

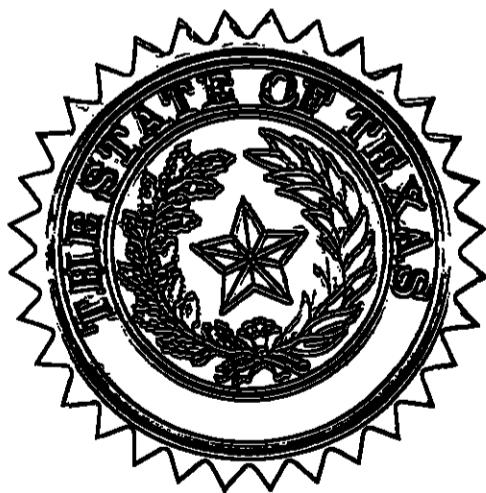
MESSAGE

I am signing House Bill No. 680 into law because it makes many improvements to the complaint process at the Texas Medical Board. However, I have serious concerns about one provision in House Bill 680 regarding the disposition of contested case hearings at the board, a provision that is also included in Senate Bill 191.

The board is charged with regulating the practice of medicine in Texas by, among other things, enforcing physicians' standards of conduct and imposing appropriate sanctions when those standards are violated. When the board is unable to resolve a case, it is referred to an administrative law judge (ALJ) at the State Office of Administrative Hearings. House Bill 680 requires the board to accept an ALJ's findings of fact on whether a physician has committed a violation.

This provision weakens the board's authority to oversee physicians and vests that authority instead in the ALJ. This bill treats the Texas Medical Board differently from every other occupational licensing agency by mandating that the board accept the ALJ's findings.

The responsibility for deciding whether a physician has violated a standard of conduct should belong to the multimember board, not to a single ALJ. ALJs serve the important role of providing an independent forum for conducting adjudicative hearings to determine the facts, but their role is to assist agencies in reaching a proper decision, not to supplant them or relieve them of that duty.



IN TESTIMONY WHEREOF, I
have signed my name officially
and caused the Seal of the State
to be affixed hereto at Austin,
this 17th day of June, 2011.

Rick Perry
RICK PERRY
Governor of Texas

ATTESTED BY:

Esperanza Andrade
ESPERANZA "HOPE" ANDRADE

Secretary of State

FILED IN THE OFFICE OF THE
SECRETARY OF STATE
4:00 PM O'CLOCK
JUN 17 2011

1 AN ACT

2 relating to complaints filed with the Texas Medical Board.

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

4 SECTION 1. Section 154.051, Occupations Code, is amended by
5 adding Subsections (d) and (e) to read as follows:

6 (d) The board may not consider or act on a complaint
7 involving care provided more than seven years before the date on
8 which the complaint is received by the board unless the care was
9 provided to a minor. If the care was provided to a minor, the board
10 may not consider or act on a complaint involving the care after the
11 later of:

12 (1) the date the minor is 21 years of age; or

13 (2) the seventh anniversary of the date of the care.

14 (e) On receipt of a complaint, the board may consider a
15 previously investigated complaint to determine whether there is a
16 pattern of practice violating this subtitle.

17 SECTION 2. Subchapter B, Chapter 154, Occupations Code, is
18 amended by adding Section 154.0535 to read as follows:

19 Sec. 154.0535. REQUIREMENTS FOR CERTAIN COMPLAINTS. (a)

20 In this section:

21 (1) "Anonymous complaint" means a complaint that lacks
22 sufficient information to identify the source or the name of the
23 person who filed the complaint.

24 (2) "Insurance agent" means a person licensed under

1 Chapter 4054, Insurance Code.

2 (3) "Insurer" means an insurance company or other
3 entity authorized to engage in the business of insurance under
4 Subtitle C, Title 6, Insurance Code.

5 (4) "Third-party administrator" means a person
6 required to have a certificate of authority under Chapter 4151,
7 Insurance Code.

8 (b) The board may not accept anonymous complaints.

9 (c) Notwithstanding any confidentiality requirements under
10 Chapter 552, Government Code, this subtitle, or rules adopted under
11 this subtitle, a complaint filed with the board by an insurance
12 agent, insurer, pharmaceutical company, or third-party
13 administrator against a physician must include the name and address
14 of the insurance agent, insurer, pharmaceutical company, or
15 third-party administrator filing the complaint. Not later than the
16 15th day after the date the complaint is filed with the board, the
17 board shall notify the physician who is the subject of the complaint
18 of the name and address of the insurance agent, insurer,
19 pharmaceutical company, or third-party administrator who filed the
20 complaint, unless the notice would jeopardize an investigation.

21 SECTION 3. Section 154.057(b), Occupations Code, is amended
22 to read as follows:

23 (b) The board shall complete a preliminary investigation of
24 the complaint not later than the 45th [~~30th~~] day after the date of
25 receiving the complaint. The board shall first determine whether
26 the physician constitutes a continuing threat to the public
27 welfare. On completion of the preliminary investigation, the board

1 shall determine whether to officially proceed on the complaint. If
2 the board fails to complete the preliminary investigation in the
3 time required by this subsection, the board's official
4 investigation of the complaint is considered to commence on that
5 date.

6 SECTION 4. Subchapter A, Chapter 164, Occupations Code, is
7 amended by adding Section 164.0015 to read as follows:

8 Sec. 164.0015. REMEDIAL PLAN. (a) In addition to the
9 authority under Sections 164.001 and 164.002, the board may issue
10 and establish the terms of a remedial plan to resolve the
11 investigation of a complaint relating to this subtitle.

12 (b) A remedial plan may not contain a provision that:

13 (1) revokes, suspends, limits, or restricts a person's
14 license or other authorization to practice medicine; or

15 (2) assesses an administrative penalty against a
16 person.

17 (c) A remedial plan may not be imposed to resolve a
18 complaint:

19 (1) concerning:

20 (A) a patient death;

21 (B) the commission of a felony; or

22 (C) a matter in which the physician engaged in
23 inappropriate sexual behavior or contact with a patient or became
24 financially or personally involved with a patient in an
25 inappropriate manner; or

26 (2) in which the appropriate resolution may involve a
27 restriction on the manner in which a license holder practices

1 medicine.

2 (d) The board may not issue a remedial plan to resolve a
3 complaint against a license holder if the license holder has
4 previously entered into a remedial plan with the board for the
5 resolution of a different complaint relating to this subtitle.

6 (e) The board may assess a fee against a license holder
7 participating in a remedial plan in an amount necessary to recover
8 the costs of administering this plan.

9 (f) The board shall adopt rules necessary to implement this
10 section.

11 SECTION 5. Sections 164.002(c) and (d), Occupations Code,
12 are amended to read as follows:

13 (c) An agreed disposition is a disciplinary order for
14 purposes of reporting under this subtitle and of administrative
15 hearings and proceedings by state and federal regulatory agencies
16 regarding the practice of medicine. An agreed disposition or a
17 remedial plan under Section 164.0015 is public information.

18 (d) In civil litigation, an agreed disposition or a remedial
19 plan under Section 164.0015 is a settlement agreement under Rule
20 408, Texas Rules of Evidence. This subsection does not apply to a
21 license holder who has previously entered into an agreed
22 disposition with the board of a different disciplinary matter or
23 whose license the board is seeking to revoke.

24 SECTION 6. Section 164.003, Occupations Code, is amended by
25 amending Subsections (b) and (f) and adding Subsection (i) to read
26 as follows:

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

1 (1) an informal meeting in compliance with Section
2 2001.054, Government Code, be scheduled not later than the 180th
3 day after the date the board's official investigation of the
4 complaint is commenced as provided by Section 154.057(b), unless
5 good cause is shown by the board for scheduling the informal meeting
6 after that date;

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

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

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

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

18 (6) a member of the board's staff be at the meeting to
19 present to the board's representative the facts the staff
20 reasonably believes it could prove by competent evidence or
21 qualified witnesses at a hearing.

22 (f) The notice required by Subsection (b)(2) must be
23 accompanied by a written statement of the nature of the allegations
24 and the information the board intends to use at the meeting. If the
25 board does not provide the statement or information at that time,
26 the license holder may use that failure as grounds for rescheduling
27 the informal meeting. If the complaint includes an allegation that

1 the license holder has violated the standard of care, the notice
2 must include a copy of the report by the expert physician reviewer.
3 The license holder must provide to the board the license holder's
4 rebuttal at least 15 [~~five~~] business days before the date of the
5 meeting in order for the information to be considered at the
6 meeting.

7 (i) On request by a physician under review, the board shall
8 make a recording of the informal settlement conference proceeding.
9 The recording is a part of the investigative file and may not be
10 released to a third party unless authorized under this subtitle.
11 The board may charge the physician a fee to cover the cost of
12 recording the proceeding.

13 SECTION 7. Sections 164.007(a) and (a-1), Occupations Code,
14 are amended to read as follows:

15 (a) The board by rule shall adopt procedures governing
16 formal disposition of a contested case under Chapter 2001,
17 Government Code. A formal hearing shall be conducted by an
18 administrative law judge employed by the State Office of
19 Administrative Hearings. After receiving the administrative law
20 judge's findings of fact and conclusions of law, the board shall
21 dispose of the contested case by issuing a final order based on the
22 administrative law judge's findings of fact and conclusions of law
23 [~~determine the charges on the merits~~].

24 (a-1) Notwithstanding Section 2001.058(e), Government
25 Code, the [The] board may not change a finding of fact or conclusion
26 of law or vacate or modify an order of the administrative law judge.
27 The board may obtain judicial review of any finding of fact or

1 conclusion of law issued by the administrative law judge as
2 provided by Section 2001.058(f)(5), Government Code. For each
3 case, the board has the sole authority and discretion to determine
4 the appropriate action or sanction, and the administrative law
5 judge may not make any recommendation regarding the appropriate
6 action or sanction [~~only if the board makes a determination~~
7 ~~required by Section 2001.058(e), Government Code~~].

8 SECTION 8. (a) Sections 154.051, 154.057, and 164.003,
9 Occupations Code, as amended by this Act, and Section 154.0535,
10 Occupations Code, as added by this Act, apply only to the
11 investigation of a complaint filed on or after the effective date of
12 this Act. The investigation of a complaint filed before that date
13 is governed by the law in effect on the date the complaint was
14 filed, and that law is continued in effect for that purpose.

15 (b) The Texas Medical Board shall adopt rules under Section
16 164.0015, Occupations Code, as added by this Act, not later than
17 January 1, 2012.

18 (c) Section 164.0015, Occupations Code, as added by this
19 Act, applies only to a complaint under Subtitle B, Title 3,
20 Occupations Code, filed on or after the effective date of this Act.
21 A complaint under Subtitle B, Title 3, Occupations Code, filed
22 before that date is governed by the law in effect on the date the
23 complaint was filed, and that law is continued in effect for that
24 purpose.

25 (d) Sections 164.007(a) and (a-1), Occupations Code, as
26 amended by this Act, apply only to a contested case for which an
27 administrative law judge employed by the State Office of

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

9 SECTION 9. This Act takes effect September 1, 2011.

David Dewhurst

President of the Senate

Joe Straus

Speaker of the House

I certify that H.B. No. 680 was passed by the House on May 13, 2011, by the following vote: Yeas 137, Nays 1, 1 present, not voting; and that the House concurred in Senate amendments to H.B. No. 680 on May 27, 2011, by the following vote: Yeas 140, Nays 0, 2 present, not voting.

Robert Haney

Chief Clerk of the House

I certify that H.B. No. 680 was passed by the Senate, with amendments, on May 25, 2011, by the following vote: Yeas 31, Nays 0.

Patry Spaw

Secretary of the Senate

APPROVED: 17 JUN '11

Date

RICK PERRY

Governor

FILED IN THE OFFICE OF THE
SECRETARY OF STATE

4:00pm O'CLOCK

JUN 17 2011

Boyd Rahn

Secretary of State