

By: Smith

H.B. No. 2380

A BILL TO BE ENTITLED

AN ACT

relating to appearances at an informal show compliance proceeding and settlement conference.

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

SECTION 1. Subchapter A, Chapter 151, Occupations Code, is amended to read as follows:

Sec. 151.002. DEFINITIONS. (a) In this subtitle:

(1) "Appear" means an opportunity to be heard at an Informal Show Compliance proceeding and settlement conference (ISC) under Chapter 164 of this subtitle via videoconference, or if a respondent cannot utilize videoconference to appear via teleconference.

(2) ~~+(1)+~~ "Board" means the Texas Medical Board.

(3) ~~+(2)+~~ "Continuing threat to the public welfare" means a real danger to the health of a physician's patients or to the public from the acts or omissions of the physician caused through the physician's lack of competence, impaired status, or failure to care adequately for the physician's patients, as determined by:

(A) the board;

(B) a medical peer review committee in this state;

(C) a physician licensed to practice medicine in this state or otherwise lawfully practicing medicine in this state;

1 (D) a physician engaged in graduate medical
2 education or training; or

3 (E) a medical student.

4 (4) ~~+(3)~~ "Disciplinary order" means an action taken
5 under Section [164.001](#), [164.053](#), [164.058](#), or [164.101](#).

6 (5) ~~+(4)~~ "Doctor of osteopathic medicine" includes a
7 doctor of osteopathy, an osteopath, an osteopathic physician, and
8 an osteopathic surgeon.

9 (6) ~~+(5)~~ "Health care entity" means:

10 (A) a hospital licensed under Chapter [241](#) or [577](#),
11 Health and Safety Code;

12 (B) an entity, including a health maintenance
13 organization, group medical practice, nursing home, health science
14 center, university medical school, hospital district, hospital
15 authority, or other health care facility, that:

16 (i) provides or pays for medical care or
17 health care services; and

18 (ii) follows a formal peer review process
19 to further quality medical care or health care;

20 (C) a professional society or association of
21 physicians, or a committee of such a society or association, that
22 follows a formal peer review process to further quality medical
23 care or health care;

24 (D) an organization established by a
25 professional society or association of physicians, hospitals, or
26 both, that:

27 (i) collects and verifies the authenticity

1 of documents and other information concerning the qualifications,
2 competence, or performance of licensed health care professionals;
3 and

4 (ii) acts as a health care facility's agent
5 under the Health Care Quality Improvement Act of 1986 (42 U.S.C.
6 Section 11101 et seq.); or

7 (E) a health care collaborative certified under
8 Chapter 848, Insurance Code.

9 (7) ~~+(6)+~~ "Legally authorized representative" of a
10 patient means:

11 (A) a parent or legal guardian if the patient is a
12 minor;

13 (B) a legal guardian if the patient has been
14 adjudicated incompetent to manage the patient's personal affairs;

15 (C) an agent of the patient authorized under a
16 durable power of attorney for health care;

17 (D) an attorney ad litem appointed for the
18 patient;

19 (E) a guardian ad litem appointed for the
20 patient;

21 (F) a personal representative or statutory
22 beneficiary if the patient is deceased; or

23 (G) an attorney retained by the patient or by
24 another person listed by this subdivision.

25 (7-a) ~~+(6)+~~ "License holder" means a person holding a
26 license, permit, or certificate issued under this subtitle.

27 (7-b) ~~+(6)+~~ "Maintenance of certification" means the

1 satisfactory completion of periodic recertification requirements
2 that are required for a physician to maintain certification after
3 initial certification from:

4 (A) a medical specialty member board of the
5 American Board of Medical Specialties;

6 (B) a medical specialty member board of the
7 American Osteopathic Association Bureau of Osteopathic
8 Specialists;

9 (C) the American Board of Oral and Maxillofacial
10 Surgery; or

11 (D) any other certifying board that is recognized
12 by the Texas Medical Board.

13 (8) ~~+(7)+~~ "Medical peer review" or "professional
14 review action" means the evaluation of medical and health care
15 services, including evaluation of the qualifications and
16 professional conduct of professional health care practitioners and
17 of patient care provided by those practitioners. The term includes
18 evaluation of the:

19 (A) merits of a complaint relating to a health
20 care practitioner and a determination or recommendation regarding
21 the complaint;

22 (B) accuracy of a diagnosis;

23 (C) quality of the care provided by a health care
24 practitioner;

25 (D) report made to a medical peer review
26 committee concerning activities under the committee's review
27 authority;

1 (E) report made by a medical peer review
2 committee to another committee or to the board as permitted or
3 required by law; and

4 (F) implementation of the duties of a medical
5 peer review committee by a member, agent, or employee of the
6 committee.

7 (9) ~~+(8)+~~ "Medical peer review committee" or
8 "professional review body" means a committee of a health care
9 entity, the governing board of a health care entity, or the medical
10 staff of a health care entity, that operates under written bylaws
11 approved by the policy-making body or the governing board of the
12 health care entity and is authorized to evaluate the quality of
13 medical and health care services or the competence of physicians,
14 including evaluation of the performance of those functions
15 specified by Section 85.204, Health and Safety Code. The term
16 includes:

17 (A) an employee or agent of the committee,
18 including an assistant, investigator, intervenor, attorney, and
19 any other person or organization that serves the committee; and

20 (B) the governing body of a public hospital owned
21 or operated by a governmental entity, the governing body of a
22 hospital authority created under Chapter 262 or 264, Health and
23 Safety Code, and the governing body of a hospital district created
24 under Article IX, Texas Constitution, but only:

25 (i) in relation to the governing body's
26 evaluation of the competence of a physician or the quality of
27 medical and health care services provided by the public hospital,

1 hospital authority, or hospital district; and

2 (ii) to the extent that the evaluation
3 under Subparagraph (i) involves discussions or records that
4 specifically or necessarily identify an individual patient or
5 physician.

6 (10) ~~[(9)]~~ "Medical records" means all records
7 relating to the history, diagnosis, treatment, or prognosis of a
8 patient.

9 (11) ~~[(10)]~~ "Operation" means the application of
10 surgery or the performance of surgical services.

11 (12) ~~[(11)]~~ "Person" means an individual, unless the
12 term is expressly made applicable to a partnership, association, or
13 corporation.

14 (13) ~~[(12)]~~ "Physician" means a person licensed to
15 practice medicine in this state.

16 (14) ~~[(13)]~~ "Practicing medicine" means the
17 diagnosis, treatment, or offer to treat a mental or physical
18 disease or disorder or a physical deformity or injury by any system
19 or method, or the attempt to effect cures of those conditions, by a
20 person who:

21 (A) publicly professes to be a physician or
22 surgeon; or

23 (B) directly or indirectly charges money or other
24 compensation for those services.

25 (15) ~~[(14)]~~ "Surgery" includes:

26 (A) surgical services, procedures, and
27 operations; and

1 (B) the procedures described in the surgery
2 section of the common procedure coding system as adopted by the
3 Health Care Financing Administration of the United States
4 Department of Health and Human Services.

5 (b) The terms "physician" and "surgeon" are synonyms. As
6 used in this subtitle, the terms "practitioner" and "practitioner
7 of medicine" include physicians and surgeons.

8 SECTION 2. Section 164.003, Occupations Code, is amended by
9 amending Subsections (b) and (c) to read as follows:

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

11 (1) an informal meeting in compliance with Section
12 2001.054, Government Code, be scheduled not later than the 180th
13 day after the date the board's official investigation of the
14 complaint is commenced as provided by Section 154.057(b), unless
15 good cause is shown by the board for scheduling the informal meeting
16 after that date;

17 (2) the board give notice to the license holder of the
18 time and place of the meeting not later than the 45th day before the
19 date the meeting is held;

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

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

25 (5) the board's legal counsel or a representative of
26 the attorney general appear [~~be present~~] to advise the board or the
27 board's staff;

1 (6) a member of the board's staff appear [~~be~~] at the
2 meeting to present to the board's representative the facts the
3 staff reasonably believes it could prove by competent evidence or
4 qualified witnesses at a hearing; and

5 (7) if the complaint includes an allegation that the
6 license holder has violated the standard of care, the panel
7 conducting the informal proceeding consider whether the physician
8 was practicing complementary and alternative medicine.

9 (c) An affected physician is entitled to appear to:

10 (1) reply to the staff's presentation; and

11 (2) present the facts the physician reasonably
12 believes the physician could prove by competent evidence or
13 qualified witnesses at a hearing.

14 SECTION 3. Section 164.004, Occupations Code, is amended to
15 read as follows:

16 (a) Except in the case of a suspension under Section 164.059
17 or under the terms of an agreement between the board and a license
18 holder, a revocation, suspension, involuntary modification, or
19 other disciplinary action relating to a license is not effective
20 unless, before board proceedings are instituted:

21 (1) the board gives notice, in a manner consistent
22 with the notice requirements under Section 154.053, to the affected
23 license holder of the facts or conduct alleged to warrant the
24 intended action; and

25 (2) the license holder is given an opportunity to
26 appear to show compliance with all requirements of law for the
27 retention of the license[~~, at the license holder's option, either~~

1 ~~in writing or through personal appearance]~~ at an informal meeting
2 with one or more representatives of the board. Licensees may submit
3 material in writing to show compliance rather than appear at an
4 informal meeting with one or more representatives of the board.

5 (b) If the license holder chooses to [~~personally~~] appear and
6 an informal meeting is held, the board's staff and the board's
7 representatives are subject to the ex parte provisions of Chapter
8 2001, Government Code, with regard to contacts with board members
9 and administrative law judges concerning the case.

10 SECTION 4. Section 164.008, Occupations Code, is amended to
11 read as follows:

12 In a hearing involving a disciplinary action under this
13 subtitle, the respondent is entitled to appear with counsel
14 [~~personally, by counsel, or both~~].

15 SECTION 5. Section 164.056, Occupations Code, is amended by
16 amending Subsection (c) to read as follows:

17 (c) At the hearing, the physician and the physician's
18 attorney are entitled to appear to present testimony and other
19 evidence showing that the physician should not be required to
20 submit to the examination. After a hearing, the board shall issue an
21 order either requiring the physician to submit to the examination
22 or withdrawing the request for examination.

23 SECTION 6. Section 164.059, Occupations Code, is amended by
24 amending Subsection (c) to read as follows:

25 (c) A license may be suspended or restricted by a
26 disciplinary panel under this section without notice or hearing if:

27 (1) the board immediately provides notice of the

1 suspension or restriction to the license holder; and

2 (2) appear at a hearing on the temporary suspension or
3 restriction before a disciplinary panel of the board is scheduled
4 for the earliest possible date after 10 days' notice of hearing.

5 SECTION 7. The changes in law made by this Act apply to an
6 informal show compliance proceeding and settlement conference
7 under Chapter 164, Occupations Code, scheduled on or after the
8 effective date of this Act.

9 SECTION 8. This Act takes effect immediately if it receives
10 a vote of two-thirds of all the members elected to each house, as
11 provided by Section 39, Article III, Texas Constitution. If this
12 Act does not receive the vote necessary for immediate effect, this
13 Act takes effect September 1, 2021.