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Chapter 534

S.B. No. 315

AN ACT

relating to the enforcement of subpoenas, the regulation of pain management clinics, and the adoption of guidelines for prescribing certain opioids by the Texas Medical Board.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. The heading to Section 153.007, Occupations Code, is amended to read as follows:

Sec. 153.007. AUTHORITY TO ISSUE SUBPOENA OR ADMINISTER OATH; SUBPOENA ENFORCEMENT.

SECTION 2. Section 153.007, Occupations Code, is amended by adding Subsections (e) and (f) to read as follows:

(e) If a person fails to comply with a subpoena issued under this section, the board, acting through the attorney general, may file suit to enforce the subpoena in a district court in Travis County or in a county in which a hearing conducted by the board may be held.

(f) On finding that good cause exists for issuing the subpoena, the court shall order the person to comply with the subpoena.

SECTION 3. Subchapter A, Chapter 168, Occupations Code, is amended by adding Section 168.003 to read as follows:

Sec. 168.003. LEGISLATIVE FINDING. The legislature finds that deaths resulting from the use of opioids and other controlled substances constitute a public health crisis and that there is a

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1 compelling state interest in the board closely regulating the  
2 prescribing of opioids and other controlled substances by  
3 physicians and their delegates. Accordingly, the legislature finds  
4 that inspections and investigations conducted by the board,  
5 including the board's use of subpoenas for immediate production,  
6 inspection, and copying of medical and billing records, are  
7 necessary to adequately regulate the prescribing of opioids and  
8 other controlled substances in order to protect the public health  
9 and welfare.

10 SECTION 4. Section 168.052, Occupations Code, is amended to  
11 read as follows:

12 Sec. 168.052. INSPECTIONS. (a) The board may inspect a  
13 pain management clinic certified under this chapter, including the  
14 documents of a physician practicing at the clinic, as necessary to  
15 ensure compliance with this chapter.

16 (b) The board may inspect a clinic or facility that is not  
17 certified under this chapter to determine whether the clinic or  
18 facility is required to be certified under Section 168.101. The  
19 board by rule shall establish the grounds for conducting an  
20 inspection under this subsection, including grounds based on:

21 (1) the population of patients served by the clinic or  
22 facility;

23 (2) the volume or combination of drugs prescribed to  
24 patients served by the clinic or facility; and

25 (3) any other criteria the board considers sufficient  
26 to require an inspection of the clinic or facility.

27 SECTION 5. Section 168.201, Occupations Code, is amended by

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1 adding Subsection (a-1) to read as follows:

2 (a-1) For the purposes of this section, inappropriate  
3 prescribing includes nontherapeutic prescribing or other conduct  
4 as specified by board rule.

5 SECTION 6. Subtitle B, Title 3, Occupations Code, is  
6 amended by adding Chapter 170 to read as follows:

7 CHAPTER 170. PRESCRIPTION OF OPIOID ANTAGONISTS

8 Sec. 170.001. DEFINITIONS. In this chapter, "opioid  
9 antagonist" and "opioid-related drug overdose" have the meanings  
10 assigned by Section 483.101, Health and Safety Code.

11 Sec. 170.002. GUIDELINES. (a) The board shall adopt  
12 guidelines for the prescription of opioid antagonists.

13 (b) The guidelines must address:

14 (1) prescribing an opioid antagonist to a patient to  
15 whom an opioid medication is also prescribed; and

16 (2) identifying patients at risk of an opioid-related  
17 drug overdose and prescribing an opioid antagonist to that patient  
18 or to a person in a position to administer the opioid antagonist to  
19 that patient.

20 (c) In adopting guidelines under this section, the board:

21 (1) shall consult materials published by the Substance  
22 Abuse and Mental Health Services Administration of the United  
23 States Department of Health and Human Services; and

24 (2) may consult other appropriate materials,  
25 including medical journals subject to peer review and publications  
26 by medical professional associations.

27 Sec. 170.003. LIABILITY FOR ACT OR OMISSION WITH RESPECT TO

1 PRESCRIBING AN OPIOID ANTAGONIST. A physician who acts in good  
2 faith and with reasonable care, regardless of whether the physician  
3 follows the guidelines adopted under this chapter, is not subject  
4 to criminal or civil liability or any professional disciplinary  
5 action for:

- 6           (1) prescribing or failing to prescribe an opioid
- 7 antagonist; or
- 8           (2) any outcome resulting from the eventual
- 9 administration of an opioid antagonist prescribed by the physician.

10           SECTION 7. The change in law made by this Act relating to  
11 Chapter 170, Occupations Code, as added by this Act, and to conduct  
12 that is grounds for imposition of a disciplinary sanction applies  
13 only to conduct that occurs on or after September 1, 2017. Conduct  
14 that occurs before September 1, 2017, is governed by the law in  
15 effect on the date the conduct occurred, and the former law is  
16 continued in effect for that purpose.

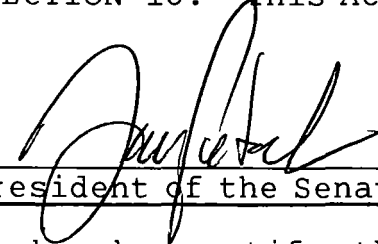
17           SECTION 8. The change in law made by this Act relating to  
18 Chapter 170, Occupations Code, as added by this Act, and to conduct  
19 that is the basis for civil liability applies only to conduct that  
20 occurs on or after September 1, 2017. Conduct that occurs before  
21 September 1, 2017, is governed by the law in effect on the date the  
22 conduct occurred, and the former law is continued in effect for that  
23 purpose.

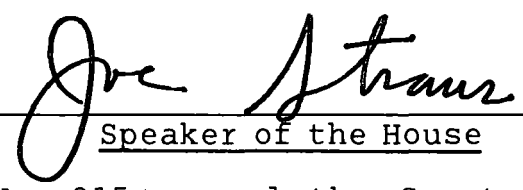
24           SECTION 9. The change in law made by this Act relating to  
25 Chapter 170, Occupations Code, as added by this Act, and to conduct  
26 that constitutes a criminal offense applies only to an offense  
27 committed on or after September 1, 2017. For purposes of this

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1 section, an offense is committed before September 1, 2017, if any  
2 element of the offense occurs before that date. An offense  
3 committed before September 1, 2017, is governed by the law in effect  
4 on the date the offense was committed, and the former law is  
5 continued in effect for that purpose.

6 SECTION 10. This Act takes effect September 1, 2017. \_\_\_\_\_

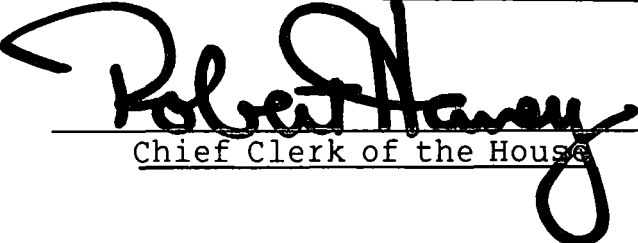
  
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President of the Senate

  
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Speaker of the House

I hereby certify that S.B. No. 315 passed the Senate on  
May 10, 2017, by the following vote: Yeas 30, Nays 0; and that the  
Senate concurred in House amendment on May 26, 2017, by the  
following vote: Yeas 31, Nays 0. \_\_\_\_\_

  
\_\_\_\_\_  
Secretary of the Senate

I hereby certify that S.B. No. 315 passed the House, with  
amendment, on May 23, 2017, by the following vote: Yeas 129,  
Nays 16, two present not voting. \_\_\_\_\_


  
\_\_\_\_\_  
Chief Clerk of the House

Approved:

6-7-2017  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Governor

FILED IN THE OFFICE OF THE  
SECRETARY OF STATE  
7:00 PM O'CLOCK

JUN 09 2017  
  
\_\_\_\_\_  
Secretary of State

**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE, 85TH LEGISLATIVE REGULAR SESSION**

**May 23, 2017**

**TO:** Honorable Dan Patrick, Lieutenant Governor, Senate

**FROM:** Ursula Parks, Director, Legislative Budget Board

**IN RE: SB315** by Hinojosa (Relating to the enforcement of subpoenas and the regulation of pain management clinics by the Texas Medical Board.), **As Passed 2nd House**

<b>No significant fiscal implication to the State is anticipated.</b>
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The bill would amend the Occupations Code relating to the enforcement of subpoenas and the regulation of pain management clinics by the Texas Medical Board (TMB). The bill would permit TMB, acting through the Attorney General, to file suit to enforce a subpoena in a district court in Travis County or in a county in which a hearing was conducted. The bill permits TMB to inspect non-certified pain management clinics and adopt guidelines for opioid antagonists. Under the provisions of the bill, inappropriate prescribing would include nontherapeutic prescribing or other conduct specified by TMB. The bill would provide exemptions to criminal, civil and other disciplinary acts to physicians who prescribe certain substances in good faith.

The bill would take effect on September 1, 2017 and exemptions, as established by the provisions of the bill, would apply to conduct that occurs on or after September 1, 2017.

This analysis assumes the provisions of the bill addressing felony sanctions for criminal offenses would not result in a significant impact on state correctional agencies.

TMB, Department of Public Safety, Health and Human Services Commission, Texas Department of Criminal Justice and the Office of Court Administration, and the Office of the Attorney General anticipate any additional work resulting from the passage of the bill could be reasonably absorbed within current resources.

**Local Government Impact**

No significant fiscal implication to units of local government is anticipated.

**Source Agencies:** 212 Office of Court Administration, Texas Judicial Council, 302 Office of the Attorney General, 503 Texas Medical Board

**LBB Staff:** UP, EK, KCA, EH

**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE, 85TH LEGISLATIVE REGULAR SESSION**

**May 7, 2017**

**TO:** Honorable Charles Schwertner, Chair, Senate Committee on Health & Human Services

**FROM:** Ursula Parks, Director, Legislative Budget Board

**IN RE: SB315** by Hinojosa (Relating to the enforcement of subpoenas and the regulation of pain management clinics by the Texas Medical Board.), **Committee Report 1st House, Substituted**

**No significant fiscal implication to the State is anticipated.**

The bill would amend the Occupations Code relating to the enforcement of subpoenas and the regulation of pain management clinics by the Texas Medical Board (TMB). The bill would permit TMB, acting through the Attorney General, to file suit to enforce a subpoena in a district court in Travis County or in a county in which a hearing was conducted. The bill permits TMB to inspect non-certified pain management clinics. Under the provisions of the bill, inappropriate prescribing would include nontherapeutic prescribing or other conduct specified by TMB.

TMB, the Office of Court Administration, and the Office of the Attorney General anticipate any additional work resulting from the passage of the bill could be reasonably absorbed within current resources.

**Local Government Impact**

No significant fiscal implication to units of local government is anticipated.

**Source Agencies:** 212 Office of Court Administration, Texas Judicial Council, 302 Office of the Attorney General, 503 Texas Medical Board

**LBB Staff:** UP, KCA, EH, EK

**LEGISLATIVE BUDGET BOARD**  
Austin, Texas

**FISCAL NOTE, 85TH LEGISLATIVE REGULAR SESSION**

**May 1, 2017**

**TO:** Honorable Charles Schwertner, Chair, Senate Committee on Health & Human Services

**FROM:** Ursula Parks, Director, Legislative Budget Board

**IN RE:** SB315 by Hinojosa (Relating to the continuation and functions of the Texas Medical Board; authorizing a fee.), **As Introduced**

**Estimated Two-year Net Impact to General Revenue Related Funds** for SB315, As Introduced: a positive impact of \$120,971 through the biennium ending August 31, 2019.

It is estimated there would be a positive impact of \$52,400 through the biennium ending August 31, 2019 to General Revenue-Dedicated Public Assurance Account 5105.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

**General Revenue-Related Funds, Five-Year Impact:**

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2018	\$141,543
2019	(\$20,572)
2020	\$39,428
2021	\$39,428
2022	\$39,428

**All Funds, Five-Year Impact:**

Fiscal Year	Probable (Cost) from <i>General Revenue Fund</i> 1	Probable Revenue Gain/(Loss) from <i>General Revenue Fund</i> 1	Probable Revenue Gain/(Loss) from <i>Public Assurance</i> 5105	Probable Savings/(Cost) from <i>Appropriated Receipts</i> 666
2018	(\$20,000)	\$161,543	\$30,400	(\$132,250)
2019	(\$60,000)	\$39,428	\$22,000	(\$132,250)
2020	\$0	\$39,428	\$22,000	(\$4,000)
2021	\$0	\$39,428	\$22,000	(\$4,000)
2022	\$0	\$39,428	\$22,000	(\$4,000)



Fiscal Year	Probable Revenue Gain/(Loss) from <i>Appropriated Receipts</i> 666
2018	\$132,250
2019	\$132,250
2020	\$4,000
2021	\$4,000
2022	\$4,000

## Fiscal Analysis

The bill would amend the Occupations Code relating to the continuation and functions of the Texas Medical Board (TMB); authorizing a fee.

The bill would continue the agency for twelve years until September 1, 2029.

The bill would permit TMB to establish a risk-based inspection process and require TMB to maintain a record of certain information relating to outpatient anesthesia.

The bill would require the TMB to periodically check prescribing information submitted by licensees to the Texas State Board of Pharmacy (TSBP) in the Prescription Monitoring Program to determine whether a licensee is engaging in potentially harmful prescribing patterns or practices. The bill requires TMB, in coordination with TSBP, to determine conduct that constitutes such patterns or practices. The bill permits TMB, if it suspects that a licensee is engaging in such patterns or practices, to notify the licensee and to initiate a complaint against the licensee.

The bill would require TMB to enter into a Memorandum of Understanding with the Texas Physician Health Program (TPHP) to establish performance measures, list the services the TMB would provide for the program, and require an internal audit of the program once every three years. The bill would permit TMB to receive gifts, grants, and donations for the TPHP.

The bill permits TMB to inspect non-certified pain management clinics. The bill would require TMB to adopt the Interstate Medical Licensure Compact (IMLC). The bill would permit TMB to establish a radiologist assistant certificate and establish education and training requirements for the license. The bill would eliminate the dual registry of the noncertified radiologic technicians at separate regulatory agencies. The bill would permit the board to extend the validity of a physician assistant license and an acupuncturist license issued by the agency from one year to two years through board rule.

The bill would require that certain applicants for licensure submit fingerprints to the board or the Department of Public Safety (DPS) for the purpose of a criminal history record check from the Department of Public Safety and Federal Bureau of Investigation. The bill would allow the board to enter into an agreement with DPS to administer the criminal history check and authorize DPS to collect from applicants an amount to cover the costs incurred by the agency in conducting the criminal history check. The bill would require all current licensees who have not undergone a criminal history check to do so by September 1, 2019.

The bill would take effect on September 1, 2017.

## Methodology

According to TMB, costs associated with changes to the agency's licensure database and website in order to receive and process applications for IMLC licenses and implement the regulation of the radiologic assistant certificate would require 640 hours of programming and business process analysis at \$125 per hour of consultation and implementation (\$80,000 in General Revenue for the biennium). TMB estimates the information technology costs would be approximately \$20,000 in fiscal year 2018 and \$60,000 in fiscal year 2019.

According to information provided by the TMB and the Comptroller of Public Accounts (CPA), the adoption of the IMLC would provide an estimated 455 existing or new physicians per year in Texas would apply for the interstate licensure in fiscal year 2018, for which the fee remitted to the agency would be \$300. This would yield \$136,500 in revenue to the General Revenue Fund in fiscal year 2018. In fiscal year 2019 and beyond, TMB and CPA estimated 178 ongoing applications for the interstate licensure per year, which would yield \$53,400 in revenue to the General Revenue Fund per fiscal year. TMB and CPA anticipate receiving 380 out of state applications for interstate licensure in Texas, for which the fee remitted to the agency would be \$464, \$80 of which is required to be remitted to General Revenue-Dedicated Public Assurance Account 5105. This would yield \$145,920 in revenue to the General Revenue Fund and \$30,400 in General Revenue-Dedicated Fund 5105 in fiscal year 2018. The estimate assumes TMB will receive 275 out of state applications for interstate licensure per fiscal year in fiscal year 2019 and beyond, which would result in a gain of \$105,600 in General Revenue and \$22,000 in General Revenue-Dedicated Fund 5105 per fiscal year thereafter.

TMB anticipates an initial 40 applicants in fiscal year 2018 (at a fee of \$130.50 per licensee) for licensure of the Radiologist Assistant Certificate, resulting in a gain of \$5,220 in General Revenue. TMB anticipates an additional 10 new applicants and 40 renewals per year after fiscal year 2018 (at a fee of \$130.50 per licensee) for licensure of the Radiologist Assistant Certificate, resulting in a gain of \$6,525 in General Revenue in each fiscal year after 2018.

Based on information provided by the Sunset Advisory Commission (SAC), the elimination of dual registration of the noncertified technicians certificate would result in a total revenue loss of \$126,097 in General Revenue across three agencies: TMB, Texas Board of Podiatric Medical Examiners (TBPME), and the Texas Board of Chiropractic Examiners (TBCE). TMB anticipates 944 noncertified technicians applying for and renewing certificates through the agency for a fee of \$130.50 per certificate; therefore the elimination of the dual registration of the certificate would result in a loss of \$123,192 in General Revenue each fiscal year beginning in fiscal year 2018. TBPME anticipates 4 noncertified technicians applying for and renewing certificates through the agency at a fee of \$35 per certificate, resulting in a loss of \$140 in General Revenue in each fiscal year beginning in fiscal year 2018. TBCE anticipates 79 noncertified technicians applying for and renewing certificates through the agency at a fee of \$35 per certificate, resulting in a loss of \$2,765 in each fiscal year beginning in fiscal year 2018.

This analysis assumes that TMB currently conducts finger-based background checks for all new licensees with the exception of acupuncturists and surgical assistants. Based on information provided by the CPA, approximately 9,500 current licensees including acupuncturists, surgical assistants, and physician assistants, would need to obtain a background check upon renewal. It is assumed that current licensees without a finger-based background check would be screened over the next two years to meet the requirements of the bill. The Department of Public Safety (DPS) charges applicants \$27 to perform a finger print based background check to cover the cost to DPS to obtain state and national criminal history record information, which results in both a gain and an offsetting cost to Appropriated receipts at DPS. Based on the number of applicants and

assumed implementation of the requirement, it is estimated that there will be a total gain and offsetting cost to Appropriated Receipts at DPS of \$132,250 each year in fiscal year 2018 and 2019 (\$128,250 for 4,750 current licensees and \$4,000 for 150 new licensees). Each fiscal year beginning with fiscal year 2020 would have a gain and offsetting cost to Appropriated Receipts at DPS of \$4,000 each fiscal year for only the new licensees.

This analysis assumes that the adoption of a biennial license renewal schedule would affect the timing of revenue collection, but would have minimal effect on the amount of revenue collected for the biennium.

Based on information provided by the TSBP, it is assumed the periodic check of prescribing information to determine whether a licensee is engaging in potentially harmful prescribing patterns or practices would require a query of information by the administrator of the program at TSBP. Based on the LBB's analysis of TSBP, duties and responsibilities associated with implementing the provisions of this bill at TSBP could be accomplished by utilizing existing resources.

The Office of the Attorney General, the Comptroller of Public Accounts, the Office of the Governor, the Office of Court Administration and the State Office of Administrative Hearings anticipate any costs related to implementing the provisions of this bill could be absorbed within current appropriations.

### **Technology**

Included in amounts above are information technology costs of \$20,000 in fiscal year 2018 and \$60,000 in fiscal year 2019 in order to receive and process applications for Interstate Compact licenses and implement the regulation of the new license type.

### **Local Government Impact**

No fiscal implication to units of local government is anticipated.

**Source Agencies:** 116 Sunset Advisory Commission, 212 Office of Court Administration, Texas Judicial Council, 302 Office of the Attorney General, 304 Comptroller of Public Accounts, 360 State Office of Administrative Hearings, 405 Department of Public Safety, 503 Texas Medical Board, 508 Board of Chiropractic Examiners, 512 Board of Podiatric Medical Examiners, 515 Board of Pharmacy, 301 Office of the Governor

**LBB Staff:** UP, EK, KCA, EH, NV, KVe

**LEGISLATIVE BUDGET BOARD  
Austin, Texas**

**CRIMINAL JUSTICE IMPACT STATEMENT**

**85TH LEGISLATIVE REGULAR SESSION**

**May 23, 2017**

**TO:** Honorable Dan Patrick, Lieutenant Governor, Senate

**FROM:** Ursula Parks, Director, Legislative Budget Board

**IN RE: SB315** by Hinojosa (Relating to the enforcement of subpoenas and the regulation of pain management clinics by the Texas Medical Board.), **As Passed 2nd House**

The provisions of the bill addressing felony sanctions for criminal offenses are the subject of this analysis. The bill would amend the Occupations Code to establish guidelines for prescribing opioid antagonists. Under the provisions of the bill, a physician acting in certain circumstances would not be subject to criminal liability for certain actions with respect to the prescribing of opioid antagonists. Punishments for these criminal penalties range from the misdemeanor to felony level with the punishment based on the specific circumstances of the offense.

A third degree felony is punishable by confinement in prison for a term from 2 to 10 years and a state jail felony is punishable by confinement in a state jail for a term from 180 days to 2 years or Class A misdemeanor punishment. In addition to confinement, most felony offenses are subject to an optional fine not to exceed \$10,000.

Limiting behaviors subject to criminal liability is expected to result in reduced demands on the correctional resources of the counties or of the State due to an expected decrease in the number of individuals placed under supervision in the community or sentenced to a term of confinement within state correctional institutions. In fiscal year 2016, fewer than 10 individuals were arrested, fewer than 10 were placed under felony community supervision, and fewer than 10 were admitted into state correctional institutions for offenses to which physicians would be subject to criminal liability under the provisions of the bill. This analysis assumes the provisions of the bill addressing felony sanctions would not result in a significant impact on the demand for state correctional resources.

**Source Agencies:**

**LBB Staff:** UP, LM, JPo