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AN ACT

relating to the regulation and enforcement of the practice of medicine by the Texas State Board of Medical Examiners; providing a criminal penalty.

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

SECTION 1. Subdivision (2), Subsection (a), Section 151.002, Occupations Code, is amended to read as follows:

(2) "Continuing threat to the public welfare" means a real ~~[and present]~~ danger to the health of a physician's patients or to the public from the acts or omissions of the physician caused through the physician's lack of competence, impaired status, or failure to care adequately for the physician's patients, as determined by:

- (A) the board;
- (B) a medical peer review committee in this state;
- (C) a physician licensed to practice medicine in this state or otherwise lawfully practicing medicine in this state;
- (D) a physician engaged in graduate medical education or training; or
- (E) a medical student.

SECTION 2. Subsection (d), Section 153.051, Occupations Code, is amended to read as follows:

(d) The board may not set, charge, collect, receive, or

1 deposit any of the following fees in excess of:

2 (1) \$900 for a license;

3 (2) \$400 [~~\$200~~] for a first [~~annual~~] registration
4 permit;

5 (3) \$200 for a temporary license;

6 (4) \$400 [~~\$200~~] for renewal of a [~~an annual~~]
7 registration permit;

8 (5) \$200 for a physician-in-training permit;

9 (6) \$600 [~~\$300~~] for the processing of an application
10 and the issuance of a [~~an annual~~] registration for anesthesia in an
11 outpatient setting;

12 (7) \$200 for an endorsement to other state medical
13 boards;

14 (8) \$200 for a duplicate license; or

15 (9) \$700 for a reinstated license after cancellation
16 for cause.

17 SECTION 3. Section 153.053, Occupations Code, is amended to
18 read as follows:

19 Sec. 153.053. SURCHARGE FOR CERTAIN FEES. (a) The board
20 shall collect a fee [~~an additional \$200~~] surcharge as follows [~~for~~
21 ~~each of the following fees~~]:

22 (1) \$200 for the license fee;

23 (2) \$400 for the first [~~annual~~] registration permit;

24 (3) \$400 for renewal of a [~~annual~~] registration
25 permit; and

26 (4) \$200 for reinstatement of a license after
27 cancellation for cause.

1 (b) Of each surcharge collected under Subsections (a)(1)
2 and (4), the board shall deposit \$50 to the credit of the foundation
3 school fund and \$150 to the credit of the general revenue fund.

4 (c) Of each surcharge collected under Subsections (a)(2)
5 and (3), the board shall deposit \$100 to the credit of the
6 foundation school fund and \$300 to the credit of the general revenue
7 fund.

8 SECTION 4. Subchapter B, Chapter 153, Occupations Code, is
9 amended by adding Section 153.0535 to read as follows:

10 Sec. 153.0535. SURCHARGE FOR REGISTRATION PERMIT. (a) The
11 board shall collect an additional \$80 surcharge for each of the
12 following fees:

- 13 (1) first registration permit; and
- 14 (2) renewal of a registration permit.

15 (b) The board shall deposit each surcharge collected to the
16 credit of the public assurance account. The public assurance
17 account is an account in the general revenue fund that shall be
18 appropriated only to the board to pay for the board's enforcement
19 program, including the expert physician panel.

20 SECTION 5. Subchapter B, Chapter 153, Occupations Code, is
21 amended by adding Section 153.056 to read as follows:

22 Sec. 153.056. REPORT ON PENDING COMPLAINTS. The board
23 shall include with its annual financial report information
24 regarding any investigations that remain pending after one year,
25 including the reasons the investigations remain pending.
26 Information in the report under this section may not identify a
27 patient for any purpose unless proper consent to the release is

1 given by the patient.

2 SECTION 6. Subsection (a), Section 154.002, Occupations
3 Code, is amended to read as follows:

4 (a) The board shall prepare:

5 (1) an alphabetical list of the names of the license
6 holders;

7 (2) an alphabetical list of the names of the license
8 holders by the county in which the license holder's principal place
9 of practice is located;

10 (3) a summary of the board's functions;

11 (4) a copy of this subtitle and a list of other laws
12 relating to the practice of medicine;

13 (5) a copy of the board's rules; ~~and~~

14 (6) a statistical report each fiscal year to the
15 legislature and the public that provides aggregate information
16 about all complaints received by the board categorized by type of
17 complaint, including administrative, quality of care, medical
18 error, substance abuse, other criminal behavior, and the
19 disposition of those complaints by category; and

20 (7) other information considered appropriate by the
21 board.

22 SECTION 7. Section 154.006, Occupations Code, is amended by
23 amending Subsections (a), (b), and (g) and adding Subsections (i)
24 and (j) to read as follows:

25 (a) The board shall create a profile of each physician
26 licensed under this subtitle. The profile must:

27 (1) include the information required by Subsection

1 (b); and

2 (2) be compiled in a format that makes [~~permits the~~
3 ~~board to make~~] the information contained in the profile easily
4 available to the public.

5 (b) A profile must contain the following information on each
6 physician:

7 (1) the name of each medical school attended and the
8 dates of:

9 (A) graduation; or

10 (B) Fifth Pathway designation and completion of
11 the Fifth Pathway Program;

12 (2) a description of all graduate medical education in
13 the United States or Canada;

14 (3) any specialty certification held by the physician
15 and issued by a medical licensing board that is a member of the
16 American Board of Medical Specialties or the Bureau of Osteopathic
17 Specialists;

18 (4) the number of years the physician has actively
19 practiced medicine in:

20 (A) the United States or Canada; and

21 (B) this state;

22 (5) the name of each hospital in this state in which
23 the physician has privileges;

24 (6) the physician's primary practice location;

25 (7) the type of language translating services,
26 including translating services for a person with impairment of
27 hearing, that the physician provides at the physician's primary

1 practice location;

2 (8) whether the physician participates in the Medicaid
3 program;

4 (9) a description of any conviction for a felony, a
5 Class A or Class B misdemeanor, or a Class C misdemeanor involving
6 moral turpitude [~~during the 10-year period preceding the date of~~
7 ~~the profile~~];

8 (10) a description of any charges reported to the
9 board [~~during the 10-year period preceding the date of the profile~~]
10 to which the physician has pleaded no contest, for which the
11 physician is the subject of deferred adjudication or pretrial
12 diversion, or in which sufficient facts of guilt were found and the
13 matter was continued by a court;

14 (11) a description of any disciplinary action against
15 the physician by the board [~~during the 10-year period preceding the~~
16 ~~date of the profile~~];

17 (12) a description of any disciplinary action against
18 the physician by a medical licensing board of another state [~~during~~
19 ~~the 10-year period preceding the date of the profile~~];

20 (13) a description of the final resolution taken by
21 the board on medical malpractice claims or complaints required to
22 be opened by the board under Section 164.201;

23 (14) whether the physician's patient service areas are
24 accessible to disabled persons, as defined by federal law; [~~and~~]

25 (15) a description of any formal complaint against the
26 physician initiated and filed under Section 164.005 and the status
27 of the complaint; and

1 (16) a description of any medical malpractice claim
2 against the physician, not including a description of any offers by
3 the physician to settle the claim, for which the physician was found
4 liable, a jury awarded monetary damages to the claimant, and the
5 award has been determined to be final and not subject to further
6 appeal.

7 (g) The board shall update the information contained in a
8 physician's profile annually, except that information provided
9 under Subsection (i) shall be updated not later than the 10th
10 working day after the date the formal complaint is filed or the
11 board's order is issued. The board shall adopt a form that allows a
12 physician to update information contained in a physician's profile.
13 The form shall be made available on the Internet and in other
14 formats as prescribed by board rule. The board may adopt rules
15 concerning the type and content of additional information that may
16 be included in a physician's profile.

17 (i) In addition to the information required by Subsection
18 (b), a profile must contain the text of a formal complaint filed
19 under Section 164.005 against the physician or of a board order
20 related to the formal complaint.

21 (j) Information included in a physician's profile under
22 Subsections (b) and (i) may not include any patient identifying
23 information.

24 SECTION 8. Section 154.054, Occupations Code, is amended to
25 read as follows:

26 Sec. 154.054. COMPLAINT INFORMATION TO HEALTH CARE ENTITY.
27 On written request, the board shall provide information to a health

1 care entity regarding:

2 (1) a complaint filed against a license holder that
3 was resolved after investigation by:

4 (A) a disciplinary order of the board; or

5 (B) an agreed settlement; and

6 (2) the basis of and current status of any complaint
7 under active investigation that has been assigned by the executive
8 director to a person authorized by the board to pursue legal action.

9 SECTION 9. Section 154.056, Occupations Code, is amended by
10 amending Subsection (a) and adding Subsections (e) and (f) to read
11 as follows:

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

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

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

20 (3) require that the board be advised of the dismissal
21 of a complaint and that a letter be sent to the person who filed the
22 complaint and to the physician who was the subject of the complaint
23 explaining the action taken on the complaint;

24 (4) ensure that a person who files a complaint has an
25 opportunity to explain the allegations made in the complaint; [~~and~~]

26 (5) prescribe guidelines concerning the categories of
27 complaints that require the use of a private investigator and the

1 procedures for the board to obtain the services of a private
2 investigator;

3 (6) provide for an expert physician panel authorized
4 under Subsection (e) to assist with complaints and investigations
5 relating to medical competency; and

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

11 (A) a hospital;

12 (B) a health maintenance organization;

13 (C) an independent practice association;

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

16 (E) a physician network.

17 (e) The board by rule shall provide for an expert physician
18 panel appointed by the board to assist with complaints and
19 investigations relating to medical competency. Each member of an
20 expert physician panel must be licensed to practice medicine in
21 this state. The rules adopted under this subsection must include
22 provisions governing the composition of the panel, qualifications
23 for membership on the panel, and the duties to be performed by the
24 panel.

25 (f) In the board rules adopted under Subsection (a)(3), the
26 board shall require that the letter informing the person who filed
27 the complaint of the dismissal of the complaint include an

1 explanation of the reason the complaint was dismissed.

2 SECTION 10. Section 154.058, Occupations Code, is amended
3 to read as follows:

4 Sec. 154.058. DETERMINATION OF MEDICAL COMPETENCY.

5 (a) Each complaint against a physician that requires a
6 determination of medical competency shall be reviewed initially by
7 a board member, consultant, or employee with a medical background
8 considered sufficient by the board.

9 (b) If the initial review under Subsection (a) indicates
10 that an act by a physician falls below an acceptable standard of
11 care, the complaint shall be reviewed by an expert physician panel
12 authorized under Section 154.056(e) consisting of physicians who
13 practice in the same specialty as the physician who is the subject
14 of the complaint or in another specialty that is similar to the
15 physician's specialty.

16 (c) The expert physician panel shall report in writing the
17 panel's determinations based on the review of the complaint under
18 Subsection (b). The report must specify the standard of care that
19 applies to the facts that are the basis of the complaint and the
20 clinical basis for the panel's determinations, including any
21 reliance on peer-reviewed journals, studies, or reports.

22 SECTION 11. The heading to Chapter 156, Occupations Code,
23 is amended to read as follows:

24 CHAPTER 156. REGISTRATION OF PHYSICIANS [~~LICENSE RENEWAL~~]

25 SECTION 12. Section 156.001, Occupations Code, is amended
26 to read as follows:

27 Sec. 156.001. [~~ANNUAL~~] REGISTRATION REQUIREMENTS AND

1 PROCEDURES [~~REQUIRED, REGISTRATION PROCEDURE~~]. (a) Each person
2 licensed to practice medicine in this state must register with the
3 board every two years [~~annually~~]. The initial [~~annual~~]
4 registration permit shall be issued with the license and expires on
5 the last day of the birth month of the license holder.

6 (b) Except as provided by Section 156.002, the application
7 for registration must be accompanied by a [~~an annual~~] registration
8 permit fee in an amount set by the board regardless of whether the
9 person is practicing medicine in this state.

10 (c) A license holder may renew the [~~annual~~] registration
11 permit by submitting to the board, on or before the expiration date
12 of the [~~annual~~] registration permit, the required renewal
13 application and registration renewal fee. Each [~~annual~~]
14 registration permit renewal application must include:

15 (1) the license holder's name, [~~and~~] mailing address,
16 and, if one is available, address for receipt of electronic mail;

17 (2) the primary place [~~or places~~] at which the license
18 holder is engaged in the practice of medicine; and

19 (3) other necessary information as prescribed by [~~the~~]
20 board rule.

21 (d) If the license holder [~~person~~] is licensed to practice
22 medicine by another state or country or by the uniformed services of
23 the United States, the registration renewal application must
24 include a description of any investigation the license holder
25 [~~person~~] knows is in progress and any sanction imposed by or
26 disciplinary matter pending in the state, country, or service
27 regarding the license holder [~~person~~].

1 SECTION 13. Section 156.002, Occupations Code, is amended
2 to read as follows:

3 Sec. 156.002. EXEMPTION FOR CERTAIN PHYSICIANS. (a) The
4 board by rule may exempt a retired physician from the [~~annual~~]
5 registration permit fee requirement.

6 (b) A physician licensed by the board whose only practice is
7 voluntary charity care, as defined by board rule, is exempt from the
8 [~~annual~~] registration permit fee requirement.

9 SECTION 14. Section 156.003, Occupations Code, is amended
10 to read as follows:

11 Sec. 156.003. STAGGERED RENEWAL SYSTEM. (a) The board by
12 rule may adopt a system under which [~~annual~~] registration permits
13 expire on various dates during the two-year registration period
14 [~~year~~].

15 (b) For the registration period [~~year~~] in which the
16 expiration date is changed, [~~annual~~] registration permit fees shall
17 be prorated. On renewal of the registration on the new expiration
18 date, the total [~~annual~~] registration permit fee is payable.

19 SECTION 15. Section 156.004, Occupations Code, is amended
20 to read as follows:

21 Sec. 156.004. NOTICE OF EXPIRATION. The board shall send a
22 [~~mail an annual~~] registration permit renewal application notice to
23 each physician at the physician's last known address according to
24 the board's records at least 30 days before the expiration date of
25 the [~~annual~~] registration permit. The board shall provide for a
26 30-day grace period for renewing the [~~annual~~] registration permit
27 from the date of the expiration of the permit.

1 SECTION 16. Section 156.005, Occupations Code, is amended
2 to read as follows:

3 Sec. 156.005. RENEWAL OF CERTAIN REGISTRATION PERMITS.

4 (a) If a person's [~~annual~~] registration permit has been expired
5 for 90 days or less, the person may renew the permit by submitting
6 to the board the required registration renewal application, the
7 registration renewal fee, and a \$75 [~~\$50~~] penalty fee.

8 (b) If the person's [~~annual~~] registration permit has been
9 expired for longer than 90 days but less than one year, the person
10 may renew the permit by submitting to the board the required
11 registration renewal application, the registration renewal fee,
12 and a \$150 [~~\$100~~] penalty fee.

13 (c) If the person's [~~annual~~] registration permit has been
14 expired for one year or longer, the person's license is
15 automatically [~~considered to have been~~] canceled, unless an
16 investigation is pending, and the person may not renew the [~~annual~~]
17 registration permit.

18 (d) A physician whose license is automatically [~~considered~~]
19 canceled may obtain a new license by [~~submitting to reexamination~~
20 ~~and~~] complying with the requirements, fees, and procedures for
21 obtaining a new license. The board may issue a new license without
22 examination to a person whose license is automatically [~~considered~~]
23 canceled for less than two years.

24 SECTION 17. Section 156.007, Occupations Code, is amended
25 to read as follows:

26 Sec. 156.007. ISSUANCE OF [~~ANNUAL~~] REGISTRATION PERMIT.

27 (a) On receipt of a registration renewal application and all

1 required fees, the board, after ascertaining from the records of
 2 the board or from other sources considered reliable by the board
 3 that the applicant is a physician in this state and meets all other
 4 requirements for registration, shall issue to the applicant a [~~an~~
 5 ~~annual~~] registration permit certifying that the applicant has filed
 6 the application, has paid the [~~annual~~] registration permit fee for
 7 the registration period [~~year~~], and has completed the requirements
 8 for [~~annual~~] registration.

9 (b) The filing of the registration renewal application, the
 10 payment of the required fees, and the issuance of the permit do
 11 [~~does~~] not entitle the permit holder to practice medicine in this
 12 state unless:

13 (1) the permit holder has been previously licensed as
 14 a physician by the board, as prescribed by law; [~~and~~]

15 (2) the license to practice medicine is in effect;

16 (3) the permit holder has met the continuing medical
 17 education requirements; and

18 (4) the permit holder has submitted a current complete
 19 physician profile.

20 SECTION 18. Section 156.008, Occupations Code, is amended
 21 to read as follows:

22 Sec. 156.008. PRACTICING MEDICINE WITHOUT [~~ANNUAL~~]
 23 REGISTRATION PROHIBITED. (a) Practicing medicine after the
 24 expiration of the 30-day grace period under Section 156.004
 25 following expiration of a [~~an annual~~] registration permit that has
 26 not been renewed for the current registration period [~~year~~] as
 27 provided by this subchapter has the same effect as, and is subject

1 to all penalties of, practicing medicine without a license.

2 (b) In a prosecution for the unlawful practice of medicine,
3 the receipt showing payment of the [~~annual~~] registration fee
4 required by this chapter does not constitute evidence that the
5 receipt holder is lawfully entitled to practice medicine.

6 SECTION 19. Section 156.009, Occupations Code, is amended
7 to read as follows:

8 Sec. 156.009. INACTIVE STATUS. The board may adopt rules
9 and set reasonable fees relating to placing license holders on
10 inactive status. [~~The board by rule shall set a time limit for the~~
11 ~~period during which a license holder may remain on inactive~~
12 ~~status.~~]

13 SECTION 20. Subsections (a) and (d), Section 156.051,
14 Occupations Code, are amended to read as follows:

15 (a) The board by rule shall adopt, monitor, and enforce a
16 reporting program for the continuing medical education of license
17 holders. The board shall adopt and administer rules that:

18 (1) establish the number of hours of continuing
19 medical education the board determines appropriate as a
20 prerequisite to the [~~annual~~] registration of a license under this
21 subtitle;

22 (2) require at least one-half of the hours of
23 continuing medical education established under Subdivision (1) to
24 be board approved; and

25 (3) adopt a process to assess a license holder's
26 participation in continuing medical education courses.

27 (d) This section does not apply to a license holder who is

1 ~~[retired and is]~~ exempt by rule from paying the ~~[annual]~~
 2 registration fee under Section 156.002(a).

3 SECTION 21. Section 156.052, Occupations Code, is amended
 4 to read as follows:

5 Sec. 156.052. PRESUMPTION OF COMPLIANCE FOR CERTAIN LICENSE
 6 HOLDERS. A license holder is presumed to be in compliance with the
 7 requirements of this subchapter if, during the 36 months preceding
 8 the date of the required ~~[annual]~~ registration, the license holder
 9 becomes board certified or recertified by ~~[in]~~ a ~~[medical]~~
 10 specialty board approved by ~~[and that medical specialty program~~
 11 ~~considers the standards of,~~

12 ~~[(1)]~~ the American Board of Medical Specialties~~+~~
 13 ~~[(2)]~~ ~~the American Medical Association,~~
 14 ~~[(3)]~~ ~~the Advisory Board for Osteopathic Specialists~~
 15 ~~and Boards of Certification,~~] or
 16 ~~[(4)]~~ the American Osteopathic Association Bureau of
 17 Osteopathic Specialists.

18 SECTION 22. Section 156.053, Occupations Code, is amended
 19 to read as follows:

20 Sec. 156.053. TEMPORARY EXEMPTION. (a) The board may
 21 temporarily exempt a license holder from the continuing medical
 22 education requirement on the basis of ~~[for]~~:

23 (1) catastrophic illness;
 24 (2) military service outside this state for longer
 25 than one year;
 26 (3) medical practice and residence outside the United
 27 States for longer than one year; or

1 (4) good cause shown on the written application of the
2 license holder that provides evidence satisfactory to the board
3 that the license holder is unable to comply with the requirement.

4 (b) A temporary exemption granted under Subsection (a) may
5 not exceed one year but may be renewed [~~annually~~].

6 SECTION 23. Subsection (a), Section 160.052, Occupations
7 Code, is amended to read as follows:

8 (a) Each insurer shall submit to the board the report or
9 other information described by Section 160.053 at the time
10 prescribed. The insurer shall provide the report or information
11 with respect to:

12 (1) a [~~notice of claim letter or~~] complaint filed
13 against an insured in a court, if the [~~notice of claim letter or~~]
14 complaint seeks damages relating to the insured's conduct in
15 providing or failing to provide a medical or health care service;
16 and

17 (2) settlement of a claim without the filing of a
18 lawsuit or settlement of a lawsuit made on behalf of the insured
19 involving damages relating to the insured's conduct in providing or
20 failing to provide a medical or health care service.

21 SECTION 24. Section 160.053, Occupations Code, is amended
22 to read as follows:

23 Sec. 160.053. CONTENTS OF REPORT; ADDITIONAL INFORMATION.

24 (a) Not later than the 30th day after the date an insurer receives
25 from an insured a [~~notice of claim letter or~~] complaint filed in a
26 lawsuit, a settlement of a claim without the filing of a lawsuit, or
27 a settlement of a lawsuit against the [~~from an~~] insured, the insurer

1 shall furnish to the board:

2 (1) the name of the insured and the insured's Texas
3 medical license number;

4 (2) the policy number; ~~and~~

5 (3) a copy of the ~~[notice of claim letter or]~~ complaint
6 or settlement; and

7 (4) a copy of any expert report filed under Section
8 13.01, Medical Liability and Insurance Improvement Act of Texas
9 (Article 4590i, Vernon's Texas Civil Statutes).

10 (b) The board, in consultation with the commissioner, shall
11 adopt rules for reporting additional information as the board
12 requires. In adopting the rules, the board shall consider other
13 claim reports required under state and federal statutes in
14 determining the information to be reported, form of the report, and
15 frequency of reporting. The rules adopted by the board under this
16 subsection must require that the following additional ~~[Additional]~~
17 information be reported ~~[the board requires may include]~~:

18 (1) the date of a judgment, dismissal, or settlement;

19 (2) whether an appeal has been taken and by which
20 party; and

21 (3) the amount of the settlement or judgment against
22 the insured.

23 SECTION 25. Subsection (a), Section 162.104, Occupations
24 Code, is amended to read as follows:

25 (a) The board shall require each physician who administers
26 anesthesia or performs a surgical procedure for which anesthesia
27 services are provided in an outpatient setting to ~~[annually]~~

1 register with the board on a form prescribed by the board and to pay
2 a fee to the board in an amount established by the board.

3 SECTION 26. Section 164.001, Occupations Code, is amended
4 by adding Subsections (f) through (i) to read as follows:

5 (f) The board by rule shall adopt a schedule of the
6 disciplinary sanctions that the board may impose under this
7 subchapter. In adopting the schedule of sanctions, the board shall
8 ensure that the severity of the sanction imposed is appropriate to
9 the type of violation or conduct that is the basis for disciplinary
10 action.

11 (g) In determining the appropriate disciplinary action,
12 including the amount of any administrative penalty to assess, the
13 board shall consider whether the person:

14 (1) is being disciplined for multiple violations of
15 this subtitle or a rule or order adopted under this subtitle; or

16 (2) has previously been the subject of disciplinary
17 action by the board.

18 (h) In the case of a person described by:

19 (1) Subsection (g)(1), the board shall consider taking
20 a more severe disciplinary action, including revocation of the
21 person's license, than the disciplinary action that would be taken
22 for a single violation; and

23 (2) Subsection (g)(2), the board shall consider
24 revoking the person's license if the person has repeatedly been the
25 subject of disciplinary action by the board.

26 (i) If the board chooses not to revoke the license of a
27 person described by Subsection (g)(2), the board shall consider

1 taking a more severe disciplinary action than the disciplinary
2 action previously taken.

3 SECTION 27. Section 164.003, Occupations Code, is amended
4 by amending Subsection (b) and adding Subsection (e) to read as
5 follows:

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

7 (1) an informal meeting in compliance with Section
8 2001.054, Government Code, be scheduled not later than the 180th
9 day after the date the complaint is filed with the board under
10 Section 154.051, unless good cause is shown by the board for
11 scheduling the informal meeting after that date;

12 (2) the board give notice to the license holder of the
13 time and place of the meeting not later than the 30th day before the
14 date the meeting is held;

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

17 (4) [~~+2~~] the board's legal counsel or a
18 representative of the attorney general be present to advise the
19 board or the board's staff; and

20 (5) [~~+3~~] a member of the board's staff at the meeting
21 present to the board's representative the facts the staff
22 reasonably believes it could prove by competent evidence or
23 qualified witnesses at a hearing.

24 (e) If the license holder has previously been the subject of
25 disciplinary action by the board, the board shall schedule the
26 informal meeting as soon as practicable but not later than the
27 deadline prescribed by Subsection (b)(1).

1 SECTION 28. Subchapter A, Chapter 164, Occupations Code, is
2 amended by adding Section 164.0035 to read as follows:

3 Sec. 164.0035. DISMISSAL OF BASELESS COMPLAINT. If, during
4 the 180-day period prescribed by Section 164.003(b)(1), the board
5 determines that the complaint is a baseless or unfounded complaint,
6 the board shall dismiss the complaint and include a statement in the
7 records of the complaint that the reason for the dismissal is
8 because the complaint was baseless or unfounded. The board shall
9 adopt rules that establish criteria for determining that a
10 complaint is baseless or unfounded.

11 SECTION 29. Section 164.010, Occupations Code, is amended
12 by adding Subsection (c) to read as follows:

13 (c) The board shall immediately investigate:
14 (1) a violation of a disciplinary order by a license
15 holder described by Subsection (a); or
16 (2) a complaint filed against a license holder
17 described by Subsection (a).

18 SECTION 30. Subsection (c), Section 164.011, Occupations
19 Code, is amended to read as follows:

20 (c) A stay or injunction may not be granted if the license
21 holder's continued practice presents a danger to the public. A stay
22 or injunction may not be granted for a term that exceeds 120 days.

23 SECTION 31. Section 164.051, Occupations Code, is amended
24 by amending Subsections (a) and (c) and adding Subsection (d) to
25 read as follows:

26 (a) The board may refuse to admit a person to its
27 examination or refuse to issue a license to practice medicine and

1 may take disciplinary action against a person if the person:

2 (1) commits an act prohibited under Section 164.052;

3 (2) is convicted of, or is placed on deferred
4 adjudication community supervision or deferred disposition for:

5 (A) a felony; or

6 (B) a misdemeanor involving moral turpitude;

7 (3) commits or attempts to commit a direct or indirect
8 violation of a rule adopted under this subtitle, either as a
9 principal, accessory, or accomplice;

10 (4) is unable to practice medicine with reasonable
11 skill and safety to patients because of:

12 (A) illness;

13 (B) drunkenness;

14 (C) excessive use of drugs, narcotics,
15 chemicals, or another substance; or

16 (D) a mental or physical condition;

17 (5) is found by a court judgment to be of unsound mind;

18 (6) fails to practice medicine in an acceptable
19 professional manner consistent with public health and welfare;

20 (7) is removed, suspended, or is subject to
21 disciplinary action taken by the person's peers in a local,
22 regional, state, or national professional medical association or
23 society, or is disciplined by a licensed hospital or medical staff
24 of a hospital, including removal, suspension, limitation of
25 hospital privileges, or other disciplinary action, if the board
26 finds that the action:

27 (A) was based on unprofessional conduct or

1 professional incompetence that was likely to harm the public; and

2 (B) was appropriate and reasonably supported by
3 evidence submitted to the board;

4 (8) is subject to repeated or recurring meritorious
5 health care liability claims that in the board's opinion evidence
6 professional incompetence likely to injure the public; or

7 (9) except as provided by Subsection (d), holds a
8 license to practice medicine subject to disciplinary action by
9 another state, or subject to disciplinary action by the uniformed
10 services of the United States, based on acts by the person that are
11 prohibited under Section 164.052 or are similar to acts described
12 by this subsection.

13 (c) A certified copy of the record of another state that
14 takes action described by Subsection (a)(9) or (d) is conclusive
15 evidence of that action.

16 (d) The board shall revoke a license issued under this
17 subtitle if the license holder held a license to practice medicine
18 in another state that has been revoked by the licensing authority in
19 that state.

20 SECTION 32. Subsection (a), Section 164.053, Occupations
21 Code, is amended to read as follows:

22 (a) For purposes of Section 164.052(a)(5), unprofessional
23 or dishonorable conduct likely to deceive or defraud the public
24 includes conduct in which a physician:

25 (1) commits an act that violates any ~~[the laws of this]~~
26 state or federal law if the act is connected with the physician's
27 practice of medicine;

1 (2) fails to keep complete and accurate records of
2 purchases and disposals of:

3 (A) drugs listed in Chapter 481, Health and
4 Safety Code; or

5 (B) controlled substances scheduled in the
6 Comprehensive Drug Abuse Prevention and Control Act of 1970 (21
7 U.S.C. Section 801 et seq.);

8 (3) writes prescriptions for or dispenses to a person
9 who:

10 (A) is known to be an abuser of narcotic drugs,
11 controlled substances, or dangerous drugs; or

12 (B) the physician should have known was an abuser
13 of narcotic drugs, controlled substances, or dangerous drugs;

14 (4) writes false or fictitious prescriptions for:

15 (A) dangerous drugs as defined by Chapter 483,
16 Health and Safety Code; or

17 (B) controlled substances scheduled in Chapter
18 481, Health and Safety Code, or the Comprehensive Drug Abuse
19 Prevention and Control Act of 1970 (21 U.S.C. Section 801 et seq.);

20 (5) prescribes or administers a drug or treatment that
21 is nontherapeutic in nature or nontherapeutic in the manner the
22 drug or treatment is administered or prescribed;

23 (6) prescribes, administers, or dispenses in a manner
24 inconsistent with public health and welfare:

25 (A) dangerous drugs as defined by Chapter 483,
26 Health and Safety Code; or

27 (B) controlled substances scheduled in Chapter

1 481, Health and Safety Code, or the Comprehensive Drug Abuse
2 Prevention and Control Act of 1970 (21 U.S.C. Section 801 et seq.);

3 (7) violates Section 311.0025, Health and Safety Code;

4 (8) fails to supervise adequately the activities of
5 those acting under the supervision of the physician; or

6 (9) delegates professional medical responsibility or
7 acts to a person if the delegating physician knows or has reason to
8 know that the person is not qualified by training, experience, or
9 licensure to perform the responsibility or acts.

10 SECTION 33. Section 164.057, Occupations Code, is amended
11 to read as follows:

12 Sec. 164.057. REQUIRED SUSPENSION OR REVOCATION OF LICENSE
13 FOR CERTAIN [~~FELONY~~] OFFENSES. (a) The board shall suspend a
14 physician's license on proof that the physician has been:

15 (1) initially convicted of:

16 (A) a felony;

17 (B) a misdemeanor under Chapter 22, Penal Code,
18 other than a misdemeanor punishable by fine only;

19 (C) a misdemeanor on conviction of which a
20 defendant is required to register as a sex offender under Chapter
21 62, Code of Criminal Procedure;

22 (D) a misdemeanor under Section 25.07, Penal
23 Code; or

24 (E) a misdemeanor under Section 25.071, Penal
25 Code; or

26 (2) subject to an initial finding by the trier of fact
27 of guilt of a felony under:

1 (A) [~~(1)~~] Chapter 481 or 483, Health and Safety
2 Code;

3 (B) [~~(2)~~] Section 485.033, Health and Safety
4 Code; or

5 (C) [~~(3)~~] the Comprehensive Drug Abuse
6 Prevention and Control Act of 1970 (21 U.S.C. Section 801 et seq.).

7 (b) On final conviction for an offense [~~a felony~~] described
8 by Subsection (a), the board shall revoke the physician's license.

9 SECTION 34. Section 164.059, Occupations Code, is amended
10 to read as follows:

11 Sec. 164.059. TEMPORARY SUSPENSION OR RESTRICTION OF
12 LICENSE. (a) The president of the board [~~with board approval~~]
13 shall appoint a three-member disciplinary panel consisting of board
14 members to determine whether a person's license to practice
15 medicine should be temporarily suspended or restricted.

16 (b) If the disciplinary panel determines from the evidence
17 [~~or information~~] presented to the panel that a person licensed to
18 practice medicine would, by the person's continuation in practice,
19 constitute a continuing threat to the public welfare, the
20 disciplinary panel shall temporarily suspend or restrict the
21 license of that person.

22 (c) A license may be suspended or restricted by a
23 disciplinary panel under this section without notice or hearing [~~on~~
24 ~~the complaint~~] if:

25 (1) the board immediately provides notice of the
26 suspension or restriction to the license holder; and

27 (2) [~~institution of proceedings for~~] a hearing on the

1 temporary suspension or restriction before a disciplinary panel of
2 the board is scheduled for the earliest possible date after 10 days'
3 notice of hearing [~~initiated simultaneously with the temporary~~
4 ~~suspension, and~~

5 [~~(2) a hearing is held under Chapter 2001, Government~~
6 ~~Code, and this subtitle as soon as possible~~].

7 (d) Notwithstanding Chapter 551, Government Code, the
8 disciplinary panel may hold a meeting by telephone conference call
9 if immediate action is required and convening of the panel at one
10 location is inconvenient for any member of the disciplinary panel.

11 (e) After the hearing before the disciplinary panel
12 described by Subsection (c), if the disciplinary panel affirms the
13 temporary suspension or restriction of the license holder's
14 license, the board shall schedule an informal compliance meeting
15 that meets the requirements of Section 2001.054(c), Government
16 Code, and Section 164.004 of this code to be held as soon as
17 practicable, unless the license holder waives the informal meeting
18 or an informal meeting has already been held with regard to the
19 issues that are the basis for the temporary suspension or
20 restriction.

21 (f) If the license holder is unable to show compliance at
22 the informal meeting described by Subsection (e) regarding the
23 issues that are the basis for the temporary suspension or
24 restriction, a board representative shall file a formal complaint
25 under Section 164.005 as soon as practicable.

26 (g) If, after the hearing described by Subsection (c), the
27 disciplinary panel does not temporarily suspend or restrict the

1 license holder's license, the facts that were the basis for the
2 temporary suspension or restriction may not be the sole basis of
3 another proceeding to temporarily suspend or restrict the license
4 holder's license. The board may use those same facts in a
5 subsequent investigation to obtain new information that may be the
6 basis for the temporary suspension or restriction of the license
7 holder's license. For purposes of this subsection, facts that are
8 the basis for the temporary suspension or restriction of a license
9 holder's license include facts presented to the disciplinary panel
10 and facts presented by the board or a representative of the board at
11 the time evidence was presented to the disciplinary panel.

12 SECTION 35. Subsection (c), Section 164.060, Occupations
13 Code, is amended to read as follows:

14 (c) If the board, during its review of a complaint against a
15 physician, discovers an act or omission that may constitute a
16 felony, a misdemeanor involving moral turpitude, a violation of
17 state or federal narcotics or controlled substance laws, ~~[or]~~ an
18 offense involving fraud or abuse under the Medicare or Medicaid
19 programs, or a violation of the workers' compensation laws under
20 Subtitle A, Title 5, Labor Code, the board shall immediately report
21 that act or omission to the appropriate prosecuting and regulatory
22 authorities ~~[authority]~~.

23 SECTION 36. Section 164.201, Occupations Code, is amended
24 to read as follows:

25 Sec. 164.201. REVIEW BY BOARD IF THREE OR MORE MALPRACTICE
26 CLAIMS. The board shall review the medical competency of
27 ~~[information relating to]~~ a physician against whom three or more

1 expert reports under Section 13.01, Medical Liability and Insurance
2 Improvement Act of Texas (Article 4590i, Vernon's Texas Civil
3 Statutes), have been filed in three separate lawsuits [~~malpractice~~
4 ~~claims have been reported under Subchapter B, Chapter 154,~~] within
5 a five-year period in the same manner as if a complaint against the
6 physician had been made to the board under Section 154.051.

7 SECTION 37. Subsection (c), Section 165.152, Occupations
8 Code, is amended to read as follows:

9 (c) An offense under Subsection (a) is a [~~Class A~~
10 ~~misdemeanor, except that if it is shown in the trial of the offense~~
11 ~~that the defendant has previously been convicted under Subsection~~
12 ~~(a), the offense is a~~] felony of the third degree.

13 SECTION 38. Subchapter B, Chapter 408, Labor Code, is
14 amended by adding Section 408.030 to read as follows:

15 Sec. 408.030. REPORTS OF PHYSICIAN VIOLATIONS. If the
16 commission discovers an act or omission by a physician that may
17 constitute a felony, a misdemeanor involving moral turpitude, a
18 violation of a state or federal narcotics or controlled substance
19 law, an offense involving fraud or abuse under the Medicare or
20 Medicaid program, or a violation of this subtitle, the commission
21 shall immediately report that act or omission to the Texas State
22 Board of Medical Examiners.

23 SECTION 39. (a) This Act takes effect immediately if it
24 receives a vote of two-thirds of all the members elected to each
25 house, as provided by Section 39, Article III, Texas Constitution.
26 If this Act does not receive the vote necessary for immediate
27 effect, this Act takes effect September 1, 2003.

1 (b) The Texas State Board of Medical Examiners shall adopt
2 rules required by Subsection (f), Section 164.001, Occupations
3 Code, as added by this Act, not later than January 1, 2004.

4 (c) The change in law made by this Act by the amendment of
5 Section 164.051, Occupations Code, applies to a physician whose
6 license to practice medicine in another state was revoked on,
7 before, or after the effective date of this Act.

8 (d) The change in law made by this Act by the amendment of
9 Section 164.057, Occupations Code, applies only to a person who is
10 initially convicted of an offense on or after the effective date of
11 this Act. A person initially convicted of an offense before that
12 date is governed by the law in effect on the date the conviction
13 occurred, and the former law is continued in effect for that
14 purpose.

15 SECTION 40. (a) The changes in law made by this Act
16 relating to the biennial registration of physicians apply to a
17 person who files with the Texas State Board of Medical Examiners an
18 application for registration under Chapter 156, Occupations Code,
19 as amended by this Act, on or after January 1, 2005. A person who
20 files an application before that date is governed by the law in
21 effect on the date the application was filed, and the former law is
22 continued in effect for that purpose.

23 (b) The Texas State Board of Medical Examiners may adopt a
24 staggered registration system as provided by Section 156.003,
25 Occupations Code, as amended by this Act, on or after September 1,
26 2004.

27 (c) The Texas State Board of Medical Examiners shall adopt

1 the rules required by Chapter 156, Occupations Code, as amended by
2 this Act, not later than December 1, 2003.

3 SECTION 41. The change in law made by this Act by the
4 enactment of Section 153.0535, Occupations Code, applies to a
5 registration permit fee that becomes due on or after January 1,
6 2004. A registration permit fee that becomes due before that date
7 is governed by the law in effect on the date the fee became due, and
8 the former law is continued in effect for that purpose.

9 SECTION 42. Subsection (a), Section 160.052, and Subsection
10 (a), Section 160.053, Occupations Code, as amended by this Act,
11 apply only to a settlement entered into on or after the effective
12 date of this Act. A settlement entered into before the effective
13 date of this Act is governed by the law as it existed on the date the
14 settlement was entered into, and that law is continued in effect for
15 that purpose.

16 SECTION 43. The change in law made by this Act by the
17 amendment of Subsection (c), Section 165.152, Occupations Code,
18 applies only to an offense committed on or after the effective date
19 of this Act. An offense committed before the effective date of this
20 Act is covered by the law in effect when the offense was committed,
21 and the former law is continued in effect for that purpose. For
22 purposes of this section, an offense was committed before the
23 effective date of this Act if any element of the offense occurred
24 before that date.

25 SECTION 44. The change in law made by this Act relating to
26 the investigation and disposition of a complaint and any proceeding
27 begun as a result of a complaint investigation applies only to a

1 complaint filed with the Texas State Board of Medical Examiners on
2 or after the effective date of this Act. A complaint filed before
3 the effective date of this Act is governed by the law in effect on
4 the date the complaint was made, and the former law is continued in
5 effect for that purpose.

David Newburn
President of the Senate

J. Coddell
Speaker of the House

I hereby certify that S.B. No. 104 passed the Senate on March 10, 2003, by the following vote: Yeas 31, Nays 0; April 25, 2003, Senate refused to concur in House amendments and requested appointment of Conference Committee; April 30, 2003, House granted request of the Senate; May 23, 2003, Senate adopted Conference Committee Report by the following vote: Yeas 30, Nays 0.

Larry Shaw
Secretary of the Senate

I hereby certify that S.B. No. 104 passed the House, with amendments, on March 19, 2003, by the following vote: Yeas 147, Nays 0, one present not voting; April 30, 2003, House granted request of the Senate for appointment of Conference Committee; May 22, 2003, House adopted Conference Committee Report by the following vote: Yeas 142, Nays 0, one present not voting.

Robert Nancy
Chief Clerk of the House

Approved:

10 JUN '03

Date

RICK PERRY
Governor

FILED IN THE OFFICE OF THE
SECRETARY OF STATE
1:40pm O'CLOCK

JUN 10 2003
Kevin Shea
Secretary of State