

By: Brown of Brazos, Fletcher, Callegari,  
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H.B. No. 3816

Substitute the following for H.B. No. 3816:

By: Davis of Harris

C.S.H.B. No. 3816

A BILL TO BE ENTITLED

AN ACT

relating to the powers and duties of the Texas Medical Board.

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 19 members appointed by the governor with the advice and consent of the senate as follows:

(1) twelve members who are learned and eminent physicians licensed in this state for at least five [~~three~~] years before the appointment, 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) seven members who represent the public.

SECTION 2. Section 152.003, Occupations Code, is amended by adding Subsections (e) and (f) to read as follows:

(e) A person may not be a member of the board if the member is not in full compliance with Section 572.051, Government Code. A person is not in full compliance with that section if the person's spouse or anyone related to the person within the second degree by consanguinity engages in conduct described by Section 572.051(a), Government Code, that would affect or influence the person's official conduct, position, powers, or duties as a member of the

1 board in a manner prohibited by that section.

2 (f) A member of the board may not participate in any matter  
3 regarding a license holder if the person or anyone related to the  
4 person within the second degree by consanguinity receives  
5 compensation from an entity, other than a medical practice, that  
6 has a financial interest in common with or adverse to the license  
7 holder, including an insurance company, health care regulatory  
8 agency, pharmaceutical company, or medical malpractice attorney.

9 SECTION 3. Section 154.002(a), Occupations Code, is amended  
10 to read as follows:

11 (a) The board shall prepare:

12 (1) an alphabetical list of the names of the license  
13 holders;

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

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

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

20 (5) a copy of the board's rules;

21 (6) a statistical report each fiscal year to the  
22 legislature and the public that provides aggregate information  
23 about all complaints received by the board categorized by type of  
24 complaint, including administrative, quality of care, medical  
25 error, substance abuse, other criminal behavior, and the  
26 disposition of those complaints by category; ~~and~~

27 (7) a list of the names of all persons who served on an

1 informal settlement conference panel during the preceding year and  
2 the number of informal settlement conference panels on which each  
3 person served; and

4 (8) other information considered appropriate by the  
5 board.

6 SECTION 4. Section 154.051, Occupations Code, is amended by  
7 adding Subsection (e) to read as follows:

8 (e) The board may not consider or act on a complaint  
9 involving care provided more than seven years before the date the  
10 complaint is filed, unless the care was provided to a minor. If the  
11 care was provided to a minor, the board may not consider or act on a  
12 complaint involving the care after the later of:

13 (1) the date the minor is 21 years of age; or

14 (2) the seventh anniversary of the date of care.

15 SECTION 5. Section 154.053, Occupations Code, is amended by  
16 amending Subsection (a) and adding Subsection (a-1) to read as  
17 follows:

18 (a) The board shall notify by personal delivery or certified  
19 mail a physician who is the subject of a complaint filed with the  
20 board that a complaint has been filed and shall provide [~~notify~~] the  
21 physician with a copy of the [~~nature of the~~] complaint without  
22 redaction unless there is a risk of harm to the public or the notice  
23 would jeopardize an investigation. The complaint must include a  
24 statement of the alleged violation in plain language.

25 (a-1) If a physician rejects a notice by personal delivery  
26 or certified mail under Subsection (a), the board may send to the  
27 physician an additional notice of the complaint by first class mail

1 that includes notice of the attempted delivery by personal delivery  
2 or certified mail.

3 SECTION 6. Subchapter B, Chapter 154, Occupations Code, is  
4 amended by adding Section 154.0535 to read as follows:

5 Sec. 154.0535. REQUIREMENTS FOR CERTAIN COMPLAINTS. (a)  
6 In this section:

7 (1) "Anonymous complaint" means a complaint that lacks  
8 sufficient information to identify the source or the name of the  
9 person who filed the complaint.

10 (2) "Insurance agent" means a person licensed under  
11 Chapter 4054, Insurance Code.

12 (3) "Insurer" means an insurance company or other  
13 entity authorized to engage in the business of insurance under  
14 Subtitle C, Title 6, Insurance Code.

15 (b) Notwithstanding any confidentiality requirements under  
16 Chapter 552, Government Code, this subtitle, or rules adopted under  
17 this subtitle, a complaint filed with the board by an insurance  
18 agent or insurer against a physician must include the name and  
19 address of the insurance agent or insurer filing the complaint. Not  
20 later than the 15th day after the date the complaint is filed with  
21 the board, the board shall notify the physician who is the subject  
22 of the complaint of the name and address of the insurance agent or  
23 insurer who filed the complaint, unless the notice would jeopardize  
24 an investigation.

25 (c) The board may not accept anonymous complaints.

26 (d) The board shall adopt rules as necessary to implement  
27 this section.

1       (e) Failure by an insurance agent or insurer to comply with  
2 the requirements of Subsection (b) or rules adopted by the board  
3 under this section constitutes grounds for the imposition of  
4 sanctions by the commissioner of the Texas Department of Insurance  
5 under Chapter 82, Insurance Code. The commissioner of insurance  
6 may adopt rules to implement this subsection.

7       SECTION 7. Sections 154.056(a), (b), and (e), Occupations  
8 Code, are amended to read 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;

23           (5) ensure that a physician who is the subject of a  
24 complaint has at least 45 days after receiving a copy of the  
25 complaint as provided by Section 154.053(a) to prepare and submit a  
26 response;

27           (6) prescribe guidelines concerning the categories of

1 complaints that require the use of a private investigator and the  
2 procedures for the board to obtain the services of a private  
3 investigator;

4 (7) [~~(6)~~] provide for an expert physician panel  
5 authorized under Subsection (e) to assist with complaints and  
6 investigations relating to medical competency; and

7 (8) [~~(7)~~] require the review of reports filed with the  
8 National Practitioner Data Bank for any report of the termination,  
9 limitation, suspension, limitation in scope of practice, or  
10 probation of clinical or hospital staff privileges of a physician  
11 by:

- 12 (A) a hospital;
- 13 (B) a health maintenance organization;
- 14 (C) an independent practice association;
- 15 (D) an approved nonprofit health corporation  
16 certified under Section 162.001; or
- 17 (E) a physician network.

18 (b) The board shall:

- 19 (1) dispose of each complaint in a timely manner; and
- 20 (2) establish a schedule for conducting each phase of  
21 a complaint that is under the control of the board not later than  
22 the 30th day after the date the physician's time for preparing and  
23 submitting a response expires [~~board receives the complaint~~].

24 (e) The board by rule shall provide for an expert physician  
25 panel appointed by the board to assist with complaints and  
26 investigations relating to medical competency by acting as expert  
27 physician reviewers. Each member of the expert physician panel

1 must be actively practicing [~~licensed to practice~~] medicine in this  
2 state. The rules adopted under this subsection must include  
3 provisions governing the composition of the panel, qualifications  
4 for membership on the panel, length of time a member may serve on  
5 the panel, grounds for removal from the panel, the avoidance of  
6 conflicts of interest, including situations in which the affected  
7 physician and the panel member live or work in the same geographical  
8 area or are competitors, and the duties to be performed by the  
9 panel. The board's rules governing grounds for removal from the  
10 panel must include providing for the removal of a panel member who  
11 is repeatedly delinquent in reviewing complaints and in submitting  
12 reports to the board. The board's rules governing appointment of  
13 expert physician panel members to act as expert physician reviewers  
14 must include a requirement that the board randomly select, to the  
15 extent permitted by Section 154.058(b) and the conflict of interest  
16 provisions adopted under this subsection, panel members to review a  
17 complaint.

18 SECTION 8. Section 154.0561, Occupations Code, is amended  
19 by adding Subsections (a-1) and (e) to read as follows:

20 (a-1) Before the complaint is reviewed, the board must  
21 redact all information that identifies the physician who is the  
22 subject of the complaint, the patient, and the person filing the  
23 complaint.

24 (e) The board shall deliver a copy of the preliminary and  
25 final reports to the physician who is the subject of the review.  
26 Before delivering the reports to the physician, the board shall  
27 redact information identifying the expert physicians from the

1 reports.

2 SECTION 9. Section 154.058(b), Occupations Code, is amended  
3 to read as follows:

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

11 SECTION 10. Section 164.001, Occupations Code, is amended  
12 by adding Subsections (k) and (l) to read as follows:

13 (k) A license holder may practice medicine in a manner  
14 taught in a course currently accredited by the Accreditation  
15 Council for Continuing Medical Education, the American Medical  
16 Association, or the American Osteopathic Association.

17 (l) The board may not direct a physician in the practice of  
18 medicine, except by ordering that a physician not engage in a  
19 practice that causes actual harm or an imminent risk of harm to a  
20 patient.

21 SECTION 11. Section 164.003, Occupations Code, is amended  
22 by adding Subsection (i) to read as follows:

23 (i) On request by a physician under review, the board shall  
24 make a recording of the informal settlement conference proceeding.  
25 The recording is a part of the investigative file and may not be  
26 released to a third party unless authorized under this subtitle.

27 SECTION 12. Section 164.0031(a), Occupations Code, is



1 amended to read as follows:

2 (a) In an informal meeting under Section 164.003 or an  
3 informal hearing under Section 164.103, at least two panelists  
4 shall be randomly appointed to determine whether an informal  
5 disposition is appropriate. At least one of the panelists must be a  
6 physician.

7 SECTION 13. Sections 164.007(a) and (a-1), Occupations  
8 Code, are amended to read as follows:

9 (a) The board by rule shall adopt procedures governing  
10 formal disposition of a contested case under Chapter 2001,  
11 Government Code. A formal hearing shall be conducted by an  
12 administrative law judge employed by the State Office of  
13 Administrative Hearings. After receiving the administrative law  
14 judge's findings of fact and conclusions of law, the board shall  
15 dispose of the contested case by issuing a final order based on the  
16 administrative law judge's findings of fact and conclusions of law  
17 ~~[determine the charges on the merits]~~.

18 (a-1) Notwithstanding Section 2001.058(e), Government  
19 Code, the [The] board may not change a finding of fact or conclusion  
20 of law or vacate or modify an order of the administrative law judge.  
21 The board may obtain judicial review of any finding of fact or  
22 conclusion of law issued by the administrative law judge as  
23 provided by Section 2001.058(f)(5), Government Code. For each  
24 case, the board has the sole authority and discretion to determine  
25 the appropriate action or sanction, and the administrative law  
26 judge may not make any recommendation regarding the appropriate  
27 action or sanction ~~[only if the board makes a determination~~

1 ~~required by Section 2001.058(e), Government Code].~~

2 SECTION 14. Section 164.009, Occupations Code, is amended  
3 to read as follows:

4 Sec. 164.009. JUDICIAL REVIEW. (a) A person whose  
5 license to practice medicine has been revoked or who is subject to  
6 other disciplinary action by the board may appeal to a Travis County  
7 district court not later than the 30th day after the date the board  
8 decision is final.

9 (b) A person whose license to practice medicine has been  
10 revoked is entitled to a jury trial in a district court in Travis  
11 County.

12 SECTION 15. Section 164.053(a), Occupations Code, is  
13 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 state or federal  
18 law if the act is connected with the physician's practice of  
19 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 and has the  
15 likelihood of harm to a patient;

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

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

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

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

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

26 (9) delegates professional medical responsibility or  
27 acts to a person if the delegating physician knows or has reason to

1 know that the person is not qualified by training, experience, or  
2 licensure to perform the responsibility or acts.

3 SECTION 16. The changes in law made by this Act by the  
4 amendment of Sections 152.002(a) and 152.003, Occupations Code,  
5 apply only to a person appointed to the Texas Medical Board on or  
6 after the effective date of this Act. A person appointed before the  
7 effective date of this Act is governed by the law in effect on the  
8 date the appointment is made, and the former law is continued in  
9 effect for that purpose.

10 SECTION 17. The changes in law made by this Act relating to  
11 the Texas Medical Board's complaint procedures apply only to a  
12 complaint filed on or after the effective date of this Act. A  
13 complaint filed before the effective date of this Act is governed by  
14 the law in effect on the date the complaint is filed, and the former  
15 law is continued in effect for that purpose.

16 SECTION 18. The changes in law made by this Act relating to  
17 the Texas Medical Board's disciplinary authority apply only to  
18 conduct that occurs on or after the effective date of this Act.  
19 Conduct that occurs before the effective date of this Act is  
20 governed by the law in effect on the date the conduct occurs, and  
21 the former law is continued in effect for that purpose.

22 SECTION 19. Sections 164.007(a) and (a-1), Occupations  
23 Code, as amended by this Act, apply only to a contested case for  
24 which an administrative law judge employed by the State Office of  
25 Administrative Hearings issues written findings of fact and  
26 conclusions of law on or after the effective date of this Act. A  
27 contested case for which an administrative law judge employed by

1 the State Office of Administrative Hearings issues written findings  
2 of fact and conclusions of law before the effective date of this Act  
3 is governed by the law in effect on the date the findings of fact and  
4 conclusions of law were issued, and the former law is continued in  
5 effect for that purpose.

6 SECTION 20. This Act takes effect September 1, 2009.