

By: Hughes

S.B. No. 1941

A BILL TO BE ENTITLED

AN ACT

relating to the licensing and regulation of neurodiagnostic practitioners and neurodiagnostic technologists; requiring an occupational license; creating an offense; providing penalties and authorizing fees.

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

SECTION 1. Subtitle K, Title 3, Occupations Code, is amended by adding Chapter 606 to read as follows:

CHAPTER 606. NEURODIAGNOSTIC PRACTITIONERS AND NEURODIAGNOSTIC TECHNOLOGISTS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 606.001. DEFINITIONS. In this chapter:

(1) "Autonomic reflex testing" means a test used to measure how autonomic nerves work in controlling involuntary body functions, including blood pressure, heart rate, and sweating, in response to different maneuvers, such as deep breathing, blowing into a mouthpiece, sweating, and lying for several minutes on a table that is tilted to a near standing position.

(2) "Board" means the Texas Medical Board.

(3) "Credentialing organization" means an accrediting organization that is recognized by the board and that administers and awards credentials in the modalities of neurodiagnostic technology.

(4) "Direct supervision" means supervision by a

1 responsible physician or neurodiagnostic practitioner or  
2 neurodiagnostic technologist who is physically present and  
3 immediately available to provide assistance and direction while a  
4 neurodiagnostic procedure is being performed.

5 (5) "Electroencephalography" means the recording and  
6 analysis of the ongoing electrical activity of the brain using a  
7 digital or analog instrument with a minimum of 16 channels and 21  
8 electrodes to assist in the diagnosis of epilepsy and other  
9 neurological symptoms.

10 (6) "Electromyography" means the recording and  
11 analysis of electrical activity generated by a needle insertion  
12 into a muscle.

13 (7) "Evoked potentials" means the recording of  
14 electrical activity from the brain, spinal nerves, or sensory  
15 receptors that occurs in direct response to auditory, visual, or  
16 electrical stimulation using surface electrodes and computer  
17 equipment to average the electrical potentials generated.

18 (8) "Intraoperative monitoring" means the use of a  
19 neurophysiological monitoring technique during surgery that  
20 ensures the safety of a patient by:

21 (A) providing information to the surgeon that  
22 relates to the integrity of the central and peripheral nervous  
23 systems; and

24 (B) using real-time electrographic information  
25 or stimulus evoked recordings of auditory, visual, somatosensory,  
26 or motor pathways via surface or subdermal needle electrodes.

27 (9) "License holder" means a person who holds a

1 license as a neurodiagnostic practitioner or neurodiagnostic  
2 technologist under this chapter.

3 (10) "Long-term monitoring" means the prolonged  
4 recording, by video recording or digital analysis, of the ongoing  
5 electrical activity of the brain to evaluate and diagnose epilepsy  
6 and other intermittent or infrequent neurological disturbances.

7 (11) "Magnetoencephalography" means the use of a  
8 neuroimaging technique for mapping brain activity by recording  
9 magnetic fields, outside the head, that are produced by electrical  
10 currents that occur naturally in the brain.

11 (12) "Nerve conduction study" means a recording  
12 obtained from electrical stimulation of peripheral nerves using  
13 surface electrodes and standard equipment with oscilloscopes for  
14 waveform analysis to evaluate and diagnose a disorder of the  
15 peripheral nervous system.

16 (13) "Neurodiagnostic practitioner" means a person  
17 who holds a doctoral degree approved by the board and a license  
18 issued under this chapter to:

19 (A) perform the duties of a neurodiagnostic  
20 technologist;

21 (B) perform intraoperative monitoring under the  
22 general supervision of a physician; and

23 (C) supervise the performance of intraoperative  
24 monitoring and interpret intraoperative monitoring data under the  
25 delegated authority and general supervision of a physician.

26 (14) "Neurodiagnostic student" means a person who is  
27 enrolled in a neurodiagnostics program.

1           (15) "Neurodiagnostic technologist" means a person  
2 who holds a license issued under this chapter to:

3                 (A) use specialized equipment to record and  
4 analyze physiological data and electrical activity from the central  
5 and peripheral nervous systems; and

6                 (B) perform one or more of the following  
7 neurodiagnostic procedures under the appropriate level of  
8 supervision by a physician or a neurodiagnostic practitioner:

9                         (i) electroencephalography;  
10                        (ii) evoked potentials;  
11                        (iii) continuous electroencephalography  
12 monitoring;

13                        (iv) intraoperative neuromonitoring;

14                        (v) long-term monitoring;

15                        (vi) magnetoencephalography;

16                        (vii) nerve conduction studies;

17                        (viii) polysomnography; or

18                        (ix) autonomic reflex testing.

19           (16) "Neurodiagnostic trainee" means a license holder  
20 who performs a neurodiagnostic procedure that the person does not  
21 have a credential to perform while under the direct supervision of a  
22 physician or neurodiagnostic practitioner or neurodiagnostic  
23 technologist who does have a credential to perform the procedure.

24           (17) "Polysomnography" means the recording of the  
25 biophysiological changes that occur during sleep by monitoring the  
26 ongoing electrical activity of the brain, eye movements, muscle  
27 activity, heart rhythm, and respiratory effort to diagnose and

1 treat sleep disorders.

2 Sec. 606.002. EXEMPTIONS. This chapter does not apply to:

3 (1) a physician licensed in this state;

4 (2) a person performing a neurodiagnostic procedure:

5 (A) for research if the results of the procedure  
6 are not used to diagnose or treat a patient;

7 (B) as a neurodiagnostic student or  
8 neurodiagnostic trainee under the direct supervision of a physician  
9 or a neurodiagnostic practitioner or neurodiagnostic technologist;

10 (C) as an employee under the direct supervision  
11 of a physician as part of the employee's job training; or

12 (D) as an audiologist or physical therapist  
13 licensed in this state while performing only a procedure that the  
14 audiologist or physical therapist is authorized to perform as  
15 determined by board rule; or

16 (3) a faculty member of an accredited school or  
17 university with a neurodiagnostics, allied health, or health  
18 education program.

19 SUBCHAPTER B. POWERS AND DUTIES OF BOARD

20 Sec. 606.051. GENERAL POWERS AND DUTIES; RULES. (a) The  
21 board shall administer and enforce this chapter.

22 (b) The board shall adopt rules necessary to implement this  
23 chapter.

24 Sec. 606.052. FEES. (a) The board by rule shall establish  
25 reasonable and necessary fees in amounts sufficient to cover the  
26 costs of administering and enforcing this chapter.

27 (b) The board may modify the fee for the issuance or renewal

of a license as necessary to cover the costs of enforcing this chapter.

SUBCHAPTER C. LICENSE REQUIREMENTS

Sec. 606.101. LICENSE REQUIRED. (a) A person may not act as or offer to act as a neurodiagnostic practitioner or neurodiagnostic technologist unless the person holds the applicable license issued under this chapter.

(b) A person who is not licensed under this chapter, or whose license has been suspended or revoked, may not:

(1) use the word "neurodiagnostic" on a sign, name tag, or any form of advertising unless the person is expressly exempt from the licensing requirements of this chapter;

(2) use in connection with the person's practice any abbreviations or credentials indicating or implying that the person is a neurodiagnostic practitioner or neurodiagnostic technologist; or

(3) directly or by implication represent in any way that the person is a neurodiagnostic practitioner or neurodiagnostic technologist.

(c) A license:

(1) is valid only with respect to the person named on the license; and

(2) authorizes the license holder to engage in the neurodiagnostic procedure for which the license holder has a credential issued by a credentialing organization.

(d) A license issued under this chapter is not transferable or assignable.

1       Sec. 606.102. LICENSING APPLICATION. (a) An applicant for  
2 a license must:

3           (1) apply to the board on a form prescribed by the  
4 board and under rules adopted by the board;

5           (2) submit with the application a nonrefundable  
6 application fee in an amount set by the board; and

7           (3) pass a credentialing organization examination  
8 administered or accepted by the board.

9       (b) The board by rule shall specify the information that  
10 must be included on an application submitted to the board. The  
11 rules must require:

12           (1) each application to include the name and address  
13 of the applicant; and

14           (2) each applicant for a license by examination to  
15 present satisfactory evidence to the board that the applicant is:

16                   (A) at least 18 years of age; and

17                   (B) of good moral character.

18       Sec. 606.103. CRIMINAL BACKGROUND CHECKS. (a) On receipt  
19 of an application for a license under this chapter, the board shall  
20 conduct a criminal background check on the applicant.

21       (b) An applicant is not eligible for a license under this  
22 chapter if the applicant, in the 10 years preceding the date of the  
23 application, has been finally convicted of a misdemeanor involving  
24 moral turpitude or a felony.

25       Sec. 606.104. EXAMINATIONS ADMINISTERED OR ACCEPTED BY  
26 BOARD. The board may administer or accept for licensing a  
27 credentialing organization examination as determined by rule.

1       Sec. 606.1041. REDUCED LICENSE REQUIREMENTS. (a) A person  
2 who applies for a license under this chapter not later than July 1,  
3 2017, is exempt from the examination required under this chapter if  
4 the person presents satisfactory evidence to the board that the  
5 person has been actively performing neurodiagnostic procedures  
6 since before January 1, 2017.

7       (b) Satisfactory evidence under Subsection (a) must be in  
8 the form of a signed letter submitted by the employer or supervising  
9 physician of the applicant.

10       (c) A person who qualifies under this section for an  
11 exemption from the requirement to take the examination required  
12 under this chapter must comply with all other requirements under  
13 this chapter for the issuance and renewal of a license.

14       (d) This section expires July 1, 2018.

15       Sec. 606.105. TEMPORARY LICENSES. (a) The board may adopt  
16 rules and set fees relating to granting temporary licenses.

17       (b) A temporary license under this chapter expires on the  
18 second anniversary of the date the temporary license is issued or  
19 the date the applicant presents satisfactory evidence to the board  
20 that the applicant has passed the examination required under this  
21 chapter, whichever date occurs first.

22       (c) The board by rule may extend the expiration date of a  
23 temporary license by not more than an additional 12 months.

24                   SUBCHAPTER D. LICENSE RENEWAL

25       Sec. 606.151. LICENSE RENEWAL. (a) A license is valid for  
26 two years from the date of issuance and may be renewed biennially.

27       (b) The board by rule may adopt a system under which



licenses expire on various dates during the year.

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

(d) To renew a license under this chapter, a person must submit proof satisfactory to the board that the person has:

(1) maintained the appropriate credentials issued by a credentialing organization; and

(2) complied with the continuing education requirements prescribed by the board.

Sec. 606.152. CONTINUING EDUCATION. (a) The board shall establish for the renewal of a license or temporary license uniform continuing education requirements of not less than 30 continuing education hours for each renewal period.

(b) The board shall adopt a procedure to assess a license holder's participation in continuing education programs.

#### SUBCHAPTER E. PRACTICE BY LICENSE HOLDER

Sec. 606.201. ADVERTISING. (a) A license holder shall include the license holder's license number in each advertisement.

(b) A person who advertises that the person is a neurodiagnostic practitioner or neurodiagnostic technologist is presumed to be engaging in conduct regulated by this chapter.

#### SUBCHAPTER F. PROHIBITED PRACTICES AND ENFORCEMENT PROVISIONS

Sec. 606.251. PROHIBITED PRACTICES. (a) A license holder may not engage in a neurodiagnostic procedure for which the license holder does not hold the proper credential issued by a credentialing organization.

1        (b) A license holder may not:

2                (1) interpret neurodiagnostic data, including making  
3 a determination of normal or abnormal findings and identifying the  
4 presence, absence, type, severity, or likelihood of an illness,  
5 injury, or other condition;

6                (2) provide clinical correlation of data, including  
7 making statements about the meaning of test results based on a  
8 person's symptoms, medical history, physical examination, or other  
9 clinical test results;

10               (3) perform needle insertion electromyography in a  
11 clinical setting; or

12               (4) meet with a patient except under the direct  
13 supervision of a physician.

14        Sec. 606.252. INVESTIGATION OF COMPLAINTS. (a) The board  
15 shall investigate any complaint alleging that a violation of this  
16 chapter or a rule or order adopted under this chapter has occurred.

17        (b) A complaint must be filed in a manner prescribed by the  
18 board.

19        Sec. 606.253. SANCTIONS. The board may impose sanctions  
20 under this chapter in the same manner as provided by Chapter 164 for  
21 imposition of sanctions against a physician.

22                                SUBCHAPTER G. PENALTIES

23        Sec. 606.301. ADMINISTRATIVE PENALTY. The board may impose  
24 an administrative penalty against a person under this chapter in  
25 the same manner as provided by Subchapter A, Chapter 165, against a  
26 physician, regardless of whether the person holds a license under  
27 this chapter, if the person violates this chapter or a rule or order

1 adopted under this chapter.

2 Sec. 606.302. CRIMINAL PENALTY. (a) A person commits an  
3 offense if the person violates this chapter.

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

5 SECTION 2. Not later than February 1, 2018, the Texas  
6 Medical Board shall adopt rules and forms necessary to implement  
7 Chapter 606, Occupations Code, as added by this Act.

8 SECTION 3. The Texas Medical Board shall issue a  
9 neurodiagnostic practitioner or neurodiagnostic technologist  
10 license, as applicable, under Chapter 606, Occupations Code, as  
11 added by this Act, to an applicant who:

12 (1) applies for the license under this section not  
13 later than July 1, 2018;

14 (2) submits to the board the information required by  
15 rule;

16 (3) meets the requirements of Section 606.1041,  
17 Occupations Code, as added by this Act; and

18 (4) pays the application fee established by the board.

19 SECTION 4. (a) Except as provided by Subsection (b) of this  
20 section, this Act takes effect September 1, 2017.

21 (b) Section 606.101 and Subchapter G, Chapter 606,  
22 Occupations Code, as added by this Act, take effect September 1,  
23 2018.