

- SUBJECT:** Continuing the Board of Medical Examiners and related state boards
- COMMITTEE:** Public Health — committee substitute recommended
- VOTE:** 8 ayes — Delisi, Laubenberg, Truitt, Coleman, Dawson, Jackson, McReynolds, Zedler
- 0 nays
- 1 absent — Solis
- SENATE VOTE:** On final passage, April 26 — 31-0 on Local and Uncontested Calendar
- WITNESSES:** *(On House companion bill, HB 1944:)*
For — C. Stratton Hill, Texas Pain Society
- Against — Marc Fellman
- On — Shelia Bailey-Taylor, State Office of Administrative Hearings; Donald Patrick, Texas State Board Of Medical Examiners; Susan M. Strate, Texas Medical Association; Matt Wall, Texas Hospital Association; Meredith Whitten, Sunset Advisory Commission; Lynda Woolbert, Coalition for Nurses in Advanced Practice; Karin M. Zaner
- BACKGROUND:** The Board of Medical Examiners (BME) administers the licensing and oversees the practice of medicine by physicians in Texas. The Medical Practice Act sets requirements and fees for physician licensure, procedures for resolving complaints against licensees, and disciplinary actions, including suspension or revocation of a license. The BME's key functions are licensing, enforcement, and public awareness.
- In 2003, the 78th Legislature enacted SB 104 by Nelson, which made significant changes to the BME, including:
- changing the requirements for physician licensure;
 - directing the BME to prioritize complaints and adopt a schedule of sanctions;
 - establishing an expert panel to assist in investigation of complaints;

- changing the complaint resolution and enforcement process; and
- changing the fee structure for physician licensure.

The board last underwent Sunset review in 1993 and was continued by the 73rd Legislature. If not continued by the 79th Legislature, the board will be abolished September 1, 2005.

The Board of Physician Assistant Examiners is a subset of the BME. It oversees the practice and licensure of physician assistants, who are health care professionals licensed to assist physicians in practicing medicine. Under supervision, physician assistants' duties can include conducting physical exams, diagnosing and treating patients, ordering and interpreting tests, counseling patients on preventive health care, and assisting in surgery. Although it is a subset of the BME, the board has a separate Sunset review date. Created in 1993, it has not yet undergone review, but if not continued by the 79th Legislature, the board will be abolished September 1, 2005.

The State Board of Acupuncture Examiners also is a subset of the BME. It oversees the practice and licensure of acupuncturists, practitioners of an ancient Chinese method of healing that involves sticking very fine, solid needles into specific points on the body. The board underwent Sunset review in 1997 and was continued by the 75th Legislature. If not continued by the 79th Legislature, the board will be abolished September 1, 2005.

DIGEST:

CSSB 104 would continue the BME, Board of Physician Assistant Examiners, and Board of Acupuncture Examiners until September 1, 2017, and place all boards attached to the BME under one Sunset date.

Texas Medical Board (Board of Medical Examiners). The bill would change the BME's name to the Texas Medical Board. It would create three new types of licenses:

- a license limited in scope to work within a particular specialty practice based the applicant's significant experience in that specialty;
- a license limited to the practice of administrative medicine; and
- a faculty temporary license.

The bill would establish the qualifications and documentation required for each type of license. It would repeal the exemption from board rule on the

administration of outpatient anesthesia.

CSSB 419 would revise the confidentiality provisions relating to information in the board's possession and peer review. Board members and members of expert physician panels would be prohibited from using information gained by their membership for the benefit of their practice or another physician's practice. Members of expert panels acting in good faith would be immune from liability. The bill also would require the medical board to publish information about reversals of decisions or errors, unless the licensee requested that an update not be published. Physicians, not the board, would keep records of delegated duties.

CSSB 419 would establish requirements for board rules about qualifications and procedures for expert physician reviews. The bill also would increase the number of public members and training for members of district review committees. It would permit the board to request their assistance in an informal hearing and require one member at a formal meeting to be a public member. Notification requirements prior to a formal meeting would be more explicit in describing the issues the formal meeting would address, and the board's rules about procedures would be codified. Informal dispositions would require review by two panelists, one of whom would have to be a doctor. The board also would be required to independently investigate hospital peer review conclusions, not simply present them as evidence without review.

The bill would require the BME to establish guidelines for ensuring stakeholder input in the rulemaking process. The board would be directed to consider whether or not patient harm occurred when determining disciplinary action. It also would set guidelines for impairment evaluation examinations and terms under which non-disciplinary rehabilitation orders could be granted and the notification requirements for compliance.

The bill would establish a legislative interim study on peer review, including the use of peer review in identifying issues to the board, the role of peer review in disciplining physicians, and appropriate confidentiality and immunity.

Board of Acupuncturists. CSSB 419 would establish that the acupuncture board could have independent licensing authority so that each license would not require medical board approval. Acupuncture board

rules would continue to require medical board oversight. The bill would require the presiding officer to be an acupuncturist and would make acupuncture schools or degree programs subject to approval by the Texas Higher Education Coordinating Board.

CSSB 419 also would apply standard across-the-board Sunset recommendations, including those governing conflict of interest, presiding officer designation, training for board members, division of responsibilities, technology, and complaint resolution processes. It also would apply common licensing model recommendations, including rules on criminal conviction, delegating authority to board employees, license renewal, refunds, and cease and desist orders.

Other changes to the Board of Physician Assistant Examiners, and Board of Acupuncture Examiners would make their statutes conform with the medical board's. Other changes common to all three boards include requiring stakeholder input, clarifying timelines for complaint resolution and establishment of jurisdiction, and setting guidelines for amending State Office of Administrative Hearing orders.

The bill would take effect September 1, 2005.

**SUPPORTERS
SAY:**

CSSB 419 would implement the changes recommended by the Sunset Advisory Commission in its review of the Board of Medical Examiners, Board of Physician Assistant Examiners, and Board of Acupuncture Examiners. Generally, those boards adequately oversee and regulate their licensees, and the recommendations would improve input, public protection, disciplinary actions, and protect the confidentiality of professionals working under these licenses.

Texas should protect the public by ensuring that the administration of all anesthesia is regulated by the Texas Medical Board, the renamed Board of Medical Examiners. Under current statute, analgesics applied in an outpatient setting in doses that are unlikely to effect a patient's life-preserving protective reflexes are not regulated by the board. This places patients at risk because offices are not required to meet the board's safety guidelines and can be unprepared to manage emergencies. Recent incidents resulting in serious impairment and death, however, have highlighted the need for greater regulation.

The medical board should continue regulating surgical assistants, contrary

to the Sunset recommendation. Although not all professionals working as surgical assistants take advantage of the licensing option and choose to work under the delegation of the surgeon, those that are licensed can bill separately from the physician. The fees for the license support the administration of the license, so there is no reason to get rid of it.

OPPONENTS
SAY:

The medical board better could focus its resources if it were not required to offer a surgical assistant license. Since its establishment in 2001, very few professionals have applied for the license and it serves no public protection purpose because they work under the supervision and delegation of a surgeon.

Requiring the administration of all office-based anesthesia to be regulated by the medical board could result in higher costs and reduced access for some patients. Analgesics can include topical pain-killers, such as lidocaine, that commonly are used in dental and cosmetic applications as well as other settings. Not all offices may be able to afford the equipment and other supplies that could be required under new regulation. Also, the physician who administers or delegates the administration of the drug is responsible for using sound medical judgment in determining what precautions should be taken.

NOTES:

The fiscal note estimates the bill would result in a cost to the state of \$55,000 in fiscal 2006-07 and \$121,000 each fiscal year thereafter.

The House committee substitute of CSSB 419 differs from the Senate-approved version in that the substitute would:

- establish the confidentiality of peer review documents;
- set deadlines for certain informal hearing documents;
- require notification of decisions, and limit the board attorney's role in the proceedings;
- consider whether or not a violation was related to patient care in setting penalties; and
- add the peer review study.

The House companion bill, HB 1944 by Solomons, was left pending in the House Public Health Committee on April 13.