

By: Rodríguez

S.B. No. 1240

A BILL TO BE ENTITLED

1 AN ACT  
2 relating to the prescriptive authority of certain psychologists;  
3 authorizing a fee.

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

5 SECTION 1. Section 501.002, Occupations Code, is amended by  
6 adding Subdivision (2-a) to read as follows:

7 (2-a) "Prescription drug" and "prescription drug  
8 order" have the meanings assigned by Section 551.003.

9 SECTION 2. Section 501.003(c), Occupations Code, is  
10 amended to read as follows:

11 (c) The practice of psychology:

12 (1) includes providing or offering to provide services  
13 to an individual or group, including providing computerized  
14 procedures, that include the application of established  
15 principles, methods, and procedures of describing, explaining, and  
16 ameliorating behavior;

17 (2) addresses normal behavior and involves  
18 evaluating, preventing, and remediating psychological, emotional,  
19 mental, interpersonal, learning, and behavioral disorders of  
20 individuals or groups, as well as the psychological disorders that  
21 accompany medical problems, organizational structures, stress, and  
22 health;

23 (3) includes:

24 (A) using projective techniques,

1 neuropsychological testing, counseling, career counseling,  
2 psychotherapy, hypnosis for health care purposes, hypnotherapy,  
3 and biofeedback; ~~and~~

4 (B) evaluating and treating mental or emotional  
5 disorders and disabilities by psychological techniques and  
6 procedures; and

7 (C) acting under the authority granted by a  
8 prescriptive authority certificate issued under Section 501.353;  
9 and

10 (4) is based on:

11 (A) a systematic body of knowledge and principles  
12 acquired in an organized program of graduate study; and

13 (B) the standards of ethics established by the  
14 profession.

15 SECTION 3. Section 501.051(b), Occupations Code, is amended  
16 to read as follows:

17 (b) To ensure adequate representation on the board of the  
18 diverse fields of psychology, the governor in making appointments  
19 under Subsection (a)(1) shall appoint:

20 (1) at least two members who provide psychological  
21 services, at least one of whom holds a prescriptive authority  
22 certificate issued under Section 501.353;

23 (2) at least one member who conducts research in the  
24 field of psychology; and

25 (3) at least one member who teaches as a member of the  
26 faculty of a psychological training institution.

27 SECTION 4. Subchapter D, Chapter 501, Occupations Code, is

1 amended by adding Section 501.163 to read as follows:

2 Sec. 501.163. ADVISORY COMMITTEE ON PRESCRIPTIVE  
3 AUTHORITY. (a) The board shall appoint an advisory committee on  
4 prescriptive authority for psychologists.

5 (a-1) Effective September 1, 2017, the advisory committee  
6 consists of six members as follows:

7 (1) three members who each hold a prescriptive  
8 authority certificate issued under Section 501.353;

9 (2) one member who is a psychiatrist;

10 (3) one member who is a pediatrician; and

11 (4) one member who represents the public.

12 (a-2) This subsection and Subsection (a-1) expire September  
13 1, 2020.

14 (b) Effective September 1, 2020, the advisory committee  
15 consists of six members as follows:

16 (1) five members who each hold a prescriptive  
17 authority certificate issued under Section 501.353; and

18 (2) one member who represents the public.

19 (c) The advisory committee shall make recommendations to  
20 the board regarding the regulation of psychologists who hold  
21 prescriptive authority certificates issued under Section 501.353,  
22 including recommendations concerning board rules to establish:

23 (1) eligibility requirements; and

24 (2) standards of practice for certificate holders.

25 (d) Chapter 2110, Government Code, does not apply to the  
26 composition or duration of the advisory committee.

27 SECTION 5. Subchapter H, Chapter 501, Occupations Code, is

1 amended by adding Section 501.353 to read as follows:

2 Sec. 501.353. PRESCRIPTIVE AUTHORITY CERTIFICATE. (a) The  
3 board shall issue a prescriptive authority certificate to a  
4 psychologist who:

5 (1) meets the eligibility requirements of Subsection  
6 (b);

7 (2) submits an application on a form prescribed by the  
8 board; and

9 (3) pays the fee set by the board.

10 (b) To be eligible for a prescriptive authority certificate  
11 a psychologist must:

12 (1) have completed a postdoctoral training program in  
13 psychopharmacology from an institution of higher education or a  
14 provider of continuing education approved by the board that  
15 includes instruction in:

16 (A) basic life sciences;

17 (B) neuroscience;

18 (C) clinical and research pharmacology and  
19 psychopharmacology;

20 (D) clinical pathophysiology;

21 (E) physical assessments and laboratory  
22 examinations;

23 (F) clinical pharmacotherapeutics; and

24 (G) ethical and legal issues relevant to  
25 prescriptive authority and associated research;

26 (2) complete the supervised experience required by the  
27 board; and

1           (3) pass a nationally recognized examination approved  
2 by the board in the area of prescriptive authority.

3           (c) A psychologist who holds a prescriptive authority  
4 certificate is authorized to:

5                 (1) issue a prescription drug order;

6                 (2) administer or dispense a prescription drug;

7                 (3) order tests to monitor the use of prescription  
8 drugs; and

9                 (4) represent that the psychologist holds a  
10 prescriptive authority certificate.

11           (d) The board shall adopt rules to protect the health of  
12 patients by requiring a psychologist who holds a prescriptive  
13 authority certificate to consult with a patient's treating  
14 physician before the psychologist issues a prescription drug order  
15 for or administers or dispenses a prescription drug to the patient.

16           SECTION 6. Section 481.002(39), Health and Safety Code, is  
17 amended to read as follows:

18                 (39) "Practitioner" means:

19                         (A) a physician, dentist, veterinarian,  
20 podiatrist, scientific investigator, psychologist, or other person  
21 licensed, registered, or otherwise permitted to distribute,  
22 dispense, analyze, conduct research with respect to, or administer  
23 a controlled substance in the course of professional practice or  
24 research in this state;

25                         (B) a pharmacy, hospital, or other institution  
26 licensed, registered, or otherwise permitted to distribute,  
27 dispense, conduct research with respect to, or administer a

1 controlled substance in the course of professional practice or  
2 research in this state;

3 (C) a person practicing in and licensed by  
4 another state as a physician, dentist, veterinarian, psychologist,  
5 or podiatrist, having a current Federal Drug Enforcement  
6 Administration registration number, who may legally prescribe  
7 Schedule II, III, IV, or V controlled substances in that state; or

8 (D) an advanced practice registered nurse or  
9 physician assistant to whom a physician has delegated the authority  
10 to prescribe or order a drug or device under Section [157.0511](#),  
11 [157.0512](#), or [157.054](#), Occupations Code.

12 SECTION 7. Section [481.073](#)(a), Health and Safety Code, is  
13 amended to read as follows:

14 (a) Only a practitioner defined by Section [481.002](#)(39)(A)  
15 and an agent designated in writing by the practitioner in  
16 accordance with rules adopted by the board may communicate a  
17 prescription by telephone. A pharmacy that receives a  
18 telephonically communicated prescription shall promptly write the  
19 prescription and file and retain the prescription in the manner  
20 required by this subchapter. A practitioner who designates an  
21 agent to communicate prescriptions shall maintain the written  
22 designation of the agent in the practitioner's usual place of  
23 business and shall make the designation available for inspection by  
24 investigators for the Texas Medical Board, the State Board of  
25 Dental Examiners, the State Board of Veterinary Medical Examiners,  
26 the Texas State Board of Examiners of Psychologists, the board, and  
27 the department. A practitioner who designates a different agent

1 shall designate that agent in writing and maintain the designation  
2 in the same manner in which the practitioner initially designated  
3 an agent under this section.

4 SECTION 8. Section 481.074(d), Health and Safety Code, is  
5 amended to read as follows:

6 (d) Except as specified in Subsections (e) and (f), the  
7 board, by rule and in consultation with the Texas Medical Board and  
8 the Texas State Board of Examiners of Psychologists, shall  
9 establish the period after the date on which the prescription is  
10 issued that a person may fill a prescription for a controlled  
11 substance listed in Schedule II. A person may not refill a  
12 prescription for a substance listed in Schedule II.

13 SECTION 9. Sections 481.076(a) and (c), Health and Safety  
14 Code, are amended to read as follows:

15 (a) The board may not permit any person to have access to  
16 information submitted to the board under Section 481.074(q) or  
17 481.075 except:

18 (1) an investigator for the board, the Texas Medical  
19 Board, the Texas State Board of Podiatric Medical Examiners, the  
20 State Board of Dental Examiners, the State Board of Veterinary  
21 Medical Examiners, the Texas Board of Nursing, [~~or~~] the Texas  
22 Optometry Board, or the Texas State Board of Examiners of  
23 Psychologists;

24 (2) an authorized officer or member of the department  
25 or authorized employee of the board engaged in the administration,  
26 investigation, or enforcement of this chapter or another law  
27 governing illicit drugs in this state or another state;

1           (3) the department on behalf of a law enforcement or  
2 prosecutorial official engaged in the administration,  
3 investigation, or enforcement of this chapter or another law  
4 governing illicit drugs in this state or another state;

5           (4) a medical examiner conducting an investigation;

6           (5) a pharmacist or a pharmacy technician, as defined  
7 by Section 551.003, Occupations Code, acting at the direction of a  
8 pharmacist or a practitioner who is a physician, dentist,  
9 veterinarian, podiatrist, optometrist, psychologist, or advanced  
10 practice nurse or is a physician assistant described by Section  
11 481.002(39)(D) or an employee or other agent of a practitioner  
12 acting at the direction of a practitioner and is inquiring about a  
13 recent Schedule II, III, IV, or V prescription history of a  
14 particular patient of the practitioner, provided that the person  
15 accessing the information is authorized to do so under the Health  
16 Insurance Portability and Accountability Act of 1996 (Pub. L.  
17 No. 104-191) and rules adopted under that Act;

18           (6) a pharmacist or practitioner who is inquiring  
19 about the person's own dispensing or prescribing activity; or

20           (7) one or more states or an association of states with  
21 which the board has an interoperability agreement, as provided by  
22 Subsection (j).

23           (c) The board by rule shall design and implement a system  
24 for submission of information to the board by electronic or other  
25 means and for retrieval of information submitted to the board under  
26 this section and Sections 481.074 and 481.075. The board shall use  
27 automated information security techniques and devices to preclude



1 improper access to the information. The board shall submit the  
2 system design to the director, ~~and~~ the Texas Medical Board, and  
3 the Texas State Board of Examiners of Psychologists for review and  
4 comment a reasonable time before implementation of the system and  
5 shall comply with the comments of those agencies unless it is  
6 unreasonable to do so.

7 SECTION 10. Section 483.001(12), Health and Safety Code, is  
8 amended to read as follows:

9 (12) "Practitioner" means:

10 (A) a person licensed or certified by the Texas  
11 Medical Board, State Board of Dental Examiners, Texas State Board  
12 of Podiatric Medical Examiners, Texas Optometry Board, Texas State  
13 Board of Examiners of Psychologists, or State Board of Veterinary  
14 Medical Examiners to prescribe and administer dangerous drugs;

15 (B) a person licensed by another state in a  
16 health field in which, under the laws of this state, a licensee may  
17 legally prescribe dangerous drugs;

18 (C) a person licensed in Canada or Mexico in a  
19 health field in which, under the laws of this state, a licensee may  
20 legally prescribe dangerous drugs; or

21 (D) an advanced practice registered nurse or  
22 physician assistant to whom a physician has delegated the authority  
23 to prescribe or order a drug or device under Section 157.0511,  
24 157.0512, or 157.054, Occupations Code.

25 SECTION 11. Sections 576.025(b), (c), (e), and (f), Health  
26 and Safety Code, are amended to read as follows:

27 (b) Consent to the administration of psychoactive

1 medication given by a patient or by a person authorized by law to  
2 consent on behalf of the patient is valid only if:

3 (1) the consent is given voluntarily and without  
4 coercive or undue influence;

5 (2) the treating physician, a treating psychologist  
6 who holds a prescriptive authority certificate, or a person  
7 designated by the physician or psychologist, provided the following  
8 information, in a standard format approved by the department, to  
9 the patient and, if applicable, to the patient's representative  
10 authorized by law to consent on behalf of the patient:

11 (A) the specific condition to be treated;

12 (B) the beneficial effects on that condition  
13 expected from the medication;

14 (C) the probable health and mental health  
15 consequences of not consenting to the medication;

16 (D) the probable clinically significant side  
17 effects and risks associated with the medication;

18 (E) the generally accepted alternatives to the  
19 medication, if any, and why the physician or psychologist  
20 recommends that they be rejected; and

21 (F) the proposed course of the medication;

22 (3) the patient and, if appropriate, the patient's  
23 representative authorized by law to consent on behalf of the  
24 patient is informed in writing that consent may be revoked; and

25 (4) the consent is evidenced in the patient's clinical  
26 record by a signed form prescribed by the facility or by a statement  
27 of the [~~treating~~] physician or psychologist described by

1 Subdivision (2), or a person designated by the physician or the  
2 psychologist, that documents that consent was given by the  
3 appropriate person and the circumstances under which the consent  
4 was obtained.

5 (c) If the [~~treating~~] physician or psychologist described  
6 by Subsection (b)(2) designates another person to provide the  
7 information under Subsection (b), then, not later than two working  
8 days after that person provides the information, excluding weekends  
9 and legal holidays, the physician or psychologist shall meet with  
10 the patient and, if appropriate, the patient's representative who  
11 provided the consent, to review the information and answer any  
12 questions.

13 (e) In prescribing psychoactive medication, a [~~treating~~]  
14 physician or psychologist described by Subsection (b)(2) shall:

15 (1) prescribe, consistent with clinically appropriate  
16 medical care, the medication that has the fewest side effects or the  
17 least potential for adverse side effects, unless the class of  
18 medication has been demonstrated or justified not to be effective  
19 clinically; and

20 (2) administer the smallest therapeutically  
21 acceptable dosages of medication for the patient's condition.

22 (f) If a physician or psychologist described by Subsection  
23 (b)(2) issues an order to administer psychoactive medication to a  
24 patient without the patient's consent because the patient is having  
25 a medication-related emergency:

26 (1) the physician or psychologist shall document in  
27 the patient's clinical record in specific medical or behavioral

1 terms the necessity of the order and that the physician or  
2 psychologist has evaluated but rejected other generally accepted,  
3 less intrusive forms of treatment, if any; and

4 (2) treatment of the patient with the psychoactive  
5 medication shall be provided in the manner, consistent with  
6 clinically appropriate medical care, least restrictive of the  
7 patient's personal liberty.

8 SECTION 12. Section 301.002(2), Occupations Code, is  
9 amended to read as follows:

10 (2) "Professional nursing" means the performance of an  
11 act that requires substantial specialized judgment and skill, the  
12 proper performance of which is based on knowledge and application  
13 of the principles of biological, physical, and social science as  
14 acquired by a completed course in an approved school of  
15 professional nursing. The term does not include acts of medical  
16 diagnosis or the prescription of therapeutic or corrective  
17 measures. Professional nursing involves:

18 (A) the observation, assessment, intervention,  
19 evaluation, rehabilitation, care and counsel, or health teachings  
20 of a person who is ill, injured, infirm, or experiencing a change in  
21 normal health processes;

22 (B) the maintenance of health or prevention of  
23 illness;

24 (C) the administration of a medication or  
25 treatment as ordered by a health care practitioner legally  
26 authorized to prescribe the medication or treatment [~~physician,~~  
27 ~~podiatrist, or dentist~~];

- 1 (D) the supervision or teaching of nursing;
- 2 (E) the administration, supervision, and  
3 evaluation of nursing practices, policies, and procedures;
- 4 (F) the requesting, receiving, signing for, and  
5 distribution of prescription drug samples to patients at practices  
6 at which an advanced practice registered nurse is authorized to  
7 sign prescription drug orders as provided by Subchapter B, Chapter  
8 157;
- 9 (G) the performance of an act delegated by a  
10 physician under Section 157.0512, 157.054, 157.058, or 157.059; and
- 11 (H) the development of the nursing care plan.

12 SECTION 13. Section 551.003(34), Occupations Code, is  
13 amended to read as follows:

14 (34) "Practitioner" means:

15 (A) a person licensed, certified, or registered  
16 to prescribe, distribute, administer, or dispense a prescription  
17 drug or device in the course of professional practice in this state,  
18 including a physician, dentist, podiatrist, psychologist, or  
19 veterinarian but excluding a person licensed under this subtitle;

20 (B) a person licensed by another state, Canada,  
21 or the United Mexican States in a health field in which, under the  
22 law of this state, a license or certificate holder in this state may  
23 legally prescribe a dangerous drug;

24 (C) a person practicing in another state and  
25 licensed by another state as a physician, dentist, veterinarian,  
26 psychologist, or podiatrist, who has a current federal Drug  
27 Enforcement Administration registration number and who may legally

1 prescribe a Schedule II, III, IV, or V controlled substance, as  
2 specified under Chapter 481, Health and Safety Code, in that other  
3 state; or

4 (D) an advanced practice registered nurse or  
5 physician assistant to whom a physician has delegated the authority  
6 to prescribe or order a drug or device under Section 157.0511,  
7 157.0512, or 157.054.

8 SECTION 14. Section 501.051(b), Occupations Code, as  
9 amended by this Act, does not affect the entitlement of a member  
10 serving on the Texas State Board of Examiners of Psychologists  
11 immediately before the effective date of this Act to continue to  
12 serve for the remainder of the member's term. With the first  
13 appointment of a member described by Section 501.051(a)(1),  
14 Occupations Code, to be made by the governor on or after the  
15 effective date of this Act, the governor shall appoint a member to  
16 the board who has the qualifications required by Section  
17 501.051(b), Occupations Code, as amended by this Act.

18 SECTION 15. (a) Not later than December 1, 2017, the Texas  
19 State Board of Examiners of Psychologists shall appoint members of  
20 the advisory committee in accordance with Section 501.163(a-1),  
21 Occupations Code, as added by this Act.

22 (b) Not later than June 1, 2018, the advisory committee  
23 shall make initial recommendations to the Texas State Board of  
24 Examiners of Psychologists as described by Section 501.163(c),  
25 Occupations Code, as added by this Act.

26 (c) Not later than December 1, 2020, the Texas State Board  
27 of Examiners of Psychologists shall appoint members to the advisory

1 committee so that the composition of the committee complies with  
2 Section 501.163(b), Occupations Code, as added by this Act.

3 SECTION 16. Not later than September 1, 2018, the Texas  
4 State Board of Examiners of Psychologists shall adopt rules and  
5 procedures necessary to implement Section 501.353, Occupations  
6 Code, as added by this Act.

7 SECTION 17. This Act takes effect September 1, 2017.