

SUBJECT: Physician licensing and impaired physicians

COMMITTEE: Public Health — favorable, without amendment

VOTE: 7 ayes — Berlanga, Hirschi, Glaze, Janek, Maxey, McDonald, Rodriguez
0 nays
2 absent — Coleman, Delisi

SENATE VOTE: On final passage, April 27 — voice vote

WITNESSES: For — Harold Freeman, Texas Medical Association; Joe DaSilva, Texas Hospital Association
Against — None
On — Bruce A. Levy, M.D., J.D., Texas Board of Medical Examiners

DIGEST: SB 1303 would authorize the Board of Medical Examiners to impose rehabilitation orders and would impose higher criminal penalties for practicing medicine without a valid license and doing harm to another person. The bill would take effect September 1, 1995.

SB 1303 would allow the board to impose a nondisciplinary rehabilitation order on any licensee or licensure applicant due to:

- an addictive use of alcohol or drugs caused by medical care provided by another physician;
- a court judgment that the individual is unsound or
- results from a mental or physical examination that show the individual suffers from a potentially dangerous limitation or inability to practice medicine.

A rehabilitation order would be an agreed order or result from a contested hearing, would contain findings of fact and conclusions of law and would be exempt from the Open Records Act. It could impose a revocation,

cancellation, suspension or restriction, and violations of the order would be subject to existing disciplinary actions in the Medical Practice Act.

Rehabilitation orders would be subject to independent audits at least every three years by state or private auditors contracted by the board.

A person practicing medicine without a valid license who causes physical or psychological harm to another person by such practice would be punished for a third degree felony; if financial harm was caused, the person would be subject to a state jail felony. A third degree felony carries a maximum penalty of 10 years in prison and an optional fine of up to \$10,000. A state-jail felony carries a maximum penalty of two years in a state jail and an optional fine of up to \$10,000.

**SUPPORTERS
SAY:**

SB 1303 would increase the number of physicians who self-report problems with substance abuse and give the board an alternative measure to monitor physician activity and improvement.

The board currently can exercise only open record disciplinary proceedings against an incapacitated physician or one who intemperately uses alcohol or drugs, which creates a disincentive for physicians who know they have a problem to turn themselves in for help. SB 1303 would provide a nonpunitive measure to assist these doctors and at the same time limit and monitor their activities. Nonpunitive rehabilitation orders are also a more humane way of regulating physicians who may have an incapacity, such as depression, that is not the fault of the physician and could be corrected.

Auditing requirements would be provided to ensure that the board would not inappropriately use rehabilitation orders for physicians who should be disciplined.

Penalties for practicing medicine without a license have been increased to ensure that physicians who actually harm someone are prosecuted. The current penalty for practicing without a valid license is a Class A misdemeanor — punishable by a maximum penalty of one year in jail and a \$4,000 fine — which is too low to be a priority to most local prosecutors.

OPPONENTS
SAY:

The effectiveness of a rehabilitation order lies in the effectiveness of the required treatments and supervision of impaired physicians, for example the frequency of random drug screens and the adequacy of counseling programs. This bill would allow closed records for rehabilitation orders, forcing the public to rely on faith on Board of Medical Examiner judgment and monitoring. Audits only once every three years may not be frequent enough to evaluate the rehabilitation order provisions.

Establishing higher penalties for practicing without a license would probably not entice local prosecutors to take on more cases. Practicing medicine is not necessarily a hard case to prosecute, and there are usually not that many violators anyway. If anything, prosecuting under the higher penalty could be more difficult in some cases because what constitutes "psychological harm" or "financial harm" is undefined.