

1-1 By: Hall S.B. No. 666
 1-2 (In the Senate - Filed January 30, 2023; February 17, 2023,
 1-3 read first time and referred to Committee on Health & Human
 1-4 Services; May 2, 2023, reported adversely, with favorable
 1-5 Committee Substitute by the following vote: Yeas 6, Nays 2;
 1-6 May 2, 2023, sent to printer.)

1-7 COMMITTEE VOTE

| | Yea | Nay | Absent | PNV |
|------|-----|-----|--------|-----|
| 1-8 | X | | | |
| 1-9 | X | | | |
| 1-10 | X | | | |
| 1-11 | X | | | |
| 1-12 | X | | | |
| 1-13 | | | X | |
| 1-14 | X | | | |
| 1-15 | | X | | |
| 1-16 | | X | | |
| 1-17 | X | | | |

1-18 COMMITTEE SUBSTITUTE FOR S.B. No. 666 By: Perry

1-19 A BILL TO BE ENTITLED
 1-20 AN ACT

1-21 relating to complaint information and to rulemaking and
 1-22 disciplinary procedures of the Texas Medical Board.

1-23 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-24 SECTION 1. Section 153.001, Occupations Code, is amended to
 1-25 read as follows:

1-26 Sec. 153.001. ADOPTION OF RULES. (a) The board may adopt
 1-27 rules and bylaws as necessary to:

- 1-28 (1) govern its own proceedings;
- 1-29 (2) perform its duties;
- 1-30 (3) regulate the practice of medicine in this state;

1-31 and

- 1-32 (4) enforce this subtitle.

1-33 (b) Notwithstanding any other law and except as otherwise
 1-34 provided by this subsection, the board must hold a public hearing
 1-35 with a public comment period on a proposed rule before adopting the
 1-36 rule. This subsection does not apply to an emergency rule adopted
 1-37 or renewed in accordance with Section 2001.034, Government Code.

1-38 SECTION 2. Section 154.051, Occupations Code, is amended by
 1-39 amending Subsections (a), (b), and (c) and adding Subsection (d-2)
 1-40 to read as follows:

1-41 (a) The board by rule shall establish methods by which
 1-42 members of the public and license holders are notified of the name,
 1-43 mailing address, and telephone number of the board for the purpose
 1-44 of obtaining information about complaint procedures and directing
 1-45 complaints to the board. The board may provide for that notice:

- 1-46 (1) on each registration form, application, or written
 1-47 contract for services of a person or entity regulated under this
 1-48 subtitle;
- 1-49 (2) on a sign prominently displayed in the place of
 1-50 business of each person or entity regulated under this subtitle; or
- 1-51 (3) in a bill for service provided by a person or
 1-52 entity regulated under this subtitle.

1-53 (b) The board shall list with its regular telephone number
 1-54 any toll-free telephone number established under other state law
 1-55 that may be called to obtain information about how to present a
 1-56 complaint about a health professional.

1-57 (c) A person, including a partnership, association,
 1-58 corporation, or other entity, may not file a complaint against a
 1-59 license holder with the board unless the person:

- 1-60 (1) is:

2-1 (A) a patient of the license holder; or
2-2 (B) directly involved in the care of a patient of
2-3 the license holder and the complaint concerns the license holder's
2-4 provision of care to that patient; or

2-5 (2) is not a person described by Subdivision (1) and
2-6 has direct knowledge of the incident that is the subject of the
2-7 complaint. [~~The board may file a complaint on its own initiative.~~]

2-8 (d-2) Notwithstanding Subsections (d) and (d-1), the board
2-9 may consider or act on a complaint involving conduct that
2-10 constitutes a criminal offense at any time before the expiration of
2-11 the applicable statute of limitations for the offense.

2-12 SECTION 3. Subchapter B, Chapter 154, Occupations Code, is
2-13 amended by adding Section 154.0511 to read as follows:

2-14 Sec. 154.0511. FORM OF CERTAIN COMPLAINTS. The board may
2-15 not accept or take action regarding, or require a license holder to
2-16 respond to, a complaint filed with the board by a person described
2-17 by Section 154.051(c)(2) unless the complaint is in writing and
2-18 includes:

2-19 (1) the name of the complainant; and

2-20 (2) a sworn affidavit that:

2-21 (A) states that all of the facts asserted in the
2-22 complaint are:

2-23 (i) true; and

2-24 (ii) based on personal knowledge of the
2-25 physician's care of a patient identified in the complaint; and

2-26 (B) is executed before a notary public under
2-27 penalty of perjury.

2-28 SECTION 4. Section 154.053, Occupations Code, is amended by
2-29 amending Subsection (a) and adding Subsection (a-1) to read as
2-30 follows:

2-31 (a) Except as provided by Subsection (a-1), the [~~The~~] board
2-32 shall notify a physician who is the subject of a complaint filed
2-33 with the board that a complaint has been filed and shall provide
2-34 [~~notify~~] the physician with a complete copy [~~of the nature~~] of the
2-35 complaint, including the name of the complainant [~~unless the notice~~
2-36 ~~would jeopardize an investigation~~].

2-37 (a-1) The board shall redact the name of the complainant
2-38 from the complete copy of the complaint provided to the physician
2-39 under Subsection (a) if the complaint filed with the board is in
2-40 writing and includes:

2-41 (1) the name of the complainant; and

2-42 (2) a sworn affidavit that:

2-43 (A) states that all of the facts asserted in the
2-44 complaint are:

2-45 (i) true; and

2-46 (ii) based on personal knowledge of the
2-47 physician's care of a patient identified in the complaint; and

2-48 (B) is executed before a notary public under
2-49 penalty of perjury.

2-50 SECTION 5. Section 154.056, Occupations Code, is amended by
2-51 adding Subsections (b-1), (b-2), (b-3), (b-4), and (b-5) and
2-52 amending Subsection (e) to read as follows:

2-53 (b-1) The board must complete the investigation of a
2-54 complaint not later than the 120th day after the date the complaint
2-55 is filed with the board, except that the board may extend the period
2-56 for investigating the complaint for an additional 30 days if
2-57 extenuating circumstances prevent the completion of the
2-58 investigation within the 120-day period.

2-59 (b-2) In conducting an investigation of a complaint filed
2-60 with the board, the board may not investigate matters that are
2-61 outside of the scope of the filed complaint. This subsection
2-62 applies at all times before the resolution of the complaint,
2-63 including during the initial investigation period and any informal
2-64 proceeding or disciplinary hearing.

2-65 (b-3) Except as provided by Subsection (b-4), the board may
2-66 not investigate a complaint involving a violation alleged to have
2-67 occurred more than three years before the date the complaint is
2-68 filed.

2-69 (b-4) The board may not investigate a complaint that alleges

3-1 a violation involving care provided to a person who was 17 years of
 3-2 age or younger at the time of the alleged violation unless the
 3-3 complaint is filed on or before the person's 20th birthday.

3-4 (b-5) Notwithstanding Subsections (b-3) and (b-4), the
 3-5 board may investigate a complaint that alleges a violation
 3-6 involving conduct constituting a criminal offense as provided by
 3-7 Section 154.051(d-2).

3-8 (e) The board by rule shall provide for an expert physician
 3-9 panel appointed by the board to assist with complaints and
 3-10 investigations relating to medical competency by acting as expert
 3-11 physician reviewers. Each member of the expert physician panel
 3-12 must be a physician licensed [~~to practice medicine~~] in this state
 3-13 and engaged in the active practice of medicine. The rules adopted
 3-14 under this subsection must include provisions governing the
 3-15 composition of the panel, qualifications for membership on the
 3-16 panel, length of time a member may serve on the panel, grounds for
 3-17 removal from the panel, the avoidance of conflicts of interest,
 3-18 including situations in which the affected physician and the panel
 3-19 member live or work in the same geographical area or are
 3-20 competitors, and the duties to be performed by the panel. The
 3-21 board's rules governing grounds for removal from the panel must
 3-22 include providing for the removal of a panel member who is
 3-23 repeatedly delinquent in reviewing complaints and in submitting
 3-24 reports to the board. The board's rules governing appointment of
 3-25 expert physician panel members to act as expert physician reviewers
 3-26 must include a requirement that the board randomly select, to the
 3-27 extent permitted by Section 154.058(b) and the conflict of interest
 3-28 provisions adopted under this subsection, panel members to review a
 3-29 complaint.

3-30 SECTION 6. Section 154.058, Occupations Code, is amended to
 3-31 read as follows:

3-32 Sec. 154.058. EXPERT PHYSICIAN REVIEW AND DETERMINATION OF
 3-33 MEDICAL COMPETENCY. (a) Each complaint against a physician that
 3-34 requires a determination of medical competency shall be reviewed
 3-35 initially by a board member, consultant, or employee [~~with a~~
 3-36 ~~medical background considered sufficient by the board~~]. A board
 3-37 member, consultant, or employee who reviews a complaint under this
 3-38 subsection must be a physician licensed in this state and engaged in
 3-39 the active practice of medicine.

3-40 (b) If the initial review under Subsection (a) indicates
 3-41 that an act by a physician may fall [~~falls~~] below an acceptable
 3-42 standard of care, the complaint shall be reviewed by at least eight
 3-43 expert physician reviewers who:

3-44 (1) are selected from the [~~an~~] expert physician panel
 3-45 authorized under Section 154.056(e); and

3-46 (2) have an active [~~consisting of physicians who~~
 3-47 practice in the same specialty as the physician who is the subject
 3-48 of the complaint [~~or in another specialty that is similar to the~~
 3-49 ~~physician's specialty~~].

3-50 (b-1) The physician who is the subject of the complaint is
 3-51 entitled to strike any expert physician panel member from
 3-52 participating in the review under Subsection (b) if the subject
 3-53 physician is aware that the panel member's participation represents
 3-54 a conflict of interest, including a situation in which the subject
 3-55 physician and the panel member live or work in the same geographical
 3-56 area or are competitors.

3-57 (b-2) Each expert physician panel member reviewing a
 3-58 complaint under this section must:

3-59 (1) be provided separate copies of the complaint
 3-60 information; and

3-61 (2) before communicating with another expert
 3-62 physician reviewer, independently:

3-63 (A) review the complaint information; and

3-64 (B) form an opinion as to whether an act by the
 3-65 physician who is the subject of the complaint falls below an
 3-66 acceptable standard of care.

3-67 (b-3) After each expert physician panel member selected
 3-68 under Subsection (b) independently reviews the complaint
 3-69 information and forms an opinion as described by Subsection

4-1 (b-2)(2), the expert physician reviewers shall vote on the question
 4-2 of whether an act by the physician who is the subject of the
 4-3 complaint falls below an acceptable standard of care.

4-4 (c) The expert physician reviewers [~~panel~~] shall report in
 4-5 writing the reviewers' [~~panel's~~] determinations based on the review
 4-6 of the complaint under Subsection (b), including the results of the
 4-7 vote under Subsection (b-3). The report must specify the standard
 4-8 of care that applies to the facts that are the basis of the
 4-9 complaint and the clinical basis for the reviewers' [~~panel's~~]
 4-10 determinations, including any reliance on peer-reviewed journals,
 4-11 studies, or reports.

4-12 (d) Notwithstanding any other law, the board may not take
 4-13 any disciplinary action against a physician who is the subject of a
 4-14 complaint reviewed under this section unless the expert physician
 4-15 reviewers determine by a three-fourths vote under Subsection (b-3)
 4-16 that an act by the subject physician falls below an acceptable
 4-17 standard of care. If the expert physician reviewers do not
 4-18 determine by a three-fourths vote that the act falls below an
 4-19 acceptable standard of care, the board shall dismiss the reviewed
 4-20 complaint with prejudice.

4-21 SECTION 7. Sections 164.003(f) and (i), Occupations Code,
 4-22 are amended to read as follows:

4-23 (f) The notice required by Subsection (b)(2) must be
 4-24 accompanied by a written statement of the nature of the allegations
 4-25 and the information the board intends to use at the meeting. If the
 4-26 board does not provide the statement or information at that time,
 4-27 the license holder may use that failure as grounds for rescheduling
 4-28 the informal meeting. If the complaint includes an allegation that
 4-29 the license holder has violated the standard of care, the notice
 4-30 must include a copy of the [~~each~~] report prepared [~~by an expert~~
 4-31 ~~physician reviewer~~] under Section 154.058(c) [~~154.0561~~]. The
 4-32 license holder must provide to the board the license holder's
 4-33 rebuttal at least 15 business days before the date of the meeting in
 4-34 order for the information to be considered at the meeting.

4-35 (i) ~~Any person participating in the informal settlement~~
 4-36 ~~conference proceeding may~~ [~~On request by a physician under review,~~
 4-37 ~~the board shall~~] make a recording of the [~~informal settlement~~
 4-38 ~~conference~~] proceeding. A recording made under this subsection may
 4-39 be used in any subsequent legal proceeding [~~The recording is a part~~
 4-40 ~~of the investigative file and may not be released to a third party~~
 4-41 ~~unless authorized under this subtitle. The board may charge the~~
 4-42 ~~physician a fee to cover the cost of recording the proceeding].~~

4-43 SECTION 8. Section 164.007(a), Occupations Code, is amended
 4-44 to read as follows:

4-45 (a) The board by rule shall adopt procedures governing
 4-46 formal disposition of a contested case under Chapter 2001,
 4-47 Government Code. A formal hearing shall be conducted by an
 4-48 administrative law judge employed by the State Office of
 4-49 Administrative Hearings. After receiving the administrative law
 4-50 judge's findings of fact and conclusions of law, the board shall[+
 4-51

4-52 ~~(1)] dispose of the contested case by issuing a final~~
 4-53 ~~order based on the administrative law judge's findings of fact and~~
 4-54 ~~conclusions of law[+ or~~

4-55 ~~(2) appeal the administrative law judge's findings of~~
 4-56 ~~fact and conclusions of law in the manner provided by Section~~
 4-57 ~~164.0072].~~

4-58 SECTION 9. The following provisions of the Occupations Code
 4-59 are repealed:

4-60 (1) Section 154.0561; and

4-61 (2) Section 164.0072.

4-62 SECTION 10. Not later than the 30th day after the effective
 4-63 date of this Act, the Texas Medical Board shall adopt rules as
 4-64 necessary to implement the changes in law made by this Act.

4-65 SECTION 11. The changes in law made by this Act apply only
 4-66 to a complaint, or a disciplinary action based on a complaint, filed
 4-67 on or after the 30th day after the effective date of this Act. A
 4-68 complaint, or a disciplinary action based on a complaint, filed
 4-69 before the 30th day after the effective date of this Act is governed
 4-70 by the law in effect immediately before the effective date of this

5-1 Act, and the former law is continued in effect for that purpose.
5-2 SECTION 12. This Act takes effect immediately if it
5-3 receives a vote of two-thirds of all the members elected to each
5-4 house, as provided by Section 39, Article III, Texas Constitution.
5-5 If this Act does not receive the vote necessary for immediate
5-6 effect, this Act takes effect September 1, 2023.

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