

2015 Regular Session

# ACT No. 441

HOUSE BILL NO. 843 (Substitute for House Bill No. 573 by Representative Hazel)

BY REPRESENTATIVES HAZEL, CARTER, CONNICK, IVEY, JACKSON, SIMON,  
AND STOKES

1 AN ACT

2 To amend and reenact R.S. 37:1267 and 1285(A)(introductory paragraph) and (12) through  
3 (14) and to enact R.S. 37:1285.2, relative to the powers and duties of the Louisiana  
4 State Board of Medical Examiners; to provide for a quorum; to define professional  
5 and medical incompetency and unprofessional conduct; to require promulgation of  
6 the procedures to be used for complaints, investigations, and adjudications; to require  
7 rulemaking progress reports; to provide for an effective date; and to provide for  
8 related matters.

9 Be it enacted by the Legislature of Louisiana:

10 Section 1. R.S. 37:1267 and 1285(A)(introductory paragraph) and (12) through (14)  
11 are hereby amended and reenacted and R.S. 37:1285.2 is hereby enacted to read as follows:

12 §1267. Quorum

13 ~~Three~~ Four members of the board constitute a quorum for all purposes  
14 including the holding of examinations, the granting of licenses and permits,  
15 rulemaking and, except as provided in R.S. 37:1285.1, the adjudication functions of  
16 the board.

17 \* \* \*

18 §1285. Causes for nonissuance; suspension; revocation; or the imposition of  
19 restrictions; fines; reinstatement; publication of action; stays

20 A. The board may refuse to issue, or may suspend or revoke any license or  
21 permit, or impose probationary or other restrictions on any license or permit issued  
22 ~~under~~ pursuant to this Part for the following causes:

23 \* \* \*

24 (12) ~~Professional or medical incompetency;~~ An inability to practice  
25 medicine with reasonable skill or safety due to mental illness or deficiency, including

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

3 (13) Unprofessional conduct, including but not limited to, conduct  
4 manifested as sexual misconduct, disruptive behavior, failing to cooperate with the  
5 board, failing to maintain independent medical judgment, improperly delegating or  
6 supervising, exercising undue influence, enabling the unauthorized practice of  
7 medicine, practicing or enabling practice by an impaired provider, failing to practice  
8 within the scope of education, training, and experience, intentionally falsifying or  
9 fraudulently altering records, or failing to create or maintain medical records.

10 (14) ~~Continuing~~ Medical incompetency, including but not limited to,  
11 incompetency manifested by continuing or recurring medical practice which fails to  
12 satisfy the prevailing and usually accepted standards of medical practice in this  
13 state;

14 \* \* \*

15 §1285.2. Investigations and adjudications; staff; complaints; board procedure;  
16 rulemaking authority

17 A. Any staff member of the board, except the executive director, may be  
18 appointed to act as the lead investigator for any complaint regarding a physician  
19 received by the board or any investigation regarding a physician initiated by the  
20 board upon its own motion.

21 B. The board shall adopt rules, in accordance with the Administrative  
22 Procedure Act, to provide for the investigation of complaints against physicians and  
23 adjudication of alleged violations by physicians of any provision of this Chapter. The  
24 rules shall satisfy the minimum due process requirements of the Constitution of  
25 Louisiana and the Constitution of the United States of America and shall address, at  
26 a minimum, all of the following:

27 (1) Notice of the investigation including a brief summary of the facts  
28 constituting the alleged violation to be provided to the physician no later than five  
29 business days after the board's formal investigation is initiated by a majority vote of  
30 the board members present and voting.

1                   (2) Time limits for initiating and completing a complaint investigation and  
2                   for scheduling an adjudicatory hearing.

3                   (3) Informal settlements and consent decrees.

4                   (4) Notice of any adjudicatory hearing to be provided to the physician.

5                   (5) Pleadings and other motions.

6                   (6) Discovery.

7                   (7) Subpoenas and subpoenas duces tecum.

8                   (8) Representation of the physician by counsel of choice.

9                   (9) Prehearing conferences.

10                  (10) Procedure for conducting the adjudicatory hearing including  
11                  examination of witnesses and the placement of evidence into the record.

12                  (11) Notice of the final decision of the board to be provided to the physician.

13                  C. Any final decision of the board shall be supported by a preponderance of  
14                  the evidence presented at the adjudicatory hearing.

15                  D. The board shall adopt the rules required by this Section no later than  
16                  January 1, 2016. Beginning July 1, 2015, the board shall report monthly on the  
17                  progress of the promulgation of the required rules to the House and Senate  
18                  committees on health and welfare.

19                  Section 2. The provisions of this Act shall have prospective application only and  
20 shall not apply to any investigation pending on the effective date of this Act.

21                  Section 3. This Act shall become effective upon signature by the governor or, if not  
22 signed by the governor, upon expiration of the time for bills to become law without signature  
23 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If  
24 vetoed by the governor and subsequently approved by the legislature, this Act shall become  
25 effective on the day following such approval.

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SPEAKER OF THE HOUSE OF REPRESENTATIVES

\_\_\_\_\_  
PRESIDENT OF THE SENATE

\_\_\_\_\_  
GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: \_\_\_\_\_