

OCCUPATIONS CODE  
TITLE 3. HEALTH PROFESSIONS  
SUBTITLE B. PHYSICIANS  
CHAPTER 165. PENALTIES

SUBCHAPTER A. ADMINISTRATIVE PENALTIES

Sec. 165.001. IMPOSITION OF ADMINISTRATIVE PENALTY. The board by order may impose an administrative penalty against a person licensed or regulated under this subtitle who violates this subtitle or a rule or order adopted under this subtitle.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 165.002. PROCEDURE. (a) The board by rule shall prescribe the procedure by which it may impose an administrative penalty.

(b) A proceeding under this subchapter is subject to Chapter 2001, Government Code.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.035, eff. Sept. 1, 2001.

Sec. 165.003. AMOUNT OF PENALTY. (a) The amount of an administrative penalty may not exceed \$5,000 for each violation. Each day a violation continues or occurs is a separate violation for purposes of imposing a penalty.

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

(1) the seriousness of the violation, including:

(A) the nature, circumstances, extent, and gravity of any prohibited act; and

(B) 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 a future violation;

(5) efforts to correct the violation; and

(6) any other matter that justice may require.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 165.004. NOTICE OF VIOLATION AND PENALTY. (a) If the board by order determines that a violation has occurred and imposes an administrative penalty, the board shall notify the affected person of the board's order.

(b) The notice must include a statement of the right of the person to judicial review of the order.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 165.005. OPTIONS FOLLOWING DECISION: PAY OR APPEAL.

(a) Not later than the 30th day after the date the board's order imposing the administrative penalty is final, the person shall:

(1) pay the penalty;

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

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

(b) Within the 30-day period, a person who acts under Subsection (a)(3) may:

(1) stay enforcement of the penalty by:

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

(B) giving to the court a supersedeas bond 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 an affidavit of the person stating that the person is financially unable to pay 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.

(c) If the executive director receives a copy of an

affidavit under Subsection (b)(2), the executive director may file with the court a contest to the affidavit not later than the fifth day after the date the copy is received.

(d) 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 penalty and to give a supersedeas bond.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 165.006. COLLECTION OF PENALTY. If the person does not pay the administrative 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 penalty.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 165.007. DETERMINATION BY COURT. (a) If on appeal the court sustains the determination that a violation occurred, the court may uphold or reduce the amount of the administrative penalty and order the person to pay the full or reduced penalty.

(b) If the court does not sustain the determination that a violation occurred, the court shall order that a penalty is not owed.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 165.008. REMITTANCE OF PENALTY AND INTEREST. (a) If after judicial review, the administrative penalty is reduced or not imposed by the court, the court shall, after the judgment becomes final:

(1) order that the appropriate amount, plus accrued interest, be remitted to the person if the person paid the penalty; or

(2) order the release of the bond in full if the penalty is not imposed or order the release of the bond after the person pays the penalty imposed if the person posted a supersedeas bond.

(b) The interest paid under Subsection (a)(1) is the rate charged on loans to depository institutions by the New York Federal Reserve Bank. The interest is paid for the period beginning on the date the penalty is paid and ending on the date the penalty is remitted.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

#### SUBCHAPTER B. INJUNCTIVE RELIEF AND OTHER ENFORCEMENT PROVISIONS

Sec. 165.051. INJUNCTION AUTHORITY. In addition to any other action authorized by law, the board may institute an action in its own name to enjoin a violation of this subtitle.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 165.052. CEASE AND DESIST ORDER. (a) If it appears to the board that a person who is not licensed under this subtitle is violating this subtitle, a rule adopted under this subtitle, or another state statute or rule relating to the practice of medicine, the board after notice and opportunity for a hearing may issue a cease and desist order prohibiting the person from engaging in the activity.

(b) A violation of an order under this section constitutes grounds for imposing an administrative penalty under this chapter. Added by Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 1.48, eff. September 1, 2005.

#### SUBCHAPTER C. CIVIL PENALTIES

Sec. 165.101. CIVIL PENALTY. (a) If it appears that a person is in violation of or is threatening to violate this subtitle 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.

(b) Each day a violation continues constitutes a separate violation.

(c) An action filed under this section must be filed in a district court in Travis County or the county in which the violation

occurred.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 165.102. LIMITATION ON CIVIL PENALTY. The attorney general may not institute an action for a civil penalty against a person described by Section 151.053 or 151.054 if the person is not in violation of or threatening to violate this subtitle or a rule or order adopted by the board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 165.103. RECOVERY OF EXPENSES BY ATTORNEY GENERAL; DEPOSIT. (a) The attorney general may recover reasonable expenses incurred in obtaining a civil penalty under this subchapter, including:

- (1) court costs;
- (2) reasonable attorney's fees;
- (3) investigative costs;
- (4) witness fees; and
- (5) deposition expenses.

(b) A civil penalty recovered by the attorney general under this subchapter shall be deposited in the general revenue fund.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

#### SUBCHAPTER D. CRIMINAL PENALTIES

Sec. 165.151. GENERAL CRIMINAL PENALTY. (a) A person commits an offense if the person violates this subtitle or a rule of the board.

(b) If another penalty is not specified for the offense, an offense under this section is a Class A misdemeanor.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 165.152. PRACTICING MEDICINE IN VIOLATION OF SUBTITLE. (a) A person commits an offense if the person practices medicine in this state in violation of this subtitle.

(b) Each day a violation continues constitutes a separate offense.

(c) An offense under Subsection (a) is a felony of the third degree.

(d) On final conviction of an offense under this section, a person forfeits all rights and privileges conferred by virtue of a license issued under this subtitle.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 202, Sec. 37, eff. June 10, 2003.

Sec. 165.153. CRIMINAL PENALTIES FOR ADDITIONAL HARM. (a) A person commits an offense if the person practices medicine without a license or permit and causes another person:

- (1) physical or psychological harm; or
- (2) financial harm.

(b) An offense under Subsection (a)(1) is a felony of the third degree.

(c) An offense under Subsection (a)(2) is a state jail felony.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 165.1535. PERFORMING SURGERY WHILE INTOXICATED. (a) In this section, "intoxicated" has the meaning assigned by Section [49.01](#), Penal Code.

(b) A person commits an offense if the person is licensed or regulated under this subtitle, performs surgery on a patient while intoxicated, and, by reason of that conduct, places the patient at a substantial and unjustifiable risk of harm.

(c) An offense under this section is a state jail felony.

(d) It is an affirmative defense to prosecution under this section that the actor performed the surgery in an emergency. In this subsection, "emergency" means a condition or circumstance in which a reasonable person with education and training similar to that of the actor would assume that the person on whom the surgery was performed was in imminent danger of serious bodily injury or death.

Added by Acts 2003, 78th Leg., ch. 565, Sec. 1, eff. Sept. 1, 2003.

Sec. 165.154. TAMPERING WITH GOVERNMENTAL RECORD; PERJURY

OFFENSES. (a) A person commits an offense if the person makes a false statement:

(1) in the person's application for a license; or

(2) under oath to obtain a license or to secure the registration of a license to practice medicine.

(b) An offense under this section:

(1) constitutes tampering with a governmental record or perjury as provided by the Penal Code; and

(2) shall be punished on conviction as provided by that code.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 165.155. SOLICITATION OF PATIENTS; PENALTY. (a) A physician commits an offense if the physician employs or agrees to employ, pays or promises to pay, or rewards or promises to reward any person, firm, association, partnership, or corporation for securing or soliciting a patient or patronage.

(b) Each payment, reward, or fee or agreement to pay or accept a reward or fee constitutes a separate offense.

(c) A physician commits an offense if the physician accepts or agrees to accept a payment or other thing of value for securing or soliciting patronage for another physician.

(d) This section does not prohibit advertising except that which:

(1) is false, misleading, or deceptive; or

(2) advertises professional superiority or the performance of professional service in a superior manner and which is not readily subject to verification.

(e) An offense under this section is a Class A misdemeanor.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 165.156. MISREPRESENTATION REGARDING ENTITLEMENT TO PRACTICE MEDICINE. A person, partnership, trust, association, or corporation commits an offense if the person, partnership, trust, association, or corporation, through the use of any letters, words, or terms affixed on stationery or on advertisements, or in any other manner, indicates that the person, partnership, trust,

association, or corporation is entitled to practice medicine if the person, partnership, trust, association, or corporation is not licensed to do so.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 165.157. DUTY TO ASSIST IN CERTAIN PROSECUTIONS. (a) The board and the board's employees shall assist the local prosecuting officers of each county in the enforcement of:

(1) state laws prohibiting the unlawful practice of medicine;

(2) this subtitle; and

(3) other matters.

(b) Except as otherwise provided by law, a prosecution is subject to the direction and control of the prosecuting officers. This subtitle does not deprive those officers of any authority vested by law.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 165.158. UNAUTHORIZED RELEASE OF CONFIDENTIAL INFORMATION. (a) A person commits an offense if the person unlawfully discloses confidential information described by Section [160.006](#) that is possessed by the board.

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

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 165.159. PRACTICING MEDICINE WITHOUT REGISTRATION.

(a) A person commits an offense if the person practices medicine without complying with the registration requirements imposed by this subtitle.

(b) An offense under Subsection (a) constitutes the offense of practicing medicine without a license.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 165.160. EFFECT ON CRIMINAL PROSECUTION. This subtitle does not bar a criminal prosecution for a violation of this subtitle or a rule adopted under this subtitle.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.