

By: Hall

S.B. No. 666

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 Subsections (c-1) and (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

1 of obtaining information about complaint procedures and directing  
2 complaints to the board. The board may provide for that notice:

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

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

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

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

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

17 (1) is:

18 (A) a patient of the license holder; or

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

22 (2) is not a person described by Subdivision (1) and  
23 has direct knowledge of the incident that is the subject of the  
24 complaint.

25 (c-1) The board may file a complaint on its own initiative.

26 (d-2) Notwithstanding Subsections (d) and (d-1), the board  
27 may consider or act on a complaint involving conduct that

1 constitutes a criminal offense at any time before the expiration of  
2 the applicable statute of limitations for the offense.

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

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

10 (1) the name of the complainant; and

11 (2) a sworn affidavit that:

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

14 (i) true; and

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

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

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

22 (a) Except as provided by Subsection (a-1), the [The] board  
23 shall notify a physician who is the subject of a complaint filed  
24 with the board that a complaint has been filed and shall provide  
25 [notify] the physician with a complete copy [of the nature] of the  
26 complaint, including the name of the complainant [unless the notice  
27 would jeopardize an investigation].

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

5               (1) the name of the complainant; and

6               (2) a sworn affidavit that:

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

9                               (i) true; and

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

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

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

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

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

1 proceeding or disciplinary hearing.

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

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

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

14 (e) The board by rule shall provide for an expert physician  
15 panel appointed by the board to assist with complaints and  
16 investigations relating to medical competency by acting as expert  
17 physician reviewers. Each member of the expert physician panel  
18 must be a physician licensed [~~to practice medicine~~] in this state  
19 and engaged in the active practice of medicine. The rules adopted  
20 under this subsection must include provisions governing the  
21 composition of the panel, qualifications for membership on the  
22 panel, length of time a member may serve on the panel, grounds for  
23 removal from the panel, the avoidance of conflicts of interest,  
24 including situations in which the affected physician and the panel  
25 member live or work in the same geographical area or are  
26 competitors, and the duties to be performed by the panel. The  
27 board's rules governing grounds for removal from the panel must

1 include providing for the removal of a panel member who is  
2 repeatedly delinquent in reviewing complaints and in submitting  
3 reports to the board. The board's rules governing appointment of  
4 expert physician panel members to act as expert physician reviewers  
5 must include a requirement that the board randomly select, to the  
6 extent permitted by Section 154.058(b) and the conflict of interest  
7 provisions adopted under this subsection, panel members to review a  
8 complaint.

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

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

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

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

25 (2) have an active [consisting of physicians who]  
26 practice in the same specialty as the physician who is the subject  
27 of the complaint [or in another specialty that is similar to the

1 ~~physician's specialty~~].

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

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

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

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

15 (A) review the complaint information; and

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

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

25 (c) The expert physician reviewers [~~panel~~] shall report in  
26 writing the reviewers' [~~panel's~~] determinations based on the review  
27 of the complaint under Subsection (b), including the results of the

1 vote under Subsection (b-3). The report must specify the standard  
2 of care that applies to the facts that are the basis of the  
3 complaint and the clinical basis for the reviewers' [~~panel's~~]  
4 determinations, including any reliance on peer-reviewed journals,  
5 studies, or reports.

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

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

17 (f) The notice required by Subsection (b)(2) must be  
18 accompanied by a written statement of the nature of the allegations  
19 and the information the board intends to use at the meeting. If the  
20 board does not provide the statement or information at that time,  
21 the license holder may use that failure as grounds for rescheduling  
22 the informal meeting. If the complaint includes an allegation that  
23 the license holder has violated the standard of care, the notice  
24 must include a copy of the [~~each~~] report prepared [~~by an expert~~  
25 ~~physician reviewer~~] under Section [154.058](#)(c) [~~154.0561~~]. The  
26 license holder must provide to the board the license holder's  
27 rebuttal at least 15 business days before the date of the meeting in



1 order for the information to be considered at the meeting.

2 (i) Any person participating in the informal settlement  
3 conference proceeding may [~~On request by a physician under review,~~  
4 ~~the board shall~~] make a recording of the [~~informal settlement~~  
5 ~~conference~~] proceeding. A recording made under this subsection may  
6 be used in any subsequent legal proceeding [~~The recording is a part~~  
7 ~~of the investigative file and may not be released to a third party~~  
8 ~~unless authorized under this subtitle. The board may charge the~~  
9 ~~physician a fee to cover the cost of recording the proceeding~~].

10 SECTION 8. Section 164.007(a), Occupations Code, is amended  
11 to read as follows:

12 (a) The board by rule shall adopt procedures governing  
13 formal disposition of a contested case under Chapter 2001,  
14 Government Code. A formal hearing shall be conducted by an  
15 administrative law judge employed by the State Office of  
16 Administrative Hearings. After receiving the administrative law  
17 judge's findings of fact and conclusions of law, the board shall[+]

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

21 [~~(2)~~ ~~appeal the administrative law judge's findings of~~  
22 ~~fact and conclusions of law in the manner provided by Section~~  
23 ~~164.0072~~].

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

- 26 (1) Section 154.0561; and  
27 (2) Section 164.0072.

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

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

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