

By: \_\_\_\_\_ .B. No. \_\_\_\_\_

Substitute the following for \_\_\_\_B. No. \_\_\_\_\_:

By: \_\_\_\_\_ C.S. \_\_\_\_B. No. \_\_\_\_\_

A BILL TO BE ENTITLED

AN ACT

relating to the powers and duties of the Texas Medical Board.

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

SECTION 1. Section 152.002(a), Occupations Code, is amended to read as follows:

(a) The board consists of 19 members appointed by the governor with the advice and consent of the senate as follows:

(1) twelve members who are learned and eminent physicians licensed in this state for at least five [~~three~~] years before the appointment, nine of whom must be graduates of a reputable medical school or college with a degree of doctor of medicine (M.D.) and three of whom must be graduates of a reputable medical school or college with a degree of doctor of osteopathic medicine (D.O.); and

(2) seven members who represent the public.

SECTION 2. Section 152.003, Occupations Code, is amended by adding Subsections (e) and (f) to read as follows:

(e) A person may not be a member of the board if the member is not in full compliance with Section 572.051, Government Code. A person is not in full compliance with that section if the person's spouse or anyone related to the person within the second degree by consanguinity engages in conduct described by Section 572.051(a),

Government Code, that would affect or influence the person's official conduct, position, powers, or duties as a member of the board in a manner prohibited by that section.

(f) A member of the board may not participate in any matter regarding a license holder if the person or anyone related to the person within the second degree by consanguinity receives compensation from an entity, other than a medical practice, that has a financial interest in common with or adverse to the license holder, including an insurance company, health care regulatory agency, pharmaceutical company, or medical malpractice attorney.

SECTION 3. Section 154.051, Occupations Code, is amended by adding Subsection (d) to read as follows:

(d) The board may not consider or act on a complaint involving care provided more than seven years before the date the complaint is filed, unless the care was provided to a minor. If the care was provided to a minor, the board may not consider or act on a complaint involving the care after the later of:

- (1) the date the minor is 21 years of age; or
- (2) the seventh anniversary of the date of care.

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

(a) The board shall notify by personal delivery or certified mail 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 copy of the [nature of the] complaint, including a statement of the alleged violation in plain language. The complaint must be provided to the physician without redaction unless:

(1) the complaint is filed by:

(A) a patient of the physician;

(B) a patient's parent or legal guardian if the patient is a minor; or

(C) a patient's agent under a power of attorney;

(2) there is a risk of harm to the public; or

(3) the notice would jeopardize an investigation.

(a-1) If a physician rejects a notice by personal delivery or certified mail under Subsection (a), the board may send to the physician an additional notice of the complaint by first class mail that includes notice of the attempted delivery by personal delivery or certified mail.

SECTION 5. Subchapter B, Chapter 154, Occupations Code, is amended by adding Section 154.0535 to read as follows:

Sec. 154.0535. REQUIREMENTS FOR CERTAIN COMPLAINTS. (a) In this section, "anonymous complaint" means a complaint that lacks sufficient information to identify the source or the name of the person who filed the complaint.

(b) The board may not accept anonymous complaints.

(c) A complaint filed with the board against a physician must include the name and address of the person filing the complaint.

(d) Not later than the 15th day after the date the complaint is filed with the board, the board shall notify the physician who is the subject of the complaint of the name and address of the person who filed the complaint, unless:

(1) the notice would jeopardize an investigation; or

(2) the complaint is filed by:

(A) a patient of the physician;

(B) a patient's parent or legal guardian if the patient is a minor; or

(C) a patient's agent under a power of attorney.

(e) The board shall adopt rules as necessary to implement this section.

SECTION 6. Sections 154.056(a), (b), and (e), Occupations Code, are amended to read as follows:

(a) The board shall adopt rules concerning the investigation and review of a complaint filed with the board. The rules adopted under this section must:

(1) distinguish among categories of complaints and give priority to complaints that involve sexual misconduct, quality of care, and impaired physician issues;

(2) ensure that a complaint is not dismissed without appropriate consideration;

(3) require that the board be advised of the dismissal of a complaint and that a letter be sent to the person who filed the complaint and to the physician who was the subject of the

complaint explaining the action taken on the complaint;

(4) ensure that a person who files a complaint has an opportunity to explain the allegations made in the complaint;

(5) ensure that a physician who is the subject of a complaint has at least 30 days after receiving a copy of the complaint as provided by Section 154.053(a) to prepare and submit a response;

(6) prescribe guidelines concerning the categories of complaints that require the use of a private investigator and the procedures for the board to obtain the services of a private investigator;

(7) [~~6~~] provide for an expert physician panel authorized under Subsection (e) to assist with complaints and investigations relating to medical competency; and

(8) [~~7~~] require the review of reports filed with the National Practitioner Data Bank for any report of the termination, limitation, suspension, limitation in scope of practice, or probation of clinical or hospital staff privileges of a physician by:

(A) a hospital;

(B) a health maintenance organization;

(C) an independent practice association;

(D) an approved nonprofit health corporation certified under Section 162.001; or

(E) a physician network.

(b) The board shall:

(1) dispose of each complaint in a timely manner; and

(2) establish a schedule for conducting each phase of a complaint that is under the control of the board not later than the 30th day after the date the physician's time for preparing and submitting a response expires [~~board receives the complaint~~].

(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 actively practicing [~~licensed to practice~~] medicine in this state. 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 7. Section 154.0561, Occupations Code, is amended by adding Subsection (e) to read as follows:

(e) The board shall deliver a copy of the preliminary and final reports, including any dissenting or minority report, to the physician who is the subject of the review.

SECTION 8. Section 154.057(b), Occupations Code, is amended to read as follows:

(b) The board shall complete a preliminary investigation of the complaint not later than the 45th [~~30th~~] day after the date of receiving the complaint. The board shall first determine whether the physician constitutes a continuing threat to the public welfare. On completion of the preliminary investigation, the board shall determine whether to officially proceed on the complaint. If the board fails to complete the preliminary investigation in the time required by this subsection, the board's official investigation of the complaint is considered to commence on that date.

SECTION 9. Section 154.058(b), Occupations Code, is amended to read as follows:

(b) If the initial review under Subsection (a) indicates that an act by a physician falls below an acceptable standard of care, the complaint shall be reviewed by an expert physician panel authorized under Section 154.056(e) consisting of physicians who

have an active 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.

SECTION 10. Section 164.003, Occupations Code, is amended by amending Subsection (b) and adding Subsections (i) and (j) to read as follows:

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

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

(2) the board give notice to the license holder of the time and place of the meeting not later than the 45th [~~30th~~] day before the date the meeting is held;

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

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

(5) the board's legal counsel or a representative of the attorney general be present to advise the board or the board's staff; and

(6) a member of the board's staff be at the meeting to

present to the board's representative the facts the staff reasonably believes it could prove by competent evidence or qualified witnesses at a hearing.

(i) On request by a physician under review, the board shall make an audio recording of the informal settlement conference proceeding and provide a copy of the audio recording to the physician. The physician shall pay the costs of producing and copying the requested audio recording.

(j) The audio recording is a part of the investigative file and may not be released by the board to a third party unless authorized under this subtitle.

SECTION 11. Section 164.0031(a), Occupations Code, is amended to read as follows:

(a) In an informal meeting under Section 164.003 or an informal hearing under Section 164.103, at least two panelists shall be randomly appointed to determine whether an informal disposition is appropriate, unless a panelist of the same or a similar practice as the affected physician is available to serve in the informal meeting or hearing. At least one of the panelists must be a physician.

SECTION 12. Sections 164.007(a) and (a-1), Occupations Code, are 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 dispose of the contested case by issuing a final order based on the administrative law judge's findings of fact and conclusions of law [~~determine the charges on the merits~~].

(a-1) Notwithstanding Section 2001.058(e), Government Code, the [The] board may not change a finding of fact or conclusion of law or vacate or modify an order of the administrative law judge. The board may obtain judicial review of any finding of fact or conclusion of law issued by the administrative law judge as provided by Section 2001.058(f)(5), Government Code. For each case, the board has the sole authority and discretion to determine the appropriate action or sanction, and the administrative law judge may not make any recommendation regarding the appropriate action or sanction [~~only if the board makes a determination required by Section 2001.058(e), Government Code~~].

SECTION 13. Section 164.009, Occupations Code, is amended to read as follows:

Sec. 164.009. JUDICIAL REVIEW. (a) A person whose license to practice medicine has been revoked or who is subject to other disciplinary action by the board may appeal to a Travis County district court not later than the 30th day after the date the board decision is final.

(b) A person whose license to practice medicine has been

revoked is entitled to a jury trial in a district court in Travis County.

SECTION 14. The changes in law made by this Act by the amendment of Sections 152.002(a) and 152.003, Occupations Code, apply only to a person appointed to the Texas Medical Board on or after the effective date of this Act. A person appointed before the effective date of this Act is governed by the law in effect on the date the appointment is made, and the former law is continued in effect for that purpose.

SECTION 15. The changes in law made by this Act relating to the Texas Medical Board's complaint procedures apply only to a complaint filed on or after the effective date of this Act. A complaint filed before the effective date of this Act is governed by the law in effect on the date the complaint is filed, and the former law is continued in effect for that purpose.

SECTION 16. The changes in law made by this Act relating to the Texas Medical Board's disciplinary authority apply only to conduct that occurs on or after the effective date of this Act. Conduct that occurs before the effective date of this Act is governed by the law in effect on the date the conduct occurs, and the former law is continued in effect for that purpose.

SECTION 17. Sections 164.007(a) and (a-1), Occupations Code, as amended by this Act, apply only to a contested case for which an administrative law judge employed by the State Office of Administrative Hearings issues written findings of fact and

conclusions of law on or after the effective date of this Act. A contested case for which an administrative law judge employed by the State Office of Administrative Hearings issues written findings of fact and conclusions of law before the effective date of this Act is governed by the law in effect on the date the findings of fact and conclusions of law were issued, and the former law is continued in effect for that purpose.

SECTION 18. This Act takes effect September 1, 2011.