

CHAPTER 862

S.B. No. 1062

AN ACT

relating to the continuation and operation of the Texas State Board of Medical Examiners and to the regulation of the practice of medicine, including the practice of acupuncture; creating an offense and providing penalties.

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

SECTION 1. Subsection (a), Section 1.03, Medical Practice Act (Article 4495b, Vernon's Texas Civil Statutes), is amended by amending Subdivisions (5) and (6) and adding Subdivisions (15) and (16) to read as follows:

(5) "Health-care entity" means:

(A) a hospital that is licensed pursuant to Chapter 241, Health and Safety Code or the Texas Mental Health Code (Articles 5547-88 through 5547-100, Vernon's Texas Civil Statutes);

(B) an entity, including a health maintenance organization, group medical practice, nursing home, health science center, university medical school, or other health-care facility, that provides medical or health-care services and that follows a formal peer review process for the purposes of furthering quality medical or health care; [and]

(C) a professional society or association, or committee thereof, of physicians that follows a formal peer review process for the purpose of furthering quality medical or health care; and

(D) *an organization established by a professional society or association of physicians or of hospitals, or both, that collects and verifies the authenticity of documents and other data concerning the qualifications, competence, or performance of licensed health care professionals and that acts as a health care facility's agent pursuant to the Health Care Quality Improvement Act of 1986, Title IV, Pub. L. 99-660 (42 U.S.C. Section 11101 et seq.).*

(6) "Medical peer review committee" or "professional review body" means a committee of a health-care entity, the governing board of a health-care entity, or the medical staff of a health-care entity, provided the committee or medical staff operates pursuant to written bylaws that have been approved by the policy-making body or the governing board of the health-care entity and authorized to evaluate the quality of medical and health-care services or the competence of physicians, *including those functions specified by Section 85.204, Health and Safety Code, and its subsequent amendments.* Such a committee includes the employees and agents of the committee, including assistants, investigators, intervenors, attorneys, and any other persons or organizations that serve the committee in any capacity.

(15) "Surgery" *includes surgical services, surgical procedures, surgical operations, and the procedures described in the surgery section of the Common Procedure Coding System as adopted by the Health Care Financing Administration of the United States Department of Health and Human Services.*

(16) "Operation" *means the application of surgery or the performance of surgical services.*

SECTION 2. Sections 2.02 and 2.03, Medical Practice Act (Article 4495b, Vernon's Texas Civil Statutes), are amended to read as follows:

Sec. 2.02. MEMBERS, TERMS. The board is composed of 18 [15] members whose terms of office are six years or until a successor is appointed and qualified. Terms of office shall be staggered so that *six [five]* terms expire biennially.

Sec. 2.03. APPOINTMENT TO BOARD. Members of the board shall be appointed by the governor and confirmed by the senate. Any vacancy on the board shall be filled by appointment of the governor. Any appointment made shall be without regard to race, *color, disability [ereed]*, sex, religion, age, or national origin, except that a person younger than 18 years of age is not eligible for appointment.

SECTION 3. Section 2.04, Medical Practice Act (Article 4495b, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 2.04. REMOVAL FROM OFFICE. (a) It is a ground for removal from the board if *a member:*

(1) *does not have at the time of appointment the qualifications required by Sections 2.05(a), (b), (c), (d), and (e) of this Act;*

(2) *does not maintain during service on the board the qualifications required by Sections 2.05(a), (b), (c), (d), and (e) of this Act;*

(3) *violates a prohibition established by Section 2.05(f), (g), (h), (j), or (k) of this Act;*

(4) *cannot discharge the member's duties for a substantial part of the term for which the member is appointed because of illness or disability; or*

(5) *is absent from more than half of the regularly scheduled board meetings that the member is eligible to attend during a calendar year*[~~, during a member's service on the board, the member fails to meet the qualifications set forth in this Act for members of the board. The validity of an action of the board is not affected by the fact that it was taken when a ground for removal of a member of the board existed].~~

(b) *The validity of an action of the board is not affected by the fact that it is taken when a ground for removal of a board member exists* [~~Each member of the board shall be present for at least one-half of the regularly scheduled board meetings held each year. Failure of a board member to meet this requirement is grounds for removal of the member from the board and the removal creates a vacancy on the board.~~].

(c) *If the executive director has knowledge that a potential ground for removal exists, the executive director shall notify the president of the board of the ground. The president shall then notify the governor that a potential ground for removal exists.*

SECTION 4. Section 2.05, Medical Practice Act (Article 4495b, Vernon's Texas Civil Statutes), is amended by amending Subsections (b), (c), (d), (g), (h), and (i) and adding Subsections (j), (k), and (l) to read as follows:

(b) Nine members of the board must:

(1) be learned and eminent physicians licensed to practice medicine within this state for at least three years prior to appointment and be graduates of a reputable medical school or college with a degree of doctor of medicine (M.D.); [and]

(2) have been actively engaged in the practice of medicine for at least five years immediately preceding their appointment; and

(3) have been actively engaged in organized peer review at a health care entity for at least three years immediately preceding their appointment.

(c) Three members of the board must:

(1) be learned and eminent physicians licensed to practice medicine within this state for at least three years prior to appointment and be graduates of a reputable medical school or college with a degree of doctor of osteopathic medicine (D.O.); [and]

(2) have been actively engaged in the practice of medicine for at least five years immediately preceding their appointment; and

(3) have been actively engaged in organized peer review at a health care entity for at least three years immediately preceding their appointment.

(d) Six [~~Three~~] members of the board must be public representatives who are not licensed to practice medicine; who are not financially involved in any organization subject to the regulation of the board, and who are not providers of health care. "Provider of health care" means:

(1) an individual who is a direct provider of health care (including but not limited to a dentist, registered nurse, licensed vocational nurse, chiropractor, podiatrist, physician assistant, psychologist, athletic trainer, physical therapist, social psychotherapist, pharmacist, optometrist, hospital administrator, or nursing home administrator) in that the individual's primary current activity is the provision of health care to individuals or the administration of facilities or institutions (including but not limited to hospitals, long-term care facilities, out-patient facilities, and health maintenance organizations) in which such care is provided and, when required by law or otherwise, the individual has received professional or other training in the provision of such care or in such administration and is licensed or certified or holds himself out for such provision or administration;

(2) one who is an indirect provider of health care in that the individual holds a fiduciary position with or has a fiduciary interest in an entity described below in this subdivision; for purposes of this subdivision, a fiduciary position or interest as applied to any entity means a position or interest with respect to such entity affected with the character of a trust, including members of boards of directors and officers, majority shareholders, or agents, and receivers (either directly or through their spouses) of more than one-tenth of their annual income from any one or combination of fees or other compensation for research into or instruction in the provision of health-care entities (or associations or organizations composed of such entities) engaged (or comprised of individuals who are engaged) in the provision of health care or in the provision of health care and entities (or associations or organizations composed of such entities engaged in producing drugs or other such articles);

(3) one who is a member of the immediate family of an individual described in this subsection; for purposes of this subsection "immediate family" as applied to any individual

includes only his parents, spouse, children, brothers, and sisters who reside in the same household;

(4) one who is engaged in or employed by an entity issuing any policy or contract of individual or group health insurance or hospital or medical service benefits; or

(5) one who is employed by, on the board of directors of, or holds elective office by or under the authority of any unit of federal, state, or local government or any organization that receives a significant part of its funding from any such unit of federal, state, or local government.

(g) *An officer, employee, or paid consultant of a Texas trade or professional association in the field of health care may not be a member or employee of the board who is exempt from the state's position classification plan or is compensated at or above the amount prescribed by the General Appropriations Act for step 1, salary group 17, of the position classification salary schedule.*

(h) *A person who is the spouse of an officer, manager, or paid consultant of a Texas trade or professional association in the field of health care may not be a board member and may not be a board employee who is exempt from the state's position classification plan or is compensated at or above the amount prescribed by the General Appropriations Act for step 1, salary group 17, of the position classification salary schedule.*

(i) *For the purposes of this section, a "Texas trade or professional association" is a nonprofit, cooperative, and voluntarily joined association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.*

(j) *A person may not serve as a member of the board if the person is required to register as a lobbyist under Chapter 305, Government Code, and its subsequent amendments, because of the person's activities for compensation on behalf of a profession related to the operation of the board [A person required to register as a lobbyist under Chapter 305, Government Code, by virtue of his activities on behalf of a trade or professional association in the regulated profession may not act as a member of the board].*

(k) ~~(h)~~ A person is ineligible for appointment to the board if, at the time of appointment, the person is a stockholder, paid full-time faculty member, or a member of the board of trustees of a medical school.

(l) ~~(i)~~ All board members must take the official oath.

SECTION 5. Subsection (a), Section 2.07, Medical Practice Act (Article 4495b, Vernon's Texas Civil Statutes), is amended to read as follows:

(a) *Not later than December after each regular session of the legislature [At the first meeting of the board after each biennial appointment], the governor shall appoint from the members of the board a president and the board shall elect from its members a [president,] vice-president, secretary-treasurer, and other officers as are required, in the opinion of the board, to carry out its duties.*

SECTION 6. Subchapter B, Medical Practice Act (Article 4495b, Vernon's Texas Civil Statutes), is amended by adding Section 2.081 to read as follows:

**Sec. 2.081. TRAINING AND GUIDELINES FOR MEMBERS OF THE BOARD.** (a) *The board shall establish a training program for the members of the board.*

(b) *Before a member of the board may assume the member's duties and before the member may be confirmed by the senate, the member must complete at least one course of the training program established under this section.*

(c) *A training program established under this section shall provide information to a participant regarding:*

- (1) *the enabling legislation that created the board to which the member is appointed;*
- (2) *the programs operated by the agency;*
- (3) *the role and functions of the agency;*
- (4) *the rules of the agency with an emphasis on the rules that relate to disciplinary and investigatory authority;*

- (5) *the current budget for the agency;*
- (6) *the results of the most recent formal audit of the agency;*
- (7) *the requirements of the:*

(A) *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;*

(B) *open records law, Chapter 424, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252-17a, Vernon's Texas Civil Statutes), and its subsequent amendments; and*

(C) *Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes) and its subsequent amendments;*

(8) *the requirements of the conflict of interest laws and other laws relating to public officials; and*

(9) *any applicable ethics policies adopted by that state agency or the Texas Ethics Commission.*

(d) *In developing the training requirements provided for in this section, the board shall consult with the governor's office, the attorney general's office, and the Texas Ethics Commission.*

(e) *In the event that another state agency or entity is given the authority to establish the training requirements, the board shall allow that training in lieu of developing its own program.*

**SECTION 7.** Section 2.09, Medical Practice Act (Article 4495b, Vernon's Texas Civil Statutes), is amended by amending Subsections (b), (c), (g), (k), (s), and (u) and adding Subsections (b-1), (x), (y), (z), and (aa) to read as follows:

(b) *The board shall develop and implement policies that clearly define the respective responsibilities of the board and the staff of the board. The board shall appoint an executive director who shall be its chief executive and administrative officer, who shall be charged with the primary responsibility of administering, enforcing, and carrying out the provisions of the Medical Practice Act under the control and supervision and at the direction of the board. The executive director shall hold such position at the pleasure of board and may be discharged at any time. The board may act under its rules through the executive director, an executive committee, or other committee, unless otherwise specified in this Act. The executive committee shall be the president, vice-president, and secretary-treasurer except where otherwise provided in this Act. ~~Any duty of the secretary-treasurer in this Act may be performed by the executive director within the discretion of the board. Any reference to secretary-treasurer shall have the same meaning as executive director when so designated by the board.~~*

(b-1) *The executive director may employ a chief operating officer who shall be primarily responsible for administering, implementing, and monitoring systems and necessary measures to promote quality and efficiency of ongoing board operations and other duties as may be assigned by the executive director. If the board appoints an executive director who is not a physician licensed to practice in this state, the executive director shall appoint a medical director who is a physician licensed to practice in this state and who shall be primarily responsible for implementing and maintaining policies, systems, and measures regarding clinical and professional issues and determinations. The chief operating officer or medical director shall act under the control and supervision and at the direction of the executive director.*

(c) *The board may make rules and establish fees as are reasonable relating to the granting and extension of expiration dates of temporary licenses and the placing of licensees on inactive status. The board shall by rule set time limits on the periods for which licensees may hold temporary licenses or maintain inactive status.*

(g) *A person may not serve as a member of the board or act as the general counsel to the board if the person is required to register as a lobbyist under Chapter 305, Government Code, and its subsequent amendments, because of the person's activities for compensation on behalf of a profession related to the operation of the board ~~[who is required personally to register as a lobbyist under Chapter 305, Government Code, representing physicians, health care entities, or health care related professions, may not be employed by the board in any capacity].~~*

(k) The board ~~[shall establish]~~ by rule shall establish reasonable and necessary fees so that the fees, in the aggregate, produce sufficient revenue to cover the cost of administering this Act. The fees set by the board may be adjusted so that the total fees collected shall be sufficient to meet the expenses of administering this Act. The board may not set a fee for an amount less than the amount of that fee on September 1, 1993 ~~[a reasonable charge for those fees not specifically determined but authorized by this Act]~~. The board may not waive collection of any fee or penalty. The board shall place all fees received under authority of this Act, not otherwise specified, into the medical licensing fund. The board is authorized and shall by annual budget determine the manner of handling the funds and the purpose, consistent with this Act, for which the same may be used. The budgeted expenses authorized by the board shall not be a charge upon the general revenue of the state nor paid from the general revenue.

(s)(1) The board shall prepare information of public ~~[consumer]~~ interest describing the functions of the board and the board's procedures by which complaints are filed with and resolved by the board. The board shall make the information available to the public and appropriate state agencies.

(2) The board by rule shall establish methods by which the public and licensees of the board are notified of the name, mailing address, and telephone number of the board for the purpose of directing complaints to the board. The board may provide for that notification:

(A) on each registration form, application, or written contract for services of an individual or entity regulated under this Act;

(B) on a sign prominently displayed in the place of business of each individual or entity regulated under this Act; or

(C) in a bill for services provided by an individual or entity regulated under this Act.

(3) The board shall list along with its regular telephone number the toll-free telephone number that may be called to present a complaint about a health professional if the toll-free number is established under other state law ~~[regulatory functions of the board and describing the board's procedures by which consumer complaints are filed with and resolved by the board]~~. On written request the board shall make information available to the general public for a reasonable fee to cover expenses and appropriate state agencies including a summary of any previous disciplinary orders by the board against a specific physician licensed in this state, the date of the order, and the current status of the order. The board shall establish an eight-hour toll-free telephone number to make the information immediately available to any caller if the board is not required to establish a toll-free telephone number under other state law.

(u) The executive director or the executive director's designee shall develop an intra-agency career ladder program. The program shall require intra-agency posting of all non-entry-level positions concurrently with any public posting ~~[board shall cause to be developed an intraagency career ladder program, one part of which shall be the intraagency posting of each job opening with the board in a nonentry-level position. The intraagency posting shall be made at least 10 days before any public posting]~~.

(x) Each board member shall comply with the board member training requirements established by any other state agency that is given authority to establish the requirements for the board.

(y) The board shall provide to its members and employees, as often as necessary, information regarding their qualifications for office or employment under this Act and their responsibilities under applicable laws relating to standards of conduct for state officers or employees.

(z) The board shall develop and implement policies that provide the public with a reasonable opportunity to appear before the board and to speak on any issue under the jurisdiction of the board.

(aa) The board shall prepare and maintain a written plan that describes how a person who does not speak English can be provided reasonable access to the board's programs. The board shall also comply with federal and state laws for program and facility accessibility.

SECTION 8. Subchapter B, Medical Practice Act (Article 4495b, Vernon's Texas Civil Statutes), is amended by adding Section 2.10 to read as follows:

*Sec. 2.10. EQUAL EMPLOYMENT OPPORTUNITY. (a) The executive director or the executive director's designee shall prepare and maintain a written policy statement to assure implementation of a program of equal employment opportunity under which all personnel decisions are made without regard to race, color, disability, sex, religion, age, or national origin. The policy statement must include:*

*(1) personnel policies, including policies relating to recruitment, evaluation, selection, appointment, training, and promotion of personnel, that are in compliance with requirements of the Commission on Human Rights Act (Article 5221k, Vernon's Texas Civil Statutes) and its subsequent amendments;*

*(2) a comprehensive analysis of the board's work force that meets federal and state guidelines;*

*(3) procedures by which a determination can be made of significant underuse in the board's work force of all persons for whom federal or state guidelines encourage a more equitable balance; and*

*(4) reasonable methods to appropriately address those areas of significant underuse.*

*(b) A policy statement prepared under Subsection (a) of this section must cover an annual period, be updated annually and reviewed by the Commission on Human Rights for compliance with requirements of the Commission on Human Rights Act (Article 5221k, Vernon's Texas Civil Statutes) and its subsequent amendments, and be filed with the governor's office.*

*(c) The governor's office shall deliver a biennial report to the legislature based on the information received under Subsection (b) of this section. The report may be made separately or as a part of other biennial reports made to the legislature.*

SECTION 9. Subsections (a), (c), (f), (h), and (i), Section 3.01, Medical Practice Act (Article 4495b, Vernon's Texas Civil Statutes), are amended to read as follows:

*(a) All persons now lawfully qualified to practice medicine in this state, or who are hereafter licensed for the practice of medicine by the board, shall be registered as practitioners with the board on or before the first day of January and thereafter shall register in like manner annually, on or before the first day of January of each succeeding year. Each person so registered with the board shall pay, in connection with each annual registration and for the receipt hereinafter provided for, a fee established by the board which fee shall accompany the application of each person for registration. The payment shall be made to the board. Every person so registered shall file with the board a written application for annual registration, setting forth his name and mailing address, the place or places where the applicant is engaged in the practice of medicine, and other necessary information prescribed by the board. If the person is licensed for the practice of medicine by another state, the District of Columbia, a territory of the United States, Canada, any other country, or the uniformed services of the United States, the application must include a description of any investigations the person knows are in progress and of any sanctions imposed by or disciplinary matters pending in the state, district, territory, country, or service.*

*(c)(1) A person may renew an unexpired license by paying to the board on or before the expiration date of the license the required renewal fee.*

*(2) If a person's license has been expired for 90 days or less, the person may renew the license by paying to the board the required renewal fee and a fee that is one-half of the examination fee for the license.*

*(3) If a person's license has been expired for longer than 90 days but less than one year, the person may renew the license by paying to the board all unpaid renewal fees and a fee that is equal to the examination fee for the license.*

*(4) If a person's license has been expired for one year, it is considered to have been canceled, and the person may not renew the license. The person may obtain a new license by submitting to reexamination and complying with the requirements and procedures for obtaining an original license.*

(5) ~~The board may renew without examination an expired license of a person who was licensed in this state, moved to another state, and is currently licensed and has been in practice in the other state for not more than two years preceding application. The person must pay to the board a fee that is equal to the examination fee for the license. [Failure of any licensee to pay the annual license renewal fee on or before the 90th day after the date it is due automatically cancels his licensure. Any licensee whose license has been canceled because of failure to pay the annual license renewal fee may secure reinstatement of his license at any time within that license year upon payment of the delinquent fee together with a penalty in an amount as the board may determine to be reasonable. After expiration of the license year for which the license fee was not paid, no license shall be reinstated except upon application and satisfaction of other conditions as the board may establish and payment of delinquent fees and a penalty to be assessed by the board.]~~

(f) ~~[In performing its duties as provided in this Act, the board may act through the secretary-treasurer of the board. The secretary-treasurer is entitled to a salary to be fixed by the legislature in its General Appropriations Act for the performance of duties under this Act.] The executive director [secretary-treasurer] of the board shall file a surety bond with the board. The bond shall be in an amount not 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 [secretary-treasurer] does not faithfully discharge the duties of the office. The board shall pay the premium on the bond. [The salary shall be paid out of said medical registration fund and shall not be in any way a charge upon the general revenue of the state.]~~

(h) ~~The [secretary-treasurer or the] executive director shall review each application for licensure by examination or reciprocity and shall recommend to the board all applicants eligible for licensure. The [secretary-treasurer or the] executive director also shall report to the board the names of all applicants determined to be ineligible for licensure, together with the reasons for each recommendation. An applicant deemed ineligible for licensure by the [secretary-treasurer or the] executive director may request review of such recommendation by a committee of the board within 20 days of receipt of such notice, and the [secretary-treasurer or the] executive director may refer any application to said committee for a recommendation concerning eligibility. If the committee finds the applicant ineligible for licensure, such recommendation, together with the reasons therefor, shall be submitted to the board unless the applicant requests a [an appellate] hearing [before a hearing examiner appointed by the board] within 20 days of receipt of notice of the committee's determination. The hearing shall be before an administrative law judge of the State Office of Administrative Hearings and shall comply with the Administrative Procedure Act and its subsequent amendments and the rules of the State Office of Administrative Hearings and the board. The committee may refer any application for determination of eligibility to the full board. The board shall, after receiving the administrative law judge's proposed findings of fact and conclusions of law, determine the eligibility of the applicant for licensure [an appellate hearing on its own motion. The board may elect to hear any appeal in lieu of proceedings before a hearing examiner, and it shall adopt, modify, or reject each decision made by a hearing examiner. The board also shall adopt, modify, or reject each recommendation of ineligibility made by the secretary-treasurer or the executive director or by the committee, unless the applicant has requested a timely review of the recommendation. Such action by the board shall constitute a final administrative decision concerning licensure. Any hearing before the board or before a hearing examiner under this subsection becomes a contested case under the Administrative Procedure Act]. A physician whose application for licensure is denied by the board shall receive a written statement[, upon request,] containing the reasons for the board's action. All reports received or gathered by the board on each applicant are confidential and are not subject to disclosure under the Open Records Law. The board may disclose such reports to appropriate licensing authorities in other states [upon request].~~

(i) ~~At least 30 days before the expiration of a person's license, the board shall send written notice of the impending license expiration to the person at the licensee's last known address according to the records of the board [The board must notify each delinquent licensee of his impending license cancellation by registered or certified mail sent to the licensee's address listed with the board not less than 30 days prior to the cancellation. This requirement shall be waived when the licensee has requested in writing that his or her license be canceled].~~



SECTION 10. Subchapter C, Medical Practice Act (Article 4495b, Vernon's Texas Civil Statutes), is amended by adding Section 3.025 to read as follows:

*Sec. 3.025. CONTINUING MEDICAL EDUCATION. (a) The board by rule shall adopt, monitor, and enforce a reporting program for continuing medical education of licensees. The board shall adopt and administer rules:*

*(1) requiring the number of hours of continuing medical education the board determines appropriate as a prerequisite to the annual registration of a licensee under this Act;*

*(2) requiring at least one-half of the hours of continuing medical education required under Subdivision (1) of this subsection to be approved by the board after taking into account the standards of the American Medical Association for its Physician's Recognition Award, the Council on Medical Specialty Societies, or the American Osteopathic Association and permitting the remaining hours to be composed of self-study or equivalent self-directed continuing medical education according to guidelines determined by the board; and*

*(3) adopting a process to assess a licensee's participation in continuing medical education courses.*

*(b) A licensee shall be presumed to have complied with this section if in the preceding 36 months the licensee becomes board certified or recertified in a medical specialty and the medical specialty program takes into consideration the standards of the American Board of Medical Specialties, the American Medical Association, the Advisory Board for Osteopathic Specialists and Boards of Certification, or the American Osteopathic Association.*

*(c) The board may temporarily exempt a licensee from the requirement for continuing medical education for:*

*(1) catastrophic illness;*

*(2) military service of longer than one year's duration outside the state;*

*(3) medical practice and residence of longer than one year's duration outside the United States; or*

*(4) good cause shown on written application of the licensee that gives satisfactory evidence to the board that the licensee is unable to comply with the requirement for continuing medical education.*

*(d) A temporary exemption under Subsection (c) of this section may not exceed one year but may be renewed annually.*

*(e) Subsection (a) of this section does not apply to a licensee who is retired and has been exempted by rule from paying the annual registration fee.*

*(f) This section does not prevent the board from taking disciplinary action with respect to a licensee or an applicant for a license by requiring additional hours of continuing medical education or of specific course subjects.*

SECTION 11. Section 3.03, Medical Practice Act (Article 4495b, Vernon's Texas Civil Statutes), is amended by amending Subsections (a) through (f) and adding Subsection (h) to read as follows:

(a) The board, at its sole discretion and upon payment by an applicant of a fee prescribed by the board under this Act, may grant a license to practice medicine to any [reputable] physician who is a graduate of an acceptable [a-reputable] medical college as determined by the board and who:

[~~(4)~~] is a licensee of another state or Canadian province having requirements for physician registration and practice substantially equivalent to those established by the laws of this state; ~~or~~

[~~(2) is qualified by an examination for a certificate to practice medicine under a commission in the uniformed services of the United States~~].

(b) An application for a license under this section must be in writing and upon a form prescribed by the board. The application must be accompanied by:

(1) a diploma or photograph of a diploma awarded to the applicant by an acceptable [a-reputable] medical college and a certified transcript showing courses and grades [~~or~~

~~certificate, license, or commission issued to the applicant by the Medical Corps of the uniformed services of the United States];~~

(2) a license or a certified copy of a license to practice medicine lawfully issued to the applicant, ~~on examination,~~ by some other state or a Canadian province that requires in its examination the same general degree of fitness required by this state and that grants the same reciprocal privileges to persons licensed by the board; ~~or~~

(3) a certification made by ~~[an executive officer of the uniformed services of the United States,]~~ the president or secretary of the board that issued the license~~,~~ or a duly constituted registration office of the state or Canadian province that issued the certificate or license, reciting that the accompanying certificate or license has not been canceled, suspended, or revoked ~~[except by honorable discharge from the Medical Corps of the uniformed services of the United States]~~ and reciting that the statement of the qualifications made in the application for medical license in Texas is true and correct; *and*

(4) *evidence of a passing grade on an examination required by the board.*

(c) Applicants for a license under this section must subscribe to an oath in writing before an officer authorized by law to administer oaths. The written oath must be a part of the application. The application must:

(1) state that:

(A) ~~[(1)]~~ the license, certificate, or authority under which the applicant *has most recently* practiced medicine in the state or Canadian province from which the applicant is *transferring to this state* ~~removed~~ or in the uniformed service in which the applicant served *is* ~~[was at the time of the removal or completion of service]~~ in full force and not restricted, canceled, suspended, or revoked;

(B) ~~[(2)]~~ the applicant is the identical person to whom the certificate *or*, license~~,~~ ~~or commission]~~ and the diploma were issued;

(C) ~~[(3)]~~ no proceeding has been instituted against the applicant for the *restriction, cancellation, suspension, or revocation* of the certificate, license, or authority to practice medicine in the state, Canadian province, or uniformed service of the United States in which it was issued; *and*

(D) ~~[(4)]~~ no prosecution is pending against the applicant in any state, federal, or Canadian court for any offense that under the laws of this state is a felony;

(2) *include a description of any sanctions imposed by or disciplinary matters pending in the state or Canadian province in which the applicant was or is licensed or certified to practice medicine; and*

(3) *include evidence of postgraduate training required by the board.*

(d) *An applicant for a license under this section must* ~~[A “reputable physician” means one who would]~~ be eligible for examination by the board. ~~[A “reputable medical school or college” means a medical school or college that was approved by the board at the time the applicant’s degree was conferred.]~~

(e) In addition to other licensure requirements, the board may require by rule and regulation that *an applicant who is a licensee of another state or Canadian province and who is a graduate* ~~[graduates]~~ of a medical school ~~[schools]~~ located outside of the United States and Canada, or the school *itself* ~~[schools themselves]~~, provide additional information to the board concerning the medical school attended prior to approval *of the applicant.*

(f) The board may refuse to issue a license to an applicant who *is a licensee of another state or Canadian province and who graduated* from a medical school outside of the United States and Canada if it finds that the applicant does not possess the requisite qualifications to provide the same standard of medical care as provided by a licensed physician in this state.

(h) *The board may not refuse to issue a license to an applicant under Subsection (f) of this section if the applicant:*

(1) *for the preceding five years has been a licensee of another state or a Canadian province;*

(2) *is not the subject of a sanction imposed by or disciplinary matter pending in any state or Canadian province in which the applicant is licensed to practice medicine; and*

(3) is either specialty board certified by a board that is a member of the American Board of Medical Specialties or a specialty board approved by the American Osteopathic Association or successfully passes an examination that the board shall determine by rule.

SECTION 12. Subchapter C, Medical Practice Act (Article 4495b, Vernon's Texas Civil Statutes), is amended by adding Section 3.0305 to read as follows:

Sec. 3.0305. *TEMPORARY LICENSE FOR OUT-OF-STATE PRACTITIONERS.* (a) On application, the board shall grant a temporary license to practice medicine. An applicant for a temporary license under this section must:

(1) have a current, active, and unrestricted license, without any pending disciplinary matters, as a physician in another state, the District of Columbia, or a territory of the United States that has licensing requirements that are substantially equivalent to the requirements of this Act;

(2) have passed a national or other examination recognized by the board relating to the practice of medicine; and

(3) be sponsored by a person licensed by the board under this Act with whom the temporary license holder may practice under this section.

(b) An applicant for a temporary license may be excused from the requirement of Subsection (a)(3) of this section if the board determines that compliance with that subsection constitutes a hardship to the applicant.

(c) A temporary license is valid until the date the board approves or denies the temporary license holder's application for a license. The board shall issue a license under this Act to the holder of a temporary license under this section if:

(1) the temporary license holder passes the examination required by Section 3.05 of this Act;

(2) the board verifies that the temporary license holder has satisfied the academic and experience requirements for a license under this Act; and

(3) the temporary license holder has satisfied any other license requirements under this Act.

(d) The board must assemble the documents and information necessary to process a temporary license holder's application for a license not later than the 90th day after the date the temporary license is issued and complete the processing of the application not later than the 90th day after the date the documents and information are assembled. If by the 180th day after the date the temporary license is issued the board has not completed the processing of the application, the board shall review the application to determine the cause of the delay.

SECTION 13. Section 3.04, Medical Practice Act (Article 4495b, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 3.04. *QUALIFICATION OF LICENSEE.* (a) An applicant, to be eligible for the examination and issuance of a license, must present satisfactory proof to the board that the applicant:

(1) is at least 21 years of age;

(2) is of good professional character;

(3) has completed 60 semester hours of college courses other than in medical school, which courses would be acceptable, at the time of completion, to The University of Texas for credit on a bachelor of arts degree or a bachelor of science degree; and

(4) is a graduate of an acceptable [a] medical school or college that was approved by the board at the time the degree was conferred[;] and has completed a one-year program of graduate medical training approved by the board.

(b) ~~The [(5) has successfully completed a one-year program of graduate medical training approved by the board. In addition to other licensure requirements, the board may require by rule and regulation that graduates of medical schools located outside the United States and Canada comply with other requirements that the board considers appropriate, including but not limited to additional graduate medical training in the United States, except those who qualify for licensure in Section 5.04 of this Act. However, the] applicant shall be eligible for examination prior to complying with the graduate training requirement of Subsection (a)(4)~~

~~[Subdivision (5) of Subsection (a)]~~ of this section but shall not be eligible for the issuance of an unrestricted license until the requirements of *Subsection (a) of this section* ~~[this subsection]~~ have been satisfied.

(c) ~~[(b)]~~ Applications for examination must be made in writing, verified by affidavit, filed with the board on forms prescribed by the board, and accompanied by *documents* and a fee as the board determines to be reasonable.

(d) *To be recognized by the board for the purposes of this subchapter, all allopathic or osteopathic medical education instruction taught in the United States must be accredited by an accrediting body officially recognized by the United States Department of Education and the Council on Postsecondary Accreditation as the accrediting body for medical education leading to the doctor of medicine degree or the doctor of osteopathy degree in the United States.*

(e) *The requirements for licensure of a graduate of an unapproved foreign medical school are set out in Section 5.035 of this Act, and the requirements for eligibility for licensure of a person who has completed all of the didactic work of a foreign medical school but has not graduated from the school (Fifth Pathway Program) are set out in Section 5.04 of this Act.*

SECTION 14. Subsections (a), (c), and (e), Section 3.05, Medical Practice Act (Article 4495b, Vernon's Texas Civil Statutes), are amended to read as follows:

(a) All examinations for license to practice medicine shall be conducted in writing in the English language and in a manner as to be entirely fair and impartial to all individuals and to every school or system of medicine. ~~[All applicants shall be known to the examiners only by numbers, without names or other method of identification on examination papers by which members of the board may be able to identify the applicants or examinees, until after the general averages of the examinees' numbers in the class have been determined and license granted or refused.]~~ Examinations shall be conducted on and cover those subjects generally taught by medical schools, a knowledge of which is commonly and generally required of candidates for the degree of doctor of medicine or doctor of osteopathy conferred by schools or colleges of medicine approved by the board, and the examinations shall also be conducted on and cover the subject of medical jurisprudence. *Examinations shall be prepared by a national testing service or prepared by the board and validated by qualified independent testing professionals.* On satisfactory examination conducted as required by this Act under rules of the board, applicants *may* ~~[shall]~~ be granted licenses to practice medicine. All questions and answers, with the grades attached, shall be preserved for one year in the executive office of the board or such other repository as the board by rule may direct. All applicants examined at the same time shall be given identical questions. All certificates shall be attested by the seal of the board. The board in its discretion may give the examination for license in two or more parts.

(c) All applicants for license to practice medicine in this state not otherwise licensed under the provisions of law must successfully pass *a uniform [an] examination approved by the board as determined by rule.* The board is authorized to adopt and enforce all rules of procedure not inconsistent with statutory requirements. All applicants shall be given due notice of the date and place of the examination~~;~~ ~~provided that the partial examinations provided for in this Act shall not be disturbed by this section].~~ If any applicant, because of failure to pass the required examination, is refused a license, the applicant, at a time as the board may fix, shall be permitted to take a subsequent examination *not more than two additional times [upon any subjects required in the original examination]* as the board may prescribe on the payment of a fee as the board may determine to be reasonable. In the event satisfactory grades shall be made on the subjects prescribed and taken on the reexamination, the board may grant the applicant a license to practice medicine. The board shall determine the credit to be given examinees on answers turned in on the subjects of complete and partial examination, and its decision is final.

(e) Within 90 ~~[30]~~ days after the day on which an examination is administered under this Act, the board shall notify each examinee of the results of the examination. However, if an examination is graded or reviewed by a national testing service, the board shall notify each examinee of the results of the examination *not later than the 30th day [within four weeks]* after the date the board receives the results from the testing service. If the notice of the

examination results will be delayed for longer than 90 days after the examination, the board shall notify the examinee of the reason for the delay before the 90th day.

SECTION 15. Subdivision (5), Subsection (d), Section 3.06, Medical Practice Act (Article 4495b, Vernon's Texas Civil Statutes), is amended by adding Paragraph (G) to read as follows:

*(G) An advertisement for a site serving a medically underserved population shall include the name and business address of the supervising physician for the site.*

SECTION 16. Section 3.06, Medical Practice Act (Article 4495b, Vernon's Texas Civil Statutes), is amended by adding Subsections (g) and (h) to read as follows:

*(g) This Act does not prohibit a nonprofit clinic that is operated by a nonprofit hospital or organization and that primarily serves a financially indigent population from:*

- (1) contracting with a physician to provide services at the clinic;*
- (2) paying a physician a minimum guarantee to assure the physician's availability;*
- (3) billing to and collecting from patients as the physician's agent the physician's professional fees; or*
- (4) retaining any professional fees collected under Subdivision (3) of this subsection up to the amount of the minimum guarantee fee and a reasonable collection fee.*

*(h) In Subsection (g) of this section, "financially indigent population" means persons meeting Medicaid eligibility requirements or uninsured persons who are accepted for care with no obligation to pay or with a discounted obligation to pay for services rendered based on the clinic's eligibility system.*

SECTION 17. Section 3.08, Medical Practice Act (Article 4495b, Vernon's Texas Civil Statutes), is amended to read as follows:

**Sec. 3.08. GROUNDS FOR REFUSAL TO ADMIT PERSONS TO EXAMINATION AND TO ISSUE LICENSE AND RENEWAL LICENSE AND FOR DISCIPLINARY ACTION.** The board may refuse to admit persons to its examinations and to issue a license to practice medicine to any person *and may take disciplinary action against any person* for any of the following reasons:

- (1) submission of a false or misleading statement, document, or certificate to the board in an application for examination or licensure; the presentation to the board of any license, certificate, or diploma that was illegally or fraudulently obtained; the practice of fraud or deception in taking or passing an examination;
- (2) conviction of a crime of the grade of a felony or a crime of a lesser degree that involves moral turpitude;
- (3) intemperate use of alcohol or drugs that, in the opinion of the board, could endanger the lives of patients;
- (4) unprofessional or dishonorable conduct that is likely to deceive or defraud the public or injure the public. Unprofessional or dishonorable conduct likely to deceive or defraud the public includes but is not limited to the following acts:

(A) committing any act that is in violation of the laws of the State of Texas if the act is connected with the physician's practice of medicine. A complaint, indictment, or conviction of a law violation is not necessary for the enforcement of this provision. Proof of the commission of the act while in the practice of medicine or under the guise of the practice of medicine is sufficient for action by the board under this section;

(B) failing to keep complete and accurate records of purchases and disposals of drugs listed in Chapter 481, Health and Safety Code, or of controlled substances scheduled in the Federal Comprehensive Drug Abuse Prevention and Control Act of 1970, 21 U.S.C.A. Section 801 et seq. (Public Law 91-513). A physician shall keep records of his purchases and disposals of these drugs to include without limitation the date of purchase, the sale or disposal of the drugs by the physician, the name and address of the person receiving the drugs, and the reason for the disposing or dispensing of the drugs to the person. A failure to keep the records for a reasonable time is grounds for revoking, canceling, suspending, or probating the license of any practitioner of medicine. The board or its representative may enter and inspect a physician's place(s) of practice during

reasonable business hours for the purpose of verifying the correctness of these records and of taking inventory of the prescription drugs on hand;

(C) writing prescriptions for or dispensing to a person known to be *an abuser* [a ~~habitual user~~] of narcotic drugs, controlled substances, or dangerous drugs or to a person who the physician should have known was *an abuser* [a ~~habitual user~~] of the narcotic drugs, controlled substances, or dangerous drugs. This provision does not apply to those persons:

(i) being treated by the physician for their narcotic use after the physician notifies the board in writing of the name and address of the person being so treated; or

(ii) *who the physician is treating for intractable pain under the Intractable Pain Treatment Act (Article 4495c, Revised Statutes) and its subsequent amendments;*

(D) writing false or fictitious prescriptions for dangerous drugs as defined by Chapter 483, Health and Safety Code, of controlled substances scheduled in the Texas Controlled Substances Act (*Chapter 481, Health and Safety Code*) [~~(Article 4476-15, Vernon's Texas Civil Statutes)~~], or of controlled substances scheduled in the Federal Comprehensive Drug Abuse Prevention and Control Act of 1970, 21 U.S.C.A. Section 801 et seq. (Public Law 91-513);

(E) prescribing or administering a drug or treatment that is nontherapeutic in nature or nontherapeutic in the manner the drug or treatment is administered or prescribed;

(F) prescribing, administering, or dispensing in a manner not consistent with public health and welfare dangerous drugs as defined by Chapter 483, Health and Safety Code, controlled substances scheduled in the Texas Controlled Substances Act (*Chapter 481, Health and Safety Code*) [~~(Article 4476-15, Vernon's Texas Civil Statutes)~~], or controlled substances scheduled in the Federal Comprehensive Drug Abuse Prevention and Control Act of 1970, 21 U.S.C.A. Section 801 et seq. (Public Law 91-513);

(G) persistently or [~~and~~] flagrantly overcharging or overtreating patients;

(H) failing to supervise adequately the activities of those acting under the supervision of the physician; or

(I) delegating professional medical responsibility or acts to a person if the delegating physician knows or has reason to know that the person is not qualified by training, experience, or licensure to perform the responsibility or acts;

(5) violation or attempted violation, direct or indirect, of any valid rules issued under this Act, either as a principal, accessory, or accomplice;

(6) use of any advertising statement that is false, misleading, or deceptive;

(7) advertising professional superiority or the performance of professional service in a superior manner if the advertising is not readily subject to verification;

(8) purchase, sale, barter, or use or any offer to purchase, sell, barter, or use any medical degree, license, certificate, diploma, or transcript of license, certificate, or diploma in or incident to an application to the board for a license to practice medicine;

(9) altering, with fraudulent intent, any medical license, certificate, diploma, or transcript of a medical license, certificate, or diploma;

(10) using any medical license, certificate, diploma, or transcript of a medical license, certificate, or diploma that has been fraudulently purchased, issued, or counterfeited or that has been materially altered;

(11) impersonating or acting as proxy for another in any examination required by this Act for a medical license; or engaging in conduct which subverts or attempts to subvert any examination process required by this Act for a medical license. Conduct which subverts or attempts to subvert the medical licensing examination process includes, but is not limited to:

(A) conduct which violates the security of the examination materials, as prescribed by board rules;

(B) conduct which violates the standard of test administration, as prescribed by board rules; or

(C) conduct which violates the accreditation process, as prescribed by board rules;

(12) impersonating a licensed practitioner or permitting or allowing another to use his license or certificate to practice medicine in this state for the purpose of diagnosing, treating, or offering to treat sick, injured, or afflicted human beings;

(13) employing, directly or indirectly, any person whose license to practice medicine has been suspended,  *canceled, or revoked* or association in the practice of medicine with any person or persons whose license to practice medicine has been suspended,  *canceled, or revoked* or any person who has been convicted of the unlawful practice of medicine in Texas or elsewhere;

(14) performing or procuring a criminal abortion or aiding or abetting in the procuring of a criminal abortion or attempting to perform or procure a criminal abortion or attempting to aid or abet the performance or procurement of a criminal abortion;

(15) aiding or abetting, directly or indirectly, the practice of medicine by any person, partnership, association, or corporation not duly licensed to practice medicine by the board;

(16) inability to practice medicine with reasonable skill and safety to patients by reason of illness, drunkenness, excessive use of drugs, narcotics, chemicals, or any other type of material or as a result of any mental or physical condition. In enforcing this subdivision the board shall, upon probable cause, request a physician to submit to a mental or physical examination by physicians designated by the board. If the physician refuses to submit to the examination, the board shall issue an order requiring the physician to show cause why he should not be required to submit to the examination and shall schedule a hearing on the order within 30 days after notice is served on the physician. The physician shall be notified by either personal service or certified mail with return receipt requested. At the hearing, the physician and his attorney are entitled to present any testimony and other evidence to show why the physician should not be required to submit to the examination. After a complete hearing, the board shall issue an order either requiring the physician to submit to the examination or withdrawing the request for examination. An appeal from the decision of the board shall be taken under the Administrative Procedure Act;

(17) judgment by a court of competent jurisdiction that a person licensed to practice medicine is of unsound mind;

(18) professional failure to practice medicine in an acceptable manner consistent with public health and welfare;

(19) being removed, suspended, or having disciplinary action taken by his peers in any professional medical association or society, whether the association or society is local, regional, state, or national in scope, or being disciplined by a licensed hospital or medical staff of a hospital, including removal, suspension, limitation of hospital privileges, or other disciplinary action, if that action in the opinion of the board was based on unprofessional conduct or professional incompetence that was likely to harm the public, provided that the board finds that the actions were appropriate and reasonably supported by evidence submitted to it. The action does not constitute state action on the part of the association, society, or hospital medical staff;

(20) repeated or recurring meritorious health-care liability claims that in the opinion of the board evidence professional incompetence likely to injure the public; or

(21) suspension, revocation, [or] restriction, or other disciplinary action by another state of a license to practice medicine, or disciplinary action by the uniformed services of the United States, based upon acts by the licensee similar to acts described in this section. A certified copy of the record of the state taking the action is conclusive evidence of it.

SECTION 18. Subchapter C, Medical Practice Act (Article 4495b, Vernon's Texas Civil Statutes), is amended by adding Section 3.085 to read as follows:

Sec. 3.085. *RESTRICTIONS ON BIDDING AND ADVERTISING.* (a) *The board may not adopt rules restricting competitive bidding or advertising by a person regulated by the board except to prohibit false, misleading, or deceptive practices by the person.*

(b) *The board may not include in its rules to prohibit false, misleading, or deceptive practices by a person regulated by the board a rule that:*

(1) *restricts the use of any medium for advertising;*

(2) restricts the person's personal appearance or use of the person's voice in an advertisement;

(3) relates to the size or duration of an advertisement by the person; or

(4) restricts the person's advertisement under a trade name.

SECTION 19. Subsections (b), (c), (d), and (e), Section 3.10, Medical Practice Act (Article 4495b, Vernon's Texas Civil Statutes), are amended to read as follows:

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

<del>[(1) for processing and granting a license by reciprocity to a licensee of another state</del>	<del>.....</del>	<del>\$700</del>
<del>[(2) for processing an application and administration of a partial examination for licensure</del>	<del>.....</del>	<del>\$700</del>
<del>[(3) for processing an application and administration of a complete examination for licensure</del>	<del>.....</del>	<del>\$700</del>
<del>[(4) for processing an application and issuance of a temporary license</del>	<del>.....</del>	<del>\$200</del>
<del>[(5) for processing an application and issuance of a duplicate license</del>	<del>.....</del>	<del>\$200</del>
<del>[(6) for processing an application and issuance of a license of reinstatement after a lapse or cancellation of a license</del>	<del>.....</del>	<del>\$700</del>
<del>[(7) for processing an application and issuance of an annual registration of a licensee</del>	<del>.....</del>	<del>\$200</del>
<del>[(8) for processing and issuance of an institutional permit for interns, residents, and others in approved medical training programs</del>	<del>.....</del>	<del>\$200</del>
<del>[(9) for processing an application and issuance of an endorsement to other state medical boards</del>	<del>.....</del>	<del>\$200</del>
<del>[(10) for processing and issuance of a permit to a physician who supervises a physician assistant</del>	<del>.....</del>	<del>\$200</del>
<del>[(11) for processing and issuance of a permit to a physician who supervises an acupuncturist</del>	<del>.....</del>	<del>\$200</del>

~~[(e)]~~ The board may set and collect a sales charge for making copies of any paper of record in the office of the board and for any printed material published by the board. The charges shall be in amounts considered sufficient to reimburse the board for the actual expense.

~~(c) [(d)]~~ The financial transactions of the board are subject to audit by the state auditor in accordance with Chapter 321, Government Code.

~~(d) The board shall 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. The annual report must be in the form and reported in the time provided by the General Appropriations Act [(e) On or before the first day of January each year, the board shall file 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 year.]~~

SECTION 20. Section 3.11A, Medical Practice Act (Article 4495b, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 3.11A. ~~DISPOSITION OF [INCREASE IN] FEES.~~ (a) ~~This section applies to each [Each] of the following fees [imposed by or under another section of this Act is increased by \$200]:~~

- (1) fee for processing and granting a license by reciprocity to a licensee of another state;
- (2) fee for processing an application and administration of a partial examination for licensure;
- (3) fee for processing an application and administration of a complete examination for licensure;
- (4) fee for processing an application and issuance of a license of reinstatement after a lapse or cancellation of a license; and
- (5) fee for processing an application and issuance of an annual registration of a licensee.



(b) Of each fee [increase] collected, \$50 shall be deposited to the credit of the foundation school fund and \$150 shall be deposited to the credit of the general revenue fund. This subsection applies to the disposition of *the stated portion* of each fee [increase] regardless of any other provision of law providing for a different disposition of funds.

SECTION 21. Section 4.01, Medical Practice Act (Article 4495b, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 4.01. GROUND FOR CANCELLATION, REVOCATION, SUSPENSION, AND PROBATION OF LICENSE. (a) *The board shall, except for good cause shown, revoke or suspend a license, place on probation a person whose license has been suspended, or reprimand a licensee for a violation of this Act or a rule of the board* [~~Except as provided herein, the board may cancel, revoke, or suspend the license of any practitioner of medicine or impose any other authorized means of discipline upon proof of the violation of this Act in any respect~~] or for any cause for which the board is authorized to refuse to admit persons to its examination and to issue a license and renewal license, including an initial conviction or the initial finding of the trier of fact of guilt of a felony or misdemeanor involving moral turpitude.

(b) On proof that a practitioner of medicine has been initially convicted of a felony or the initial finding of the trier of fact of guilt of a felony under Chapter 481, Health and Safety Code, Section 485.033, Health and Safety Code, Chapter 483, Health and Safety Code, or the Federal Comprehensive Drug Abuse Prevention and Control Act of 1970, 21 U.S.C.A. Section 801 et seq. (Public Law 91-513), the board shall suspend the practitioner's license. On the practitioner's final conviction for such a felony offense, the board shall revoke the practitioner's license.

(c) The board shall suspend the license of a practitioner who is serving a prison term in a state or federal penitentiary during his incarceration regardless of the offense.

SECTION 22. Section 4.04, Medical Practice Act (Article 4495b, Vernon's Texas Civil Statutes), is redesignated as Section 4.02 and amended to read as follows:

Sec. 4.02 [4.04]. COMPLAINT; INVESTIGATION. (a) *Any person, including a partnership, association, corporation, or other entity, may file a complaint against a licensee with the board, or the board may file a complaint on its own initiative. The board shall adopt rules concerning the investigation of a complaint filed with the board. The rules adopted under this subsection shall:*

- (1) *distinguish between categories of complaints;*
- (2) *ensure that complaints are not dismissed without appropriate consideration;*
- (3) *require that the board be advised of a complaint that is dismissed and that a letter be sent to the person who filed the complaint explaining the action taken on the dismissed complaint;*
- (4) *ensure that the person who filed the complaint has an opportunity to explain the allegations made in the complaint; and*
- (5) *prescribe guidelines concerning the categories of complaints that require the use of a private investigator and the procedures for the board to obtain the services of a private investigator.*

(b) *The board shall keep an information file about each complaint filed with the board. The board's information file shall be kept current and contain a record for each complaint of:*

- (1) *potential witnesses contacted in relation to the complaint;*
- (2) *a summary of findings made at each step of the complaint process;*
- (3) *an explanation of the legal basis and reason for a complaint that is dismissed; and*
- (4) *other relevant information.*

(c) *If a written complaint is filed with the board that the board has authority to resolve, the board, at least as frequently as quarterly and until final disposition of the complaint, shall notify the parties to the complaint of the status of the complaint unless the notice would jeopardize an investigation.*

(d) *The board by rule shall adopt a form to standardize information concerning complaints made to the board. The board by rule shall prescribe information to be provided to a person when the person files a complaint with the board.*

(e) *The board shall provide reasonable assistance to a person who wishes to file a complaint with the board.*

(f) *Except as otherwise provided by this section, all investigations shall be conducted by the board or persons authorized by the board to conduct them. The board may commission investigators as peace officers for the purpose of enforcing this Act. However, investigators of the board so commissioned as peace officers may not carry a firearm or exercise arrest powers. Each complaint against a physician which requires a determination of medical competency shall be reviewed by a board member, consultant, or employee with medical background considered sufficient by the board.*

(g) [(b)] *Unless it would jeopardize an investigation, the board shall notify the physician that a complaint has been filed and the nature of the complaint. The board shall make a preliminary investigation of the complaint. The first consideration of the board shall be whether the physician constitutes a continuing threat to the public welfare.*

(h) *The board may, unless precluded by the law or this Act, make a disposition of any complaint or matter relating to this Act, or of any contested case by stipulation, agreed settlement, or consent order. The board shall dispose of a complaint, contested case, or other matter in writing, and if appropriate, the physician shall sign the writing. An agreed disposition is a disciplinary order for purposes of reporting under this Act and of administrative hearings and proceedings by state and federal regulatory agencies regarding the practice of medicine. An agreed disposition is a public record.*

(i) *In civil litigation, an agreed disposition is a settlement agreement under Rule 408, Texas Rules of Civil Evidence. This subsection does not apply to a licensee who has previously entered into an agreed disposition with the board of a different disciplinary matter or whose license the board is seeking to revoke.*

(j) *The board shall adopt such rules as are appropriate to carry out this section [such disposition. Such disposition shall be considered a disciplinary order].*

(k) *The board shall dispose of all complaints in a timely manner. The board shall establish a schedule for conducting each phase of a complaint that is under the control of the board not later than the 30th day after the date the complaint is received by the board. The schedule shall be kept in the information file for the complaint and all parties shall be notified of the projected time requirements for pursuing the complaint. A change in the schedule must be noted in the complaint information file, and all parties to the complaint must be notified not later than the 14th day after the date the change is made unless the notice would jeopardize an investigation.*

(l) *The executive director of the board shall notify the board of a complaint that extends beyond the time prescribed by the board for resolving the complaint so that the board may take necessary action on the complaint.*

(m) *Except in the case of a suspension under Section 4.13 of this Act or in accordance with the terms of an agreement between the board and a licensee, no revocation, suspension, involuntary modification, or disciplinary action relating to a license is effective unless, before board proceedings are instituted:*

(1) *the board has served notice, in a manner consistent with the requirements for service under Subsection (g) of this section, to the physician of the facts or conduct alleged to warrant the intended action; and*

(2) *the physician was given an opportunity to show compliance with all requirements of law for the retention of the license either in writing or through personal appearance at an informal meeting with one or more representatives of the board, at the option of the licensee.*

(n) *If the licensee exercises the option to personally appear at an informal meeting with one or more representatives of the board and the informal meeting is held, the staff of the board and the representatives of the board shall be subject to the ex parte provisions of the Administrative Procedure Act with regard to contacts with board members and administrative law judges concerning the case.*

SECTION 23. Subchapter D, Medical Practice Act (Article 4495b, Vernon's Texas Civil Statutes), is amended by adding Section 4.025 to read as follows:

Sec. 4.025. *INFORMAL PROCEEDINGS.* (a) *The board by rule shall adopt procedures governing:*

(1) *informal disposition of a contested case under Section 13(e), Administrative Procedure Act, and its subsequent amendments; and*

(2) *informal proceedings held in compliance with Section 18(c), Administrative Procedure Act, and its subsequent amendments.*

(b) *Rules adopted under this section must provide the complainant and the licensee an opportunity to be heard and must require the presence of the board's legal counsel or a representative of the office of the attorney general to advise the board or board's employees. The rules shall provide that the staff of the board at the meeting shall present to the representative of the board the facts the staff reasonably believes it could prove by competent evidence or qualified witnesses at a hearing. The physician is entitled to reply to the staff's presentation and present the facts the physician reasonably believes the physician could prove by competent evidence or qualified witnesses at a hearing. After ample time is given for the presentations, the representative of the board shall recommend that the investigation be closed or attempt to mediate the disputed matters and make a recommendation regarding the disposition of the case in the absence of a hearing under the provisions of applicable law concerning contested cases.*

SECTION 24. Section 4.02, Medical Practice Act (Article 4495b, Vernon's Texas Civil Statutes), is redesignated as Section 4.03 and amended to read as follows:

Sec. 4.03[4.02]. *INITIATION OF CHARGES.* (a) *Proceedings, unless otherwise specified, under this Act or other applicable law and charges against a licensee may be instituted by a duly authorized representative of the board [on its own initiative or by any person]. Charges must be in writing and on sworn affidavit filed with the records custodian or assistant records custodian of the board detailing the nature of the charges as required by this Act or other applicable law. The president or an authorized [his] designee shall [set a time and place for a hearing and shall] cause a copy of the charges[, together with a notice of the time and place fixed for the hearing] to be served on the respondent or the respondent's counsel of record.*

(b) *The president or designee shall notify the State Office of Administrative Hearings of a formal complaint.*

(c) *A formal complaint shall be in writing and shall allege with reasonable certainty the specific act or acts relied on by the agency to constitute a violation of a specific statute or rule. The formal complaint shall be specific enough to enable a person of common understanding to know what is meant by the formal complaint and shall contain a degree of certainty that will give the person who is the subject of the formal complaint notice of the particular act or acts alleged to be a violation of a specific statute or rule.*

(d) *The board shall adopt reasonable rules to promote discovery by all parties to contested cases.*

(e) *In this section, "formal complaint" means a written statement made by a credible person under oath that is filed and presented by a representative of the board charging a person with having committed an act or acts that if proven could affect the legal rights or privileges of a licensee or other person under the jurisdiction of the board.*

SECTION 25. Section 4.03, Medical Practice Act (Article 4495b, Vernon's Texas Civil Statutes), is redesignated as Section 4.04 and amended to read as follows:

Sec. 4.04 [4.03]. *NOTICE.* (a) *Service of process notifying the respondent of [the time and place of] a hearing about [and the nature of] the charges against the person shall be made in accordance with the requirements of the Administrative Procedure Act and its subsequent amendments [person or by mail. Notice shall be sufficient if made in person or if sent by registered or certified mail to the person charged at the address shown in the board files or on his most recent application for registration or renewal, no later than 10 days before the hearing].*

(b) *If service of notice as prescribed by Subsection (a) of this section is impossible or cannot be effected, the board shall cause to be published once a week for two successive weeks a notice of the hearing in a newspaper published in the county of the last known place*

of practice in Texas of the person, if known. If the licensee is not currently practicing in Texas as evidenced by information in the board files, or if the last county of practice is unknown, publication shall be in a newspaper in Travis County. When publication of notice is used, the date of hearing may not be less than 10 days after the date of the last publication of notice.

SECTION 26. Section 4.05, Medical Practice Act (Article 4495b, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 4.05. HEARINGS, RULES. (a) ~~The [president of the] board by rule shall adopt procedures governing formal disposition of a contested case under the Administrative Procedure Act and its subsequent amendments. A formal hearing shall be conducted by an administrative law judge employed by the State Office of Administrative Hearings [designate one of the following alternative procedures for the conduct of each individual contested case in a disciplinary matter:~~

~~[(1) a hearing before the board itself where a quorum of the board shall be present for the hearing and decision at the conclusion of the hearing;~~

~~[(2) a hearing committee appointed by the president of the board, provided that the hearing committee shall be composed of not less than three members of the board and the composition of such committee shall be consistent with the provisions of Sections 2.08 and 2.09 of this Act; or~~

~~[(3) a hearing before a hearing examiner appointed by the board to conduct a hearing and to prepare and submit to the board for action a proposal for decision as provided in the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).~~

~~[Any individual conducting a hearing under this subchapter is empowered to administer oaths and to receive evidence at the hearing and shall report the hearing as prescribed by board rules]. Notwithstanding any other provision of this Act or other law, the board may, in its sole discretion, employ, retain, and compensate such attorneys, consultants, and other professionals as it deems necessary and appropriate to serve as [hearing examiners,] board consultants or[,] special counsel to prosecute on behalf of the hearings division and investigating division such complaints as are filed with the board, court reporters, and other staff deemed necessary or appropriate by the board to prepare for or represent the board in [conduct] the hearings authorized by this section. [All hearings conducted under this subchapter by the board shall comply with the provisions of the Administrative Procedure Act and the board's rules.]~~

~~(b) [The licensee shall have the right to produce witnesses or evidence on the person's behalf, to cross-examine witnesses, and to have subpoenas issued by the board to be served at the licensee's expense.~~

~~[(e)] The board shall, after receiving the administrative law judge's findings of fact and conclusions of law [the hearing], determine the charges upon their merits.~~

~~(c) [(d)] All complaints, adverse reports, investigation files, other investigation reports, and other investigative information in the possession of, received or gathered by the board or its employees or agents relating to a licensee, an application for license, or a criminal investigation or proceedings are privileged and confidential and are not subject to discovery, subpoena, or other means of legal compulsion for their release to anyone other than the board or its employees or agents involved in licensee discipline. Not later than 30 days after receiving a written request from a licensee who is the subject of a formal complaint initiated and filed under Section 4.03 of this Act or from the licensee's counsel of record and subject to any other privileges or restrictions set forth by rule, statute, or legal precedent, and unless good cause is shown for delay, the board shall provide the licensee with access to all information in its possession that the board intends to offer into evidence in presenting its case in chief at the contested hearing on the complaint. However, the board is not required to provide board investigative reports or investigative memoranda, the identity of nontestifying complainants, attorney-client communications, attorney-work product, or other materials covered by a privilege as recognized by the Texas Rules of Civil Procedure or the Texas Rules of Civil Evidence. The furnishing of information shall not constitute a waiver of privilege or confidentiality under this section, this Act, or other applicable law. Investigative [However,~~

investigative] information in the possession of the board or its employees or agents which relates to licensee discipline may be disclosed to the appropriate licensing authority in another state, the District of Columbia, or a territory or country in which the licensee is licensed or has applied for a license, or to a peer review committee reviewing an application for privileges or the qualifications of the licensee with respect to retaining privileges. If the investigative information in the possession of the board or its employees or agents indicates a crime may have been committed, the information shall be reported to the proper law enforcement agency. The board shall cooperate and assist all law enforcement agencies conducting criminal investigations of licensees by providing information which is relevant to the criminal investigation to the investigating agency. Any information disclosed by the board to an investigative agency shall remain confidential and shall not be disclosed by the investigating agency except as necessary to further the investigation. The board shall provide information upon the written request of a health-care entity about a complaint filed against a licensee that was resolved after investigation by a disciplinary order of the board or by an agreed settlement and the basis of and current status of any complaint under active investigation. The board shall keep information on file about each complaint filed with the board, consistent with this Act. If a written complaint is filed with the board relating to a person licensed by the board, the board, at least as often as quarterly and until final determination of the action to be taken relative to the complaint, shall notify the *parties to the complaint* [~~complainant~~] consistent with this Act of the status of the complaint unless the notice would jeopardize an active investigation.

(d) [(e)] The board in its discretion may accept the voluntary surrender of a license. No license may be returned unless the board determines, under rules established by it, that the licensee is competent to resume practice.

SECTION 27. Section 4.10, Medical Practice Act (Article 4495b, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 4.10. PETITION FOR REINSTATEMENT. (a) Upon application, the board may reissue a license to practice medicine to a person whose license has been canceled, revoked, or suspended, but the application, in the case of revocation, may not be made prior to one year after the revocation was issued or became final *and if denied by the board may not be brought more frequently than annually* and must be made upon payment of the fees as established by the board and in the manner and form and under the conditions as the board may require. Further, the board may not reinstate or reissue a license to a person whose license has been canceled, revoked, or suspended because of a felony conviction under Chapter 481, Health and Safety Code, Section 485.033, Health and Safety Code, Chapter 483, Health and Safety Code, or the Federal Comprehensive Drug Abuse Prevention and Control Act of 1970, 21 U.S.C.A. Section 801 et seq. (Public Law 91-513), except on an express determination based on substantial evidence contained in an investigative report indicating that the reinstatement or reissue of the license is in the best interests of the public and of the person whose license has been canceled, revoked, or suspended.

(b) *In addition to the requirements of Subsection (a) of this section, to be eligible for reinstatement or reissuance of a license, an applicant must prove that it is in the best interests of the public and of the person whose license has been canceled, revoked, or suspended to reinstate or reissue the license.*

(c) *A decision by the board to deny an application to reinstate or reissue a license is subject to judicial review in the manner provided by Section 4.09 of this Act.*

SECTION 28. Section 4.11, Medical Practice Act (Article 4495b, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 4.11. MONITORING OF LICENSE HOLDER; PROBATION. (a) *The board by rule shall develop a system for monitoring the compliance with the requirements of this Act of license holders who are the subject of disciplinary action. Rules adopted under this section shall include procedures for monitoring a license holder who is ordered by the board to perform certain acts to ascertain that the license holder performs the required acts and to identify and monitor license holders who are the subject of disciplinary action and who present a continuing threat to the public welfare through the practice of medicine.*

(b) The board upon majority vote may provide that the order canceling, revoking, or suspending a license or imposing any other method of discipline be probated so long as the

probationer conforms to the orders, conditions, and rules that the board may set out as the terms of probation. However, the board may not grant probation to a person whose license has been canceled, revoked, or suspended because of a felony conviction under Chapter 481, Health and Safety Code, Section 485.033, Health and Safety Code, Chapter 483, Health and Safety Code, or the Federal Comprehensive Drug Abuse Prevention and Control Act of 1970, 21 U.S.C.A. Section 801 et seq. (Public Law 91-513), except on an express determination, based on substantial evidence, that the grant of probation is in the best interests of the public and of the person whose license has been suspended, revoked, or canceled. The board, at the time of probation, shall set out the period of time that constitutes the probationary period. The board may not grant probation to a physician who poses, through the practice of medicine, a continuing threat to the public welfare.

(c) [(b)] The board may at any time while a *license holder* [~~the probationer~~] remains on probation, with adequate grounds being shown, *cause* [hold] a hearing *to be held* and, upon *proof of a violation of the order* [~~majority vote~~], rescind the probation and enforce the board's original action *and may impose any disciplinary action permitted under Section 4.12 of this Act in addition to or in lieu of enforcing the original order.* The board [~~and~~] shall *revoke or suspend a probationer's license* [~~do so~~] if the board determines that the probationer poses, through the practice of medicine, a continuing threat to the public welfare.

(d) [(e)] The hearing to rescind the probation shall be governed by the same provisions as are set forth in this subchapter for other charges.

SECTION 29. Section 4.12, Medical Practice Act (Article 4495b, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 4.12. METHODS OF DISCIPLINE. (a) Except as otherwise provided in Section 4.01, if the board finds any person to have committed any of the acts set forth in Section 3.08 of this Act, it shall enter an order imposing one or more of the following:

- (1) deny the person's application for a license or other authorization to practice medicine;
- (2) administer a public reprimand;
- (3) suspend, limit, or restrict the person's license or other authorization to practice medicine, including limiting the practice of the person to or by the exclusion of one or more specified activities of medicine or stipulating periodic board review;
- (4) revoke the person's license or other authorization to practice medicine;
- (5) require the person to submit to care, counseling, or treatment of physicians designated by the board as a condition for the initial, continued, or renewal of a license or other authorization to practice medicine;
- (6) require the person to participate in a program of education or counseling prescribed by the board;
- (7) require the person to practice under the direction of a physician designated by the board for a specified period of time; [~~or~~]
- (8) require the person to perform public service considered appropriate by the board; *or*
- (9) *assess an administrative penalty against the person as provided by Section 4.125 of this Act.*

(b) Providing however, if the board determines that, through the practice of medicine, the physician poses a continuing threat to the public welfare, it shall revoke, suspend or deny the license.

(c) *In addition to the other disciplinary actions authorized by this section, the board may issue a written reprimand to a license holder who violates this Act or require that a license holder who violates this Act participate in continuing education programs. The board shall specify the continuing education programs that may be attended and the number of hours that must be completed by an individual license holder to fulfill the requirements of this subsection.*

(d) *If a license suspension is probated, the board may require the license holder to:*

- (1) *report regularly to the board on matters that are the basis of the probation;*
- (2) *limit practice to the areas prescribed by the board; or*

(3) continue or review continuing professional education until the license holder attains a degree of skill satisfactory to the board in those areas that are the basis of the probation.

(e) The schedule of sanctions adopted by the board by rule shall be used by the State Office of Administrative Hearings for any sanction imposed as the result of a hearing conducted by that office.

SECTION 30. Subchapter D, Medical Practice Act (Article 4495b, Vernon's Texas Civil Statutes), is amended by adding Section 4.125 to read as follows:

Sec. 4.125. **ADMINISTRATIVE PENALTY.** (a) The board by order may impose an administrative penalty against a person licensed or regulated under this Act who violates this Act or a rule or order adopted under this Act.

(b) The penalty for a violation may be in an amount not to exceed \$5,000. Each day a violation continues or occurs is a separate violation for purposes of imposing a penalty.

(c) The amount of the penalty shall be based on:

(1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of any prohibited acts, and the hazard or potential hazard created to the health, safety, or economic welfare of the public;

(2) the economic harm to property or the environment caused by the violation;

(3) the history of previous violations;

(4) the amount necessary to deter future violations;

(5) efforts to correct the violation; and

(6) any other matter that justice may require.

(d) The board by rule shall prescribe the procedure by which it may impose an administrative penalty.

(e) All proceedings under this section are subject to the Administrative Procedure Act and its subsequent amendments.

(f) If the board by order finds that a violation has occurred and imposes an administrative penalty, the board shall give notice to the person of the board's order. The notice must include a statement of the right of the person to judicial review of the order.

(g) Within 30 days after the date the board's order imposing the penalty is final as provided by Section 16(c), Administrative Procedure Act, and its subsequent amendments, the person shall:

(1) pay the amount of the penalty;

(2) pay the amount of the penalty and file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty; or

(3) without paying the amount of the penalty, file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(h) Within the 30-day period, a person who acts under Subsection (g)(3) of this section may:

(1) stay enforcement of the penalty by:

(A) paying the amount of the penalty to the court for placement in an escrow account; or

(B) giving to the court a supersedeas bond that is approved by the court for the amount of the penalty and that is effective until all judicial review of the board's order is final; or

(2) request the court to stay enforcement of the penalty by:

(A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the amount of the penalty and is financially unable to give the supersedeas bond; and

(B) giving a copy of the affidavit to the executive director by certified mail.

(i) *An executive director who receives a copy of an affidavit under Subsection (h)(2) of this section may file with the court, within five days after the date the copy is received, a contest to the affidavit. The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the amount of the penalty and to give a supersedeas bond.*

(j) *If the person does not pay the amount of the penalty and the enforcement of the penalty is not stayed, the executive director may refer the matter to the attorney general for collection of the amount of the penalty.*

(k) *If on appeal the court sustains the occurrence of the violation, the court may uphold or reduce the amount of the penalty and order the person to pay the full or reduced amount of the penalty. If the court does not sustain the occurrence of the violation, the court shall order that no penalty is owed.*

(l) *When the judgment of the court becomes final, the court shall proceed under this subsection. If the person paid the amount of the penalty and if that amount is reduced or is not upheld by the court, the court shall order that the appropriate amount plus accrued interest be remitted to the person. The rate of the interest is the rate charged on loans to depository institutions by the New York Federal Reserve Bank, and the interest shall be paid for the period beginning on the date the penalty was paid and ending on the date the penalty is remitted. If the person gave a supersedeas bond and if the amount of the penalty is not upheld by the court, the court shall order the release of the bond. If the person gave a supersedeas bond and if the amount of the penalty is reduced, the court shall order the release of the bond after the person pays the amount.*

(m) *A penalty collected under this section shall be remitted to the comptroller for deposit in the general revenue fund.*

SECTION 31. Subchapter D, Medical Practice Act (Article 4495b, Vernon's Texas Civil Statutes), is amended by adding Section 4.126 to read as follows:

Sec. 4.126. **CIVIL PENALTY.** (a) *If it appears that a person is in violation of or is threatening to violate this Act or a rule or order adopted by the board, the attorney general may institute an action for a civil penalty of \$1,000 for each violation. Each day of a violation shall constitute a separate violation.*

(b) *A civil action filed under this section by the attorney general must be filed in a district court in Travis County or the county in which the violation occurred.*

(c) *The attorney general may recover reasonable expenses incurred in obtaining a civil penalty under this section, including court costs, reasonable attorney fees, investigative costs, witness fees, and deposition expenses.*

(d) *A civil penalty recovered in an action by the attorney general under this section shall be deposited in the general revenue fund.*

(e) *The attorney general may not institute an action for a civil penalty against a person described by Section 3.06(c) or (e) of this Act if the person is not in violation of or threatening to violate this Act or a rule or order adopted by the board.*

SECTION 32. Section 4.13, Medical Practice Act (Article 4495b, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 4.13. **TEMPORARY SUSPENSION OF LICENSE.** (a) *The president of the board, with the approval of the board, shall appoint a three-member disciplinary panel consisting of members of the board for the purpose of determining whether a person's license to practice medicine in this state should be temporarily suspended under this section.*

(b) *If the disciplinary panel [~~executive committee of the board~~] determines from the evidence or information presented to it that a person licensed to practice medicine in this state by his continuation in practice would constitute a continuing threat to the public welfare, the disciplinary panel [~~executive committee of the board~~] shall temporarily suspend the license of that person.*

(c) *The license may be suspended under this section without notice or hearing on the complaint, provided institution of proceedings for a hearing before the board is initiated*



simultaneously with the temporary suspension and provided that a hearing is held as soon as can be accomplished under the Administrative Procedure Act and this Act.

*(d) Notwithstanding the open meetings law, Chapter 271, Acts of the 60th Legislature, Regular Session, 1967 (Article 6252-17, Vernon's Texas Civil Statutes), the disciplinary panel may hold a meeting by telephone conference call if immediate action is required and the convening at one location of the disciplinary panel is inconvenient for any member of the disciplinary panel.*

SECTION 33. Subchapter E, Medical Practice Act (Article 4495b, Vernon's Texas Civil Statutes), is amended by adding Section 5.035 to read as follows:

*Sec. 5.035. GRADUATES OF UNAPPROVED FOREIGN MEDICAL SCHOOLS. (a) An applicant who is a graduate of a medical school that is located outside the United States and Canada and that was not approved by the board at the time the degree was conferred, to be eligible for the issuance of a license, must present satisfactory proof to the board that the applicant:*

- (1) meets the requirements set out in Sections 3.04(a)(1), (2), and (3) of this Act;*
- (2) is a graduate of a school whose curriculum meets the requirements for an unapproved medical school as determined by a committee of experts selected by the Texas Higher Education Coordinating Board;*
- (3) has successfully completed three years of graduate medical training in the United States or Canada that was approved by the board on the date the training was completed;*
- (4) is eligible for licensure to practice medicine in the country in which the school is located;*
- (5) possesses a valid certificate issued by the Educational Commission for Foreign Medical Graduates;*
- (6) has the ability to communicate in the English language; and*
- (7) has passed the examination required by the board of all applicants for license as required by Section 3.05 of this Act.*

*(b) In addition to other licensure requirements, the board may require by rule that a graduate of an unapproved medical school located outside the United States and Canada or the school of which the person is a graduate provide additional information to the board concerning the school before approving the applicant.*

*(c) The board may refuse to issue a license to an applicant who graduated from an unapproved medical school located outside the United States and Canada if it finds that the applicant does not possess the requisite qualifications to provide the same standard of medical care as provided by a physician licensed in this state.*

*(d) The board may refuse to issue a license to an applicant who graduated from an unapproved medical school located outside the United States and Canada if the applicant fails to provide the board evidence to establish that the applicant completed medical education or professional training substantially equivalent to that provided by a medical school in this state.*

SECTION 34. Section 5.04, Medical Practice Act (Article 4495b, Vernon's Texas Civil Statutes), is amended to read as follows:

*Sec. 5.04. FIFTH PATHWAY FOR FOREIGN MEDICAL SCHOOL STUDENTS. (a) An applicant [~~Notwithstanding any other provision of law, an individual~~] who has been a student of a foreign medical school, to be eligible for the issuance of a license, must present satisfactory proof to the board that the applicant [~~is eligible for licensure to practice medicine in this state if he~~]:*

- (1) meets the requirements set out in Sections 3.04(a)(1), (2), and (3) of this Act;*
- (2) has studied medicine in an acceptable [~~a reputable~~] medical school as defined by the board located outside the United States and Canada;*
- (3) [~~(2)~~] has completed all of the didactic work of the foreign medical school but has not graduated from the school;*

(4) [(3)] has attained a score satisfactory to a medical school in the United States approved by the Liaison Committee on Medical Education on a qualifying examination and has satisfactorily completed one academic year of supervised clinical training for foreign medical students as defined by the American Medical Association Council on Medical Education (*Fifth Pathway Program*) under the direction of the medical school in the United States;

(5) [(4)] has attained a passing score on the Educational *Commission* [Council] for Foreign Medical Graduates examination, or other examination, if required by the board; [and]

(6) *has successfully completed three years of graduate medical training in the United States or Canada that was approved by the board on the date the training was completed; and*

(7) [(5)] has passed the examination required by the board of all applicants for license *as required by Section 3.05 of this Act.*

(b) Satisfaction of the requirements of Subsection (a) of this section are in lieu of the completion of any requirements of the foreign medical school beyond completion of the didactic work, and no other *medical education* requirements shall be a condition of licensure to practice medicine in this state.

(c) Satisfaction of the requirements specified in Subsection (a) of this section shall be in lieu of certification by the Educational *Commission* [Council] for Foreign Medical Graduates, and the certification is not a condition of licensure to practice medicine in this state for candidates who have completed the requirements of Subsection (a) of this section.

(d) A hospital that is licensed by this state, that is operated by the state or a political subdivision of the state, or that receives state financial assistance, directly or indirectly, may not require an individual who has been a student of a foreign medical school *but has not graduated from the school* to satisfy any requirements other than those contained in [Subdivisions (1), (2), (3), and (4) of] Subsection (a) of this section prior to commencing an internship or residency.

(e) A document granted by a medical school located outside the United States issued after the completion of all the didactic work of the foreign medical school shall, on certification by the medical school in the United States in which the training was received of satisfactory completion by the person to whom the document was issued of the requirements listed in Subdivision (4) [(3)] of Subsection (a) of this section, be considered the equivalent of a degree of doctor of medicine or doctor of osteopathy for purposes of licensure.

SECTION 35. Section 5.08, Medical Practice Act (Article 4495b, Vernon's Texas Civil Statutes), is amended by amending Subsections (d) and (k) and adding Subsection (n) to read as follows:

(d) The prohibitions of this section continue to apply to confidential communications or records concerning any patient irrespective of when the patient received the services of a physician, *except for medical records 100 years old or older requested for historical purposes.*

(k) A physician shall furnish copies of medical records requested, or a summary or narrative of the records, pursuant to a written consent for release of the information as provided by Subsection (j) of this section, except if the physician determines that access to the information would be harmful to the physical, mental, or emotional health of the patient, and the physician may delete confidential information about another person who has not consented to the release. The information shall be furnished by the physician within *30 days after the date of receipt of the request* [~~a reasonable period of time~~] and reasonable fees for furnishing the information shall be paid by the patient or someone on his behalf. *If the physician denies the request, in whole or in part, the physician shall furnish the patient a written statement, signed and dated, stating the reason for the denial. A copy of the statement denying the request shall be placed in the patient's medical records.* In this subsection, "medical records" means any records pertaining to the history, diagnosis, treatment, or prognosis of the patient.

(n) *A person who may provide a copy of a record or a summary of the record to another under this section may provide the copy, summary, or narrative:*

(1) on paper; or

(2) on microfilm, microfiche, computer hard disk, magnetic tape, optical disk, or by means of another appropriate medium, including a machine-readable medium, if the person who is to provide and the person who is to receive the copy, summary, or narrative agree to a form authorized by this subdivision.

SECTION 36. Section 5.10, Medical Practice Act (Article 4495b, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 5.10. SUNSET PROVISION. The Texas State Board of Medical Examiners is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the board is abolished and this Act expires September 1, 2005 [1993].

SECTION 37. The Medical Practice Act (Article 4495b, Vernon's Texas Civil Statutes) is amended by adding Subchapter F to read as follows:

#### SUBCHAPTER F. ACUPUNCTURE PRACTICE

Sec. 6.01. LEGISLATIVE FINDINGS AND PURPOSE. *The legislature finds that:*

(1) *the review and establishment of statewide standards for the training, education, and discipline of persons performing acupuncture are in the public interest; and*

(2) *the health, safety, and welfare of the people of this state are best served by an orderly system of regulating the practice of acupuncture.*

Sec. 6.02. DEFINITIONS. *In this subchapter:*

(1) "Acupuncture" means:

(A) *the insertion of an acupuncture needle and the application of moxibustion to specific areas of the human body as a primary mode of therapy to treat and mitigate a human condition; and*

(B) *the administration of thermal or electrical treatments or the recommendation of dietary guidelines, energy flow exercise, or dietary or herbal supplements in conjunction with the treatment described by Paragraph (A) of this subdivision.*

(2) "Acupuncturist" means *a person who practices acupuncture.*

(3) "Acupuncture board" means *the Texas State Board of Acupuncture Examiners.*

(4) "Chiropractor" means *a licensee of the Texas Board of Chiropractic Examiners.*

(5) "Executive director" means *the executive director of the Texas State Board of Medical Examiners.*

(6) "Medical board" means *the Texas State Board of Medical Examiners.*

(7) "Physician" means *a licensee of the Texas State Board of Medical Examiners.*

Sec. 6.03. EXEMPTION; LIMITATION. (a) *This subchapter does not apply to a health care professional licensed under another subchapter of this Act or another statute of this state and acting within the scope of the license.*

(b) *This subchapter does not:*

(1) *limit the practice of medicine by a physician or permit the unauthorized practice of medicine; or*

(2) *permit a person to dispense, administer, or supply any controlled substance, narcotic, or dangerous drug if the person is not otherwise authorized by law to do so.*

Sec. 6.04. ACUPUNCTURE BOARD. (a) *The Texas State Board of Acupuncture Examiners is composed of nine members appointed by the governor as follows:*

(1) *four acupuncturists who have at least five years of experience in the practice of acupuncture in this state and are not licensed in this state as physicians;*

(2) *two physicians who are licensed in this state and are experienced in the practice of acupuncture; and*

(3) three members of the general public who are not licensed or trained in a health care profession and who represent the public.

(b) The following persons may not serve on the acupuncture board:

(1) a person who is required to register as a lobbyist under Chapter 305, Government Code, and its subsequent amendments; and

(2) a person who is currently employed by or serving as president, vice-president, secretary, or treasurer of a statewide or national organization incorporated for the purpose of representing a health care profession in this state or the United States.

(c) Members of the acupuncture board hold office for staggered terms of six years, with three members' terms expiring January 31 of each odd-numbered year.

(d) The governor shall designate a presiding officer of the acupuncture board from the members of the acupuncture board.

(e) A vacancy on the acupuncture board shall be filled by appointment of the governor.

(f) A member of the acupuncture board may not receive compensation for service on the board but is entitled to receive a per diem as set by legislative appropriation for transportation and related expenses incurred for each day that the member engages in the business of the board.

(g) The acupuncture board is subject to the open meetings law, the open records law, and the Administrative Procedure Act and any subsequent amendments.

(h) The acupuncture board is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the board is abolished and this subchapter expires September 1, 1997.

Sec. 6.05. **POWERS AND DUTIES OF ACUPUNCTURE BOARD.** (a) Subject to the advice and approval of the medical board, the acupuncture board shall:

(1) establish qualifications for an acupuncturist to practice in this state;

(2) establish minimum educational and training requirements necessary for the acupuncture board to recommend that the medical board issue a license to practice acupuncture;

(3) administer an examination that is validated by independent testing professionals for a license to practice acupuncture;

(4) develop requirements for licensure by endorsement of other states;

(5) prescribe the application form for a license to practice acupuncture;

(6) make recommendations on applications for licenses to practice acupuncture;

(7) establish a procedure for reporting and processing complaints relating to the practice of acupuncture under this article;

(8) establish the requirements for a tutorial program for students who have completed at least 48 semester hours of college; and

(9) recommend additional rules as are necessary for the administration and enforcement of this subchapter.

(b) Notwithstanding Subsection (a) of this section, the acupuncture board has no independent rulemaking authority.

Sec. 6.06. **LICENSE REQUIRED.** A person may not practice acupuncture in this state unless the person holds a license to practice acupuncture issued by the medical board under this subchapter.

Sec. 6.07. **QUALIFICATIONS OF ACUPUNCTURISTS.** (a) An applicant for a license to practice acupuncture who is not otherwise licensed under this subchapter must pass an examination approved by the acupuncture board.

(b) To be eligible for the examination, an applicant must:

(1) be at least 21 years of age;

(2) have completed at least 48 semester hours of college courses, including basic science courses as determined by the advisory board; and

(3) be a graduate of an acceptable acupuncture school whose entrance requirements and course of instruction meet standards set by the acupuncture board.

(c) A reputable acupuncture school must:

(1) maintain a resident course of instruction equivalent to not less than six terms of four months each for a total of not less than 1,800 instructional hours;

(2) provide supervised patient treatment for at least two terms of the resident course of instruction;

(3) maintain a course of instruction in anatomy-histology, bacteriology, physiology, symptomatology, pathology, meridian and point locations, hygiene, and public health; and

(4) have the necessary teaching force and facilities for proper instruction in required subjects.

(d) In establishing standards for the entrance requirements and course of instruction of an acupuncture school, the acupuncture board may consider the standards set by the National Accreditation Commission for Schools and Colleges of Acupuncture and Oriental Medicine.

(e) The examination shall be conducted on practical and theoretical acupuncture and other subjects required by the acupuncture board.

(f) An application for examination must be:

(1) in writing on a form prescribed by the acupuncture board;

(2) verified by affidavit;

(3) filed with the executive director of the medical board; and

(4) accompanied by a fee set by the medical board.

(g) The medical board shall notify all applicants of the time and place of the examination.

(h) The examination may be in writing, by a practical demonstration of the applicant's skill, or both, as the acupuncture board may require.

Sec. 6.08. **ASSISTANCE BY MEDICAL BOARD.** The medical board shall provide administrative and clerical employees as necessary to enable the acupuncture board to carry out this subchapter.

Sec. 6.09. **FEES.** (a) The medical board shall set and collect fees in amounts that are reasonable and necessary to cover the costs of administering and enforcing this subchapter without the use of any other funds generated by the medical board.

(b) Fees collected by the medical board under this subchapter shall be deposited by the medical board in the state treasury to the credit of an account in the general revenue fund and may be expended to cover the costs of administering and enforcing this subchapter. At the end of each fiscal biennium, the comptroller shall transfer any surplus money remaining in the account to the general revenue fund.

Sec. 6.10. **ISSUANCE OF LICENSE.** (a) After consulting the acupuncture board, the medical board shall issue a license to practice acupuncture in this state to a person who meets the requirements of this subchapter and the rules adopted under this subchapter.

(b) The medical board shall by rule provide for the annual renewal of a license to practice acupuncture.

Sec. 6.11. **DENIAL OF LICENSE; DISCIPLINE OF LICENSE HOLDER.** (a) A license to practice acupuncture may be denied or, after notice and hearing, suspended, probated, or revoked if the applicant for a license or the holder of a license:

(1) uses drugs or intoxicating liquors to an extent that affects the person's professional competence;

(2) obtains or attempts to obtain a license by fraud or deception;

(3) is adjudged mentally incompetent by a court of competent jurisdiction;

(4) practices acupuncture in a manner detrimental to the public health and welfare;

(5) violates this subchapter or a rule adopted under this subchapter;

(6) is convicted of a felony or a crime involving moral turpitude; or

(7) holds himself out as a physician or surgeon or any combination or derivative of those terms unless the person is also licensed by the medical board as a physician or surgeon.

(b) Except as provided by Subsection (c) of this section, a license to practice acupuncture shall be denied or, after notice and hearing, revoked if the holder of a license has performed acupuncture on a person who was not evaluated by a physician or dentist, as appropriate, for the condition being treated within six months before the date acupuncture was performed.

(c) The holder of a license may perform acupuncture on a person who was referred by a doctor licensed to practice chiropractic by the Texas Board of Chiropractic Examiners if the licensee commences the treatment within 30 days of the date of the referral. The licensee shall refer the person to a physician after performing acupuncture 20 times or for 30 days, whichever occurs first, if no substantial improvement occurs in the person's condition for which the referral was made.

(d) The holder of a license must obtain reasonable documentation that the evaluation required by Subsection (b) of this section has taken place. If the licensee is unable to determine that an evaluation has taken place, the licensee must obtain a written statement signed by the person on a form prescribed by the acupuncture board that states that the person has been evaluated by a physician within the prescribed time frame. The form shall contain a clear statement that the person should be evaluated by a physician for the condition being treated by the licensee.

(e) The medical board with advice from the acupuncture board by rule may modify the requirement of the time frame or the scope of the evaluation under Subsection (b) of this section.

(f) The medical board with advice from the acupuncture board by rule may modify the requirement of the time frame for commencement of treatment after referral by a chiropractor or the number of treatments or days before referral to a physician is required under Subsection (c) of this section.

(g) Notwithstanding Subsections (b) and (c) of this section, an acupuncturist holding a current and valid license may without a referral from a physician, dentist, or chiropractor perform acupuncture on a person for smoking addiction, weight loss, or, as established by the medical board with advice from the acupuncture board by rule, substance abuse.

Sec. 6.12. **OFFENSE.** (a) A person commits an offense if the person violates Section 6.06 of this Act.

(b) An offense under Subsection (a) of this section is a Class A misdemeanor.

(c) Each day of a violation constitutes a separate offense.

Sec. 6.13. **INJUNCTIVE RELIEF; CIVIL PENALTY.** (a) The medical board, the attorney general, or a district or county attorney may bring a civil action to compel compliance with this subchapter or to enforce a rule adopted under this subchapter.

(b) In addition to injunctive relief or any other remedy provided by law, a person who violates this subchapter or a rule adopted under this subchapter is liable to the state for a civil penalty in an amount not to exceed \$2,000 for each violation. Each day a violation continues or occurs is a separate violation for purposes of imposing a civil penalty. The attorney general, at the request of the medical board or on the attorney general's own initiative, may bring a civil action to collect a civil penalty under this subsection. A civil penalty recovered shall be deposited to the credit of the general revenue fund.

Sec. 6.14. **AUTOMATIC LICENSURE.** (a) With the approval of the medical board, the acupuncture board shall establish appropriate and reasonable requirements to determine those persons practicing acupuncture on the effective date of this subchapter who are eligible for immediate approval for a license to practice acupuncture under this section.

(b) This section only applies to a person who meets the requirements for immediate licensure under this section and who applies for immediate approval on or before June 1, 1994.

(c) This section expires June 2, 1994.

SECTION 38. Subsection (a), Section 19, Texas Medical Physics Practice Act (Article 4512n, Vernon's Texas Civil Statutes), is amended to read as follows:

(a) The board may issue a license to practice medical physics in this state, without an examination, to a person who, before September 1, 1994, is a resident of this state and:

(1) has an earned bachelor's, master's, or doctoral degree from an accredited college or university that signifies the completion of courses approved by the board in physics, medical physics, biophysics, radiological physics, medical health physics, or nuclear engineering and demonstrated to the board's satisfaction the completion of at least two years of full-time work experience in the five years preceding *January 1, 1993*, [~~the effective date of this Act~~] in the medical physics specialty for which application is made; or

(2) has completed a training course approved by the board in physics, medical physics, biophysics, radiological physics, or medical health physics and demonstrated to the board's satisfaction the completion of at least 10 years of full-time work experience in the 12 years preceding *January 1, 1993*, [~~the effective date of this Act~~] in the medical physics specialty for which application is made.

SECTION 39. (a) As soon as possible on or after the effective date of this Act, the governor shall appoint three new public members to the Texas State Board of Medical Examiners to achieve the membership plan established by Section 2.05, Medical Practice Act (Article 4495b, Vernon's Texas Civil Statutes), as amended by this Act. In making the appointments, the governor shall designate one new member for a term expiring April 13, 1995, one new member for a term expiring April 13, 1997, and one new member for a term expiring April 13, 1999.

(b) The changes in law made by this Act in the qualifications of, and the prohibitions applying to, members of the Texas State Board of Medical Examiners do not affect the entitlement of a member serving on the board immediately before the effective date of this Act to continue to carry out the functions of the board for the remainder of the member's term. The changes in law apply only to a member appointed on or after the effective date of this Act. This Act does not prohibit a person who is a member of the board on the effective date of this Act from being reappointed to the board if the person has the qualifications required for a member under the Medical Practice Act (Article 4495b, Vernon's Texas Civil Statutes), as amended by this Act.

(c) The changes in law made by this Act relating to an administrative penalty or civil penalty apply only to a violation of the Medical Practice Act (Article 4495b, Vernon's Texas Civil Statutes) or a rule or order adopted by the Texas State Board of Medical Examiners that occurs on or after the effective date of this Act. A violation occurs on or after the effective date of this Act only if each element of the violation occurs on or after that date. A violation that occurs before the effective date of this Act is governed by the law in effect on the date the violation occurred, and the former law is continued in effect for that purpose.

(d) A person is not required to obtain a license to practice acupuncture under Subchapter F, Medical Practice Act (Article 4495b, Vernon's Texas Civil Statutes), as added by this Act, until June 1, 1994.

(e) The Texas State Board of Medical Examiners shall adopt rules under Subchapter F, Medical Practice Act (Article 4495b, Vernon's Texas Civil Statutes), as added by this Act, not later than February 1, 1994.

(f) Not later than January 1, 1994, the governor shall make initial appointments to the Texas State Board of Acupuncture Examiners and shall designate three members for terms expiring January 31, 1995, three members for terms expiring January 31, 1997, and three members for terms expiring January 31, 1999.

(g) Notwithstanding other provisions of this Act, Sections 6.06 and 6.12 of the Medical Practice Act (Article 4495b, Vernon's Texas Civil Statutes), as added by this Act, take effect June 1, 1994.

SECTION 40. This Act takes effect September 1, 1993.

SECTION 41. 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 the Senate on May 4, 1993, by a viva-voce vote; May 20, 1993, Senate refused to concur in House amendments and requested appointment of Conference Committee; May 25, 1993, House granted request of the Senate; May 30, 1993, Senate adopted Conference Committee Report by a viva-voce vote; passed the House, with amendments, on May 18, 1993, by a non-record vote; May 25, 1993, House granted request of the Senate for appointment of Conference Committee; May 30, 1993, House adopted Conference Committee Report by a non-record vote.

Approved June 18, 1993.

Effective Sept. 1, 1993.