By:  Hall S.B. No. 666

(In the Senate - Filed January 30, 2023; February 17, 2023, read first time and referred to Committee on Health & Human Services; May 2, 2023, reported adversely, with favorable Committee Substitute by the following vote: Yeas 6, Nays 2; May 2, 2023, sent to printer.)

COMMITTEE VOTE

                 Yea Nay Absent  PNV

Kolkhorst         X

Perry             X

Blanco            X

Hall              X

Hancock                     X

Hughes            X

LaMantia              X

Miles                 X

Sparks            X

COMMITTEE SUBSTITUTE FOR S.B. No. 666 By:  Perry

A BILL TO BE ENTITLED

AN ACT

relating to complaint information and to rulemaking and disciplinary procedures of the Texas Medical Board.

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

SECTION 1.  Section 153.001, Occupations Code, is amended to read as follows:

Sec. 153.001.  ADOPTION OF RULES. (a)  The board may adopt rules and bylaws as necessary to:

(1)  govern its own proceedings;

(2)  perform its duties;

(3)  regulate the practice of medicine in this state; and

(4)  enforce this subtitle.

(b)  Notwithstanding any other law and except as otherwise provided by this subsection, the board must hold a public hearing with a public comment period on a proposed rule before adopting the rule. This subsection does not apply to an emergency rule adopted or renewed in accordance with Section 2001.034, Government Code.

SECTION 2.  Section 154.051, Occupations Code, is amended by amending Subsections (a), (b), and (c) and adding Subsection (d-2) to read as follows:

(a)  The board by rule shall establish methods by which members of the public and license holders are notified of the name, mailing address, and telephone number of the board for the purpose of obtaining information about complaint procedures and directing complaints to the board. The board may provide for that notice:

(1)  on each registration form, application, or written contract for services of a person or entity regulated under this subtitle;

(2)  on a sign prominently displayed in the place of business of each person or entity regulated under this subtitle; or

(3)  in a bill for service provided by a person or entity regulated under this subtitle.

(b)  The board shall list with its regular telephone number any toll-free telephone number established under other state law that may be called to obtain information about how to present a complaint about a health professional.

(c)  A person, including a partnership, association, corporation, or other entity, may not file a complaint against a license holder with the board unless the person:

(1)  is:

(A)  a patient of the license holder; or

(B)  directly involved in the care of a patient of the license holder and the complaint concerns the license holder's provision of care to that patient; or

(2)  is not a person described by Subdivision (1) and has direct knowledge of the incident that is the subject of the complaint. [~~The board may file a complaint on its own initiative.~~]

(d-2)  Notwithstanding Subsections (d) and (d-1), the board may consider or act on a complaint involving conduct that constitutes a criminal offense at any time before the expiration of the applicable statute of limitations for the offense.

SECTION 3.  Subchapter B, Chapter 154, Occupations Code, is amended by adding Section 154.0511 to read as follows:

Sec. 154.0511.  FORM OF CERTAIN COMPLAINTS. The board may not accept or take action regarding, or require a license holder to respond to, a complaint filed with the board by a person described by Section 154.051(c)(2) unless the complaint is in writing and includes:

(1)  the name of the complainant; and

(2)  a sworn affidavit that:

(A)  states that all of the facts asserted in the complaint are:

(i)  true; and

(ii)  based on personal knowledge of the physician's care of a patient identified in the complaint; and

(B)  is executed before a notary public under penalty of perjury.

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

(a)  Except as provided by Subsection (a-1), the [~~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 provide [~~notify~~] the physician with a complete copy [~~of the nature~~] of the complaint, including the name of the complainant [~~unless the notice would jeopardize an investigation~~].

(a-1)  The board shall redact the name of the complainant from the complete copy of the complaint provided to the physician under Subsection (a) if the complaint filed with the board is in writing and includes:

(1)  the name of the complainant; and

(2)  a sworn affidavit that:

(A)  states that all of the facts asserted in the complaint are:

(i)  true; and

(ii)  based on personal knowledge of the physician's care of a patient identified in the complaint; and

(B)  is executed before a notary public under penalty of perjury.

SECTION 5.  Section 154.056, Occupations Code, is amended by adding Subsections (b-1), (b-2), (b-3), (b-4), and (b-5) and amending Subsection (e) to read as follows:

(b-1)  The board must complete the investigation of a complaint not later than the 120th day after the date the complaint is filed with the board, except that the board may extend the period for investigating the complaint for an additional 30 days if extenuating circumstances prevent the completion of the investigation within the 120-day period.

(b-2)  In conducting an investigation of a complaint filed with the board, the board may not investigate matters that are outside of the scope of the filed complaint. This subsection applies at all times before the resolution of the complaint, including during the initial investigation period and any informal proceeding or disciplinary hearing.

(b-3)  Except as provided by Subsection (b-4), the board may not investigate a complaint involving a violation alleged to have occurred more than three years before the date the complaint is filed.

(b-4)  The board may not investigate a complaint that alleges a violation involving care provided to a person who was 17 years of age or younger at the time of the alleged violation unless the complaint is filed on or before the person's 20th birthday.

(b-5)  Notwithstanding Subsections (b-3) and (b-4), the board may investigate a complaint that alleges a violation involving conduct constituting a criminal offense as provided by Section 154.051(d-2).

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

SECTION 6.  Section 154.058, Occupations Code, is amended to read as follows:

Sec. 154.058.  EXPERT PHYSICIAN REVIEW AND DETERMINATION OF MEDICAL COMPETENCY.  (a)  Each complaint against a physician that requires a determination of medical competency shall be reviewed initially by a board member, consultant, or employee [~~with a medical background considered sufficient by the board~~]. A board member, consultant, or employee who reviews a complaint under this subsection must be a physician licensed in this state and engaged in the active practice of medicine.

(b)  If the initial review under Subsection (a) indicates that an act by a physician may fall [~~falls~~] below an acceptable standard of care, the complaint shall be reviewed by at least eight expert physician reviewers who:

(1)  are selected from the [~~an~~] expert physician panel authorized under Section 154.056(e); and

(2)  have an active [~~consisting of physicians who~~] practice in the same specialty as the physician who is the subject of the complaint [~~or in another specialty that is similar to the physician's specialty~~].

(b-1)  The physician who is the subject of the complaint is entitled to strike any expert physician panel member from participating in the review under Subsection (b) if the subject physician is aware that the panel member's participation represents a conflict of interest, including a situation in which the subject physician and the panel member live or work in the same geographical area or are competitors.

(b-2)  Each expert physician panel member reviewing a complaint under this section must:

(1)  be provided separate copies of the complaint information; and

(2)  before communicating with another expert physician reviewer, independently:

(A)  review the complaint information; and

(B)  form an opinion as to whether an act by the physician who is the subject of the complaint falls below an acceptable standard of care.

(b-3)  After each expert physician panel member selected under Subsection (b) independently reviews the complaint information and forms an opinion as described by Subsection (b-2)(2), the expert physician reviewers shall vote on the question of whether an act by the physician who is the subject of the complaint falls below an acceptable standard of care.

(c)  The expert physician reviewers [~~panel~~] shall report in writing the reviewers' [~~panel's~~] determinations based on the review of the complaint under Subsection (b), including the results of the vote under Subsection (b-3). The report must specify the standard of care that applies to the facts that are the basis of the complaint and the clinical basis for the reviewers' [~~panel's~~] determinations, including any reliance on peer-reviewed journals, studies, or reports.

(d)  Notwithstanding any other law, the board may not take any disciplinary action against a physician who is the subject of a complaint reviewed under this section unless the expert physician reviewers determine by a three-fourths vote under Subsection (b-3) that an act by the subject physician falls below an acceptable standard of care. If the expert physician reviewers do not determine by a three-fourths vote that the act falls below an acceptable standard of care, the board shall dismiss the reviewed complaint with prejudice.

SECTION 7.  Sections 164.003(f) and (i), Occupations Code, are amended to read as follows:

(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 [~~each~~] report prepared [~~by an expert physician reviewer~~] under Section 154.058(c) [~~154.0561~~].  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.

(i)  Any person participating in the informal settlement conference proceeding may [~~On request by a physician under review, the board shall~~] make a recording of the [~~informal settlement conference~~] proceeding. A recording made under this subsection may be used in any subsequent legal 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 8.  Section 164.007(a), Occupations Code, is 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 law judge's findings of fact and conclusions of law, the board shall[~~:~~

[~~(1)~~] dispose of the contested case by issuing a final order based on the administrative law judge's findings of fact and conclusions of law[~~; or~~

[~~(2)  appeal the administrative law judge's findings of fact and conclusions of law in the manner provided by Section 164.0072~~].

SECTION 9.  The following provisions of the Occupations Code are repealed:

(1)  Section 154.0561; and

(2)  Section 164.0072.

SECTION 10.  Not later than the 30th day after the effective date of this Act, the Texas Medical Board shall adopt rules as necessary to implement the changes in law made by this Act.

SECTION 11.  The changes in law made by this Act apply only to a complaint, or a disciplinary action based on a complaint, filed on or after the 30th day after the effective date of this Act. A complaint, or a disciplinary action based on a complaint, filed before the 30th day after the effective date of this Act is governed by the law in effect immediately before the effective date of this Act, and the former law is continued in effect for that purpose.

SECTION 12.  This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2023.

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