

SUBJECT: Licensing and regulation of physicians and other medical professionals

COMMITTEE: Public Health — committee substitute recommended

VOTE: 8 ayes — Kolkhorst, Coleman, Gonzales, S. King, Laubenberg, McReynolds, Truitt, Zerwas

1 nay — Naishtat

2 absent — J. Davis, Hopson

SENATE VOTE: On final passage, April 23 — 30-0

WITNESSES: No public hearing

BACKGROUND: The Medical Practice Act governs the licensing of physicians, physician assistants, acupuncturists, and surgical assistants. The Texas Medical Board licenses over 60,000 physicians, 4500 physician assistants, and 800 acupuncturists.

DIGEST: **Licensing of physicians.** CSSB 2397 would remove the requirement that a license applicant's oath be subscribed in writing before an officer authorized by law to administer oaths. A medical specialty board certification would be acceptable as an alternative to presenting proof that each medical school attended by the applicant was substantially equivalent to a Texas medical school.

As an alternative to proof of least three years of graduate medical training in the United States or Canada, the bill would allow graduates of foreign medical schools to show proof of at least two years of graduate medical training in the United States or Canada and at least one year of graduate medical training outside the United States or Canada that was approved by the Texas Medical Board for advanced standing by a specialty board organization. The bill also would remove the requirement that the applicant be eligible for a license to practice medicine in the country of the applicant's medical school.

Complaints and investigations of physician conduct. CSSB 2397 would require the board to provide physicians with a copy of a complaint by certified mail or personal delivery. The complaint would state the alleged violation and would be unredacted unless there was a risk of harm to the public or notice would jeopardize the investigation. If the board subpoenaed a patient's records, the board would send notice to the patient or the patient's guardian unless the notice would jeopardize the investigation.

The board could not accept anonymous complaints or complaints lacking sufficient information to identify the source or the name of the individual who filed the complaint. Complaints filed by insurance companies or insurance agents would have to include the name and address of the agent or insurer, and the board would be required to provide this information to the physician within 15 days of the filing of the complaint unless the notice would jeopardize the investigation.

CSSB 2397 would require the board to complete a preliminary investigation into a complaint within 60 days of receiving the complaint.

The board could not consider or act on a complaint involving care provided more than seven years before the date the complaint was filed unless the care was provided to a minor. If the care was provided to a minor, the board could not consider or act on a complaint after the minor's 21st birthday or the seventh anniversary of the date of care, whichever occurred later.

The bill would allow the board to identify a patient or complainant in information provided to a legislative committee and would specify that information received by the committee could not be released to any third party.

Disciplinary actions against physicians. The bill would amend Occupations Code, ch. 164 to require the board to notify a license holder of the time and place of an informal meeting no later than the 60th day before the date of the meeting. In addition, CSSB 2397 would add that, on request of the physician under review, the board would record the informal settlement conference proceeding and could charge the license holder a fee to cover the recording cost. The recording would be part of the investigative file and could not be released to a third party.

Regulation of physician assistants. The bill would amend Occupations Code, ch. 204 to provide that to be eligible for licensure as a physician assistant, individuals would have to be of good professional character, rather than good moral character.

CSSB 2397 would allow the physician assistant board to hear all evidence and arguments and conduct deliberations relating to license applications and disciplinary actions in executive sessions. The physician assistant board could vote and announce its decisions in open session. Deliberations would be exempt from the open meetings requirements of Government Code, ch. 551.

The bill would allow the physician assistant board to adopt rules and set fees relating to granting temporary licenses and extending the expiration dates of temporary licenses. In addition, the bill would require the physician assistant board to set a time limit for the term of a temporary license. Specific requirements for a temporary license currently listed in the section would be repealed.

CSSB 2397 would allow the physician assistant board to issue a physician assistant postgraduate training permit to a physician assistant not otherwise licensed by the physician assistant board who was participating in a graduate physician assistant education training program. The permit would not authorize the performance of a physician assistant act unless the act was:

- part of the graduate medical education training program; and
- under the supervision of a physician and a physician assistant.

The physician assistant board would have jurisdiction to discipline a permit holder whose permit had expired if the violation of law occurred during the time the permit was valid, or if the permit expired while the investigation was open.

If an individual's license had been expired for one year or longer, the license automatically would be cancelled, unless an investigation was pending, and the individual could not renew the license. The physician assistant could obtain a new license by complying with the requirements, fees, and procedures for obtaining a new license. The physician assistant board could issue a new license without examination to an individual whose license automatically was cancelled for less than two years.

Regulation of acupuncturists. CSSB 2397 would provide that the acupuncture board could adopt rules and recommend to the medical board fees relating to granting temporary licenses and extending the expiration dates of temporary licenses, and would by rule set a time limit for the term of a temporary license. The bill would repeal specific requirements currently provided for in Occupations Code, ch. 205 for temporary acupuncture licenses.

The bill would specify that information involving complaints, adverse reports, and investigation information relating to a license holder or applicant would be privileged and confidential and not subject to release to anyone other than the acupuncture board, medical board employees, or agents involved in the discipline of a license holder. Investigation records would be exempt from Government Code, ch. 552 open records requirements.

Regulation of surgical assistants. The bill would amend Occupations Code, ch. 206 to provide that to be eligible for licensure as a surgical assistant, individuals would have to be of good professional character, rather than good moral character.

CSSB 2397 would add a section to Occupations Code, ch. 206 allowing the medical board to hear all evidence and arguments and conduct deliberations relating to license applications and disciplinary actions in executive sessions. The medical board could vote and announce its decisions in open session. Deliberations relating to the professional character and fitness of applicants and disciplinary actions would be exempt from open meetings and open records requirements in Government Code, chapters 551 and 552.

Changes made by the bill would apply to license applications and investigations of complaints filed on or after the effective date of the bill, contested case hearings conducted on or after the effective date of the bill, or licenses that expired on or after the effective date of the bill.

The bill would take effect September 1, 2009.

**SUPPORTERS
SAY:**

CSSB 2397 would amend the Medical Practice Act to ensure efficient licensing of certain health professions and provide for improved processing of complaints to better protect the public interest. In addition,

the bill would make changes to reflect more closely how other state licensing boards operate in terms of complaints and disciplinary actions.

Seven years is the standard for record retention under administrative rule, so many professionals, companies, and organizations purge their records after seven years to make room for new ones. However, there is currently no statute of limitations on complaints against physicians, which makes it difficult for the medical board to investigate complaints and hard for a physician to defend if the incident occurred more than seven years prior to the date the complaint was filed. The bill would provide this limitation to avoid such situations.

Streamlining the process for licensing doctors would help address the shortage of physicians currently being experienced in Texas and nationwide. Under current law, applicants who attended medical school outside the United States or Canada are required to demonstrate that the education they received from the foreign institution of higher education was substantially equivalent to that of a Texas medical school. This documentation and evaluation is difficult and time-consuming, both for the doctor and for the medical board. The bill would allow a foreign-trained physician to be licensed in Texas if the doctor was certified by a specialty board, which requires a valid license to practice medicine and a demonstration of a high level of competency through passage of national board certification examinations, or if the doctor had completed a board approved residency program.

The author intends to offer an amendment eliminating a requirement in the bill that a physician be provided an unredacted copy of a complaint and instead require that the notice provide a detailed summary of the complaint, including specific factual allegations and the potential violations associated with the complaint.

OPPONENTS
SAY:

CSSB 2397 would weaken the medical board's ability to provide consumer protection by requiring notice of complaints delivered to physicians be unredacted. This requirement would create an inherent disincentive for a consumer to file a complaint, as incidences of intimidation of dissatisfied patients by doctors have been known to occur.

NOTES:

The LBB anticipates no fiscal impact to the state as it would be assumed that implementation of the bill could be accomplished by utilizing existing

resources and adjusting licensing fees as necessary to cover any additional costs associated with implementation of the bill.

The House committee substitute for the Senate-passed version of the bill would provide more time for the medical board to complete a preliminary investigation of a complaint by requiring the investigation be completed within 60 days of the complaint being filed rather than 45 days as in the Senate version. The House committee substitute would require the board to give notice to a license holder of the time and place of an informal meeting concerning the individual's license within 60 days of the meeting date, rather than 45 days as in the Senate version.

The House committee substitute added provisions not in the Senate version regarding:

- complaints about care provided more than seven years before the date on which the complaint was filed;
- the method of delivery and the content of a notice about a complaint involving physician conduct;
- complaints filed by insurance agents or companies; and
- the release of information to a legislative committee.