

By: Nelson, Lindsay, Fraser

S.B. No. 104

A BILL TO BE ENTITLED

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AN ACT

relating to the regulation and enforcement of the practice of medicine by the Texas State Board of Medical Examiners.

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

SECTION 1. Subdivision (2), Subsection (a), Section 151.002, Occupations Code, is amended to read as follows:

(2) "Continuing threat to the public welfare" means a real ~~[and present]~~ danger to the health of a physician's patients or to the public from the acts or omissions of the physician caused through the physician's lack of competence, impaired status, or failure to care adequately for the physician's patients, as determined by:

- (A) the board;
- (B) a medical peer review committee in this state;
- (C) a physician licensed to practice medicine in this state or otherwise lawfully practicing medicine in this state;
- (D) a physician engaged in graduate medical education or training; or
- (E) a medical student.

SECTION 2. Subsection (d), Section 153.051, Occupations Code, is amended to read as follows:

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

- 1 (1) \$900 for a license;
- 2 (2) \$400 [~~\$200~~] for a first [~~annual~~] registration
3 permit;
- 4 (3) \$200 for a temporary license;
- 5 (4) \$400 [~~\$200~~] for renewal of a [~~an annual~~]
6 registration permit;
- 7 (5) \$200 for a physician-in-training permit;
- 8 (6) \$600 [~~\$300~~] for the processing of an application
9 and the issuance of a [~~an annual~~] registration for anesthesia in an
10 outpatient setting;
- 11 (7) \$200 for an endorsement to other state medical
12 boards;
- 13 (8) \$200 for a duplicate license; or
- 14 (9) \$700 for a reinstated license after cancellation
15 for cause.

16 SECTION 3. Section 153.053, Occupations Code, is amended to
17 read as follows:

18 Sec. 153.053. SURCHARGE FOR CERTAIN FEES. (a) The board
19 shall collect a fee [~~an additional \$200~~] surcharge as follows [~~for~~
20 ~~each of the following fees~~]:

- 21 (1) \$200 for the license fee;
- 22 (2) \$400 for the first [~~annual~~] registration permit;
- 23 (3) \$400 for renewal of a [~~annual~~] registration
24 permit; and
- 25 (4) \$200 for reinstatement of a license after
26 cancellation for cause.

27 (b) Of each surcharge collected under Subsections (a)(1)

1 and (4), the board shall deposit \$50 to the credit of the foundation
2 school fund and \$150 to the credit of the general revenue fund.

3 (c) Of each surcharge collected under Subsections (a)(2)
4 and (3), the board shall deposit \$100 to the credit of the
5 foundation school fund and \$300 to the credit of the general revenue
6 fund.

7 SECTION 4. Subchapter B, Chapter 153, Occupations Code, is
8 amended by adding Section 153.0535 to read as follows:

9 Sec. 153.0535. SURCHARGE FOR REGISTRATION PERMIT. (a) The
10 board shall collect an additional \$30 surcharge for each of the
11 following fees:

- 12 (1) first registration permit; and
13 (2) renewal of a registration permit.

14 (b) The board shall deposit each surcharge collected to the
15 credit of the public assurance account. The public assurance
16 account is an account in the general revenue fund that shall be
17 appropriated only to the board to pay for the board's enforcement
18 program, including the expert physician panel.

19 SECTION 5. Section 153.055, Occupations Code, is amended by
20 adding Subsection (c) to read as follows:

21 (c) The board shall include in the report information
22 regarding any investigations that remain pending after one year,
23 including the reasons the investigations remain pending.

24 SECTION 6. Subsection (a), Section 154.002, Occupations
25 Code, is amended to read as follows:

- 26 (a) The board shall prepare:
27 (1) an alphabetical list of the names of the license

1 holders;

2 (2) an alphabetical list of the names of the license
3 holders by the county in which the license holder's principal place
4 of practice is located;

5 (3) a summary of the board's functions;

6 (4) a copy of this subtitle and a list of other laws
7 relating to the practice of medicine;

8 (5) a copy of the board's rules; ~~and~~

9 (6) a statistical report each fiscal year to the
10 legislature and the public that provides aggregate information
11 about all complaints received by the board categorized by type of
12 complaint, including administrative, quality of care, medical
13 error, substance abuse, other criminal behavior, and the
14 disposition of those complaints by category; and

15 (7) other information considered appropriate by the
16 board.

17 SECTION 7. Subsection (b), Section 154.006, Occupations
18 Code, is amended to read as follows:

19 (b) A profile must contain the following information on each
20 physician:

21 (1) the name of each medical school attended and the
22 dates of:

23 (A) graduation; or

24 (B) Fifth Pathway designation and completion of
25 the Fifth Pathway Program;

26 (2) a description of all graduate medical education in
27 the United States or Canada;

1 (3) any specialty certification held by the physician
2 and issued by a medical licensing board that is a member of the
3 American Board of Medical Specialties or the Bureau of Osteopathic
4 Specialists;

5 (4) the number of years the physician has actively
6 practiced medicine in:

7 (A) the United States or Canada; and

8 (B) this state;

9 (5) the name of each hospital in this state in which
10 the physician has privileges;

11 (6) the physician's primary practice location;

12 (7) the type of language translating services,
13 including translating services for a person with impairment of
14 hearing, that the physician provides at the physician's primary
15 practice location;

16 (8) whether the physician participates in the Medicaid
17 program;

18 (9) a description of any conviction for a felony, a
19 Class A or Class B misdemeanor, or a Class C misdemeanor involving
20 moral turpitude during the 10-year period preceding the date of the
21 profile;

22 (10) a description of any charges reported to the
23 board during the 10-year period preceding the date of the profile to
24 which the physician has pleaded no contest, for which the physician
25 is the subject of deferred adjudication or pretrial diversion, or
26 in which sufficient facts of guilt were found and the matter was
27 continued by a court;

1 (11) a description of any disciplinary action against
2 the physician by the board during the 10-year period preceding the
3 date of the profile;

4 (12) a description of any disciplinary action against
5 the physician by a medical licensing board of another state during
6 the 10-year period preceding the date of the profile;

7 (13) a description of the final resolution taken by
8 the board on medical malpractice claims or complaints required to
9 be opened by the board under Section 164.201;

10 (14) whether the physician's patient service areas are
11 accessible to disabled persons, as defined by federal law; ~~and~~

12 (15) a description of any formal complaint against the
13 physician initiated and filed under Section 164.005 and the status
14 of the complaint; and

15 (16) a description of any medical malpractice claim
16 against the physician, not including a description of any offers by
17 the physician to settle the claim, for which the physician was found
18 liable, a jury awarded monetary damages to the claimant, and any
19 such award was determined to be final, and not subject to further
20 appeal.

21 SECTION 8. Section 154.054, Occupations Code, is amended to
22 read as follows:

23 Sec. 154.054. COMPLAINT INFORMATION TO HEALTH CARE ENTITY.
24 On written request, the board shall provide information to a health
25 care entity regarding:

26 (1) a complaint filed against a license holder that
27 was resolved after investigation by:

1 (A) a disciplinary order of the board; or

2 (B) an agreed settlement; and

3 (2) the basis of and current status of any complaint
4 under active investigation that has been assigned by the executive
5 director to a person authorized by the board to pursue legal action.

6 SECTION 9. Section 154.056, Occupations Code, is amended by
7 amending Subsection (a) and adding Subsections (e) and (f) to read
8 as follows:

9 (a) The board shall adopt rules concerning the
10 investigation and review of a complaint filed with the board. The
11 rules adopted under this section must:

12 (1) distinguish among categories of complaints and
13 give priority to complaints that involve sexual misconduct, quality
14 of care, and impaired physician issues;

15 (2) ensure that a complaint is not dismissed without
16 appropriate consideration;

17 (3) require that the board be advised of the dismissal
18 of a complaint and that a letter be sent to the person who filed the
19 complaint and to the physician who was the subject of the complaint
20 explaining the action taken on the complaint;

21 (4) ensure that a person who files a complaint has an
22 opportunity to explain the allegations made in the complaint; ~~and~~

23 (5) prescribe guidelines concerning the categories of
24 complaints that require the use of a private investigator and the
25 procedures for the board to obtain the services of a private
26 investigator;

27 (6) provide for an expert physician panel authorized

1 under Subsection (e) to assist with complaints and investigations
2 relating to medical competency; and

3 (7) require review of reports filed with the National
4 Practitioner Data Bank for any reports of termination, limitation,
5 suspension, limitations in scope of practice and/or probation of
6 clinical or hospital staff privileges of a physician by any
7 hospital, health maintenance organization, Independent Physician
8 Association, Section 5.01(a) organization, or physician network.

9 (e) The board by rule shall provide for an expert physician
10 panel appointed by the board to assist with complaints and
11 investigations relating to medical competency. Each member of an
12 expert physician panel must be licensed to practice medicine in
13 this state. The rules adopted under this subsection must include
14 provisions governing the composition of the panel, qualifications
15 for membership on the panel, and the duties to be performed by the
16 panel.

17 (f) In the board rules adopted under Subsection (a)(3), the
18 board shall require that the letter informing the person who filed
19 the complaint of the dismissal of the complaint include an
20 explanation of the reason the complaint was dismissed.

21 SECTION 10. Section 154.058, Occupations Code, is amended
22 to read as follows:

23 Sec. 154.058. DETERMINATION OF MEDICAL COMPETENCY.

24 (a) Each complaint against a physician that requires a
25 determination of medical competency shall be reviewed initially by
26 a board member, consultant, or employee with a medical background
27 considered sufficient by the board.

1 (b) If the initial review under Subsection (a) indicates
2 that an act by a physician falls below an acceptable standard of
3 care, the complaint shall be reviewed by an expert physician panel
4 authorized under Section 154.056(e) consisting of physicians who
5 practice in the same specialty as the physician who is the subject
6 of the complaint or in another specialty that is similar to the
7 physician's specialty.

8 (c) The expert physician panel shall report in writing the
9 panel's determinations based on the review of the complaint under
10 Subsection (b). The report must specify the standard of care that
11 applies to the facts that are the basis of the complaint and the
12 clinical basis for the panel's determinations, including any
13 reliance on peer-reviewed journals, studies, or reports.

14 SECTION 11. The heading to Chapter 156, Occupations Code,
15 is amended to read as follows:

16 CHAPTER 156. REGISTRATION OF PHYSICIANS [~~LICENSE RENEWAL~~]

17 SECTION 12. Section 156.001, Occupations Code, is amended
18 to read as follows:

19 Sec. 156.001. [~~ANNUAL~~] REGISTRATION REQUIREMENTS AND
20 PROCEDURES [~~REQUIRED, REGISTRATION PROCEDURE~~]. (a) Each person
21 licensed to practice medicine in this state must register with the
22 board every two years [~~annually~~]. The initial [~~annual~~]
23 registration permit shall be issued with the license and expires on
24 the last day of the birth month of the license holder.

25 (b) Except as provided by Section 156.002, the application
26 for registration must be accompanied by a [~~an annual~~]
27 permit fee in an amount set by the board regardless of whether the

1 person is practicing medicine in this state.

2 (c) A license holder may renew the ~~[annual]~~ registration
3 permit by submitting to the board, on or before the expiration date
4 of the ~~[annual]~~ registration permit, the required renewal
5 application and registration renewal fee. Each ~~[annual]~~
6 registration permit renewal application must include:

7 (1) the license holder's name, ~~[and]~~ mailing address,
8 and, if one is available, address for receipt of electronic mail;

9 (2) the primary place ~~[or places]~~ at which the license
10 holder is engaged in the practice of medicine; and

11 (3) other necessary information as prescribed by ~~[the]~~
12 board rule.

13 (d) If the license holder ~~[person]~~ is licensed to practice
14 medicine by another state or country or by the uniformed services of
15 the United States, the registration renewal application must
16 include a description of any investigation the license holder
17 ~~[person]~~ knows is in progress and any sanction imposed by or
18 disciplinary matter pending in the state, country, or service
19 regarding the license holder ~~[person]~~.

20 SECTION 13. Section 156.002, Occupations Code, is amended
21 to read as follows:

22 Sec. 156.002. EXEMPTION FOR CERTAIN PHYSICIANS. (a) The
23 board by rule may exempt a retired physician from the ~~[annual]~~
24 registration permit fee requirement.

25 (b) A physician licensed by the board whose only practice is
26 voluntary charity care, as defined by board rule, is exempt from the
27 ~~[annual]~~ registration permit fee requirement.

1 SECTION 14. Section 156.003, Occupations Code, is amended
2 to read as follows:

3 Sec. 156.003. STAGGERED RENEWAL SYSTEM. (a) The board by
4 rule may adopt a system under which [~~annual~~] registration permits
5 expire on various dates during the two-year registration period
6 [~~year~~].

7 (b) For the registration period [~~year~~] in which the
8 expiration date is changed, [~~annual~~] registration permit fees shall
9 be prorated. On renewal of the registration on the new expiration
10 date, the total [~~annual~~] registration permit fee is payable.

11 SECTION 15. Section 156.004, Occupations Code, is amended
12 to read as follows:

13 Sec. 156.004. NOTICE OF EXPIRATION. The board shall send a
14 [~~mail an annual~~] registration permit renewal application notice to
15 each physician at the physician's last known address according to
16 the board's records at least 30 days before the expiration date of
17 the [~~annual~~] registration permit. The board shall provide for a
18 30-day grace period for renewing the [~~annual~~] registration permit
19 from the date of the expiration of the permit.

20 SECTION 16. Section 156.005, Occupations Code, is amended
21 to read as follows:

22 Sec. 156.005. RENEWAL OF CERTAIN REGISTRATION PERMITS.
23 (a) If a person's [~~annual~~] registration permit has been expired
24 for 90 days or less, the person may renew the permit by submitting
25 to the board the required registration renewal application, the
26 registration renewal fee, and a \$75 [~~\$50~~] penalty fee.

27 (b) If the person's [~~annual~~] registration permit has been

1 expired for longer than 90 days but less than one year, the person
2 may renew the permit by submitting to the board the required
3 registration renewal application, the registration renewal fee,
4 and a \$150 [~~\$100~~] penalty fee.

5 (c) If the person's [~~annual~~] registration permit has been
6 expired for one year or longer, the person's license is
7 automatically [~~considered to have been~~] canceled, unless an
8 investigation is pending, and the person may not renew the [~~annual~~]
9 registration permit.

10 (d) A physician whose license is automatically [~~considered~~]
11 canceled may obtain a new license by [~~submitting to reexamination~~
12 ~~and~~] complying with the requirements, fees, and procedures for
13 obtaining a new license. The board may issue a new license without
14 examination to a person whose license is automatically [~~considered~~]
15 canceled for less than two years.

16 SECTION 17. Section 156.007, Occupations Code, is amended
17 to read as follows:

18 Sec. 156.007. ISSUANCE OF [~~ANNUAL~~] REGISTRATION PERMIT.

19 (a) On receipt of a registration renewal application and all
20 required fees, the board, after ascertaining from the records of
21 the board or from other sources considered reliable by the board
22 that the applicant is a physician in this state and meets all other
23 requirements for registration, shall issue to the applicant a [~~an~~
24 ~~annual~~] registration permit certifying that the applicant has filed
25 the application, has paid the [~~annual~~] registration permit fee for
26 the registration period [~~year~~], and has completed the requirements
27 for [~~annual~~] registration.

1 (b) The filing of the registration renewal application, the
2 payment of the required fees, and the issuance of the permit do
3 ~~[does]~~ not entitle the permit holder to practice medicine in this
4 state unless:

5 (1) the permit holder has been previously licensed as
6 a physician by the board, as prescribed by law; ~~[and]~~

7 (2) the license to practice medicine is in effect;

8 (3) the permit holder has met the continuing medical
9 education requirements; and

10 (4) the permit holder has submitted a current complete
11 physician profile.

12 SECTION 18. Section 156.008, Occupations Code, is amended
13 to read as follows:

14 Sec. 156.008. PRACTICING MEDICINE WITHOUT ~~[ANNUAL]~~
15 REGISTRATION PROHIBITED. (a) Practicing medicine after the
16 expiration of the 30-day grace period under Section 156.004
17 following expiration of a ~~[an annual]~~ registration permit that has
18 not been renewed for the current registration period ~~[year]~~ as
19 provided by this subchapter has the same effect as, and is subject
20 to all penalties of, practicing medicine without a license.

21 (b) In a prosecution for the unlawful practice of medicine,
22 the receipt showing payment of the ~~[annual]~~ registration fee
23 required by this chapter does not constitute evidence that the
24 receipt holder is lawfully entitled to practice medicine.

25 SECTION 19. Section 156.009, Occupations Code, is amended
26 to read as follows:

27 Sec. 156.009. INACTIVE STATUS. The board may adopt rules

1 and set reasonable fees relating to placing license holders on
2 inactive status. [~~The board by rule shall set a time limit for the~~
3 ~~period during which a license holder may remain on inactive~~
4 ~~status.~~]

5 SECTION 20. Subsections (a) and (d), Section 156.051,
6 Occupations Code, are amended to read as follows:

7 (a) The board by rule shall adopt, monitor, and enforce a
8 reporting program for the continuing medical education of license
9 holders. The board shall adopt and administer rules that:

10 (1) establish the number of hours of continuing
11 medical education the board determines appropriate as a
12 prerequisite to the [~~annual~~] registration of a license under this
13 subtitle;

14 (2) require at least one-half of the hours of
15 continuing medical education established under Subdivision (1) to
16 be board approved; and

17 (3) adopt a process to assess a license holder's
18 participation in continuing medical education courses.

19 (d) This section does not apply to a license holder who is
20 [~~retired and is~~] exempt by rule from paying the [~~annual~~]
21 registration fee under Section 156.002(a).

22 SECTION 21. Section 156.052, Occupations Code, is amended
23 to read as follows:

24 Sec. 156.052. PRESUMPTION OF COMPLIANCE FOR CERTAIN LICENSE
25 HOLDERS. A license holder is presumed to be in compliance with the
26 requirements of this subchapter if, during the 36 months preceding
27 the date of the required [~~annual~~] registration, the license holder

1 becomes board certified or recertified by [~~in~~] a [~~medical~~]
2 specialty board approved by [~~and that medical specialty program~~
3 ~~considers the standards of:~~

- 4 [~~(1)~~] the American Board of Medical Specialties[~~+~~
5 [~~(2)~~] ~~the American Medical Association,~~
6 [~~(3)~~] ~~the Advisory Board for Osteopathic Specialists~~
7 ~~and Boards of Certification,~~] or
8 [~~(4)~~] the American Osteopathic Association Bureau of
9 Osteopathic Specialists.

10 SECTION 22. Section 156.053, Occupations Code, is amended
11 to read as follows:

12 Sec. 156.053. TEMPORARY EXEMPTION. (a) The board may
13 temporarily exempt a license holder from the continuing medical
14 education requirement on the basis of [~~for~~]:

- 15 (1) catastrophic illness;
16 (2) military service outside this state for longer
17 than one year;
18 (3) medical practice and residence outside the United
19 States for longer than one year; or
20 (4) good cause shown on the written application of the
21 license holder that provides evidence satisfactory to the board
22 that the license holder is unable to comply with the requirement.

23 (b) A temporary exemption granted under Subsection (a) may
24 not exceed one year but may be renewed [~~annually~~].

25 SECTION 23. Subsection (a), Section 160.052, Occupations
26 Code, is amended to read as follows:

27 (a) Each insurer shall submit to the board the report or

1 other information described by Section 160.053 at the time
2 prescribed. The insurer shall provide the report or information
3 with respect to:

4 (1) a [~~notice of claim letter or~~] complaint filed
5 against an insured in a court, if the [~~notice of claim letter or~~]
6 complaint seeks damages relating to the insured's conduct in
7 providing or failing to provide a medical or health care service;
8 and

9 (2) settlement of a claim without the filing of a
10 lawsuit or settlement of a lawsuit made on behalf of the insured
11 involving damages relating to the insured's conduct in providing or
12 failing to provide a medical or health care service.

13 SECTION 24. Section 160.053, Occupations Code, is amended
14 to read as follows:

15 Sec. 160.053. CONTENTS OF REPORTS; ADDITIONAL INFORMATION.

16 (a) Not later than the 30th day after the date an insurer receives
17 from an insured a [~~notice of claim letter or~~] complaint filed in a
18 lawsuit, the date of a settlement of a claim without the filing of a
19 lawsuit, or the date of a settlement of a lawsuit against the [~~from~~
20 an] insured, the insurer shall furnish to the board:

21 (1) the name of the insured and the insured's Texas
22 medical license number;

23 (2) the policy number; [~~and~~]

24 (3) a copy of the [~~notice of claim letter or~~] complaint
25 or settlement; and

26 (4) a copy of any expert report filed pursuant to
27 Section 13.01, Medical Liability and Insurance Improvement Act of

1 Texas (Article 4590i, Vernon's Texas Civil Statutes).

2 (b) The board, in consultation with the commissioner, shall
3 adopt rules for reporting additional information as the board
4 requires. In adopting the rules, the board shall consider other
5 claim reports required under state and federal statutes in
6 determining the information to be reported, form of the report, and
7 frequency of reporting. Additional information which the board
8 shall require must [~~requires may~~] include:

- 9 (1) the date of a judgment, dismissal, or settlement;
10 (2) whether an appeal has been taken and by which
11 party; and
12 (3) the amount of the settlement or judgment against
13 the insured.

14 SECTION 25. Subsection (a), Section 162.104, Occupations
15 Code, is amended to read as follows:

16 (a) The board shall require each physician who administers
17 anesthesia or performs a surgical procedure for which anesthesia
18 services are provided in an outpatient setting to [~~annually~~]
19 register with the board on a form prescribed by the board and to pay
20 a fee to the board in an amount established by the board.

21 SECTION 26. Section 164.001, Occupations Code, is amended
22 by adding Subsections (f) through (i) to read as follows:

23 (f) The board by rule shall adopt a schedule of the
24 disciplinary sanctions that the board may impose under this
25 subchapter. In adopting the schedule of sanctions, the board shall
26 ensure that the severity of the sanction imposed is appropriate to
27 the type of violation or conduct that is the basis for disciplinary

1 action.

2 (g) In determining the appropriate disciplinary action,
3 including the amount of any administrative penalty to assess, the
4 board shall consider whether the person:

5 (1) is being disciplined for multiple violations of
6 this subtitle or a rule or order adopted under this subtitle; or

7 (2) has previously been the subject of disciplinary
8 action by the board.

9 (h) In the case of a person described by:

10 (1) Subsection (g)(1), the board shall consider taking
11 a more severe disciplinary action, including revocation of the
12 person's license, than the disciplinary action that would be taken
13 for a single violation; and

14 (2) Subsection (g)(2), the board shall consider
15 revoking the person's license if the person has repeatedly been the
16 subject of disciplinary action by the board.

17 (i) If the board chooses not to revoke the license of a
18 person described by Subsection (g)(2), the board shall consider
19 taking a more severe disciplinary action than the disciplinary
20 action previously taken.

21 SECTION 27. Section 164.003, Occupations Code, is amended
22 by amending Subsections (b) and (c) and adding Subsections (e),
23 (f), and (g) to read as follows:

24 (b) Rules adopted under this section must require that:

25 (1) an informal meeting in compliance with Section
26 2001.054, Government Code, be scheduled not later than the 180th
27 day after the date the complaint is filed with the board under

1 Section 154.051, unless good cause is shown by the board for
2 scheduling the informal meeting after that date;

3 (2) the board give notice to the license holder of the
4 time and place of the meeting not later than the 30th day before the
5 date the meeting is held;

6 (3) the complainant and the license holder be provided
7 an opportunity to be heard;

8 (4) [~~(2)~~] the board's legal counsel or a
9 representative of the attorney general be present to advise the
10 board or the board's staff; and

11 (5) [~~(3)~~] a member of the board's staff at the meeting
12 present to the board's representative the facts the staff
13 reasonably believes it could prove by competent evidence or
14 qualified witnesses at a hearing.

15 (c) An affected physician is entitled to:

16 (1) reply to the staff's presentation; [~~and~~]

17 (2) present the facts the physician reasonably
18 believes the physician could prove by competent evidence or
19 qualified witnesses at a hearing;

20 (3) be present in person or through an attorney at the
21 entire meeting with the board's representative, except for
22 deliberations as to the disposition of the complaint;

23 (4) receive, at least 10 days before the date of the
24 meeting, a complete copy of any information, including reports,
25 summaries, and clinical records provided to the board's
26 representative by the board's staff; and

27 (5) if applicable, a statement and explanation of the

1 standard of care the physician is alleged to have violated,
2 including the final report of the expert physician panel used by the
3 board to establish the existence of the alleged violation.

4 (e) For purposes of Subsections (c)(4) and (c)(5), the
5 information provided by the board to the physician must include the
6 facts of the case, as presented to the board, and the final expert
7 physician panel report. The board is not required under those
8 subsections to provide the following information:

9 (1) a board investigative report or memorandum;

10 (2) the identity of a nontestifying complainant; or

11 (3) attorney-client communications, attorney work
12 product, or other materials covered by a privilege recognized by
13 the Texas Rules of Civil Procedure or the Texas Rules of Evidence.

14 (f) Any information obtained or compiled by the board under
15 this section that is subject to the confidentiality protections of
16 Section 161.032, Health and Safety Code, or Section 160.007 of this
17 code is confidential and may not be disclosed by the board.

18 (g) If the license holder has previously been the subject of
19 disciplinary action by the board, the board shall schedule the
20 informal meeting as soon as practicable but not later than the
21 deadline prescribed by Subsection (b)(1).

22 SECTION 28. Subchapter A, Chapter 164, Occupations Code, is
23 amended by adding Section 164.0035 to read as follows:

24 Sec. 164.0035. DISMISSAL OF BASELESS COMPLAINT. If, during
25 the 180-day period prescribed by Section 164.003(b)(1), the board
26 determines that the complaint is a baseless or unfounded complaint,
27 the board shall dismiss the complaint and include a statement in the

1 records of the complaint that the reason for the dismissal is
2 because the complaint was baseless or unfounded.

3 SECTION 29. Section 164.004, Occupations Code, is amended
4 by amending Subsection (a) and adding Subsections (c) and (d) to
5 read as follows:

6 (a) Except in the case of a suspension under Section 164.059
7 or under the terms of an agreement between the board and a license
8 holder, a revocation, suspension, involuntary modification, or
9 other disciplinary action relating to a license is not effective
10 unless, before board proceedings are instituted:

11 (1) the board gives notice, in a manner consistent
12 with the notice requirements under Section 154.053, to the affected
13 license holder of the facts or conduct alleged to warrant the
14 intended action, including, if appropriate, a statement and
15 explanation of the standard of care allegedly violated by the
16 license holder; ~~and~~

17 (2) the license holder is provided with a complete
18 copy of any information, including reports, summaries, and clinical
19 records provided to the board's representative by the board's
20 staff; and

21 (3) the license holder is given an opportunity to show
22 compliance with all requirements of law for the retention of the
23 license, at the license holder's option, either in writing or
24 through personal appearance at an informal meeting with one or more
25 representatives of the board.

26 (c) For purposes of Subsection (a), the information
27 provided by the board to the physician must include the facts of the

1 case, as presented to the board, and the final expert physician
2 panel report. The board is not required under that subsection to
3 provide the following information:

- 4 (1) a board investigative report or memorandum;
5 (2) the identity of a nontestifying complainant; or
6 (3) attorney-client communications, attorney work
7 product, or other materials covered by a privilege recognized by
8 the Texas Rules of Civil Procedure or the Texas Rules of Evidence.

9 (d) Any information obtained or compiled by the board under
10 this section that is subject to the confidentiality protections of
11 Section 161.032, Health and Safety Code, or Section 160.007 of this
12 code is confidential and may not be disclosed by the board.

13 SECTION 30. Subsection (a), Section 164.005, Occupations
14 Code, is amended to read as follows:

15 (a) In this section, "formal complaint" means a written
16 statement made by a credible person under oath that is filed and
17 presented by a board representative charging a person with having
18 committed an act that, if proven, could affect the legal rights or
19 privileges of a license holder or other person under the board's
20 jurisdiction. An investigation shall be initiated by a board
21 representative:

22 (1) upon receipt by the board of three expert reports
23 filed pursuant to Section 13.01, Medical Liability and Insurance
24 Improvement Act of Texas (Article 4590i, Vernon's Texas Civil
25 Statutes), detailing acts or failures to act falling below an
26 acceptable standard of care; or

27 (2) if a majority of panel members in Section

1 154.056(a)(6) find that an act or omission by a physician fell below
2 an acceptable standard of care.

3 SECTION 31. Section 164.010, Occupations Code, is amended
4 by adding Subsection (c) to read as follows:

5 (c) The board shall immediately investigate:

6 (1) a violation of a disciplinary order by a license
7 holder described by Subsection (a); or

8 (2) a complaint filed against a license holder
9 described by Subsection (a).

10 SECTION 32. Subsection (c), Section 164.011, Occupations
11 Code, is amended to read as follows:

12 (c) A stay or injunction may not be granted if the license
13 holder's continued practice presents a danger to the public. A stay
14 or injunction may not be granted for a term that exceeds 120 days.

15 SECTION 33. Section 164.051, Occupations Code, is amended
16 by amending Subsections (a) and (c) and adding Subsection (d) to
17 read as follows:

18 (a) The board may refuse to admit a person to its
19 examination or refuse to issue a license to practice medicine and
20 may take disciplinary action against a person if the person:

21 (1) commits an act prohibited under Section 164.052;

22 (2) is convicted of, or is placed on deferred
23 adjudication community supervision or deferred disposition for:

24 (A) a felony; or

25 (B) a misdemeanor involving moral turpitude;

26 (3) commits or attempts to commit a direct or indirect
27 violation of a rule adopted under this subtitle, either as a

1 principal, accessory, or accomplice;

2 (4) is unable to practice medicine with reasonable
3 skill and safety to patients because of:

4 (A) illness;

5 (B) drunkenness;

6 (C) excessive use of drugs, narcotics,
7 chemicals, or another substance; or

8 (D) a mental or physical condition;

9 (5) is found by a court judgment to be of unsound mind;

10 (6) fails to practice medicine in an acceptable
11 professional manner consistent with public health and welfare;

12 (7) is removed, suspended, or is subject to
13 disciplinary action taken by the person's peers in a local,
14 regional, state, or national professional medical association or
15 society, or is disciplined by a licensed hospital or medical staff
16 of a hospital, including removal, suspension, limitation of
17 hospital privileges, or other disciplinary action, if the board
18 finds that the action:

19 (A) was based on unprofessional conduct or
20 professional incompetence that was likely to harm the public; and

21 (B) was appropriate and reasonably supported by
22 evidence submitted to the board;

23 (8) is subject to repeated or recurring meritorious
24 health care liability claims that in the board's opinion evidence
25 professional incompetence likely to injure the public; or

26 (9) except as provided by Subsection (d), holds a
27 license to practice medicine subject to disciplinary action by

1 another state, or subject to disciplinary action by the uniformed
2 services of the United States, based on acts by the person that are
3 prohibited under Section 164.052 or are similar to acts described
4 by this subsection.

5 (c) A certified copy of the record of another state that
6 takes action described by Subsection (a)(9) or (d) is conclusive
7 evidence of that action.

8 (d) The board shall revoke a license issued under this
9 subtitle if the license holder held a license to practice medicine
10 in another state that has been revoked by the licensing authority in
11 that state.

12 SECTION 34. Subsection (a), Section 164.053, Occupations
13 Code, is amended to read as follows:

14 (a) For purposes of Section 164.052(a)(5), unprofessional
15 or dishonorable conduct likely to deceive or defraud the public
16 includes conduct in which a physician:

17 (1) commits an act that violates any ~~[the laws of this]~~
18 state or federal law if the act is connected with the physician's
19 practice of medicine;

20 (2) fails to keep complete and accurate records of
21 purchases and disposals of:

22 (A) drugs listed in Chapter 481, Health and
23 Safety Code; or

24 (B) controlled substances scheduled in the
25 Comprehensive Drug Abuse Prevention and Control Act of 1970 (21
26 U.S.C. Section 801 et seq.);

27 (3) writes prescriptions for or dispenses to a person

1 who:

2 (A) is known to be an abuser of narcotic drugs,
3 controlled substances, or dangerous drugs; or

4 (B) the physician should have known was an abuser
5 of narcotic drugs, controlled substances, or dangerous drugs;

6 (4) writes false or fictitious prescriptions for:

7 (A) dangerous drugs as defined by Chapter 483,
8 Health and Safety Code; or

9 (B) controlled substances scheduled in Chapter
10 481, Health and Safety Code, or the Comprehensive Drug Abuse
11 Prevention and Control Act of 1970 (21 U.S.C. Section 801 et seq.);

12 (5) prescribes or administers a drug or treatment that
13 is nontherapeutic in nature or nontherapeutic in the manner the
14 drug or treatment is administered or prescribed;

15 (6) prescribes, administers, or dispenses in a manner
16 inconsistent with public health and welfare:

17 (A) dangerous drugs as defined by Chapter 483,
18 Health and Safety Code; or

19 (B) controlled substances scheduled in Chapter
20 481, Health and Safety Code, or the Comprehensive Drug Abuse
21 Prevention and Control Act of 1970 (21 U.S.C. Section 801 et seq.);

22 (7) violates Section 311.0025, Health and Safety Code;

23 (8) fails to supervise adequately the activities of
24 those acting under the supervision of the physician; or

25 (9) delegates professional medical responsibility or
26 acts to a person if the delegating physician knows or has reason to
27 know that the person is not qualified by training, experience, or

1 licensure to perform the responsibility or acts.

2 SECTION 35. Section 164.059, Occupations Code, is amended
3 to read as follows:

4 Sec. 164.059. TEMPORARY SUSPENSION OR RESTRICTION OF
5 LICENSE. (a) The president of the board [~~, with board approval,~~]
6 shall appoint a three-member disciplinary panel consisting of board
7 members to determine whether a person's license to practice
8 medicine should be temporarily suspended or restricted.

9 (b) If the disciplinary panel determines from the evidence
10 [~~or information~~] presented to the panel that a person licensed to
11 practice medicine would, by the person's continuation in practice,
12 constitute a continuing threat to the public welfare, the
13 disciplinary panel shall temporarily suspend or restrict the
14 license of that person.

15 (c) A license may be suspended or restricted by a
16 disciplinary panel under this section without notice or hearing [~~on~~
17 ~~the complaint~~] if:

18 (1) the board immediately provides notice of the
19 suspension or restriction to the license holder; and

20 (2) [~~institution of proceedings for~~] a hearing on the
21 temporary suspension or restriction before a disciplinary panel of
22 the board is scheduled for the earliest possible date after 10 days'
23 notice of hearing [~~initiated simultaneously with the temporary~~
24 ~~suspension; and~~

25 [~~(2) a hearing is held under Chapter 2001, Government~~
26 ~~Code, and this subtitle as soon as possible~~].

27 (d) Notwithstanding Chapter 551, Government Code, the

1 disciplinary panel may hold a meeting by telephone conference call
2 if immediate action is required and convening of the panel at one
3 location is inconvenient for any member of the disciplinary panel.

4 (e) After the hearing before the disciplinary panel
5 described by Subsection (c), if the disciplinary panel affirms the
6 temporary suspension or restriction of the license holder's
7 license, the board shall schedule an informal compliance meeting
8 that meets the requirements of Section 2001.054(c), Government
9 Code, and Section 164.004 of this code to be held as soon as
10 practicable, unless the license holder waives the informal meeting
11 or an informal meeting has already been held with regard to the
12 issues that are the basis for the temporary suspension or
13 restriction.

14 (f) If the license holder is unable to show compliance at
15 the informal meeting described by Subsection (e) regarding the
16 issues that are the basis for the temporary suspension or
17 restriction, a board representative shall file a formal complaint
18 under Section 164.005 as soon as practicable.

19 (g) If, after the hearing described by Subsection (c), the
20 disciplinary panel does not temporarily suspend or restrict the
21 license holder's license, the facts that were the basis for the
22 temporary suspension or restriction may not be the sole basis of
23 another proceeding to temporarily suspend or restrict the license
24 holder's license. The board may use those same facts in a
25 subsequent investigation to obtain new information that may be the
26 basis for the temporary suspension or restriction of the license
27 holder's license. For purposes of this subsection, facts that are

1 the basis for the temporary suspension or restriction of a license
2 holder's license include facts presented to the disciplinary panel
3 and facts presented by the board or a representative of the board at
4 the time evidence was presented to the disciplinary panel.

5 SECTION 36. Subsection (c), Section 164.060, Occupations
6 Code, is amended to read as follows:

7 (c) If the board, during its review of a complaint against a
8 physician, discovers an act or omission that may constitute a
9 felony, a misdemeanor involving moral turpitude, a violation of
10 state or federal narcotics or controlled substance laws, ~~[or]~~ an
11 offense involving fraud or abuse under the Medicare or Medicaid
12 programs, or a violation of the workers' compensation laws under
13 Subtitle A, Title 5, Labor Code, the board shall immediately report
14 that act or omission to the appropriate prosecuting and regulatory
15 authorities ~~[authority]~~.

16 SECTION 37. Section 164.201, Occupations Code, is amended
17 to read as follows:

18 Sec. 164.201. REVIEW BY BOARD IF THREE OR MORE MALPRACTICE
19 CLAIMS. The board shall review the medical competency of
20 ~~[information relating to]~~ a physician against whom three or more
21 expert reports under Section 13.01, Medical Liability and Insurance
22 Improvement Act of Texas (Article 4590i, Vernon's Texas Civil
23 Statutes), have been filed in three separate lawsuits ~~[malpractice~~
24 ~~claims have been reported under Subchapter B, Chapter 154]~~, within
25 a five-year period in the same manner as if a complaint against the
26 physician had been made to the board under Section 154.051.

27 SECTION 38. (a) This Act takes effect immediately if it

1 receives a vote of two-thirds of all the members elected to each
2 house, as provided by Section 39, Article III, Texas Constitution.
3 If this Act does not receive the vote necessary for immediate
4 effect, this Act takes effect September 1, 2003.

5 (b) The Texas State Board of Medical Examiners shall adopt
6 rules as required by Subsection (f), Section 164.001, Occupations
7 Code, as added by this Act, not later than January 1, 2004.

8 (c) The change in law made by this Act by the amendment of
9 Section 164.051, Occupations Code, applies to a physician whose
10 license to practice medicine in another state was revoked on,
11 before, or after the effective date of this Act.

12 SECTION 39. (a) The changes in law made by this Act
13 relating to the biennial registration of physicians apply to a
14 person who files with the Texas State Board of Medical Examiners an
15 application for registration under Chapter 156, Occupations Code,
16 as amended by this Act, on or after January 1, 2004. A person who
17 files an application before that date is governed by the law in
18 effect on the date the application was filed, and the former law is
19 continued in effect for that purpose.

20 (b) The Texas State Board of Medical Examiners may adopt a
21 staggered registration system as provided by Section 156.003,
22 Occupations Code, as amended by this Act, on or after September 1,
23 2004.

24 (c) The Texas State Board of Medical Examiners shall adopt
25 the rules required by Chapter 156, Occupations Code, as amended by
26 this Act, not later than December 1, 2003.

27 SECTION 40. The change in law made by this Act by the

1 enactment of Section 153.0535, Occupations Code, applies to a
2 registration permit fee that becomes due on or after January 1,
3 2004. A registration permit fee that becomes due before that date
4 is governed by the law in effect on the date the fee became due, and
5 the former law is continued in effect for that purpose.

6 SECTION 41. Subsection (a), Section 160.052, and Subsection
7 (a), Section 160.053, Occupations Code, as amended by this Act,
8 apply only to a settlement entered into on or after the effective
9 date of this Act. A settlement entered into before the effective
10 date of this Act is governed by the law as it existed on the date the
11 settlement was entered into, and that law is continued in effect for
12 that purpose.

13 SECTION 42. The change in law made by this Act relating to
14 the investigation and disposition of a complaint and any proceeding
15 begun as a result of a complaint investigation applies only to a
16 complaint filed with the Texas State Board of Medical Examiners on
17 or after the effective date of this Act. A complaint filed before
18 the effective date of this Act is governed by the law in effect on
19 the date the complaint was made, and the former law is continued in
20 effect for that purpose.