

OCCUPATIONS CODE
CHAPTER 164. DISCIPLINARY ACTIONS AND PROCEDURES
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 164.001. DISCIPLINARY AUTHORITY OF BOARD; METHODS OF DISCIPLINE. (a) Except for good cause shown, the board, on determining a violation of this subtitle or a board rule or for any cause for which the board may refuse to admit a person to its examination or to issue or renew a license, including an initial conviction or the initial finding of the trier of fact of guilt of a felony or misdemeanor involving moral turpitude, shall:

- (1) revoke or suspend a license;
- (2) place on probation a person whose license is suspended; or
- (3) reprimand a license holder.

(b) Except as otherwise provided by Sections 164.057 and 164.058, the board, on determining that a person committed an act described by Sections 164.051 through 164.054, shall enter an order to:

- (1) deny the person's application for a license or other authorization to practice medicine;
- (2) administer a public reprimand;
- (3) suspend, limit, or restrict the person's license or other authorization to practice medicine, including:

(A) limiting the practice of the person to or excluding one or more specified activities of medicine; or

(B) stipulating periodic board review;

- (4) revoke the person's license or other authorization to practice medicine;

(5) require the person to submit to care, counseling, or treatment of physicians designated by the board as a condition for:

(A) the issuance or renewal of a license or other authorization to practice medicine; or

(B) continued practice under a license;

- (6) require the person to participate in an educational or counseling program prescribed by the board;

(7) require the person to practice under the direction of a physician designated by the board for a specified period;

(8) require the person to perform public service considered appropriate by the board; or

(9) assess an administrative penalty against the person as provided by Section 165.001.

(c) Notwithstanding Subsection (b), the board shall revoke, suspend, or deny a physician's license if the board determines that, through the practice of medicine, the physician poses a continuing threat to the public welfare.

(d) In addition to any other disciplinary action authorized by this section, the board may issue a written reprimand to a license holder who violates this subtitle or require that a license holder who violates this subtitle participate in continuing education programs. The board shall specify the continuing education programs to be attended and the number of hours that must be completed by the license holder to fulfill the requirements of this subsection.

(e) For any sanction imposed under this chapter as the result of a hearing conducted by the State Office of Administrative Hearings, that office shall use the schedule of sanctions adopted by board rule.

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

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

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

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

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

(1) Subsection (g)(1), the board shall consider taking a more severe disciplinary action, including revocation of the person's license, than the disciplinary action that would be taken

for a single violation; and

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

(i) If the board chooses not to revoke the license of a person described by Subsection (g)(2), the board shall consider taking a more severe disciplinary action than the disciplinary action previously taken.

(j) In determining the appropriate disciplinary action, including the amount of any administrative penalty to impose, the board shall consider whether the violation relates directly to patient care or involves only an administrative violation.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 202, Sec. 26, eff. June 10, 2003; Acts 2005, 79th Leg., ch. 269, Sec. 1.34, eff. Sept. 1, 2005.

Sec. 164.002. BOARD DISPOSITION OF COMPLAINTS, CONTESTED CASES, AND OTHER MATTERS. (a) Unless precluded by law, the board may dispose of any complaint or matter relating to this subtitle or of any contested case by a stipulation, agreed settlement, or consent order.

(b) The board shall dispose of a complaint, contested case, or other matter in writing. If appropriate, the affected physician shall sign the writing.

(c) An agreed disposition is a disciplinary order for purposes of reporting under this subtitle and of administrative hearings and proceedings by state and federal regulatory agencies regarding the practice of medicine. An agreed disposition is public information.

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

(e) The board may not dismiss a complaint solely on the grounds that the case has not been scheduled for an informal meeting within the time required by Section 164.003(b).

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2005, 79th Leg., ch. 269, Sec. 1.35, eff. Sept. 1, 2005.

Sec. 164.0025. DELEGATION OF CERTAIN COMPLAINT DISPOSITIONS. (a) The board may delegate to a committee of board employees the authority to dismiss or enter into an agreed settlement of a complaint that does not relate directly to patient care or that involves only administrative violations. The disposition determined by the committee must be approved by the board at a public meeting.

(b) A complaint delegated under this section shall be referred for informal proceedings under Section 164.003 if:

(1) the committee of employees determines that the complaint should not be dismissed or settled;

(2) the committee is unable to reach an agreed settlement; or

(3) the affected physician requests that the complaint be referred for informal proceedings.

Added by Acts 2005, 79th Leg., ch. 269, Sec. 1.36, eff. Sept. 1, 2005.

Sec. 164.003. INFORMAL PROCEEDINGS. (a) The board by rule shall adopt procedures governing:

(1) informal disposition of a contested case under Section 2001.056, Government Code; and

(2) informal proceedings held in compliance with Section 2001.054, Government Code.

(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 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.

(c) An affected physician is entitled to:

(1) reply to the staff's presentation; and

(2) present the facts the physician reasonably believes the physician could prove by competent evidence or qualified witnesses at a hearing.

(d) After ample time is given for the presentations, the board representative shall recommend that the investigation be closed or shall attempt to mediate the disputed matters and make a recommendation regarding the disposition of the case in the absence of a hearing under applicable law concerning contested cases.

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

(f) The notice required by Subsection (b)(2) must be accompanied by a written statement of the nature of the allegations and the information the board intends to use at the meeting. If the board does not provide the statement or information at that time, the license holder may use that failure as grounds for rescheduling the informal meeting. If the complaint includes an allegation that the license holder has violated the standard of care, the notice must include a copy of the report by the expert physician reviewer. The license holder must provide to the board the license holder's rebuttal at least five business days before the date of the meeting in order for the information to be considered at the meeting.

(g) The board by rule shall define circumstances constituting good cause for purposes of Subsection (b)(1), including the extended illness of a board investigator and an expert physician reviewer's delinquency in reviewing and submitting a report to the board.

(h) Section 164.007(c) applies to the board's investigation file used in an informal meeting under this section. Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 202, Sec. 27, eff. June 10, 2003; Acts 2005, 79th Leg., ch. 269, Sec. 1.37, eff. Sept. 1, 2005.

Sec. 164.0031. BOARD REPRESENTATION IN INFORMAL PROCEEDINGS. (a) In an informal meeting under Section 164.003 or an informal hearing under Section 164.103, at least two panelists shall be appointed to determine whether an informal disposition is appropriate. At least one of the panelists must be a physician.

(b) Notwithstanding Subsection (a) and Section 164.003(b)(4), an informal proceeding may be conducted by one panelist if the affected physician waives the requirement that at least two panelists conduct the informal proceeding. If the physician waives that requirement, the panelist may be either a physician or a member who represents the public.

(c) The panel requirements described by Subsection (a) do not apply to an informal proceeding conducted by the board under Section 164.003 to show compliance with an order of the board. Added by Acts 2005, 79th Leg., ch. 269, Sec. 1.38, eff. Sept. 1, 2005.

Sec. 164.0032. ROLES AND RESPONSIBILITIES OF PARTICIPANTS IN INFORMAL PROCEEDINGS. (a) A board member or district review committee member that serves as a panelist at an informal meeting under Section 164.003 shall make recommendations for the disposition of a complaint or allegation. The member may request the assistance of a board employee at any time.

(b) Board employees shall present a summary of the allegations against the affected physician and of the facts pertaining to the allegation that the employees reasonably believe may be proven by competent evidence at a formal hearing.

(c) A board attorney shall act as counsel to the panel and, notwithstanding Subsection (e), shall be present during the informal meeting and the panel's deliberations to advise the panel on legal issues that arise during the proceeding. The attorney may ask questions of participants in the informal meeting to clarify

any statement made by the participant. The attorney shall provide to the panel a historical perspective on comparable cases that have appeared before the board, keep the proceedings focused on the case being discussed, and ensure that the board's employees and the affected physician have an opportunity to present information related to the case. During the panel's deliberations, the attorney may be present only to advise the panel on legal issues and to provide information on comparable cases that have appeared before the board.

(d) The panel and board employees shall provide an opportunity for the affected physician and the physician's authorized representative to reply to the board employees' presentation and to present oral and written statements and facts that the physician and representative reasonably believe could be proven by competent evidence at a formal hearing.

(e) An employee of the board who participated in the presentation of the allegation or information gathered in the investigation of the complaint, the affected physician, the physician's authorized representative, the complainant, the witnesses, and members of the public may not be present during the deliberations of the panel. Only the members of the panel and the board attorney serving as counsel to the panel may be present during the deliberations.

(f) The panel shall recommend the dismissal of the complaint or allegations or, if the panel determines that the affected physician has violated a statute or board rule, the panel may recommend board action and terms for an informal settlement of the case.

(g) The panel's recommendations under Subsection (f) must be made in a written order and presented to the affected physician and the physician's authorized representative. The physician may accept the proposed settlement within the time established by the panel at the informal meeting. If the physician rejects the proposed settlement or does not act within the required time, the board may proceed with the filing of a formal complaint with the State Office of Administrative Hearings.

(h) If the board rejects the panel's recommendation for settlement or dismissal, the board shall notify the physician and state in the board's minutes the reason for rejecting the recommendation and specify further action to be considered. In determining the appropriate further action to be taken, the board shall consider previous attempts to resolve the matter.

Added by Acts 2005, 79th Leg., ch. 269, Sec. 1.38, eff. Sept. 1, 2005.

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

Added by Acts 2003, 78th Leg., ch. 202, Sec. 28, eff. June 10, 2003.

Sec. 164.0036. NOTICE REGARDING CERTAIN COMPLAINTS. (a) If an informal meeting is not scheduled for a complaint before the 180th day after the date the board's official investigation of the complaint is commenced under Section 154.057(b), the board shall provide notice to all parties to the complaint. The notice must include an explanation of the reason why the informal meeting has not been scheduled. The notice under this subsection is not required if the notice would jeopardize an investigation.

(b) The board must include in its annual report to the legislature information about any complaint for which notice is required under Subsection (a), including the reason for failing to schedule the informal meeting before the 180-day deadline. The information provided under this subsection must also list any complaint in which the investigation has extended beyond the first anniversary of the date the complaint was filed with the board.

Added by Acts 2005, 79th Leg., ch. 269, Sec. 1.39, eff. Sept. 1, 2005.

Sec. 164.004. COMPLIANCE WITH DUE PROCESS REQUIREMENTS. (a) Except in the case of a suspension under Section 164.059 or under the terms of an agreement between the board and a license holder, a revocation, suspension, involuntary modification, or other disciplinary action relating to a license is not effective unless,

before board proceedings are instituted:

(1) the board gives notice, in a manner consistent with the notice requirements under Section 154.053, to the affected license holder of the facts or conduct alleged to warrant the intended action; and

(2) the license holder is given an opportunity to show compliance with all requirements of law for the retention of the license, at the license holder's option, either in writing or through personal appearance at an informal meeting with one or more representatives of the board.

(b) If the license holder chooses to personally appear and an informal meeting is held, the board's staff and the board's representatives are subject to the ex parte provisions of Chapter 2001, Government Code, with regard to contacts with board members and administrative law judges concerning the case. Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 164.005. INITIATION OF CHARGES; FORMAL COMPLAINT. (a) In this section, "formal complaint" means a written statement made by a credible person under oath that is filed and presented by a board representative charging a person with having committed an act that, if proven, could affect the legal rights or privileges of a license holder or other person under the board's jurisdiction.

(b) Unless otherwise specified, a proceeding under this subtitle or other applicable law and a charge against a license holder may be instituted by an authorized representative of the board.

(c) A charge must be in the form of a written affidavit that:
(1) is filed with the board's records custodian or assistant records custodian; and

(2) details the nature of the charge as required by this subtitle or other applicable law.

(d) The board president or a designee shall ensure a copy of the charges is served on the respondent or the respondent's counsel of record.

(e) The president or designee shall notify the State Office of Administrative Hearings of a formal complaint.

(f) A formal complaint must allege with reasonable certainty each specific act relied on by the board to constitute a violation of a specific statute or rule. The formal complaint must be specific enough to:

(1) enable a person of common understanding to know what is meant by the formal complaint; and

(2) give the person who is the subject of the formal complaint notice of each particular act alleged to be a violation of a specific statute or rule.

(g) The board shall adopt rules to promote discovery by each party to a contested case.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 164.006. SERVICE OF NOTICE. (a) Service of process to notify the respondent of a hearing about the charges against the person must be served in accordance with Chapter 2001, Government Code.

(b) If service described by Subsection (a) is impossible or cannot be effected, the board shall publish once a week for two successive weeks a notice of the hearing in a newspaper published in the county of the last known place of practice in this state of the person, if known.

(c) If the license holder is not currently practicing in this state as evidenced by information in the board files, or if the last county of practice is unknown, the notice shall be published in a newspaper in Travis County.

(d) If publication of notice is used, the date of hearing may not be earlier than the 10th day after the date of the last publication.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 164.007. ADMINISTRATIVE HEARINGS; CONFIDENTIALITY ISSUES. (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 determine the charges on the merits.

(a-1) The board may 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.

(b) Notwithstanding this subtitle or other law, the board may employ, retain, and compensate:

(1) attorneys, consultants, and other professionals as necessary and appropriate to serve as board consultants or special counsel to prosecute complaints filed with the board on behalf of the hearings division and investigating division; and

(2) court reporters and other staff necessary to prepare for or represent the board in the hearings authorized by this section.

(c) Each complaint, adverse report, investigation file, other investigation report, and other investigative information in the possession of or received or gathered by the board or its employees or agents relating to a license holder, an application for license, or a criminal investigation or proceeding is privileged and confidential and is not subject to discovery, subpoena, or other means of legal compulsion for release to anyone other than the board or its employees or agents involved in discipline of a license holder. For purposes of this subsection, investigative information includes information relating to the identity of, and a report made by, a physician performing or supervising compliance monitoring for the board.

(d) Not later than the 30th day after the date of receipt of a written request from a license holder who is the subject of a formal complaint initiated and filed under Section 164.005 or from the license holder's counsel of record, and subject to any other privilege or restriction set forth by rule, statute, or legal precedent, and unless good cause is shown for delay, the board shall provide the license holder with access to all information in its possession that the board intends to offer into evidence in presenting its case in chief at the contested hearing on the complaint. The board is not required to provide:

(1) a board investigative report or memorandum;

(2) the identity of a nontestifying complainant; or

(3) attorney-client communications, attorney work product, or other materials covered by a privilege recognized by the Texas Rules of Civil Procedure or the Texas Rules of Evidence.

(e) Furnishing information under Subsection (d) does not constitute a waiver of privilege or confidentiality under this subtitle or other applicable law.

(f) Investigative information in the possession of the board or an employee or agent relating to discipline of a license holder may be disclosed to:

(1) the appropriate licensing authority of:

(A) another state; or

(B) a territory or country in which the license holder is licensed or has applied for a license; or

(2) a medical peer review committee reviewing an application for privileges or the qualifications of the license holder with respect to retaining privileges.

(g) If investigative information in the possession of the board or its employees or agents indicates that a crime may have been committed, the board shall report the information to the appropriate law enforcement agency.

(h) The board shall cooperate with and assist a law enforcement agency conducting a criminal investigation of a license holder by providing information that is relevant to the criminal investigation to the investigating agency. Information disclosed by the board to an investigative agency remains confidential and may not be disclosed by the investigating agency except as necessary to further the investigation.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1201, Sec. 2, eff. June 15, 2001; Acts 2005, 79th Leg., ch. 269, Sec. 1.40, eff. Sept. 1, 2005.

Sec. 164.0071. HEARINGS ON CERTAIN COMPLAINTS. (a) In a formal hearing described by Section 164.007 in which the sole basis for disciplinary action is the basis described by Section 164.051(a)(7), the board shall provide evidence from the board's investigation that shows the basis for the board's findings required by that subdivision.

(b) In any formal hearing described by Section 164.007, information obtained as a result of peer review may not be used as evidence except as the basis for the opinion of an expert witness called by the board. When admitted into evidence, this information

shall be admitted under seal to protect the confidentiality of the documents. In the event that a decision of the board or the State Office of Administrative Hearings is appealed to a district court or other court, the confidentiality protections relating to the medical peer review committee documents shall continue.

(c) A member of a peer review committee is not subject to subpoena and may not be compelled to provide evidence in a formal hearing.

Added by Acts 2005, 79th Leg., ch. 269, Sec. 1.41, eff. Sept. 1, 2005.

Sec. 164.008. RIGHT TO COUNSEL. In a hearing involving a disciplinary action under this subtitle, the respondent is entitled to appear personally, by counsel, or both.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 164.009. JUDICIAL REVIEW. 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.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 164.010. MONITORING OF LICENSE HOLDER. (a) The board by rule shall develop a system to monitor compliance with the requirements of this subtitle of license holders who are the subject of disciplinary action.

(b) Rules adopted under this section must include procedures to:

(1) monitor for compliance a license holder ordered by the board to perform certain acts; and

(2) identify and monitor license holders who are the subject of disciplinary action and who present a continuing threat to the public welfare through the practice of medicine.

(c) The board shall immediately investigate:

(1) a violation of a disciplinary order by a license holder described by Subsection (a); or

(2) a complaint filed against a license holder described by Subsection (a).

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 202, Sec. 29, eff. June 10, 2003.

Sec. 164.011. LICENSE STATUS PENDING APPEAL. (a) The board's decision on a disciplinary matter may not be enjoined or stayed except on application to the appropriate court after notice to the board.

(b) A person may not practice medicine or deliver health care services in violation of a disciplinary order or action of the board while an appeal is pending unless the order or action is stayed by the appropriate court.

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

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 202, Sec. 30, eff. June 10, 2003.

SUBCHAPTER B. LICENSE DENIAL AND DISCIPLINARY ACTIONS

Sec. 164.051. GROUNDS FOR DENIAL OR DISCIPLINARY ACTION. (a) The board may refuse to admit a person to its examination or refuse to issue a license to practice medicine and may take disciplinary action against a person if the person:

(1) commits an act prohibited under Section 164.052;

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

(A) a felony; or

(B) a misdemeanor involving moral turpitude;

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

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

(A) illness;

(B) drunkenness;

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

(D) a mental or physical condition;

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

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

(7) is removed, suspended, or is subject to

disciplinary action taken by the person's peers in a local, regional, state, or national professional medical association or society, or is disciplined by a licensed hospital or medical staff of a hospital, including removal, suspension, limitation of hospital privileges, or other disciplinary action, if the board finds that the action:

(A) was based on unprofessional conduct or professional incompetence that was likely to harm the public; and

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

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

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

(b) Action taken by a professional medical association, society, or hospital medical staff under Subsection (a)(7) does not constitute state action.

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

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

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 202, Sec. 31, eff. June 10, 2003.

Sec. 164.052. PROHIBITED PRACTICES BY PHYSICIAN OR LICENSE APPLICANT. (a) A physician or an applicant for a license to practice medicine commits a prohibited practice if that person:

(1) submits to the board a false or misleading statement, document, or certificate in an application for a license;

(2) presents to the board a license, certificate, or diploma that was illegally or fraudulently obtained;

(3) commits fraud or deception in taking or passing an examination;

(4) uses alcohol or drugs in an intemperate manner that, in the board's opinion, could endanger a patient's life;

(5) commits unprofessional or dishonorable conduct that is likely to deceive or defraud the public, as provided by Section 164.053, or injure the public;

(6) uses an advertising statement that is false, misleading, or deceptive;

(7) advertises professional superiority or the performance of professional service in a superior manner if that advertising is not readily subject to verification;

(8) purchases, sells, barter, or uses, or offers to purchase, sell, barter, or use, a medical degree, license, certificate, or diploma, or a transcript of a license, certificate, or diploma in or incident to an application to the board for a license to practice medicine;

(9) alters, with fraudulent intent, a medical license, certificate, or diploma, or a transcript of a medical license, certificate, or diploma;

(10) uses a medical license, certificate, or diploma, or a transcript of a medical license, certificate, or diploma that has been:

(A) fraudulently purchased or issued;

(B) counterfeited; or

(C) materially altered;

(11) impersonates or acts as proxy for another person in an examination required by this subtitle for a medical license;

(12) engages in conduct that subverts or attempts to subvert an examination process required by this subtitle for a medical license;

(13) impersonates a physician or permits another to use the person's license or certificate to practice medicine in this state;

(14) directly or indirectly employs a person whose license to practice medicine has been suspended, canceled, or

revoked;

(15) associates in the practice of medicine with a person:

(A) whose license to practice medicine has been suspended, canceled, or revoked; or

(B) who has been convicted of the unlawful practice of medicine in this state or elsewhere;

(16) performs or procures a criminal abortion, aids or abets in the procuring of a criminal abortion, attempts to perform or procure a criminal abortion, or attempts to aid or abet the performance or procurement of a criminal abortion;

(17) directly or indirectly aids or abets the practice of medicine by a person, partnership, association, or corporation that is not licensed to practice medicine by the board;

(18) performs an abortion on a woman who is pregnant with a viable unborn child during the third trimester of the pregnancy unless:

(A) the abortion is necessary to prevent the death of the woman;

(B) the viable unborn child has a severe, irreversible brain impairment; or

(C) the woman is diagnosed with a significant likelihood of suffering imminent severe, irreversible brain damage or imminent severe, irreversible paralysis; or

(19) performs an abortion on an unemancipated minor without the written consent of the child's parent, managing conservator, or legal guardian or without a court order, as provided by Section 33.003 or 33.004, Family Code, authorizing the minor to consent to the abortion, unless the physician concludes that on the basis of the physician's good faith clinical judgment, a condition exists that complicates the medical condition of the pregnant minor and necessitates the immediate abortion of her pregnancy to avert her death or to avoid a serious risk of substantial impairment of a major bodily function and that there is insufficient time to obtain the consent of the child's parent, managing conservator, or legal guardian.

(b) For purposes of Subsection (a)(12), conduct that subverts or attempts to subvert the medical licensing examination process includes, as prescribed by board rules, conduct that violates:

(1) the security of the examination materials;

(2) the standard of test administration; or

(3) the accreditation process.

(c) The board shall adopt the forms necessary for physicians to obtain the consent required for an abortion to be performed on an unemancipated minor under Subsection (a). The form executed to obtain consent or any other required documentation must be retained by the physician until the later of the fifth anniversary of the date of the minor's majority or the seventh anniversary of the date the physician received or created the documentation for the record. Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2005, 79th Leg., ch. 269, Sec. 1.42, eff. Sept. 1, 2005.

Sec. 164.053. UNPROFESSIONAL OR DISHONORABLE CONDUCT. (a) For purposes of Section 164.052(a)(5), unprofessional or dishonorable conduct likely to deceive or defraud the public includes conduct in which a physician:

(1) commits an act that violates any state or federal law if the act is connected with the physician's practice of medicine;

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

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

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

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

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

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

(4) writes false or fictitious prescriptions for:

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

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

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

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

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

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

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

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

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

(b) A complaint, indictment, or conviction of a violation of law is not necessary for the enforcement of Subsection (a)(1). Proof of the commission of the act while in the practice of medicine or under the guise of the practice of medicine is sufficient for the board's action.

(c) Subsection (a)(3) does not apply to a person the physician is treating for:

(1) the person's use of narcotics after the physician notifies the board in writing of the name and address of the person being treated; or

(2) intractable pain under the Intractable Pain Treatment Act (Article 4495c, Revised Statutes).

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.034(a), eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 202, Sec. 32, eff. June 10, 2003.

Sec. 164.054. ADDITIONAL REQUIREMENTS REGARDING DRUG RECORDS. (a) Each physician shall keep a record of the physician's purchase and disposal of drugs and controlled substances described by Section 164.053(a)(2) that includes:

(1) the date of purchase and the date of the sale or disposal of the drugs and controlled substances by the physician;

(2) the name and address of the person receiving the drugs or controlled substances; and

(3) the reason for the disposing or dispensing of the drugs or controlled substances to the person.

(b) Failure to keep the records required by this section for a reasonable time constitutes grounds for revoking, canceling, suspending, or placing on probation the physician's license.

(c) The board or its representative may enter and inspect a physician's place of practice during reasonable business hours to:

(1) verify the accuracy of the records; and

(2) perform an inventory of the prescription drugs on hand.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 164.055. PROHIBITED ACTS REGARDING ABORTION. (a) The board may take an appropriate disciplinary action against a physician who violates Section 170.002, Health and Safety Code. The board may refuse to admit to examination or refuse to issue a license or renewal license to a person who violates that section.

(b) The sanctions provided by Subsection (a) are in addition to any other grounds for refusal to admit persons to examination under this subtitle or to issue a license or renew a license to practice medicine under this subtitle. The criminal penalties provided by Section 165.152 do not apply to a violation of Section 170.002, Health and Safety Code.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 164.056. PHYSICAL OR MENTAL EXAMINATION; HEARING. (a) In enforcing Section 164.051(a)(4), the board, on probable cause, shall request the affected physician or applicant to submit to a mental or physical examination by physicians designated by the board. The board shall adopt guidelines, in conjunction with persons interested in or affected by this section, to enable the board to evaluate circumstances in which a physician or applicant may be required to submit to an examination for mental or physical health conditions, alcohol and substance abuse, or professional

behavior problems.

(b) If the affected physician refuses to submit to the examination, the board shall issue an order requiring the physician to show cause why the physician should not be required to submit to the examination and shall schedule a hearing on the order not later than the 30th day after the date on which notice is served on the physician. The physician shall be notified by either personal service or certified mail with return receipt requested.

(c) At the hearing, the physician and the physician's attorney are entitled to present testimony and other evidence showing that the physician should not be required to submit to the examination. After a hearing, the board shall issue an order either requiring the physician to submit to the examination or withdrawing the request for examination.

(d) The board shall refer a physician or applicant with a physical or mental health condition to the most appropriate medical specialist for evaluation. The board may not require a physician or applicant to submit to an examination by a physician having a specialty specified by the board unless medically indicated. The board may not require a physician or applicant to submit to an examination to be conducted an unreasonable distance from the person's home or place of business unless the physician or applicant resides and works in an area in which there are a limited number of physicians able to perform an appropriate examination.

(e) The guidelines adopted under this section do not impair or remove the board's power to make an independent licensing decision.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2005, 79th Leg., ch. 269, Sec. 1.43, eff. Sept. 1, 2005.

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

- (1) initially convicted of:
 - (A) a felony;
 - (B) a misdemeanor under Chapter 22, Penal Code, other than a misdemeanor punishable by fine only;
 - (C) a misdemeanor on conviction of which a defendant is required to register as a sex offender under Chapter 62, Code of Criminal Procedure;
 - (D) a misdemeanor under Section 25.07, Penal Code; or
 - (E) a misdemeanor under Section 25.071, Penal Code; or

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

- (A) Chapter 481 or 483, Health and Safety Code;
- (B) Section 485.033, Health and Safety Code; or
- (C) the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. Section 801 et seq.).

(b) On final conviction for an offense described by Subsection (a), the board shall revoke the physician's license. Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 202, Sec. 33, eff. June 10, 2003.

Sec. 164.058. REQUIRED SUSPENSION OF LICENSE OF INCARCERATED PHYSICIAN. Regardless of the offense, the board shall suspend the license of a physician serving a prison term in a state or federal penitentiary during the term of the incarceration. Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

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

(b) If the disciplinary panel determines from the evidence presented to the panel that a person licensed to practice medicine would, by the person's continuation in practice, constitute a continuing threat to the public welfare, the disciplinary panel shall temporarily suspend or restrict the license of that person.

(c) A license may be suspended or restricted by a disciplinary panel under this section without notice or hearing if:

- (1) the board immediately provides notice of the suspension or restriction to the license holder; and
- (2) a hearing on the temporary suspension or restriction before a disciplinary panel of the board is scheduled for the earliest possible date after 10 days' notice of hearing.

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

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

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

(g) If, after the hearing described by Subsection (c), the disciplinary panel does not temporarily suspend or restrict the license holder's license, the facts that were the basis for the temporary suspension or restriction may not be the sole basis for another proceeding to temporarily suspend or restrict the license holder's license. The board may use those same facts in a subsequent investigation to obtain new information that may be the basis for the temporary suspension or restriction of the license holder's license. For purposes of this subsection, facts that are the basis for the temporary suspension or restriction of a license holder's license include facts presented to the disciplinary panel and facts presented by the board or a representative of the board at the time evidence was presented to the disciplinary panel.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 202, Sec. 34, eff. June 10, 2003.

Sec. 164.060. REPORT OF BOARD ACTIONS. (a) Not later than the first working day after the date a board order is issued taking disciplinary action against a physician, the board shall report the action to the appropriate health care facilities and hospitals, if known by the board.

(b) Not later than the 30th day after the date the board takes disciplinary action against a physician, the board shall report that action, in writing, to:

(1) the appropriate health care facilities and hospitals, if not previously notified in writing;

(2) professional societies of physicians in this state;

(3) the entity responsible for the administration of Medicare and Medicaid in this state;

(4) the United States Secretary of Health and Human Services or the secretary's designee; and

(5) the complainant.

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

(d) Notwithstanding Subsection (c), the board may exercise discretion in the case of an impaired physician who is actively participating in board-approved or sanctioned care, counseling, or treatment.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 202, Sec. 35, eff. June 10, 2003.

Sec. 164.061. SURRENDER OF LICENSE. (a) The board may accept the voluntary surrender of a license.

(b) A surrendered license may not be returned unless the board determines, under board rules, that the license holder is competent to resume practice.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

SUBCHAPTER C. PROBATION OF LICENSE

Sec. 164.101. PROBATION. (a) The board on majority vote may probate an order canceling, revoking, or suspending a license or

imposing any other method of discipline if the probationer conforms to each order, condition, and rule the board establishes as a term of probation.

(b) At the time probation is granted the board shall establish the term of the probationary period.

(c) If a license suspension is probated, the board may require the license holder to:

(1) report regularly to the board on matters that are the basis of the probation;

(2) limit practice to the areas prescribed by the board; or

(3) continue or review continuing professional education until the license holder attains a degree of skill satisfactory to the board in the areas that are the basis of the probation.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 164.102. PERSONS INELIGIBLE FOR PROBATION. (a) The board may not grant probation to a physician who constitutes, through the practice of medicine, a continuing threat to the public welfare.

(b) Except on an express determination, based on substantial evidence, that granting probation is in the best interests of the public and of the person whose license has been suspended, revoked, or canceled, the board may not grant probation to a person whose license has been canceled, revoked, or suspended because of a felony conviction under:

(1) Chapter 481 or 483, Health and Safety Code;

(2) Section 485.033, Health and Safety Code; or

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

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 164.103. RESCISSION OF PROBATION. (a) At any time during a probation term, on a showing of adequate grounds, the board may hold a hearing and, on proof of a violation of the probation order, may:

(1) rescind the probation and enforce the board's original order; and

(2) impose any disciplinary action permitted under Section 164.001 in addition to or instead of enforcing the original order.

(b) The board shall revoke or suspend a probationer's license if the board determines that the probationer constitutes, through the practice of medicine, a continuing threat to the public welfare.

(c) A hearing to rescind probation is subject to the requirements established under this chapter for other charges.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

SUBCHAPTER D. LICENSE REINSTATEMENT

Sec. 164.151. APPLICATION FOR LICENSE REINSTATEMENT. (a) On application, the board may reissue a license to practice medicine to a person whose license has been canceled, revoked, or suspended.

(b) The application must be:

(1) accompanied by the fees set by the board; and

(2) made in the manner and form and under the conditions required by the board.

(c) In addition to the other requirements imposed under this subchapter, to be eligible for reinstatement or reissuance of a license an applicant must prove that the reinstatement or reissuance is in the best interests of:

(1) the public; and

(2) the person whose license has been canceled, revoked, or suspended.

(d) A decision by the board to deny an application to reinstate or reissue a license is subject to judicial review in the manner provided by Section 164.009.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 164.152. APPLICATION PERIOD. (a) A person may not apply for reinstatement of a license that was revoked before the first anniversary of the date on which the revocation was issued or became final.

(b) If the board denies the application for reinstatement, the applicant may not reapply more frequently than annually.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 164.153. CERTAIN PERSONS INELIGIBLE FOR REINSTATEMENT. Except on an express determination based on

substantial evidence contained in an investigative report indicating that reinstatement or reissue of the license is in the best interests of the public and of the person whose license has been canceled, revoked, or suspended, the board may not reinstate or reissue a license to a person whose license has been canceled, revoked, or suspended because of a felony conviction under:

- (1) Chapter 481 or 483, Health and Safety Code;
- (2) Section 485.033, Health and Safety Code; or
- (3) the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. Section 801 et seq.).

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 164.154. EFFECT OF LICENSE REINSTATEMENT ON CERTAIN PROSECUTIONS OR PENALTIES. If a physician has had charges filed against the physician during a period in which the physician's license was not in force or was suspended, revoked, or canceled, or if penalties have been incurred by the physician during that period, the reinstatement of the physician's license does not abate the prosecution or penalties.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

SUBCHAPTER E. OTHER ACTIONS

Sec. 164.201. REVIEW BY BOARD IF THREE OR MORE MALPRACTICE CLAIMS. The board shall review the medical competency of a physician against whom three or more expert reports under Section 74.351, Civil Practice and Remedies Code, have been filed in three separate lawsuits within a five-year period in the same manner as if a complaint against the physician had been made to the board under Section 154.051.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 202, Sec. 36, eff. June 10, 2003; Acts 2005, 79th Leg., ch. 141, Sec. 1, eff. Sept. 1, 2005.

Sec. 164.202. REHABILITATION ORDER. (a) The board, through an agreed order or after a contested proceeding, may impose a nondisciplinary rehabilitation order on an applicant, as a prerequisite for issuing a license, or on a license holder, based on:

(1) intemperate use of drugs or alcohol directly resulting from habituation or addiction caused by medical care or treatment provided by a physician;

(2) self-reported intemperate use of drugs or alcohol during the five years preceding the report that could adversely affect the reporter's ability to practice medicine safely, if:

(A) the reporting individual has not previously been the subject of a substance abuse-related order of the board; and

(B) the applicant or license holder has not committed a violation of the standard of care as a result of the intemperate use of drugs or alcohol;

(3) a judgment by a court that the applicant or license holder is of unsound mind;

(4) a determination of impairment based on a mental or physical examination offered to establish the impairment in an evidentiary hearing before the board in which the applicant or license holder was provided an opportunity to respond; or

(5) an admission by the applicant or license holder indicating that the applicant or license holder suffers from a potentially dangerous limitation or an inability to practice medicine with reasonable skill and safety by reason of illness or as a result of any physical or mental condition.

(b) The board may not issue an order under this section if, before the individual signs the proposed order, the board receives a valid complaint with regard to the individual based on the individual's intemperate use of drugs or alcohol in a manner affecting the standard of care.

(c) The board must determine whether an individual has committed a standard of care violation described by Subsection (a)(2) before imposing an order under this section.

(d) The board may disclose a rehabilitation order to a local or statewide private medical association only as provided by Section 164.205.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2005, 79th Leg., ch. 269, Sec. 1.44, eff. Sept. 1, 2005.

Sec. 164.203. EFFECT OF REHABILITATION ORDER. (a) A rehabilitation order imposed under Section 164.202 is a nondisciplinary private order. If entered by agreement, the order is:

(1) an agreed disposition or settlement agreement for purposes of civil litigation as provided under Section 164.002; and

(2) exempt from Chapter 552, Government Code.

(b) A rehabilitation order imposed under Section 164.202 must contain findings of fact and conclusions of law. The order may impose a revocation, cancellation, suspension, period of probation or restriction, or any other term authorized by Section 164.001 or agreed to by the board and the person subject to the order.

(c) A violation of a rehabilitation order may result in disciplinary action under this subtitle or under the terms of the agreed order. A violation of a rehabilitation order is grounds for disciplinary action based on:

(1) unprofessional or dishonorable conduct; or

(2) any provision of this subtitle that applies to the conduct that resulted in the violation.

(d) A violation of a rehabilitation order is grounds for temporary suspension of the person's license under Section 164.059. This section does not prevent or limit the authority of the board to take action to temporarily suspend a license under that section. Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 164.204. AUDIT OF REHABILITATION ORDER. (a) The board shall maintain a rehabilitation order imposed under Section 164.202 in a confidential file. The file is subject to an independent audit by the state auditor or a private auditor with whom the board contracts to perform the audit to ensure that only qualified license holders are subject to rehabilitation orders.

(b) An audit may be performed at any time at the direction of the board. The board shall ensure that an audit is performed at least once in each three-year period.

(c) The audit results are public information and shall be reported in a manner that maintains the anonymity of each license holder who is subject to a rehabilitation order.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 164.205. RESPONSIBILITIES OF PRIVATE MEDICAL ASSOCIATIONS. (a) If a rehabilitation order imposed under Section 164.202 requires a license holder to participate in activities or programs provided by a local or statewide private medical association, the board shall inform the association of the license holder's duties under the order. The information provided under this section must include specific guidance to enable the association to comply with any requirements necessary to assist in the physician's rehabilitation.

(b) The board may provide to the association any information that the board determines to be necessary, including a copy of the rehabilitation order. Any information received by the association remains confidential, is not subject to discovery, subpoena, or other means of legal compulsion, and may be disclosed only to the board.

Added by Acts 2005, 79th Leg., ch. 269, Sec. 1.45, eff. Sept. 1, 2005.

Sec. 164.206. REFUND. (a) Subject to Subsection (b), the board may order a license holder to pay a refund to a consumer as provided in an agreement resulting from an informal settlement conference instead of or in addition to imposing an administrative penalty under Chapter 165.

(b) The amount of a refund ordered as provided in an agreement resulting from an informal settlement conference may not exceed the amount the consumer paid to the license holder for a service regulated by this subtitle. The board may not require payment of other damages or estimate harm in a refund order.

Added by Acts 2005, 79th Leg., ch. 269, Sec. 1.46, eff. Sept. 1, 2005.