By:  Oliverson, et al. (Senate Sponsor - Zaffirini) H.B. No. 1434

(In the Senate - Received from the House April 28, 2021; May 4, 2021, read first time and referred to Committee on Health & Human Services; May 14, 2021, reported favorably by the following vote: Yeas 9, Nays 0; May 14, 2021, sent to printer.)

COMMITTEE VOTE

                 Yea Nay Absent  PNV

Kolkhorst         X

Perry             X

Blanco            X

Buckingham        X

Campbell          X

Hall              X

Miles             X

Powell            X

Seliger           X

A BILL TO BE ENTITLED

AN ACT

relating to limitations on pelvic examinations; authorizing disciplinary action, including an administrative penalty.

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

SECTION 1.  Subtitle H, Title 2, Health and Safety Code, is amended by adding Chapter 167A to read as follows:

CHAPTER 167A. PELVIC EXAMINATIONS

Sec. 167A.001.  DEFINITIONS. In this chapter:

(1)  "Health care practitioner" means a physician, physician assistant, or advanced practice registered nurse licensed to practice in this state.

(2)  "Patient's legally authorized representative" means:

(A)  a parent, managing conservator, or guardian of a patient, if the patient is a minor;

(B)  a guardian of the patient, if the patient has been adjudicated incompetent to manage the patient's personal affairs; or

(C)  an agent of the patient authorized under a durable power of attorney for health care.

(3)  "Pelvic examination" means a physical examination by a health care practitioner of a patient's external and internal reproductive organs, genitalia, or rectum.

Sec. 167A.002.  LIMITATIONS ON CERTAIN PELVIC EXAMINATIONS. (a) A health care practitioner may not perform or delegate to another individual, including a student training to become a health care practitioner, the performance of a pelvic examination on an anesthetized or unconscious patient unless:

(1)  the pelvic examination is within the standard scope of a procedure or diagnostic examination scheduled to be performed on the patient;

(2)  the patient or the patient's legally authorized representative gives informed consent for the pelvic examination as provided by Subsection (b);

(3)  the pelvic examination is necessary for diagnosis or treatment of the patient's medical condition; or

(4)  the pelvic examination is for the purpose of collecting evidence.

(b)  To obtain informed consent to perform a pelvic examination on an unconscious or anesthetized patient, a health care practitioner must:

(1)  provide the patient or the patient's legally authorized representative with a written or electronic informed consent form that:

(A)  may be included as a distinct or separate section of a general informed consent form;

(B)  contains the following heading at the top of the form in at least 18-point boldface type: "CONSENT FOR EXAMINATION OF PELVIC REGION";

(C)  specifies the nature and purpose of the pelvic examination;

(D)  informs the patient or the patient's legally authorized representative that a medical student or resident may be present if the patient or the patient's legally authorized representative authorizes the student or resident to:

(i)  perform the pelvic examination; or

(ii)  observe or otherwise be present at the pelvic examination, either in person or through electronic means;

(E)  allows the patient or the patient's legally authorized representative the opportunity to consent to or refuse to consent to the pelvic examination; and

(F)  allows a patient or a patient's legally authorized representative that consents to a pelvic examination under Paragraph (E) the opportunity to authorize or refuse to authorize:

(i)  a medical student or resident to perform the pelvic examination; or

(ii)  a medical student or resident to observe or otherwise be present at the pelvic examination, either in person or through electronic means;

(2)  obtain the signature of the patient or the patient's legally authorized representative on the informed consent form; and

(3)  sign the informed consent form.

Sec. 167A.003.  DISCIPLINARY ACTION. The appropriate licensing authority may take disciplinary action against a health care practitioner who violates Section 167A.002, including imposing an administrative penalty, as if the practitioner violated an applicable licensing law.

SECTION 2.  Section 164.052(a), Occupations Code, is amended to read as follows:

(a)  A physician or an applicant for a license to practice medicine commits a prohibited practice if that person:

(1)  submits to the board a false or misleading statement, document, or certificate in an application for a license;

(2)  presents to the board a license, certificate, or diploma that was illegally or fraudulently obtained;

(3)  commits fraud or deception in taking or passing an examination;

(4)  uses alcohol or drugs in an intemperate manner that, in the board's opinion, could endanger a patient's life;

(5)  commits unprofessional or dishonorable conduct that is likely to deceive or defraud the public, as provided by Section 164.053, or injure the public;

(6)  uses an advertising statement that is false, misleading, or deceptive;

(7)  advertises professional superiority or the performance of professional service in a superior manner if that advertising is not readily subject to verification;

(8)  purchases, sells, barters, or uses, or offers to purchase, sell, barter, or use, a medical degree, license, certificate, or diploma, or a transcript of a license, certificate, or diploma in or incident to an application to the board for a license to practice medicine;

(9)  alters, with fraudulent intent, a medical license, certificate, or diploma, or a transcript of a medical license, certificate, or diploma;

(10)  uses a medical license, certificate, or diploma, or a transcript of a medical license, certificate, or diploma that has been:

(A)  fraudulently purchased or issued;

(B)  counterfeited; or

(C)  materially altered;

(11)  impersonates or acts as proxy for another person in an examination required by this subtitle for a medical license;

(12)  engages in conduct that subverts or attempts to subvert an examination process required by this subtitle for a medical license;

(13)  impersonates a physician or permits another to use the person's license or certificate to practice medicine in this state;

(14)  directly or indirectly employs a person whose license to practice medicine has been suspended, canceled, or revoked;

(15)  associates in the practice of medicine with a person:

(A)  whose license to practice medicine has been suspended, canceled, or revoked; or

(B)  who has been convicted of the unlawful practice of medicine in this state or elsewhere;

(16)  performs or procures a criminal abortion, aids or abets in the procuring of a criminal abortion, attempts to perform or procure a criminal abortion, or attempts to aid or abet the performance or procurement of a criminal abortion;

(17)  directly or indirectly aids or abets the practice of medicine by a person, partnership, association, or corporation that is not licensed to practice medicine by the board;

(18)  performs an abortion on a woman who is pregnant with a viable unborn child during the third trimester of the pregnancy unless:

(A)  the abortion is necessary to prevent the death of the woman;

(B)  the viable unborn child has a severe, irreversible brain impairment; or

(C)  the woman is diagnosed with a significant likelihood of suffering imminent severe, irreversible brain damage or imminent severe, irreversible paralysis;

(19)  performs an abortion on an unemancipated minor without the written consent of the child's parent, managing conservator, or legal guardian or without a court order, as provided by Section 33.003 or 33.004, Family Code, unless the abortion is necessary due to a medical emergency, as defined by Section 171.002, Health and Safety Code;

(20)  otherwise performs an abortion on an unemancipated minor in violation of Chapter 33, Family Code;

(21)  performs or induces or attempts to perform or induce an abortion in violation of Subchapter C, F, or G, Chapter 171, Health and Safety Code; [~~or~~]

(22)  in complying with the procedures outlined in Sections 166.045 and 166.046, Health and Safety Code, wilfully fails to make a reasonable effort to transfer a patient to a physician who is willing to comply with a directive; or

(23)  performs or delegates to another individual the performance of a pelvic examination on an anesthetized or unconscious patient in violation of Section 167A.002, Health and Safety Code.

SECTION 3.  Section 301.452(b), Occupations Code, is amended to read as follows:

(b)  A person is subject to denial of a license or to disciplinary action under this subchapter for:

(1)  a violation of this chapter, a rule or regulation not inconsistent with this chapter, or an order issued under this chapter;

(2)  fraud or deceit in procuring or attempting to procure a license to practice professional nursing or vocational nursing;

(3)  a conviction for, or placement on deferred adjudication community supervision or deferred disposition for, a felony or for a misdemeanor involving moral turpitude;

(4)  conduct that results in the revocation of probation imposed because of conviction for a felony or for a misdemeanor involving moral turpitude;

(5)  use of a nursing license, diploma, or permit, or the transcript of such a document, that has been fraudulently purchased, issued, counterfeited, or materially altered;

(6)  impersonating or acting as a proxy for another person in the licensing examination required under Section 301.253 or 301.255;

(7)  directly or indirectly aiding or abetting an unlicensed person in connection with the unauthorized practice of nursing;

(8)  revocation, suspension, or denial of, or any other action relating to, the person's license or privilege to practice nursing in another jurisdiction or under federal law;

(9)  intemperate use of alcohol or drugs that the board determines endangers or could endanger a patient;

(10)  unprofessional conduct in the practice of nursing that is likely to deceive, defraud, or injure a patient or the public;

(11)  adjudication of mental incompetency;

(12)  lack of fitness to practice because of a mental or physical health condition that could result in injury to a patient or the public; [~~or~~]

(13)  performing or delegating to another individual the performance of a pelvic examination on an anesthetized or unconscious patient in violation of Section 167A.002, Health and Safety Code; or

(14)  failure to care adequately for a patient or to conform to the minimum standards of acceptable nursing practice in a manner that, in the board's opinion, exposes a patient or other person unnecessarily to risk of harm.

SECTION 4.  The changes in law made by this Act apply only to a pelvic examination performed on or after the effective date of this Act. A pelvic examination performed before the effective date of this Act is governed by the law in effect when the pelvic examination occurred, and the former law is continued in effect for that purpose.

SECTION 5.  This Act takes effect September 1, 2021.

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