



SOLUTIONS LAW PRESS

# HEALTH CARE UPDATE

Physicians and others concerned about physician oversight and discipline by the Texas Medical Board ("Board") take note. The 11 member Texas House Committee on Public Health has scheduled a hearing Tuesday, April 14<sup>th</sup> to consider Texas Medical Board reforms proposed in HB 3816. Advocates of the legislation are urging supporters to attend the hearing and/or communicate their support for the legislation now.

Supported by a broad range of physician and other health care organizations, HB 3816 and a companion bill pending in the Texas Senate, SB 2336, seek to regulate certain practices by the Board which many physicians and others perceive as overly heavy handed. As currently proposed, HB 3816 would implement the following reforms effective September 1, 2009:

- Require that the Executive Director of the Board be a physician licensed in good standing
- Require that individuals filing complaints swear under oath to the truth of the statements in the complaint
- Require that the Board have "good cause" to file a complaint on its own initiative
- Require the Board to encourage each person with a complaint to attempt to resolve the complaint with the license holder directly before filing a formal complaint with the Board, in situations where that would be appropriate. Preprinted complaint forms provided by the Board would be required to include a prominent statement encouraging persons with complaints to attempt to resolve their complaints directly with the physician, when appropriate, before filing a formal complaint with the Board.
- Require that the Board notify physicians charged in a complaint by personal delivery or certified mail
- Prohibit the Board from considering or acting on a complaint involving care provided more than 4 years after the date the complaint is filed
- Deny civil, criminal, or regulatory immunity to persons filing complaints when the complaint is filed with malice or with an anticompetitive purpose.
- Require that the Board provide the physician charged in the complaint with an unredacted copy of the complaint unless there is a risk of harm to the public or unless it would jeopardize a criminal investigation.
- Ensure that physicians subject to a complaint receive at least 30 days after receiving a copy of the complaint to prepare and submit a response
- Establish a schedule for conducting each phase of a complaint that is under the control of the Board not later than the 30th day after the date the physician's time for preparing and submitting a response expires.
- Restrict the physicians qualified to serve on the expert physician panel for a complaint to physicians actively practicing medicine in the State of Texas
- Require that the Board review a report concerning a physician's medical competency prepared by an expert at the request of the physician who is the subject of the complaint
- Require that any review by a second expert be independent of the first review, without knowledge by the second reviewer of the identity of the first reviewer, and without any communication between the two reviewers.
- When the first and second reviewer disagree, require that the physician subject of the complaint be notified of the conflict and provided with copies of the conflicting reports and require that the final written report include a copy of the dissenting report.
- Requires that before using a report under this section, the Board provide the identity and qualifications of each expert physician who reviewed the complaint to the physician subject to the complaint

- Require considerations of the medical competency of the physician charged be conducted only by a physician engaged in an active practice in the same or similar specialty as the physician in the year preceding the review.
- Requires that the identity of the members of the expert panel considering medical competency be promptly disclosed to the physician who is the subject of the complaint
- Would require that a report concerning the medical competency of a charged physician be in the form of an affidavit sworn under oath to qualify for consideration by the Board
- Would excuse a charged physician from the obligation to provide evidence concerning patient records in the absence of a court order where the patient objects to this disclosure of the records for reasons of patient privacy
- Require “clear and convincing evidence” that, through the practice of medicine, the physician poses a continuing threat to the public welfare before the Board could deny or restrict a physician’s license or otherwise discipline a physician.
- Prohibit the Board from ordering or requiring a physician to practice medicine in a particular manner, to practice medicine, or to direct anyone in the practice of medicine, except by ordering that a physician not engage in a practice that causes actual harm or an imminent risk of harm to a patient
- Prohibit the Board from imposing a penalty, sanction, or other disciplinary action that is different from the action recommended by the panel in an informal proceeding and agreed upon by the license holder
- Prohibit the Board from involving itself in fee disputes or taking disciplinary action against a license holder for using the "fee for service" method of billing
- Prohibit the Board from taking disciplinary action against a license holder based upon the manner in which the license holder maintains the license holder's office or records, unless the conduct has a likelihood of causing an actual harm or an imminent risk of harm to a patient
- Requires that a physician receive notice at least 48 hours prior to a an Informal Settlement Conference proceeding of the identity of the panel members presiding over the Informal Settlement Conference proceedings; and the opportunity to have an audio or video record or arrange for transcription of the Informal Settlement Conference proceedings
- Provide that decisions of the administrative law judge be binding on the Board
- Protect the right of a license holder may access and obtain a copy of any information relating to the license holder
- Provide that the district court reviewing a Board disciplinary action may only sustain the discipline on a finding by clear and convincing evidence that the action was supported by facts and law.
- Guarantee a jury trial right for physicians seeking to challenge the revocation of their license in the courts
- Require greater proof that a drug or treatment is nontherapeutic and that the prescribed treatment be have a “likelihood of harm to a patient” to constitute grounds for discipline

You can review the current language of the bill by clicking [here](#). For a list of the current members of the Texas House Committee on Public Health, see [here](#).

You also can review guidance governing the SDP [here](#). For examples of past settlements under the SDP law, see [here](#).

For assistance in reviewing and updating your Stark Law, Anti-Kickback Statute, or other health care compliance and risk management policies, practices or programs, assessing the strength of your controls in addressing these laws or other healthcare laws and regulations, or in addressing other compliance or health care concerns, please contact Cynthia Marcotte Stamer at [cstamer@CTTLegal.com](mailto:cstamer@CTTLegal.com) or (214) 270- 2402.

**For More Information**

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**For More Information**

We hope that this information is useful to you. If you need assistance responding to concerns about the matters discussed in this publication or other health care concerns, wish to obtain information about arranging for training or presentations by Ms. Stamer, wish to suggest a topic for a future program or update, or wish to request other information or materials, please contact Ms. Stamer via telephone at (214) 270-2402 or via e-mail to [cstamer@CTTLegal.com](mailto:cstamer@CTTLegal.com).

You can review other recent updates and other publications by Ms. Stamer and other helpful health care resources and additional information about Ms. Stamer and her experience, see [Stamer Health Industry Experience](#). If you or someone else you know would like to receive future updates about developments on these and other concerns, please be sure that we have your current contact information – including your preferred e-mail- by creating or updating your profile at [here](#) or by registering to participate in the Solutions Law Press Health Care Update blog at [Health Care Update Blog](#). For important information concerning this communication click [here](#). If you do not wish to receive these updates in the future, send an e-mail with the word "Remove" in the Subject to [support@SolutionsLawyer.net](mailto:support@SolutionsLawyer.net).