

SUBJECT: Removal of complaint records from a doctor's medical board profile

COMMITTEE: Public Health — committee substitute recommended

VOTE: 8 ayes — Kolkhorst, Naishtat, Coleman, J. Davis, Gonzales, Laubenberg, McReynolds, Zerwas

0 nays

3 absent — Hopson, S. King, Truitt

WITNESSES: For — Tim Weitz; (*Registered, but did not testify*: Greg Herzog, Texas Medical Association; Mark Kincaid, Texas Trial Lawyers Association)

Against — Ed Sterling, Texas Press Association, Texas Daily Newspaper Association

On — Mari Robinson, Texas Medical Board

BACKGROUND: Formal complaints against a physician are statements — made by a credible person under oath, filed with the Texas Medical Board, and presented by a board representative — that charge a person with having committed an act that could affect the legal rights or privileges of a license holder.

The Texas Medical Board maintains a permanent, public profile on each licensed physician. The profile includes the text and status of any formal complaint filed against the physician. The profile also includes the record of the board's investigation into the medical competency of a physician against whom three separate medical malpractice lawsuits had been filed within a five-year period.

DIGEST: CSHB 732 would require the Texas Medical Board, during the annual update to a physician's profile, to remove records of a formal complaint that was dismissed more than five years before the update if:

- no action was taken against the physician's license due to the complaint; or

- the complaint was deemed baseless, unfounded, or lacking in evidence to prove the violation.

The board also would have to remove records about an investigation of three or more medical malpractice claims filed within a five-year period if:

- the investigation was resolved more than five years before the date of the update; and
- no action was taken against the physician's license as a result of the investigation.

The bill would take effect September 1, 2009.

**SUPPORTERS
SAY:**

CSHB 732 would require the Texas Medical Board, after a reasonable amount of time, to remove from its website records of unsubstantiated complaints and investigations that could affect adversely a doctor's business. If a formal complaint had been dismissed and the Medical Board took no action against the physician's license, it is clear that the evidence in these dismissed complaints could not substantiate the claim. Unsubstantiated complaints do not warrant indefinite posting on the Medical Board's website. Tens of thousands of consumers visit the board's website each year to review doctors' profiles. These consumers could choose not to see a doctor based on a review of complaints that had been dismissed. Health facilities also could deny credentialing to a physician whose profile reflected dismissed complaints.

The five years that the bill would allow dismissed complaints to remain on the Texas Medical Board's website would provide an adequate history of formal complaints filed against the doctor to reflect any pattern of unusually high filings during that period. If such a pattern was not indicated in the previous five years, it would be unlikely that a consumer should have cause for concern. Consumers still could file a public information request to obtain information on complaints that were dismissed more than five years prior to their request.

**OPPONENTS
SAY:**

CSHB 732 should not permit the Texas Medical Board to remove any formal complaint or investigation record from a physician's website profile, even if a complaint had been dismissed. Consumers entrust doctors with their lives and should be able to access easily public information about complaints filed against physicians, as well as investigations into multiple malpractice claims. Public information

requests would be too cumbersome for both the consumer and Medical Board if a consumer had to make public information requests regarding the full complaint history of multiple doctors in order to select a provider with whom they felt comfortable. Even dismissed complaints could reflect an inappropriate or unsafe pattern of behavior by a physician. A complaint dismissed without disciplinary action by the board does not mean the physician was found innocent. The only conclusion that may be drawn from a complaint dismissal is that the board did not think a violation could be proven.

**OTHER
OPPONENTS
SAY:**

CSHB 732 could be improved if it prohibited any complaint that was dismissed without further disciplinary action from being posted on the Medical Board's website. Even a single, baseless complaint could deter a patient from choosing a doctor. Other professions, such as law, do not post information about complaints that have been dismissed.

The bill should have complaint records removed during a biennial rather than annual profile update. Following the most recent Sunset review of the Texas Medical Board, physicians began registering with the board biennially rather than annually. A physician's profile is updated only when the physician renews registration.