

2015 Regular Session

HOUSE BILL NO. 573

BY REPRESENTATIVES HAZEL, HOFFMANN, AND JACKSON

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

BOARDS/COMMISSIONS: Provides for the investigation and adjudication of violations by the Louisiana State Board of Medical Examiners

1 AN ACT

2 To amend and reenact R.S. 37:1267, 1269, 1270(A)(7) and (8), 1278(A) and (B),
3 1285(A)(12) through (14), (C)(1), (E), (F), and (G) and R.S. 44:4.1(B)(23) and to
4 enact R.S. 37:1270(A)(9) through (11) and Part IV of Chapter 15 of Title 37 of the
5 Louisiana Revised Statutes of 1950, to be comprised of R.S. 37:1345.1 through
6 1345.78, and to repeal R.S. 37:1270(B)(5), 1285(H) and (I), and 1285.1, relative to
7 the powers and duties of the Louisiana State Board of Medical Examiners; to provide
8 for quorum; to provide for waiver of privileges; to provide for powers and duties of
9 the board; to provide for publication of actions; to provide for procedures to be used
10 for complaints, investigations, and formal adjudications; to provide for informal
11 settlement conferences; to define medical incompetency and unprofessional conduct;
12 to provide for expert physician review panels; to provide for the appointment,
13 powers, and duties of a supervising member; to provide for emergency actions; to
14 provide for the redesignation of certain portions of Chapter 15 of Title 37 of the
15 Louisiana Revised Statutes of 1950; and to provide for related matters.

16 Be it enacted by the Legislature of Louisiana:

17 Section 1. R.S. 37:1267, 1269, 1270(A)(7) and (8), 1278(A) and (B), and
18 1285(A)(12) through (14), (C)(1), (E), (F), and (G) are hereby amended and reenacted and
19 R.S. 37:1270(A)(9) through (11) and Part IV of Chapter 15 of Title 37 of the Louisiana
20 Revised Statutes of 1950, comprised of R.S. 37:1345.1 through 1345.78, are hereby enacted
21 to read as follows:

1 §1267. Quorum

2 ~~Three~~ Four members of the board constitute a quorum for all purposes
3 ~~including the holding of examinations, the granting of licenses and permits,~~
4 ~~rulemaking and, except as provided in R.S. 37:1285.1, the adjudication functions of~~
5 ~~the board.~~ For all matters other than those requiring the board to exercise
6 adjudicatory functions, the board shall act only with the concurrence of a majority
7 of the members of the board present and voting. However, in any matter in which
8 the board is required to vote to take any adjudicative action against a licensee of the
9 board, the adjudicative action shall only be taken upon the concurrence of no less
10 than four members of the board.

11 * * *

12 §1269. Receipts and disbursements

13 A. All monies collected by the board shall be deposited in the treasury of the
14 board. All expenses of the board and compensation of board members and
15 employees shall be paid out of the funds of the board only and shall never be a
16 charge on the state.

17 B. The board shall not cause any funds of the board to be expended directly
18 or indirectly on any activity or function which is sponsored, supported, or in any
19 manner associated with, in whole or in part, the Federation of State Medical Boards.

20 §1270. Duties and powers of the board

21 A. The board shall:

22 * * *

23 (7)(a) Appoint or designate an examining committee of physicians
24 possessing appropriate qualifications to conduct physical and mental examinations
25 on a physician, to otherwise inquire into the physician's fitness and ability to practice
26 medicine with reasonable skill and safety to patients, and to submit advisory reports
27 and recommendations to the board as to whether such physician's fitness and ability
28 is affected by mental illness or deficiency or physical illness, including but not
29 limited to deterioration through the aging process or the loss of motor skills or

1 excessive use or abuse of drugs, including alcohol. A physician serving on the
2 examining committee shall be prohibited from providing healthcare services to any
3 physician upon which he has conducted a physical or mental examination pursuant
4 to this Chapter.

5 (b) Any report or recommendation submitted to the board shall be considered
6 part of an investigative matter and shall be deemed confidential and not subject to
7 disclosure by the board or subject to the Public Records Law, R.S. 44:1 et seq. The
8 report shall also be strictly prohibited from being introduced into evidence into any
9 civil or criminal proceeding. However, in the event an adverse action is taken
10 against the licensee or an individual is denied licensure based upon the findings and
11 recommendations of the report, the confidentiality of the report shall be waived if the
12 physician or individual appeals the adverse action in a court of competent
13 jurisdiction.

14 (c) A copy of any report or recommendation shall be made immediately
15 available to the licensee and providing the copy shall not, by itself, be construed to
16 be a waiver of the confidentiality of the report.

17 (8) Appoint or designate physicians to serve on expert physician review
18 panels for the purpose of assisting the board with complaints and investigations
19 relating to medical competency by acting as expert physician reviewers. The
20 appointments shall be made in conformance with the provisions of Subpart G of Part
21 IV of this Chapter.

22 (9) Appoint a member of the board to act as the supervising member for each
23 complaint received by the board. Appointment shall be in conformance with the
24 provisions of Subpart F of Part IV of this Chapter.

25 (10) Have the authority to:

26 (a) Request and obtain state and national criminal history record information
27 on any person applying for any license, permit, certification, or registration which
28 the board is authorized by law to issue.

1 (b) Require any applicant for any license, permit, certification, or registration
2 issued by the board to submit a full set of fingerprints, in a form and manner
3 prescribed by the board, as a condition to the board's consideration of his or her
4 application.

5 (c) Charge and collect from an applicant for any license, permit,
6 certification, or registration issued by the board, in addition to all other applicable
7 fees and costs, such amount as may be incurred by the board in requesting and
8 obtaining criminal history record information on the applicant.

9 ~~(8)~~ (11) Have the authority to establish and determine by rule minimum
10 requirements relative to continuing education for the renewal or reinstatement of any
11 license or permit issued by the board.

12 * * *

13 §1278. Application for or acceptance of license or permit; waiver of personal
14 privileges

15 A.(1) Any person applying for or accepting a license or permit to practice
16 medicine or midwifery in this state shall, by applying for or accepting ~~said~~ the
17 license or permit, be deemed to have given his consent to submit to physical or
18 mental examinations when so directed by the board and to waive all objections as to
19 admissibility or disclosure of findings, reports, or recommendations pertaining
20 thereto on the grounds of privileged communications or other personal privileges
21 provided for by law.

22 (2) Notwithstanding the provisions of Paragraph (1) of this Subsection, the
23 board shall only require a licensee to submit to a physical or mental examination if
24 both of the following conditions are met:

25 (a) The board is acting upon a written complaint.

26 (b) The board by an affirmative action makes a finding that it has reasonable
27 cause to believe that the licensee's fitness and ability to practice medicine with
28 reasonable skill and safety may be impaired by mental illness or deficiency or

1 physical illness, including but not limited to deterioration through the aging process
2 or the loss of motor skills or excessive use or abuse of drugs, including alcohol.

3 B. Any person applying for, accepting, or holding a license or permit to
4 practice medicine in this state shall be deemed, notwithstanding any privilege of
5 confidentiality, to have given his authorization and consent to the disclosure to the
6 board, by any physician or other health care provider and by any health care
7 institution, of any and all medical records and information pertaining to such person's
8 diagnosis, evaluation, treatment, and prognosis for any physical or mental condition,
9 disease, illness, deficiency, or infirmity, when the board is acting upon a written
10 complaint and it has reasonable cause to believe that his fitness and ability to
11 practice medicine with reasonable skill and safety may be impaired by mental illness
12 or deficiency, or physical illness, including but not limited to deterioration through
13 the aging process or the loss of motor skills, ~~and/or~~ or excessive use or abuse of
14 drugs, including alcohol; however, any records or information obtained by the board
15 pursuant to this Section shall not constitute public records and shall be maintained
16 in confidence by the board. ~~until and unless such~~ However, the portion of the
17 medical records or information which is necessary for the board to render a final
18 decision in an adjudication proceeding ~~are~~ may be admitted into the record of
19 proceedings before the board pursuant to R.S. 37:1285. If a board decision is based
20 upon a mental illness or deficiency or physical illness, the public report of the final
21 decision of the board may include a statement concerning the relevance of such
22 deficiency or illness.

23 * * *

24 §1285. Causes for nonissuance; suspension; revocation; or the imposition of
25 restrictions; fines; reinstatement; publication of action; stays

26 A. The board may refuse to issue, or may suspend or revoke any license or
27 permit, or impose probationary or other restrictions on any license or permit issued
28 under this Part for the following causes:

29 * * *

1 (12) ~~Professional or medical incompetency;~~ An inability to practice
2 medicine with reasonable skill or safety due to mental illness or deficiency, including
3 but not limited to deterioration through the aging process or the loss of motor skills
4 or excessive use or abuse of drugs, including alcohol.

5 (13) Unprofessional conduct; manifested as sexual misconduct, disruptive
6 behavior, failing to cooperate with the board, failing to maintain independent
7 medical judgment, improperly delegating or supervising, exercising undue influence,
8 enabling the unauthorized practice of medicine, practicing or enabling practice by
9 an impaired provider, failing to practice within the scope of education, training, and
10 experience, or failure to create or maintain medical records.

11 (14) ~~Continuing~~ Medical incompetency, manifested by continuing or
12 recurring medical practice which fails to satisfy the prevailing and usually accepted
13 standards of medical practice in this state;

14 * * *

15 C.(1) The board may, as part of a an adverse decision, ~~consent order, or other~~
16 ~~agreed order,~~ require a license or permit holder or an applicant to pay all costs of the
17 board proceedings, including but not limited to investigators', stenographers', and
18 attorney fees, witness fees and expenses, and the per diem and expenses of the
19 members of the board's hearing panel, and to pay a fine not to exceed the sum of five
20 thousand dollars.

21 * * *

22 E. The board's final decision in an adjudication proceeding under this
23 Section, other than by consent order, agreement, or other informal disposition, shall
24 constitute a public record, and the board may disclose and provide such final
25 decision to any person, firm, or corporation, or to the public generally. The board's
26 disposition of an adjudication proceeding by consent order shall not constitute a
27 public record, ~~but the board shall have authority and discretion to disclose such~~
28 ~~disposition.~~

1 F. ~~No judicial order staying or enjoining the effectiveness or enforcement of~~
2 ~~a final decision or order of the board in an adjudication proceeding, whether issued~~
3 ~~pursuant to R.S. 49:964(C) or otherwise, shall be effective, or be issued to be~~
4 ~~effective beyond the earlier of:~~

5 (1) ~~One hundred twenty days from the date on which the board's decision or~~
6 ~~order was rendered.~~

7 (2) ~~The date on which the court enters judgment in a proceeding for judicial~~
8 ~~review of the board's decision or order pursuant to R.S. 49:964.~~

9 G. ~~Notwithstanding any other law to the contrary, no judicial order staying,~~
10 ~~enjoining, or continuing an adjudication proceeding before, or a preliminary,~~
11 ~~procedural, or intermediate decision, ruling, order, or action of, the board shall be~~
12 ~~effective or issued to be effective, whether pursuant to R.S. 49:964 or otherwise,~~
13 ~~prior to the exhaustion of all administrative remedies and issuance of a final decision~~
14 ~~or order by the board.~~

15 H. No order staying or enjoining a final decision or order of the board shall
16 be issued unless the district court finds that the applicant or petitioner has established
17 that the issuance of the stay does not:

18 (1) Threaten harm to other interested parties, including individuals for whom
19 the applicant or petitioner may render medical services; or

20 (2) Constitute a threat to the health, safety, and welfare of the citizens of this
21 state.

22 F. G. No stay of a final decision or order of the board shall be granted ex
23 parte. The court shall schedule a hearing on a request for a stay order within ten days
24 from filing of the request. The court's decision to either grant or deny the stay order
25 shall be rendered within five days after the conclusion of the hearing.

26 * * *

1 PART IV. COMPLAINTS, INVESTIGATIONS, AND ADJUDICATIONS

2 SUBPART A. EMERGENCY ACTION

3 §1345.1. Summary suspension

4 A. If the board, acting through its president or a supervising member
5 assigned a complaint, finds that the public health, safety, and welfare requires
6 emergency action and a finding to that effect is incorporated in its order, summary
7 suspension of a license, permit, certificate, or registration may be ordered pursuant
8 to R.S. 49:961(C), pending proceedings for revocation or other action. A hearing on
9 the summary suspension shall be noticed and scheduled not more than sixty days
10 from the date of suspension, unless the licensee waives convening a hearing during
11 such period.

12 B. The board may, as an alternative to a formal adjudicatory hearing, offer
13 to settle the matter through the use of an informal settlement conference as provided
14 for in Subpart D of this Part. If the licensee agrees to submit to an informal
15 settlement conference the time period for scheduling a formal hearing is suspended
16 until such time that the licensee fails to agree to any informal settlement offered by
17 the board at which point the matter shall be scheduled for formal adjudicatory
18 hearing.

19 SUBPART B. COMPLAINTS

20 §1345.11. Complaints

21 A. An initial complaint may be made by any person or by the board on its
22 own initiative. The board shall not accept an anonymous complaint. The initial
23 complaint shall be made in writing, dated, and at a minimum include all of the
24 following information:

25 (1) The name and contact information of the complainant.

26 (2) The name of the licensee against whom the complaint is filed.

27 (3) The time and place of the alleged violation.

28 (4) If applicable, the name and birth date of the patient whom the licensee
29 has allegedly harmed.

1 B. The identity of the complainant, as well as the complaint itself, shall
2 constitute a part of the investigative record and shall be confidential and not be
3 considered a public record. Confidentiality shall be waived only by a written
4 statement of the complainant specifically waiving confidentiality or by the
5 complainant testifying in a contested case hearing held by the board. However, the
6 name and address of an insurance agent, insurer, attorney or agent acting on behalf
7 of or in the interests of a third party, pharmaceutical company, or third-party
8 administrator that files a complaint against a physician shall be reported to the
9 subject physician, unless the supervising member of the board, appointed in
10 accordance with the provisions of Subpart F of this Part, who is assigned the
11 complaint makes an official finding that due to the nature of the allegations notice
12 would substantially jeopardize the ability of the board to conduct any subsequent
13 investigation.

14 §1345.12. Time limitations for review of medical competency

15 A. The board shall not consider or act on a complaint alleging medical
16 incompetency if the complaint involves care provided more than three years before
17 the date on which the complaint is received by the board.

18 B. Notwithstanding Subsection A of this Section, the record of a complaint
19 previously investigated relating to an allegation of medical incompetency that
20 occurred more than three years from the date a new complaint is filed with the board
21 may be considered by the board with a new complaint but only for the limited
22 purpose of determining whether there is a pattern of practice violating any provision
23 of Chapter 15 of Title 37 of the Louisiana Revised Statutes of 1950. In such
24 instances, the records relating to the previously investigated complaint shall be made
25 available to the licensee.

26 C. There are no time limitations for the filing of complaints in relation to any
27 other violation including action by another state licensing entity or criminal conduct.

1 §1345.13. Preliminary investigations

2 A.(1) Once a complaint has been received by the board, the board shall
3 provide notice to the licensee that a complaint has been filed with the board and the
4 board will begin a preliminary investigation to determine whether the complaint is
5 jurisdictional and whether there is probable cause to justify further investigation. The
6 notice shall include a copy of the complaint including the identity of the complainant
7 if required by the provisions of R.S. 37:1345.11(B).

8 (2) Upon receipt of a complaint, board staff shall conduct a preliminary
9 investigation of the complaint within forty-five days.

10 (3) As part of the preliminary investigation of each complaint, the following
11 minimum additional evidence may be gathered:

12 (a) The history of the licensee collected and maintained by the board.

13 (b) The history of the licensee maintained by the National Practitioner Data
14 Bank.

15 B. During this preliminary investigation, the agency staff may make
16 reasonable efforts to contact the complainant concerning the complaint. Any
17 additional information received from the complainant will be added to the
18 information maintained on the complaint.

19 C. During this preliminary investigation, the licensee may be given the
20 opportunity to respond to the allegations. If the licensee is given this opportunity,
21 the response shall be received within thirty days from the date of the request. Any
22 additional information received from the licensee will be added to the information
23 maintained on the complaint.

24 D. At the conclusion of the preliminary investigation, the supervising
25 member, as defined and set forth in Subpart E of this Part, with the assistance of
26 appropriate board staff, shall determine whether a complaint is jurisdictional and
27 whether there is probable cause to justify further investigation.

28 (1) If the supervising member of the board assigned to the complaint finds
29 that a complaint alleges misconduct which is not regulated under the jurisdiction of

1 the board or there is a lack of probable cause to justify further investigation, the
2 complaint shall be immediately dismissed by the supervising member of the board
3 who has been assigned the complaint and both the complainant and licensee shall be
4 notified of the dismissal within five business days of the dismissal and reason
5 therefor. However, the information contained in the complaint may be referred to
6 another government agency for investigation if the supervising member assigned the
7 complaint believes that another state or federal agency or board may have
8 jurisdiction over the alleged conduct of the licensee contained in the complaint. All
9 records and information related to a complaint and initial investigation which is
10 dismissed pursuant to this Section shall be destroyed and shall not be further
11 maintained by the board in any manner.

12 (2) If the supervising member determines the complaint on its face contains
13 sufficient information to justify further investigation, the supervising member shall
14 instruct the board staff to initiate a formal investigation pursuant to Subpart C of this
15 Part. The board shall notify the complainant and the licensee no later than five
16 business days from the date the formal investigation is initiated that the preliminary
17 investigation has resulted in the initiation of a formal investigation.

18 §1345.14. Complaint resolution

19 A. After sufficient information and evidence have been gathered by the
20 board through the formal investigation process, the supervising member shall make
21 a determination as to whether the information and evidence gathered indicate that a
22 violation of the provisions of this Chapter has occurred.

23 B. If the information and evidence gathered indicate that a violation of this
24 Chapter has occurred, the supervising member may do either of the following:

25 (1) Refer the investigation for an informal settlement conference. This
26 meeting shall be scheduled not later than one hundred eighty days after the complaint
27 has been filed, unless good cause is shown for scheduling the meeting after that date.
28 Once the informal settlement conference is scheduled, the complaint shall be
29 governed by Subpart C of this Part.

1 (2) File a formal written administrative complaint with the board to initiate
2 a formal adjudication proceeding before the board pursuant to Subpart D of this Part.

3 C.(1) If the information and evidence gathered are insufficient to support the
4 allegation that a violation of this Chapter has occurred, the supervising member shall
5 recommend to the board that the investigation be closed and the complaint be
6 dismissed. In addition, if the supervising member concludes that the complaint is
7 not based on any material evidence or relevant fact or is otherwise baseless or
8 unfounded, the supervising member may include this finding in his recommendation
9 to dismiss the complaint. The board shall schedule consideration of this
10 recommendation at the next regularly scheduled meeting of the board. The board
11 shall affirm the recommendation of the supervising member unless the board by a
12 majority vote makes a finding that good cause exists to continue the investigation.
13 If the board approves the recommendation of the supervising member, the complaint
14 shall be dismissed. If the recommendation of the supervising members includes a
15 finding that the complaint is not based on any material evidence or relevant fact or
16 is otherwise baseless or unfounded, the board in addition to dismissing the complaint
17 shall order all records of the complaint to be immediately removed from the record
18 of the licensee and destroyed.

19 (2) If a complaint is dismissed, the board shall send a letter to the
20 complainant notifying him of the dismissal.

21 (3) If the complaint is dismissed, the board shall send a letter to the address
22 of record of the licensee notifying him of the dismissal. The board may inform the
23 licensee of any recommendations that may improve the licensee's practice. If the
24 complaint is determined to be not based on any material evidence or relevant fact or
25 is otherwise baseless or unfounded, the complaint shall be dismissed and the board
26 shall send a letter to the address of record of the licensee notifying him that the
27 complaint was dismissed due to the fact that it was baseless and unfounded.

1 SUBPART C. FORMAL INVESTIGATIONS

2 §1345.21. Formal investigation

3 A.(1) Every formal investigation shall be completed no later than one
4 hundred eighty days after the supervising member assigned the complaint makes the
5 determination to initiate a formal investigation, unless the board approves an
6 extension of time based upon a finding of good cause as to why the investigation
7 could not be completed within that time. Good cause shall include but not be limited
8 to:

9 (a) The unavailability of pertinent documents that the board has made all
10 reasonable efforts to obtain.

11 (b) The refusal of the licensee to cooperate during the course of the
12 investigation.

13 (c) Delinquency in reviewing the case and submitting a report by an expert
14 physician reviewer.

15 (d) The necessity of additional investigation as determined by the board.

16 (e) Additional complaints pending investigation regarding the licensee.

17 (f) Other events beyond the control of the board.

18 (2) The board shall not dismiss a complaint solely on the grounds that an
19 investigation has not been completed or the case has not been scheduled for hearing
20 within one hundred and eighty days.

21 (3) If an investigation has not been completed or the case has not been
22 scheduled for hearing within one hundred eighty days, the board shall notify the
23 parties to the complaint as to why these deadlines were not met. This notice is not
24 required if the board makes an official finding that notice would substantially
25 jeopardize an investigation.

26 §1345.22. Past complaints

27 Past complaints made against a licensee and investigations conducted by the
28 board concerning the licensee may be examined during the course of a new

1 investigation concerning the licensee but only for the limited purposes of
2 determining if there is a pattern or practice of behavior on the part of the licensee.

3 §1345.23. Investigations related to medical competency

4 A. If the complaint giving rise to the formal investigation alleges medical
5 incompetency, the complaint shall be reviewed by an expert physician review panel,
6 authorized pursuant to Subpart G of this Part, consisting of physicians who practice
7 in the same specialty as the physician who is the subject of the complaint or in
8 another specialty that is similar to the physician's specialty.

9 B. The expert physician review panel shall report to the board in writing the
10 panel's determinations pursuant to Subpart G of this Part.

11 §1345.24. Confidentiality

12 A. Each complaint, adverse report, investigation file, other investigation
13 report, and other investigative information in the possession of or received or
14 gathered by the board or its employees or agents relating to a licensee, an application
15 for license, or a criminal investigation or proceeding is privileged and confidential
16 and is not subject to discovery, subpoena, or other means of legal compulsion for
17 release to anyone other than the board or its employees or agents involved in
18 discipline of a license holder. For purposes of this Subsection, "investigative
19 information" includes information relating to the identity of, and a report made by,
20 a physician performing or supervising compliance monitoring for the board.

21 B. Notwithstanding the provisions in Subsection A of this Section,
22 investigative information in the possession of the board or an employee or agent
23 relating to discipline of a licensee may be disclosed to either of the following:

24 (1) The appropriate licensing authority of another state or a territory or
25 country in which the licensee is licensed or has applied for a license.

26 (2) A medical peer review committee reviewing an application for privileges
27 or the qualifications of the licensee with respect to retaining privileges.

1 C. If investigative information in the possession of the board or its
2 employees or agents indicates that a crime may have been committed, the board shall
3 report the information to the appropriate law enforcement agency.

4 D. The board shall cooperate with and assist a law enforcement agency
5 conducting a criminal investigation of a licensee by providing information that is
6 relevant to the criminal investigation to the investigating agency. Information
7 disclosed by the board to an investigative agency remains confidential and shall not
8 be disclosed by the board except as necessary to further the investigation.

9 SUBPART D. INFORMAL SETTLEMENT CONFERENCE

10 §1345.31. Informal settlement conference

11 A. Upon the referral of an investigation by the supervising member,
12 representatives of the board shall hold an informal settlement conference with the
13 licensee no later than one hundred eighty days from the date the formal investigation
14 is initiated, unless the board by affirmative vote of a majority of a quorum of the
15 board approves an extension of that time period upon a finding of good cause.

16 B.(1) The board shall provide notice to the licensee of the time and place of
17 the meeting no later than the forty-fifth day prior to date the meeting is to be held.
18 The notice shall be accompanied with a copy of the complaint and the information
19 the board intends to use at the meeting. If the board does not provide the statement
20 or information at that time, the licensee may use that failure as grounds for
21 rescheduling the informal meeting. If the complaint includes an allegation of
22 medical incompetency, the notice shall include a copy of the report by the expert
23 physician reviewer. The licensee shall provide to the board his rebuttal at least
24 fifteen business days before the date of the meeting in order for the information to
25 be considered at the meeting.

26 (2) The board shall also provide notice that the licensee may be represented
27 by an attorney duly admitted to practice in any state. Following receipt by the board
28 of proper notice of representation, all further notices, complaints, subpoenas, orders,

1 or other process related to the proceeding shall be served on the licensee through his
2 designated counsel of record.

3 C. The meeting shall be attended by the licensee and his legal counsel, the
4 executive director of the board, the supervising member of the board assigned the
5 complaint, and legal counsel for the board. The board may also include any
6 additional staff who may present facts relative to the complaint.

7 D. The executive director or his designee shall present those facts to the
8 supervising member that he reasonably believes could be proven by competent
9 evidence or qualified witnesses at a formal hearing.

10 E. The licensee may do any of the following:

11 (1) Reply to the presentation of the executive director or his designee.

12 (2) Present the facts the licensee believes he could provide by competent
13 evidence or qualified witnesses at a hearing.

14 F.(1) No later than seven days from the date of the meeting, the supervising
15 member may do any of the following:

16 (a) Make a recommendation to the board that the investigation be closed and
17 the complaint dismissed. The supervising member may also make a finding that the
18 complaint is not based on any material evidence or relevant fact or is otherwise
19 baseless or unfounded. The board shall review this recommendation at the next
20 regularly scheduled meeting of the board and absent a showing of good cause the
21 board shall dismiss the complaint.

22 (b) Attempt to mediate the disputed matter and make a recommendation to
23 the board to enter into an informal disposition of the matter through default, consent
24 order, agreement, or settlement. If the licensee does not agree to the terms and
25 conditions of any informal disposition offered by the supervising member, then the
26 supervising member shall file a formal written administrative complaint with the
27 board to initiate a formal adjudication proceeding pursuant to Subpart E of this Part.

28 (c) File a formal written administrative complaint with the board to initiate
29 a formal adjudication proceeding before the board pursuant to Subpart E of this Part.

1 (2) The board shall provide notice of the outcome of the informal meeting
2 to the licensee and the complainant no later than five business days from the date the
3 supervising member makes a recommendation.

4 G. Upon request of the licensee, the board shall make a recording of the
5 informal settlement conference. The recording is deemed a part of the investigative
6 record and shall not be released to any third party unless otherwise authorized under
7 this Chapter.

8 §1345.32. Informal dispositions; disclosure

9 All informal dispositions of complaints by the board shall not constitute a
10 public record; however, the board may do any of the following:

11 (1) Report the disposition to the National Practitioner Data Bank if required
12 under federal law.

13 (2) Provide the public with a report which only includes the following
14 information:

15 (i) The full name and license number of the licensee subject to the informal
16 disposition.

17 (ii) The specific violation either agreed to by the licensee or alleged by the
18 board.

19 (iii) The adverse action or measures instituted by the board against the
20 licensee as agreed upon pursuant to the consent order.

21 SUBPART E. FORMAL ADJUDICATIONS

22 §1345.41. Initiation of a formal administrative complaint

23 A. A formal administrative hearing before the board shall only be
24 commenced upon the filing of a formal written administrative complaint.

25 B. A formal administrative complaint shall meet all of the following criteria:

26 (1) Be in writing, dated, and signed by the supervising member assigned the
27 complaint.

1 (2) Be filed by the supervising member of the board assigned the complaint
2 or an authorized representative of the board which shall include but not be limited
3 to the executive director.

4 (3) Set forth, in separately numbered paragraphs, all of the following:

5 (a) A concise statement of the facts giving rise to the board's jurisdiction
6 over the licensee.

7 (b)(i) A concise statement of those material facts relied upon by the board
8 which are alleged to constitute a violation of a specific statute or rule.

9 (ii) The formal administrative complaint shall be specific enough to enable
10 a person of common understanding to know what is meant by the formal complaint
11 and give the person who is the subject of the formal complaint notice of each
12 particular act alleged to a violation of a specific statute or rule.

13 (4) Be concluded with a request for the administrative sanction or other relief
14 sought by the board.

15 (5) Bear the name, address, and telephone number of the counsel engaged
16 by the board to present the case before the board.

17 §1345.42. Notice of hearing; service

18 A. Upon the filing of a formal administrative complaint, the board shall
19 docket the complaint and schedule the complaint for hearing before the board no less
20 than forty-five days nor more than one hundred eighty days thereafter; however, this
21 time period may be lengthened or shortened as the board determines necessary or
22 appropriate to protect the public interest or upon motion of the investigating officer
23 or the licensee pursuant to a showing of proper grounds. In the event that the
24 licensee's license, permit, certification, or registration has been suspended by the
25 board pending hearing, pursuant to Subpart A of this Part and R.S. 49:961(C), an
26 evidentiary hearing on the complaint shall be noticed and scheduled no more than
27 sixty days from the date of suspension, unless the licensee waives convening a
28 hearing during such period.

1 B. A written notice of the complaint and the time, date, and place of the
2 scheduled hearing shall be served upon the licensee by registered, return receipt
3 requested mail, as well as by regular first class mail, at the most current address for
4 the licensee reflected in the official records of the board, or by personal delivery of
5 the complaint to the licensee. The notice shall include a statement of the legal
6 authority and jurisdiction under which the hearing is to be held and shall be
7 accompanied by a certified copy of the administrative complaint.

8 C. The complaint counsel of the board may amend a formal administrative
9 complaint after being duly served upon the licensee at any time prior to the
10 scheduled hearing date if the amendment is for the purpose of correcting a clerical
11 error or clarifying facts set forth in the affidavit. A formal administrative complaint
12 may be amended to add additional charges or counts if the amended complaint is
13 served upon the licensee not less than thirty days from the scheduled hearing date or
14 by mutual agreement of the parties.

15 §1345.43. Response to complaint; notice of representation

16 A. Within thirty days of service of the complaint, or such longer time as the
17 board, on motion of the licensee, may permit, the licensee may answer the complaint,
18 admitting or denying each of the separate allegations of fact and of law set forth
19 therein. Any matters admitted by the licensee shall be deemed proven and
20 established for purposes of adjudication. If the licensee does not file a response to
21 the complaint, all matters asserted therein shall be deemed denied.

22 B. A licensee may amend his answer as a matter of course at any time before
23 the answer is due. Otherwise, a licensee may amend his answer only by leave of the
24 board. Leave shall be freely given when justice so requires.

25 C. Any licensee may be represented in an adjudication proceeding before the
26 board by an attorney duly admitted to practice in any state. Upon receipt of service
27 of a complaint pursuant to this Part, or thereafter, a licensee who is represented by
28 legal counsel with respect to the proceeding shall personally or through such counsel
29 give written notice to the board of the name, address, and telephone number of the

1 counsel. Following receipt by the board of proper notice of representation, all
2 further notices, complaints, subpoenas, orders, or other process related to the
3 proceeding shall be served on the licensee through his designated counsel of record.

4 §1345.44. Pleadings, motions, service

5 A.(1) All pleadings, motions, or other papers permitted or required to be
6 filed with the board in connection with a pending adjudication proceeding shall be
7 filed by personal delivery at or by mail to the office of the board and shall by the
8 same method of delivery be concurrently served upon the complaint counsel
9 designated by the complaint, if filed by or on behalf of the licensee, or upon the
10 licensee, through counsel of record if any, if filed by the complaint counsel.

11 (2) All pleadings, motions, or other papers shall meet all of the following
12 criteria:

13 (a) Be submitted on plain white, letter-size, eight and one-half inches by
14 eleven inches bond paper.

15 (b) Have margins of at least one inch on all sides and text double-spaced
16 except as to quotations and other matter customarily single-spaced.

17 (c) Bear the caption and docket number of the case as they appear on the
18 complaint.

19 (d) Include the certificate of the attorney or person making the filing that
20 service of a copy of the pleading, motion, or other paper has been effected in the
21 manner prescribed by this Section.

22 (3) The board may refuse to accept for filing any pleading, motion, or other
23 paper not conforming to the requirements of this Section.

24 B.(1) All prehearing motions, except for a motion for continuance, shall be
25 filed no later than fifteen days prior to the date of the hearing. Each prehearing
26 motion shall be accompanied by a memorandum which shall set forth a concise
27 statement of the grounds upon which the relief sought is based and the legal authority
28 therefor. A motion may be accompanied by an affidavit as necessary to establish
29 facts alleged in support of the motion. No later than ten days after the filing of a

1 motion and memorandum or such shorter time as the board may order, the
2 investigating officer, through the complaint counsel, may file a memorandum in
3 opposition to or otherwise setting forth the investigating officer's position with
4 respect to the motion.

5 (2) A motion for continuance of hearing shall be filed within the delay
6 prescribed by Paragraph (1) of this Subsection; however, the board may accept the
7 filing of a motion for continuance at any time prior to hearing upon a showing of
8 good cause not discoverable within the time otherwise provided for the filing of
9 prehearing motions. A scheduled hearing shall be continued by the board only upon
10 a showing by the licensee or the complaint counsel that there are substantial
11 legitimate grounds that the hearing should be continued balancing the right of the
12 licensee to a reasonable opportunity to prepare and present a defense to the
13 complaint and the board's responsibility to protect the public health, welfare, and
14 safety. The board shall grant a motion to continue a hearing that has been previously
15 continued upon motion of the same party only upon a finding of extraordinary
16 circumstances evidenced by verified motion or accompanying affidavit. If an initial
17 motion for continuance is not opposed, it may be granted by the executive director.

18 C. Any prehearing motion, other than an unopposed initial motion for the
19 continuance of a hearing which may be granted by the executive director, shall be
20 referred for decision to the presiding officer of the board. The presiding officer, in
21 his discretion, may refer any prehearing motion to the entire board for disposition,
22 and any party aggrieved by the decision of a presiding officer on a prehearing motion
23 may request that the motion be reconsidered by the entire board.

24 D. Prehearing motions shall ordinarily be ruled upon by the presiding officer
25 on the papers filed, without hearing. On the written request of the licensee or of
26 complaint counsel, however, and on demonstration that there are good grounds
27 therefor, the presiding officer may grant opportunity for hearing, by oral argument,
28 on any prehearing motion.

29 §1345.45. Discovery

1 A.(1) Except as provided in Subsection B of this Section, upon written
2 request by a licensee or his counsel, the complaint counsel of the board shall disclose
3 and permit the licensee or his counsel to inspect, copy, or photograph all of the
4 following information and material which is in the possession, custody, or control
5 of the board, or the existence of which is known to the complaint counsel:

6 (a) Names and addresses of all witnesses proposed to be called in the
7 complaint counsel's case in chief, together with a copy of the contents of any
8 statement, written, recorded, or otherwise preserved, of each witness.

9 (b) A copy of any written or recorded statement of the licensee and the
10 substance of any oral statement made by the licensee.

11 (c) A copy of any criminal record of the licensee, if proposed to be used.

12 (d) Any written reports or statements of experts, if proposed to be offered as
13 evidence in connection with the particular case.

14 (e) All records, documents, physical evidence, or photographs which may
15 be offered as evidence in the complaint counsel's case in chief.

16 (f) Any exculpatory material concerning the licensee.

17 (2) The board shall charge the licensee a fee for the reproduction of the
18 documents which is consistent with the fee schedule set forth in R.S. 40:1299.96.

19 B. The board may deny disclosure required by Subsection A of this Section
20 if it finds that there is a substantial risk to any person of physical harm, intimidation,
21 bribery, economic reprisals, or unnecessary embarrassment resulting from the
22 disclosure which substantially outweighs any usefulness of the disclosure to licensee
23 or his counsel.

24 C. If a licensee requests discovery pursuant to this Section, the licensee shall
25 promptly disclose to the complaint counsel and permit him to inspect, copy, or
26 photograph all of the following information and material which is in the possession,
27 custody, or control of the licensee or his counsel or the existence of which is known
28 to the licensee or his counsel:

1 (1) Names and addresses of all witnesses proposed to be called in the
2 licensee's defense, together with a copy of the contents of any statement, written,
3 recorded, or otherwise preserved of each witness.

4 (2) All records, documents, physical evidence, or photographs which may
5 be offered as evidence in the licensee's defense.

6 (3) Any written reports or statements of experts, if proposed to be offered as
7 evidence in connection with the particular case.

8 D. Disclosure pursuant to the provisions of this Section shall occur no later
9 than ten days after receipt of the request for discovery. In addition, after the request
10 has been satisfied, both parties have a continuing duty to supplement information
11 required to be exchanged pursuant to this Section.

12 E. If a party fails to disclose timely a witness's name and address, statements
13 by the witness, or other evidence required to be disclosed or exchanged pursuant to
14 this Section, the presiding officer may grant a continuance of the hearing, preclude
15 the party from calling the witness or introducing the document, or take other action
16 as may be appropriate. If the board through the complaint counsel or otherwise fails
17 to disclose in a timely manner any exculpatory material, the presiding officer may
18 require the matter to be disclosed and grant a continuance or take other action as may
19 be appropriate.

20 §1345.46. Subpoenas for hearing

21 A. Upon request of the licensee or the complaint counsel and in compliance
22 with the requirements of this Section, the executive director, or such other
23 individuals as may be designated by the board, shall sign and issue subpoenas in the
24 name of the board requiring the attendance and giving of testimony by witnesses and
25 the production of books, papers, and other documentary evidence at an adjudication
26 hearing.

27 B. No subpoena shall be issued until the party who wishes to subpoena the
28 witness deposits with the board a sum of money sufficient to pay all fees and

1 expenses to which a witness in a civil case is entitled pursuant to R.S. 13:3661 and
2 3671. A witnesses who is subpoenaed to testify before the board only to an opinion
3 founded on special study or experience in any branch of science, or to make
4 scientific or professional examinations, and to state the results thereof, shall receive
5 any additional compensation from the party who wishes to subpoena the witness as
6 may be fixed by the board with reference to the value of time employed and the
7 degree of learning or skill required.

8 §1345.47. Prehearing conference

9 A. In any case of adjudication noticed and docketed for hearing, the counsel
10 for the licensee and the complaint counsel may agree, or the presiding officer may
11 require, that a prehearing conference be held among the counsel, or together with the
12 board's independent counsel appointed pursuant to this Subpart, for the purpose of
13 simplifying the issues for hearing and promoting stipulations as to facts and
14 proposed evidentiary offerings which will not be disputed at hearing.

15 B. Following such prehearing conference the parties shall, and without such
16 conference the parties may, agree in writing on a prehearing stipulation which shall
17 include:

18 (1) A brief statement by the complaint counsel as to what the counsel expects
19 the evidence to be presented against the licensee to show.

20 (2) A brief statement by the licensee as to what the evidence and arguments
21 in defense are expected to show.

22 (3) A list of the witnesses to be called by the complaint counsel and by the
23 licensee, together with a brief general statement of the nature of the testimony each
24 witness is expected to give.

25 (4) Any stipulations which the parties may be able to agree upon concerning
26 undisputed claims, facts, testimony, documents, or issues.

27 (5) An estimate of the time required for the hearing.

1 §1345.48. Conduct of hearing; record

2 A. Unless requested by the licensee, adjudication hearings shall be
3 conducted in closed session.

4 B. At an adjudication hearing, opportunity shall be afforded to the complaint
5 counsel and the licensee to present evidence on all issues of fact and argument on all
6 issues of law and policy involved, to call, examine, and cross-examine witnesses, and
7 to offer and introduce documentary evidence and exhibits as required for a full and
8 true disclosure of the facts and disposition of the complaint.

9 C. Unless stipulation is made between the parties, and approved by the
10 hearing panel, to provide for other means of recordation, all testimony and other
11 proceedings of an adjudication shall be recorded by a certified stenographer who
12 shall be retained by the board to prepare a written transcript of the proceedings. If
13 other means of recordation are utilized, a copy of the recordation shall be made
14 available to the parties.

15 D. During the evidentiary hearing, the presiding officer shall rule upon all
16 evidentiary objections and other procedural questions, but in his discretion may
17 consult with the entire panel in executive session. At the evidentiary hearing, the
18 board may be assisted by legal counsel, retained by the board for such purpose, who
19 is independent of the complaint counsel and who has not participated in the
20 investigation or prosecution of the case. If the board is attended by independent
21 counsel, the presiding officer may delegate to the counsel the ruling on evidentiary
22 objections and other procedural issues raised during the hearing.

23 E. The record in a case of adjudication shall include all of the following:

24 (1) The administrative complaint and notice of hearing, the licensee's
25 response to the complaint, if any, subpoenas issued in connection with discovery in
26 the case or hearing of the adjudication, and all pleadings, motions, and intermediate
27 rulings.

28 (2) Evidence received or considered at the hearing.

1 (3) A statement of matters officially noticed except matters so obvious that
2 statement of them would serve no useful purpose.

3 (4) Offers of proof, objections, and rulings thereon.

4 (5) Proposed findings and exceptions, if any.

5 (6) The written decision, opinion, report, or other disposition of the case
6 made by the board.

7 F. Findings of fact shall be based exclusively on the evidence and on matters
8 officially noticed.

9 §1345.49. Evidence

10 A. In an adjudication hearing, the board may give probative effect to
11 evidence which possesses probative value commonly accepted by reasonably prudent
12 men in the conduct of their affairs. Effect shall be given to the rules of privilege
13 recognized by law. The board may exclude incompetent, irrelevant, immaterial, and
14 unduly repetitious evidence. Objections to evidentiary offers may be made and shall
15 be noted in the record. Subject to these requirements, when a hearing will be
16 expedited and the interests of the parties will not be prejudiced substantially, any part
17 of the evidence may be received in written form.

18 B. All evidence, including records and documents in the possession of the
19 board which the complaint counsel desires the board to consider, shall be offered and
20 made a part of the record, and all such documentary evidence may be received in the
21 form of copies or excerpts or by incorporation by reference. In case of incorporation
22 by reference, the materials shall be available for examination by the licensee before
23 being received in evidence.

24 C. Notice may be taken of judicially cognizable facts and of generally
25 recognized technical or scientific facts within the board's medical knowledge.
26 Parties shall be notified either before or during the hearing of the material noticed
27 or sought by a party to be noticed, and they shall be afforded an opportunity to
28 contest the material so noticed. The board's medical experience, technical

1 competence, and medical knowledge may be utilized in the evaluation of the
2 evidence.

3 D. Any member of the board serving as presiding officer in an adjudication
4 hearing shall administer oaths or affirmations to all witnesses appearing to give
5 testimony, regulate the course of the hearing, set the time and place of continued
6 hearings, and fix the time for the filing of briefs and other documents, if any are
7 required or requested, and may direct the parties to appear and confer to consider
8 simplification of the issues.

9 E. Except as otherwise governed by the provisions of this Section,
10 adjudication hearings before the board shall be governed by the Louisiana Code of
11 Evidence, as applicable.

12 §1345.50. Decisions; notice

13 A. The final decision of the board shall be supported by a preponderance of
14 the evidence.

15 B. The final decision of the board in an adjudication proceeding shall, if
16 adverse to the licensee, and otherwise may, be in writing, shall include findings of
17 fact and conclusions of law, and shall be signed by the presiding officer of the
18 hearing panel on behalf and in the name of the board.

19 C. Upon issuance of a final decision, a certified copy shall promptly be
20 served upon the licensee's counsel of record, or upon the licensee personally in the
21 absence of counsel, in the same manner of service prescribed with respect to service
22 of complaints.

23 D. The board's final decision in an adjudication proceeding held pursuant to
24 this Subpart, other than by consent order, agreement, or other informal disposition,
25 shall constitute a public record and the board may disclose the final decision to any
26 person, firm, or corporation, or to the public generally.

27 §1345.51. Rehearings

28 A. A decision by the board in a case of adjudication shall be subject to
29 rehearing, reopening, or reconsideration by the board pursuant to a written motion

1 filed with the board no later than ten days after service of the decision on the
2 licensee. A motion for rehearing, reopening, or reconsideration shall be made and
3 served in the form and manner prescribed by R.S. 37:1345.34 and shall set forth the
4 grounds upon which the motion is based, as provided by Subsection B of this
5 Section.

6 B. The board may grant rehearing, reopening, or reconsideration if it is
7 shown that any of the following criteria can be satisfied:

8 (1) The decision is clearly contrary to the law and the evidence.

9 (2) The licensee has discovered since the hearing evidence important to the
10 issues which he could not have with due diligence obtained before or during the
11 hearing.

12 (3) Other issues not previously considered ought to be examined in order
13 properly to dispose of the matter.

14 (4) There exist other good grounds for further consideration of the issues and
15 the evidence in the public interest.

16 SUBPART F. SUPERVISING MEMBER

17 §1345.61. Supervising members

18 A. All complaints and investigations of alleged violations of this Chapter
19 shall be supervised by a board member. The president of the board shall be exempt
20 from serving as a supervising member. The remaining members of the board shall
21 be delegated two months out of every calendar year to serve as the supervising
22 member. A board member serving as a supervising member is prohibited from
23 participating in the adjudication of a case in which the member served as the
24 supervising member.

25 B. The president may designate another member of the board to act as the
26 supervising member in any case where the originally appointed supervising member
27 has an apparent conflict of interest which would preclude the supervising member
28 from fairly supervising the investigation.

1 SUBPART G. EXPERT PHYSICIAN REVIEW PANELS2 §1345.71. Expert physician review panels; purpose

3 The board shall provide for an expert physician review panel appointed by
4 the board to assist with complaints and investigations relating to medical competency
5 by acting as expert physician reviewers.

6 §1345.72. Qualifications

7 A. In order to serve on the expert physician review panel, a physician shall
8 meet all of the following criteria:

9 (1) Hold an active and unrestricted license to practice medicine in Louisiana.

10 (2) Hold current board certification by a national certifying body recognized
11 by the board.

12 (3) Have no history of licensure restriction.

13 (4) Be engaged in the active practice of medicine.

14 B. For purposes of this Section, "active practice of medicine" means the
15 active diagnosis or treatment of persons or being part of the active teaching faculty
16 of an acceptable approved medical school for at least twenty hours per week for forty
17 weeks duration during the preceding calendar year.

18 §1345.73. Term; resignation; removal

19 A. A physician appointed to serve as an expert physician reviewer shall serve
20 on the expert physician review panel until resignation or removal from the panel by
21 the board.

22 B. A physician appointed to serve as an expert physician reviewer may
23 resign from the expert panel at any time by providing written notice to the board.

24 C. A physician appointed to serve as an expert physician reviewer may be
25 removed from the expert physician review panel by the board for good cause at any
26 time. Good cause for removal includes but is not limited to any of the following:

27 (1) Failure to maintain the eligibility requirements set forth in R.S.
28 37:1345.72.

29 (2) Failure to inform the board of potential or apparent conflicts of interest.

1 (3) Repeated failure to timely review complaints or timely submit reports to
2 the board.

3 (4) Repeated failure to prepare the reports in the prescribed format.

4 §1345.74. Selection of reviewers

5 A. The board shall refer any complaint alleging possible medical
6 incompetency to expert physician reviewers who will review all the medical
7 information and records collected by the board and shall report findings in the
8 prescribed format by the board.

9 B.(1) Reviewers shall be randomly selected from among those expert
10 physician review panel members who practice in the same specialty as the licensee
11 who is the subject of the complaint. The practice area or specialty declared by the
12 licensee as his area of practice may be the specialty of the expert reviewers.

13 (2) If a randomly selected reviewer has an apparent conflict of interest that
14 would prevent the reviewer from providing a fair and unbiased opinion, the reviewer
15 shall not review the case and another reviewer shall be randomly selected from
16 among those expert physician review panel members who practice in the same or
17 similar specialty as the licensee who is the subject of the complaint, after excluding
18 the previously selected reviewer.

19 §1345.75. Conflicts of interest

20 A. An apparent conflict of interest exists if the reviewer meets any of the
21 following criteria:

22 (1) Has a direct financial interest or relationship with any matter, party, or
23 witness that would give the appearance of a conflict of interest.

24 (2) Has a familial relationship within the third degree of affinity with any
25 party or witness.

26 (3) It is determined that the reviewer has knowledge of information that has
27 not been provided by the board and the reviewer cannot set aside that knowledge and
28 fairly and impartially consider the matter based solely on the information provided
29 by the board.

1 B. If any selected reviewer has an apparent conflict of interest, the reviewer
2 shall immediately notify board staff.

3 §1345.76. Procedures for expert physician review

4 A. Reviewers shall be specifically informed that they shall communicate
5 only with other reviewers selected to review the case and that they shall
6 communicate only with other reviewers to attempt to reach a consensus.

7 B.(1) An expert physician reviewer who is selected to review a complaint
8 shall determine whether the licensee who is the subject of the complaint was
9 medically incompetent and issue a preliminary written report of that determination.

10 (2) A second expert physician reviewer shall review the first expert
11 physician reviewer's preliminary report and other information associated with the
12 complaint. If the second expert physician reviewer agrees with the conclusions of
13 the first expert physician reviewer, the first expert physician reviewer shall issue a
14 final written report on the matter to the board for final adjudication.

15 (3) If the second expert physician reviewer does not agree with the
16 conclusions of the first expert physician reviewer, a third expert physician reviewer
17 shall review the preliminary report and information and decide between the
18 conclusions reached by the first two expert physicians reviewers. The final written
19 report shall be issued by the third expert physician reviewer or the expert physician
20 reviewer with whom the third expert physician reviewer concurs and submitted to
21 the board for final adjudication.

22 §1345.77. Expert physician reviewer report

23 A report shall be prepared by the expert physician reviewers to include all of
24 the following:

25 (1) The general qualifications of each reviewer.

26 (2) The opinions agreed to by at least a majority of the reviewers regarding:

27 (a) Relevant facts concerning the medical care rendered.

28 (b) The application of medical incompetency to the relevant facts.

1 (c) A determination of whether medical incompetency has been
2 demonstrated.

3 (d) The clinical basis for the determinations, including any reliance on
4 peer-reviewed journals, studies, or reports.

5 (3) All expert physician reviewers reports shall contain the following notice:
6 "PURSUANT TO PART IV OF CHAPTER 15 OF TITLE 37 OF THE LOUISIANA
7 REVISED STATUTES OF 1950, R.S. 37:1345.1 ET SEQ., THIS DOCUMENT
8 CONSTITUTES INVESTIGATIVE INFORMATION AND IS PRIVILEGED AND
9 CONFIDENTIAL. THIS DOCUMENT IS PROVIDED FOR USE AT THE
10 INFORMAL SETTLEMENT CONFERENCE ONLY AND MAY NOT BE USED
11 FOR ANY OTHER PURPOSE. THIS DOCUMENT IS NOT SUBJECT TO
12 PUBLIC RECORDS REQUESTS AND IS NOT ADMISSIBLE AS EVIDENCE IN
13 ANY CIVIL JUDICIAL OR ADMINISTRATIVE PROCEEDING. THIS
14 DOCUMENT SHALL NOT BE USED OR DISSEMINATED BY ANY LICENSEE
15 OR HIS REPRESENTATIVE IN ANY CONTESTED CASE PROCEEDING.
16 ACCORDINGLY, THIS DOCUMENT SHALL NOT BE RELEASED TO ANY
17 PERSON OR ENTITY WITHOUT THE CONSENT OF THE BOARD. RELEASE
18 OF THIS DOCUMENT, OR ANY PORTION THEREOF, TO A LICENSEE OR
19 HIS REPRESENTATIVE PURSUANT TO THE PROVISIONS OF PART IV OF
20 CHAPTER 15 OF TITLE 37 OF THE LOUISIANA REVISED STATUTES OF
21 1950, R.S. 37:1345.1 ET SEQ., SHALL NOT CONSTITUTE A WAIVER OF
22 PRIVILEGE OR CONFIDENTIALITY."

23 §1345.78. Confidentiality

24 An expert physician reviewer report is deemed to be investigative
25 information and an investigative report and is therefore privileged and confidential
26 and not subject to disclosure pursuant to the Public Records Law, R.S. 44:1 et seq.
27 The report shall not be introduced into evidence in any civil, administrative, or
28 criminal proceeding. The expert physician reviewer shall not be subject to subpoena
29 for the purpose of testifying in any legal proceeding regarding the performance of

1 his duty pursuant to this Part. This prohibition shall extend to depositions and
2 interrogatories, both written and oral.

3 Section 2. R.S. 44:4.1(B)(23) is hereby amended and reenacted to read as follows:

4 §4.1. Exceptions

5 * * *

6 B. The legislature further recognizes that there exist exceptions, exemptions,
7 and limitations to the laws pertaining to public records throughout the revised
8 statutes and codes of this state. Therefore, the following exceptions, exemptions, and
9 limitations are hereby continued in effect by incorporation into this Chapter by
10 citation:

11 * * *

12 (23) R.S. 37:74, 86, 90, 147, 691, 711.10, 763, 763.1, 781, 920.1, 969.1,
13 1123(E), 1270, 1277, 1278, 1285, 1326, 1345.11, 1345.24, 1345.31, 1345.32,
14 1345.45, 1345.77, 1345.78, 1518, 1745.15, 1747, 1806, 2156.1, 2406, 2505.1, 3481,
15 3507.1

16 * * *

17 Section 3. R.S. 37:1270(B)(5), 1285(H) and (I), and 1285.1 are hereby repealed in
18 their entirety.

19 Section 4. The Louisiana State Law Institute is hereby directed to redesignate Parts
20 IV, V, VI, and VII of Chapter 15 of Title 37 of the Louisiana Revised Statutes of 1950 as
21 Parts V, VI, VII, and VIII respectively.

22 Section 5. This Act shall become effective upon signature by the governor or, if not
23 signed by the governor, upon expiration of the time for bills to become law without signature
24 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If
25 vetoed by the governor and subsequently approved by the legislature, this Act shall become
26 effective on the day following such approval.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HB 573 Original

2015 Regular Session

Hazel

Abstract: Establishes procedures for the investigation and adjudication of alleged violations by the La. State Board of Medical Examiners (LSBME).

Present law provides that three members of the board constitute a quorum for all purposes including the holding of examinations, the granting of licenses and permits, rulemaking and, except as provided in present law, the adjudication functions of the LSBME.

Proposed law raises the quorum to four.

Proposed law requires the LSBME, for all matters other than those requiring the exercise of adjudicatory functions, to act only with the concurrence of a majority of the members of the LSBME present and voting. Further requires, in any matter in which the LSBME is required to vote to take any adjudicative action against a licensee, the adjudicative action to only be taken upon the concurrence of no less than four members of the board.

Proposed law prohibits the LSBME from expending any funds, directly or indirectly, on any activity or function which is sponsored, supported, or in any manner associated with, in whole or in part, the Federation of State Medical Boards.

Present law provides for the duties and powers of the LSBME.

Proposed law retains present law and adds the following duties and powers:

- (1) Appoint or designate an examining committee of physicians possessing appropriate qualifications to conduct physical and mental examinations on a physician, to otherwise inquire into the physician's fitness and ability to practice medicine with reasonable skill and safety to patients, and to submit advisory reports and recommendations to the board as to whether such physician's fitness and ability is affected by mental illness or deficiency or physical illness, including but not limited to deterioration through the aging process or the loss of motor skills or excessive use or abuse of drugs, including alcohol.
- (2) Appoint or designate physicians to serve on expert physician review panels for the purpose of assisting the board with complaints and investigations relating to medical competency by acting as expert physician reviewers.
- (3) Appoint a member of the board to act as the supervising member for each complaint received by the board.

Present law provides that any person applying for or accepting a license or permit to practice medicine or midwifery in this state is deemed to have given his consent to submit to physical or mental examinations when directed to do so by the board and to waive all objections as to admissibility or disclosure of findings, reports, or recommendations pertaining thereto.

Proposed law retains present law but limits the LSBME's power to require a licensee to submit to a physical or mental examination to a situation where both of the following conditions are met:

- (1) The board is acting upon a written complaint.

- (2) The board by an affirmative action makes a finding that it has reasonable cause to believe that the licensee's fitness and ability to practice medicine with reasonable skill and safety may be impaired by mental illness or deficiency or physical illness, including but not limited to deterioration through the aging process or the loss of motor skills or excessive use or abuse of drugs, including alcohol.

Present law authorizes the LSBME to refuse to issue, or suspend or revoke any license or permit, or impose probationary or other restrictions on any license or permit for the certain causes.

Proposed law retains present law but clarifies the following causes: professional incompetency, medical incompetency, and unprofessional conduct.

Present law authorizes the LSBME, as part of a decision, consent order, or other agreed order, require a license or permit holder or an applicant to pay all costs of the proceedings, and to pay a fine not to exceed the sum of \$5,000.

Proposed law limits the authorization to adverse decisions.

Present law provides that the LSBME's disposition of an adjudication proceeding by consent order is not a public record, but the board may disclose the disposition.

Proposed law removes the authorization to disclose a consent order.

Present law provides that no judicial order staying or enjoining the effectiveness or enforcement of a final decision or order of the LSBME in an adjudication proceeding shall be effective, or be issued to be effective beyond the earlier of:

- (1) 120 days from the date on which the LSBME's decision or order was rendered.
- (2) The date on which the court enters judgment in a proceeding for judicial review of the LSBME's decision or order.

Proposed law repeals present law.

Present law provides that, no judicial order staying, enjoining, or continuing an adjudication proceeding before, or a preliminary, procedural, or intermediate decision, ruling, order, or action of, the LSBME shall be effective prior to the exhaustion of all administrative remedies and issuance of a final decision or order by the LSBME.

Proposed law repeals present law.

Proposed law authorizes the summary suspension of a license if the LSBME finds that the public health, safety, and welfare requires emergency action and a finding to that effect is incorporated in its order. Requires a hearing on the summary suspension not more than 60 days from the date of suspension, unless the licensee waives convening a hearing during the period. Further authorizes the LSBME, as an alternative to a formal adjudicatory hearing, to offer to settle the matter through the use of an informal settlement conference.

Proposed law provides that an initial complaint may be made by any person or by the LSBME on its own initiative but prohibits the LSBME from accepting an anonymous complaint. Further requires the initial complaint to be made in writing and dated and provides for the minimum required content for the complaint.

Proposed law provides that the identity of the complainant, as well as the complaint itself, is confidential and not considered a public record. Further provides for the waiver of confidentiality.

Proposed law prohibits the LSBME acting on a complaint alleging medical incompetency if the complaint involves care provided more than three years before the date on which the complaint is received by the board. Further provides an exception for the limited purpose of determining whether there is a pattern of violations.

Proposed law provides that there is no time limitations for the filing of complaints in relation to any other violation including action by another state licensing entity or criminal conduct.

Proposed law requires all complaints and investigations of alleged violations to be supervised by a board member. Further requires members of the LSBME to serve two months out of every calendar year as the supervising member.

Proposed law prohibits a board member serving as a supervising member from participating in the adjudication of a case in which the member served as the supervising member and authorizes the president of the LSBME to designate another member of the board to act as the supervising member in any case where the originally appointed supervising member has an apparent conflict of interest which would preclude him from fairly supervising the investigation.

Proposed law provides for preliminary investigations once a complaint has been received by the LSBME including the required notice to the licensee, time limits for the investigation, and the collection of evidence.

Proposed law requires the dismissal of complaints which are not regulated under the jurisdiction of the LSBME or that lack probable cause to justify further investigation.

Proposed law provides for resolution of complaints and authorizes the supervising member to either refer the investigation for an informal settlement conference or file a formal written administrative complaint to initiate a formal adjudication proceeding before the LSBME.

Proposed law provides for dismissal of the complaint if the evidence gathered is insufficient to support the allegation that a violation has occurred and requires notice to be sent to the complainant and licensee.

Proposed law provides for formal investigations including the time limit for completing the investigation and the extension of time for investigation upon good cause shown.

Proposed law requires complaints alleging medical incompetency to be reviewed by an expert physician review panel consisting of physicians who practice in the same specialty as the physician who is the subject of the complaint or in another specialty that is similar to the physician's specialty.

Proposed law provides for the confidentiality of each complaint, adverse report, investigation file, other investigation report, and other investigative information in the possession of or received or gathered by the LSBME relating to a licensee, an application for license, or a criminal investigation or proceeding. Further provides for the limited disclosure of investigative information in the possession of the LSBME relating to discipline of a licensee.

Proposed law provides for informal settlement conferences including the time limit for holding the conference, the required notice to the licensee, rescheduling of the conference, mandatory attendees, presentation of information by the LSBME, and permitted actions by the licensee.

Proposed law authorizes the supervising member, no later than seven days from the date of the conference, to recommend that the investigation be closed and the complaint dismissed, attempt to mediate the disputed matter and make a recommendation for an informal

disposition of the matter, or file a formal written administrative complaint with the LSBME to initiate a formal adjudication.

Proposed law provides for the confidentiality and limited disclosure of informal dispositions.

Proposed law provides for a formal administrative hearing before the LSBME including the filing of a formal administrative complaint, the require notice and service thereof, the amendment of a formal administrative complaint previously filed, the licensee's opportunity to respond to the complaint or amend a response, representation by counsel, pleadings and motions, discovery by the LSBME and the licensee, subpoenas, and prehearing conferences.

Proposed law provides for the conduct of the hearing including the confidentiality of the proceeding, the right to present or object to evidence, stipulations, and findings of fact.

Proposed law provides for the issuance of decisions after a formal administrative hearing by requiring it to be supported by a preponderance of the evidence, be in writing if adverse to the licensee, include findings of fact and conclusions of law, and be signed by the presiding officer of the hearing panel on behalf and in the name of the LSBME.

Proposed law provides for service of the final decision upon the licensee and authorizes the disclosure to the public.

Proposed law provides that decisions by the LSBME in a case of adjudication are subject to rehearing, reopening, or reconsideration pursuant to a written motion filed no later than 10 days after service of the decision on the licensee if the decision is clearly contrary to the law and the evidence, the licensee has discovered evidence which he could not have obtained before or during the hearing, or there exist other good grounds for further consideration of the issues and the evidence in the public interest.

Proposed law establishes expert physician review panels to assist with complaints and investigations relating to medical competency by acting as expert physician reviewers. Further provides for the qualifications of expert physician reviewers and selection for and terms of service on a panel.

Proposed law sets forth the procedures for a review by an expert physician and the issuing of a reviewer report. Further provides for the confidentiality of the reviewer report.

Proposed law (R.S. 44:4.1) adds references to the confidentiality provisions in proposed law to the Public Records Law.

Effective upon signature of governor or lapse of time for gubernatorial action.

(Amends R.S. 37:1267, 1269, 1270(A)(7) and (8), 1278(A) and (B), 1285(A)(12)-(14), (C)(1), (E), (F), and (G), and R.S. 44:4.1(B)(23); Adds R.S. 37:1270(A)(9) through (11) and 1345.1 through 1345.78; Repeals R.S. 37:1270(B)(5), 1285(H) and (I), and 1285.1)