

BILL ANALYSIS

Senate Research Center
78R5849 JMM-D

C.S.S.B. 104
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Health & Human Services
2/19/2003
Committee Report (Substituted)

DIGEST AND PURPOSE

Currently, the Texas State Board of Medical Examiners (TSBME) has limited authority relating to the regulation and enforcement of the practice of medicine in this state. C.S.S.B. 104 would grant more authority to TSBME regarding physicians licenses in this state.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas State Board of Medical Examiners in SECTION 4 (Section 154.056, Occupations Code), SECTION 7 (Section 156.001, Occupations Code), SECTION 8 (Section 156.002, Occupations Code), and SECTION 19 (164.001, Occupations Code) of this bill.

Rulemaking authority is modified in SECTION 4 (Section 154.056, Occupations Code), SECTION 14 (Section 156.009, Occupations Code), and SECTION 20 (Section 164.003, Occupations Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 153.051(d), Occupations Code, to increase from \$200 to \$400 a first registration permit, from \$200 to \$400 a renewal of a registration permit, and from \$300 to \$600 the processing of an application and the issuance of a registration for anesthesia in an outpatient setting, relating to the maximum fee amount the Texas State Board of Medical Examiners (TSBME) is allowed to set, charge, collect, receive, or deposit. Deletes existing text relating to annual fees. Makes nonsubstantive changes.

SECTION 2. Amends Section 153.053, Occupations Code, as follows:

- (a) Requires TSBME to collect a certain fee surcharge, rather than an additional \$200, relating to licenses and registration.
- (b) Makes a conforming change relating to the changes in Subsections (a)(1) and (4).
- (c) Requires TSBME to deposit \$100 to the credit of the foundation school fund and \$150 to the credit of the general revenue fund, of each surcharge collected under Subsections (a)(2) and (3).

SECTION 3. Amends Chapter 153B, Occupations Code, by adding Section 153.0535, as follows:

Sec. 153.0535. SURCHARGE FOR REGISTRATION PERMIT. (a) Requires TSBME to collect an additional \$30 surcharge for certain fees relating to registration permits.

- (b) Requires TSBME to deposit each surcharge collected to the credit of the public assurance account. Requires the public assurance account to be an account in the general revenue fund that is to be appropriated only to TSBME to pay for TSBME's

enforcement program, including the expert physician panel.

SECTION 4. Amends Section 154.056, Occupations Code, by amending Subsection (a) and adding Subsection (e), as follows:

(a) Requires TSBME to adopt rules concerning the investigations and review of a complaint filed with TSBME. Includes in the requirements of the rules adopted under this section, that priority be given to complaints that involve sexual misconduct, quality of care, and impaired physician issues; that a letter be sent to the physician who was subject of the complaint if dismissed; and that a provision be made for an expert physician panel authorized under Subsection (e) to assist with complaints and investigations relating to medical competency.

(e) Requires TSBME, by rule, to provide for an expert physician panel appointed by TSBME to assist with complaints and investigations relating to medical competency. Requires each member of an expert physician panel to be licensed to practice medicine in this state. Requires the rules adopted under this subsection to include provisions governing the composition of the panel, qualifications for membership on the panel, and the duties to be performed by the panel.

SECTION 5. Amends Section 154.058, Occupations Code, as follows:

(a) Requires each complaint against a physician that requires a determination of medical competency to be reviewed initially by certain persons with a medical background considered sufficient by TSBME.

(b) Requires the complaint, if the initial review under Subsection (a) indicates that an act by a physician falls below an acceptable standard of care, to be reviewed by an expert physician panel authorized under Section 154.056(e) consisting of physicians who practice in the same specialty as the physician who is the subject of the complaint or in another specialty that is similar to the physician's specialty.

(c) Requires the expert physician panel to report in writing the panel's determinations based on the review of the complaint under Subsection (b). Requires the report to specify the standard of care that applies to the facts that are the basis of the complaint and the clinical basis for the panel's determinations, including any reliance on peer-reviewed journals, studies, or reports.

SECTION 6. Amends the heading to Chapter 156, Occupations Code, to read as follows:

CHAPTER 156. REGISTRATION OF PHYSICIANS

SECTION 7. Amends Section 156.001, Occupations Code, as follows:

Sec. 156.001. New heading: REGISTRATION REQUIREMENTS AND PROCEDURES.

(a) Requires each person licensed to practice medicine in this state to register with the board every two years, rather than annually. Deletes existing text relating to annual license registration. Requires the initial registration permit to be issued with the license and expire on the first day of the birth month of the license holder.

(b) Makes a conforming change to delete existing text "annual" relating to license registration.

(c) Authorizes an eligible license holder, as determined by TSBME, to renew the registration permit by submitting to TSBME, on or before the expiration date of the registration permit, the required renewal application and registration renewal fee. Makes conforming changes to delete existing text "annual" relating to license registration. Requires each registration permit renewal application to include certain personal information relating to the license holder and other necessary information as prescribed by board rule.

(d) Changes existing term “person” to license holder. Adds registration to the term “renewal application.” Makes conforming changes.

SECTION 8. Amends Section 156.002, Occupations Code, as follows:

(a) Makes a conforming change to delete existing text “annual” relating to license registration.

(b) Provides that a physician licensed by TSBME whose only practice is voluntary charity care, as defined by board rule, is exempt from the registration permit fee requirement. Makes a conforming change to delete existing text “annual” relating to license registration.

SECTION 9. Amends Section 156.003, Occupations Code, to authorize TSBME, by rule, to adopt a system under which registration permits expire on various dates during the two-year registration period, rather than the year. Makes conforming changes relating to replacing the year with the registration period and deleting existing text “annual.”

SECTION 10. Amends Section 156.004, Occupations Code, to require TSBME to send a, rather than mail and annual, registration permit renewal application notice to each physician. Makes a conforming change to delete existing text annual relating to license registration.

SECTION 11. Amends Section 156.005, Occupations Code, as follow:

(a) Makes conforming changes relating to deleting existing text “annual” and adding the term registration to existing text “renewal application” and “renewal fee.” Increases a certain penalty fee from \$50 to \$75.

(b) Makes conforming changes relating to deleting existing text “annual” and adding the term registration to existing text “renewal application” and “renewal fee.” Increases a certain penalty fee from \$100 to \$150.

(c) Makes conforming changes relating to the deleting of existing text “annual.” Sets forth that a person’s license is automatically, rather than considered to have been, canceled if expired for one year or longer.

(d) Deletes existing text “submitted to reexamination” relating to a canceled license. Makes conforming changes replacing existing text “considered” with “automatically.” Adds new to existing text license relating to a physician with a canceled license.

SECTION 12. Amends Section 156.007, Occupations Code, as follows:

Sec. 156.007. New heading: ISSUANCE OF REGISTRATION PERMIT. Deletes existing text “annual” from heading. (a) Makes conforming changes to delete existing text “annual.” Requires an eligible physician to meet all other requirements for registration before TSBME is required to issue a registration permit. Deletes existing text “year” and replaces with “registration period.”

(b) Makes conforming changes. Includes the requirement that the permit holder has met the continuing medical education requirements and submitted a current complete physician profile in the list of requirements for a permit holder to practice medicine in this state.

SECTION 13. Amends Section 156.008, Occupations Code, to make conforming changes.

SECTION 14. Amends Section 156.009, Occupations Code, to delete existing text relating to requiring TSBME, by rule, to set a time limit for the period during which a license holder is authorized to remain on inactive status.

SECTION 15. Amends Sections 156.051(a) and (d), Occupations Code, as follows:

(a) Makes a conforming change.

(d) Makes a conforming change relating to Section 156.002(a). Deletes existing text which states this section does not apply to retire license holders.

SECTION 16. Amends Section 156.052, Occupations Code, to make conforming and nonsubstantive changes. Provides that a license holder is presumed to be in compliance with the requirements of this subchapter if, during the 36 months proceeding the date of the required registration, the license holder becomes TSBME certified or recertified by a specialty board, rather than medical board, approved by certain medical entities. Deletes the American Medical Association and the Advisory Board for Osteopathic Specialists and Boards of Certification from the list of medical entities.

SECTION 17. Amends Section 156.053, Occupations Code, to make conforming and nonsubstantive changes.

SECTION 18. Amends Section 162.104(a), Occupations Code, to make a conforming change.

SECTION 19. Amends Section 164.001, Occupations Code, by adding Subsection (f), as follows:

(f) Requires TSBME, by rule, to adopt a schedule of the disciplinary sanctions that TSBME is authorized to impose under this subchapter. Requires TSBME, in adopting the schedule of sanctions, to ensure that the severity of the sanction imposed is appropriate to the type of violation or conduct that is the basis for disciplinary action.

SECTION 20. Amends Section 164.003, Occupations Code, by amending Subsections (b) and (c) and adding Subsections (e) and (f), as follows:

(b) Adds two requirements of rules adopted under this section relating to details of an informal meeting between TSBME and a license holder. Creates new Subdivision (3). Redesignates Subdivisions (2) and (3) as (4) and (5).

(c) Adds to the list of actions an affected physician is entitled to take relating to a meeting.

(e) Requires the information provided by TSBME to the physician to include the facts of the case as known to TSBME and any expert panel report, for purposes of Subsections (c)(4), (c)(5), and (c)(6). Provides that TSBME is not required under those subsections to provide certain information relating to an investigation.

(f) Requires TSBME, if the license holder has previously been the subject of disciplinary action by TSBME, to schedule the informal meeting as soon practicable but not later than the deadline prescribed by Subsection (b)(1).

SECTION 21. Amends Section 164A, Occupations Code, by adding Section 164.0035, as follows:

Sec. 164.0035. DISMISSAL OF BASELESS COMPLAINT. Requires TSBME, if, during the 180-day period prescribed by Section 164.003(b)(1), TSBME determines that the complaint is a baseless or unfounded complaint, to dismiss the complaint and include a statement in the records of the complaint that the reason for the dismissal is because the complaint was baseless or unfounded.

SECTION 22. Amends Section 164.004, Occupations Code, by amending Subsection (a) and adding Subsection (c), as follows:

(a) Adds, to the list of actions necessary for certain disciplinary actions relating to a license to be effective, a statement and explanation of the standard of care allegedly violated by the license holder; and provision to the license holder any exculpatory evidence, reports, or information in the possession or control of TSBME.

(c) Requires the information provided by TSBME to the physician, for purposes of Subsection (a), to include the facts of the case as known by TSBME and any expert physician panel report. Provides that TSBME is not required under that subsection to provide certain information relating to a complaint.

SECTION 23. Amends Section 164.010, Occupations Code, by adding Subsection (c), to require TSBME to immediately investigate a certain violation or complaint relating to a license holder.

SECTION 24. Amends Section 164.011(c), Occupations Code, to include an injunction to a list of actions which are prohibited from being granted depending on certain circumstances relating to a license holder.

SECTION 25. Amends Section 164.051, Occupations Code, by amending Subsections (a), and (c), and adding Subsection (d), as follows:

(a) Includes in the list of reasons TSBME is authorized to refuse to admit a person to its examination or refuse to issue a license to practice medicine and is authorized to take disciplinary action against a person, if that person is placed on deferred adjudication community supervision or deferred disposition for certain crimes. Makes a conforming change relating to Subsection (d).

(c) Makes a conforming change relating to Subsection (d).

(d) Requires TSBME to revoke a license issued under this subtitle if the license holder held a license to practice medicine in another state that has been revoked by the licensing authority in that state.

SECTION 26. Amends Section 164.053(a), Occupations Code, to include acts which violate federal law in the list of conduct considered unprofessional or dishonorable by a physician.

SECTION 27. Amends Section 164.057, Occupations Code, as follows:

Sec. 164.057. New heading: **REQUIRED SUSPENSION OR REVOCATION OF LICENSE FOR CERTAIN OFFENSES.** Deletes “felony” from the heading.

(a) Includes a misdemeanor under Chapter 22, Penal Code, other than a misdemeanor punishable by fine only in the list of initial convictions which would require TSBME to suspend a physician’s license. Makes conforming and nonsubstantive changes.

(b) Makes a conforming change.

SECTION 28. Amends Section 164.059, Occupations Code, as follows:

Sec. 164.059. New heading: **TEMPORARY SUSPENSION OR RESTRICTION OF LICENSE.** (a) Deletes existing text relating to TSBME approval. Makes a conforming change relating to a license being suspended or restricted.

(b) Requires the disciplinary panel, if the disciplinary panel determines from the evidence presented to the panel that a person licensed to practice medicine would, by the person’s continuation in unrestricted practice, constitute a real danger to the health or safety of the

person's patients, to temporarily suspend or restrict the license of that person. Deletes existing text relating to information and continuing threat to the public welfare.

(c) Authorizes a license to be suspended or restricted by a disciplinary panel under this section without notice or hearing if certain conditions apply. Makes a nonsubstantive change.

(e) Requires TSBME, if the disciplinary panel affirms the temporary suspension or restriction of the license holder's license, after the hearing before the disciplinary panel described by Subsection (c), to schedule an informal compliance meeting that meets the requirements of Section 2001.054(c), Government Code (Licenses), and Section 164.004 of this code to be held as soon as practicable, unless the license holder waives the informal meeting or an informal meeting has already been held with regard to the issues that are the basis for the temporary suspension or restriction.

(f) Requires a TSBME representative, if the license holder is unable to show compliance at the informal meeting described by Subsection (e) regarding the issues that are the basis for the temporary suspension or restriction, to file a formal complaint under Section 164.005 as soon as possible.

(g) Prohibits the facts that were the basis for the temporary suspension or restriction from being the sole basis of another proceeding to temporarily suspend or restrict the license holder's license, if, after the hearing described by Subsection (c), the disciplinary panel does not temporarily suspend or restrict the license holder's license.

SECTION 29. Amends Section 164.060(c), Occupations Code, to include a violation of the workers' compensation laws under Title 5A, Labor Code, among the violations TSBME is required to immediately report if discovered.

SECTION 30. (a) Effective date: upon passage or September 1, 2003.

(b) Requires TSBME to adopt rules as required by Section 164.001(f), Occupations Code, as added by this Act, not later than January 1, 2004.

(c) Makes application of Section 164.051, Occupations Code, retroactive.

(d) Makes application of Section 164.057, Occupations Code, prospective.

SECTION 31. (a) Makes application of this Act relating to biennial registration of physicians under Chapter 156, Occupations Code, prospective to January 1, 2004.

(b) Makes the application of Section 156.003, Occupations Code, relating to TSBME being authorized to adopt a staggered registration system, prospective to September 1, 2004.

(c) Requires TSBME to adopt rules required by Chapter 156, Occupations Code, as amended by this Act, not later than December 1, 2003.

SECTION 32. Makes applications of this Act by the enactment of Section 153.0535, Occupations Code, prospective to January 1, 2004.

SECTION 33. Makes application of this Act relating to investigation and disposition of a complaint and any proceeding begun as a result of a complaint investigation, prospective.

SUMMARY OF COMMITTEE CHANGES

Differs from original by adding SECTIONS 1-24, 26, and 28-33.

Differs from original in SECTION 25 by adding in the list of reasons TSBME is authorized to refuse to admit a person to its examination or refuse to issue a license to practice medicine and is authorized to take disciplinary action against a person, if that person is placed on deferred adjudication community supervision or deferred disposition for certain crimes.

Differs from the original in SECTION 27 by replacing existing text referring to any other offense that is a violent crime with a misdemeanor under Chapter 22, Penal Code, other than a misdemeanor punishable by fine only.