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H.B. No. 1013

A BILL TO BE ENTITLED

1 AN ACT
2 relating to the powers and duties of the Texas Medical Board and the
3 regulation of certain persons licensed by the board.

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

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

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

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

16 (2) seven members who represent the public.

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

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

1 official conduct, position, powers, or duties as a member of the
2 board in a manner prohibited by that section.

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

10 SECTION 3. Section 154.051, Occupations Code, is amended by
11 adding Subsection (d) to read as follows:

12 (d) The board may not consider or act on a complaint
13 involving care provided more than seven years before the date the
14 complaint is filed, unless the care was provided to a minor. If the
15 care was provided to a minor, the board may not consider or act on a
16 complaint involving the care after the later of:

- 17 (1) the date the minor is 21 years of age; or
18 (2) the seventh anniversary of the date of care.

19 SECTION 4. Section 154.053, Occupations Code, is amended by
20 amending Subsection (a) and adding Subsection (a-1) to read as
21 follows:

22 (a) The board shall notify by personal delivery or certified
23 mail a physician who is the subject of a complaint filed with the
24 board that a complaint has been filed and shall provide [~~notify~~] the
25 physician with a copy of the [~~nature of the~~] complaint, including a
26 statement of the alleged violation in plain language. The
27 complaint must be provided to the physician without redaction

1 unless:

2 (1) the complaint is filed by:

3 (A) a patient of the physician;

4 (B) a patient's parent or legal guardian if the
5 patient is a minor;

6 (C) a patient's agent under a power of attorney;

7 or

8 (D) a registered nurse or a licensed vocational
9 nurse;

10 (2) there is a risk of harm to the public; or

11 (3) the notice would jeopardize an investigation.

12 (a-1) If a physician rejects a notice by personal delivery
13 or certified mail under Subsection (a), the board may send to the
14 physician an additional notice of the complaint by first class mail
15 that includes notice of the attempted delivery by personal delivery
16 or certified mail.

17 SECTION 5. Subchapter B, Chapter 154, Occupations Code, is
18 amended by adding Section 154.0535 to read as follows:

19 Sec. 154.0535. REQUIREMENTS FOR CERTAIN COMPLAINTS. (a)
20 In this section, "anonymous complaint" means a complaint that lacks
21 sufficient information to identify the source or the name of the
22 person who filed the complaint.

23 (b) The board may not accept anonymous complaints.

24 (c) A complaint filed with the board against a physician
25 must include the name and address of the person filing the
26 complaint.

27 (d) Not later than the 15th day after the date the complaint

1 is filed with the board, the board shall notify the physician who is
2 the subject of the complaint of the name and address of the person
3 who filed the complaint, unless:

4 (1) the notice would jeopardize an investigation; or

5 (2) the complaint is filed by:

6 (A) a patient of the physician;

7 (B) a patient's parent or legal guardian if the
8 patient is a minor;

9 (C) a patient's agent under a power of attorney;

10 or

11 (D) a registered nurse or a licensed vocational
12 nurse.

13 (e) The board shall adopt rules as necessary to implement
14 this section.

15 SECTION 6. Sections 154.056(a), (b), and (e), Occupations
16 Code, are amended to read as follows:

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

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

23 (2) ensure that a complaint is not dismissed without
24 appropriate consideration;

25 (3) require that the board be advised of the dismissal
26 of a complaint and that a letter be sent to the person who filed the
27 complaint and to the physician who was the subject of the complaint

1 explaining the action taken on the complaint;

2 (4) ensure that a person who files a complaint has an
3 opportunity to explain the allegations made in the complaint;

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

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

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

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

20 (A) a hospital;

21 (B) a health maintenance organization;

22 (C) an independent practice association;

23 (D) an approved nonprofit health corporation
24 certified under Section 162.001; or

25 (E) a physician network.

26 (b) The board shall:

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

1 (2) establish a schedule for conducting each phase of
2 a complaint that is under the control of the board not later than
3 the 30th day after the date the physician's time for preparing and
4 submitting a response expires [~~board receives the complaint~~].

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

26 SECTION 7. Section 154.0561, Occupations Code, is amended
27 by adding Subsection (e) to read as follows:

1 (e) The board shall deliver a copy of the preliminary and
2 final reports, including any dissenting or minority report, to the
3 physician who is the subject of the review.

4 SECTION 8. Section 154.057(b), Occupations Code, is amended
5 to read as follows:

6 (b) The board shall complete a preliminary investigation of
7 the complaint not later than the 45th [~~30th~~] day after the date of
8 receiving the complaint. The board shall first determine whether
9 the physician constitutes a continuing threat to the public
10 welfare. On completion of the preliminary investigation, the board
11 shall determine whether to officially proceed on the complaint. If
12 the board fails to complete the preliminary investigation in the
13 time required by this subsection, the board's official
14 investigation of the complaint is considered to commence on that
15 date.

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

18 (b) If the initial review under Subsection (a) indicates
19 that an act by a physician falls below an acceptable standard of
20 care, the complaint shall be reviewed by an expert physician panel
21 authorized under Section 154.056(e) consisting of physicians who
22 have an active practice in the same specialty as the physician who
23 is the subject of the complaint or in another specialty that is
24 similar to the physician's specialty.

25 SECTION 10. Subchapter B, Chapter 156, Occupations Code, is
26 amended by adding Section 156.059 to read as follows:

27 Sec. 156.059. CONTINUING EDUCATION IN TICK-BORNE DISEASES.

1 (a) A physician licensed under this subtitle who submits an
2 application for renewal of a license to practice medicine and whose
3 practice includes the treatment of tick-borne diseases is
4 encouraged to include continuing medical education in the treatment
5 of tick-borne diseases among the hours of continuing medical
6 education completed for purposes of rules adopted under Section
7 156.051(a)(2).

8 (b) The board shall adopt rules to establish the content of
9 and approval requirements for continuing medical education
10 relating to the treatment of tick-borne diseases. In adopting
11 rules, the board shall review relevant courses, including courses
12 that have been approved in other states. Rules adopted under this
13 section must provide for the identification and approval of
14 accredited continuing medical education courses that represent an
15 appropriate spectrum of relevant medical clinical treatment
16 relating to tick-borne diseases.

17 (c) If relevant, the board shall consider a physician's
18 participation in a continuing medical education course approved
19 under Subsection (b) if:

20 (1) the physician is being investigated by the board
21 regarding the physician's selection of clinical care for the
22 treatment of tick-borne diseases; and

23 (2) the physician completed the course not more than
24 two years before the start of the investigation.

25 (d) The board may adopt other rules to implement this
26 section.

27 SECTION 11. Section 164.003, Occupations Code, is amended

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

3 (b) Rules adopted under this section must require that:

4 (1) an informal meeting in compliance with Section
5 2001.054, Government Code, be scheduled not later than the 180th
6 day after the date the board's official investigation of the
7 complaint is commenced as provided by Section 154.057(b), unless
8 good cause is shown by the board for scheduling the informal meeting
9 after that date;

10 (2) the board give notice to the license holder of the
11 time and place of the meeting not later than the 45th [~~30th~~] day
12 before the date the meeting is held;

13 (3) the complainant and the license holder be provided
14 an opportunity to be heard;

15 (4) at least one of the board members or district
16 review committee members participating in the informal meeting as a
17 panelist be a member who represents the public;

18 (5) the board's legal counsel or a representative of
19 the attorney general be present to advise the board or the board's
20 staff; and

21 (6) a member of the board's staff be at the meeting to
22 present to the board's representative the facts the staff
23 reasonably believes it could prove by competent evidence or
24 qualified witnesses at a hearing.

25 (i) On request by a physician under review, the board shall
26 make an audio recording of the informal settlement conference
27 proceeding and provide a copy of the audio recording to the

1 physician. The physician shall pay the costs of producing and
2 copying the requested audio recording.

3 (j) The audio recording is a part of the investigative file
4 and may not be released by the board to a third party unless
5 authorized under this subtitle.

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

8 (a) In an informal meeting under Section 164.003 or an
9 informal hearing under Section 164.103, at least two panelists
10 shall be randomly appointed to determine whether an informal
11 disposition is appropriate, unless a panelist of the same or a
12 similar practice as the affected physician is available to serve in
13 the informal meeting or hearing. At least one of the panelists must
14 be a physician.

15 SECTION 13. Section 164.0032, Occupations Code, is amended
16 by adding Subsection (f-1) to read as follows:

17 (f-1) At least 21 days before the date the board conducts a
18 meeting to consider the panel's recommendations under Subsection
19 (f), the board must notify the affected physician and the
20 physician's authorized representative of the meeting. The
21 physician and the physician's representative may be present at the
22 meeting.

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

25 (a) The board by rule shall adopt procedures governing
26 formal disposition of a contested case under Chapter 2001,
27 Government Code. A formal hearing shall be conducted by an

1 administrative law judge employed by the State Office of
2 Administrative Hearings. After receiving the administrative law
3 judge's findings of fact and conclusions of law, the board shall
4 dispose of the contested case by issuing a final order based on the
5 administrative law judge's findings of fact and conclusions of law
6 ~~[determine the charges on the merits]~~.

7 (a-1) Notwithstanding Section 2001.058(e), Government
8 Code, the [The] board may not change a finding of fact or conclusion
9 of law or vacate or modify an order of the administrative law judge.
10 The board may obtain judicial review of any finding of fact or
11 conclusion of law issued by the administrative law judge as
12 provided by Section 2001.058(f)(5), Government Code. For each
13 case, the board has the sole authority and discretion to determine
14 the appropriate action or sanction, and the administrative law
15 judge may not make any recommendation regarding the appropriate
16 action or sanction ~~[only if the board makes a determination~~
17 ~~required by Section 2001.058(e), Government Code]~~.

18 SECTION 15. Section 164.009, Occupations Code, is amended
19 to read as follows:

20 Sec. 164.009. JUDICIAL REVIEW. A person whose license to
21 practice medicine has been revoked or who is subject to other
22 disciplinary action by the board may appeal to a Travis County
23 district court not later than the 30th day after the date the board
24 decision is final.

25 SECTION 16. Subchapter G, Chapter 301, Occupations Code, is
26 amended by adding Section 301.304 to read as follows:

27 Sec. 301.304. CONTINUING EDUCATION IN TICK-BORNE DISEASES.

1 (a) As part of the continuing education requirements under Section
2 301.303, a license holder whose practice includes the treatment of
3 tick-borne diseases shall be encouraged to participate, during each
4 two-year licensing period, in continuing education relating to the
5 treatment of tick-borne diseases.

6 (b) The board shall adopt rules to identify the license
7 holders who are encouraged to complete continuing education under
8 Subsection (a) and establish the content of that continuing
9 education. In adopting rules, the board shall review relevant
10 courses, including courses that have been approved in other states.
11 Rules adopted under this section must provide for the
12 identification and approval of accredited continuing education
13 courses that represent an appropriate spectrum of relevant medical
14 clinical treatment relating to tick-borne diseases.

15 (c) If relevant, the board shall consider a license holder's
16 participation in a continuing education course approved under
17 Subsection (b) if:

18 (1) the license holder is being investigated by the
19 board regarding the license holder's selection of clinical care for
20 the treatment of tick-borne diseases; and

21 (2) the license holder completed the course not more
22 than two years before the start of the investigation.

23 (d) The board may adopt other rules to implement this
24 section, including rules under Section 301.303(c) for the approval
25 of education programs and providers.

26 SECTION 17. The legislature finds that tick-borne diseases
27 are an important public health issue in Texas. The legislature

1 further finds that medical and nursing education on the appropriate
2 care and treatment of tick-borne diseases is essential to the
3 delivery of necessary health care to individuals in Texas suffering
4 from tick-borne diseases. It is the intent of the legislature to
5 address the need for medical and nursing education on tick-borne
6 diseases through the continuing medical education requirements for
7 physicians and nurses.

8 SECTION 18. The Texas Medical Board and the Texas Board of
9 Nursing shall consult and cooperate in adopting the rules required
10 under Sections 156.059 and 301.304, Occupations Code, as added by
11 this Act.

12 SECTION 19. Not later than January 31, 2012, the Texas
13 Medical Board shall adopt rules required by Section 156.059,
14 Occupations Code, as added by this Act.

15 SECTION 20. Not later than January 31, 2012, the Texas Board
16 of Nursing shall adopt rules required by Section 301.304,
17 Occupations Code, as added by this Act.

18 SECTION 21. Not later than February 6, 2012, the Texas
19 Medical Board and the Texas Board of Nursing shall report to the
20 governor, the lieutenant governor, and the speaker of the house of
21 representatives concerning the adoption of rules as required by
22 Sections 156.059 and 301.304, Occupations Code, as added by this
23 Act.

24 SECTION 22. Sections 156.059(c) and 301.304(c),
25 Occupations Code, as added by this Act, apply only to the
26 investigation of a complaint or a disciplinary action based on a
27 complaint filed on or after the effective date of this Act. The

1 investigation of a complaint or a disciplinary action based on a
2 complaint filed before that date is governed by the law in effect on
3 the date the complaint was filed, and that law is continued in
4 effect for that purpose.

5 SECTION 23. The changes in law made by this Act by the
6 amendment of Sections 152.002(a) and 152.003, Occupations Code,
7 apply only to a person appointed to the Texas Medical Board on or
8 after the effective date of this Act. A person appointed before the
9 effective date of this Act is governed by the law in effect on the
10 date the appointment is made, and the former law is continued in
11 effect for that purpose.

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

18 SECTION 25. The changes in law made by this Act relating to
19 the Texas Medical Board's disciplinary authority apply only to
20 conduct that occurs on or after the effective date of this Act.
21 Conduct that occurs before the effective date of this Act is
22 governed by the law in effect on the date the conduct occurs, and
23 the former law is continued in effect for that purpose.

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

1 conclusions of law on or after the effective date of this Act. A
2 contested case for which an administrative law judge employed by
3 the State Office of Administrative Hearings issues written findings
4 of fact and conclusions of law before the effective date of this Act
5 is governed by the law in effect on the date the findings of fact and
6 conclusions of law were issued, and the former law is continued in
7 effect for that purpose.

8 SECTION 27. This Act takes effect September 1, 2011.