

BILL ANALYSIS

C.S.H.B. 1504
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Public Health
Committee Report (Substituted)

BACKGROUND AND PURPOSE

The Texas Medical Board (TMB), which traces its history back to 1907 when the legislature established the Texas State Board of Medical Examiners, is responsible for licensing and regulating medical practitioners in Texas to ensure that Texans receive safe and quality medical care. Subject to review and abolishment under the Texas Sunset Act, the Sunset Advisory Commission found that key elements of TMB licensing and regulatory functions do not conform to common licensing standards. C.S.H.B. 1504 seeks to continue the TMB and address this issue with several statutory modifications designed to enhance TMB's ability to protect patients and the public while affording license holders due process.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the Texas Medical Board in SECTIONS 6, 11, 16, and 26 of this bill.

ANALYSIS

C.S.H.B. 1504 amends the Occupations Code to postpone from September 1, 2019, to September 1, 2031, the date on which the Texas Medical Board (TMB) is abolished and the Medical Practice Act, the Physician Assistant Licensing Act, the Medical Radiologic Technologist Certification Act, the Medical Physics Practice Act, the Licensed Perfusionists Act, statutory provisions regulating acupuncture, statutory provisions governing surgical assistants, and statutory provisions governing respiratory care practitioners expire unless continued in existence

as provided by the Texas Sunset Act.

C.S.H.B. 1504 revises provisions relating to the TMB negotiated rulemaking. The bill revises provisions relating to the training required for TMB members, members of the Texas State Board of Acupuncture Examiners, members of the Texas Board of Medical Radiologic Technology, and members of the Texas Board of Respiratory Care and sets out provisions relating to that required training. The revised training requirements apply to board members appointed before, on, or after the bill's effective date, except that a board member who completed the existing training requirements must complete only the additional training on subjects added by the bill. The bill prohibits a board member from voting, deliberating, or being counted as a member in attendance at a board meeting held on or after December 1, 2019, until the member completes the additional required training.

C.S.H.B. 1504 revises provisions relating to the update of a physician's TMB profile as follows:

- authorizes the TMB, on or after the fifth anniversary of the date a remedial plan to resolve the investigation of a complaint relating to the Medical Practice Act is issued, to remove from the profile of the physician subject to the plan any information regarding the plan and the complaint resolved by the plan unless the complaint was related to the delivery of health care or unless more than one remedial plan has been issued to resolve complaints alleging the same violation by the physician, including a complaint not related to the delivery of health care;
- provides for certain complaint and investigation information to be removed from a physician's profile within 10 working days if the complaint was dismissed or no adverse action was taken against the physician as a result of the complaint or the findings of the investigation; and
- requires the TMB to remove from the physician's profile a formal complaint and any prior disciplinary action concerning the complaint and to update the profile to contain the TMB's final order dismissing or resolving the complaint within 10 working days of issuing the order.

C.S.H.B. 1504 changes the condition under which the TMB is prohibited from issuing a remedial plan against a physician who previously entered into a remedial plan by specifying that the prohibition is triggered instead if the physician has entered into a remedial plan in the preceding five years. The bill authorizes the TMB, for good cause, to extend a preliminary investigation into a complaint against a physician for not more than 15 days after the date required for completion.

C.S.H.B. 1504 clarifies that the authority of the TMB to conduct inspections of a physician's practice that relate to the provision of anesthesia in an outpatient setting as necessary to regulate

the administration of anesthesia in such a setting applies with respect to the physician's equipment and office procedures and authorizes the TMB to establish a risk-based approach to those inspections. The bill requires the TMB to maintain a record of the outpatient settings in which physicians provide anesthesia and requires a physician who provides anesthesia in such a setting to inform the TMB of any other physician with whom the physician shares equipment used to administer anesthesia.

C.S.H.B. 1504 requires the TMB rules providing procedures governing informal disposition of a contested disciplinary case against a physician and related informal proceedings to require that the panel conducting the informal proceeding, if the complaint includes an allegation that the physician has violated the standard of care, consider whether the physician was practicing complementary and alternative medicine. The bill requires the TMB, not later than March 1, 2020, to adopt rules necessary to implement that requirement and requires the TMB to redact any identifying information of an expert physician reviewer, other than the specialty of the reviewer, before providing the physician with a report prepared by each reviewer as part of the notice of the board's meeting regarding the contested case against the physician.

C.S.H.B. 1504 removes the requirement that a formal complaint by the TMB initiating charges against a physician or other person under TMB jurisdiction be in the form of a written affidavit. The bill requires notice of a hearing on such charges held by the State Office of Administrative Hearings be sent by certified mail. The bill sets out provisions governing the judicial review of the findings of fact and conclusions of law received from the administrative law judge in a contested case. The bill authorizes the TMB to obtain the judicial review, before disposing of the case by issuing a final order, by filing a suit in a Travis County district court not later than the 30th day after the date the findings and conclusions are issued. The bill requires the TMB to join in the suit of the respondent in the contested case for which the TMB seeks to obtain judicial review and provides for the scope of the review. The bill requires the TMB, after the court issues a final order in the suit, to dispose of the contested case by issuing a final order based on the court's final order. The respondent may not appeal a sanction ordered by the TMB unless the sanction exceeds sanctions guidelines published by the TMB.

C.S.H.B. 1504 provides for an expedited licensing process for certain out-of-state applicants for a physician's license and requires the TMB by rule to develop and implement an expedited licensing process for an applicant who is considered to have satisfied the examination requirements established under the bill's provisions.

C.S.H.B. 1504 requires the governing board of the Texas Physician Health Program to enter into a memorandum of understanding with the TMB for purposes of better coordinating services and operations of the program. The bill requires the governing board and the TMB to adopt the memorandum by rule not later than January 1, 2020, and requires the memorandum to establish certain performance measures, include a list of program services, and require an internal

program audit with a specified frequency. The bill authorizes the governing board to accept gifts, grants, donations, and any other thing of value from any source for the program in addition to fees paid to the governing board or money appropriated to the governing board for the program.

C.S.H.B. 1504 requires the Texas State Board of Acupuncture Examiners (TSBAE) and the TMB to require, respectively, an applicant for an original or renewed acupuncture license and an applicant for an original or renewed surgical assistant license to submit a complete and legible set of fingerprints to the respective board, on a form prescribed by the respective board, or to the Department of Public Safety (DPS) for the purpose of obtaining criminal history record information from DPS and the FBI and sets out additional provisions related to the requirements. The bill requires the TSBAE and the TMB, not later than September 1, 2021, to obtain criminal history record information on each person who, on the bill's effective date, holds an applicable license and did not undergo the required check based on the license holder's fingerprints on the initial application for the license and authorizes the TSBAE and the TMB to suspend the license of a license holder who does not provide the required information. The bill removes as an eligibility requirement for a surgical assistant license that the person be of good moral character.

C.S.H.B. 1504 establishes a radiologist assistant certificate, requires the Texas Board of Medical Radiologic Technology by rule to establish the education and training required for a person to obtain the certificate, and requires the TMB to approve those rules not later than January 1, 2020. The bill sets out provisions relating to the certificate and provides for the issuance of a temporary certificate.

C.S.H.B. 1504 repeals Sections 155.056(c) and (d), Occupations Code.

EFFECTIVE DATE

September 1, 2019.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 1504 may differ from the original in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

The substitute includes provisions clarifying the process for the TMB to obtain judicial review of an administrative law judge's findings of fact and conclusions of law.

The substitute includes a provision authorizing the TMB, for good cause, to take an additional 15 days to complete a preliminary investigation into a complaint against a physician.

The substitute revises provisions relating to the TMB physician profiles to provide for the

removal of certain complaint-related and investigation-related information from a physician's profile within a specified period if the complaint was dismissed or no adverse action was taken and to provide for the updated profile to contain the applicable final order.