

BILL ANALYSIS

C.S.H.B. 1998
By: Johnson, Julie
Public Health
Committee Report (Substituted)

BACKGROUND AND PURPOSE

A number of cases have recently emerged in which Texas physicians caused severe harm or, in some cases, fatal harm to patients. Many of the physicians in these cases had previously displayed negligence or otherwise engaged in inappropriate behavior in the scope of practice. Some even had previous disciplinary actions by hospitals or licensing authorities in other states. However, because of current statutes relating to the licensure of physicians in Texas, many of these cases were overlooked and these physicians were able to continue practicing while putting lives at risk. C.S.H.B. 1998 seeks to address this issue by clarifying language and closing a number of loopholes in current statute that governs the Texas Medical Board and its disciplinary authority, licensing and renewal requirements, and the complaint investigation and resolution process.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill expressly does one or more of the following: creates a criminal offense, increases the punishment for an existing criminal offense or category of offenses, or changes the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 1998 amends the Occupations Code to set out and revise Medical Practice Act provisions relating to the following:

- certain public interest information regarding physicians licensed to practice in Texas;
- procedures for expert physician review of alleged standard of care violations by a physician;
- the circumstances under which a person is rendered ineligible to apply for a medical license in Texas and under which the Texas Medical Board (TMB) refuses to issue or revokes a license;
- criminal record checks and fingerprint submission requirements for license application or for the applicable renewal of a license registration; and
- the criminal offense of making a false statement on an application for a medical license or under oath to obtain a license or to secure registration of a license to practice medicine.

Public Interest Information Regarding Physicians

Physician Profiles

C.S.H.B. 1998 requires the TMB to run a continuous query on the National Practitioner Data Bank and update a licensed physician's profile as created under the act not later than the 10th

working date after the date any new information is found to, as follows:

- include any new report or correction to a report of disciplinary action against the physician; and
- remove any report of disciplinary action against the physician that has been dismissed or otherwise voided.

The bill prohibits any patient identifying information or information that may reasonably be used to identify any person or entity other than the physician from being included in the profile.

Expert Physician Panel Assisting with Complaints and Investigations

C.S.H.B. 1998, with respect to the expert physician panel appointed by the TMB to assist with complaints and investigations relating to medical competency by acting as expert physician reviewers, replaces the current requirement for panel members to be licensed to practice medicine only in Texas with a requirement for members of the panel instead to be licensed to practice in any member state of the Interstate Medical Licensure Compact. Moreover, with respect to the TMB rules prescribing the random selection process the TMB must currently use in making such appointments, the bill revises that provision to require those rules to include a requirement that, while prioritizing the appointment of panel members licensed to practice medicine in Texas, the TMB randomly select a panel member licensed to practice in any member state of the compact if there are no panel members licensed in Texas available to review the complaint in a timely manner.

Procedures for Expert Physician Review

C.S.H.B. 1998 changes the act's requirement that a second expert physician reviewer review, without regard to any determination made by the first expert physician reviewer, all preliminary written reports issued by a physician in determining whether a physician who is the subject of a complaint has violated an applicable standard of care. The bill requires a review by a second expert physician reviewer instead only if the complaint reviewed by the first physician alleges a violation that resulted in serious injury or death or if the physician reviewer determines that the applicable standard of care was violated. The bill establishes that, absent those circumstances, the preliminary report issued by the first expert physician constitutes the final report. The bill authorizes the second expert physician reviewing the first expert physician's preliminary report to issue a second written report with the findings of the review.

Ineligibility; Refusal or Revocation

Ineligibility of Applicant

C.S.H.B. 1998 limits the circumstances under which an applicant for a medical license is rendered ineligible for such a license on the basis of having had a previously held medical license revoked. Currently, an applicant is ineligible when a medical license has been revoked, for any reason, by a state, a Canadian province, or a uniformed service of the United States, but the bill revises that provision to specify instead that such a person is ineligible only if the applicant held a license to practice medicine that has been revoked by the licensing authority in another state or a Canadian province for a reason that would be grounds for the TMB to revoke a medical license.

Refusal or Revocation of License

C.S.H.B. 1998 requires the TMB to refuse to issue a medical license to an applicant whose medical license in another state has been revoked by the licensing authority in that state for a reason that would be grounds for the TMB to revoke a medical license. Moreover, the bill limits the circumstances under which the TMB must revoke a medical license on the basis of the license holder having held a medical license that was revoked by the licensing authority in another state. Rather than being applicable only if the license holder held a license to practice

medicine in another state that has been revoked by the licensing authority in that state, the bill requires revocation only if the out-of-state license is revoked while the license holder holds a medical license in Texas and when that out-of-state license is revoked for a reason that would be grounds for revocation of a medical license in Texas.

Criminal Record Check

Mandatory Submission of Fingerprints for License Application

C.S.H.B. 1998 expressly requires the TMB to submit to the Department of Public Safety (DPS) a complete set of fingerprints of each applicant for a medical license for DPS to check the fingerprints against DPS fingerprint records, whereas current law authorizes but does not require such submission.

Mandatory Submission of Fingerprints for Registration Permit Renewal

C.S.H.B. 1998 requires a person licensed to practice medicine to submit to the TMB with the person's registration permit renewal application a complete set of fingerprints and authorizes the TMB to suspend or refuse to renew the registration of a person who fails to do so. The bill requires the TMB to submit each set of fingerprints received for such a renewal to DPS for the purpose of completing a criminal record check. The requirements applicable to a registration permit renewal apply only to an application to renew a registration submitted on or after the bill's effective date and expressly do not apply to a license holder who previously submitted a complete set of fingerprints as part of an application for a medical license or as part of a previous application to renew a registration permit.

Criminal Offense

C.S.H.B. 1998 expands the offenses for which a person's arrest is grounds for a physician disciplinary panel to temporarily suspend a person's medical license. Rather than the grounds for temporary suspension being applicable only to an arrest for the offenses of sexual assault of a child, aggravated sexual assault of a child, continuous sexual abuse of a young child or disabled individual, and indecency with a child, the grounds for suspension under the bill's provisions include an arrest for any of the following additional offenses:

- an offense of criminal homicide;
- a trafficking of persons offense; or
- any sexual or assaultive offense committed against a patient of the license holder, a child, an elderly individual, or an individual with a disability that is sexual, lewd, or indecent in nature and not punishable as a fine-only misdemeanor.

C.S.H.B. 1998 revises the offense established under the act for a person who makes a false statement in the person's application for a medical license or under oath to obtain a license or to secure the registration of a license to practice medicine by doing the following:

- establishing a requisite state of mind for the offense, which requires that the false statements be knowingly made by the actor;
- explicitly classifying the offense, as revised, as a standalone offense punishable as a Class A misdemeanor unless the actor's intent is to defraud or harm another, in which event the offense is classified as a state jail felony; and
- removing the provision in current law classifying the offense level by reference to the conduct that constitutes tampering with a governmental record or perjury as provided by the Penal Code, which is also a Class A misdemeanor unless enhanced to a state jail felony for the intent to defraud or harm another, but without the bill's requisite intent, and requiring the offense to be punished on conviction as provided by that code.

These provisions apply only to an offense committed on or after the bill's effective date, and the bill provides for the continuation of the law in effect before the bill's effective date for purposes of an offense, or any element thereof, that occurred before that date.

Report of Medical Peer Review to the TMB

C.S.H.B. 1998, with respect to the reporting requirement for a medical peer review committee or a health care entity that is triggered when the results and circumstances of a medical peer review adversely affect a physician's clinical privileges, shortens the duration of the period triggering that report to the TMB from a period that is longer than 30 days to a period that is longer than 14 days.

EFFECTIVE DATE

September 1, 2023.

COMPARISON OF INTRODUCED AND SUBSTITUTE

While C.S.H.B. 1998 may differ from the introduced in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

Whereas the introduced required the TMB, at least once each month, to search the National Practitioner Data Bank and update a physician's profile to include any new report of disciplinary action against the physician, the substitute requires the TMB instead to run a continuous query on the data bank and, not later than the 10th working day after the date any new information is found, to update a physician's profile to include any new report or correction to a report of disciplinary action against the physician and remove any report of disciplinary action against the physician that has been dismissed or otherwise voided. The substitute includes a prohibition not in the introduced against the TMB including in a physician's profile any patient identifying information or any information that may be used to identify any person or entity other than the physician.

The substitute does not include the provision from the introduced requiring a medical peer review committee or health care entity to report in writing to the National Practitioner Data Bank the results and circumstances of a medical peer review that adversely affects the clinical privileges of a physician for not more than 30 days. The substitute includes a provision absent from the introduced that instead shortens the requisite duration of an adverse effect of the results and circumstances of a medical peer review on a physician's clinical privileges that triggers the requirement for a medical peer review committee or health care entity to report in writing to the TMB those results and circumstances from longer than 30 days to longer than 14 days.

Both the introduced and the substitute require the TMB to refuse to issue a medical license if the applicant held a medical license in another state that has been revoked by the licensing authority in that state. However, the substitute includes a specification not included in the introduced that the reason for the revocation of the license in the other state must be grounds for the TMB to revoke a medical license for that revocation to trigger the refusal requirement. Relatedly, whereas both the introduced and the substitute limit the circumstances under which the TMB is required to revoke a medical license on the basis of the license holder having a medical license revoked by the licensing authority in another state to only when the out-of-state license is revoked while the license holder holds an in-state medical license, the substitute includes a provision not in the introduced further limiting those circumstances to when the licensed is revoked in another state for a reason that would be grounds for the TMB to revoke a medical license.

The substitute includes provisions absent from the introduced related to the following:

- the TMB expert physician panel and a preliminary written report issued by an expert physician on such a panel;

- ineligibility for a medical license from the TMB on the basis of a previous license revocation;
- criminal history record checks of medical license applicants and the mandatory submission of fingerprints by the TMB to DPS;
- the offenses for which an arrest is grounds for a physician disciplinary panel to suspend or restrict a person's medical license; and
- the offense involving making a false statement.

The substitute also includes corresponding procedural provisions that did not appear in the introduced.