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H.B. No. 1998

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of physicians and the disciplinary authority of the Texas Medical Board; increasing a criminal penalty; imposing a fee.

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

SECTION 1. Subchapter B, Chapter 153, Occupations Code, is amended by adding Section 153.055 to read as follows:

Sec. 153.055. FEE FOR CERTAIN SEARCHES RELATED TO LICENSE STATUS. (a) The board shall set and collect an additional surcharge to cover the cost of administering a continuous query on the National Practitioner Data Bank as required by Section 154.006(m). The surcharge shall be collected from each license holder for:

- (1) issuance of a first registration permit; and
- (2) renewal of a registration permit.

(b) The board shall deposit each fee collected to the credit of the public assurance account described by Section 153.0535(b).

SECTION 2. Section 154.006, Occupations Code, is amended by adding Subsections (m) and (n) to read as follows:

(m) The board shall run a continuous query on the National Practitioner Data Bank and, not later than the 10th working day after the date any new information is found, update a physician's profile to:

- (1) include any new report or correction to a report of

1 disciplinary action against the physician; and

2 (2) remove any report of disciplinary action against  
3 the physician that has been dismissed or otherwise voided.

4 (n) Information included in a physician's profile under  
5 Subsection (m) may not include any patient identifying information  
6 or information that may reasonably be used to identify any person or  
7 entity other than the physician.

8 SECTION 3. Section 154.056(e), Occupations Code, is amended  
9 to read as follows:

10 (e) The board by rule shall provide for an expert physician  
11 panel appointed by the board to assist with complaints and  
12 investigations relating to medical competency by acting as expert  
13 physician reviewers. Each member of the expert physician panel must  
14 be licensed to practice medicine in a member [~~this~~] state, as  
15 defined by Section 171.002. The rules adopted under this subsection  
16 must include provisions governing the composition of the panel,  
17 qualifications for membership on the panel, length of time a member  
18 may serve on the panel, grounds for removal from the panel, the  
19 avoidance of conflicts of interest, including situations in which  
20 the affected physician and the panel member live or work in the same  
21 geographical area or are competitors, and the duties to be  
22 performed by the panel. The board's rules governing grounds for  
23 removal from the panel must include providing for the removal of a  
24 panel member who is repeatedly delinquent in reviewing complaints  
25 and in submitting reports to the board. The board's rules governing  
26 appointment of expert physician panel members to act as expert  
27 physician reviewers must include a requirement that the board

1 randomly select, to the extent permitted by Section 154.058(b) and  
2 the conflict of interest provisions adopted under this subsection,  
3 panel members to review a complaint who are:

- 4 (1) licensed to practice medicine in this state; or  
5 (2) licensed to practice medicine in a member state,  
6 as defined by Section 171.002, if there are no panel members  
7 licensed to practice medicine in this state available to review the  
8 complaint in a timely manner.

9 SECTION 4. Section 154.0561, Occupations Code, is amended  
10 by adding Subsection (a-1) and amending Subsection (b) to read as  
11 follows:

12 (a-1) Except as provided by Subsections (b) and (c), the  
13 report issued under Subsection (a) constitutes the final report.

14 (b) If the complaint reviewed under Subsection (a) alleges a  
15 violation that resulted in serious injury or death or if the  
16 physician reviewing the complaint under Subsection (a) determines  
17 that the applicable standard of care was violated, a [A] second  
18 expert physician reviewer shall review the first physician's  
19 preliminary report and other information associated with the  
20 complaint. The second expert physician may issue a second written  
21 report with the findings of the review. If the second expert  
22 physician agrees with the first expert physician, the first  
23 physician shall issue a final written report on the matter.

24 SECTION 5. Section 155.003(e), Occupations Code, is amended  
25 to read as follows:

- 26 (e) An applicant is not eligible for a license if:  
27 (1) the applicant holds a medical license that is

1 currently restricted for cause, canceled for cause, or suspended  
2 for cause~~[, or revoked]~~ by a state, a province of Canada, or a  
3 uniformed service of the United States;

4 (2) an investigation or a proceeding is instituted  
5 against the applicant for the restriction, cancellation,  
6 suspension, or revocation in a state, a province of Canada, or a  
7 uniformed service of the United States; ~~[or]~~

8 (3) a prosecution is pending against the applicant in  
9 any state, federal, or Canadian court for any offense that under the  
10 laws of this state is a felony or a misdemeanor that involves moral  
11 turpitude; or

12 (4) the applicant held a license to practice medicine  
13 that has been revoked by the licensing authority in another state or  
14 a province of Canada for a reason that would be grounds for the  
15 board to revoke a license to practice medicine in this state.

16 SECTION 6. Section 155.008(a), Occupations Code, is amended  
17 to read as follows:

18 (a) The board shall ~~[may]~~ submit to the Department of Public  
19 Safety a complete set of fingerprints of each license applicant,  
20 and the department shall classify and check the fingerprints  
21 against those in the department's fingerprint records. The  
22 department shall certify to the board its findings regarding the  
23 criminal record of the applicant or the applicant's lack of a  
24 criminal record.

25 SECTION 7. Subchapter A, Chapter 156, Occupations Code, is  
26 amended by adding Section 156.0015 to read as follows:

27 Sec. 156.0015. CRIMINAL RECORD CHECK. (a) In addition to

1 the information required by Section 156.001, a license holder  
2 shall submit to the board with the registration permit renewal  
3 application a complete set of fingerprints. The board shall submit  
4 to the Department of Public Safety each set of fingerprints  
5 received under this section for the purpose of completing the  
6 criminal record check described by Section 155.008.

7 (b) The board may suspend or refuse to renew the  
8 registration of a license holder who fails to submit a complete set  
9 of fingerprints under this section.

10 (c) This section does not apply to a license holder who  
11 previously submitted a complete set of fingerprints:

12 (1) as part of an application for a license; or

13 (2) as part of a previous application to renew a  
14 registration permit under this section.

15 SECTION 8. Section 160.002(a), Occupations Code, is amended  
16 to read as follows:

17 (a) A medical peer review committee or health care entity  
18 shall report in writing to the board the results and circumstances  
19 of a medical peer review that:

20 (1) adversely affects the clinical privileges of a  
21 physician for a period longer than 14 [~~30~~] days;

22 (2) accepts a physician's surrender of clinical  
23 privileges either:

24 (A) while the physician is under an investigation  
25 by the medical peer review committee relating to possible  
26 incompetence or improper professional conduct; or

27 (B) in return for not conducting an investigation

1 or proceeding relating to possible incompetence or improper  
2 professional conduct; or

3 (3) adversely affects the membership of a physician in  
4 a professional society or association, if the medical peer review  
5 is conducted by that society or association.

6 SECTION 9. Section 164.051, Occupations Code, is amended by  
7 amending Subsections (a) and (d) and adding Subsection (e) to read  
8 as follows:

9 (a) The board may refuse to admit a person to its  
10 examination or refuse to issue a license to practice medicine and  
11 may take disciplinary action against a person if the person:

12 (1) commits an act prohibited under Section 164.052;

13 (2) is convicted of, or is placed on deferred  
14 adjudication community supervision or deferred disposition for:

15 (A) a felony; or

16 (B) a misdemeanor involving moral turpitude;

17 (3) commits or attempts to commit a direct or indirect  
18 violation of a rule adopted under this subtitle, either as a  
19 principal, accessory, or accomplice;

20 (4) is unable to practice medicine with reasonable  
21 skill and safety to patients because of:

22 (A) illness;

23 (B) drunkenness;

24 (C) excessive use of drugs, narcotics,  
25 chemicals, or another substance; or

26 (D) a mental or physical condition;

27 (5) is found by a court judgment to be of unsound mind;

1 (6) fails to practice medicine in an acceptable  
2 professional manner consistent with public health and welfare;

3 (7) is removed, suspended, or is subject to  
4 disciplinary action taken by the person's peers in a local,  
5 regional, state, or national professional medical association or  
6 society, or is disciplined by a licensed hospital or medical staff  
7 of a hospital, including removal, suspension, limitation of  
8 hospital privileges, or other disciplinary action, if the board  
9 finds that the action:

10 (A) was based on unprofessional conduct or  
11 professional incompetence that was likely to harm the public; and

12 (B) was appropriate and reasonably supported by  
13 evidence submitted to the board;

14 (8) is subject to repeated or recurring meritorious  
15 health care liability claims that in the board's opinion evidence  
16 professional incompetence likely to injure the public; or

17 (9) except as provided by Subsections [~~Subsection~~] (d)  
18 and (e), holds a license to practice medicine subject to  
19 disciplinary action by another state, or subject to disciplinary  
20 action by the uniformed services of the United States, based on acts  
21 by the person that are prohibited under Section 164.052 or are  
22 similar to acts described by this subsection.

23 (d) The board shall refuse to issue a license under this  
24 subtitle if the applicant held a license to practice medicine in  
25 another state that has been revoked by the licensing authority in  
26 that state for a reason that would be grounds for the board to  
27 revoke a license to practice medicine in this state.

1        (e) The board shall revoke a license issued under this  
2 subtitle if the license holder, while holding the license under  
3 this subtitle, held a license to practice medicine in another state  
4 that has been revoked by the licensing authority in that state for a  
5 reason that would be grounds for the board to revoke a license to  
6 practice medicine in this state.

7        SECTION 10. Section 164.0595(a), Occupations Code, is  
8 amended to read as follows:

9        (a) A disciplinary panel appointed under Section 164.059  
10 may suspend or restrict the license of a person arrested for an  
11 offense under:

12            (1) Chapter 19 [~~Section 22.011(a)(2)~~], Penal Code  
13 (criminal homicide) [~~(sexual assault of a child)~~];

14            (2) Chapter 20A [~~Section 22.021(a)(1)(B)~~], Penal Code  
15 (trafficking of persons) [~~(aggravated sexual assault of a child)~~];

16 or

17            (3) Chapter 21 or 22 [~~Section 21.02~~], Penal Code  
18 (sexual or assaultive offenses), if the offense is:

19                    (A) sexual, lewd, or indecent in nature;

20                    (B) not a misdemeanor punishable by fine only;

21 and

22                    (C) committed against:

23                            (i) a patient of the license holder;

24                            (ii) a child;

25                            (iii) an elderly individual [~~(continuous~~  
26 ~~sexual abuse of young child or disabled individual)~~]; or

27                            (iv) an individual with a disability [~~(4)~~]



1 Section ~~21.11~~, Penal Code (indecenty with a child)].

2 SECTION 11. Section 165.154, Occupations Code, is amended  
3 to read as follows:

4 Sec. 165.154. FALSE STATEMENT [~~TAMPERING WITH GOVERNMENTAL~~  
5 ~~RECORD~~]; OFFENSE [~~PERJURY OFFENSES~~]. (a) A person commits an  
6 offense if the person knowingly makes a false statement:

7 (1) in the person's application for a license; or

8 (2) under oath to obtain a license or to secure the  
9 registration of a license to practice medicine.

10 (b) An offense under this section is a Class A misdemeanor  
11 unless the actor's intent is to defraud or harm another, in which  
12 event the offense is a state jail felony [+

13 [~~(1) constitutes tampering with a governmental record~~  
14 ~~or perjury as provided by the Penal Code, and~~

15 [~~(2) shall be punished on conviction as provided by~~  
16 ~~that code~~].

17 SECTION 12. Section 156.0015, Occupations Code, as added by  
18 this Act, applies only to an application to renew a registration  
19 submitted on or after the effective date of this Act. An  
20 application submitted before the effective date of this Act is  
21 governed by the law in effect on the date the application was  
22 submitted, and the former law is continued in effect for that  
23 purpose.

24 SECTION 13. Section 165.154, Occupations Code, as amended  
25 by this Act, applies only to an offense committed on or after the  
26 effective date of this Act. An offense committed before the  
27 effective date of this Act is governed by the law in effect on the

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

5 SECTION 14. This Act takes effect September 1, 2023.