

**CHAPTER 661**

**S.B. No. 1170**

An Act relating to the meetings of the Texas State Board of Medical Examiners; to registration of practitioners and interns; to grounds for refusal to admit persons to examinations and to issue licenses and renewal licenses; to hearings, rules, and to judicial review; to reports by peer review committees or medical personnel and their immunity from liability; and to applicability of the open meetings law; amending Section 2.07; Subsections (b) and (g), Section 3.01; Section 3.08; Subsection (a), Section 4.05; Section 4.09; and Subsections (a), (b), (e), and (f), Section 5.06, Medical Practice Act, as amended (Article 4495b, Vernon's Texas Civil Statutes).

*Be it enacted by the Legislature of the State of Texas:*

**SECTION 1.** Section 2.07, Medical Practice Act, as amended (Article 4495b, Vernon's Texas Civil Statutes), is amended to read as follows:

"Section 2.07. **MEETINGS OF THE BOARD.** At the first meeting of the board after each biennial appointment, the board shall elect from its members a president, vice-president, secretary-treasurer, and other officers as are required, in the opinion of the board, to carry out its duties. Regular meetings shall be held at least twice a year at times and places as the board shall consider most convenient for applicants and board members. Special meetings may be held in accordance with rules adopted by the board. *After hearing all evidence and arguments in open meeting, the board may in its discretion conduct deliberations relative to applications for licensure and licensee disciplinary actions in executive sessions. The board shall vote and announce its decisions in open session.*"

**SECTION 2.** Subsection (b), Section 3.01, Medical Practice Act, as amended (Article 4495b, Vernon's Texas Civil Statutes), is amended to read as follows:

"(b) *Physicians not otherwise licensed by the board who are participating in graduate medical education training programs approved by the board may be issued institutional permits as provided by rules of the board. A reasonable fee shall be charged and deposited into the medical registration fund. This permit* ~~Any person desiring to serve in this state as an intern, resident, or fellow in graduate medical education programs herein described who is not otherwise licensed by the board shall register with the board within 30 days after beginning service as an intern, resident, or fellow, and annually thereafter, and shall pay the fee as the board may determine to be reasonable. Upon registration, a permit shall be issued annually to the interns, residents, and fellows participating in graduate medical education programs at hospitals and other medical institutions approved by the board on request of the hospitals or medical institutions as provided by rules of the board. The fee shall be deposited in the medical registration fund. Registration as an intern, resident, or fellow~~ does not authorize the performance of medical acts except as the acts are performed as a part of graduate medical education programs and under the supervision of a licensed practitioner of medicine."

**SECTION 3.** Subsection (g), Section 3.01, Medical Practice Act, as amended (Article 4495b, Vernon's Texas Civil Statutes), is amended to read as follows:

"(g) The annual registration fee shall apply to all persons licensed by the board, whether or not they are practicing within the borders of this state, *except retired physicians as provided by rules of the board.*"

**SECTION 4.** Section 3.08, Medical Practice Act, as amended (Article 4495b, Vernon's Texas Civil Statutes), is amended to read as follows:

"Section 3.08. **GROUND FOR REFUSAL TO ADMIT PERSONS TO EXAMINATION AND TO ISSUE LICENSE AND RENEWAL LICENSE.** The board may refuse to admit persons to its examinations and to issue a license to practice medicine to any person for any of the following reasons:

"(1) submission of a false or misleading statement, document, or certificate to the board in an application for examination or licensure; the presentation to the board of any license, certificate, or diploma that was illegally or fraudulently obtained; the practice of fraud or deception in taking or passing an examination;

"(2) conviction of a crime of the grade of a felony or a crime of a lesser degree that involves moral turpitude;

"(3) intemperate use of alcohol or drugs that, in the opinion of the board, could endanger the lives of patients;

"(4) unprofessional or dishonorable conduct that is likely to deceive or defraud the public or injure the public. Unprofessional or dishonorable conduct likely to deceive or defraud the public includes but is not limited to the following acts:

"(A) committing any act that is in violation of the laws of the State of Texas if the act is connected with the physician's practice of medicine. A complaint, indictment, or conviction of a law violation is not necessary for the enforcement of this provision. 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 action by the board under this section;

"(B) failing to keep complete and accurate records of purchases and disposals of drugs listed in the Texas Controlled Substances Act (Article 4476-15, Vernon's Texas Civil Statutes), or of controlled substances scheduled in the Federal Comprehensive Drug Abuse Prevention and Control Act of 1970, 21 U.S.C.A. Section 801 et seq. (Public Law 91-513). A physician shall keep records of his purchases and disposals of these drugs to include without limitation the date

of purchase, the sale or disposal of the drugs by the physician, the name and address of the person receiving the drugs, and the reason for the disposing or dispensing of the drugs to the person. A failure to keep the records for a reasonable time is grounds for revoking, canceling, suspending, or probating the license of any practitioner of medicine. The board or its representative may enter and inspect a physician's place(s) of practice during reasonable business hours for the purpose of verifying the correctness of these records and of taking inventory of the prescription drugs on hand;

“(C) writing prescriptions for or dispensing to a person known to be a habitual user of narcotic drugs, controlled substances, or dangerous drugs or to a person who the physician should have known was a habitual user of the narcotic drugs, controlled substances, or dangerous drugs. This provision does not apply to those persons being treated by the physician for their narcotic use after the physician notifies the board in writing of the name and address of the person being so treated;

“(D) writing false or fictitious prescriptions for dangerous drugs as defined by Chapter 425, Acts of the 56th Legislature, Regular Session, 1959 (Article 4476-14, Vernon's Texas Civil Statutes), of controlled substances scheduled in the Texas Controlled Substances Act (Article 4476-15, Vernon's Texas Civil Statutes), or of controlled substances scheduled in the Federal Comprehensive Drug Abuse Prevention and Control Act of 1970, 21 U.S.C.A. Section 801 et seq. (Public Law 91-513);

“(E) prescribing or administering a drug or treatment that is nontherapeutic in nature or nontherapeutic in the manner the drug or treatment is administered or prescribed;

“(F) prescribing, administering, or dispensing in a manner not consistent with public health and welfare dangerous drugs as defined by Chapter 425, Acts of the 56th Legislature, Regular Session, 1959 (Article 4476-14, Vernon's Texas Civil Statutes), controlled substances scheduled in the Texas Controlled Substances Act (Article 4476-15, Vernon's Texas Civil Statutes), or controlled substances scheduled in the Federal Comprehensive Drug Abuse Prevention and Control Act of 1970, 21 U.S.C.A. Section 801 et seq. (Public Law 91-513);

“(G) persistently and flagrantly overcharging or overtreating patients;

“(H) failing to supervise adequately the activities of those acting under the supervision of the physician; or

“(I) delegating 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;

“(5) violation or attempted violation, direct or indirect, of any valid rules issued under this Act, either as a principal, accessory, or accomplice;

“(6) use of any advertising statement that is false, misleading, or deceptive;

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

“(8) purchase, sale, barter, or use or any offer to purchase, sell, barter, or use any medical degree, license, certificate, diploma, or transcript of license, certificate, or diploma in or incident to an application to the board for a license to practice medicine;

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

“(10) using any medical license, certificate, diploma, or transcript of a medical license, certificate, or diploma that has been fraudulently purchased, issued, or counterfeited or that has been materially altered;

“(11) impersonating or acting as proxy for another in any examination required by this Act for a medical license; or engaging in conduct which subverts or attempts to subvert any examination process required by this Act for a medical license. Conduct which subverts or attempts to subvert the medical licensing examination process includes, but is not limited to: (A) conduct which violates the security of the examination materials, as prescribed by board rules; (B) conduct which violates the standard of test administration, as prescribed by board rules; (C) conduct which violates the accreditation process, as prescribed by board rules;

“(12) impersonating a licensed practitioner or permitting or allowing another to use his license or certificate to practice medicine in this state for the purpose of diagnosing, treating, or offering to treat sick, injured, or afflicted human beings;

“(13) employing, directly or indirectly, any person whose license to practice medicine has been suspended or association in the practice of medicine with any person or persons whose license to practice medicine has been suspended or any person who has been convicted of the unlawful practice of medicine in Texas or elsewhere;

“(14) performing or procuring a criminal abortion or aiding or abetting in the procuring of a criminal abortion or attempting to perform or procure a criminal abortion or attempting to aid or abet the performance or procurement of a criminal abortion;

“(15) aiding or abetting, directly or indirectly, the practice of medicine by any person, partnership, association, or corporation not duly licensed to practice medicine by the board;

“(16) inability to practice medicine with reasonable skill and safety to patients by reason of illness, drunkenness, excessive use of drugs, narcotics, chemicals, or any other type of material or as a result of any mental or physical condition. In enforcing this subdivision the board shall, upon probable cause, request a physician to submit to a mental or physical examination by physicians designated by the board. If the physician refuses to submit to the examination, the board shall issue an order requiring the physician to show cause why he should not be required to submit to the examination and shall schedule a hearing on the order within 30 days after notice is served on the physician. The physician shall be notified by either personal service or certified mail with return receipt requested. At the hearing, the physician and his attorney are entitled to present any testimony and other evidence to show why the physician should not be required to submit to the examination. After a complete hearing, the board shall issue an order either requiring the physician to submit to the examination or withdrawing the request for examination. An appeal from the decision of the board shall be taken under the Administrative Procedure Act;

“(17) judgment by a court of competent jurisdiction that a person licensed to practice medicine is of unsound mind;

“(18) professional failure to practice medicine in an acceptable manner consistent with public health and welfare;

“(19) being removed, suspended, or having disciplinary action taken by his peers in any professional medical association or society, whether the association or society is local, regional, state, or national in scope, or being disciplined by a licensed hospital or medical staff of a hospital, including removal, suspension, limitation of hospital privileges, or other disciplinary action, if that action in the opinion of the board was based on unprofessional conduct or professional incompetence that was likely to harm the public, provided that the board finds that the actions were appropriate and reasonably supported by evidence submitted to it. The action does not constitute state action on the part of the association, society, or hospital medical staff;

“(20) repeated or recurring meritorious health-care liability claims that in the opinion of the board evidence professional incompetence likely to injure the public; or

“(21) suspension, revocation, or restriction by another state of a license to practice medicine, or disciplinary action by the uniformed services of the United States, based upon acts by the licensee similar to acts described in this section. A certified copy of the record of the state taking the action is conclusive evidence of it.”

**SECTION 5.** Subsection (a), Section 4.05, Medical Practice Act, as amended (Article 4495b, Vernon's Texas Civil Statutes), is amended to read as follows:

“(a) *The president of the board shall designate one of the following alternative procedures for the conduct of each individual contested case in a disciplinary matter:*

“(1) *a hearing before the board itself where a quorum of the board shall be present for the hearing and decision at the conclusion of the hearing;*

“(2) *a hearing committee appointed by the president of the board, provided that the hearing committee shall be composed of not less than three members of the board and the composition of such committee shall be consistent with the provisions of Sections 2.08 and 2.09 of this Act; or*

“(3) *a hearing before a hearing examiner appointed by the board to conduct a hearing and to prepare and submit to the board for action a proposal for decision as provided in the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).*

“*Any individual conducting a hearing under this subchapter is empowered to administer oaths and to receive evidence at the hearing and shall report the hearing as prescribed by board rules. Notwithstanding any other provision of this Act or other law, the board may, in its sole discretion, employ, retain, and compensate such attorneys, consultants, and other professionals as it deems necessary and appropriate to serve as hearing examiners, board consultants, special counsel to prosecute on behalf of the hearings division and investigating division such complaints as are filed with the board, court reporters, and other staff deemed necessary or appropriate by the board to prepare for or conduct the hearings authorized by this section. All hearings conducted under this subchapter by the board shall comply with the provisions of the Administrative Procedure Act and the board's rules. [The board may delegate the authority to conduct hearings under this subchapter to a hearing committee comprised of not less than three members appointed by the board. The composition of such committee shall be consistent with the provisions of Sections 2.08 and 2.09 of this Act. Any individual or individuals conducting a hearing under this subchapter are empowered to administer oaths and receive evidence at the hearing and shall report the hearing as prescribed by board rules.]”*

**SECTION 6.** Section 4.09, Medical Practice Act, as amended (Article 4495b, Vernon's Texas Civil Statutes), is amended to read as follows:

"Section 4.09. JUDICIAL REVIEW. (a) Any person whose license to practice medicine has been canceled, revoked, suspended, or otherwise disciplined by the board may, within 30 days after the decision complained of is final and appealable, take an appeal to ~~[any of the district courts in the licensee's county of residence, if the county of residence is at the time of the hearing in Texas. Otherwise, the appeal shall be taken to]~~ one of the district courts of Travis County.

"(b) The proceedings on appeal shall be under the substantial evidence rule as provided for in the Administrative Procedure Act."

**SECTION 7.** Section 5.06, Medical Practices Act, as amended (Article 4495b, Vernon's Texas Civil Statutes), is amended by amending Subsections (a), (b), and (f) and Subdivision (3) of Subsection (e) to read as follows:

"(a) Any medical peer review committee in this state, ~~[and]~~ any physician licensed to practice medicine or otherwise lawfully practicing medicine in this state, *any physician engaged in graduate medical education or training, or any medical student* may report relevant information ~~[facts]~~ to the board relating to the acts of any physician in this state if, in the opinion of the medical peer review committee, ~~[or the]~~ physician, *or medical student, that information [they have knowledge]* relating to the physician ~~[that]~~ reasonably raises a question with respect to his competency.

"(b) *Any committee of a professional society comprised primarily of physicians, its staff, or any district or local intervenor participating in a program established to aid physicians whose ability to practice medicine is impaired by drug or alcohol abuse or mental or physical illness may report to the board the name of the impaired physician together with the pertinent information relating to that impairment.* A professional society in this state comprised primarily of physicians that takes formal disciplinary action against a member relating to professional ethics, medical incompetency, moral turpitude, or drug or alcohol abuse may *also report [in writing]* to the board the name of the member, together with the pertinent information relating to the action."

"(3) In no event may records and reports *disclosed pursuant to this article by the board to others, or reports and records received, maintained, or developed by the board, by a medical organization committee described in Subsection (a) or (b) of this section, or by a member of such a committee [or disclosed by the board to others, pursuant to this article],* be available for discovery or court subpoena or introduced into evidence in a medical professional liability suit ~~[or other action for damages]~~ arising out of the provision of or failure to provide medical or health-care services, *or in any other action for damages.*"

"(f) The following persons are immune from civil liability:

"(1) a person reporting to or furnishing information to a medical peer review committee;

"(2) a member, employee, or agent of the board, *a member, employee, or agent of a medical peer review committee, a member, employee, or agent of a medical organization committee, or a medical organization district or local intervenor who takes any action or makes any recommendation within the scope of the functions of the board, committee, or intervenor program, if such member, employee, or agent acts without malice and in the reasonable belief that such action or recommendation is warranted by the facts known to him [medical peer review committee who assists in the organization, investigation, or preparation of information or who makes a report on other information available to the board pursuant to this subsection];* and

"(3) any member or employee of the board or any person who assists the board in carrying out its duties or functions provided by law."

**SECTION 8.** The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

Passed the Senate on May 6, 1985, by the following vote: Yeas 28, Nays 2; May 24, 1985, Senate refused to concur in House amendments and requested appointment of Conference Committee; May 26, 1985, House granted request of the Senate; May 27, 1985, Senate adopted Conference Committee Report by a viva-voce vote; passed the House, with amendments, on May 23, 1985, by a non-record vote; May 26, 1985, House granted request of the Senate for appointment of Conference Committee; May 27, 1985, House adopted Conference Committee Report by a non-record vote.

Approved: June 14, 1985

Effective: August 26, 1985