

By: Janek

S.B. No. 248

A BILL TO BE ENTITLED

AN ACT

relating to the composition and functions of the Texas State Board of Medical Examiners.

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

SECTION 1. Section 152.002(a), Occupations Code, is amended to read as follows:

(a) The board consists of 21 [~~18~~] members appointed by the governor with the advice and consent of the senate as follows:

(1) thirteen [~~twelve~~] members who are learned and eminent physicians licensed in this state for at least three years before the appointment, ten [~~nine~~] of whom must be graduates of a reputable medical school or college with a degree of doctor of medicine (M.D.) and three of whom must be graduates of a reputable medical school or college with a degree of doctor of osteopathic medicine (D.O.); and

(2) eight [~~six~~] members who represent the public.

SECTION 2. Section 153.013, Occupations Code, is amended to read as follows:

Sec. 153.013. REPRESENTATION BY ATTORNEY GENERAL. (a) The board shall be represented by the attorney general in:

(1) formal contested case hearings under Section 164.007; and

(2) court proceedings [~~by the attorney general~~].

(b) A representative of the attorney general shall advise

1 the board's staff in informal proceedings under Section 164.003.

2 SECTION 3. Subchapter B, Chapter 153, Occupations Code, is  
3 amended by adding Section 153.0535 to read as follows:

4 Sec. 153.0535. SURCHARGE FOR ANNUAL REGISTRATION PERMIT.

5 (a) The board shall collect an additional \$15 surcharge for each of  
6 the following fees:

7 (1) first annual registration permit; and

8 (2) renewal of annual registration permit.

9 (b) The board shall deposit each surcharge collected to the  
10 credit of the public assurance account. The public assurance  
11 account is an account in the general revenue fund that may be  
12 appropriated only to the attorney general to pay the costs incurred  
13 by the attorney general in prosecuting complaints filed with the  
14 board.

15 SECTION 4. Section 153.055, Occupations Code, is amended by  
16 adding Subsection (a-1) to read as follows:

17 (a-1) The board shall include in the report information  
18 regarding the disposition of each complaint filed with the board  
19 during the preceding year, including the reason for dismissal of  
20 any case dismissed by the board.

21 SECTION 5. Section 155.007, Occupations Code, is amended by  
22 adding Subsection (c-1) to read as follows:

23 (c-1) If the committee schedules a conference with the  
24 applicant, the applicant may request a complete copy of the board's  
25 file relating to the application. The board shall provide the copy  
26 of the file not later than the fifth business day after the date the  
27 board receives the request. The board may charge a fee in an amount

1 reasonable and necessary to cover the costs of reproducing and  
2 mailing a copy of the file.

3 SECTION 6. Section 164.001, Occupations Code, is amended by  
4 adding Subsections (d-1)-(d-3) and amending Subsection (e) to read  
5 as follows:

6 (d-1) In determining the appropriate disciplinary action,  
7 including the amount of any administrative penalty to assess, the  
8 board shall consider whether the person:

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

11 (2) has previously been the subject of disciplinary  
12 action by the board.

13 (d-2) In the case of a person described by:

14 (1) Subsection (d-1)(1), the board shall consider  
15 taking a more severe disciplinary action, including revocation of  
16 the person's license, than the disciplinary action that would be  
17 taken for a single violation; and

18 (2) Subsection (d-1)(2), the board shall consider:

19 (A) taking a more severe disciplinary action,  
20 including revocation of the person's license, than the disciplinary  
21 action previously taken if the previous disciplinary action was  
22 taken in response to the commission of the same type of violation;  
23 or

24 (B) revoking the person's license if the person  
25 has repeatedly been the subject of disciplinary action by the  
26 board.

27 (d-3) If the board chooses not to revoke the license of a

1 person described by Subsection (d-2)(2)(B), the board in its  
2 disciplinary order shall explain the reason for not revoking the  
3 license.

4 (e) The provisions of this chapter governing sanctions  
5 imposed by the board apply to a [For any] sanction imposed under  
6 this chapter by the State Office of Administrative Hearings as the  
7 result of a hearing conducted by [the State Office of  
8 Administrative Hearings,] that office. In imposing a sanction,  
9 that office shall use the schedule of sanctions adopted by board  
10 rule.

11 SECTION 7. Section 164.003, Occupations Code, is amended by  
12 amending Subsection (b) and adding Subsections (b-1)-(b-3) to read  
13 as follows:

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

15 (1) an informal meeting in compliance with Section  
16 2001.054, Government Code, be scheduled not later than the 180th  
17 day after the date the complaint is filed with the board under  
18 Section 154.051;

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

22 (3) the complainant and the license holder be provided  
23 an opportunity to be heard;

24 (4) [+2] the board's legal counsel [or a  
25 representative of the attorney general] be present to advise the  
26 board;

27 (5) a representative of the attorney general be

1 present to advise [~~or~~] the board's staff; and

2 (6) [~~(3)~~] a member of the board's staff at the meeting  
3 present to the board's representative the facts the staff  
4 reasonably believes it could prove by competent evidence or  
5 qualified witnesses at a hearing.

6 (b-1) The license holder who is the subject of the complaint  
7 may request a complete copy of the board's investigation file  
8 relating to the complaint after the board gives notice of the  
9 informal meeting under Subsection (b)(2). The board shall provide  
10 the copy of the file not later than the fifth business day after the  
11 date the board receives the request. The board may charge a fee in  
12 an amount reasonable and necessary to cover the costs of  
13 reproducing and mailing a copy of the file.

14 (b-2) The license holder may request that the board grant a  
15 continuance of the informal meeting. The board may grant only one  
16 continuance without cause. The board may not grant another  
17 continuance unless the board determines that the license holder has  
18 shown good cause for the continuance. The first continuance  
19 granted extends the deadline for scheduling the informal meeting  
20 under Subsection (b)(1) by the period of the continuance, but a  
21 subsequent continuance granted does not extend that deadline.

22 (b-3) If the license holder has previously been the subject  
23 of disciplinary action by the board, the board shall schedule the  
24 informal meeting as soon as practicable but not later than the  
25 deadline prescribed by Subsection (b)(1). The license holder may  
26 request that the board grant a continuance of the informal meeting  
27 under this subsection. The board may grant only one continuance.

1 The board may not grant the continuance unless the board determines  
2 that the license holder has shown good cause for the continuance. A  
3 continuance granted under this subsection does not extend the  
4 deadline for scheduling the informal meeting under Subsection  
5 (b)(1).

6 SECTION 8. Subchapter A, Chapter 164, Occupations Code, is  
7 amended by adding Section 164.0035 to read as follows:

8 Sec. 164.0035. DEADLINE FOR INFORMAL DISPOSITION OR  
9 REFERRAL FOR FORMAL DISPOSITION OF COMPLAINT. The board shall  
10 dismiss a complaint unless, before the first anniversary of the  
11 date the complaint is filed under Section 154.051:

12 (1) the complaint is disposed of under Section  
13 164.003; or

14 (2) the board refers the complaint to the State Office  
15 of Administrative Hearings for disposition under Section 164.007.

16 SECTION 9. Section 164.005(e), Occupations Code, is amended  
17 to read as follows:

18 (e) The president or designee shall notify the State Office  
19 of Administrative Hearings and the attorney general of a formal  
20 complaint.

21 SECTION 10. Section 164.007, Occupations Code, is amended  
22 by amending Subsections (a) and (b) and adding Subsections (a-1)  
23 and (a-2) to read as follows:

24 (a) The board by rule shall adopt procedures governing  
25 formal disposition of a contested case under Chapter 2001,  
26 Government Code. A formal hearing shall be conducted by an  
27 administrative law judge employed by the State Office of

1 Administrative Hearings. The attorney general shall represent the  
2 board in the hearing.

3 (a-1) After the hearing is concluded, the parties may submit  
4 to the administrative law judge proposed findings of fact and  
5 conclusions of law and a proposal for decision as to the occurrence  
6 of the violation and any proposed sanction. The administrative law  
7 judge shall make [After receiving the administrative law judge's]  
8 findings of fact and conclusions of law and issue a final decision  
9 finding that a violation has occurred and imposing a sanction or  
10 finding that no violation occurred. If the administrative law  
11 judge finds that a violation has occurred, the administrative law  
12 judge may impose any sanction that the board is authorized to impose  
13 under this chapter. The administrative law judge may impose more  
14 than one sanction for the same violation. Section 2001.058(f),  
15 Government Code, applies to the formal disposition of a contested  
16 case under this section regardless of whether the board has adopted  
17 a rule under that subsection. For the purposes of this chapter, a  
18 sanction imposed by an administrative law judge under this section  
19 is considered to be a disciplinary action taken by the board.

20 (a-2) The administrative law judge must issue the decision  
21 not later than the earlier of:

22 (1) the date required by Section 2001.058(f),  
23 Government Code; or

24 (2) the first anniversary of the date the complaint is  
25 referred to the State Office of Administrative Hearings [~~the~~  
26 board shall determine the charges on the merits].

27 (b) Notwithstanding this subtitle or other law, the board,

1 with the approval of the attorney general, may employ, retain, and  
2 compensate:

3 (1) attorneys, consultants, and other professionals  
4 as necessary and appropriate to serve as board consultants or  
5 special counsel to prosecute complaints filed with the board on  
6 behalf of the hearings division and investigating division; and

7 (2) court reporters and other staff necessary to  
8 prepare for or represent the board in the hearings authorized by  
9 this section.

10 SECTION 11. Section 164.010, Occupations Code, is amended  
11 by adding Subsection (c) to read as follows:

12 (c) The board shall immediately investigate:

13 (1) a violation of a disciplinary order by a license  
14 holder described by Subsection (a); or

15 (2) a complaint filed against a license holder  
16 described by Subsection (a).

17 SECTION 12. Section 164.059(c), Occupations Code, is  
18 amended to read as follows:

19 (c) A license may be suspended under this section without  
20 notice or hearing on the complaint if:

21 (1) institution of proceedings for a hearing before  
22 the State Office of Administrative Hearings [~~board~~] is initiated  
23 simultaneously with the temporary suspension; [~~and~~]

24 (2) a hearing is held by the State Office of  
25 Administrative Hearings under Chapter 2001, Government Code, and  
26 this subtitle as soon as possible; and

27 (3) not later than the 10th business day after the date



1 the license is suspended, a hearing is held before the board to  
2 determine whether the suspension should remain in effect until the  
3 State Office of Administrative Hearings issues a decision in the  
4 case.

5 SECTION 13. (a) This Act takes effect September 1, 2003.

6 (b) As soon as practicable on or after the effective date of  
7 this Act, the governor shall appoint the following additional  
8 members to the Texas State Board of Medical Examiners to reflect the  
9 change in law made by this Act to Section 152.002, Occupations Code:

10 (1) one member who is a physician; and

11 (2) two members who represent the public.

12 (c) The term of the member appointed under Subsection (b)(1)  
13 of this section expires April 13, 2009, and the terms of the members  
14 appointed under Subsection (b)(2) of this section expire April 13,  
15 2005.

16 (d) The changes in law made by this Act relating to license  
17 applications and complaints apply only to an application or  
18 complaint filed on or after the effective date of this Act. A  
19 license application or complaint filed before the effective date of  
20 this Act is covered by the law in effect when the application or  
21 complaint was filed, and the former law is continued in effect for  
22 that purpose.

23 (e) Section 153.0535, Occupations Code, as added by this  
24 Act, applies only to a fee for a first annual registration permit or  
25 a renewal of an annual registration permit that becomes due on or  
26 after the effective date of this Act.