

OCCUPATIONS CODE

TITLE 3. HEALTH PROFESSIONS

SUBTITLE B. PHYSICIANS

CHAPTER 160. REPORT AND CONFIDENTIALITY REQUIREMENTS

SUBCHAPTER A. REQUIREMENTS RELATING TO MEDICAL PEER REVIEW

Sec. 160.001. APPLICATION OF FEDERAL LAW. The Health Care Quality Improvement Act of 1986 (42 U.S.C. Section 11101 et seq.) applies to a professional review action or medical peer review conducted by a professional review body or medical peer review committee in this state on or after September 1, 1987.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 160.002. REPORT OF MEDICAL PEER REVIEW. (a) A medical peer review committee or health care entity shall report in writing to the board the results and circumstances of a medical peer review that:

(1) adversely affects the clinical privileges of a physician for a period longer than 30 days;

(2) accepts a physician's surrender of clinical privileges either:

(A) while the physician is under an investigation by the medical peer review committee relating to possible incompetence or improper professional conduct; or

(B) in return for not conducting an investigation or proceeding relating to possible incompetence or improper professional conduct; or

(3) adversely affects the membership of a physician in a professional society or association, if the medical peer review is conducted by that society or association.

(b) The duty to report under this section may not be nullified through contract.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 160.003. REPORT BY CERTAIN PRACTITIONERS. (a) This section applies to:

- (1) a medical peer review committee in this state;
- (2) a physician licensed in this state or otherwise lawfully practicing medicine in this state;
- (3) a physician engaged in graduate medical education or training;
- (4) a medical student;
- (5) a physician assistant or acupuncturist licensed in this state or otherwise lawfully practicing in this state; and
- (6) a physician assistant student or acupuncturist student.

(b) A person or committee subject to this section shall report relevant information to the board relating to the acts of a physician in this state if, in the opinion of the person or committee, that physician poses a continuing threat to the public welfare through the practice of medicine.

(c) The duty to report under this section may not be nullified through contract.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 160.004. REPORT REGARDING CERTAIN IMPAIRED PHYSICIANS. (a) This section applies to:

(1) a committee of a professional medical society or association operating under written bylaws approved by the policymaking body or governing board of the society or association and composed primarily of physicians;

(2) the staff of that committee; or

(3) a 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.

(b) A person or committee subject to this section:

(1) may report to the board or to a health care entity in which an affected physician has clinical privileges the name of the impaired physician together with pertinent information relating to that impairment; and

(2) shall report to the board and any known health care entity in which the physician has clinical privileges if the person

or committee determines that, through the practice of medicine, the physician poses a continuing threat to the public welfare.

(c) Except as otherwise provided by this subtitle, each proceeding and record of a person described by Subsection (a) is confidential, and any communication made to the person or committee is privileged from disclosure in the manner provided under this subchapter for information submitted by a medical peer review committee. This confidentiality and privilege from disclosure applies to all information developed under this section, including information developed before September 1, 1991.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 160.005. REPORT CONFIDENTIAL; COMMUNICATION NOT PRIVILEGED. (a) A report made under this subchapter is confidential and is not subject to disclosure under Chapter 552, Government Code.

(b) In a proceeding brought under this chapter or Chapter 158, 159, or 162, evidence may not be excluded on the ground that it consists of a privileged communication unless it is a communication between attorney and client.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 160.006. BOARD CONFIDENTIALITY. (a) A record, report, or other information received and maintained by the board under this subchapter or Subchapter B, including any material received or developed by the board during an investigation or hearing and the identity of, and reports made by, a physician performing or supervising compliance monitoring for the board, is confidential. The board may disclose this information only:

(1) in a disciplinary hearing before the board or State Office of Administrative Hearings or in a subsequent trial or appeal of a board action or order;

(2) to the physician licensing or disciplinary authority of another jurisdiction, 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;

(3) under a court order;

(4) to qualified personnel for bona fide research or educational purposes, if personally identifiable information relating to any physician or other individual is first deleted; or

(5) to the division of workers' compensation of the Texas Department of Insurance as provided by Section [413.0514](#), Labor Code.

(b) Any known hospital suspension of a physician for a term of 30 days or longer relating to the physician's competence and a disciplinary order of the board against a physician are not confidential.

(c) A record or report disclosed by the board under this subchapter, a record or report received, maintained, or developed by the board, a medical peer review committee, a member of the committee, or a health care entity, and a record or report received or maintained by the State Office of Administrative Hearings under this subchapter are not available for discovery or court subpoena and may not be introduced into evidence in any action for damages, including a medical professional liability action that arises out of the provision of or failure to provide a medical or health care service.

(d) Medical peer review documents remain confidential at the board and at the State Office of Administrative Hearings. If medical peer review documents are admitted into evidence for any purpose at a proceeding before the State Office of Administrative Hearings, the documents must be admitted under seal to protect the confidentiality of the records as provided by this section and Section [160.007](#). In the event that a decision of the board or the State Office of Administrative Hearings is appealed to district court or other court, the confidentiality protections relating to the medical peer review committee documents shall continue.

(e) The confidentiality requirements of this section do not apply to records used by a medical peer review committee, including a patient's medical records or records made or maintained in the regular course of business, if the records are not considered confidential under this chapter or any other law and are otherwise

available to the board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1201, Sec. 1, eff. June 15, 2001; Acts 2003, 78th Leg., ch. 963, Sec. 5, eff. June 20, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 6.102, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 1.29, eff. September 1, 2005.

Sec. 160.007. CONFIDENTIALITY RELATING TO MEDICAL PEER REVIEW COMMITTEE. (a) Except as otherwise provided by this subtitle, each proceeding or record of a medical peer review committee is confidential, and any communication made to a medical peer review committee is privileged.

(b) If a judge makes a preliminary finding that a proceeding or record of a medical peer review committee or a communication made to the committee is relevant to an anticompetitive action, or to a civil rights proceeding brought under 42 U.S.C. Section 1983, the proceeding, record, or communication is not confidential to the extent it is considered relevant.

(c) A record or proceeding of a medical peer review committee or a written or oral communication made to the committee may be disclosed to:

- (1) another medical peer review committee;
- (2) an appropriate state or federal agency;
- (3) a national accreditation body;
- (4) the board; or
- (5) the state board of registration or licensing of physicians of another state.

(d) 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. Disclosure to the affected physician of confidential

peer review committee information relevant to the matter under review does not constitute waiver of the confidentiality requirements established under this subtitle.

(e) Unless disclosure is required or authorized by law, a record or determination of or a communication to a medical peer review committee is not subject to subpoena or discovery and is 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 subtitle may be invoked by a person or organization in a civil judicial or administrative proceeding unless the person or organization secures a waiver of the privilege executed in writing by the chair, vice chair, or secretary of the affected medical peer review committee.

(f) If, under Sections 160.008(a) and (b), a person participating in peer review, a medical peer review committee, or a health care entity named as a defendant in a civil action filed as a result of participation in peer review may use otherwise confidential information in the defendant's own defense, a plaintiff in the proceeding may disclose a record or determination of or a communication to a medical peer review committee in rebuttal to information supplied by the defendant.

(g) A 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 an otherwise privileged communication or record in cooperation with a law enforcement authority in a criminal investigation is not considered to have waived any privilege established under this subtitle.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 160.008. USE OF CERTAIN CONFIDENTIAL INFORMATION. (a) This section applies to a person participating in peer review, a medical peer review committee, or a health care entity named as a defendant in a civil action filed as a result of participation in peer review.

(b) A defendant subject to this section may use otherwise

confidential information obtained for legitimate internal business and professional purposes, including use in the defendant's own defense. Use of confidential information under this subsection does not constitute a waiver of the confidential and privileged nature of medical peer review committee proceedings.

(c) A defendant subject to this section may file a counterclaim in a pending action or may prove a cause of action in a subsequent action to recover defense costs, including court costs, attorney's fees, and damages incurred as a result of the civil action, if the plaintiff's original action is determined to be frivolous or brought in bad faith.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 160.009. COMPLIANCE WITH SUBPOENA. (a) The governing body and medical staff of each health care entity and any other person shall comply with a subpoena for documents or information issued by the board under Section 153.007 or 204.308. 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.

(b) Failure to comply with a subpoena under Subsection (a) constitutes grounds for disciplinary action against the person or entity by the appropriate licensing board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 160.010. IMMUNITY FROM CIVIL LIABILITY. (a) The following are immune from civil liability:

(1) a person who, in good faith, reports or furnishes information to a medical peer review committee or the board;

(2) a member, employee, or agent of the board, a medical peer review committee, or a medical organization committee, or a medical organization district or local intervenor, who takes an action or makes a recommendation within the scope of the functions of the board, committee, or intervenor program, if that member, employee, agent, or intervenor acts without malice and in the reasonable belief that the action or recommendation is warranted by the facts known to that person; and

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

(b) A cause of action does not accrue against a member, agent, or employee of a medical peer review committee or against a health care entity from any act, statement, determination or recommendation made, or act reported, without malice, in the course of medical peer review.

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

(d) A person or health care entity required to report to the board may not be found liable in a 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 person or entity for not reporting as required under this subtitle.

(e) A member of an expert panel under Section 154.056(e) and a person serving as a consultant to the board are immune from suit and judgment and may not be subjected to a suit for damages for any investigation, report, recommendation, statement, evaluation, finding, or other action taken without fraud or malice in the course of performing the person's duties in evaluating a medical competency case. The attorney general shall represent a member of an expert panel or consultant in any suit resulting from a duty provided by the person in good faith to the board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 1.30, eff. September 1, 2005.

Sec. 160.011. NOT STATE ACTION. The reporting or assistance provided for in this subchapter does not constitute state action on the reporting or assisting medical peer review committee or its parent organization.

Sec. 160.012. DISCIPLINE OR DISCRIMINATION PROHIBITED. (a) A person may not suspend, terminate, or otherwise discipline or discriminate against a person who reports to the board under this subtitle.

(b) A person has a cause of action against a health care entity, or an owner or employee of a health care entity, that suspends or terminates the employment of the person or otherwise disciplines or discriminates against the person for reporting to the board under Section 160.002, 160.003, or 160.004. The person may recover:

(1) the greater of:

(A) actual damages, including damages for mental anguish regardless of whether other injury is shown; or

(B) \$1,000;

(2) exemplary damages;

(3) court costs; and

(4) reasonable attorney's fees.

(c) In addition to amounts recovered under Subsection (b), a person whose employment is suspended or terminated in violation of this section is entitled to:

(1) either:

(A) reinstatement in the person's former position; or

(B) severance pay in an amount equal to three months of the person's most current salary; and

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

(d) A person who brings an action under this section has the burden of proof. It is a rebuttable presumption that the person's employment was suspended or terminated for reporting an act that imperils the welfare of a patient if:

(1) the person is suspended or terminated not later than the 90th day after the date of making a report in good faith; and

(2) the board or a court determines that the reported

case made the subject of the cause of action was a case in which the person was required to report under Section 160.002, 160.003, or 160.004.

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

- (1) the plaintiff resides;
- (2) the plaintiff was employed by the defendant; or
- (3) the defendant conducts business.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 160.013. EXPUNGEMENT OF REPORT MADE IN BAD FAITH. If a court makes a final determination that a report or complaint made to the board was made in bad faith, the complaint shall be expunged from the physician's or applicant's individual historical record.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 160.014. ACTION BY HEALTH CARE ENTITY NOT PRECLUDED. The filing of a report with the board under this subchapter, or an investigation or disposition by the board, does not in itself preclude any action by a health care entity to suspend, restrict, or revoke the privileges or membership of the physician.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 160.015. IMMUNITY OF HOSPITAL DISTRICT OR HOSPITAL AUTHORITY. This subchapter does not impose liability or waive immunity for a hospital district or hospital authority that has common law, statutory, or other immunity.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.031(a), eff. Sept. 1, 2001.

SUBCHAPTER B. REQUIREMENTS RELATING TO INSURERS

Sec. 160.051. DEFINITIONS. In this subchapter:

(1) "Commissioner" means the commissioner of insurance.

(2) "Insurer" means an insurer or other entity that provides medical professional liability insurance covering a

physician in this state.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 160.052. REPORT FROM INSURER OR PHYSICIAN. (a) Each insurer shall submit to the board the report or other information described by Section 160.053 at the time prescribed. The insurer shall provide the report or information with respect to:

(1) 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 a medical or health care service; and

(2) settlement of a claim without the filing of a lawsuit or settlement of a lawsuit made on behalf of the insured involving damages relating to the insured's conduct in providing or failing to provide a medical or health care service.

(b) A physician practicing medicine in this state shall report the information required under Section 160.053 if the physician:

(1) does not carry or is not covered by medical professional liability insurance; or

(2) is insured by a nonadmitted carrier or other entity providing medical liability insurance that is not reporting under this subchapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 202, Sec. 23, eff. June 10, 2003.

Sec. 160.053. CONTENTS OF REPORT; ADDITIONAL INFORMATION.

(a) Not later than the 30th day after the date an insurer receives from an insured a complaint filed in a lawsuit, a settlement of a claim without the filing of a lawsuit, or a settlement of a lawsuit against the insured, the insurer shall furnish to the board:

(1) the name of the insured and the insured's Texas medical license number;

(2) the policy number;

(3) a copy of the complaint or settlement; and

(4) a copy of any expert report filed under Section 74.351, Civil Practice and Remedies Code.

(b) The board, in consultation with the commissioner, shall adopt rules for reporting additional information as the board requires. In adopting the rules, the board shall consider other claim reports required under state and federal statutes in determining the information to be reported, form of the report, and frequency of reporting. The rules adopted by the board under this subsection must require that the following additional information be reported:

- (1) the date of a judgment, dismissal, or settlement;
- (2) whether an appeal has been taken and by which party; and
- (3) the amount of the settlement or judgment against the insured.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 202, Sec. 24, eff. June 10, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 140 (H.B. 743), Sec. 1, eff. September 1, 2005.

Sec. 160.054. REPORT NOT EVIDENCE. In the trial of an action against a physician based on the physician's conduct in providing or failing to provide a medical or health care service, a report or other information submitted to the board under this subchapter and the fact that the report or information has been submitted to the board may not be offered in evidence or used in any manner.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 160.055. SANCTIONS FOR FAILURE TO REPORT. The commissioner may impose sanctions authorized by Chapter 82, Insurance Code, on an insurer who fails to report information as required by this subchapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 10A.543, eff. Sept. 1, 2003.

Sec. 160.056. CIVIL LIABILITY. A person or entity is not liable for any action taken by the person or entity under this

subchapter, and a cause of action does not arise against that person or entity, if the person or entity is:

- (1) an insurer reporting under this subchapter;
- (2) an agent or employee of that insurer; or
- (3) a member, employee, or representative of the board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

SUBCHAPTER C. REQUIREMENTS RELATING TO CERTAIN CONVICTIONS OR
ADJUDICATIONS

Sec. 160.101. REPORT BY COURT TO DEPARTMENT OF PUBLIC SAFETY. (a) This section applies to a person known to be a physician who is licensed or otherwise lawfully practicing in this state or applying to be licensed and who is convicted of or placed on deferred adjudication for:

- (1) a felony;
- (2) a Class A or Class B misdemeanor;
- (3) a Class C misdemeanor involving moral turpitude;
- (4) a violation of a state or federal narcotics or controlled substances law; or
- (5) an offense involving fraud or abuse under the Medicare or Medicaid program.

(b) Not later than the 30th day after the date a person described by Subsection (a) is convicted of an offense listed in that subsection or is placed on deferred adjudication for an offense listed in that subsection, the clerk of the court in which the person is convicted or placed on deferred adjudication shall prepare and forward to the Department of Public Safety the information required by Chapter 60, Code of Criminal Procedure.

(c) The duty of a clerk to prepare and forward information under Subsection (b) is not affected by:

- (1) any subsequent appeal of the conviction for the offense reported; or
- (2) any subsequent dismissal of proceedings related to the placement on deferred adjudication for the offense reported.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended

by Acts 2001, 77th Leg., ch. 1420, Sec. 14.032(a), eff. Sept. 1, 2001.

Sec. 160.102. REPORT BY COURT TO BOARD. Not later than the 30th day after the date a court finds that a physician is mentally ill or mentally incompetent, the clerk of the court of record in which the finding is entered shall prepare and forward to the board a certified abstract of record, regardless of whether the adjudication or finding is subsequently withheld or appealed.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.