

By: Rodríguez

S.B. No. 268

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(a)(1), Occupations Code, is
10 amended to read as follows:

11 (1) "Practice of psychology" means:

12 (A) the observation, description, diagnosis,
13 evaluation, assessment, interpretation, or treatment of and
14 intervention in human behavior by applying education, training,
15 methods, and procedures for the purpose of:

16 (i) preventing, predicting, treating,
17 remediating, or eliminating:

18 (a) symptomatic, maladaptive, or
19 undesired behavior;

20 (b) emotional, interpersonal,
21 learning, substance use, neuropsychological, cognitive, or
22 behavioral disorders or disabilities, including those that
23 accompany medical problems; or

24 (c) mental illness;

1 (ii) evaluating, assessing, or
2 facilitating, by a license holder or a person who represents the
3 person to the public by a title or description of services that
4 includes the word "psychological," "psychologist," or
5 "psychology," the enhancement of individual, group, or
6 organizational effectiveness, including evaluating, assessing, or
7 facilitating:

- 8 (a) personal effectiveness;
- 9 (b) adaptive behavior;
- 10 (c) interpersonal relationships;
- 11 (d) academic, vocational, and life
12 adjustment;
- 13 (e) health; or
- 14 (f) individual, group, or
15 organizational performance;

16 (iii) providing psychological,
17 neuropsychological, and psychoeducational evaluation, therapy, and
18 remediation as well as counseling, psychoanalysis, psychotherapy,
19 hypnosis, and biofeedback; or

20 (iv) consulting with others, including
21 other mental health professionals, physicians, school personnel,
22 or organizations within the scope of the provider's competency and
23 training with respect to services provided for a specific
24 individual; [~~or~~]

25 (B) action taken under the authority granted by a
26 prescriptive authority certificate issued under Section 501.353;

27 or

1 (C) the supervision of an activity or service
2 described by Paragraph (A) or (B).

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

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

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

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

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

15 SECTION 4. Subchapter D, Chapter 501, Occupations Code, is
16 amended by adding Section 501.163 to read as follows:

17 Sec. 501.163. ADVISORY COMMITTEE ON PRESCRIPTIVE
18 AUTHORITY. (a) The board shall appoint an advisory committee on
19 prescriptive authority for psychologists.

20 (a-1) Effective September 1, 2019, the advisory committee
21 consists of six members as follows:

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

24 (2) one member who is a psychiatrist;

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

26 (4) one member who represents the public.

27 (a-2) This subsection and Subsection (a-1) expire September

1 1, 2022.

2 (b) Effective September 1, 2022, the advisory committee
3 consists of six members as follows:

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

6 (2) one member who represents the public.

7 (c) The advisory committee shall make recommendations to
8 the board regarding the regulation of psychologists who hold
9 prescriptive authority certificates issued under Section 501.353,
10 including recommendations concerning board rules to establish:

11 (1) eligibility requirements; and

12 (2) standards of practice for certificate holders.

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

15 SECTION 5. Section 501.304, Occupations Code, is amended by
16 adding Subsection (a-1) to read as follows:

17 (a-1) The rules adopted under Subsection (a) must require
18 that, of the minimum number of hours of continuing education
19 required to renew a license as a psychologist, half of that number
20 of hours or 10 hours, whichever is less, must be in the areas of
21 pharmacology and pathophysiology if the psychologist holds a
22 prescriptive authority certificate.

23 SECTION 6. Subchapter H, Chapter 501, Occupations Code, is
24 amended by adding Sections 501.353 and 501.354 to read as follows:

25 Sec. 501.353. PRESCRIPTIVE AUTHORITY CERTIFICATE. (a) The
26 board shall issue a prescriptive authority certificate to a
27 psychologist who:

1 (1) meets the eligibility requirements of Subsection

2 (b);

3 (2) submits an application on a form prescribed by the

4 board;

5 (3) has not, in the two-year period preceding the date

6 of the application, had a prescriptive authority certificate

7 revoked; and

8 (4) pays the fee set by the board.

9 (b) To be eligible for a prescriptive authority certificate

10 a psychologist must:

11 (1) have completed a training program in

12 psychopharmacology from an institution of higher education or a

13 provider of continuing education approved by the board that

14 includes instruction in:

15 (A) basic life sciences;

16 (B) neuroscience;

17 (C) clinical and research pharmacology and

18 psychopharmacology;

19 (D) clinical pathophysiology;

20 (E) physical assessments and laboratory

21 examinations;

22 (F) clinical pharmacotherapeutics; and

23 (G) ethical and legal issues relevant to

24 prescriptive authority and associated research;

25 (2) pass a nationally recognized examination approved

26 by the board in the area of prescriptive authority; and

27 (3) provide evidence of professional liability

1 coverage.

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

4 (1) issue a prescription drug order;

5 (2) administer or dispense a prescription drug;

6 (3) order tests commonly associated with monitoring
7 the use of prescription drugs; and

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

10 (d) The authority of a psychologist to issue a prescription
11 drug order or administer or dispense a prescription drug under a
12 prescriptive authority certificate is limited to a drug or device
13 related to the diagnosis, treatment, or management of emotional,
14 interpersonal, learning, substance use, neuropsychological,
15 cognitive, or behavioral disorders or disabilities, or mental
16 illness. A prescriptive authority certificate does not authorize
17 the prescribing, administering, or dispensing of an opioid.

18 (e) A psychologist who holds a prescriptive authority
19 certificate may only practice under the supervision of a physician
20 or a psychologist who meets the requirements of Section 501.354
21 until the certificate holder satisfies the supervised experience
22 requirement of that section.

23 (f) The board shall adopt rules to protect the health of
24 patients by requiring a psychologist who holds a prescriptive
25 authority certificate to notify a patient's primary care physician
26 or provider, if any, before the psychologist:

27 (1) issues a prescription drug order for a drug or

1 otherwise changes the type or dosage of any drug prescribed for the
2 patient; or

3 (2) administers or dispenses a prescription drug to
4 the patient.

5 (g) A primary care provider is not liable for an act of a
6 psychologist acting under a prescriptive authority certificate
7 based solely on the provider receiving a notification under
8 Subsection (f).

9 Sec. 501.354. REQUIRED SUPERVISED EXPERIENCE FOR
10 PRESCRIPTIVE AUTHORITY CERTIFICATE HOLDER. (a) Not later than the
11 second anniversary of the date of issuance of a prescriptive
12 authority certificate, the psychologist who holds the certificate
13 must complete at least 2,000 hours of practice under the authority
14 of the certificate treating not less than 100 patients under the
15 supervision of a physician or a psychologist who has maintained a
16 prescriptive authority certificate for the three years preceding
17 the date the supervision began. The supervision must be under a
18 written agreement approved by the board that requires periodic
19 meetings between the psychologist and supervising provider.

20 (b) A physician or psychologist may not at any time
21 supervise under this section more than the full-time equivalent of
22 seven psychologists.

23 (c) Unless the supervising provider has reason to believe
24 the psychologist lacked the competency to perform the act, a
25 supervising provider is not liable for an act of a psychologist
26 solely because the provider entered into an agreement to supervise
27 the psychologist.

1 (d) The board shall revoke the prescriptive authority
2 certificate of a psychologist who does not complete the supervised
3 experience as required by Subsection (a).

4 SECTION 7. Section 481.002(39), Health and Safety Code, is
5 amended to read as follows:

6 (39) "Practitioner" means:

7 (A) a physician, dentist, veterinarian,
8 podiatrist, scientific investigator, psychologist, or other person
9 licensed, registered, or otherwise permitted to distribute,
10 dispense, analyze, conduct research with respect to, or administer
11 a controlled substance in the course of professional practice or
12 research in this state;

13 (B) a pharmacy, hospital, or other institution
14 licensed, registered, or otherwise permitted to distribute,
15 dispense, conduct research with respect to, or administer a
16 controlled substance in the course of professional practice or
17 research in this state;

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

23 (D) an advanced practice registered nurse or
24 physician assistant to whom a physician has delegated the authority
25 to prescribe or order a drug or device under Section 157.0511,
26 157.0512, or 157.054, Occupations Code.

27 SECTION 8. Section 481.073(a), Health and Safety Code, is

1 amended to read as follows:

2 (a) Only a practitioner defined by Section 481.002(39)(A)
3 and an agent designated in writing by the practitioner in
4 accordance with rules adopted by the board may communicate a
5 prescription by telephone. A pharmacy that receives a
6 telephonically communicated prescription shall promptly write the
7 prescription and file and retain the prescription in the manner
8 required by this subchapter. A practitioner who designates an
9 agent to communicate prescriptions shall maintain the written
10 designation of the agent in the practitioner's usual place of
11 business and shall make the designation available for inspection by
12 investigators for the Texas Medical Board, the State Board of
13 Dental Examiners, the State Board of Veterinary Medical Examiners,
14 the Texas State Board of Examiners of Psychologists, the board, and
15 the department. A practitioner who designates a different agent
16 shall designate that agent in writing and maintain the designation
17 in the same manner in which the practitioner initially designated
18 an agent under this section.

19 SECTION 9. Section 481.074(d), Health and Safety Code, is
20 amended to read as follows:

21 (d) Except as specified in Subsections (e) and (f), the
22 board, by rule and in consultation with the Texas Medical Board and
23 the Texas State Board of Examiners of Psychologists, shall
24 establish the period after the date on which the prescription is
25 issued that a person may fill a prescription for a controlled
26 substance listed in Schedule II. A person may not refill a
27 prescription for a substance listed in Schedule II.

1 SECTION 10. Sections 481.076(a) and (c), Health and Safety
2 Code, are amended to read as follows:

3 (a) The board may not permit any person to have access to
4 information submitted to the board under Section 481.074(q) or
5 481.075 except:

6 (1) the board, the Texas Medical Board, the Texas
7 Department of Licensing and Regulation [~~State Board of Podiatric~~
8 ~~Medical Examiners~~], the State Board of Dental Examiners, the State
9 Board of Veterinary Medical Examiners, the Texas Board of Nursing,
10 [~~or~~] the Texas Optometry Board, or the Texas State Board of
11 Examiners of Psychologists for the purpose of:

12 (A) investigating a specific license holder; or
13 (B) monitoring for potentially harmful
14 prescribing or dispensing patterns or practices under Section
15 481.0762;

16 (2) an authorized officer or member of the department
17 or authorized employee of the board engaged in the administration,
18 investigation, or enforcement of this chapter or another law
19 governing illicit drugs in this state or another state;

20 (3) the department on behalf of a law enforcement or
21 prosecutorial official engaged in the administration,
22 investigation, or enforcement of this chapter or another law
23 governing illicit drugs in this state or another state;

24 (4) a medical examiner conducting an investigation;

25 (5) provided that accessing the information is
26 authorized under the Health Insurance Portability and
27 Accountability Act of 1996 (Pub. L. No. 104-191) and regulations

1 adopted under that Act:

2 (A) a pharmacist or a pharmacy technician, as
3 defined by Section 551.003, Occupations Code, acting at the
4 direction of a pharmacist; or

5 (B) a practitioner who:

6 (i) is a physician, dentist, veterinarian,
7 podiatrist, optometrist, psychologist, or advanced practice nurse
8 or is a physician assistant described by Section 481.002(39)(D) or
9 an employee or other agent of a practitioner acting at the direction
10 of a practitioner; and

11 (ii) is inquiring about a recent Schedule
12 II, III, IV, or V prescription history of a particular patient of
13 the practitioner;

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

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

19 (c) The board by rule shall design and implement a system
20 for submission of information to the board by electronic or other
21 means and for retrieval of information submitted to the board under
22 this section and Sections 481.074 and 481.075. The board shall use
23 automated information security techniques and devices to preclude
24 improper access to the information. The board shall submit the
25 system design to the director, ~~and~~ the Texas Medical Board, and
26 the Texas State Board of Examiners of Psychologists for review and
27 comment a reasonable time before implementation of the system and

1 shall comply with the comments of those agencies unless it is
2 unreasonable to do so.

3 SECTION 11. Section 483.001(12), Health and Safety Code, is
4 amended to read as follows:

5 (12) "Practitioner" means:

6 (A) a person:

7 (i) licensed or certified by the Texas
8 Medical Board, State Board of Dental Examiners, [~~Texas State Board~~
9 ~~of Podiatric Medical Examiners,~~] Texas Optometry Board, Texas State
10 Board of Examiners of Psychologists, or State Board of Veterinary
11 Medical Examiners to prescribe and administer dangerous drugs; or

12 (ii) licensed by the Texas Department of
13 Licensing and Regulation, with respect to podiatry, to prescribe
14 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 12. 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 13. 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 14. 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 15. 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 16. (a) Not later than December 1, 2019, 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, 2020, 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, 2022, 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 17. Not later than September 1, 2020, the Texas
4 State Board of Examiners of Psychologists shall adopt rules and
5 procedures necessary to implement Sections 501.353 and 501.354,
6 Occupations Code, as added by this Act.

7 SECTION 18. This Act takes effect September 1, 2019.