

By: Riddle

H.B. No. 4366

A BILL TO BE ENTITLED

1 AN ACT

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

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

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

6 (a) The board consists of 19 members appointed by the
7 governor with the advice and consent of the senate as follows:

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

15 (2) seven members who represent the public.

16 SECTION 2. Section 152.003, Occupations Code, is amended by
17 amending Subsection (b) and adding Subsection (e) to read as
18 follows:

19 (b) A person may not be a public member of the board if he or
20 anyone within the second degree by consanguinity:

21 (1) is registered, certified, or licensed by a
22 regulatory agency in the field of health care;

23 (2) is employed by or participates in the management
24 of a business entity or other organization regulated by or

1 receiving money from the board;

2 (3) owns or controls, directly or indirectly, more
3 than a 10 percent interest in a business entity or other
4 organization regulated by or receiving money from the board;

5 (4) uses or receives a substantial amount of tangible
6 goods, services, or money from the board other than compensation or
7 reimbursement authorized by law for board membership, attendance,
8 or expenses; ~~or~~

9 (5) is a provider of health care; or

10 (6) is not in full compliance with Subchapter 572.051,
11 Government Code, Texas Ethics Commission ("Conflict of Interest"),
12 as though the person were an employee of the state.

13 (e) A person may not be a member of the board if he or anyone
14 within the second degree by consanguinity is not in full compliance
15 with Subchapter 572.051, Government Code, Texas Ethics Commission
16 ("Conflict of Interest"), as though the person were an employee of
17 the state.

18 (f) A person may not be a member of the board participating
19 in decision-making about a license holder if the person or anyone
20 within the second degree by consanguinity receives compensation in
21 excess of 1% of his overall income from an entity, other than a
22 medical practice, which has a financial interest in common with or
23 adverse to the license holder under review by the board, including
24 compensation by an insurance company, health care regulatory
25 agency, pharmaceutical company, or medical malpractice attorney.

26 SECTION 3. Subchapter A, Chapter 152, Occupations Code, is
27 amended by adding Section 152.011 to read as follows:

1 Sec. 152.011. PUBLIC TESTIMONY. (a) The board shall
2 convene at least twice a year, on days other than its regularly
3 scheduled board meetings, in order to receive public testimony
4 about board conduct.

5 SECTION 4. Section 152.051(a), Occupations Code, is amended
6 to read as follows:

7 (a) The board shall appoint an executive director, who may
8 serve only when he is a physician licensed in good standing in this
9 state. The executive director serves as the chief executive and
10 administrative officer of the board.

11 SECTION 5. Section 154.002(a), Occupations Code, is amended
12 to read as follows:

13 (a) The board shall prepare:

14 (1) an alphabetical list of the names of the license
15 holders;

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

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

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

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

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

1 disposition of those complaints by category; ~~and~~

2 (7) a list of the names of all persons who served on an
3 informal settlement conference panel during the preceding year and
4 the number of informal settlement conference panels on which each
5 person served; and

6 (8) other information considered appropriate by the
7 board.

8 SECTION 6. Section 154.051, Occupations Code, is amended by
9 amending Subsection (c) and adding Subsections (e), (f), and (g) to
10 read as follows:

11 (c) A person, including a person acting on behalf of a
12 partnership, association, corporation, or other entity, [A person,
13 including a partnership, association, corporation, or other
14 entity,] may file a complaint against a license holder with the
15 board by swearing under oath to the truth of the statements in the
16 complaint. If the person filing the complaint is other than a
17 patient, then that person must report his employment status and the
18 business for whom he works. The board may file a complaint on its
19 own initiative based only on good cause.

20 (d) The board may not consider or act on a complaint
21 involving care provided more than four (4) years before the date the
22 complaint is filed.

23 (e) Notwithstanding any other law, a person may not receive
24 civil, criminal, or regulatory immunity as a result of filing a
25 complaint if the complaint is filed with malice or with an
26 anticompetitive purpose.

27 SECTION 7. Section 154.053(a), Occupations Code, is amended

1 to read as follows:

2 (a) The board shall notify by personal delivery or certified
3 mail a physician who is the subject of a complaint filed with the
4 board that a complaint has been filed and shall provide [~~notify~~] the
5 physician notice of the complaint in plain language with sufficient
6 detail to formulate a response to the allegations made in the
7 complaint. If the doctor does not think he had been given
8 sufficient information then he may request that the board make a
9 good faith effort to provide additional information or shall
10 respond in writing why the board will not provide additional
11 information.

12 SECTION 8. Section 154.056, Occupations Code, is amended by
13 amending Subsections (a), (b), and (e) and adding Subsection (e-1)
14 to read as follows:

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

18 (1) distinguish among categories of complaints and
19 give priority to complaints that involve sexual misconduct, quality
20 of care, and impaired physician issues;

21 (2) ensure that a complaint is not dismissed without
22 appropriate consideration;

23 (3) require that the board be advised of the dismissal
24 of a complaint and that a letter be sent to the person who filed the
25 complaint and to the physician who was the subject of the complaint
26 explaining the action taken on the complaint;

27 (4) ensure that a person who files a complaint has an

1 opportunity to explain the allegations made in the complaint;

2 (5) ensure that a physician who is the subject of a
3 complaint has at least 30 days after receiving a copy of the
4 complaint as provided by Section 154.053(a) to prepare and submit a
5 response;

6 (6) prescribe guidelines concerning the categories of
7 complaints that require the use of a private investigator and the
8 procedures for the board to obtain the services of a private
9 investigator;

10 (7) [~~(6)~~] provide for an expert physician panel
11 authorized under Subsection (e) to assist with complaints and
12 investigations relating to medical competency; and

13 (8) [~~(7)~~] require the review of reports filed with the
14 National Practitioner Data Bank for any report of the termination,
15 limitation, suspension, limitation in scope of practice, or
16 probation of clinical or hospital staff privileges of a physician
17 by:

18 (A) a hospital;

19 (B) a health maintenance organization;

20 (C) an independent practice association;

21 (D) an approved nonprofit health corporation
22 certified under Section 162.001; or

23 (E) a physician network.

24 (b) The board shall:

25 (1) dispose of each complaint in a timely manner; and

26 (2) establish a schedule for conducting each phase of a complaint
27 that is under the control of the board not later than the 30th day

1 after the date the physician's time for preparing and submitting a
2 response expires.

3 (e) The board by rule shall provide for an expert physician
4 panel appointed by the board to assist with complaints and
5 investigations relating to medical competency by acting as expert
6 physician reviewers. Each member of the expert physician panel
7 must be actively practicing medicine in this state. The rules
8 adopted under this subsection must include provisions governing the
9 composition of the panel, qualifications for membership on the
10 panel, length of time a member may serve on the panel, grounds for
11 removal from the panel, the avoidance of conflicts of interest,
12 including situations in which the affected physician and the panel
13 member live or work in the same geographical area or are
14 competitors, and the duties to be performed by the panel. The
15 board's rules governing grounds for removal from the panel must
16 include providing for the removal of a panel member who is
17 repeatedly delinquent in reviewing complaints and in submitting
18 reports to the board. The board's rules governing appointment of
19 expert physician panel members to act as expert physician reviewers
20 must include a requirement that the board randomly select, to the
21 extent permitted by Section 154.058(b) and the conflict of interest
22 provisions adopted under this subsection, panel members to review a
23 complaint.

24 (e-1) The board shall review a report concerning a
25 physician's medical competency prepared by an expert at the request
26 of the physician who is the subject of the complaint.

27 SECTION 9. Section 154.0561, Occupations Code, is amended

1 by amending Subsections (b) and (c) and adding Subsection (e) to
2 read as follows:

3 (b) A second expert physician reviewer shall independently
4 review information associated with the complaint. The review by
5 the second expert shall be independent of the first review, without
6 knowledge by the second reviewer of the identity of the first
7 reviewer, and without any communication between the two reviewers.

8 If the second expert physician agrees with the first expert
9 physician, the first physician shall issue a final written report
10 on the matter.

11 (c) If the second expert physician does not agree with the
12 conclusions of the first expert physician, then the physician who
13 is the subject of the complaint shall be notified of the conflict
14 and provided with copies of the conflicting reports. A [a] third
15 expert physician reviewer shall review the reports of both expert
16 witnesses and all information related to the complaint, and decide
17 between the conclusions reached by the first two expert physicians.
18 The final written report shall be issued by the third physician or
19 the physician with whom the third physician concurs and must
20 include a copy of the dissenting report.

21 (e) Before using a report under this section, the board
22 shall provide to the physician who is the subject of the complaint
23 the identity and qualifications of each expert physician who
24 reviewed the complaint.

25 SECTION 10. Section 154.058, Occupations Code, is amended
26 to read as follows:

27 Sec. 154.058. DETERMINATION OF MEDICAL COMPETENCY. (a)

1 Each complaint against a physician that requires a determination of
2 medical competency shall be reviewed initially by a board member,
3 consultant, or employee with a medical background and is engaged in
4 an active medical practice in the same or similar specialty as the
5 physician in the year preceding the review [~~considered sufficient~~
6 ~~by the board~~].

7 (b) If the initial review under Subsection (a) indicates
8 that an act by a physician falls below an acceptable standard of
9 care, the complaint shall be reviewed by an expert physician panel
10 authorized under Section 154.056(e) consisting of physicians who
11 have an active practice in the same specialty as the physician who
12 is the subject of the complaint. The identity of the members of the
13 expert panel shall be promptly disclosed to the physician who is the
14 subject of the complaint [~~or in another specialty that is similar to~~
15 ~~the physician's specialty~~].

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

22 SECTION 11. Section 164.003(c), Occupations Code, is
23 amended to read as follows:

24 (c) An affected physician is entitled to:
25 (1) reply to the staff's presentation; [~~and~~]
26 (2) present the facts the physician reasonably
27 believes the physician could prove by competent evidence or

1 qualified witnesses at a hearing;

2 (3) receive notice at least 48 hours prior to a
3 proceeding of the identity of the panel members presiding over the
4 Informal Settlement Conference proceedings; and

5 (4) audio or video record or arrange for transcription
6 of the Informal Settlement Conference proceedings.

7 SECTION 12. Section 164.0031(a), Occupations Code, is
8 amended to read as follows:

9 (a) In an informal meeting under Section 164.003 or an
10 informal hearing under Section 164.103, at least two panelists
11 shall be randomly appointed to determine whether an informal
12 disposition is appropriate. At least one of the panelists must be a
13 physician.

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

16 (a-1) The decision of the SOAH judge shall be binding on the
17 board.

18 SECTION 14. Section 164.009, Occupations Code, is amended
19 to read as follows:

20 Sec. 164.009. JUDICIAL REVIEW. (b) A person whose license
21 to practice medicine has been revoked is entitled to a jury trial.

22 SECTION 15. Section 164.053(a), Occupations Code, is
23 amended to read as follows:

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

27 (1) commits an act that violates any state or federal

1 law if the act is connected with the physician's practice of
2 medicine;

3 (2) fails to keep complete and accurate records of
4 purchases and disposals of:

5 (A) drugs listed in Chapter 481, Health and
6 Safety Code; or

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

10 (3) writes prescriptions for or dispenses to a person
11 who:

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

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

16 (4) writes false or fictitious prescriptions for:

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 (5) prescribes or administers a drug or treatment that
23 is nontherapeutic in nature or nontherapeutic in the manner the
24 drug or treatment is administered or prescribed and has a
25 likelihood of harm to a patient;

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

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

3 (B) controlled substances scheduled in Chapter
4 481, Health and Safety Code, or the Comprehensive Drug Abuse
5 Prevention and Control Act of 1970 (21 U.S.C. Section 801 et seq.);

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

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

9 (9) delegates professional medical responsibility or
10 acts to a person if the delegating physician knows or has reason to
11 know that the person is not qualified by training, experience, or
12 licensure to perform the responsibility or acts.

13 SECTION 16. The changes in law made by this Act by the
14 amendment of Sections 152.002(a) and 152.003, Occupations Code,
15 apply only to a person appointed to the Texas Medical Board on or
16 after the effective date of this Act. A person appointed before the
17 effective date of this Act is governed by the law in effect on the
18 date the appointment is made, and the former law is continued in
19 effect for that purpose.

20 SECTION 17. The changes in law made by this Act relating to
21 the Texas Medical Board's complaint procedures apply only to a
22 complaint filed on or after the effective date of this Act. A
23 complaint filed before the effective date of this Act is governed by
24 the law in effect on the date the complaint is filed, and the former
25 law is continued in effect for that purpose.

26 SECTION 18. The changes in law made by this Act relating to
27 the Texas Medical Board's disciplinary authority apply only to

1 conduct that occurs on or after the effective date of this Act.
2 Conduct that occurs before the effective date of this Act is
3 governed by the law in effect on the date the conduct occurs, and
4 the former law is continued in effect for that purpose.

5 SECTION 19. Not later than January 1, 2010, the governor and
6 lieutenant governor shall appoint the members of the advisory
7 commission under Section 152.011, Occupations Code, as added by
8 this Act.

9 SECTION 20. The change in law made by this Act by the
10 amendment of Section 152.051(a), Occupations Code, applies only to
11 a person appointed as executive director of the Texas Medical Board
12 on or after the effective date of this Act. A person appointed
13 before the effective date of this Act is governed by the law in
14 effect when the person is appointed, and the former law is continued
15 in effect for that purpose.

16 SECTION 21. This Act takes effect September 1, 2009.