

By: Hall

S.B. No. 93

A BILL TO BE ENTITLED

AN ACT

relating to complaint information and to rulemaking and disciplinary procedures of the Texas Medical Board.

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

SECTION 1. Section 153.001, Occupations Code, is amended to read as follows:

Sec. 153.001. ADOPTION OF RULES. (a) The board may adopt rules and bylaws as necessary to:

(1) govern its own proceedings;

(2) perform its duties;

(3) regulate the practice of medicine in this state;

and

(4) enforce this subtitle.

(b) Notwithstanding any other law and except as otherwise provided by this subsection, the board must hold a public hearing with a public comment period on a proposed rule before adopting the rule. This subsection does not apply to an emergency rule adopted or renewed in accordance with Section 2001.034, Government Code.

SECTION 2. Section 154.051, Occupations Code, is amended by amending Subsections (a), (b), and (c) and adding Subsections (c-1) and (d-2) to read as follows:

(a) The board by rule shall establish methods by which members of the public and license holders are notified of the name, mailing address, and telephone number of the board for the purpose

1 of obtaining information about complaint procedures and directing
2 complaints to the board. The board may provide for that notice:

3 (1) on each registration form, application, or written
4 contract for services of a person or entity regulated under this
5 subtitle;

6 (2) on a sign prominently displayed in the place of
7 business of each person or entity regulated under this subtitle; or

8 (3) in a bill for service provided by a person or
9 entity regulated under this subtitle.

10 (b) The board shall list with its regular telephone number
11 any toll-free telephone number established under other state law
12 that may be called to obtain information about how to present a
13 complaint about a health professional.

14 (c) A person, including a partnership, association,
15 corporation, or other entity, may not file a complaint against a
16 license holder with the board unless the person:

17 (1) is:

18 (A) a patient of the license holder; or

19 (B) directly involved in the care of a patient of
20 the license holder and the complaint concerns the license holder's
21 provision of care to that patient; or

22 (2) is not a person described by Subdivision (1) and
23 has direct knowledge of the incident that is the subject of the
24 complaint.

25 (c-1) The board may file a complaint on its own initiative.

26 (d-2) Notwithstanding Subsections (d) and (d-1), the board
27 may consider or act on a complaint involving conduct that

1 constitutes a criminal offense at any time before the expiration of
2 the applicable statute of limitations for the offense.

3 SECTION 3. Subchapter B, Chapter 154, Occupations Code, is
4 amended by adding Section 154.0511 to read as follows:

5 Sec. 154.0511. FORM OF CERTAIN COMPLAINTS. The board may
6 not accept or take action regarding, or require a license holder to
7 respond to, a complaint filed with the board by a person described
8 by Section 154.051(c)(2) unless the complaint is in writing and
9 includes:

10 (1) the name of the complainant; and

11 (2) a sworn affidavit that:

12 (A) states that all of the facts asserted in the
13 complaint are:

14 (i) true; and

15 (ii) based on personal knowledge of the
16 physician's care of a patient identified in the complaint; and

17 (B) is executed before a notary public under
18 penalty of perjury.

19 SECTION 4. Section 154.053, Occupations Code, is amended by
20 amending Subsection (a) and adding Subsection (a-1) to read as
21 follows:

22 (a) Except as provided by Subsection (a-1), the [The] board
23 shall notify a physician who is the subject of a complaint filed
24 with the board that a complaint has been filed and shall provide
25 [notify] the physician with a complete copy [of the nature] of the
26 complaint, including the name of the complainant [unless the notice
27 would jeopardize an investigation].

1 (a-1) The board shall redact the name of the complainant
2 from the complete copy of the complaint provided to the physician
3 under Subsection (a) if the complaint filed with the board is in
4 writing and includes:

5 (1) the name of the complainant; and

6 (2) a sworn affidavit that:

7 (A) states that all of the facts asserted in the
8 complaint are:

9 (i) true; and

10 (ii) based on personal knowledge of the
11 physician's care of a patient identified in the complaint; and

12 (B) is executed before a notary public under
13 penalty of perjury.

14 SECTION 5. Section [154.056](#), Occupations Code, is amended by
15 adding Subsections (b-1), (b-2), (b-3), (b-4), and (b-5) and
16 amending Subsection (e) to read as follows:

17 (b-1) The board must complete the investigation of a
18 complaint not later than the 120th day after the date the complaint
19 is filed with the board, except that the board may extend the period
20 for investigating the complaint for an additional 30 days if
21 extenuating circumstances prevent the completion of the
22 investigation within the 120-day period.

23 (b-2) In conducting an investigation of a complaint filed
24 with the board, the board may not investigate matters that are
25 outside of the scope of the filed complaint. This subsection
26 applies at all times before the resolution of the complaint,
27 including during the initial investigation period and any informal

1 proceeding or disciplinary hearing.

2 (b-3) Except as provided by Subsection (b-4), the board may
3 not investigate a complaint involving a violation alleged to have
4 occurred more than three years before the date the complaint is
5 filed.

6 (b-4) The board may not investigate a complaint that alleges
7 a violation involving care provided to a person who was 17 years of
8 age or younger at the time of the alleged violation unless the
9 complaint is filed on or before the person's 20th birthday.

10 (b-5) Notwithstanding Subsections (b-3) and (b-4), the
11 board may investigate a complaint that alleges a violation
12 involving conduct constituting a criminal offense as provided by
13 Section 154.051(d-2).

14 (e) The board by rule shall provide for an expert physician
15 panel appointed by the board to assist with complaints and
16 investigations relating to medical competency by acting as expert
17 physician reviewers. Each member of the expert physician panel
18 must be a physician licensed to practice medicine in a member state,
19 as defined by Section 171.002, and engaged in the active practice of
20 medicine. The rules adopted under this subsection must include
21 provisions governing the composition of the panel, qualifications
22 for membership on the panel, length of time a member may serve on
23 the panel, grounds for removal from the panel, the avoidance of
24 conflicts of interest, including situations in which the affected
25 physician and the panel member live or work in the same geographical
26 area or are competitors, and the duties to be performed by the
27 panel. The board's rules governing grounds for removal from the

1 panel must include providing for the removal of a panel member who
2 is repeatedly delinquent in reviewing complaints and in submitting
3 reports to the board. The board's rules governing appointment of
4 expert physician panel members to act as expert physician reviewers
5 must include a requirement that the board randomly select, to the
6 extent permitted by Section 154.058(b) and the conflict of interest
7 provisions adopted under this subsection, panel members to review a
8 complaint who are:

9 (1) licensed to practice medicine in this state; or

10 (2) licensed to practice medicine in a member state,
11 as defined by Section 171.002, if there are no panel members
12 licensed to practice medicine in this state available to review the
13 complaint in a timely manner.

14 SECTION 6. Section 154.058, Occupations Code, is amended to
15 read as follows:

16 Sec. 154.058. EXPERT PHYSICIAN REVIEW AND DETERMINATION OF
17 MEDICAL COMPETENCY. (a) Each complaint against a physician that
18 requires a determination of medical competency shall be reviewed
19 initially by a board member, consultant, or employee ~~[with a~~
20 ~~medical background considered sufficient by the board]~~. A board
21 member, consultant, or employee who reviews a complaint under this
22 subsection must be a physician licensed in this state and engaged in
23 the active practice of medicine.

24 (b) If the initial review under Subsection (a) indicates
25 that an act by a physician may fall ~~[falls]~~ below an acceptable
26 standard of care, the complaint shall be reviewed by five expert
27 physician reviewers who:

1 (1) are selected from the [an] expert physician panel
2 authorized under Section 154.056(e); and

3 (2) have an active [consisting of physicians who]
4 practice in the same specialty as the physician who is the subject
5 of the complaint [or in another specialty that is similar to the
6 physician's specialty].

7 (b-1) The physician who is the subject of the complaint is
8 entitled to strike any expert physician panel member from
9 participating in the review under Subsection (b) if the subject
10 physician is aware that the panel member's participation represents
11 a conflict of interest, including a situation in which the subject
12 physician and the panel member live or work in the same geographical
13 area or are competitors.

14 (b-2) Each expert physician panel member reviewing a
15 complaint under this section must:

16 (1) be provided separate copies of the complaint
17 information; and

18 (2) before communicating with another expert
19 physician reviewer, independently:

20 (A) review the complaint information; and

21 (B) form an opinion as to whether an act by the
22 physician who is the subject of the complaint falls below an
23 acceptable standard of care.

24 (b-3) After each expert physician panel member selected
25 under Subsection (b) independently reviews the complaint
26 information and forms an opinion as described by Subsection
27 (b-2)(2), the expert physician reviewers shall vote on the question

1 of whether an act by the physician who is the subject of the
2 complaint falls below an acceptable standard of care.

3 (c) The expert physician reviewers [~~panel~~] shall report in
4 writing the reviewers' [~~panel's~~] determinations based on the review
5 of the complaint under Subsection (b), including the results of the
6 vote under Subsection (b-3). The report must specify the standard
7 of care that applies to the facts that are the basis of the
8 complaint and the clinical basis for the reviewers' [~~panel's~~]
9 determinations, including any reliance on peer-reviewed journals,
10 studies, or reports.

11 (d) Notwithstanding any other law, the board may not take
12 any disciplinary action against a physician who is the subject of a
13 complaint reviewed under this section unless the expert physician
14 reviewers determine by a three-fourths vote under Subsection (b-3)
15 that an act by the subject physician falls below an acceptable
16 standard of care. If the expert physician reviewers do not
17 determine by a three-fourths vote that the act falls below an
18 acceptable standard of care, the board shall dismiss the reviewed
19 complaint with prejudice.

20 SECTION 7. Sections 164.003(f) and (i), Occupations Code,
21 are amended to read as follows:

22 (f) The notice required by Subsection (b)(2) must be
23 accompanied by a written statement of the nature of the allegations
24 and the information the board intends to use at the meeting. If the
25 board does not provide the statement or information at that time,
26 the license holder may use that failure as grounds for rescheduling
27 the informal meeting. If the complaint includes an allegation that

1 the license holder has violated the standard of care, the notice
2 must include a copy of the [~~each~~] report prepared [~~by an expert~~
3 ~~physician reviewer~~] under Section 154.058(c) [~~154.0561~~]. The
4 license holder must provide to the board the license holder's
5 rebuttal at least 15 business days before the date of the meeting in
6 order for the information to be considered at the meeting.

7 (i) Any person participating in the informal settlement
8 conference proceeding may [~~On request by a physician under review,~~
9 ~~the board shall~~] make a recording of the [~~informal settlement~~
10 ~~conference~~] proceeding. A recording made under this subsection may
11 be used in any subsequent legal proceeding [~~The recording is a part~~
12 ~~of the investigative file and may not be released to a third party~~
13 ~~unless authorized under this subtitle. The board may charge the~~
14 ~~physician a fee to cover the cost of recording the proceeding~~].

15 SECTION 8. Section 164.007(a), Occupations Code, is amended
16 to read as follows:

17 (a) The board by rule shall adopt procedures governing
18 formal disposition of a contested case under Chapter 2001,
19 Government Code. A formal hearing shall be conducted by an
20 administrative law judge employed by the State Office of
21 Administrative Hearings. After receiving the administrative law
22 judge's findings of fact and conclusions of law, the board shall[+]

23 [~~(1)~~] dispose of the contested case by issuing a final
24 order based on the administrative law judge's findings of fact and
25 conclusions of law[+ ~~or~~

26 [~~(2)~~ ~~appeal the administrative law judge's findings of~~
27 ~~fact and conclusions of law in the manner provided by Section~~

1 ~~164.0072~~].

2 SECTION 9. The following provisions of the Occupations Code
3 are repealed:

4 (1) Section 154.0561; and

5 (2) Section 164.0072.

6 SECTION 10. Not later than the 30th day after the effective
7 date of this Act, the Texas Medical Board shall adopt rules as
8 necessary to implement the changes in law made by this Act.

9 SECTION 11. The changes in law made by this Act apply only
10 to a complaint, or a disciplinary action based on a complaint, filed
11 on or after the 30th day after the effective date of this Act. A
12 complaint, or a disciplinary action based on a complaint, filed
13 before the 30th day after the effective date of this Act is governed
14 by the law in effect immediately before the effective date of this
15 Act, and the former law is continued in effect for that purpose.

16 SECTION 12. This Act takes effect immediately if it
17 receives a vote of two-thirds of all the members elected to each
18 house, as provided by Section 39, Article III, Texas Constitution.
19 If this Act does not receive the vote necessary for immediate
20 effect, this Act takes effect September 1, 2025.