

SUBJECT: Texas Medical Board enforcement of subpoenas and pain clinic regulation

COMMITTEE: Public Health — favorable, without amendment

VOTE: 9 ayes — Price, Sheffield, Arévalo, Burkett, Coleman, Cortez, Guerra, Klick, Oliverson

1 nay — Zedler

1 absent — Collier

SENATE VOTE: On final passage, May 10 — 30-0

WITNESSES: *On House companion bill, HB 3040:*

For — Matt Boutte, Texas Academy of Physician Assistants; David Teuscher, Texas Medical Association; Robert Van Boven; (*Registered, but did not testify*: Rick Hardcastle, Celltex Therapeutics; Vicki Sanders, Society of Radiology Physician Extenders, American Society of Radiologic Technologists; Lisa Jackson, Texas Academy of Physician Assistants; Jaime Capelo, Texas Chapter American College of Cardiology, Texas Academy of Physician Assistants; Nora Belcher, Texas e-Health Alliance; Troy Alexander, Texas Medical Association; Jay Propes, Texas Ophthalmological Association; Clayton Travis, Texas Pediatric Society)

Against — Sheila Page, Association of American Physicians and Surgeons; Emily Kebodeaux Cook and John Seago, Texas Right to Life; Tony Farmer

On — Andrew Kotsanis and Beverly Kotsanis, Kotsanis Institute; Erick Fajardo, Sunset Commission; Wally Doggett, Texas Association of Acupuncture and Oriental; Robert Bredt, Scott Freshour, and Monique Johnston, Texas Medical Board; Coleman Hemphill and Sheila Hemphill, Texas Right To Know; Lawrence Broder; Joseph Zadeh; Susan Zadeh; (*Registered, but did not testify*: Megan Goode, Texas Medical Board)

BACKGROUND: The Texas Medical Board licenses and regulates medical practitioners in the state. The board's mission is to protect and enhance the public's health, safety, and welfare by establishing and maintaining standards of excellence used in regulating the practice of medicine and ensuring quality health care for the citizens of Texas through licensure, discipline, and education.

In addition to medical licensing and regulation, the medical board also:

- registers and inspects pain management clinics and physicians who perform office-based anesthesia;
- investigates and resolves complaints;
- takes disciplinary action to enforce the board's statutes and rules; and
- monitors compliance with disciplinary orders.

DIGEST: SB 315 would adopt the Legislature's findings related to a compelling state interest in opioid and controlled substance prescription regulation. The bill also would allow the Texas Medical Board to inspect pain management facilities or clinics to determine whether they should be certified and would authorize a process for the board to enforce a subpoena.

Legislative findings. SB 315 would adopt legislative findings that deaths resulting from the use of opioids and other controlled substances constitute a public health crisis and that there is a compelling state interest in the Texas Medical Board closely regulating the prescribing of opioids and other controlled substances by physicians and their delegates. The Legislature finds that board investigations and inspections, including the board's use of subpoenas for immediate production, inspection, and copying of medical and billing records, are necessary to adequately regulate the prescribing of opioids and other controlled substances in order to protect the public health and welfare.

Pain management clinic inspection and compliance. SB 315 would authorize the board to inspect a pain management clinic or facility that

was not certified to determine whether it was required to be certified under state law. The board by rule would establish the grounds for conducting such an inspection, including those based on:

- the population of patients served by the clinic or facility;
- the volume or combination of drugs prescribed to patients served by the clinic or facility; and
- any other criteria the board considered sufficient for an inspection.

As it related to disciplinary actions and offenses by a person affiliated with a pain management clinic, inappropriate prescribing under the bill would include nontherapeutic prescribing or other conduct as specified by board rule.

Subpoena enforcement. If a person failed to comply with a subpoena issued by the board, SB 315 would authorize the board to act through the attorney general to sue to enforce the subpoena in Travis County district court or in another county where the hearing could be held. If the court found that there was good cause to issue the subpoena, it would be required to order the person to comply with the subpoena.

Effective date. SB 315 would take effect September 1, 2017.

NOTES:

The Texas Medical Board underwent Sunset review during the 2016-17 cycle and is scheduled to expire in statute on September 1, 2017. SB 315 as introduced contained continuing language for the board and several Sunset recommendations. The Senate committee substitute to SB 315 removed many of these provisions, including the continuing language. On May 21, the House adopted an amendment by Price to SB 80 by Nelson, which would continue the board until September 1, 2021. As amended, SB 80 by Nelson was approved by the House on May 21.

A companion bill, HB 3040 by Burkett, was reported favorably from the House Committee on Public Health on April 25.