

SUBJECT: Regulating and licensing of chiropractors

COMMITTEE: Public Health — favorable, without amendment

VOTE: 5 ayes — Laubenberg, Dawson, Taylor, Truitt, Zedler
0 nays
4 absent — Capelo, Coleman, McReynolds, Naishtat

SENATE VOTE: On final passage, March 17 — 24-7 (Brimer, Deuell, Duncan, Hinojosa, Lindsay, Ogden, Van de Putte)

WITNESSES: For — None
Against — None
On — Sandra Smith, Texas Board of Chiropractic Examiners

BACKGROUND: Occupations Code 201.051 establishes the Texas Board of Chiropractic Examiners, which consists of nine members appointed by the governor with the advice and consent of the senate. The board is composed of six reputable, practicing chiropractors who have resided in the state for at least five years preceding appointment, and three members who represent the public.

Sec. 201.204 states that the board shall keep an information file about each complaint filed with the board, which must remain current and contain a record for each complaint of:

- each person contacted in relation to the complaint;
- a summary of findings made at each step of the complaint process;
- an explanation of the legal basis and reason for complaint that is dismissed;
- the investigation schedule and a notification of any change in the schedule; and
- other relevant information.

Sec. 201.156 establishes board duties regarding complaints and specifies that the board by rule must adopt a form to standardize information concerning complaints made to the board and prescribe information to be provided to a person filing a complaint with the board. Further, the board by rule must adopt procedures concerning the retention of information files on license holders and also the expunction of files, including complaints, adverse reports, and other investigative information on license holders.

DIGEST: SB 211 would add Occupations Code, sec. 201.206 to state that investigation files were confidential, privileged, and not subject to discovery, subpoena, or any other means of legal compulsion for release other than to the Texas Board of Chiropractic Examiners or its employee or agent.

It would require the board to share information in investigation files, on request, with another state or federal regulatory agency or with any law enforcement agency, regardless of whether the investigation had been completed. The board would not be required to disclose attorney-client communications, attorney work products, or other information protected by a privilege recognized by the Texas Rules of Civil Procedures or the Texas Rules of Evidence.

On completion of an investigation and before a board hearing, the board would provide to the chiropractic license holder access to all information in the board's possession that the board intended to offer into evidence in presenting its case in chief at a contested hearing on a complaint. The board would not be required to provide a board investigative report or memorandum, the identity of a non-testifying complainant, or privileged attorney-client materials recognized by the Texas Rules of Civil Procedure or the Texas Rules of Evidence.

The board could disclose a complaint to the affected license holder and could provide to a complainant the license holder's response to the complaint, if the board considered providing the response necessary to the investigation. The bill would not prohibit the board or another party in a disciplinary action from offering into evidence in a contested court case a record, document, or other information obtained or created during an investigation.

SB 211 also would authorize the board to renew a chiropractic license without reexamination if the license holder had practiced for two years in good standing in another state or foreign country. It would require the board to adopt requirements for recognizing another chiropractic licensing board that had licensing requirements substantially equivalent to the state's requirements and maintained professional standards considered by the board to be equivalent to those in Texas law.

SB 211 would repeal current educational requirements for chiropractors.

The bill would take effect September 1, 2003, and would apply to a complaint or investigation pending on that date or filed on or after that date.

**SUPPORTERS
SAY:**

SB 211 would change requirements involving confidentiality, public information, reexamination, and education to make the laws governing the Texas Board of Chiropractic Examiners more consistent with those for similar boards and with standards for the chiropractic profession. It would make investigative files with the board confidential and privileged. Under current law, the Texas Board of Chiropractic Examiners and the Texas Optometry Board are the only two agencies that regulate health practitioners without confidentiality provisions in place for investigative files.

This bill would change the way open records requests were handled where enforcement matters were concerned. SB 211 would close investigative files during an investigation, but it would allow other regulatory or law enforcement agencies to have access while an investigation was open. A license holder would be allowed to see investigative files, subject to other privilege or restrictions, only after the board completed the complaint process.

Further, SB 211 would authorize the board to renew without reexamination an expired license of a chiropractor who was licensed in this state and who had practiced in good standing in a foreign country. Current law extends this two-year option only to chiropractors who have been licensed in Texas, but who move to and practice in another state, and a chiropractor who had practiced abroad in good standing should be treated the same way.

Finally, the bill would repeal the current statute affecting chiropractic educational requirements, which have become outmoded. Current provisions

list seven courses that a licensed chiropractor must complete at the undergraduate level; however, these courses are now part of curricula for upper level, chiropractic school.

**OPPONENTS
SAY:**

SB 211 would restrict important patient information with regard to complaints against chiropractors. Under this bill, a person seeking treatment would have no way of determining if a chiropractor had complaints filed with the board, nor would a license holder have access to ongoing complaint files. The Legislature should retain provisions in current law that would keep investigative files of the board from being confidential and thus protect interested consumers, as well as chiropractors under complaint.