

By: Nelson

S.B. No. 2398

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. Subsection (a), Section 152.002, Occupations
5 Code, is amended 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 Subsections (e) and (f) to read
18 as follows:

19 (b) A person may not be a public member of the board if the
20 person or the person's spouse:

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) would not be in full compliance with Section
11 572.051, Government Code, if the person or the person's spouse were
12 an employee of the state.

13 (e) A person may not be a member of the board if the person
14 or anyone related to the person within the second degree by
15 consanguinity would not be in full compliance with Section 572.051,
16 Government Code, if the person were an employee of the state.

17 (f) A person may not be a member of the board participating
18 in decision-making about a license holder if the person or anyone
19 related to the person within the second degree by consanguinity
20 receives compensation amounting to more than one percent of the
21 person's overall income from an entity, other than a medical
22 practice, that has a financial interest in common with or adverse to
23 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. Subsection (a), Section 152.051, Occupations
6 Code, is amended to read as follows:

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

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

11 (c) A person, including a person acting on behalf of a
12 partnership, association, corporation, or other entity, may file a
13 complaint against a license holder with the board by swearing under
14 oath to the truth of the statements in the complaint. If the person
15 filing the complaint is not a patient, then that person must report
16 the person's employment status and the business for whom the person
17 works. The board may file a complaint on its own initiative based
18 only on good cause.

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

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

26 SECTION 7. Subsection (a), Section 154.053, Occupations
27 Code, is amended to read as follows:

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

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
- 27 a complaint that is under the control of the board not later than

1 the 30th day after the date the physician's time for preparing and
2 submitting a response expires [~~board receives the complaint~~].

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 [~~licensed to practice~~] medicine in this
8 state. The rules adopted under this subsection must include
9 provisions governing the composition of the panel, qualifications
10 for membership on the panel, length of time a member may serve on
11 the panel, grounds for removal from the panel, the avoidance of
12 conflicts of interest, including situations in which the affected
13 physician and the panel member live or work in the same geographical
14 area or are competitors, and the duties to be performed by the
15 panel. The board's rules governing grounds for removal from the
16 panel must include providing for the removal of a panel member who
17 is 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) At the request of the physician who is the subject of
25 the complaint, the board shall review a report concerning a
26 physician's medical competency prepared by an expert physician
27 reviewer.

1 SECTION 9. Section 154.0561, Occupations Code, is amended
2 by amending Subsections (b) and (c) and adding Subsection (e) to
3 read as follows:

4 (b) A second expert physician reviewer shall independently
5 review ~~[the first physician's preliminary report and other]~~
6 information associated with the complaint. The review by the
7 second expert shall be independent of the first review, without
8 knowledge by the second reviewer of the identity of the first
9 reviewer, and without any communication between the two reviewers.

10 If the second expert physician reviewer agrees with the first
11 expert physician reviewer, the first reviewer ~~[physician]~~ shall
12 issue a final written report on the matter.

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

25 (e) Before using a report under this section, the board
26 shall provide to the physician who is the subject of the complaint
27 the identity and qualifications of each expert physician reviewer

1 who reviewed the complaint.

2 SECTION 10. Section 154.058, Occupations Code, is amended
3 to read as follows:

4 Sec. 154.058. DETERMINATION OF MEDICAL COMPETENCY.

5 (a) Each complaint against a physician that requires a
6 determination of medical competency shall be reviewed initially by
7 a board member, consultant, or employee with a medical background
8 who is engaged in an active medical practice in the same or similar
9 specialty as the physician in the year preceding the review
10 ~~[considered sufficient by the board].~~

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

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

26 SECTION 11. Subsection (c), Section 164.003, Occupations
27 Code, is amended to read as follows:

1 (c) An affected physician is entitled to:

2 (1) reply to the staff's presentation; ~~and~~

3 (2) present the facts the physician reasonably
4 believes the physician could prove by competent evidence or
5 qualified witnesses at a hearing;

6 (3) receive notice at least 48 hours prior to a
7 proceeding of the identity of the panel members presiding over the
8 informal settlement conference proceedings; and

9 (4) audio or video record or arrange for transcription
10 of the informal settlement conference proceedings.

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

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

18 SECTION 13. Subsection (a-1), Section 164.007, Occupations
19 Code, is amended to read as follows:

20 (a-1) The decision of the State Office of Administrative
21 Hearings judge shall be binding on the board [~~The board may change a~~
22 ~~finding of fact or conclusion of law or vacate or modify an order of~~
23 ~~the administrative law judge only if the board makes a~~
24 ~~determination required by Section 2001.058(e), Government Code].~~

25 SECTION 14. Section 164.009, Occupations Code, is amended
26 to read as follows:

27 Sec. 164.009. JUDICIAL REVIEW. (a) A person whose license

1 to practice medicine has been revoked or who is subject to other
2 disciplinary action by the board may appeal to a Travis County
3 district court not later than the 30th day after the date the board
4 decision is final.

5 (b) A person whose license to practice medicine has been
6 revoked is entitled to a jury trial.

7 SECTION 15. Subsection (a), Section 164.053, Occupations
8 Code, is amended to read as follows:

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

12 (1) commits an act that violates any state or federal
13 law if the act is connected with the physician's practice of
14 medicine;

15 (2) fails to keep complete and accurate records of
16 purchases and disposals of:

17 (A) drugs listed in Chapter 481, Health and
18 Safety Code; or

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

22 (3) writes prescriptions for or dispenses to a person
23 who:

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

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

1 (4) writes false or fictitious prescriptions for:

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

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

7 (5) prescribes or administers a drug or treatment that
8 is nontherapeutic in nature or nontherapeutic in the manner the
9 drug or treatment is administered or prescribed and has a
10 likelihood of harm to a patient;

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

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

15 (B) controlled substances scheduled in Chapter
16 481, Health and Safety Code, or the Comprehensive Drug Abuse
17 Prevention and Control Act of 1970 (21 U.S.C. Section 801 et seq.);

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

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

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

25 SECTION 16. The changes in law made by this Act to
26 Subsection (a), Section 152.002, and Section 152.003, Occupations
27 Code, apply only to a person appointed to the Texas Medical Board on

1 or after the effective date of this Act. A person appointed before
2 the effective date of this Act is governed by the law in effect on
3 the date the appointment was made, and the former law is continued
4 in effect for that purpose.

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

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

17 SECTION 19. The change in law made by this Act to Subsection
18 (a), Section 152.051, Occupations Code, applies only to a person
19 appointed as executive director of the Texas Medical Board on or
20 after the effective date of this Act. A person appointed before the
21 effective date of this Act is governed by the law in effect when the
22 person was appointed, and the former law is continued in effect for
23 that purpose.

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