

## **BILL ANALYSIS**

C.S.H.B. 286  
By: Zedler  
Public Health  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Under current procedures, when the Texas Medical Board notifies a physician of a complaint filed against the physician, the board is required to notify the physician only of the nature of the complaint, which, interested parties note, can result in the physician having to submit additional, unrelated documents to the board. In addition, before an informal proceeding, the board must notify the physician only of the information the board intends to use during the proceeding and does not have to address what statute, board rule, or standard of care each specific allegation violated or the identity and credentials of the expert witnesses the board intends to use. Interested parties observe that, if an informal settlement is rejected and a formal complaint is filed, a hearing before the State Office of Administrative Hearings is arranged where additional charges can be introduced without having been discussed in the informal proceedings. C.S.H.B. 286 seeks to address these issues by amending current law relating to the Texas Medical Board's complaint process.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

### **ANALYSIS**

C.S.H.B. 286 amends the Occupations Code to require the Texas Medical Board, in the required notification given to a physician concerning a complaint filed with the board, to notify the physician of the specific allegations made in the complaint, rather than the nature of the complaint. The bill requires the written statement required to accompany the notice of the time and place of a meeting in an informal proceeding given to a physician who is the subject of a complaint to include, in addition to the information the board intends to use at the meeting, the following: the specific factual allegations, rather than the nature of the allegations, made in the complaint; the specific statute, rule, or standard of care alleged to be violated; and the credentials of any expert the board intends to rely on at the meeting. The bill requires the written order containing the recommendations of the panel serving at an informal meeting to state the specific basis for the order, including the specific statute, board rule, or standard of care that each act violates.

C.S.H.B. 286 requires a formal complaint against a physician filed by the board to allege with reasonable certainty each specific act relied on by the board to constitute a violation of a specific standard of care. The bill prohibits the board, in a formal complaint filed by the board or in a contested case before the State Office of Administrative Hearings, from adding a charge or alleged violation from a different investigation to the complaint or case unless the board has attempted to resolve the additional charge or alleged violation through an informal proceeding.

### **EFFECTIVE DATE**

September 1, 2013.

## COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 286 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and highlighted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

### INTRODUCED

SECTION 1. Section 154.053(a), Occupations Code, is amended.

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

(f) The notice required by Subsection (b)(2) must be accompanied by a written statement of the specific [nature of the] allegations made in the complaint, the specific statute, rule, or standard of care alleged to be violated, [and] the information the board intends to use at the meeting, and the identity and credentials of any expert the board intends to rely on 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 business days before the date of the meeting in order for the information to be considered at the meeting.

SECTION 3. Section 164.0032, Occupations Code, is amended by amending Subsections (f) and (g) and adding Subsection (g-1) to read as follows:

(f) The panel shall recommend the dismissal of the complaint or allegations or, if the panel determines that the affected physician has violated a statute, ~~[or]~~ board rule, or standard of care, the panel may recommend board action and terms for an informal settlement of the case.

(g) The panel's recommendations under Subsection (f) must be made in a written order and presented to the affected physician and the physician's authorized representative. The order must state each specific act the panel has determined is a

### HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Same as introduced version.

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

(f) The notice required by Subsection (b)(2) must be accompanied by a written statement of the specific **factual** [nature of the] allegations, the specific statute, rule, or standard of care alleged to be violated, [and] the information the board intends to use at the meeting, and the credentials of any expert the board intends to rely on 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 business days before the date of the meeting in order for the information to be considered at the meeting.

SECTION 3. Section 164.0032, Occupations Code, is amended by amending Subsections (f) and (g) and adding Subsection (g-1) to read as follows:

(f) The panel shall recommend the dismissal of the complaint or allegations or, if the panel determines that the affected physician has violated a statute, ~~[or]~~ board rule, or standard of care, the panel may recommend board action and terms for an informal settlement of the case.

(g) The panel's recommendations under Subsection (f) must be made in a written order and presented to the affected physician and the physician's authorized representative. The order must state the specific basis for the order, including the

violation and the specific statute, board rule, or standard of care the act violates if the panel determines that the affected physician has violated a statute, board rule, or standard of care.

(g-1) The physician may accept the proposed settlement within the time established by the panel at the informal meeting. If the physician rejects the proposed settlement or does not act within the required time, the board may proceed with the filing of a formal complaint with the State Office of Administrative Hearings.

SECTION 4. Section 164.005(f), Occupations Code, is amended.

SECTION 5. Subchapter A, Chapter 164, Occupations Code, is amended by adding Section 164.0061 to read as follows:

Sec. 164.0061. ADDITIONAL CHARGE OR ALLEGED VIOLATION. In a formal complaint filed under Section 164.005 or in a contested case before the State Office of Administrative Hearings, the board may not add a charge or alleged violation to the complaint or case unless the board has attempted to resolve the additional charge or alleged violation through an informal proceeding under Section 164.003.

SECTION 6. Sections 154.053 and 164.005, Occupations Code, as amended by this Act, apply only to a complaint filed on or after the effective date of this Act. A complaint filed before that date is governed by the law in effect on the date the complaint was filed, and the former law is continued in effect for that purpose.

SECTION 7. Sections 164.003 and 164.0032, Occupations Code, as amended by this Act, apply only to an informal proceeding concerning a complaint filed on or after the effective date of this Act. An informal proceeding concerning a complaint filed before that date is governed by the law in effect on the date the complaint was filed, and the former law is continued in effect for that purpose.

SECTION 8. Section 164.0061, Occupations Code, as added by this Act, applies only to a formal hearing that

specific statute, board rule, or standard of care that each act violates.

(g-1) The physician may accept the proposed settlement within the time established by the panel at the informal meeting. If the physician rejects the proposed settlement or does not act within the required time, the board may proceed with the filing of a formal complaint with the State Office of Administrative Hearings.

SECTION 4. Same as introduced version.

SECTION 5. Subchapter A, Chapter 164, Occupations Code, is amended by adding Section 164.0061 to read as follows:

Sec. 164.0061. ADDITIONAL CHARGE OR ALLEGED VIOLATION. In a formal complaint filed under Section 164.005 or in a contested case before the State Office of Administrative Hearings, the board may not add a charge or alleged violation from a different investigation to the complaint or case unless the board has attempted to resolve the additional charge or alleged violation through an informal proceeding under Section 164.003.

SECTION 6. Same as introduced version.

SECTION 7. Same as introduced version.

SECTION 8. Same as introduced version.

commences on or after the effective date of this Act. A formal hearing that commences before that date is governed by the law in effect at the time the hearing commenced, and the former law is continued in effect for that purpose.

SECTION 9. This Act takes effect September 1, 2013.

SECTION 9. Same as introduced version.