

## **BILL ANALYSIS**

Senate Research Center  
82R628 JAM-F

S.B. 177  
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Health & Human Services  
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As Filed

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

A number of concerns were raised during the 81st Legislature with respect to the Texas Medical Board (TMB). S.B. 177 serves to reform the existing complaint process at TMB, strengthen due process rights for Texas physicians, protect patient rights and privacy, and eliminate impropriety or the appearance of impropriety at TMB.

S.B. 177 would add new sections to the Occupations Code to establish a statute of limitations on complaints filed with TMB relating to care provided to an individual, with an exception for care provided to a minor, and add requirements for certain complaints and prevent TMB from accepting anonymous complaints.

The bill increases the length of time TMB has to complete a preliminary investigation of a complaint; cleans up language relating to the eligibility of a license holder; gives license holders additional notice prior to an informal complaint meeting; and requires TMB to make a recording of the informal settlement conference upon request. The bill also clarifies the role of the State Office of Administrative Hearings in the formal disposition of a contested case.

As proposed, S.B. 177 amends current law relating to the licensing and regulation of physicians.

### **RULEMAKING AUTHORITY**

Rulemaking authority previously granted to the Texas Medical Board is modified in SECTION 7 (Section 164.003, Occupations Code) and SECTION 8 (Section 164.007, Occupations Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 154.051, Occupations Code, by adding Subsection (d), as follows:

(d) Prohibits the Texas Medical Board (TMB) from considering or acting on a complaint involving care provided more than seven years before the date on which the complaint is filed unless the care was provided to a minor. Prohibits TMB, if the care was provided to a minor, from considering or acting 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 2. Amends Subchapter B, Chapter 154, Occupations Code, by adding Section 154.0535, as follows:

Sec. 154.0535. REQUIREMENTS FOR CERTAIN COMPLAINTS. (a) Defines "anonymous complaint," "insurance agent," "insurer," and "third-party administrator" in this section.

- (b) Prohibits TMB from accepting anonymous complaints.

(c) Requires that a complaint filed with TMB by an insurance agent, insurer, or third-party administrator against a physician, notwithstanding any confidentiality requirements under Chapter 552 (Public Information), Government Code, this subtitle, or rules adopted under this subtitle, include the name and address of the insurance agent, insurer, or third-party administrator filing the complaint. Requires TMB, not later than the 15th day after the date the complaint is filed with TMB, to notify the physician who is the subject of the complaint of the name and address of the insurance agent, insurer, or third-party administrator who filed the complaint, unless the notice would jeopardize an investigation.

SECTION 3. Amends Section 154.057(b), Occupations Code, to require TMB to complete a preliminary investigation of the complaint not later than the 45th day, rather than the 30th day, after the date of receiving the complaint.

SECTION 4. Amends Section 155.003(e), Occupations Code, as follows:

(e) Provides that an applicant is not eligible for a license if the applicant holds a medical license that is currently restricted for cause or suspended for cause; or held a medical license that was surrendered or canceled for cause or revoked by a state, another country, or a uniformed service of the United States, rather than a state, a province of Canada, or a uniformed service of the United States. Provides that an applicant is not eligible for a license if a prosecution is pending against the applicant in any state or federal court or a court in another country, rather than any state, federal, or Canadian court, for any offense that under the laws of this state is a felony or misdemeanor that involves moral turpitude.

SECTION 5. Amends Section 155.101(b), Occupations Code, to make conforming changes.

SECTION 6. Amends Section 155.104(b), Occupations Code, as follows:

(b) Prohibits a physician who has held a medical license that was surrendered or canceled for cause or revoked by another state or country or by a uniformed service of the United States from being issued a faculty temporary license to practice medicine as provided by this section. Makes conforming and nonsubstantive changes.

SECTION 7. Amends Section 164.003, Occupations Code, by amending Subsections (b) and (f) and adding Subsection (i), as follows:

(b) Requires that rules adopted under this section require that TMB give notice to the license holder of the time and place of the meeting not later than the 45th day, rather than the 30th day, before the date the meeting is held.

(f) Requires the license holder provide to TMB the license holder's rebuttal at least 15 business days, rather than five business days, before the date of the meeting in order for the information to be considered at the meeting.

(i) Requires TMB, on request by a physician under review, to make a recording of the informal settlement conference proceeding. Provides that the recording is a part of the investigative file. Prohibits the recording from being released to a third party unless authorized under this subtitle.

SECTION 8. Amends Sections 164.007(a) and (a-1), Occupations Code, as follows:

(a) Requires TMB, after receiving the administrative law judge's findings of fact and conclusions of law, to dispose of the contested case by issuing a final order based on the administrative law judge's finding of fact and conclusions of law, rather than determine the charges on the merits.

(a-1) Prohibits TMB, notwithstanding Section 2001.058(e) (relating to conditions that authorize a state agency to change a finding of fact or conclusion of law made by an administrative law judge), Government Code, from changing a finding of fact or

conclusion of law or vacate or modify an order of the administrative law judge. Authorizes TMB to 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. Provides that, for each case, TMB has the sole authority and discretion to determine the appropriate action or sanction. Prohibits the administrative law judge from making any recommendation regarding the appropriate action or sanction. Deletes existing text authorizing to change a finding of fact or conclusion of law or vacate or modify an order of the administrative law judge only if the board makes a determination required by Section 2001.058(e), Government Code.

SECTION 9. Makes application of Sections 154.051, 154.057, and 164.003, Occupations Code, as amended by this Act, and Section 154.0535, Occupation Code, as added by this Act, prospective.

SECTION 10. Makes application of Sections 155.003, 155.101, and 155.104, Occupations Code, as amended by this Act, prospective.

SECTION 11. Makes application of Section 164.007, Occupations Code, as amended by this Act, prospective.

SECTION 12. Effective date: September 1, 2011.