

By: Huffman

S.B. No. 1782

A BILL TO BE ENTITLED

AN ACT

relating to the denial, suspension, or revocation of licenses issued by the Texas Medical Board for certain offenses.

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

SECTION 1. Chapter 108, Occupations Code, is amended to read as follows:

CHAPTER 108. REQUIRED LICENSE DENIAL, SUSPENSION, OR REVOCATION BY TEXAS MEDICAL BOARD [~~REQUIRED~~] FOR CERTAIN OFFENSES [~~DRUG FELONY CONVICTIONS~~]

Sec. 108.001. DEFINITIONS [~~DEFINITION~~]. In this chapter:

(1) "Board" [~~,"board"~~] means the Texas [~~State Board of~~] Medical Board [~~Examiners~~].

(2) "License" means a license, certificate, registration, permit, or other form of authorization issued by the board and required by law to engage in an occupation or profession regulated by the board.

Sec. 108.002. LICENSE SUSPENSION OR REVOCATION ON CERTAIN PLEAS OR FINDING OF GUILT [~~CONVICTION, REVOCATION~~]. In accordance with Section 108.004, the [~~(a) The~~] board shall:

(1) subject to Subdivision (2), suspend a license [~~issued by the board~~] 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, Code of Criminal Procedure; or

(ii) under:

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

(b) Section 25.07, Penal Code;

(c) Section 25.071, Penal Code;

(d) Chapter 481, Health and Safety Code, other than an offense described by Article 42A.054(a)(14), Code of Criminal Procedure;

(e) Chapter 483, Health and Safety Code;

(f) Section 485.033, 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, Code of Criminal Procedure; or

(ii) under Section 21.11, Penal Code; or

(B) is convicted of an offense described by

Subdivision (1), regardless of the status of any pending appeal ~~[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 of that code].~~

~~[(b) A hearing under Subsection (a) shall be conducted under Chapter 2001, Government Code.~~

~~[(c) The board shall 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) In accordance with Section 108.004, the board shall suspend a license if the license holder is arrested for an offense under:

(1) Section 22.011(a)(2), Penal Code;

(2) Section 22.021(a)(1)(B), Penal Code;

(3) Section 21.02, Penal Code;

(4) Section 21.11, Penal Code;

(5) Section 43.26, Penal Code; or

(6) Section 43.262, Penal Code.

(b) The board may suspend the license of a license holder who is arrested for an offense in which the victim of the offense was:

(1) a child, elderly individual, or disabled individual, as those terms are defined by Section 22.04, Penal Code; or

(2) a patient in a hospital or health care facility at the time the offense was committed.

(c) A suspension under this section remains in effect until

1 the final disposition of the case.

2 (d) The board shall adopt rules to implement this section,
3 including rules regarding evidence that serves as proof of final
4 disposition of a case.

5 Sec. 108.004. HEARING; INFORMAL SETTLEMENT CONFERENCE;
6 JUDICIAL REVIEW. (a) As soon as practicable after the board
7 discovers or receives notice that grounds exist under Section
8 108.002 or 108.003 requiring the board to suspend or revoke a
9 license holder's license, the president of the board shall:

10 (1) appoint a three-member disciplinary panel
11 consisting of board members, at least one of whom must be a
12 physician and one of whom must be a public member; and

13 (2) schedule a hearing before the disciplinary panel
14 on the suspension or revocation for the earliest possible date
15 after providing 10 days' notice of the hearing to the license
16 holder.

17 (b) At a hearing under Subsection (a), the disciplinary
18 panel shall:

19 (1) provide the respondent the opportunity to be heard
20 and present evidence;

21 (2) determine whether grounds exist under Section
22 108.002 or 108.003 requiring the board to suspend or revoke the
23 license holder's license; and

24 (3) if the panel finds that grounds exist under
25 Subdivision (2), enter an order immediately suspending or revoking
26 the license, as appropriate.

27 (c) In a hearing under Subsection (a), a disciplinary panel

1 may not probate the suspension of a license.

2 (d) Immediately following a hearing under Subsection (a),
3 the disciplinary panel may convene and conduct, according to board
4 rules, an informal settlement conference with the respondent to:

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

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

14 (e) An agreed order under Subsection (d):

15 (1) is not effective unless the board approves the
16 order; and

17 (2) supersedes any order entered by a disciplinary
18 panel at a hearing under Subsection (a).

19 (f) A license holder whose license is suspended or revoked
20 under this section is entitled to judicial review of the suspension
21 or revocation under the substantial evidence rule. A petition for
22 judicial review under this subsection must be filed not later than
23 the 30th day after the date the order suspending or revoking the
24 license is entered.

25 Sec. 108.005. DENIAL OF LICENSE APPLICATION. The board
26 shall deny an application for a license if grounds would exist under
27 Section [108.002](#) or [108.003](#) requiring the board to suspend or revoke

1 the applicant's license if the applicant were a license holder.

2 Sec. 108.006 ~~[108.003]~~. LICENSE REINSTATEMENT OR
3 REISSUANCE. (a) Except as provided by Subsection (b), the ~~[The]~~
4 board may not reinstate or reissue a license suspended or revoked
5 under Section 108.002 ~~[unless an express determination is made that~~
6 ~~the reinstatement or reissuance of the license is in the best~~
7 ~~interests of the public and the person whose license was suspended~~
8 ~~or revoked]~~.

9 (b) A person whose license is suspended or revoked under
10 Section 108.002 may apply for reinstatement or reissuance of the
11 license if the conviction on which the suspension or revocation is
12 based is set aside, vacated, or otherwise overturned on appeal ~~[The~~
13 ~~board must base its determination under Subsection (a) on~~
14 ~~substantial evidence contained in an investigative report]~~.

15 SECTION 2. Section 151.002(a)(3), Occupations Code, is
16 amended to read as follows:

17 (3) "Disciplinary order" means an action taken under
18 Section 164.001, 164.053, ~~[164.058]~~ or 164.101.

19 SECTION 3. Sections 164.001(a) and (b), Occupations Code,
20 are amended to read as follows:

21 (a) Except for good cause shown, the board, on determining a
22 violation of this subtitle or a board rule or for any cause for
23 which the board may refuse to admit a person to its examination or
24 to issue or renew a license, ~~[including an initial conviction or the~~
25 ~~initial finding of the trier of fact of guilt of a felony or~~
26 ~~misdemeanor involving moral turpitude]~~ shall:

27 (1) revoke or suspend a license;

(2) place on probation a person whose license is suspended; or

(3) reprimand a license holder.

(b) The ~~[Except as otherwise provided by Sections 164.057 and 164.058, the]~~ board, on determining that a person committed an act described by Sections 164.051 through 164.054, shall enter an order to:

(1) deny the person's application for a license or other authorization to practice medicine;

(2) administer a public reprimand;

(3) suspend, limit, or restrict the person's license or other authorization to practice medicine, including:

(A) limiting the practice of the person to or excluding one or more specified activities of medicine; or

(B) stipulating periodic board review;

(4) revoke the person's license or other authorization to practice medicine;

(5) require the person to submit to care, counseling, or treatment of physicians designated by the board as a condition for:

(A) the issuance or renewal of a license or other authorization to practice medicine; or

(B) continued practice under a license;

(6) require the person to participate in an educational or counseling program prescribed by the board;

(7) require the person to practice under the direction of a physician designated by the board for a specified period;

(8) require the person to perform public service considered appropriate by the board; or

(9) assess an administrative penalty against the person as provided by Section 165.001.

SECTION 4. Section 204.303(a), Occupations Code, is amended to read as follows:

(a) The physician assistant board may take action under Section 204.301 against an applicant or license holder who:

(1) violates this chapter or a rule adopted under this chapter;

~~(2) [is convicted of a felony, placed on deferred adjudication, or placed in a pretrial diversion program,~~

~~(3)]~~ violates state law if the violation is connected with practice as a physician assistant;

(3) ~~(4)]~~ fails to keep complete and accurate records of the purchase and disposal of drugs as required by Chapter 483, Health and Safety Code, or any subsequent rules; or

(4) ~~(5)]~~ writes a false or fictitious prescription for a dangerous drug as defined by Chapter 483, Health and Safety Code.

SECTION 5. Section 205.351(a), Occupations Code, is amended to read as follows:

(a) A license to practice acupuncture may be denied or, after notice and hearing, a license holder may be subject to disciplinary action under Section 205.352 if the license applicant or license holder:

(1) intemperately uses drugs or intoxicating liquors

1 to an extent that, in the opinion of the board, could endanger the
2 lives of patients;

3 (2) obtains or attempts to obtain a license by fraud or
4 deception;

5 (3) has been adjudged mentally incompetent by a court;

6 (4) has a mental or physical condition that renders
7 the person unable to perform safely as an acupuncturist;

8 (5) fails to practice acupuncture in an acceptable
9 manner consistent with public health and welfare;

10 (6) violates this chapter or a rule adopted under this
11 chapter;

12 (7) ~~[has been convicted of a crime involving moral~~
13 ~~turpitude or a felony or is the subject of deferred adjudication or~~
14 ~~pretrial diversion for such an offense;~~

15 ~~[(8)]~~ holds the person out as a physician or surgeon or
16 any combination or derivative of those terms unless the person is
17 also licensed by the medical board as a physician or surgeon;

18 (8) ~~[(9)]~~ fraudulently or deceptively uses a license;

19 (9) ~~[(10)]~~ engages in unprofessional or dishonorable
20 conduct that is likely to deceive, defraud, or injure a member of
21 the public;

22 (10) ~~[(11)]~~ commits an act in violation of state law
23 if the act is connected with the person's practice as an
24 acupuncturist;

25 (11) ~~[(12)]~~ fails to adequately supervise the
26 activities of a person acting under the supervision of the license
27 holder;

1 (12) [~~(13)~~] directly or indirectly aids or abets the
2 practice of acupuncture by any person not licensed to practice
3 acupuncture by the acupuncture board;

4 (13) [~~(14)~~] is unable to practice acupuncture with
5 reasonable skill and with safety to patients because of illness,
6 drunkenness, or excessive use of drugs, narcotics, chemicals, or
7 any other type of material or because of any mental or physical
8 condition;

9 (14) [~~(15)~~] is the subject of repeated or recurring
10 meritorious health-care liability claims that in the opinion of the
11 acupuncture board evidence professional incompetence likely to
12 injure the public;

13 (15) [~~(16)~~] has had a license to practice acupuncture
14 suspended, revoked, or restricted by another state or has been
15 subject to other disciplinary action by another state or by the
16 uniformed services of the United States regarding practice as an
17 acupuncturist; or

18 (16) [~~(17)~~] sexually abuses or exploits another
19 person through the license holder's practice as an acupuncturist.

20 SECTION 6. Section [206.203](#)(a), Occupations Code, is amended
21 to read as follows:

22 (a) Except as provided by Section [206.206](#), to be eligible
23 for a license, a person must:

24 (1) be of good moral character;

25 (2) [~~have not been convicted of a felony or a crime~~
26 ~~involving moral turpitude,~~

27 [~~(3)~~] not use drugs or alcohol to an extent that

1 affects the applicant's professional competency;

2 (3) ~~[(4)]~~ not have had a license or certification
3 revoked by a licensing agency or by a certifying professional
4 organization; and

5 (4) ~~[(5)]~~ not have engaged in fraud or deceit in
6 applying for a license under this chapter.

7 SECTION 7. Section [206.303](#)(a), Occupations Code, is amended
8 to read as follows:

9 (a) The medical board may take action under Section [206.301](#)
10 against an applicant or license holder who:

11 (1) violates this chapter or a rule adopted under this
12 chapter; or

13 (2) ~~[is convicted of a felony, placed on deferred~~
14 ~~adjudication, or placed in a pretrial diversion program; or~~

15 ~~[(3)]~~ violates state law if the violation is connected
16 with practice as a surgical assistant.

17 SECTION 8. Section [602.251](#), Occupations Code, is amended to
18 read as follows:

19 Sec. 602.251. GROUNDS FOR LICENSE DENIAL OR DISCIPLINARY
20 ACTION. The medical board may refuse to issue or renew a license,
21 suspend, restrict, or revoke a license, or reprimand a license
22 holder for:

23 (1) obtaining or renewing a license by means of fraud,
24 misrepresentation, or concealment of a material fact;

25 (2) having previously applied for or held a license
26 issued by the licensing authority of another state, territory, or
27 jurisdiction that was denied, suspended, or revoked by that

1 licensing authority;

2 (3) engaging in unprofessional conduct that
3 endangered or is likely to endanger the health, safety, or welfare
4 of the public as defined by medical board rule;

5 (4) violating this chapter, a lawful order or rule of
6 the medical board, or the medical board's code of ethics; or

7 (5) being convicted of an offense [÷

8 [~~(A) a felony; or~~

9 [~~(B) a misdemeanor involving moral turpitude or~~

10 that directly relates to the person's duties as a licensed medical
11 physicist.

12 SECTION 9. The following provisions of the Occupations Code
13 are repealed:

14 (1) Section 164.057;

15 (2) Section 164.058;

16 (3) Section 164.0595;

17 (4) Section 204.310;

18 (5) Section 206.311;

19 (6) Section 601.310; and

20 (7) Section 604.208.

21 SECTION 10. Section 108.005, Occupations Code, as added by
22 this Act, applies only to an application for a license, as defined
23 by Section 108.001, Occupations Code, as amended by this Act,
24 pending on or submitted on or after the effective date of this Act.

25 SECTION 11. Chapter 108, Occupations Code, as amended by
26 this Act, applies only to an offense committed on or after the
27 effective date of this Act. An offense committed before the

1 effective date of this Act is governed by the law in effect on the
2 date the offense was committed, and the former law is continued in
3 effect for that purpose. For purposes of this section, an offense
4 was committed before the effective date of this Act if any element
5 of the offense was committed before that date.

6 SECTION 12. The changes in law made by this Act to Chapters
7 108, 164, 204, 205, 206, 601, 602, and 604, Occupations Code, do not
8 affect the validity of a disciplinary action or other
9 administrative proceeding that was initiated before the effective
10 date of this Act and that is pending before a court or other
11 governmental entity on the effective date of this Act.

12 SECTION 13. This Act takes effect September 1, 2019.