

**House Bill 680**  
Senate Amendments  
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION (CS)

CONFERENCE

No equivalent provision.

SECTION 1. Section 154.051, Occupations Code, is amended by adding Subsections (d) and (e) to read as follows:

(d) The board may not consider or act on a complaint involving care provided more than seven years before the date on which the complaint is received by the board unless the care was provided to a minor. If the care was provided to a minor, the board may not consider or act on a complaint involving the care after the later of:

(1) the date the minor is 21 years of age; or

(2) the seventh anniversary of the date of the care.

(e) On receipt of a complaint, the board may consider a previously investigated complaint to determine whether there is a pattern of practice violating this subtitle.

No equivalent provision.

SECTION 2. Subchapter B, Chapter 154, Occupations Code, is amended by adding Section 154.0535 to read as follows:

Sec. 154.0535. REQUIREMENTS FOR CERTAIN COMPLAINTS. (a) In this section:

(1) "Anonymous complaint" means a complaint that lacks sufficient information to identify the source or the name of the person who filed the complaint.

(2) "Insurance agent" means a person licensed under Chapter 4054, Insurance Code.

(3) "Insurer" means an insurance company or other entity authorized to engage in the business of insurance under Subtitle C, Title 6, Insurance Code.

(4) "Third-party administrator" means a person required to have a certificate of authority under Chapter 4151, Insurance Code.

(b) The board may not accept anonymous complaints.

(c) Notwithstanding any confidentiality requirements under

**House Bill 680**  
Senate Amendments  
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION (CS)

CONFERENCE

Chapter 552, Government Code, this subtitle, or rules adopted under this subtitle, a complaint filed with the board by an insurance agent, insurer, pharmaceutical company, or third-party administrator against a physician must include the name and address of the insurance agent, insurer, pharmaceutical company, or third-party administrator filing the complaint. Not later than the 15th day after the date the complaint is filed with the board, the board shall notify the physician who is the subject of the complaint of the name and address of the insurance agent, insurer, pharmaceutical company, or third-party administrator who filed the complaint, unless the notice would jeopardize an investigation.

SECTION 1. Section 154.057(b), Occupations Code, is amended to read as follows:

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

**No equivalent provision.**

SECTION 3. Same as House version.

SECTION 4. Subchapter A, Chapter 164, Occupations Code, is amended by adding Section 164.0015 to read as follows:  
Sec. 164.0015. REMEDIAL PLAN. (a) In addition to the authority under Sections 164.001 and 164.002, the board may

**House Bill 680**  
Senate Amendments  
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION (CS)

CONFERENCE

issue and establish the terms of a remedial plan to resolve the investigation of a complaint relating to this subtitle.

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

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

(2) assesses an administrative penalty against a person.

(c) A remedial plan may not be imposed to resolve a complaint:

(1) concerning:

(A) a patient death;

(B) the commission of a felony; or

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

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

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

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

(f) The board shall adopt rules necessary to implement this section.

No equivalent provision.

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

(c) An agreed disposition is a disciplinary order for purposes

**House Bill 680**  
Senate Amendments  
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION (CS)

CONFERENCE

of reporting under this subtitle and of administrative hearings and proceedings by state and federal regulatory agencies regarding the practice of medicine. An agreed disposition or a remedial plan under Section 164.0015 is public information.

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

SECTION 2. Section 164.003(b), Occupations Code, is amended to read as follows:

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

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

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

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

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

(5) the board's legal counsel or a representative of the attorney general be present to advise the board or the board's

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

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

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

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

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

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

(5) the board's legal counsel or a representative of the attorney general be present to advise the board or the board's

**House Bill 680**  
Senate Amendments  
Section-by-Section Analysis

HOUSE VERSION

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

No equivalent provision.

SENATE VERSION (CS)

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

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

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

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

(a) The board by rule shall adopt procedures governing formal disposition of a contested case under Chapter 2001, Government Code. A formal hearing shall be conducted by an administrative law judge employed by the State Office of Administrative Hearings. After receiving the administrative

CONFERENCE

**House Bill 680**  
Senate Amendments  
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION (CS)

CONFERENCE

law judge's findings of fact and conclusions of law, the board shall dispose of the contested case by issuing a final order based on the administrative law judge's findings of fact and conclusions of law [~~determine the charges on the merits~~].

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

SECTION 3. Sections 154.057 and 164.003, Occupations Code, as amended by this Act, apply only to the investigation of a complaint filed on or after the effective date of this Act. The investigation of a complaint filed before that date is governed by the law in effect on the date the complaint was filed, and that law is continued in effect for that purpose.

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

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

(c) Section 164.0015, Occupations Code, as added by this Act, applies only to a complaint under Subtitle B, Title 3,

**House Bill 680**  
Senate Amendments  
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION (CS)

CONFERENCE

Occupations Code, filed on or after the effective date of this Act. A complaint under Subtitle B, Title 3, Occupations Code, filed before that date is governed by the law in effect on the date the complaint was filed, and that law is continued in effect for that purpose.

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

SECTION 4. This Act takes effect September 1, 2011.

SECTION 9. Same as House version.