

SUBJECT: Complaints filed with the Texas State Board of Medical Examiners

COMMITTEE: Public Health — favorable, without amendment

VOTE: 7 ayes — Gray, Coleman, Capelo, Delisi, Glaze, Uresti, Wohlgemuth
1 nay — Maxey
1 absent — Longoria

SENATE VOTE: On final passage, April 2 — 30-0

WITNESSES: For — Donald “Rocky” Wilcox, Texas Medical Association
Against — Lisa McGiffert, Consumers Union
On — Michele Shackelford, Texas State Board of Medical Examiners

DIGEST: SB 595 would allow the Texas State Board of Medical Examiners 10 years after the closure of a complaint to delete the identity of a person against whom a complaint was filed and retain a record of the complaint, if the complaint were closed with no disciplinary or rehabilitative action taken.

The board would have to provide information to health care entities about the basis and status of complaints under active investigation only if the complaint had been assigned by the executive director to a person authorized to pursue legal action, instead of providing information about any complaint under active investigation.

Insurers no longer would have to submit to the board notice of claim letters. Information would have to be submitted about settlements — whether a lawsuit was filed or not — when they involved damages relating to the insured’s conduct in providing or failing to provide a medical or health care service.

Deadlines for insurers to furnish certain information to the board no longer would be triggered by the notice of claim letter. Instead, the deadline would

be 30 days after an insurer received from an insured a complaint filed in a lawsuit, or 30 days from the date of a settlement with or without the filing of a lawsuit. The insurer would have to furnish information about the insured, his or her medical license number, the policy number, and a copy of the complaint or settlement.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2001, and would apply only to settlements entered into on or after the bill's effective date.

**SUPPORTERS
SAY:**

SB 595 only would allow the expunction of complaints that had been closed with no disciplinary or rehabilitative action and only after a decade had passed. This would give the board ample time to see if a pattern of complaints had developed against a license holder. Frivolous complaints can hurt doctors who must explain the circumstances surrounding them to hospitals, insurance companies, and others. License holders who have had frivolous complaints filed against them should be afforded at least the same options available to criminal offenders who can have their criminal records expunged after a set period of time.

SB 595 would allow the board to provide information to health care entities only if the complaint had been assigned for legal action. This would ensure that doctors were not penalized for frivolous or invalid complaints against them. Having to report all complaints — whether or not legal action will be taken — taints some doctor's records with complaints that never are pursued after further investigation. This can distort a doctor's records and lead health care entities to make decisions based on inaccurate information.

Insurers no longer should have to send the board notice of every potential claim, many of which are narrowed and ultimately do not involve the insurer. Insurers still would have to file information about the settlement of any claim, even those settled out of court, and all court settlements involving damages.

**OPPONENTS
SAY:**

It would be unnecessary and unwise to expunge the identity of license holders who had complaints filed against them, even if no disciplinary or rehabilitative action were taken. Unlike criminal records, these complaint

files are not open to the public. In general, only the board has access to them so expunging them would be unnecessary to protect license holders. Expunging such records would result in the loss of a complaint history against license holders. At some later time, it could be important for the board to know a doctor's complaint history. The board is a regulatory body with a responsibility to protect the public, and expunging complaint files could make this more difficult.

Allowing the board to provide information to health care entities about the basis and status of complaints under investigation only if the complaint had been targeted for legal action would restrict the information that hospitals and insurance companies could get about license holders. For example, if a hospital was considering giving staff privileges to a doctor, the hospital would not be told of a complaint investigation until the complaint had been assigned to legal action. Hospitals then might have to make important decisions that could affect patient welfare based on incomplete knowledge of the doctor's history.

OTHER
OPPONENTS
SAY:

It would be unfair to single out complaints to the Board of Medical Examiners for expunction when other health care licensing boards do not have this authority.