

## **BILL ANALYSIS**

Senate Research Center  
81R15385 JAM-F

S.B. 2397  
By: Nelson  
Health & Human Services  
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As Filed

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

Currently, the Texas Medical Board (TMB) licenses physicians, physician assistants, acupuncturists, and surgical assistants. Some of the professions licensed by TMB are regulated in a manner that not only is inconsistent with how other state boards license and regulate licensees, but is inconsistent with how licensees are regulated by TMB.

As proposed, S.B. 2397 makes changes to statutes governing the licensing and regulation of physicians, physician assistants, acupuncturists, and surgical assistants.

### **RULEMAKING AUTHORITY**

Rulemaking authority previously granted to the Texas Medical Board is modified in SECTION 1.02 (Section 155.0031(d), Occupations Code) and SECTION 1.04 (Section 164.003, Occupations Code) of this bill.

Rulemaking authority is expressly granted to the Physician Assistant Board in SECTION 2.03 (Section 204.155, Occupations Code) and SECTION 2.04 (Section 204.1551, Occupations Code) of this bill.

Rulemaking authority previously granted to the Physician Assistant Board is rescinded in SECTION 2.03 (Section 204.155, Occupations Code) of this bill.

Rulemaking authority is expressly granted to the Texas State Board of Acupuncture Examiners in SECTION 3.02 (Section 205.208, Occupations Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1.01. Amends Section 154.057(b), Occupations Code, to require the Texas Medical Board (TMB) to complete a preliminary investigation of the complaint not later than the 45th, rather than the 30th, day after the date of receiving the complaint.

SECTION 1.02. Amends Sections 155.0031(c) and (d), Occupations Code, as follows:

(c) Requires applicants for a license to subscribe to an oath. Deletes existing text that requires applicants for a license to subscribe to an oath in writing before an officer authorized by law to administer oaths.

(d) Requires an applicant to present proof satisfactory to the Texas Medical Board (TMB) that each medical school attended by the applicant is substantially equivalent to a Texas medical school as determined by TMB rule; or the applicant is specialty board certified by a specialty board organization acceptable to TMB.

SECTION 1.03. Amends Section 155.004, Occupations Code, as follows:

Sec. 155.004. ADDITIONAL ELIGIBILITY REQUIREMENTS FOR GRADUATES OF CERTAIN FOREIGN MEDICAL SCHOOLS. Requires that a license applicant who is a graduate of a medical school that is located outside the United States and Canada present proof satisfactory to TMB that the applicant has successfully completed at least two years of graduate medical training in the United States or Canada that was approved by TMB and at least one year of graduate medical training outside the United States or

Canada that was approved for advanced standing by a specialty board organization approved by TMB. Deletes existing text requiring that a license applicant who is a graduate of a medical school that is located outside the United States and Canada present proof satisfactory to TMB that the applicant is eligible for a license to practice medicine in the country in which the school is located, except for any citizenship requirements. Makes nonsubstantive changes.

SECTION 1.04. Amends Sections 164.003(b) and (f), Occupations Code, as follows:

(b) Requires that rules adopted under this section require that:

(2) TMB give notice to the license holder of the time and place of the meeting not later than the 45th, rather than the 30th day, before the date the meeting is held.

(f) Requires the license holder to provide to TMB the license holder's rebuttal at least 15, rather than five, business days before the date of the meeting in order for the information to be considering at the meeting.

## ARTICLE 2. REGULATION OF PHYSICIAN ASSISTANTS

SECTION 2.01. Amends Section 204.058, Occupations Code, as follows:

(a) Creates this subsection from existing text.

(b) Authorizes the Texas Physician Assistant Board (PAB) to hear all evidence and arguments and conduct deliberations relating to license applications and disciplinary actions under this chapter in executive sessions. Requires PAB to vote and announce its decisions in open session. Exempts deliberations by PAB relating to license applications and disciplinary actions from Chapter 551 (Open meetings), Government Code.

SECTION 2.02. Amends Sections 204.153(a) and (b), Occupations Code, as follows:

(a) Provides that to be eligible for a license under this chapter, an applicant must be of good professional, rather than moral, character.

(b) Provides that in addition to the requirements of Subsection (a), an applicant is not eligible for a license if the applicant meets certain conditions. Deletes existing text providing that in addition to the requirements of Subsection (a), an applicant is not eligible for a license if the applicant meets certain conditions unless PAB takes the fact into consideration in determining whether to issue the license.

SECTION 2.03. Amends Section 204.155, Occupations Code, to authorize PAB to adopt rules and set fees relating to granting temporary licenses and extending the expiration dates of temporary licenses. Requires PAB by rule to set a time limit for the term of a temporary license. Deletes existing text authorizing PAB to issue a temporary license to an applicant who meets certain requirements.

SECTION 2.04. Amends Subchapter D, Chapter 204, Occupations Code, by adding Section 204.1551, as follows:

Sec. 204.1551. POSTGRADUATE TRAINING PERMIT. (a) Authorizes PAB by rule to issue a physician assistant postgraduate training permit to a physician assistant not otherwise licensed by PAB who is participating in a graduate physician assistant education training program approved by PAB.

(b) Provides that a physician assistant postgraduate training permit does not authorize the performance of a physician assistant act by the permit holder unless the act is performed as a part of the graduate medical education training program and under the supervision of a physician and a physician assistant.

(c) Provides that PAB has jurisdiction to discipline a permit holder whose permit has expired if the violation of the law occurred during the time the permit was valid. Requires the permit to be executory if an investigation is open when the permit expires and authorizes the board to retain jurisdiction.

SECTION 2.05. Amends Section 204.156, Occupations Code, by adding Subsections (f-1) and (f-2), as follows:

(f-1) Provides that the person's license is automatically canceled if the person's license has been expired for one year or longer, unless an investigation is pending. Prohibits the person from renewing the license.

(f-2) Authorizes a physician assistant whose license is automatically canceled to obtain a new license by complying with the requirements, fees, and procedures for obtaining a new license. Authorizes PAB to issue a new license without examination to a person whose license is automatically canceled for less than two years.

### ARTICLE 3. REGULATION OF ACUPUNCTURISTS

SECTION 3.01 Amends Section 205.060, Occupations Code, as follows:

Sec. 205.060. APPLICATION OF OPEN MEETINGS, OPEN RECORDS, AND ADMINISTRATIVE PROCEDURE LAWS. (a) Creates this subsection from existing text.

(b) Authorizes the Texas State Board of Acupuncture Examiners (TSBAE) to hear all evidence and arguments and conduct deliberations relating to license applications and disciplinary actions under this chapter in executive sessions. Requires TSBAE to vote and announce its decisions in open session. Exempts deliberations by TSBAE relating to license applications and disciplinary actions from Chapter 551, Government Code. Makes nonsubstantive changes.

SECTION 3.02. Amends Section 205.208, Occupations Code, as follows:

Sec. 205.208. TEMPORARY LICENSE. Authorizes TSBAE to adopt rules and recommend to TMB fees relating to granting temporary licenses and extending the expiration dates of temporary licenses. Requires TSBAE by rule to set a time limit for the term of a temporary license. Deletes existing text that authorizes TSBAE, through the executive director, to issue a temporary license to practice acupuncture to an applicant who meets certain requirements. Deletes existing text that sets forth the length of time in which a temporary license is valid.

SECTION 3.03. Amends Section 205.3544, Occupations Code, as follows:

Sec. 205.3544. LIMIT ON ACCESS TO INVESTIGATION FILES. (a) Provides that each complaint, adverse report, investigation file, other investigation report, and other investigative information in the possession of or received or gathered by TSBAE or a TMB employee or agent relating to a license holder, an application for license, or a criminal investigation or proceeding is privileged and confidential and is not subject to discovery, subpoena, or other means of legal compulsion for release to anyone other than the TSBAE or TMB employees or agents involved in discipline of a license holder.

(b) Exempts investigation records relating to an application for license and disciplinary action of a license holder from Chapter 552 (Public information), Government Code.

(c) Provides that for purposes of this subsection, investigative information includes information relating to the identity of, and a report made by, a physician performing or supervising compliance monitoring for TSBAE. Deletes existing text that requires TSBAE to prohibit or limit access to an investigation file relating to a license holder in an informal proceeding in the manner provided by

Section 164.007(c) (relating to the confidentiality of complaints received by the board).

#### ARTICLE 4. REGULATION OF SURGICAL ASSISTANTS

SECTION 4.01. Amends Subchapter B, Chapter 206, Occupations Code, by adding Section 206.059, as follows:

Sec. 206.059. MEDICAL BOARD MEETINGS; CONFIDENTIALITY. (a) Authorizes TMB to hear all evidence and arguments and conduct deliberations relating to license applications and disciplinary actions under this chapter in executive sessions. Requires TMB to vote and announce its decisions in open session.

(b) Provides that deliberations and records relating to the professional character and fitness of applicants as well as related to disciplinary actions are exempt from Chapters 551 and 552, Government Code.

SECTION 4.02. Amends Section 206.203(a), Occupations Code, to require a person, except as provided by Section 206.206 (Temporary License), to be eligible for a license, to be of good professional, rather than moral, character.

#### ARTICLE 5. TRANSITION PROVISIONS.

SECTION 5.01. Makes application of Sections 155.0031, 155.004, 204.153, 205.208, and 206.203, Occupations Code, as amended by this Act, prospective.

SECTION 5.02. Makes application of Sections 154.057 and 164.003, Occupations Code, as amended by this Act, prospective.

SECTION 5.03. Makes application of Section 204.058, Occupations Code, as amended by this Act, and Section 205.060(b), Occupations Code, as amended by this Act, prospective.

SECTION 5.04. Makes application of Section 204.156, Occupations Code, as amended by this Act, prospective.

#### ARTICLE 6: EFFECTIVE DATE

Section 6.01. Effective date: September 1, 2009.