

SUBJECT: State jail felony for performing medical procedures while intoxicated

COMMITTEE: Criminal Jurisprudence — favorable, without amendment

VOTE: 6 ayes — Keel, Riddle, Ellis, Denny, Pena, Talton

0 nays

3 absent — Dunnam, Hodge, P. Moreno

WITNESSES: None

BACKGROUND: Penal Code, sec. 49.01 defines intoxication as not having the normal use of mental or physical faculties because of alcohol, controlled substances, drugs, or other substances or having a blood alcohol concentration of 0.08 or more.

DIGEST: HB 1592 would make it a state jail felony (punishable by 180 days to two years in a state jail and an optional fine of up to \$10,000) for a licensed physician to perform a medical procedure while intoxicated.

The bill would take effect September 1, 2003.

SUPPORTERS SAY: HB 1592 would help prevent doctors from performing medical procedures while intoxicated. Under the conditions of intoxication as defined by the Penal Code, a doctor should not be performing a medical procedure, no matter how seemingly simple. The bill would apply only to doctors who were intoxicated, not to situations in which a doctor may have had a few sips of alcohol without having his or her judgment impaired or an elevated blood alcohol level. Prosecutors would not pursue “good Samaritan” cases in which a doctor did no harm while performing a simple medical task after a few sips of alcohol, because the doctor would not meet the definitions of intoxication. HB 1592 is intended to address situations that present a real risk of injury.

In some instances, intoxicated doctors have performed surgery or other serious medical procedures, putting patients at risk of harm and even causing substantial, long-term injuries. HB 1592 would address this serious problem by punishing with a state jail penalty a doctor who worked while impaired.

Cases in which serious harm can occur are handled best by the criminal justice system, not by the state medical board or by other programs that address other questions of doctors' professional conduct. Other Penal Code provisions are inappropriate for handling these incidents. For example, assault is generally a Class A misdemeanor, not a state jail felony. A state jail felony is the appropriate punishment for situations involving intoxicated doctors, because it recognizes the seriousness of the situation by assessing a felony but places the offender in the state jail system, which is designed for nonviolent offenders. A specific offense for intoxicated doctors — like the specific offenses for driving or flying while intoxicated — would make it easier for prosecutors to recognize and pursue these cases.

OPPONENTS
SAY:

HB 1592 is too broad. The bill would make it a state jail felony if a doctor performed *any* medical procedure, whether or not any harm was done. A doctor who did something as simple as cleaning and bandaging a wound after having a drink could be prosecuted and convicted of a felony, even if the patient suffered no harm. The criminal justice system should not be involved in cases in which doctors perform medical procedures after drinking with no risk of injuring the patient. Instead, the state licensing board should handle such cases.

The bill could make doctors afraid to act as “good Samaritans” during emergency situations if they had consumed any alcohol, whether or not they were intoxicated. This could result in people going without needed medical treatment and suffering harm because doctors were afraid of prosecution.

HB 1592 could result in criminalizing the diseases of alcohol and drug addiction, which could threaten the success of a program that works to identify and treat doctors with these diseases. If the potential exists for criminal action against doctors with these addictions, the Physician Health and Rehabilitation Program might not be able to treat these doctors effectively so that they could return to practice with appropriate monitoring.

Other provisions in the Penal Code could apply to a doctor who harmed a patient after drinking. For example, a person commits assault if the person intentionally, knowingly, or recklessly causes bodily injury to another.