

By: Gattis

H.B. No. 2731

A BILL TO BE ENTITLED

AN ACT

1
2 relating to attorney general representation in a contested case
3 hearing of a person licensed or regulated by certain state
4 agencies.

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

6 SECTION 1. Section 153.013, Occupations Code, is amended to
7 read as follows:

8 Sec. 153.013. REPRESENTATION BY ATTORNEY GENERAL. The
9 attorney general shall represent the board [~~shall be represented~~]
10 in:

11 (1) court proceedings; and

12 (2) contested case proceedings under Chapter 2001,
13 Government Code, related to an individual licensed or regulated by
14 the board [~~attorney general~~].

15 SECTION 2. Sections 164.007(a), (b), and (d), Occupations
16 Code, are amended 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. The attorney general shall represent the
22 board in the formal hearing. After receiving the administrative
23 law judge's findings of fact and conclusions of law, the board shall
24 determine the charges on the merits.

1 (b) Notwithstanding this subtitle or other law, the board
2 may employ, retain, and compensate:

3 (1) attorneys, consultants, and other professionals
4 as necessary and appropriate to serve as board consultants for [~~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 (d) Not later than the 30th day after the date of receipt of
11 a written request from a license holder who is the subject of a
12 formal complaint initiated and filed under Section 164.005 or from
13 the license holder's counsel of record, and subject to any other
14 privilege or restriction set forth by rule, statute, or legal
15 precedent, and unless good cause is shown for delay, the attorney
16 general [~~board~~] shall provide the license holder with access to all
17 information in the attorney general's [~~its~~] possession that the
18 attorney general [~~board~~] intends to offer into evidence in
19 presenting the attorney general's [~~its~~] case in chief at the
20 contested hearing on the complaint. The attorney general [~~board~~]
21 is not required to provide:

- 22 (1) a board investigative report or memorandum;
23 (2) the identity of a nontestifying complainant; or
24 (3) attorney-client communications, attorney work
25 product, or other materials covered by a privilege recognized by
26 the Texas Rules of Civil Procedure or the Texas Rules of Evidence.

27 SECTION 3. Section 201.206(c), Occupations Code, is amended

1 to read as follows:

2 (c) On the completion of the investigation and before a
3 hearing under Section 201.505, the attorney general [~~board~~] shall
4 provide to the license holder, subject to any other privilege or
5 restriction set forth by rule, statute, or legal precedent, access
6 to all information in the attorney general's [~~board's~~] possession
7 that the attorney general [~~board~~] intends to offer into evidence in
8 presenting the attorney general's [~~its~~] case in chief at the
9 contested case hearing on the complaint. The attorney general
10 [~~board~~] is not required to provide:

- 11 (1) a board investigative report or memorandum;
12 (2) the identity of a nontestifying complainant; or
13 (3) attorney-client communications, attorney work
14 product, or other materials covered by a privilege recognized by
15 the Texas Rules of Civil Procedure or the Texas Rules of Evidence.

16 SECTION 4. Section 201.509, Occupations Code, is amended by
17 adding Subsection (c) to read as follows:

18 (c) The attorney general shall represent the board in
19 contested case proceedings under Chapter 2001, Government Code,
20 related to an individual licensed or regulated by the board.

21 SECTION 5. Sections 202.509(b) and (c), Occupations Code,
22 are amended to read as follows:

23 (b) Subject to any other privilege or restriction
24 established by law, not later than the 30th day after the date the
25 board receives a written request from a license holder, or the
26 license holder's attorney, who is the subject of a formal
27 complaint, the attorney general [~~board~~] shall provide the license

1 holder with access to all information in the attorney general's
2 ~~[board's]~~ possession that the attorney general ~~[board]~~ intends to
3 offer into evidence at the contested case hearing on the complaint.
4 The attorney general ~~[board]~~ may provide access to the information
5 to the license holder after the 30th day after the date the board
6 receives a request only on a showing of good cause.

7 (c) The attorney general ~~[board]~~ is not required under
8 Subsection (b) to provide access to the board's investigative
9 reports or memoranda, release the identity of a complainant who
10 will not testify at the hearing, or release information that is an
11 attorney's work product or protected by the attorney-client
12 privilege or another privilege recognized by the Texas Rules of
13 Civil Procedure or Texas Rules of Evidence. The furnishing of
14 information under Subsection (b) does not constitute a waiver of
15 any privilege or confidentiality provision under law.

16 SECTION 6. Section 202.555, Occupations Code, is amended by
17 adding Subsection (d) to read as follows:

18 (d) The attorney general shall represent the board in a
19 hearing conducted under this section.

20 SECTION 7. Section 202.6015(d), Occupations Code, is
21 amended to read as follows:

22 (d) A hearing under this section is subject to Chapter 2001,
23 Government Code. The attorney general shall represent the board in
24 the hearing.

25 SECTION 8. Sections 204.252(a) and (b), Occupations Code,
26 are amended to read as follows:

27 (a) The attorney general ~~[physician assistant board]~~ shall

1 provide a license holder who is the subject of a formal complaint
2 filed under this chapter with access to all information in the
3 attorney general's [~~its~~] possession that the attorney general
4 [~~board~~] intends to offer into evidence in presenting the attorney
5 general's [~~its~~] case in chief at the contested hearing on the
6 complaint, subject to any other privilege or restriction
7 established by rule, statute, or legal precedent. The attorney
8 general [~~board~~] shall provide the information not later than the
9 30th day after receipt of a written request from the license holder
10 or the license holder's counsel, unless good cause is shown for
11 delay.

12 (b) Notwithstanding Subsection (a), the attorney general
13 [~~board~~] is not required to provide:

- 14 (1) board investigative reports;
- 15 (2) investigative memoranda;
- 16 (3) the identity of a nontestifying complainant;
- 17 (4) attorney-client communications;
- 18 (5) attorney work product; or
- 19 (6) other material covered by a privilege recognized
20 by the Texas Rules of Civil Procedure or the Texas Rules of
21 Evidence.

22 SECTION 9. Sections 206.155(a) and (b), Occupations Code,
23 are amended to read as follows:

24 (a) The attorney general [~~medical board~~] shall provide a
25 license holder who is the subject of a formal complaint filed under
26 this chapter with access to all information in the attorney
27 general's [~~its~~] possession that the attorney general [~~medical~~

1 ~~board~~] intends to offer into evidence in presenting the attorney
2 general's [~~its~~] case in chief at the contested hearing on the
3 complaint, subject to any other privilege or restriction
4 established by rule, statute, or legal precedent. The attorney
5 general [~~medical board~~] shall provide the information not later
6 than the 30th day after receipt of a written request from the
7 license holder or the license holder's counsel, unless good cause
8 is shown for delay.

9 (b) Notwithstanding Subsection (a), the attorney general
10 [~~medical board~~] is not required to provide:

- 11 (1) medical board investigative reports;
- 12 (2) investigative memoranda;
- 13 (3) the identity of a nontestifying complainant;
- 14 (4) attorney-client communications;
- 15 (5) attorney work product; or
- 16 (6) other material covered by a privilege recognized
17 by the Texas Rules of Civil Procedure or the Texas Rules of
18 Evidence.

19 SECTION 10. Section 263.009, Occupations Code, is amended
20 to read as follows:

21 Sec. 263.009. APPEAL. A person aggrieved by a decision of
22 the board under this chapter is entitled to appeal as provided by
23 Chapter 2001, Government Code. The attorney general shall
24 represent the board in contested case proceedings under Chapter
25 2001, Government Code, related to an individual licensed or
26 regulated by the board.

27 SECTION 11. Section 264.005, Occupations Code, is amended

1 by adding Subsection (d) to read as follows:

2 (d) The attorney general shall represent the board in a
3 hearing conducted under this section.

4 SECTION 12. Section 301.162, Occupations Code, is amended
5 to read as follows:

6 Sec. 301.162. LEGAL COUNSEL. (a) The board may retain legal
7 counsel to represent the board if first:

8 (1) the board requests the attorney general to
9 represent the board; and

10 (2) the attorney general certifies to the board that
11 the attorney general cannot provide those services, subject to
12 Subsection (b).

13 (b) The attorney general shall represent the board in
14 contested case proceedings under Chapter 2001, Government Code,
15 related to an individual licensed or regulated by the board.

16 SECTION 13. Section 301.459, Occupations Code, is amended
17 by adding Subsection (c) to read as follows:

18 (c) The attorney general shall represent the board in a
19 hearing conducted under this section.

20 SECTION 14. Sections 301.460(a) and (b), Occupations Code,
21 are amended to read as follows:

22 (a) Except for good cause shown for delay and subject to any
23 other privilege or restriction set forth by statute, rule, or legal
24 precedent, the attorney general [~~board~~] shall, not later than the
25 30th day after the date the board receives a written request from a
26 license holder who is the subject of a formal charge filed under
27 Section 301.458 or from the license holder's counsel of record,

1 provide the license holder with access to:

2 (1) all known exculpatory information in the attorney
3 general's [~~board's~~] possession; and

4 (2) information in the attorney general's [~~board's~~]
5 possession that the attorney general [~~board~~] intends to offer into
6 evidence in presenting the attorney general's [~~its~~] case in chief
7 at the contested hearing on the complaint.

8 (b) The attorney general [~~board~~] is not required to provide:

9 (1) board investigative reports or investigative
10 memoranda;

11 (2) the identity of nontestifying complainants;

12 (3) attorney-client communications;

13 (4) attorney work product; or

14 (5) other materials covered by a privilege as
15 recognized by the Texas Rules of Civil Procedure or the Texas Rules
16 of Evidence.

17 SECTION 15. Section 301.511, Occupations Code, is amended
18 to read as follows:

19 Sec. 301.511. ADMINISTRATIVE PROCEDURE; REPRESENTATION BY
20 ATTORNEY GENERAL. (a) A proceeding under this subchapter is subject
21 to Chapter 2001, Government Code.

22 (b) The attorney general shall represent the board in
23 contested case proceedings under Chapter 2001, Government Code,
24 related to an individual licensed or regulated by the board.

25 SECTION 16. Section 351.158, Occupations Code, is amended
26 by adding Subsection (d) to read as follows:

27 (d) The attorney general shall represent the board in

1 contested case proceedings under Chapter 2001, Government Code,
2 related to an individual licensed or regulated by the board.

3 SECTION 17. Section 351.2045(c), Occupations Code, is
4 amended to read as follows:

5 (c) On the completion of the investigation and before a
6 hearing under Section 351.503, the attorney general [~~board~~] shall
7 provide to the license holder, subject to any other privilege or
8 restriction set forth by rule, statute, or legal precedent, access
9 to all information in the attorney general's [~~board's~~] possession
10 that the attorney general [~~board~~] intends to offer into evidence in
11 presenting the attorney general's [~~its~~] case in chief at the
12 contested case hearing on the complaint. The attorney general
13 [~~board~~] is not required to provide:

- 14 (1) a board investigative report or memorandum;
15 (2) the identity of a nontestifying complainant; or
16 (3) attorney-client communications, attorney work
17 product, or other materials covered by a privilege recognized by
18 the Texas Rules of Civil Procedure or the Texas Rules of Evidence.

19 SECTION 18. Section 351.503(c), Occupations Code, is
20 amended to read as follows:

21 (c) Disciplinary proceedings are governed by Chapter 2001,
22 Government Code. The attorney general shall represent the board in
23 a contested case proceeding under Chapter 2001, Government Code.

24 SECTION 19. Section 351.555, Occupations Code, is amended
25 by adding Subsection (c) to read as follows:

26 (c) The attorney general shall represent the board in a
27 hearing under this section.

1 SECTION 20. Section 501.409, Occupations Code, is amended
2 to read as follows:

3 Sec. 501.409. ADMINISTRATIVE PROCEDURE; ATTORNEY GENERAL
4 REPRESENTATION. (a) A proceeding to refuse, revoke, or suspend a
5 license or to reprimand a person is governed by Chapter 2001,
6 Government Code.

7 (b) The attorney general shall represent the board in
8 contested case proceedings under Chapter 2001, Government Code,
9 related to an individual licensed or regulated by the board.

10 SECTION 21. Section 501.455, Occupations Code, is amended
11 by adding Subsection (d) to read as follows:

12 (d) The attorney general shall represent the board in a
13 hearing under this section.

14 SECTION 22. Section 554.001(d), Occupations Code, is
15 amended to read as follows:

16 (d) The board may be represented by counsel, including the
17 attorney general, district attorney, or county attorney, if
18 necessary in a legal action taken under this subtitle. The attorney
19 general shall represent the board in contested case proceedings
20 under Chapter 2001, Government Code, related to an individual
21 licensed or regulated by the board.

22 SECTION 23. Section 566.009, Occupations Code, is amended
23 by adding Subsection (c) to read as follows:

24 (c) The attorney general shall represent the board in
25 contested case proceedings under Chapter 2001, Government Code,
26 related to an individual licensed or regulated by the board.

27 SECTION 24. The changes in law made by this Act apply only

1 to a written request for a contested case proceeding submitted to
2 the Texas Medical Board, Texas State Board of Acupuncture
3 Examiners, Texas Physician Assistant Board, State Board of Dental
4 Examiners, Texas Board of Nursing, Texas Board of Chiropractic
5 Examiners, Texas State Board of Podiatric Medical Examiners, Texas
6 Optometry Board, Texas State Board of Examiners of Psychologists,
7 or Texas State Board of Pharmacy on or after the effective date of
8 this Act. A written request submitted before the effective date of
9 this Act is covered by the law in effect immediately before the
10 effective date, and that law is continued in effect for that
11 purpose.

12 SECTION 25. This Act takes effect September 1, 2009.