

RÉSUMÉ DIGEST

ACT 599 (HB 778)

2018 Regular Session

Jackson

Existing law creates the La. State Board of Medical Examiners (hereafter, the "board") and provides for its powers and duties with respect to regulation of the practice of medicine. New law revises existing law pertaining to the board's membership, quorum, and procedures for investigating and disciplining physicians; otherwise, retains existing law.

Prior law provided that the board consist of seven members. New law increases the number of members of the board from seven to ten by adding the following members:

- (1) One member from a list submitted by the LSU Health Sciences Center at Shreveport.
- (2) One member from a list submitted by the La. Hospital Association.
- (3) One consumer member who shall be a full voting member of the board.

New law requires that at least every other board member appointed from the lists of names submitted by the LSU Health Sciences Center at New Orleans, the LSU Health Sciences Center at Shreveport, and the La. Hospital Association be a minority appointee. Stipulates that nothing in new law shall preclude consecutive minority appointments.

New law provides that the consumer member shall possess all applicable qualifications for consumer members established in existing law, and shall have all of the rights and privileges conferred by existing law.

New law increases the number of board members constituting a quorum from four to six.

Prior law provided that any staff member of the board except the executive director may be appointed to act as the lead investigator for any complaint regarding a physician received by the board or any investigation regarding a physician initiated by the board upon its own motion. New law repeals prior law.

New law requires the board to appoint a director of investigations, who shall be a La.-licensed physician and has engaged in the active practice of medicine for at least five years, to act as the lead investigator for any complaint regarding a physician received by the board or any investigation regarding a physician initiated by the board upon its own motion in accordance with existing law. Provides that the director of investigations shall serve at the pleasure of the board and be answerable directly to the board. Prohibits the director of investigations from concurrently serving as the executive director of the board.

New law stipulates that the board shall only initiate a preliminary review to determine if cause exists to warrant formal investigation based upon one or more of the following causes:

- (1) A complaint received from a person other than an employee of the board.
- (2) Any report from a law enforcement agency, federal or state regulatory agency, reporting authority verified by the board chairman through electronic means or other means, or physician health program or other treatment program that contains information that supports an indication that a possible violation of existing law, or any rule promulgated pursuant to existing law, may have occurred.
- (3) The duly adopted motion in an executive session of the board by a two-thirds vote of the members of the board making an affirmative finding that sufficient evidence exists to conclude that a violation of existing law, or any rule promulgated pursuant to existing law, may have occurred.

New law stipulates that the duration of any preliminary review of a licensee initiated in accordance with new law shall be no greater than 90 days unless extended by the board. Provides that the board, in conducting such a preliminary review, may obtain all files and records related to the complaint and to the complainant, and may obtain no more than 20 additional files or records in connection with the review unless authorized by the board.

New law requires that prior to the board conducting any site visit or requesting medical records from an individual licensed by the board who is not subject to an active investigation, the executive director of the board shall request approval of the board through a duly adopted motion by two-thirds vote of the board, meeting in executive session, to conduct the site visit or records request. Requires the executive director to include all of the following in the request to conduct the site visit or records request:

- (1) The basis upon which the site visit or records request is warranted.
- (2) The number of records to be requested, if applicable.
- (3) The date, time, and anticipated length of the proposed site visit.
- (4) The dates of any previous site visits.

New law provides that the process established in new law by which the board may conduct site visits or request medical records from a licensee who is not subject to an active investigation shall apply to practice performance reviews of physicians practicing telemedicine.

New law prohibits the board from disclosing the identity of any individual included in the request to conduct the site visit or records request.

New law requires the board, in connection with the notice of filing of a formal administrative complaint against a physician, to notify the physician that he has the right to face any complainant at the administrative hearing unless the independent counsel rules that the complainant may remain anonymous. Provides that prior to issuing any such ruling, the independent counsel shall review all evidence related to the complaint submitted by the complainant and the physician. Stipulates, however, that the board, through a duly adopted motion by two-thirds vote of the board, may overrule the ruling of the independent counsel relative to complainant anonymity.

New law requires that prior to offering a consent order to a person licensed by the board, the board shall make available to the person all files and records which pertain to the case against him before the board, and which are not required by law to remain confidential or which are not otherwise privileged.

New law authorizes the board to object to making particular files and records available to a respondent as provided in new law. Provides that if the board objects to disclosing any files or records to a respondent, then the independent counsel shall review the grounds for the objection and may overrule the objection. Provides further for the following procedure:

- (1) If the independent counsel overrules the objection, then the board shall disclose those files and records to the respondent as provided in new law.
- (2) If the independent counsel does not overrule the objection, then the board shall not be required to disclose those files and records to the respondent as provided in new law.

New law provides that upon filing of a formal administrative complaint against a physician, all files of the board regarding the complaint which are not required by law to remain confidential or which are not otherwise privileged shall be made available to the physician through full discovery and shall be disclosed to the physician upon request. Provides that the physician may issue interrogatories or discovery requests to the investigator in the case before the board, and the investigator shall be compelled to respond as provided for in existing law, C.C.P. Art. 1 et seq. (Code of Civil Procedure). Provides further that any potential exculpatory evidence shall be disclosed to the physician whether or not requested and whether or not reduced to recorded or documentary form.

New law stipulates that all information, documents, and records gathered in an investigation of a physician shall be noted in the record or file of the case, except that the board may object to including particular material in the record or file of the case. Provides that if the board objects to including any material in the record or file of the case, then the independent

counsel shall review the grounds for the objection and may overrule the objection. Provides further for the following procedure:

- (1) If the independent counsel overrules the objection, then the board shall include the material subject to the overruled objection in the record or file of the case.
- (2) If the independent counsel does not overrule the objection, then the board shall not be required to include the material subject to the objection in the record or file of the case.

New law requires that if the board intends to use records from any prior investigation of a physician in the case against the physician before the board, then the board shall notify the physician and his counsel of this intention, and the records shall be deemed to be records of the case before the board and subject to all applicable provisions of new law relative to disclosure and discovery.

New law requires that on or before March 1 annually, the board shall submit a report to the legislative committees on health and welfare which encompasses, at minimum, all of the following information from the prior calendar year for each type of healthcare professional licensed by the board, delineated by profession type:

- (1) The number of preliminary reviews conducted in accordance with new law.
- (2) The number of complaints that the board received.
- (3) The number of formal investigations that the board initiated.
- (4) The number of consent decrees that licensees of the board entered into and other disciplinary actions that the board took.

Effective August 1, 2018.

(Amends R.S. 37:1263(A)-(C), 1267, and 1285.2(A); Adds R.S. 37:1270(A)(9) and 1285.2(E)-(G))