

BILL ANALYSIS

C.S.H.B. 1013
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Public Health
Committee Report (Substituted)

BACKGROUND AND PURPOSE

In recent years, some insurance companies, pharmaceutical companies, hospitals, and competing doctor's offices have filed frivolous or malicious anonymous complaints with the Texas Medical Board, using the board as a means to harass and smear the reputations of good physicians. Because of this, physicians can be forced into a lengthy, time consuming, and expensive battle.

C.S.H.B. 1013 seeks to improve the accountability and transparency of the Texas Medical Board and reduce the amount of time the board spends pursuing frivolous or malicious complaints against physicians. These reforms are intended to eliminate potential conflicts of interest and to restore public faith in the independence of the board.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the Texas Medical Board in SECTIONS 5, 6, 10, and 12 of this bill.

ANALYSIS

C.S.H.B. 1013 amends the Occupations Code to increase from three to five the minimum number of years a physician is required to be a licensed physician in Texas in order to qualify as one of the 12 licensed physicians serving on the Texas Medical Board. The bill prohibits a person from being a member of the board if the member is not in full compliance with state ethical standards of conduct and specifies that a person is not in full compliance with such standards if the person's spouse or anyone related to the person within the second degree by consanguinity engages in conduct described in provisions relating to the standards of conduct for a state officer or employee that would affect or influence the person's official conduct, position, powers, or duties as a member of the board in a manner prohibited by such provisions. The bill prohibits a member of the board from participating in any matter regarding a license holder if the person or anyone related to the person within the second degree by consanguinity receives compensation from an entity, other than a medical practice, that has a financial interest in common with or adverse to the license holder, including an insurance company, health care regulatory agency, pharmaceutical company, or medical malpractice attorney.

C.S.H.B. 1013 prohibits the board from considering or acting on a complaint involving care provided more than seven years before the date the complaint is filed, unless the care was provided to a minor, and prohibits the board from considering or acting on a complaint involving care provided to a minor after the later of the date the minor is 21 years of age or the seventh anniversary of the date of care. The bill specifies that the notification to the physician who is the subject of a complaint that has been filed with the board is required to be provided by personal delivery or certified mail and requires the board, in addition to providing such notification, to also provide the physician with a copy of the complaint, including a statement of the alleged violation in plain language, rather than notify the physician of the nature of the complaint. The bill requires the complaint to be provided to the physician without redaction unless there is a risk of harm to the public; the notice would jeopardize an investigation; or the complaint is filed by a

patient of the physician, a patient's parent or legal guardian if the patient is a minor, or a patient's agent under a power of attorney. The bill authorizes the board, if a physician rejects a notice by personal delivery or certified mail, to send to the physician an additional notice of the complaint by first class mail that includes notice of the attempted delivery by personal delivery or certified mail.

C.S.H.B. 1013 prohibits the board from accepting anonymous complaints. The bill requires a complaint filed with the board against a physician to include the name and address of the person filing the complaint and requires the board, not later than the 15th day after the date the complaint is filed with the board, to notify the physician who is the subject of the complaint of the name and address of the person who filed the complaint, unless the notice would jeopardize an investigation or the complaint is filed by a patient of the physician, a patient's parent or legal guardian if the patient is a minor, or a patient's agent under a power of attorney. The bill requires the board to adopt rules as necessary to implement the bill's provisions relating to requirements for certain complaints and defines "anonymous complaint" for the purposes of these provisions.

C.S.H.B. 1013 requires the rules adopted by the board concerning the investigation and review of a complaint filed with the board to ensure that a physician who is the subject of a complaint has at least 30 days after receiving a copy of the complaint to prepare and submit a response. The bill changes the deadline by which the board is required to establish a schedule for conducting each phase of a complaint under the board's control from not later than the 30th day after the date the board receives the complaint to not later than the 30th day after the date the physician's time for preparing and submitting a response expires.

C.S.H.B. 1013 requires each member of a board-appointed expert physician panel to be actively practicing medicine in Texas, rather than licensed to practice medicine in Texas, and makes a conforming change to provisions relating to a determination of medical competency. The bill, in provisions of law establishing procedures for the review of a complaint by an expert physician panel, requires the board to deliver a copy of the expert physician panel's preliminary and final reports, including any dissenting or minority report, to the physician who is the subject of the review. The bill extends the deadline by which the board is required to complete a preliminary investigation of a complaint from not later than the 30th day after the date of receiving the complaint to not later than the 45th day after that date.

C.S.H.B. 1013, in provisions of law establishing criteria for the board's rules regarding informal proceedings, changes the date by which the board is required to give notice to a license holder of the time and place of an informal meeting from not later than the 30th day before the date the meeting is held to not later than the 45th day before that date. The bill requires the board, on request by a physician under review by the board through an informal proceeding, to make an audio recording of the informal settlement conference proceeding and provide a copy of the audio recording to the physician. The bill requires the physician to pay the costs of producing and copying the requested audio recording. The bill provides that such a recording is a part of the investigative file and prohibits the recording from being released by the board to a third party unless authorized under provisions of law relating to physicians. The bill clarifies that the two panelists in such an informal meeting or in an informal hearing related to the rescission of a physician's probation who are appointed to determine whether an informal disposition is appropriate must be randomly appointed, unless a panelist of the same or a similar practice as the affected physician is available to serve in the informal meeting or hearing.

C.S.H.B. 1013 requires the board, after receiving an administrative law judge's findings of fact and conclusions of law in a hearing on the formal disposition of a contested case involving the board, to dispose of the contested case by issuing a final order based on the administrative law judge's findings of fact and conclusions of law and removes language requiring the board to determine the charges in such a case on the merits. The bill prohibits the board from changing a finding of fact or conclusion of law or vacating or modifying an order of the administrative law judge, rather than authorizing the board to take such action if the board makes certain

determinations. The bill authorizes the board, in accordance with provisions relating to a hearing conducted by the State Office of Administrative Hearings, to obtain judicial review of any finding of fact or conclusion of law issued by the administrative law judge. The bill grants the board the sole authority and discretion to determine the appropriate action or sanction for each contested case involving the board and prohibits the administrative law judge from making any recommendation regarding the appropriate action or sanction. The bill entitles a person whose license to practice medicine has been revoked to a jury trial in a district court in Travis County.

EFFECTIVE DATE

September 1, 2011.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.H.B. 1013 omits a provision included in the original including a list of the names of all persons who served on an informal settlement conference panel during the preceding year and the number of informal settlement conference panels on which each person served among the information that the Texas Medical Board is required to prepare for the purposes of public dissemination. The substitute contains provisions not included in the original including the conditions that a complaint is filed by a patient of the physician, a patient's parent or legal guardian if the patient is a minor, or a patient's agent under a power of attorney among the conditions under which the board is not required to provide a physician who is the subject of a complaint with a copy of the complaint without redaction.

C.S.H.B. 1013, in bill provisions requiring certain complaints filed with the board against a physician to contain the name and address of the person filing the complaint and requiring the board to notify the physician of that name and address, differs from the original by making such requirements applicable to a complaint filed with the board, whereas the original makes such requirements applicable only to a complaint filed by certain insurance agents or insurers. The substitute, in the bill provision exempting the board from the requirement to notify the physician who is the subject of a complaint of the name and address of the person filing the complaint under certain circumstances, contains a provision not included in the original exempting the board if the complaint is filed by a patient of the physician, a patient's parent or legal guardian if the patient is a minor, or a patient's agent under a power of attorney. The substitute omits provisions included in the original defining "insurance agent" and "insurer" and specifying that failure by an insurance agent or insurer to comply with certain complaint requirements or board rules constitutes grounds for the imposition of sanctions by the commissioner of insurance. The substitute omits a provision included in the original authorizing the commissioner to adopt rules to implement the sanctions.

C.S.H.B. 1013, in the bill provision requiring the board's rules concerning the investigation and review of a complaint to ensure that a physician who is the subject of a complaint has sufficient time to prepare and submit a response, differs from the original by requiring the rules to ensure the physician has at least 30 days to prepare and submit a response after receiving a copy of the complaint, rather than 45 days as in the original. The substitute omits a provision included in the original requiring the board, before a complaint is reviewed by a member of the expert physician panel, to redact all information that identifies the physician who is the subject of the complaint, the patient, and the person filing the complaint. The substitute, in the bill provision requiring the board to deliver a copy of the expert physician panel's preliminary and final reports to the physician who is the subject of the review, contains a provision not included in the original including any dissenting or minority report among the reports the board is required to deliver. The substitute omits a provision included in the original requiring the board to redact information identifying the expert physicians from the reports before delivery. The substitute contains a provision not included in the original extending the deadline by which the board is required to complete a preliminary investigation of a complaint.

C.S.H.B. 1013 omits a provision included in the original authorizing a licensed physician to practice medicine in a manner taught in a course currently accredited by certain medical organizations and prohibiting the board from directing a physician in the practice of medicine, except by ordering that a physician not engage in a practice that causes harm or an imminent risk of harm to a patient. The substitute contains a provision not included in the original changing the date by which the board is required to give notice to a licensed physician of the time and place of an informal meeting. The substitute, in the bill provision requiring the board to make a recording of an informal settlement conference proceeding on request, differs from the original by specifying that the recording is an audio recording, whereas the original contains no such specification. The substitute contains provisions not included in the original requiring the board to provide a copy of the audio recording to the requesting physician and requiring the physician to pay the costs of producing and copying the recording. The substitute differs from the original by prohibiting the board from releasing the recording to a third party, whereas the original prohibits any release of the recording to a third party. The substitute, in the provision clarifying that the two panelists in certain informal meetings or hearings required to be appointed to determine whether an informal disposition is appropriate must be randomly appointed, contains a provision not included in the original creating an exception to the requirement to appoint such panelists if a panelist of the same or a similar practice as the affected physician is available to serve in the meeting or hearing. The substitute omits a provision included in the original adding a condition to provisions of law designating specified conduct in which a physician prescribes or administers a drug or treatment as unprofessional or dishonorable conduct. The substitute differs from the original in nonsubstantive and conforming ways.