

BILL ANALYSIS

Senate Research Center
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S.B. 1782
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

In August 2018, a doctor was convicted of raping (second degree felony sexual assault) a patient at Ben Taub Hospital in Houston. He received the most lenient sentence that the jury could issue, ten years probation. Despite this charge, the physician's license is suspended rather than revoked, listed as "SUSPENDED, ACTIVE" on the Texas Medical Board's (TMB) website. Under current statute, TMB must revoke the license of a license holder incarcerated for a felony (Section 53.021(B), Occupations Code), and TMB must revoke the license of a physician who committed a felony "on final conviction" (Section 164.057(B), Occupations Code). However, statute does not define final conviction. Consequently, this has been interpreted in the broadest sense possible—namely, that all appeals available to the convicted person have been exhausted. The result is that a doctor who is a convicted rapist may have a license that is merely suspended by TMB.

S.B. 1782 will fix this statutory oversight by amending the Occupations Code regarding when TMB can and must suspend or revoke a license issued by the agency.

As proposed, S.B. 1782 amends current law relating to the denial, suspension, or revocation of licenses issued by the Texas Medical Board for certain offenses.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas Medical Board (TMB) in SECTION 1 (Section 108.003, Occupations Code) of this bill.

Rulemaking authority previously granted to TMB is rescinded in SECTION 9 (Section 164.0595, Occupations Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Chapter 108, Occupation Code, as follows:

CHAPTER 108. New heading: REQUIRED LICENSE DENIAL, SUSPENSION, OR REVOCATION BY TEXAS MEDICAL BOARD FOR CERTAIN OFFENSES

Sec. 108.001. New heading: DEFINITIONS. Redefines "board" to mean the Texas Medical Board (TMB) and defines "license" for purposes of this chapter.

Sec. 108.002. New heading: LICENSE SUSPENSION OR REVOCATION ON CERTAIN PLEAS OR FINDING OF GUILT. Requires TMB, in accordance with Section 108.004, to:

(1) creates this subdivision from existing text and requires TMB, subject to Subdivision (2), to suspend a license, if the license holder during any court proceeding pleads guilty or nolo contendere to or during the guilt or innocence phase of the trial is found guilty of:

(A) a felony; or

(B) a misdemeanor:

(i) for which the actor is required to register as a sex offender under Chapter 62 (Sex Offender Registration Program), Code of Criminal Procedure; or

(ii) under:

(a) Chapter 22 (Assaultive Offenses), Penal Code, other than a misdemeanor punishable by fine only;

(b) Section 25.07 (Violation of Certain Court Orders or Conditions of Bond in a Family Violence, Child Abuse or Neglect, Sexual Assault or Abuse, Stalking, or Trafficking Case), Penal Code;

(c) Section 25.071 (Violation of Protective Order Preventing Offense Caused by Bias or Prejudice), Penal Code;

(d) Chapter 481 (Texas Controlled Substances Act), Health and Safety Code, other than an offense described by Article 42A.054(a)(14) (relating to certain sentences not applying if a person violates Chapter 481 and punishment is increased), Code of Criminal Procedure;

(e) Chapter 483 (Dangerous Drugs), Health and Safety Code;

(f) Section 485.033 (Inhalant Paraphernalia), Health and Safety Code; or

(g) the federal Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. Section 801 et seq.) or its successor statute; or

(2) revoke a license if the license holder:

(A) during any court proceeding pleads guilty or nolo contendere to or during the guilt or innocence phase of the trial is found guilty of an offense:

(i) listed in Article 42A.054 (Limitation on Judge-Ordered Community Service), Code of Criminal Procedure; or

(ii) under Section 21.11 (Indecency With a Child), Penal Code; or

(B) is convicted of an offense described by Subdivision (1), regardless of the status of any pending appeal.

Deletes existing Subsection (a) requiring TMB to suspend a license issued by the TMB if it is determined at an administrative hearing that the license holder has been convicted of a felony under Chapter 481 or 483, Health and Safety Code, or Section 485.032 (Delivery to a Minor) of that code. Deletes existing Subsection (b) requiring a hearing under Subsection (a) to be conducted under Chapter 2001 (Administrative Procedure), Government Code. Deletes existing Subsection (c) requiring TMB to revoke the license of a person whose license is suspended under Subsection (a) on the person's final conviction.

Sec. 108.003. TEMPORARY SUSPENSION FOR CERTAIN ARRESTS. (a) Requires TMB, in accordance with Section 108.004, to suspend a license if the license holder is arrested for an offense under:

(1) Section 22.011(a)(2) (relating to a person committing an offense if the person intentionally or knowingly performs certain acts with a child), Penal Code;

(2) Section 22.021(a)(1)(B) (relating to a person committing an offense if the person intentionally or knowingly performs certain acts with a child), Penal Code;

(3) Section 21.02 (Continuous Sexual Abuse of Young Child or Children), Penal Code;

(4) Section 21.11, Penal Code;

(5) Section 43.26 (Possession or Promotion of Child Pornography), Penal Code; or

(6) Section 43.262 (Possession or Promotion of Lewd Visual Materials Depicting Child), Penal Code.

(b) Authorizes TMB to suspend the license of a license holder who is arrested for an offense in which the victim of the offense was a child, elderly individual, or disabled individual, as those terms are defined by Section 22.04 (Injury to a Child, Elderly Individual, or Disabled Individual), Penal Code, or a patient in a hospital or health care facility at the time the offense was committed.

(c) Provides that a suspension under this section remains in effect until the final disposition of the case.

(d) Requires TMB to adopt rules to implement this section, including rules regarding evidence that serves as proof of final disposition of a case.

Redesignates existing Section 108.003 as Section 108.006.

Sec. 108.004. HEARING; INFORMAL SETTLEMENT CONFERENCE; JUDICIAL REVIEW. (a) Requires the president of TMB, as soon as practicable after TMB discovers or receives notice that grounds exist under Section 108.002 or 108.003 requiring TMB to suspend or revoke a license holder's license, to appoint a three-member disciplinary panel consisting of TMB members, at least one of whom must be a physician and one of whom must be a public member, and to schedule a hearing before the disciplinary panel on the suspension or revocation for the earliest possible date after providing 10 days' notice of the hearing to the license holder.

(b) Requires the disciplinary panel, at a hearing under Subsection (a), to provide the respondent the opportunity to be heard and present evidence, to determine whether grounds exist under Section 108.002 or 108.003 requiring TMB to suspend or revoke the license holder's license, and if the panel finds that grounds exist under Subdivision (2), to enter an order immediately suspending or revoking the license, as appropriate.

(c) Prohibits the disciplinary panel, in a hearing under Subsection (a), from probating the suspension of a license.

(d) Authorizes the disciplinary panel, immediately following a hearing under Subsection (a), to convene and conduct, according to TMB rules, an informal settlement conference with the respondent:

(1) to propose an agreed order regarding the suspension or revocation, as appropriate, including the probation of suspension, that, if the respondent signs the agreed order, will be presented to TMB for TMB approval; or

(2) if agreement under Subdivision (1) cannot be reached between the disciplinary panel and the respondent, refer the suspension or revocation for formal proceedings before an administrative law judge at the State Office of Administrative Hearings.

(e) Provides that an agreed order under Subsection (d) is not effective unless TMB approves the order and provides that an agreed order supersedes any order entered by a disciplinary panel at a hearing under Subsection (a).

(f) Entitles a license holder whose license is suspended or revoked under this section to judicial review of the suspension or revocation under the substantial evidence rule. Requires a petition for judicial review under this subsection to be filed not later than the 30th day after the date the order suspending or revoking the license is entered.

Sec. 108.005. DENIAL OF LICENSE APPLICATION. Requires TMB to deny an application for a license if grounds would exist under Section 108.002 or 108.003 requiring TMB to suspend or revoke the applicant's license if the applicant were a license holder.

Sec. 108.006. LICENSE REINSTATEMENT OR REISSUANCE. (a) Redesignates existing Section 108.003 as Section 108.006. Prohibits TMB, except as provided by Subsection (b), from reinstating or reissuing a license suspended or revoked under Section 108.002, rather than prohibiting TMB from reinstating or reissuing a license suspended or revoked under Section 108.002 unless an express determination is made that the reinstatement or reissuance of the license is in the best interests of the public and the person whose license was suspended or revoked.

(b) Authorizes a person whose license is suspended or revoked under Section 108.002 to apply for reinstatement or reissuance of the license if the conviction on which the suspension or revocation is based is set aside, vacated, or otherwise overturned on appeal. Deletes existing text requiring TMB to base its determination under Subsection (a) on substantial evidence contained in an investigative report.

SECTION 2. Amends Section 151.002(a)(3), Occupations Code, as follows:

(3) Redefines "disciplinary order" to mean an action taken under Section 164.001 (Disciplinary Authority of Board; Methods of Discipline), 164.053 (Unprofessional or Dishonorable Conduct), or 164.101 (Probation).

SECTION 3. Amends Sections 164.001(a) and (b), Occupations Code, as follows:

(a) Requires TMB, except for good cause shown, on determining a violation of this subtitle or a TMB rule or for any cause for which TMB may refuse to admit a person to its examination or to issue or renew a license, to perform certain tasks, rather than requiring TMB, except for good cause shown, on determining a violation of this subtitle or a TMB rule or for any cause for which TMB may refuse to admit a person to its examination or to issue or renew a license, including an initial conviction or the initial finding of the trier of fact of guilt of a felony or misdemeanor involving moral turpitude, to perform certain tasks.

(b) Deletes existing text creating an exception provided by 164.057 (Requires Suspension or Revocation of License For Certain Offenses) and 164.058 (Required Suspension of License of Incarcerated Physician) to the requirement of TMB, on determining that a

person committed an act described by Sections 164.051 (Grounds For Denial or Disciplinary Action) through 164.054 (Additional Requirements Regarding Drug Records), to enter an order that meets certain requirements.

SECTION 4. Amends Section 204.303(a), Occupations Code, as follows:

(a) Deletes existing Subdivision (2) authorizing the Texas Physician Assistant Board (PAB) to take action under Section 204.301 against an applicant or license holder who is convicted of a felony, placed on deferred adjudication, or placed in a pretrial diversion program. Renumbers existing Subdivision (3)–(5) as (2)–(4) accordingly.

SECTION 5. Amends Section 205.351(a), Occupations Code, as follows:

(a) Deletes existing Subdivision (7) authorizing a license to practice acupuncture to be denied or, after notice and hearing, authorizing a license holder to be subject to disciplinary action under Section 205.352 (Disciplinary Powers of Acupuncture Board) if the license applicant or license holder has been convicted of a crime involving moral turpitude or a felony or is the subject of deferred adjudication or pretrial diversion for such an offense. Renumbers existing Subdivision (8)–(17) as (7)–(16) accordingly.

SECTION 6. Amends Section 206.203(a), Occupations Code, as follows:

(a) Deletes existing Subdivision (2) requiring a person, except as provided by Section 206.206 (Temporary License), to be eligible for a license, to have not been convicted of a felony or a crime involving moral turpitude. Renumbers existing Subdivisions (3)–(5) as Subdivisions (2)–(4) accordingly.

SECTION 7. Amends Section 206.303(a), Occupations Code, as follows:

(a) Deletes existing Subdivision (2) authorizing TMB to take action under Section 206.301 (Disciplinary Actions by the Medical Board) against an applicant or license holder who is convicted of a felony, placed on deferred adjudication, or placed in a pretrial diversion program. Renumbers existing Subdivision (3) as Subdivision (2) accordingly.

SECTION 8. Amends Section 602.251, Occupations Code, as follows;

Sec. 602.251. GROUNDS FOR LICENSE DENIAL OR DISCIPLINARY ACTION. Authorizes TMB to refuse to issue or renew a license, suspend, restrict, or revoke a license, or reprimand a license holder for:

(1)–(4) makes no changes to these subdivisions;

(5) being convicted of an offense that directly relates to the person's duties as a licensed medical physicist. Deletes existing Paragraphs (A) and (B) authorizing TMB to refuse to issue or renew a license, suspend, restrict, or revoke a license, or reprimand a license holder for being convicted of a felony or a misdemeanor involving moral turpitude or that directly relates to the person's duties as a licensed medical physicist.

SECTION 9. Repealer: Section 164.057 (Required Suspension of Revocation for License For Certain Offenses), Occupations Code.

Repealer: Section 164.058 (Required Suspension of License of Incarcerated Physician), Occupations Code.

Repealer: Section 164.0595 (Temporary Suspension or Restriction of License For Certain Arrests), Occupations Code.

Repealer: Section 204.310 (Required Suspension of License For Incarcerated Physician Assistant), Occupations Code.

Repealer: Section 206.311 (Required Suspension of Incarcerated Surgical Assistant), Occupations Code.

Repealer: Section 601.310 (Required Suspension of License of Incarcerated Certificate Holder), Occupations Code.

Repealer: Section 604.208 (Required Suspension of License of Incarcerated Certificate or Temporary Permit Holder), Occupations Code.

SECTION 10. Makes application of Section 108.005, Occupations Code, as added by this Act, prospective.

SECTION 11. Makes application of Chapter 108, Occupations Code, as amended by this Act, prospective. Provides that for purposes of this section, an offense was committed before the effective date of this Act if any element of the offense was committed before that date.

SECTION 12. Provides that the changes in law made by this Act to Chapters 108, 164, 204, 205, 206, 601, 602, and 604, Occupations Code, do not affect the validity of a disciplinary action or other administrative proceeding that was initiated before the effective date of this Act and that is pending before a court or other governmental entity on the effective date of this Act.

SECTION 13. Effective date: September 1, 2019.