

CHAPTER 214

H.B. No. 2498

AN ACT

relating to the regulation of physician assistants; providing a criminal penalty.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. SHORT TITLE; LEGISLATIVE FINDINGS AND PURPOSE. (a) This Act may be cited as the "Physician Assistant Licensing Act."

(b) The legislature finds that the health, safety, and welfare of the people of this state are best advanced by the establishment of an orderly system for licensing physician assistants. The creation of a licensing mechanism and establishment of an entity dedicated to regulating physician assistants provides a means to ensure the competency of physician assistants without a financial burden to the people of this state.

SECTION 2. DEFINITIONS. In this Act:

- (1) "Board" means the Texas State Board of Medical Examiners.
- (2) "Council" means the Physician Assistant Advisory Council.
- (3) "Physician assistant" means a person who has graduated from a physician assistant or surgeon assistant program accredited by the American Medical Association's Committee on Allied Health Education and Accreditation or who has passed the certifying examination administered by the National Commission on Certification of Physician Assistants.
- (4) "Supervising physician" means a medical doctor or doctor of osteopathy licensed by the board who supervises a physician assistant.
- (5) "Supervision" means overseeing the activities of, and accepting responsibility for, the medical services rendered by a physician assistant. Supervision does not require the constant physical presence of a person providing supervision but includes a situation where a

person providing supervision and the person being supervised are or can easily be in contact with one another by radio, telephone, or another telecommunication device.

SECTION 3. LICENSE REQUIRED. A person may not practice as a physician assistant unless the person is licensed under this Act.

SECTION 4. PHYSICIAN ASSISTANT ADVISORY COUNCIL. (a) The Physician Assistant Advisory Council is created as an advisory board to the Texas State Board of Medical Examiners.

(b) The council consists of nine members appointed by the governor as follows:

(1) three members who are currently legally practicing as physician assistants and who have at least five years of clinical experience as practicing physician assistants;

(2) three members who are physicians licensed in this state who currently supervise physician assistants; and

(3) three members who are members of the general public who are not licensed either as physicians or physician assistants.

(c) A person is not eligible for appointment as a public member of the council if the person or the person's spouse:

(1) is licensed by an occupational regulatory agency in the field of health care; or

(2) is employed by or participates in the management of a business entity or other organization that provides health care services or that sells, manufactures, or distributes health care supplies or equipment.

(d) Each member of the council is entitled to a per diem as set by legislative appropriation for each day that the member engages in the business of the council. A member may not receive compensation for travel expenses, including expenses for meals and lodging, other than transportation expenses. A member is entitled to compensation for transportation expenses as provided by the General Appropriations Act.

(e) It is a ground for removal from the council if a member:

(1) does not have at the time of appointment the qualifications required by this section for appointment to the council;

(2) does not maintain during the service on the council the qualifications required by this section for appointment to the council; or

(3) fails to attend at least one-half of the regularly scheduled council meetings held in a calendar year, excluding meetings held while the person was not a committee member.

(f) A person who is required to register as a lobbyist under Chapter 305, Government Code, and its subsequent amendments may not serve as a member of the council.

(g) The validity of an action of the council is not affected by the fact that it is taken when a ground for removal of a member of the council exists.

(h) The council is subject to the open meetings law, Chapter 271, Acts of the 60th Legislature, Regular Session, 1967 (Article 6252-17, Vernon's Texas Civil Statutes), and its subsequent amendments, and the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes) and its subsequent amendments.

(i) Members of the council hold office for staggered terms of six years expiring February 1 of each odd-numbered year. A member is ineligible to serve more than two consecutive full terms and may not serve more than a total of three full terms.

(j) In the case of a vacancy on the council, the governor shall appoint a new member to complete an unexpired term.

(k) The council is subject to Chapter 325, Government Code (Texas Sunset Act), and its subsequent amendments. Unless continued in existence as provided by that chapter, the council is abolished and this Act expires September 1, 2005.

(l) The council shall select from its membership a presiding officer and a secretary to serve for one-year terms.

(m) Five members of the council constitute a quorum for the transaction of the business of the council.

SECTION 5. POWERS AND DUTIES OF THE COUNCIL. The council shall:

- (1) adopt rules as provided by Section 22 of this Act;
- (2) review and approve or reject applications for a license;
- (3) review and approve or reject applications for renewal of a license;
- (4) issue all licenses;
- (5) deny, suspend, or revoke a license or otherwise discipline a license holder;
- (6) prescribe and collect fees authorized under this Act; and
- (7) take any action necessary to carry out the functions and duties of the council under this Act.

SECTION 6. FEES. (a) The council shall establish fees that are reasonable and necessary to defray the cost of administering this Act.

(b) The council may not maintain unnecessary fund balances, and fee amounts shall be set in accordance with this requirement.

SECTION 7. LICENSE QUALIFICATIONS. The council shall issue a license under this Act to an applicant who:

- (1) submits an application on a form prescribed by the council;
- (2) pays the application fee as prescribed by the council;
- (3) has successfully completed an educational program for physician assistants or surgeon assistants accredited by the Committee on Allied Health Education and Accreditation or by that committee's predecessor or successor entities or has passed the Physician Assistant National Certifying Examination administered by the National Commission on Certification of Physician Assistants;
- (4) certifies that the applicant is mentally and physically able to function safely as a physician assistant;
- (5) does not have a license, certification, or registration as a physician assistant in this state or from any other licensing authority that is currently revoked or suspended or the applicant is not subject to probation or other disciplinary action for cause resulting from the applicant's acts as a physician assistant, unless the council takes that fact into consideration in determining whether to issue the license;
- (6) is of good moral character; and
- (7) submits to the council any other information the council considers necessary to evaluate the applicant's qualifications.

SECTION 8. TEMPORARY LICENSE. (a) The council may issue a temporary license to an applicant who:

- (1) meets all the qualifications for a license under this Act but is waiting for the next scheduled meeting of the council for the license to be issued; or
- (2) seeks to temporarily substitute for a licensed physician assistant during the licensee's absence, if the applicant:
 - (A) is licensed or registered in good standing in another state, territory, or the District of Columbia;
 - (B) submits an application on a form prescribed by the council; and
 - (C) pays the appropriate fee prescribed by the council.
- (b) A temporary license is valid for 45 days from the date issued and may be extended only for another 45 days after the date the initial temporary license expires.

SECTION 9. INACTIVE LICENSE. (a) A license holder may have the license holder's license placed on inactive status by applying to the council. A physician assistant with an inactive license is excused from paying renewal fees on the license and may not practice as a physician assistant.

(b) A license holder who practices as a physician assistant while on inactive status is considered to be practicing without a license.

(c) A physician assistant may return to active status by applying to the council, paying the license renewal fee, and complying with the requirements for license renewal under Section 10 of this Act.

SECTION 10. RENEWAL. A person who holds a license under this Act may, on notification from the council, renew the license by:

- (1) paying the renewal fee prescribed by the council;
- (2) submitting the appropriate form; and
- (3) meeting any other requirement established by rules adopted by the council.

SECTION 11. EXEMPTION. This Act does not require a license for:

(1) a physician assistant student enrolled in a physician assistant or surgeon assistant educational program accredited by the Committee on Allied Health Education and Accreditation of the American Medical Association;

(2) a physician assistant employed in the service of the federal government while performing duties related to that employment;

(3) a technician, assistant, or employee of a physician who performs delegated tasks in the office of a physician or elsewhere but who does not act as a physician assistant or represent that the person is a physician assistant; or

(4) any other licensed health care worker acting within the scope of that person's license if the person does not use the title "physician assistant" or "P.A." or is not represented or designated as a physician assistant.

SECTION 12. SCOPE OF PRACTICE. (a) The practice of a physician assistant includes medical services within the education, training, and experience of the physician assistant that are delegated by the supervising physician.

(b) Medical services provided by a physician assistant may include:

- (1) obtaining patient histories and performing physical examinations;
- (2) ordering or performing diagnostic and therapeutic procedures;
- (3) formulating a working diagnosis;
- (4) developing and implementing a treatment plan;
- (5) monitoring the effectiveness of therapeutic interventions;
- (6) assisting at surgery;
- (7) offering counseling and education to patients;
- (8) requesting, receiving, and signing for professional samples and distributing the samples to patients at a site serving medically underserved populations, as provided by Section 3.06(d)(5), Medical Practice Act (Article 4495b, Vernon's Texas Civil Statutes), and its subsequent amendments, or as otherwise authorized by board rule; and
- (9) making appropriate referrals.

(c) The activities listed in Subsection (b) of this section may be performed in any place authorized by a supervising physician, including a clinic, hospital, ambulatory surgical center, patient home, nursing home, or other institutional setting.

SECTION 13. SUPERVISION REQUIREMENTS. (a) Supervision by a supervising physician must be continuous but does not require the physical presence of the supervising physician at the place where physician assistant services are performed while the services are performed.

(b) Each team of a physician and physician assistant must ensure that:

- (1) the physician assistant's scope of function is identified;
- (2) delegation of medical tasks is appropriate to the physician assistant's level of competence;
- (3) the relationship between the members of the team and the access of the physician assistant to the supervising physician is defined; and
- (4) a process for evaluating the physician assistant's performance is established.

(c) A physician assistant may have more than one supervising physician.

SECTION 14. SUPERVISING PHYSICIAN. A supervising physician must:

- (1) be licensed as a physician in this state;
- (2) notify the council of the physician's intent to supervise a physician assistant; and
- (3) submit a statement to the council that the physician will:
 - (A) supervise the physician assistant according to rules adopted by the council; and
 - (B) retain professional and legal responsibility for the care rendered by the physician assistant.

SECTION 15. NOTIFICATION OF INTENT TO PRACTICE. (a) A physician assistant licensed under this Act must, before beginning practice, submit on a form prescribed by the council notification of the license holder's intent to begin practice. Notification under this section must include:

- (1) the name, business address, license number, and telephone number of the physician assistant's supervising physician; and
 - (2) the name, business address, license number, and telephone number of the physician assistant.
- (b) A physician assistant must notify the council of any changes in, or additions to, the person acting as a supervising physician for the physician assistant not later than the 30th day after the date the change or addition is made.

SECTION 16. EXCLUSION OF LIMITATION ON EMPLOYMENT. This Act does not limit the employment arrangement of a physician assistant licensed under this Act.

SECTION 17. ASSUMPTION OF PROFESSIONAL LIABILITY. (a) A physician assistant employed by a physician or a group of physicians must be supervised by and be the legal responsibility of each employing physician. The legal responsibility for the physician assistant's patient care activities remains the responsibility of the employing physician, including when the physician assistant provides care and treatment for a patient in a health care facility.

(b) A physician assistant employed by a health care facility or other entity shall be supervised by a licensed physician. A health care facility or other entity that employs a physician assistant shares the legal responsibility for the physician assistant's acts or omissions with the physician assistant's supervising physician.

SECTION 18. DISCIPLINARY PROCEEDINGS. The council may refuse to issue a license, publicly or privately reprimand a license holder, or suspend, revoke, or place other restrictions on a license of a person who:

- (1) fraudulently or deceptively obtains or attempts to obtain a license;
- (2) fraudulently or deceptively uses a license;
- (3) violates any provision of this Act or any rule adopted under this Act;
- (4) is convicted of a felony;
- (5) is a habitual user of intoxicants or nontherapeutic drugs to the extent that the person cannot safely perform as a physician assistant;
- (6) has been adjudicated as mentally incompetent or has a mental condition that renders the person unable to safely perform as a physician assistant;
- (7) has committed an act of moral turpitude; or
- (8) represents that the person is a physician.

SECTION 19. ADDITIONAL DISCIPLINARY AUTHORITY. In addition to the authority under Section 18 of this Act, the council may, on finding that a physician assistant has committed an offense described in Section 18 of this Act:

- (1) require a physician assistant to submit to the care, counseling, or treatment of a physician designated by the council;
- (2) stay enforcement of an order and place the physician assistant on probation with the council retaining the right to vacate the probationary stay and enforce the original order for noncompliance with the terms of probation;

(3) restore or reissue a license or remove any disciplinary or corrective measure that the council may have imposed;

(4) order the physician assistant to perform public service; or

(5) require the physician assistant to complete additional training.

SECTION 20. OFFENSE. (a) A person commits an offense if, without holding a license under this Act, the person:

(1) holds the person out as a physician assistant;

(2) uses any combination or abbreviation of the term "physician assistant" to indicate or imply that the person is a physician assistant; or

(3) acts as a physician assistant without being licensed by the council.

(b) An offense under this section is a felony of the third degree.

SECTION 21. IDENTIFICATION REQUIREMENTS. A physician assistant licensed under this Act shall:

(1) keep the physician assistant's license available for inspection at the physician assistant's primary place of business; and

(2) when engaged in the physician assistant's professional activities, wear a name tag identifying the physician assistant as a physician assistant.

SECTION 22. RULE-MAKING AUTHORITY. (a) The council shall adopt rules that are reasonable and necessary for the performance of the council's duties under this Act, as provided by the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes), and its subsequent amendments, including rules:

(1) setting licensing and other fees;

(2) establishing renewal dates for licenses; and

(3) establishing rules and procedures for disciplinary actions.

(b) Rules adopted by the council must:

(1) be approved or rejected by a majority vote of the board; and

(2) if rejected, be returned to the council for revision.

SECTION 23. RURAL PHYSICIAN ASSISTANT LOAN REIMBURSEMENT PROGRAM. (a) The council shall designate annually a portion of the revenue generated under this Act from physician assistant licensing fees to be set aside to provide student loan reimbursement for graduates of physician assistant training programs in this state who practice in rural health professional shortage areas identified by the Texas Department of Health.

(b) The Center for Rural Health Initiatives shall establish policies for and adopt rules to administer the loan program under this section.

(c) The council shall authorize and the board shall transfer annually the funds designated in Subsection (a) of this section to the Center for Rural Health Initiatives to administer the loan program under this section.

SECTION 24. CONFORMING AMENDMENT. Section 3.06(d)(5)(D)(ii), Medical Practice Act (Article 4495b, Vernon's Texas Civil Statutes), is amended to read as follows:

(ii) "Physician assistant" *has the meaning assigned to that term by Section 2(3), Physician Assistant Licensing Act, and its subsequent amendments [means a physician assistant recognized by the Board of Medical Examiners as having the specialized education and training required under Subsection (d), Section 5.02 of this Act].*

SECTION 25. CONFORMING AMENDMENT. Section 3.10(b), Medical Practice Act (Article 4495b, Vernon's Texas Civil Statutes), is amended to read as follows:

(b) The board may not set, charge, collect, receive, or deposit any of the following fees in excess of:

- (1) for processing and granting a license by reciprocity to a licensee of another state \$700
- (2) for processing an application and administration of a partial examination for licensure \$700

- (3) for processing an application and administration of a complete examination for licensure \$700
- (4) for processing an application and issuance of a temporary license \$200
- (5) for processing an application and issuance of a duplicate license \$200
- (6) for processing an application and issuance of a license of reinstatement after a lapse or cancellation of a license \$700
- (7) for processing an application and issuance of an annual registration of a licensee \$200
- (8) for processing and issuance of an institutional permit for interns, residents, and others in approved medical training programs \$200
- (9) for processing an application and issuance of an endorsement to other state medical boards \$200
- (10) for processing and issuance of a license or temporary license [permit] to a [physician who supervises-a] physician assistant \$200
- (11) for processing and issuance of a permit to a physician who supervises an acupuncturist \$200.

SECTION 26. CONFORMING AMENDMENT. Section 5.02, Medical Practice Act (Article 4495b, Vernon's Texas Civil Statutes); is amended to read as follows:

Sec. 5.02. SUPERVISION OF PHYSICIAN ASSISTANTS. ~~[(a)]~~ The board ~~[by rule]~~ shall adopt *rules to regulate physician assistants and physicians who supervise physician assistants that are consistent with the Physician Assistant Licensing Act and its subsequent amendments.* ~~[standards to regulate the extent to which a physician licensed by the board may delegate his responsibilities as a physician to a physician assistant. The standards shall take into consideration:~~

~~[(1) the skill of the physician assistant to whom the physician is to delegate the responsibility;~~

~~[(2) the skill of the physician who is to delegate the responsibility;~~

~~[(3) the nature of the responsibility delegated;~~

~~[(4) the extent and nature of the supervision that the physician is to give to the physician assistant to whom the responsibility is delegated;~~

~~[(5) the risks to the patient who is the subject of the delegated responsibility; and~~

~~[(6) other factors considered relevant by the board.~~

~~[(b) A physician licensed by the board shall comply with the standards adopted by the board as provided by this section.~~

~~[(c)(1) The physician assistants advisory committee is established.~~

~~[(2) The physician assistants advisory committee consists of not more than six physician assistants appointed by the board. A member of the advisory committee serves for a term of one year expiring on May 1 of each year.~~

~~[(3) The advisory committee shall advise the board on matters relating to physician assistants. In order to assure that the advisory committee is able to exercise properly its advisory powers, the board shall provide the advisory committee with timely notice of all board meetings on matters relating to physician assistants and a copy of the minutes of all board meetings on matters relating to physician assistants. In addition, the board may not adopt any rule relating to the practice of physician assistants that is not an emergency matter unless the proposed rule has been submitted to the advisory committee for review and comment at least 30 days prior to the adoption of the rule.~~

~~[(d) The board shall adopt rules establishing:~~

~~[(1) any specialized education and training, including pharmacology, a physician assistant must have to carry out a prescription drug order pursuant to Subdivision (5), Subsection (d), Section 3.06, of this Act; and~~

~~[(2) a system for assigning an identification number to a physician assistant who provides the board with evidence of completing the required specialized education and training.]~~

SECTION 27. CONFORMING AMENDMENT. Section 110.001(3), Civil Practice and Remedies Code, is amended to read as follows:

(3) "Health care professional" means:

(A) a person who is licensed to practice medicine under the Medical Practice Act (Article 4495b, Vernon's Texas Civil Statutes);

(B) a person registered by the Board of Nurse Examiners as an advanced nurse practitioner or a certified nurse midwife; or

(C) a person *licensed* [~~recognized~~] by the *Physician Assistant Advisory Council under the Texas State Board of Medical Examiners* as a physician assistant.

SECTION 28. TRANSITION. (a) A person is not required to obtain a license under this Act until September 1, 1994.

(b) The council shall adopt rules under this Act not later than January 1, 1994.

(c) In making the initial appointments to the council, the governor shall designate three members for terms expiring February 1, 1995, three members for terms expiring February 1, 1997, and three members for terms expiring February 1, 1999.

(d) The physician assistants advisory committee created under Section 5.02(c), Medical Practice Act (Article 4495b, Vernon's Texas Civil Statutes), is abolished on the effective date of this Act.

SECTION 29. EFFECTIVE DATE. This Act takes effect September 1, 1993, except that Sections 3 and 20 take effect September 1, 1994.

SECTION 30. EMERGENCY. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Passed by the House on April 19, 1993, by a non-record vote; the House concurred in Senate amendments to H.B. No. 2498 on May 10, 1993, by a non-record vote; passed by the Senate, with amendments, on April 30, 1993, by a viva-voce vote.

Approved May 19, 1993.

Effective Sept. 1, 1993, except §§ 3 and 20 effective Sept. 1, 1994.