

BILL ANALYSIS

C.S.H.B. 179
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 of the information the board intends to use during the proceeding but is not required to address the specific statute, board rule, or standard of care alleged to be violated or the credentials of the expert witnesses on which the board intends to rely. 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 in which additional charges can be introduced without having been discussed in the informal proceedings. C.S.H.B. 179 seeks to address these issues.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

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. 179 amends the Occupations Code to replace the requirement that the notice of a complaint filed against a physician provided by the Texas Medical Board to the physician who is the subject of the complaint be notice of the nature of the complaint with a requirement that such a notice provided to the physician include the specific allegations made in the complaint and a copy of the complaint that has been redacted to remove the name of the complainant. The bill requires each physician on an expert physician panel who is reviewing a complaint against a physician to practice in the same specialty as the physician who is the subject of the complaint.

C.S.H.B. 179 replaces the requirement that the notice given to a physician of the time and place of an informal meeting regarding a complaint be accompanied by a written statement of the nature of the allegations with a requirement that the notice be accompanied by a written statement of the specific factual allegations, 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 that meeting and retains the statutory requirement that the statement also include the information the board intends to use at the meeting. The bill requires such a notice given to a physician, if a complaint includes an allegation that the physician has violated the standard of care, to include a statement explaining exactly how the standard of care was violated. The bill authorizes the panel serving at an informal meeting to recommend board action and terms for an informal settlement of the case

if the panel determines the physician violated a standard of care. The bill requires a written order that contains 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. The bill requires a formal complaint filed by the board against a physician to allege with reasonable certainty each specific act relied on by the board to constitute a violation of a specific standard of care.

EFFECTIVE DATE

September 1, 2015.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 179 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and formatted 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 to read as follows:

(a) The board shall notify a physician who is the subject of a complaint filed with the board that a complaint has been filed and shall notify the physician of the specific allegations made in [nature of] the complaint unless the notice would jeopardize an investigation.

No equivalent provision.

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

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Section 154.053(a), Occupations Code, is amended to read as follows:

(a) The board shall provide notice to [notify] a physician who is the subject of a complaint filed with the board [that a complaint has been filed and shall notify the physician of the nature of the complaint] unless the notice would jeopardize an investigation. The notice must include:
(1) the specific allegations made in the complaint; and
(2) a copy of the complaint that has been redacted to remove the name of the complainant.

SECTION 2. Section 154.0561, Occupations Code, is amended by adding Subsection (e) to read as follows:

(e) Each physician on an expert physician panel authorized under Section 154.056(e) who is reviewing a complaint must practice in the same specialty as the physician who is the subject of the complaint.

SECTION 3. 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

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 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. 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

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 and a statement explaining exactly how the standard of care was violated. 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 4. Same as introduced version.

SECTION 5. Same as introduced version.

No equivalent provision.

SECTION 6. Sections 154.053, 154.0561, 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. Same as introduced version.

that purpose.

SECTION 8. Section 164.0061, Occupations Code, as added by this Act, applies only to a formal hearing that 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, 2015.

No equivalent provision.

SECTION 8. Same as introduced version.