

1-1 By: Schwertner, Torres (Senate Sponsor - Huffman) H.B. No. 680  
1-2 (In the Senate - Received from the House May 16, 2011;  
1-3 May 16, 2011, read first time and referred to Committee on Health  
1-4 and Human Services; May 20, 2011, reported adversely, with  
1-5 favorable Committee Substitute by the following vote: Yeas 7,  
1-6 Nays 0; May 20, 2011, sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR H.B. No. 680 By: Huffman

1-8 A BILL TO BE ENTITLED  
1-9 AN ACT

1-10 relating to complaints filed with the Texas Medical Board.  
1-11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:  
1-12 SECTION 1. Section 154.051, Occupations Code, is amended by  
1-13 adding Subsections (d) and (e) to read as follows:  
1-14 (d) The board may not consider or act on a complaint  
1-15 involving care provided more than seven years before the date on  
1-16 which the complaint is received by the board unless the care was  
1-17 provided to a minor. If the care was provided to a minor, the board  
1-18 may not consider or act on a complaint involving the care after the  
1-19 later of:  
1-20 (1) the date the minor is 21 years of age; or  
1-21 (2) the seventh anniversary of the date of the care.  
1-22 (e) On receipt of a complaint, the board may consider a  
1-23 previously investigated complaint to determine whether there is a  
1-24 pattern of practice violating this subtitle.  
1-25 SECTION 2. Subchapter B, Chapter 154, Occupations Code, is  
1-26 amended by adding Section 154.0535 to read as follows:  
1-27 Sec. 154.0535. REQUIREMENTS FOR CERTAIN COMPLAINTS. (a)  
1-28 In this section:  
1-29 (1) "Anonymous complaint" means a complaint that lacks  
1-30 sufficient information to identify the source or the name of the  
1-31 person who filed the complaint.  
1-32 (2) "Insurance agent" means a person licensed under  
1-33 Chapter 4054, Insurance Code.  
1-34 (3) "Insurer" means an insurance company or other  
1-35 entity authorized to engage in the business of insurance under  
1-36 Subtitle C, Title 6, Insurance Code.  
1-37 (4) "Third-party administrator" means a person  
1-38 required to have a certificate of authority under Chapter 4151,  
1-39 Insurance Code.  
1-40 (b) The board may not accept anonymous complaints.  
1-41 (c) Notwithstanding any confidentiality requirements under  
1-42 Chapter 552, Government Code, this subtitle, or rules adopted under  
1-43 this subtitle, a complaint filed with the board by an insurance  
1-44 agent, insurer, pharmaceutical company, or third-party  
1-45 administrator against a physician must include the name and address  
1-46 of the insurance agent, insurer, pharmaceutical company, or  
1-47 third-party administrator filing the complaint. Not later than the  
1-48 15th day after the date the complaint is filed with the board, the  
1-49 board shall notify the physician who is the subject of the complaint  
1-50 of the name and address of the insurance agent, insurer,  
1-51 pharmaceutical company, or third-party administrator who filed the  
1-52 complaint, unless the notice would jeopardize an investigation.  
1-53 SECTION 3. Section 154.057(b), Occupations Code, is amended  
1-54 to read as follows:  
1-55 (b) The board shall complete a preliminary investigation of  
1-56 the complaint not later than the 45th [~~30th~~] day after the date of  
1-57 receiving the complaint. The board shall first determine whether  
1-58 the physician constitutes a continuing threat to the public  
1-59 welfare. On completion of the preliminary investigation, the board  
1-60 shall determine whether to officially proceed on the complaint. If  
1-61 the board fails to complete the preliminary investigation in the  
1-62 time required by this subsection, the board's official  
1-63 investigation of the complaint is considered to commence on that

2-1 date.

2-2 SECTION 4. Subchapter A, Chapter 164, Occupations Code, is  
2-3 amended by adding Section 164.0015 to read as follows:

2-4 Sec. 164.0015. REMEDIAL PLAN. (a) In addition to the  
2-5 authority under Sections 164.001 and 164.002, the board may issue  
2-6 and establish the terms of a remedial plan to resolve the  
2-7 investigation of a complaint relating to this subtitle.

2-8 (b) A remedial plan may not contain a provision that:

2-9 (1) revokes, suspends, limits, or restricts a person's  
2-10 license or other authorization to practice medicine; or

2-11 (2) assesses an administrative penalty against a  
2-12 person.

2-13 (c) A remedial plan may not be imposed to resolve a  
2-14 complaint:

2-15 (1) concerning:

2-16 (A) a patient death;

2-17 (B) the commission of a felony; or

2-18 (C) a matter in which the physician engaged in  
2-19 inappropriate sexual behavior or contact with a patient or became  
2-20 financially or personally involved with a patient in an  
2-21 inappropriate manner; or

2-22 (2) in which the appropriate resolution may involve a  
2-23 restriction on the manner in which a license holder practices  
2-24 medicine.

2-25 (d) The board may not issue a remedial plan to resolve a  
2-26 complaint against a license holder if the license holder has  
2-27 previously entered into a remedial plan with the board for the  
2-28 resolution of a different complaint relating to this subtitle.

2-29 (e) The board may assess a fee against a license holder  
2-30 participating in a remedial plan in an amount necessary to recover  
2-31 the costs of administering this plan.

2-32 (f) The board shall adopt rules necessary to implement this  
2-33 section.

2-34 SECTION 5. Sections 164.002(c) and (d), Occupations Code,  
2-35 are amended to read as follows:

2-36 (c) An agreed disposition is a disciplinary order for  
2-37 purposes of reporting under this subtitle and of administrative  
2-38 hearings and proceedings by state and federal regulatory agencies  
2-39 regarding the practice of medicine. An agreed disposition or a  
2-40 remedial plan under Section 164.0015 is public information.

2-41 (d) In civil litigation, an agreed disposition or a remedial  
2-42 plan under Section 164.0015 is a settlement agreement under Rule  
2-43 408, Texas Rules of Evidence. This subsection does not apply to a  
2-44 license holder who has previously entered into an agreed  
2-45 disposition with the board of a different disciplinary matter or  
2-46 whose license the board is seeking to revoke.

2-47 SECTION 6. Section 164.003, Occupations Code, is amended by  
2-48 amending Subsections (b) and (f) and adding Subsection (i) to read  
2-49 as follows:

2-50 (b) Rules adopted under this section must require that:

2-51 (1) an informal meeting in compliance with Section  
2-52 2001.054, Government Code, be scheduled not later than the 180th  
2-53 day after the date the board's official investigation of the  
2-54 complaint is commenced as provided by Section 154.057(b), unless  
2-55 good cause is shown by the board for scheduling the informal meeting  
2-56 after that date;

2-57 (2) the board give notice to the license holder of the  
2-58 time and place of the meeting not later than the 45th [30th] day  
2-59 before the date the meeting is held;

2-60 (3) the complainant and the license holder be provided  
2-61 an opportunity to be heard;

2-62 (4) at least one of the board members or district  
2-63 review committee members participating in the informal meeting as a  
2-64 panelist be a member who represents the public;

2-65 (5) the board's legal counsel or a representative of  
2-66 the attorney general be present to advise the board or the board's  
2-67 staff; and

2-68 (6) a member of the board's staff be at the meeting to  
2-69 present to the board's representative the facts the staff

3-1 reasonably believes it could prove by competent evidence or  
3-2 qualified witnesses at a hearing.

3-3 (f) The notice required by Subsection (b)(2) must be  
3-4 accompanied by a written statement of the nature of the allegations  
3-5 and the information the board intends to use at the meeting. If the  
3-6 board does not provide the statement or information at that time,  
3-7 the license holder may use that failure as grounds for rescheduling  
3-8 the informal meeting. If the complaint includes an allegation that  
3-9 the license holder has violated the standard of care, the notice  
3-10 must include a copy of the report by the expert physician reviewer.  
3-11 The license holder must provide to the board the license holder's  
3-12 rebuttal at least 15 [~~five~~] business days before the date of the  
3-13 meeting in order for the information to be considered at the  
3-14 meeting.

3-15 (i) On request by a physician under review, the board shall  
3-16 make a recording of the informal settlement conference proceeding.  
3-17 The recording is a part of the investigative file and may not be  
3-18 released to a third party unless authorized under this subtitle.  
3-19 The board may charge the physician a fee to cover the cost of  
3-20 recording the proceeding.

3-21 SECTION 7. Sections 164.007(a) and (a-1), Occupations Code,  
3-22 are amended to read as follows:

3-23 (a) The board by rule shall adopt procedures governing  
3-24 formal disposition of a contested case under Chapter 2001,  
3-25 Government Code. A formal hearing shall be conducted by an  
3-26 administrative law judge employed by the State Office of  
3-27 Administrative Hearings. After receiving the administrative law  
3-28 judge's findings of fact and conclusions of law, the board shall  
3-29 dispose of the contested case by issuing a final order based on the  
3-30 administrative law judge's findings of fact and conclusions of law  
3-31 [~~determine the charges on the merits~~].

3-32 (a-1) Notwithstanding Section 2001.058(e), Government  
3-33 Code, the [The] board may not change a finding of fact or conclusion  
3-34 of law or vacate or modify an order of the administrative law judge.  
3-35 The board may obtain judicial review of any finding of fact or  
3-36 conclusion of law issued by the administrative law judge as  
3-37 provided by Section 2001.058(f)(5), Government Code. For each  
3-38 case, the board has the sole authority and discretion to determine  
3-39 the appropriate action or sanction, and the administrative law  
3-40 judge may not make any recommendation regarding the appropriate  
3-41 action or sanction [only if the board makes a determination  
3-42 required by Section 2001.058(e), Government Code].

3-43 SECTION 8. (a) Sections 154.051, 154.057, and 164.003,  
3-44 Occupations Code, as amended by this Act, and Section 154.0535,  
3-45 Occupations Code, as added by this Act, apply only to the  
3-46 investigation of a complaint filed on or after the effective date of  
3-47 this Act. The investigation of a complaint filed before that date  
3-48 is governed by the law in effect on the date the complaint was  
3-49 filed, and that law is continued in effect for that purpose.

3-50 (b) The Texas Medical Board shall adopt rules under Section  
3-51 164.0015, Occupations Code, as added by this Act, not later than  
3-52 January 1, 2012.

3-53 (c) Section 164.0015, Occupations Code, as added by this  
3-54 Act, applies only to a complaint under Subtitle B, Title 3,  
3-55 Occupations Code, filed on or after the effective date of this Act.  
3-56 A complaint under Subtitle B, Title 3, Occupations Code, filed  
3-57 before that date is governed by the law in effect on the date the  
3-58 complaint was filed, and that law is continued in effect for that  
3-59 purpose.

3-60 (d) Sections 164.007(a) and (a-1), Occupations Code, as  
3-61 amended by this Act, apply only to a contested case for which an  
3-62 administrative law judge employed by the State Office of  
3-63 Administrative Hearings issues written findings of fact and  
3-64 conclusions of law on or after the effective date of this Act. A  
3-65 contested case for which an administrative law judge employed by  
3-66 the State Office of Administrative Hearings issues written findings  
3-67 of fact and conclusions of law before the effective date of this Act  
3-68 is governed by the law in effect on the date the findings of fact and  
3-69 conclusions of law were issued, and the former law is continued in

4-1 effect for that purpose.

4-2 SECTION 9. This Act takes effect September 1, 2011.

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