

By: Hall

S.B. No. 666

A BILL TO BE ENTITLED

AN ACT

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

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

SECTION 1. Sections 154.051(a), (b), and (c), Occupations Code, are amended 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

1 license holder with the board unless the person is a patient of the  
2 license holder or directly involved in the care of a patient of the  
3 license holder and the complaint concerns the license holder's  
4 provision of care to that patient. [~~The board may file a complaint~~  
5 ~~on its own initiative.~~]

6 SECTION 2. Subchapter B, Chapter 154, Occupations Code, is  
7 amended by adding Section 154.0511 to read as follows:

8 Sec. 154.0511. FORM OF COMPLAINT. The board may not accept  
9 or take action regarding, or require a license holder to respond to,  
10 a complaint filed with the board unless the complaint is in writing  
11 and includes:

12 (1) the name of the complainant; and

13 (2) a sworn affidavit that:

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

16 (i) true; and

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

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

21 SECTION 3. Section 154.053(a), Occupations Code, is amended  
22 to read as follows:

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

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

4 (b-1) The board must complete the investigation of a  
5 complaint not later than the 180th day after the date the complaint  
6 is filed with the board, except that the board may extend the period  
7 for investigating the complaint for an additional 30 days if  
8 extenuating circumstances prevent the completion of the  
9 investigation within the 180-day period.

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

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

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

24 (e) The board by rule shall provide for an expert physician  
25 panel appointed by the board to assist with complaints and  
26 investigations relating to medical competency by acting as expert  
27 physician reviewers. Each member of the expert physician panel

1 must be a physician licensed [~~to practice medicine~~] in this state  
2 and engaged in the active practice of medicine. The rules adopted  
3 under this subsection must include provisions governing the  
4 composition of the panel, qualifications for membership on the  
5 panel, length of time a member may serve on the panel, grounds for  
6 removal from the panel, the avoidance of conflicts of interest,  
7 including situations in which the affected physician and the panel  
8 member live or work in the same geographical area or are  
9 competitors, and the duties to be performed by the panel. The  
10 board's rules governing grounds for removal from the panel must  
11 include providing for the removal of a panel member who is  
12 repeatedly delinquent in reviewing complaints and in submitting  
13 reports to the board. The board's rules governing appointment of  
14 expert physician panel members to act as expert physician reviewers  
15 must include a requirement that the board randomly select, to the  
16 extent permitted by Section 154.058(b) and the conflict of interest  
17 provisions adopted under this subsection, panel members to review a  
18 complaint.

19 SECTION 5. Section 154.058, Occupations Code, is amended to  
20 read as follows:

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

1 the active practice of medicine.

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

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

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

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

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

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

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

25 (A) review the complaint information; and

26 (B) form an opinion as to whether an act by the  
27 physician who is the subject of the complaint falls below an

1 acceptable standard of care.

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

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

16 (d) Notwithstanding any other law, the board may not take  
17 any disciplinary action against a physician who is the subject of a  
18 complaint reviewed under this section unless the expert physician  
19 reviewers determined by a three-fourths vote under Subsection (b-3)  
20 that an act by the subject physician falls below an acceptable  
21 standard of care.

22 SECTION 6. Sections 164.003(f) and (i), Occupations Code,  
23 are amended to read as follows:

24 (f) The notice required by Subsection (b)(2) must be  
25 accompanied by a written statement of the nature of the allegations  
26 and the information the board intends to use at the meeting. If the  
27 board does not provide the statement or information at that time,

1 the license holder may use that failure as grounds for rescheduling  
2 the informal meeting. If the complaint includes an allegation that  
3 the license holder has violated the standard of care, the notice  
4 must include a copy of the ~~[each]~~ report prepared ~~[by an expert~~  
5 ~~physician reviewer]~~ under Section 154.058(c) ~~[154.0561]~~. The  
6 license holder must provide to the board the license holder's  
7 rebuttal at least 15 business days before the date of the meeting in  
8 order for the information to be considered at the meeting.

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

17 SECTION 7. Section 154.0561, Occupations Code, is repealed.

18 SECTION 8. Not later than January 1, 2024, the Texas Medical  
19 Board shall adopt rules as necessary to implement the changes in law  
20 made by this Act.

21 SECTION 9. The changes in law made by this Act apply only to  
22 a complaint, or a disciplinary action based on a complaint, filed on  
23 or after January 1, 2024. A complaint, or a disciplinary action  
24 based on a complaint, filed before January 1, 2024, is governed by  
25 the law in effect immediately before the effective date of this Act,  
26 and the former law is continued in effect for that purpose.

27 SECTION 10. This Act takes effect immediately if it

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