

BILL ANALYSIS

Senate Research Center

C.S.S.B. 1207
By: Cain
Health Services
4/29/1999
Committee Report (Substituted)

DIGEST

Currently, under the Medical Practice Act of Texas, physicians are licensed. The Medical Practice Act assures that physicians who are seeking licensure in Texas by way of endorsement, or original licenses that are reviewed, examined, and evaluated according to the appropriate standards. The Texas Board of Medical Examiners (board) is the state agency created by the legislature to carry out the constitutional mandate of Section 31, Article XVI, Texas Constitution, which requires the legislature to pass laws for malpractice. The mission of the board is to assure the safety of its citizens through the appropriate regulation of physicians who practice medicine in Texas. The Medical Practice Act has been amended to adapt to the changing social, educational, and economic times, since its inception. C.S.S.B. 1207 would consolidate relevant sections of the Medical Practice Act, by creating coherent sections with all the necessary provisions for licensure of physicians.

PURPOSE

As proposed, C.S.S.B. 1207 sets forth licensure requirements for physicians.

RULEMAKING AUTHORITY

Rulemaking authority is granted to the Texas Board of Medical Examiners in SECTION 2 (Sections 3.01(b) and (m); 3.03(b),(c), and (f); 3.04(3) and (c)(6); 3.05(e) and (g); Article 4495(b), V.T.C.S.) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 2.09, Article 4495b, V.T.C.S., (Medical Practice Act), by amending Subsections (d), (h), (k), and (t) and adding Subsection (bb), to require the record to show whether applicants were denied or licensed. Requires a certified copy of those permanent records, with the hand or seal of the executive director, rather than secretary treasurer, of the Texas State Board of Medical Examiners (board), to be admitted in evidence in all courts. Authorizes the board to submit to the Department of Public Safety a complete set of fingerprints of every applicant for a license. Requires the board to place all receipts collected under authority of this Act. Requires the board on request of a licensee issue certification of state board examination grades to the Federation of State Medical Boards of the United States and charge a reasonable fee for the issuance. Requires the executive director of the board to file a surety bond with the board. Requires the bond to be in an amount no less than \$10,000, be in compliance with the insurance laws of the state, and be payable to the state for the use of the state, if the executive director does not faithfully discharge the duties of the office. Requires the board to pay the premium on the bond. Deletes text regarding license cancellation or suspension. Deletes text regarding fees received put into the medical licensing fund. Makes conforming changes.

SECTION 2. Amends Sections 3.01-3.05, Article 4495b, V.T.C.S., as follows:

Sec. 3.01. New heading: ANNUAL REGISTRATION OF PHYSICIANS. (a) Requires all persons now lawfully qualified to practice medicine in this state, or who are hereafter licensed for the practice of medicine by the board, to register annually as practitioners with the board. Requires the initial annual registration permit to be issued with the license.

(b) Requires the annual registration permit fee as established by board rule to apply to all physicians licensed by the board, whether or not they are practicing within the borders of this state, except retired physicians as provided by rules of the board.

- (c) Provides that a physician licensed by the board whose only practice is voluntary charity care is exempt from the annual registration permit fee as provided by rules of the board.
- (d) Requires the board to mail an annual registration permit renewal application to each practitioner at the practitioner's last known address according to the records of the board at least 30 days prior to the expiration date of the annual registration permit.
- (e) Requires the board to provide for a 30-day grace period for renewing the annual registration permit from the date of the expiration of the annual registration permit.
- (f) Authorizes a licensee to renew the annual registration permit by submitting to the board, on or before the expiration date of the annual registration permit, the required renewal application and renewal fee. Requires each annual registration permit renewal application to include the name and mailing address of the licensee, the place or places where the licensee is engaged in the practice of medicine, and other necessary information prescribed by the board.
- (g) Requires the renewal application to include a description of any investigations the licensee knows are in progress and of any sanctions imposed by or disciplinary matters pending in the state, district, territory, country, or service, if the licensee is licensed for the practice of medicine in another state, the District of Columbia, a territory of the United States, Canada, any other country, or the uniformed services of the United States.
- (h) Requires on receipt of a renewal application and all required fees, the board, after ascertaining, either from the records of the board or from other sources considered by it to be reliable, that the applicant is a licensed practitioner of medicine in this state, to issue to the licensee an annual registration permit certifying that the licensee has filed the renewal application, has paid the annual registration permit fee for the year in question, and has completed the requirements for annual registration.
- (i) Authorizes a licensee to renew his or her annual registration permit by submitting to the board the required renewal application, renewal fee, and a \$50 penalty fee, if a licensee's annual registration permit has been expired for 90 days or less.
- (j) Authorizes the licensee to renew the annual registration permit by submitting to the board the required renewal application, renewal fee, and a \$100 penalty fee, if a licensee's annual registration permit has been expired for longer than 90 days but less than one year.
- (k) Provides that the license is considered to have been canceled, unless an investigation is pending, and the licensee may not renew the annual registration permit, if a licensee's annual registration permit has been expired for one year or longer.
- (l) Authorizes each physician whose license is considered canceled to obtain a new license by submitting to reexamination and complying with the requirements, fees, and procedures for obtaining a license. Authorizes the board to issue a new license without examination to a person whose license is considered canceled for less than two years.
- (m) Authorizes the board, by rule, to adopt a system under which annual registration permits expire on various dates during the year. Requires annual registration permit fees to be prorated, for the year in which the expiration date is changed. Provides that the total annual registration permit fee is payable, on renewal of the annual registration on the new expiration date.
- (n) Requires the filing of the renewal application, the payment of the required fees, and issuance of the permit to not entitle the holder to practice medicine in Texas, unless the holder has been previously licensed as a practitioner by the board, as prescribed by law, and the license to practice medicine is in full force and effect. Prohibits the annual registration permit required by this Act from being treated as evidence that the holder is lawfully entitled to practice medicine, in any prosecution for the unlawful practice of medicine.
- (o) Provides that practicing medicine as defined in this Act without an annual registration permit for the current year as provided in this Act has the same force and effect as and is subject to all penalties of practicing medicine without a license. Deletes text regarding registration with the

board, licenses, renewing licenses, and fees. Deletes text regarding unlawful practice of medicine, annual registration fee, and application for licensure.

Sec. 3.02. New heading: PHYSICIAN IN TRAINING PERMITS. Authorizes physicians not otherwise licensed by the board who are participating in graduate medical education training programs approved by the board to be issued physician in training permits as provided by rules of the board. Provides that this permit does not authorize the performance of medical acts except as the acts are performed as part of graduate medical education training programs and under the supervision of a licensed practitioner of medicine. Provides that the board has jurisdiction to discipline a physician whose physician in training permit has expired if the violation of the law occurred during the time that the permit was valid. Requires the permit to be executory and the board to retain jurisdiction, if an investigation is open when the permit expires. Deletes text regarding application for receipt or renewal fees, and authorizing the board to adopt a system for expired registration dates.

Sec. 3.03. New heading: LICENSURE OF PHYSICIANS. (a) Authorizes the board to grant a license to practice medicine to any physician who qualifies under this Act.

(b) Requires an application for a license to be in writing and on forms prescribed by the board. Authorizes the board to allow or require applicants, by board rule, to use the Credentials Verification Service offered by the Federation of State Medical Boards of the United States.

(c) Requires the application forms to be accompanied by all fees, documents, and photographs required by board rule.

(d) Requires applicants for a license to subscribe to an oath in writing before an officer authorized by law to administer oaths. Provides that the written oath is part of the application.

(e) Provides that an applicant is not eligible for a license if certain conditions exist.

(f) Requires an applicant to present satisfactory proof to the board that each medical school attended is substantially equivalent to a Texas medical school as determined by board rule.

(g) Requires an applicant who is a graduate of a medical school that is located outside the United States and Canada to present satisfactory proof to the board that the applicant meets certain requirements.

(h) Requires all medical or osteopathic medical education received by the applicant in the United States to be accredited by an accrediting body officially recognized by the United States Department of Education as the accrediting body for medical education leading to the doctor of medicine degree or the doctor of osteopathy degree in the United States. Provides that this subsection does not apply to postgraduate medical education or training.

(i) Authorizes an applicant who is unable to comply with the requirements of Subsection (h) of this section to be eligible for an unrestricted license if the applicant meets certain conditions.

(j) Requires the executive director to review each application for licensure and to recommend to the board all applicants eligible for licensure. Requires the executive director to also report to the board the names of all applicants determined to be ineligible for licensure, together with the reasons for each recommendation. Authorizes an applicant deemed ineligible for licensure by the executive director to request review of such recommendation by a committee of the board within 20 days of receipt of such notice, and the executive director to refer any application to the committee for a recommendation concerning eligibility. Authorizes the committee to refer any application for determination of eligibility to the full board. Provides that if the committee finds the applicant ineligible for licensure, such recommendation, together with the reasons for the recommendation, to be submitted to the board unless the applicant requests a hearing with 20 days of receipt of notice of the committee's determination. Requires the hearing to be before an administrative law judge of the State Office of Administrative Hearings and to comply with Chapter 2001, Government Code, and the rules of the State Office of Administrative Hearing (office) and the board, if the applicant requests a hearing. Requires the board, after receiving the administrative law judge's proposed findings of fact and conclusions of law, determine the

eligibility of the applicant for licensure. Requires a physician whose application for licensure is denied by the board to receive a written statement containing the reasons for the board's action.

(k) Authorizes the examination questions to be used in the future, examinations other than the one taken by the person requesting it, and deliberations and records relating to the professional character and fitness of applicants are exempted from the open meeting law, Chapter 551, Government Code, and the public information law, Chapter 552, Government Code.

(l) Provides that all reports received or gathered by the board on each applicant are confidential and are not subject to disclosure under the public information law, Chapter 552, Government Code. Authorizes the board to disclose such reports to appropriate licensing authorities in other states. Requires the board to report all licensure actions to appropriate licensing authorities in other states and to the Federation of State Medical Boards of the United States.

(m) Authorizes the board to require applicants to comply with other requirements that the board considers appropriate, in addition to the requirements prescribed by this Act. Deletes text regarding payment of a fee by the applicants and the requirements of an application for license.

Sec. 3.04. New heading: QUALIFICATIONS OF LICENSEES. Requires an applicant to present satisfactory proof to the board that the applicant is of good professional character and has not violated Section 3.08 of this Act; and has completed the entire primary, secondary, and premedical education required in the country of medical school graduation, if the medical school is located outside the United States or Canada; or substantially equivalent courses as determined, by board rule; is a graduate of a medical school located inside the United States or Canada and approved by the board who has successfully complete one year of graduate medical training approved by the board in the United States or Canada or is a graduate of a medical school located outside the United States or Canada who has successfully completed three years of graduate medical training approved by the board in the United States or Canada; has successfully passed within three attempts an examination accepted or administered by the board; and has successfully passed a Texas medical jurisprudence examination as determined by board rule. Deletes text regarding applications for examinations and licensure requirements for applicants. Makes conforming changes and nonsubstantive changes.

Sec. 3.05. New heading: EXAMINATIONS ACCEPTED OR ADMINISTERED. (a) Authorizes the board to administer or accept certain examinations for licensure as determined by rule.

(b) Requires all examinations used by the board for licensure to practice medicine to be in writing. Requires applicants who wish to request reasonable accommodations due to a disability to submit the request on filing the application.

(c) Requires examinations to include subjects generally required of candidates for the degree of doctor of medicine or doctor of osteopathy conferred by schools in Texas.

(d) Requires the board to administer the Texas medical jurisprudence examination to all applicants.

(e) Authorizes the minimum passing grade for all examinations used by the board to be determined, by rule.

(f) Provides that examinations administered to evaluate basic medical knowledge and clinical competency to be prepared by a national testing service or the board and validated by qualified independent testing professionals.

(g) Authorizes all questions, answers, and grades to be preserved for one year as the board may direct, by rule.

(h) Requires all applicants to be given due notice of the date and place of the examination if administered by the board.

(i) Requires each examinee to be notified of the results of the examination, within 120 days after

the day on which an examination is administered by the board. Requires the board to notify each examinee of the results of the examination no later than 30 days after the date the board receives the results from the testing service, if an examination is graded or reviewed by national testing service.

(j) Requires all parts of certain medical examiner's examinations, except as provided by Subsection (m), on or after June 1, 1985, and the United States Medical Licensing Examination to be passed within seven years. Deletes text regarding examination requirements. Makes conforming changes.

(k) Requires an applicant to pass each part of the examination within three attempts, except that an applicant who has passed all but one part may take the remaining part of the examination one additional time.

(l) Sets forth provisions by which an applicant is considered to have satisfied the requirements of this section, notwithstanding Subsection (k).

(m) Requires applicants who are graduates of certain dual doctoral degrees to pass each part of the examination not later than the second anniversary of the date the applicant was awarded a doctor of medicine degree or doctor of osteopathy degree. Deletes text regarding examination requirements. Makes conforming changes.

SECTION 3. Amends Section 3.10, Article 4495b, V.T.C.S., to require all receipts collected by the board to be placed in the state treasury as provided by the General Appropriations Act, this Act, or other applicable laws, to be spent only for the enforcement of this Act, the prohibition of the unlawful practice of medicine, the dissemination of information to prevent the violation of the laws, and the prosecution of those who violate the laws. Authorizes all distributions to be made only on written approval of the executive director of the board or his designated representative. Prohibits the board from setting, charging, collecting, receiving, or depositing fees in excess of certain amounts. Authorizes the board to set and collect a sales charge for making copies of records in the office of the board and for any material published by the board. Provides that the financial transactions of the board are subject to audit by the state auditor in accordance with Chapter 321, Government Code. Requires the board to file annually with the governor and the presiding officer of each house of the legislature a complete and detailed written report accounting for all funds received and disbursed by the board during the preceding fiscal year. Requires the annual report to be in the form and reported in the time provided by the General Appropriations Act. Deletes text regarding the medical registration fund, depositing certain fees, and a written report accounting for all fund disbursed to the board.

SECTION 4. Amends Section 3.11A, Article 4495b, V.T.C.S., as follows:

Sec. 3.11A. New heading: SURCHARGE; DISPOSITION. (a) Requires an additional \$200 surcharge to apply to certain fees regarding licensing and registration.

(b) Requires a certain surcharge, rather than fee, to be deposited to the foundation school fund and general revenue fund. Deletes text regarding certain disposition of fees.

SECTION 5. Repealer: Section 2.10, Chapter 36, Acts of the 73rd Legislature, Regular Session, 1993 (Creation of Funds)

Repealer: Section 3.0305, Article 4495b, V.T.C.S. (Temporary License for Out-of-State Practitioners)

Repealer: Section 3.031, Article 4495b, V.T.C.S. (Temporary reciprocal license for physicians employed by Texas Department of Mental Health and Mental Retardation)

SECTION 6. Emergency clause.

Effective date: upon passage.

SUMMARY OF COMMITTEE CHANGES

SECTION 2.

Amends Section 3.01(k), Article 4495b, V.T.C.S., to provide that the license is considered to have

been canceled, unless an investigation is pending, and the licensee may not renew the annual registration permit, if a licensee's annual registration permit has been expired for one year or longer.

Amends Section 3.03(e), Article 4495b, V.T.C.S., to provide that an applicant is not eligible for a license if certain conditions exist, including an applicant holding a license that is currently restricted, canceled, suspended, or revoked for cause by a state of the United States, a province of Canada, or a uniform service of the United States. Deletes proposed Section 3.03(e)(1). Makes conforming changes.

Amends Section 3.05, Article 4495b, V.T.C.S., by amending Subsection (j) and adding new Subsections (k), (l), and (m), to set forth limits regarding an applicant's opportunity to take and pass certain medical examinations. Sets forth provisions by which an applicant is considered to have satisfied the requirements of this section, notwithstanding Subsection (k). Requires applicants who are graduates of certain dual doctoral degrees to pass each part of the examination not later than the second anniversary of the date the applicant was awarded a doctor of medicine degree or doctor of osteopathy degree. Deletes text regarding examination requirements.

SECTION 3.

Amends Sections 3.10(a) and (b), Article 4495b, V.T.C.S., to require all receipts collected by the board to be placed in the state treasury as provided by the General Appropriations Act, this Act, or other applicable laws, to be spent only for the enforcement of this Act, the prohibition of the unlawful practice of medicine, the dissemination of information to prevent the violation of the laws, and the prosecution of those who violate the laws. Prohibits the board from setting, charging, collecting, receiving, or depositing fees in excess of certain amounts.

SECTION 4.

Amends Section 3.11A(a), Article 4495b, V.T.C.S., to require an additional \$200 surcharge to apply to certain fees regarding licensing and registration.