

## CHAPTER 596

H.B. No. 2560

## AN ACT

relating to the regulation of physicians under the Medical Practice Act and to the powers and duties of the Texas State Board of Medical Examiners; providing a civil penalty.

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

SECTION 1. Section 1.03, Medical Practice Act (Article 4495b, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 1.03. DEFINITIONS. (a) In this Act:

(1) "Administrative Procedure Act" means the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

(2) "Board" means the Texas State Board of Medical Examiners.

(3) "*Continuing threat to the public welfare*" means that, in the judgment of the board, any medical peer review committee in this state, 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, the acts or omissions of the physician through his lack of competence, impaired status, or failure to care adequately for his patients constitute a real and present danger to the health of his patients.

(4) "*Disciplinary order*" means any action taken under Section 4.01 and Section 4.12 of this Act.

(5) "*Health-care entity*" means:

(A) a hospital that is licensed pursuant to the Texas Hospital Licensing Law (Article 4437f, Vernon's Texas Civil Statutes) or the Texas Mental Health Code (Articles 5547-88 through 5547-100, Vernon's Texas Civil Statutes);

(B) an entity, including a health maintenance organization, group medical practice, nursing home, health science center, university medical school, or other health-care facility, that provides medical or health-care services and that follows a formal peer review process for the purposes of furthering quality medical or health care; and

(C) a professional society or association, or committee thereof, of physicians that follows a formal peer review process for the purpose of furthering quality medical or health care.

~~["Medical peer review committee" means a committee of a state or local professional medical society, the governing board of a licensed hospital in this state or of a medical staff of a licensed hospital, nursing home, or other health-care facility, provided the committee or medical staff operates pursuant to written bylaws that have been approved by the policy-making body or the governing board of the society, hospital, nursing home, or other health-care facility, or other organization of physicians formed pursuant to state or federal law and authorized to evaluate medical and health-care services.]~~

(6) "*Medical peer review committee*" or "*professional review body*" means a committee of a health-care entity, the governing board of a health-care entity, or the medical staff of a health-care entity, provided the committee or medical staff operates pursuant to written bylaws that have been approved by the policy-making body or the governing board of the health-care entity and authorized to evaluate the quality of medical and health-care services or the competence of physicians. Such a committee includes the employees and agents of the committee, including assistants, investigators, intervenors, attorneys, and any other persons or organizations that serve the committee in any capacity.

(7) [(4)] "Open Meetings Law" means Chapter 271, Acts of the 60th Legislature, Regular Session, 1967 (Article 6252-17, Vernon's Texas Civil Statutes).

(8) [(5)] "Open Records Law" means Chapter 424, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252-17a, Vernon's Texas Civil Statutes).

(9) "Medical peer review" or "professional review action" means the evaluation of medical and health-care services, including evaluation of the qualifications of professional health-care practitioners and of patient care rendered by those practitioners. The term includes evaluation of the merits of complaints relating to health-care practitioners and determinations or recommendations regarding those complaints. The term specifically includes evaluation of:

- (A) accuracy of diagnosis;
- (B) quality of the care rendered by a health-care practitioner;
- (C) reports made to a medical peer review committee concerning activities under the committee's review authority;
- (D) reports by a medical peer review committee to other committees or to the board as permitted or required by law; and
- (E) implementation of the duties of a medical peer review committee by its members, agents, or employees.

(10) [(6)] "Person" means an individual unless otherwise expressly made applicable to a partnership, association, or corporation.

(11) [(7)] "Physician" and "surgeon" shall be construed as synonymous, and the terms "practitioners," "practitioners of medicine," and "practice of medicine," as used in this Act, shall be construed to refer to and include physicians and surgeons.

(12) [(8)] "Practicing medicine." A person shall be considered to be practicing medicine within this Act:

(A) who shall publicly profess to be a physician or surgeon and shall diagnose, treat, or offer to treat any disease or disorder, mental or physical, or any physical deformity or injury by any system or method or to effect cures thereof; or

(B) who shall diagnose, treat, or offer to treat any disease or disorder, mental or physical, or any physical deformity or injury by any system or method and to effect cures thereof and charge therefor, directly or indirectly, money or other compensation.

(13) [(9)] "State" means any state, territory, or insular possession of the United States and the District of Columbia.

(14) [(10)] "Texas Sunset Act" means Chapter 325, Government Code.

(b) [(11)] Any term, word, word of art, or phrase that is used in this Act and not otherwise defined in this Act has the meaning as is consistent with the common law.

SECTION 2. Subsection (f), Section 2.05, Medical Practice Act (Article 4495b, Vernon's Texas Civil Statutes), is amended to read as follows:

(f) A person currently serving as president, vice-president, secretary, or treasurer of a statewide or national organization incorporated for the purpose of representing the entire profession licensed to practice medicine in *this state or the United States* [~~the State of Texas~~] or an employee of such an organization may not serve as a member of the board. In this subsection, such an organization includes any such organization representing the practice of osteopathic medicine.

SECTION 3. Section 2.07, Medical Practice Act (Article 4495b, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 2.07. OFFICERS; MEETINGS OF THE BOARD. (a) 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.

(b) Regular meetings shall be held at least *four times* [~~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 4. Section 2.09, Medical Practice Act (Article 4495b, Vernon's Texas Civil Statutes), is amended by amending Subsections (b), (f), (g), (i), (l), (p), and (s) and by adding Subsection (w) to read as follows:

(b) *The board shall appoint an executive director who shall be its chief executive and administrative officer, who shall be charged with the primary responsibility of administering, enforcing, and carrying out the provisions of the Medical Practice Act under the control and supervision and at the direction of the board. The executive director shall hold such position at the pleasure of board and may be discharged at any time. The board may act under its rules through the executive director, an executive committee, or other committee, unless otherwise specified in this Act. The executive committee shall be the president, vice-president, and secretary-treasurer except where otherwise provided in this Act. Any duty of the secretary-treasurer in this Act may be performed by the executive director within the discretion of the board. Any reference to secretary-treasurer shall have the same meaning as executive director when so designated by the board.*

(f) An employee of the board may not be employed or paid any fee for services rendered by a statewide or national organization incorporated for the purpose of representing the entire profession licensed to practice medicine in *this state [the State of Texas] or the United States. A person is not eligible to serve as an employee of the board if the person is related within the second degree by affinity or within the third degree by consanguinity to a person who is employed or paid any fee for services rendered by such an organization. In this subsection, such an organization includes any such organization representing the practice of osteopathic medicine.*

(g) A person who is required *personally* to register as a lobbyist under Chapter 305, Government Code, *representing physicians, health-care entities, or health-care related professions*, may not be employed by the board in any capacity *[act as the general counsel of the board]*.

(i) The board shall have the power to appoint committees from its own membership and to make rules and regulations not inconsistent with this Act as may be necessary for the performance of its duties. The duties of any of the committees appointed from the board membership shall be to consider matters pertaining to the enforcement of this Act and the regulations promulgated in accordance with this Act as shall be referred to the committees, and they shall make recommendations to the board with respect to those matters. The board shall have the power, and may delegate that power to *the executive director or the secretary-treasurer [any committee]*, to issue subpoenas and subpoenas duces tecum to compel the attendance of witnesses, the production of books, records, and documents, to administer oaths, and to take testimony concerning all matters within its jurisdiction. *All subpoenas issued at the request of the board staff may be served either personally by the board's investigators or by certified mail. The board shall pay for photocopies subpoenaed at the board staff's request a reasonable fee not to exceed the amount the board may charge for copies of its records.* There shall be appointed not less than one member of the board who meets the qualifications of Subsection (c) of Section 2.05 of this Act, and one member of the board who meets the qualifications of Subsection (d) of Section 2.05 of this Act, on all committees of the board. Should a member appointed to a committee as provided for in this subsection decline to accept or not be qualified under this Act to serve on the committee the position on the committee may be filled from any other member of the board regardless of qualification. In the event a member of the board who meets the qualifications of Subsection (c) or (d) of Section 2.05 of this Act is not elected to an office which would make the member a member of the executive committee of the board as provided for in this Act, then the board shall cause to be appointed additional members of that committee so that at least one member serves on the committee who meets the qualifications of Subsection (c) of Section 2.05 of this Act and at least one member serves on the committee who meets the qualifications of Subsection (d) of Section 2.05 of this Act.

(l) The board shall be represented in court proceedings by the attorney general. The board *and the employees of the board* shall assist the local prosecuting officers of any county in the enforcement of all laws of the state prohibiting the unlawful practice of

medicine, this Act, and other matters; provided that all of the prosecutions shall, unless otherwise provided, be subject to the direction and control of the regularly and duly constituted prosecuting officers, and nothing in this Act shall be construed as depriving them of any authority vested in them by law.

(p) The board shall disseminate at least twice a year and at other times determined necessary by the board ~~[to all licensed physicians who are practicing in the State of Texas and, upon request, to the general public]~~ information as is of significant interest to the physicians in Texas. *The information must include summaries of disciplinary orders made against physicians licensed in this state, [including] board activities and functions, pertinent changes in this Act or board rules and regulations, and attorney general opinions. The requirements of this section are in addition to the reporting requirements imposed under Section 4.14 of this Act. The board shall disseminate the information:*

- (1) *to all licensed physicians practicing in this state;*
- (2) *to all health-care entities and other board-designated health-care institutions operating in this state;*
- (3) *to all members of health-related legislative committees;*
- (4) *on written request, to members of the general public; and*
- (5) *to public libraries throughout the state.*

(s) The board shall prepare information of consumer interest describing the regulatory functions of the board and describing the board's procedures by which consumer complaints are filed with and resolved by the board. *On written [The board on] request the board shall make [the] information available to the general public for a reasonable fee to cover expenses and appropriate state agencies including a summary of any previous disciplinary orders by the board against a specific physician licensed in this state, the date of the order, and the current status of the order. The board shall establish an eight-hour toll-free telephone number to make the information immediately available to any caller.*

(w) *The board shall, on request from a legislative committee created under the Legislative Reorganization Act of 1961 (Subchapter B, Chapter 301, Government Code), release only to the members of such committee all information regarding a complaint against a physician to aid in a legitimate legislative inquiry, but in no case shall the complainant and/or patient be identified. The identity of the physician may be revealed only to the members of the committee.*

SECTION 5. Subsection (h), Section 3.01, Medical Practice Act (Article 4495b, Vernon's Texas Civil Statutes), is revised to read as follows:

*(h) The secretary-treasurer or the executive director shall review each application for licensure by examination or reciprocity and shall recommend to the board all applicants eligible for licensure. The secretary-treasurer or the executive director also shall report to the board the names of all applicants determined to be ineligible for licensure, together with the reasons for each recommendation. An applicant deemed ineligible for licensure by the secretary-treasurer or the executive director may request review of such recommendation by a committee of the board within 20 days of receipt of such notice, and the secretary-treasurer or the executive director may refer any application to said committee for a recommendation concerning eligibility. If the committee finds the applicant ineligible for licensure, such recommendation, together with the reasons therefor, shall be submitted to the board unless the applicant requests an appellate hearing before a hearing examiner appointed by the board within 20 days of receipt of notice of the committee's determination. The committee may refer any application for an appellate hearing on its own motion. The board may elect to hear any appeal in lieu of proceedings before a hearing examiner, and it shall adopt, modify, or reject each decision made by a hearing examiner. The board also shall adopt, modify, or reject each recommendation of ineligibility made by the secretary-treasurer or the executive director or by the committee, unless the applicant has requested a timely review of the recommendation. Such action by the board shall constitute a final administrative decision concerning*

licensure. Any hearing before the board or before a hearing examiner under this subsection becomes a contested case under the Administrative Procedure Act. A physician whose application for licensure is denied by the board shall receive a written statement, upon request, containing the reasons for the board's action. All reports received or gathered by the board on each applicant are confidential and are not subject to disclosure under the Open Records Law. The board may disclose such reports to appropriate licensing authorities in other states upon request.

~~[(h) The secretary-treasurer shall determine the eligibility of each applicant for licensure by examination or reciprocity and shall recommend to the board all applicants eligible for licensure. If the secretary-treasurer cannot determine the eligibility of an applicant, then a committee of the board shall determine eligibility of the applicant. If the committee of the board cannot determine the eligibility of an applicant, then the board shall determine eligibility of the applicant. If a physician's application is denied by the secretary-treasurer, the applicant may request within 20 days of receipt of denial that a committee of the board determine his eligibility. If a physician's application is denied by the committee of the board, then the applicant may request within 20 days of denial a hearing to appeal the committee's decision. The board shall decide at the next regular board meeting the final administrative decision as to licensure. This hearing is not a contested case under the Administrative Procedure Act, but the applicant is entitled to legal counsel of his choice and may appeal the decision of the board to a district court under Section 19 of the Administrative Procedure Act. The denied applicant is entitled to know in writing why he was denied, but all reports received or gathered by the board on each applicant are confidential and are not subject to disclosure under the Open Records Law.]~~

SECTION 6. Subsections (a) and (b), Section 3.10, Medical Practice Act (Article 4495b, Vernon's Texas Civil Statutes), are amended to read as follows:

(a) All annual registration fees collected by the board shall be placed in the State Treasury to the credit of the medical registration fund. The fees deposited to this special fund shall be credited to the appropriations of the board and *may* ~~shall~~ be *spent* ~~expended~~ only as *provided by* ~~for items set out in~~ the General Appropriations Act, this Act, or other applicable statutes. *Money in that fund may* ~~to~~ be used by the board and under its direction in the enforcement of this Act, the prohibition of the unlawful practice of medicine, ~~and~~ the dissemination of information to prevent the violation of the laws, and ~~to aid in~~ the prosecution of those who violate the laws. All distributions from the fund may be made only upon written approval of the secretary-treasurer of the board or his designated representative, and the comptroller shall upon requisition of the board from time to time draw warrants upon the State Treasurer for the amounts specified in the requisition.

(b) The board may not set, charge, collect, receive, or deposit any of the following fees in excess of:

- (1) for processing and granting a license by reciprocity to a licensee of another state ..... \$700 [~~\$500~~]
- (2) for processing an application and administration of a partial examination for licensure ..... \$700 [~~\$500~~]
- (3) for processing an application and administration of a complete examination for licensure ..... \$700 [~~\$500~~]
- (4) for processing an application and issuance of a temporary license.. \$200 [~~\$100~~]
- (5) for processing an application and issuance of a duplicate license.. \$200 [~~\$100~~]
- (6) for processing an application and issuance of a license of reinstatement after a lapse or cancellation of a license ..... \$700 [~~\$500~~]
- (7) for processing an application and issuance of an annual registration of a licensee ..... \$200 [~~\$100~~]
- (8) for processing and issuance of an institutional permit for interns, residents, and others in approved medical training programs ..... \$200 [~~\$100~~]
- (9) for processing an application and issuance of an endorsement to other state medical boards ..... \$200 [~~\$100~~]

- (10) for processing and issuance of a permit to a physician who supervises a physician assistant.....\$200
- (11) for processing and issuance of a permit to a physician who supervises an acupuncturist.....\$200.

SECTION 7. Section 4.01, Medical Practice Act (Article 4495b, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 4.01. GROUNDS FOR CANCELLATION, REVOCATION, SUSPENSION, AND PROBATION OF LICENSE. (a) *Except as provided herein, [Except for practitioners convicted of a felony under the Texas Controlled Substances Act, as amended (Article 4476-15, Vernon's Texas Civil Statutes), Chapter 425, Acts of the 56th Legislature, Regular Session, 1959, as amended (Article 4476-14, Vernon's Texas Civil Statutes), or the Federal Comprehensive Drug Abuse Prevention and Control Act of 1970, 21 U.S.C.A. Section 801 et seq. (Public Law 91-513),]* the board may cancel, revoke, or suspend the license of any practitioner of medicine or impose any other authorized means of discipline upon proof of the violation of this Act in any respect or for any cause for which the board is authorized to refuse to admit persons to its examination and to issue a license and renewal license, *including an initial conviction or the initial finding of the trier of fact of guilt of a felony or misdemeanor involving moral turpitude.*

(b) On proof that a practitioner of medicine has been initially convicted of a felony or the initial finding of the trier of fact of guilt of a felony under the Texas Controlled Substances Act, as amended (Article 4476-15, Vernon's Texas Civil Statutes), Chapter 425, Acts of the 56th Legislature, Regular Session, 1959, as amended (Article 4476-14, Vernon's Texas Civil Statutes), or the Federal Comprehensive Drug Abuse Prevention and Control Act of 1970, 21 U.S.C.A. Section 801 et seq. (Public Law 91-513), the board shall suspend the practitioner's license. On the practitioner's final conviction for such a felony offense, the board shall revoke the practitioner's license.

(c) *The board shall suspend the license of a practitioner who is serving a prison term in a state or federal penitentiary during his incarceration regardless of the offense.*

SECTION 8. Section 4.04, Medical Practice Act (Article 4495b, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 4.04. INVESTIGATION. (a) *Except as otherwise provided by this section, all [All] investigations shall be conducted by the board or persons authorized by the board to conduct them. The board may commission investigators as peace officers for the purpose of enforcing this Act. However, investigators of the board so commissioned as peace officers may not carry a firearm or exercise arrest powers. Each complaint against a physician which requires a determination of medical competency shall be reviewed by a board member, consultant, or employee with medical background considered sufficient by the board.*

(b) *Unless it would jeopardize an investigation, the board shall notify the physician that a complaint has been filed and the nature of the complaint. The board shall make a preliminary investigation of the complaint. The first consideration of the board shall be whether the physician constitutes a continuing threat to the public welfare. The board may, unless precluded by the law or this Act, make a disposition of any complaint or matter relating to this Act, or of any contested case by stipulation, agreed settlement, or consent order. The board shall adopt such rules as are appropriate to carry out such disposition. Such disposition shall be considered a disciplinary order.*

SECTION 9. Subsections (b) and (d), Section 4.05, Medical Practice Act (Article 4495b, Vernon's Texas Civil Statutes), are amended to read as follows:

(b) The licensee shall have the right to produce witnesses or evidence on the person's behalf, to cross-examine witnesses, and to have subpoenas issued by the board to be served at the licensee's expense.

(d) All complaints, adverse reports, [and] investigation files, other investigation [and] reports, and other investigative information in the possession of, received or gathered

by the board or its employees or agents relating to a licensee, an application for license or a criminal investigation or proceedings are privileged and confidential and are no subject to discovery, subpoena, or other means of legal compulsion for their release to anyone other than the board or its employees or agents involved in licensee discipline. However, investigative information in the possession of the board or its employees or agents which relates to licensee discipline may be disclosed to the appropriate licensing authority in another state, the District of Columbia, or a territory or country in which the licensee is licensed or has applied for a license, or to a peer review committee reviewing an application for privileges or the qualifications of the licensee with respect to retaining privileges. If the investigative information in the possession of the board or its employees or agents indicates a crime may have been committed, the information shall be reported to the proper law enforcement agency. The board shall cooperate and assist all law enforcement agencies conducting criminal investigations of licensees by providing information which is relevant to the criminal investigation to the investigating agency. Any information disclosed by the board to an investigative agency shall remain confidential and shall not be disclosed by the investigating agency except as necessary to further the investigation. The board shall provide information upon request to a health-care entity concerning whether a complaint has been filed against a licensee or the licensee is under investigation by the board and the basis of and current status of that complaint or investigation. The board shall keep information on file about each complaint filed with the board, consistent with this Act. If a written complaint is filed with the board relating to a person licensed by the board, the board, at least as often as quarterly and until final determination of the action to be taken relative to the complaint, shall notify the complaining party consistent with this Act of the status of the complaint unless the notice would jeopardize an active investigation.

SECTION 10. Subsections (a) and (b), Section 4.11, Medical Practice Act (Article 4495b, Vernon's Texas Civil Statutes), are amended to read as follows:

(a) The board upon majority vote may provide that the order canceling, revoking, or suspending a license or imposing any other method of discipline be probated so long as the probationer conforms to the orders, conditions, and rules that the board may set out as the terms of probation. However, the board may not grant probation to a person whose license has been canceled, revoked, or suspended because of a felony conviction under the Texas Controlled Substances Act, as amended (Article 4476-15, Vernon's Texas Civil Statutes), Chapter 425, Acts of the 56th Legislature, Regular Session, 1959, as amended (Article 4476-14, Vernon's Texas Civil Statutes), or the Federal Comprehensive Drug Abuse Prevention and Control Act of 1970, 21 U.S.C.A. Section 801 et seq. (Public Law 91-513), except on an express determination, based on substantial evidence, that the grant of probation is in the best interests of the public and of the person whose license has been suspended, revoked, or canceled. The board, at the time of probation, shall set out the period of time that constitutes the probationary period. *The board may not grant probation to a physician who poses, through the practice of medicine, a continuing threat to the public welfare.*

(b) The board may at any time while the probationer remains on probation, with adequate grounds being shown, hold a hearing and, upon majority vote, rescind the probation and enforce the board's original action and shall do so if the board determines that the probationer poses, through the practice of medicine, a continuing threat to the public welfare.

SECTION 11. Section 4.12, Medical Practice Act, as amended (Article 4495b, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 4.12. METHODS OF DISCIPLINE. (a) Except as otherwise provided in Section 4.01, if the board finds any person to have committed any of the acts set forth in Section 3.08 of this Act, it shall ~~may~~ enter an order imposing one or more of the following:

- (1) deny the person's application for a license or other authorization to practice medicine;
- (2) administer a public ~~or private~~ reprimand;

(3) suspend, limit, or restrict the person's license or other authorization to practice medicine, including limiting the practice of the person to or by the exclusion of one or more specified activities of medicine *or 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 the initial, continued, or renewal of a license or other authorization to practice medicine;

(6) require the person to participate in a program of education or counseling prescribed by the board;

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

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

*(b) Providing however, if the board determines that, through the practice of medicine, the physician poses a continuing threat to the public welfare, it shall revoke, suspend or deny the license.*

SECTION 12. Section 4.13, Medical Practice Act (Article 4495b, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 4.13. TEMPORARY SUSPENSION OF LICENSE. If the executive committee of the board determines from the evidence or information presented to it that a person licensed to practice medicine in this state by his continuation in practice would constitute *a continuing threat to the public welfare* [~~an immediate danger to the public~~], the executive committee of the board shall ~~may~~ temporarily suspend the license of that person. *The license may be suspended under this section* without notice or hearing on the complaint, provided institution of proceedings for a hearing before the board is initiated simultaneously with the temporary suspension and provided that a hearing is held as soon as can be accomplished under the Administrative Procedure Act and this Act.

SECTION 13. Section 4.14, Medical Practice Act (Article 4495b, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 4.14. REPORT OF BOARD ACTIONS. The board shall report *immediately* [~~within 30 days~~] the restriction, suspension, or revocation of a physician's license or other disciplinary action by the board against a physician to the appropriate health facilities and hospitals, professional societies of physicians in this state, any entity responsible for the administration of Medicare and Medicaid in this state, *the U.S. Secretary of Health and Human Services or the secretary's designee*, and the complainant. *If the board, during its review of a complaint against any physician, discovers an act or omission potentially constituting a felony, a misdemeanor involving moral turpitude, a violation of state or federal narcotics or controlled substance laws, or an offense involving fraud or abuse under the Medicare or Medicaid programs, the board shall report such act or omission to the appropriate prosecuting authority immediately except the board may exercise discretion in the case of impaired physicians actively participating in board-approved or sanctioned care, counseling, or treatment.*

SECTION 14. Subdivision (3), Subsection (c), Section 5.02, Medical Practice Act (Article 4495b, Vernon's Texas Civil Statutes), is amended to read as follows:

(3) The advisory committee shall advise the board on matters relating to physician assistants. In order to assure that the advisory committee is able to exercise properly its advisory powers, the board shall provide the advisory committee with timely notice of all board meetings *on matters relating to physician assistants* and a copy of the minutes of all board meetings *on matters relating to physician assistants*. In addition, the board may not adopt any rule relating to the practice of physician assistants that is not an emergency matter unless the proposed rule has been submitted to the advisory committee for review and comment at least 30 days prior to the adoption of the rule.

SECTION 15. Subsections (a), (b), and (c), Section 5.03, Medical Practice Act (Article 4495b, Vernon's Texas Civil Statutes), are amended to read as follows:

(a) In this section:



(1) "Committee" means a district review committee [~~created under Subchapter C of the Medical Liability and Insurance Improvement Act of Texas (Article 4590i, Vernon's Texas Civil Statutes)~~].

(2) "District" means a [~~the~~] district established *under Subsection (b) of this section* [~~pursuant to the Medical Liability and Insurance Improvement Act of Texas~~].

(b) The number of *districts* and *the geographic area of a district* composed of various counties shall be designated by the board. The board, after a public hearing, may revise the number of districts and the composition of the various counties as it considers appropriate. In the event of change of the number or the composition of the various counties, the board shall follow the same procedure as applied to the initial designations.

(c) Each committee is composed of *five* [~~three~~] persons appointed by the governor from among persons who have resided [~~and practiced medicine~~] in the district for more than three years before their appointment. *Three members must be doctors of medicine (M.D.) who meet the qualifications of Subsection (b) of Section 2.05 of this Act. One member must be a doctor of osteopathic medicine (D.O.) who meets the qualifications of Subsection (c) of Section 2.05 of this Act. One member must be a public representative who meets the qualifications of Subsection (d) of Section 2.05 of this Act.*

SECTION 16. Subsections (b) and (c), Section 5.05, Medical Practice Act (Article 4495b, Vernon's Texas Civil Statutes), are repealed.

SECTION 17. Section 5.05, Medical Practice Act, as amended (Article 4495b, Vernon's Texas Civil Statutes), is amended by amending Subsection (a) and adding Subsections (f) and (g) as follows:

(a) *The board shall, in consultation with the State Board of Insurance, adopt rules for reporting data required by this Section. Other claim reports required under state and federal statutes shall be considered in determining the data to be reported, form of the report, and frequency of reporting under the rules. Every insurer providing medical professional liability insurance covering a physician or physicians in this state shall submit to the board the report or data adopted under* [~~described in Subsections (b) and (c) of~~] *this section at the time prescribed. The report or data shall be provided with respect to claims in which indemnity payments were paid or ordered under a medical professional liability insurance policy* [~~a complaint filed against an insured in a court, if the complaint seeks damages relating to the insured's conduct in providing or failing to provide medical or health-care services, and with respect to settlement of a claim or lawsuit made on behalf of the insured~~]. In the event a physician practicing medicine in this state does not carry or is not covered by medical professional liability insurance or is insured by a nonadmitted carrier *or insured by an entity not subject to this Act*, the information required to be reported in [~~Subsections (b) and (c) of~~] *this section shall be the responsibility of the physician.*

(f) *The board shall review the information relating to a physician against whom three or more malpractice claims have been reported within a five-year period as if a complaint against that physician had been made to the board under Section 4.02 of this Act.*

(g) *The State Board of Insurance may impose on any insurer subject to this Act sanctions authorized by Section 7 of Article 1.10, Insurance Code, if such insurer fails to report such data as prescribed by this section.*

SECTION 18. Section 5.06, Medical Practice Act (Article 4495b, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 5.06. **REPORTING AND CONFIDENTIALITY REQUIREMENTS** [~~BY MEDICAL PEER REVIEW COMMITTEE OR PHYSICIANS~~]. (a) *The provisions of the Health Care Quality Improvement Act of 1986 (Public Law No. 99-660) apply to a professional review action taken by a professional review body in this state on or after the effective date of this Act.*

(b) *Each medical peer review committee or health-care entity shall report in writing to the board the results and circumstances of any professional review action that adversely affects the clinical privileges of a physician for a period longer than 30 days, accepts the surrender of clinical privileges of a physician while the physician is*

*under an investigation by the medical peer review committee relating to possible incompetence or improper professional conduct, or in return for not conducting such an investigation or proceeding, or in the case of an entity which is a professional society or association, takes a professional review action which adversely affects the membership of a physician in the society or association. The duty to report under this section shall not be nullified through contract.*

*(c) A report made under this section is confidential and is not subject to disclosure under the open records law. In any proceeding brought under this subchapter, evidence may not be excluded on the ground of privileged communication except in the case of communications between attorney and client.*

*(d) Any medical peer review committee in this state, 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 shall [may] report relevant information to the board relating to the acts of any physician in this state if, in the opinion of the medical peer review committee, physician, or medical student, the physician poses a continuing threat to the public welfare through the practice of medicine [that information relating to the physician reasonably raises a question with respect to his competency]. The duty to report under this section shall not be nullified through contract.*

*(e) [(b)] Any committee of a professional medical society or association 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, or reasonably believed to be impaired, by drug or alcohol abuse or mental or physical illness may report to the board or the health-care entity in which the physician has clinical privileges the name of the impaired physician together with the pertinent information relating to that impairment and shall report to the board and the health-care entity, if known, in which the physician has clinical privileges if the committee determines that, through the practice of medicine, the physician poses a continuing threat to the public welfare. [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 to the board the name of the member, together with the pertinent information relating to the action.]*

*(f) [(e)] The filing of a report with the board pursuant to this section, investigation by the board, or any disposition by the board does not, in itself, preclude any action by a health-care entity [hospital or other health-care facility or professional society composed primarily of physicians] to suspend, restrict, or revoke the privileges or membership of the physician.*

*(g) Except as otherwise provided by this Act, all proceedings and records of a medical peer review committee are confidential, and all communications made to a medical peer review committee are privileged. If a judge makes a preliminary finding that such proceedings, records, or communications are relevant to an anti-competitive action, or a civil rights proceeding brought under Chapter 42, U.S.C.A. 1983, then such proceedings, records, or communications are not confidential to the extent they are deemed relevant.*

*(h) Written or oral communications made to a medical peer review committee and the records and proceedings of such a committee may be disclosed to another medical peer review committee, appropriate state or federal agencies, national accreditation bodies, or the state board of registration or licensure of this or any other state.*

*(i) Disclosure of confidential peer review committee information to the affected physician pertinent to the matter under review shall not constitute waiver of the confidentiality provisions provided in this Act. If a medical peer review committee takes action that could result in censure, suspension, restriction, limitation, revocation, or denial of membership or privileges in a health-care entity, the affected physician shall be provided a written copy of the recommendation of the medical peer review committee and a copy of the final decision, including a statement of the basis for the decision.*

(j) *Unless disclosure is required or authorized by law, records or determinations of or communications to a medical peer review committee are not subject to subpoena or discovery and are not admissible as evidence in any civil judicial or administrative proceeding without waiver of the privilege of confidentiality executed in writing by the committee. The evidentiary privileges created by this Act may be invoked by any person or organization in any civil judicial or administrative proceeding, unless the person or organization has secured a waiver of the privilege executed in writing by the chairman, vice-chairman, or secretary of the affected medical peer review committee. If under Subsection (o) of this section a medical peer review committee, a person participating in peer review, or any organization named as a defendant in any civil action filed as a result of participation in peer review may use otherwise confidential information in his or her own defense, then a plaintiff in such a proceeding may disclose records or determinations of or communications to a medical peer review committee in rebuttal to information supplied by the defendant. Any person seeking access to privileged information must plead and prove waiver of the privilege. A member, employee, or agent of a medical peer review committee who provides access to otherwise privileged communications or records in cooperation with law enforcement authorities in criminal investigations is not considered to have waived any privilege established under this Act.*

(k) *Governing bodies and medical staffs of health-care entities and others shall comply fully with a subpoena for documents or information issued by the board under Subsection (i) of Section 2.09 of this Act. The disclosure of documents or information under such a subpoena does not constitute a waiver of the privilege associated with medical peer review committee proceedings. Failure to comply with such a subpoena constitutes grounds for disciplinary action against the facility or individual by the appropriate licensing board.*

(l) *A cause of action does not accrue against the members, agents, or employees of a medical peer review committee or against the health-care entity from any act, statement, determination or recommendation made, or act reported, without malice, in the course of peer review as defined by this Act.*

(m) *A person, health-care entity, or medical peer review committee, that, without malice, participates in medical peer review activity or furnishes records, information, or assistance to a medical peer review committee or the board is immune from any civil liability arising from such an act.*

(n) *A person or health-care entity may not be found liable in any civil action for failure to report to the board unless the failure was committed knowingly or wilfully, except that the appropriate state licensing body may take action against a licensed institution or person for not reporting as required under this Act.*

(o) *A medical peer review committee, a person participating in peer review, or a health-care entity named as a defendant in any civil action filed as a result of participation in peer review, may use otherwise confidential information obtained for legitimate internal business and professional purposes, including use in its or his own defense. Such a use does not constitute a waiver of the confidential and privileged nature of medical peer review committee proceedings.*

(p) *A medical peer review committee, a person participating in peer review, or a health-care entity named as a defendant in any civil action filed as a result of participation in peer review, may file a counterclaim in any pending action or may prove a cause of action in a subsequent suit to recover any defense costs, including court costs, attorney's fees, and any damages incurred as a result of the civil action if the plaintiff's original suit is determined to be frivolous or brought in bad faith.*

(q)(1) *No person shall suspend, terminate, or otherwise discipline or discriminate against a person reporting to the board under this Act. A person has a cause of action against a health-care entity, or the owner or employee of such an entity, that suspends or terminates the employment of the person or otherwise disciplines or discriminates against the person for reporting to the board under Subsection (a), (c), or (d) of this section. The person may recover:*

(A) actual damages, including damages for mental anguish even though no other injury is shown, or \$1,000, whichever amount is greater;

(B) exemplary damages;

(C) costs of court; and

(D) reasonable attorney's fees.

(2) In addition to amounts recovered under Subdivision (1) of this subsection, a person whose employment is suspended or terminated in violation of this section is entitled to:

(A) reinstatement in the employee's former position or severance pay in an amount equal to three months of the employee's most current salary; and

(B) compensation for wages lost during the period of suspension or termination.

(3) A person who sues under this section has the burden of proof, but in the event of a determination by either the board or a court of competent jurisdiction that the reported case made the subject of the cause of action was a case in which the person was required to report under Subsection (a), (c), or (d) of this section, it is a rebuttable presumption that a person's employment was suspended or terminated for reporting an act that imperils the welfare of a patient if the person is suspended or terminated within 90 days after making a report in good faith.

(4) An action under this section may be brought in the district court of the county:

(A) in which the plaintiff resides;

(B) in which the plaintiff was employed by the defendant; or

(C) in which the defendant conducts business.

(r) ~~(d)~~ If a court of competent jurisdiction makes a final determination that a report or complaint made to the board was made in bad faith, then such complaint shall be expunged from the physician's or applicant's individual historical record. ~~[On a determination by the board that a report submitted by a medical peer review committee is without merit, the report shall be expunged from the physician's or applicant's individual historical record in the board's office. A physician or applicant or his authorized representative is entitled on request to examine the physician's or applicant's medical peer review report submitted to the board under the provisions of this section and to place into the record a statement of reasonable length of the physician's or applicant's view with respect to any information existing in the report. The statement shall at all times accompany that part of the record in contention.]~~

(s) ~~(e)~~(1) Reports, information, or records received and maintained by the board pursuant to this section and Section 5.05 of this Act, including any material received or developed by the board during an investigation or hearing, are strictly confidential and subject to the provisions of Subdivision (4) of this subsection. However, the board may disclose this confidential information only:

(A) in a disciplinary hearing before the board or in a subsequent trial or appeal of a board action or order;

(B) to the physician licensing or disciplinary authorities of other jurisdictions, to a local, state, or national professional medical society or association, or to a medical peer review committee located inside or outside this state that is concerned with granting, limiting, or denying a physician hospital privileges;

(C) pursuant to an order of a court of competent jurisdiction; or

(D) to qualified personnel for bona fide research or educational purposes, if personally identifiable information relating to any person or physician is first deleted.

(2) ~~Disciplinary orders [Orders] of the board [relating to disciplinary action] against a physician and known hospital suspensions for 30 days or longer of a physician relating to the competence of a physician are not confidential.~~

(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 peer review ~~[organization]~~ committee ~~[described in Subsection (a) or (b) of this~~

section], or by a member of such a committee, *or by a health-care entity* be available for discovery or court subpoena or introduced into evidence in a medical professional liability suit arising out of the provision of or failure to provide medical or health-care services, or in any other action for damages.

(4) A person who unlawfully discloses this confidential information possessed by the board commits a Class A misdemeanor.

(t) [(f)] The following persons are immune from civil liability:

(1) a person reporting to or furnishing information to a medical peer review committee *or the board in good faith*;

(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 *or her*; 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.

(u) [(g)] The reporting or assistance provided for in this section does not constitute state action on the reporting or assisting medical peer review committee or its parent organization.

SECTION 19. Section 5.07, Medical Practice Act, as amended (Article 4495b, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 5.07. REPORT OF *CERTAIN* [FELONY] CONVICTIONS OR DETERMINATIONS. Within 30 days after the *initial conviction or the initial finding of the trier of fact of guilt* of a person known to be a physician, licensed or otherwise lawfully practicing in this state or applying to be so licensed to practice, of a felony, a *misdemeanor involving moral turpitude, a violation of state or federal narcotics or controlled substance laws, or an offense involving fraud or abuse under the Medicare or Medicaid programs or after a determination by a court that adjudges or includes a finding that a physician is mentally ill or mentally incompetent, whether or not the conviction, adjudication, or finding is entered, withheld, or appealed* under the laws of this state, the clerk of the court of record in which the conviction, adjudication, or finding was entered shall prepare and forward to the board a certified true and correct abstract of record of the court governing the case. The abstract shall include the name and address of the physician or applicant, the nature of the offense committed, the sentence, and the judgment of the court. The board shall prepare the form of the abstract and shall distribute copies of it to all clerks of courts of record within this state with appropriate instructions for preparation and filing.

SECTION 20. This Act takes effect September 1, 1987, except that Section 16 of this Act is effective January 1, 1988. This Act applies to reports required to be filed with the Texas State Board of Medical Examiners on or after that date.

SECTION 21. 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.

Passed by the House on May 8, 1987, by the following vote: Yeas 134, Nays 0, 1 present, not voting; and that the House concurred in Senate amendments to H.B. No. 2560 on June 1, 1987, by a non-record vote. Passed by the Senate, with amendments, on May 30, 1987, by the following vote: Yeas 31, Nays 0.

Approved June 18, 1987.

Effective Sept. 1, 1987, except § 16 effective Jan. 1, 1988.