

- SUBJECT:** Licensing and regulation of certain health professionals at the TMB
- COMMITTEE:** Public Health —favorable, without amendment
- VOTE:** 10 ayes — Kolkhorst, Naishtat, Coleman, S. Davis, V. Gonzales, S. King, Laubenberg, Schwertner, Truitt, Zerwas
- 0 nays
- 1 absent — Alvarado
- SENATE VOTE:** On final passage, March 17 — 31-0, on Local and Uncontested Calendar
- WITNESSES:** For — James Willmann, Texas Nurses Association; (*Registered, but did not testify*: Jennifer Banda, Texas Hospital Association; Dan Finch, Texas Medical Association; Michael Gutierrez)
- Against — None
- On — Melinda McMichael; Mari Robinson, Texas Medical Board
- BACKGROUND:** The Texas Medical Board (TMB) regulates the practice of medicine and certain health professionals, including surgical and physician assistants and acupuncturists. The Texas Physician Assistant Board and the Texas State Board of Acupuncture Examiners are appointed by the governor, and their rulemaking is subject to TMB approval. The Surgical Assistant Advisory Committee is appointed by TMB and has no direct regulatory authority over surgical assistants.
- DIGEST:** SB 190 would amend provisions relating to the handling of complaints, eligibility for licensure, contested hearings and disciplinary actions by the TMB and related boards for physician assistants and acupuncturists.
- Physician licensing and regulation.** SB 190 would prohibit TMB from considering a complaint involving care provided more than seven years before the complaint was filed, with exceptions for minors. If the care involved a minor, the board could not consider complaints after the date the minor turned 21 years old or the seventh year after the date of care,

whichever was later. The TMB could consider a previously investigated complaint to determine if a physician had a pattern of violations.

The bill would prohibit the board from accepting anonymous complaints, and would specify that all complaints filed by insurers and insurance agents and pharmaceutical companies would have to include the name and address of the person filing the complaint. TMB would be required to notify physicians of complaints filed by these entities, unless the notification would jeopardize the investigation.

TMB would have 45 instead of 30 days to complete a preliminary investigation of a complaint. For informal meetings regarding contested cases, the bill would extend the time the board had to notify a licensee of a scheduled meeting to 45 days instead of 30 days in advance of the meeting, and give the licensees 15 instead of five days to provide a rebuttal to the allegations for the information to be considered at the meeting. Physicians could request the recording of the informal meeting, which could not be released to a third party unless authorized.

SB 190 would amend current statutes regarding licensing provisions for physicians, including prohibiting the TMB from issuing a license to a physician that held a full, provisional, or temporary (for faculty) medical license who was restricted because of a disciplinary order, surrendered, or canceled in another state or country for cause, or was under investigation for in another state or country. The bill also would remove a provision in current law allowing the TMB to charge a physician a fee of \$700 or less to reinstate a license after cancellation for cause.

Surgical assistants. TMB would be authorized to hear all evidence and arguments and deliberate disciplinary actions in executive session, exempt from the Open Meetings Act and Open Records Act.

Physician assistant licensing and regulation. The Texas Physician Assistant Board would be authorized to hear all evidence and arguments and deliberate disciplinary actions in executive session, exempt from the Open Meetings Act. The bill would remove limitations on the granting of temporary licenses and instead authorize the board to make rules regarding temporary license issuance and expiration. The bill would authorize the board to issue postgraduate training permits to students in graduate physician assistant education training programs. The bill would prohibit

the renewal of a license that had been expired for a year or longer and require the person to obtain a new license.

Acupuncturist licensing and regulation. The Texas State Board of Acupuncture Examiners would be authorized to hear all evidence and arguments and deliberate disciplinary actions in executive session, exempt from the Open Meetings Act. The bill would make confidential and not subject to discovery complaints, adverse reports, and other investigative information gathered or received by the acupuncture board or TMB relating to license holders or applicants.

Effective date. The bill would take effect September 1, 2011. The provisions in this bill would apply only to license applications, complaint investigations and contested case hearings on or before the effective date.

**SUPPORTERS
SAY:**

SB 190 would make a number of improvements to the complaints process and regulatory functions of the TMB. The bill would end anonymous complaints at the TMB, which prevent health care professionals from being able to adequately defend themselves. The bill would not discourage legitimate complaints made against health care professionals because most would remain confidential.

Currently, only a small percentage of all complaints made to the TMB are anonymous, so there is little reason to believe that SB 190 would substantially reduce the number of complaints. The bill would address the concerns by health care professionals that have been forced to defend their reputation because insurance providers or competitive doctors have issued complaints to the board for reasons beyond the standard of care. Under the bill, physicians would be notified of a complaint that was filed by an insurance agent, insurer, pharmaceutical company, or other third-party actor. This will allow physicians to challenge unfair complaints that often are made by insurance providers and drug companies who are trying to reduce the number of claims rather than address patients' needs.

The bill also would lengthen the time a physician had to respond to a complaint. This is important because physicians are trying to care for patients, manage their practices, and still deal with complaints. They should have sufficient time to respond to a complaint that could jeopardize their livelihood.

The bill also would prohibit the TMB from issuing any medical license to a physician who had their license canceled or surrendered for cause, or whose license was under investigation by another state or country. This would keep Texas patients safe by preventing bad doctors from practicing in the state.

SB 190 would make the same meetings provisions in place for investigation proceedings for physicians apply to acupuncturists and physician and surgical assistants.

**OPPONENTS
SAY:**

SB 190 would prohibit anonymous complaints to the TMB, which could silence credible complaints because an individual feared the consequences from an accused physician. While most complaints made to the TMB come directly from patients or their families, a number of legitimate concerns about a doctor's practice come from a physician's colleagues, such as a nurse or physician assistant who works side-by-side rather than in competition with the physician. These health care professionals are in a unique position to raise the alarm about a bad actor because they have the medical expertise to understand the medical consequences of a physician's treatment.

Prohibiting the TMB from accepting anonymous complaints could cause harm to a patient. Physicians' expertise and close relationships with patients put them in a unique position of power over those patients. Other state regulatory agencies, such as Child Protective Services, permit anonymous complaints for vulnerable populations because it is important to protect the health and well-being of Texans. This is an important safety issue and the current law on this point should remain intact.