HLS 18RS-1673 REENGROSSED

2018 Regular Session

HOUSE BILL NO. 778

1

BY REPRESENTATIVE JACKSON

BOARDS/COMMISSIONS: Provides relative to investigations of physicians conducted by the La. State Board of Medical Examiners

AN ACT

2	To amend and reenact R.S. 37:1263 and 1285.2(A) and to enact R.S. 37:1270(A)(9), relative
3	to regulation of the practice of medicine; to provide for the membership, powers, and
4	duties of the Louisiana State Board of Medical Examiners; to provide requirements
5	relative to investigations of physicians by the Louisiana State Board of Medical
6	Examiners; to establish restrictions relative to such investigations; and to provide for
7	related matters.
8	Be it enacted by the Legislature of Louisiana:
9	Section 1. R.S. 37:1263 and 1285.2(A) are hereby amended and reenacted and R.S.
0	37:1270(A)(9) is hereby enacted to read as follows:
1	§1263. Louisiana State Board of Medical Examiners; membership; qualifications;
12	appointment; removal; terms
13	A. The Louisiana State Board of Medical Examiners is hereby created within
4	the Louisiana Department of Health and is subject to the provisions of R.S. 36:803.
15	B. Beginning on January 1, 2017, the The board shall consist of seven nine
16	voting members, all appointed by the governor and subject to Senate confirmation
17	as follows:
18	(1) Two members from a list of names submitted by the Louisiana State
19	Medical Society. One of the members so appointed shall practice in a parish or
20	municipality with a population of less than twenty thousand people.

## Page 1 of 6

CODING: Words in struck through type are deletions from existing law; words <u>underscored</u> are additions.

1	(2) One member from a list of names submitted by the Louisiana State
2	University Health Sciences Center at New Orleans and the Louisiana State
3	University Health Sciences Center at Shreveport.
4	(3) One member from a list of names submitted by the Tulane Medical
5	School.
6	(4) Two members from a list submitted by the Louisiana Medical
7	Association.
8	(5) One member from a list submitted by the Louisiana Academy of Family
9	Practice Physicians.
10	(6) One member from a list submitted by the Louisiana Hospital Association.
11	(7) One consumer member. The consumer shall be a full voting member of
12	the board with all rights and privileges conferred on board members, except that the
13	consumer member shall not participate in any adverse licensure action initiated by
14	the board.
15	C. Each physician member of the board shall, at the time of appointment,
16	meet all of the following qualifications:
17	(1) Be He has been a resident of this state for not less than six months.
18	(2) Be He is currently licensed and in good standing to engage in the practice
19	of medicine in this state.
20	(3) Be He is actively engaged in the practice of medicine in this state.
21	(4) Have He has had five years of experience in the practice of medicine in
22	this state after licensure.
23	(5) Have He has not been convicted of a felony.
24	(6) Have He has not been placed on probation by the board.
25	D. The consumer member shall, at the time of his appointment, meet all of
26	the following qualifications:
27	(1) He has been a resident of this state for not less than six months.
28	(2) He has attained the age of majority.

1	(3) He has never been licensed by the board, nor shall he have a spouse who
2	has ever been licensed by the board.
3	(4) He has never been convicted of a felony.
4	(5) He does not have, nor has he ever had, a material financial interest in any
5	healthcare profession licensed by the board.
6	$\underline{E.}(1)$ The governor shall appoint the members of the board in accordance
7	with other provisions of this Section and the state constitution.
8	(2) When a vacancy occurs in the membership of the board for any reason,
9	including expiration of term, removal, resignation, death, disability, or
10	disqualification, the vacancy shall be filled in the same manner as the original
11	appointment.
12	(3) Each member of the board appointed to fill a vacancy occurring by death,
13	resignation, inability to act, or other cause, shall serve for the remainder of the term
14	of his predecessor.
15	E: $F$ :(1) A board member may be removed upon one or more of the
16	following grounds:
17	(a) The refusal or inability for any reason to perform his duties as a member
18	of the board in an efficient, responsible, and professional manner.
19	(b) The misuse of office to obtain personal, pecuniary, or material gain or
20	advantage for himself or another through such office.
21	(c) The violation of the laws governing the practice of medicine.
22	(2) Removal of a member of the board shall be in accordance with the
23	Administrative Procedure Act or other applicable laws.
24	(3) The governor may remove any member of the board for good cause.
25	F. G. Except as provided in Paragraph $\frac{(D)(3)}{(E)(3)}$ of this Section, members
26	of the board shall be appointed for a term of four years, beginning on July first of the
27	year in which the appointment is made. No member shall serve more than three
28	consecutive terms.
29	* * *

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§1270. Duties and powers of the board

2	A. The board shall:
3	* * *
4	(9) Appoint a director of investigations to act as the lead investigator for any
5	complaint regarding a physician received by the board or any investigation regarding
6	a physician initiated by the board upon its own motion in accordance with R.S.
7	37:1285.2(A). The director of investigations shall serve at the pleasure of the board
8	and be answerable directly to the board. The director of investigations shall be
9	prohibited from concurrently serving as the executive director of the board. Any
10	person appointed by the board to serve as director of investigations shall be a
11	Louisiana-licensed physician who maintains board certification and has engaged in
12	the active practice of medicine for at least five years.
13	* * *
14	§1285.2. Investigations and adjudications; staff; complaints; board procedure;
15	rulemaking authority
16	A. Any staff member of the board, except the executive director, may be
17	appointed to act as the lead investigator for any complaint regarding a physician
18	received by the board or any investigation regarding a physician initiated by the
19	board upon its own motion. The board shall initiate an investigation only upon one
20	or more or the following:
21	(1) A complaint received from a person other than an employee of the board.
22	(2) Any report from a law enforcement or federal or state regulatory agency
23	that contains information that supports a conclusion that a violation of this Part, or
24	any rule promulgated pursuant to this Part, may have occurred.
25	(3) The duly adopted motion in an executive session of the board by a
26	two-thirds vote of the members of the board making an affirmative finding that
27	sufficient evidence exists to conclude that a violation of this Part, or any rule
28	promulgated pursuant to this Part, may have occurred.
29	* * *

## **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 778 Reengrossed

2018 Regular Session

Jackson

**Abstract:** Provides for the membership, powers, and duties of the La. State Board of Medical Examiners and its functions relative to investigations of physicians.

<u>Present law</u> creates the seven-member La. State Board of Medical Examiners (hereafter, the "board"). Provides, generally, for powers and duties of the board with respect to regulation of the practice of medicine in this state.

<u>Proposed law</u> increases the number of members of the board  $\underline{\text{from}}$  seven  $\underline{\text{to}}$  nine by adding to the board the following members:

- (1) One member from a list submitted by the La. Hospital Association.
- One consumer member who shall be a full voting member, except that he shall not participate in any adverse licensure action initiated by the board.

<u>Proposed law</u> establishes the qualifications of the consumer member who is to be added to the board's membership.

<u>Present law</u> provides that any staff member of the La. State Board of Medical Examiners, 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. <u>Proposed law</u> repeals <u>present law</u>.

<u>Proposed law</u> requires the board to appoint a director of investigations, who shall be a La.-licensed physician and who 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 <u>present law</u>. 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.

<u>Proposed law</u> stipulates that the board shall only initiate an 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 or federal or state regulatory agency that contains information that supports a conclusion that a violation of <u>present law</u>, or any rule promulgated pursuant to present 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 <u>present law</u>, or any rule promulgated pursuant to <u>present law</u>, may have occurred.

(Amends R.S. 37:1263 and 1285.2(A); Adds R.S. 37:1270(A)(9))

## Summary of Amendments Adopted by House

The Committee Amendments Proposed by <u>House Committee on Health and Welfare</u> to the original bill:

- 1. Delete <u>proposed law</u> requiring that the lead investigator for any complaint regarding a physician received by the La. State Board of Medical Examiners (hereafter, the "board"), or any investigation regarding a physician initiated by the board upon its own motion, shall be an attorney.
- 2. Increase the number of members of the board <u>from</u> seven <u>to</u> nine by adding to the board the following members:
  - a. One member from a list submitted by the La. Hospital Association.
  - b. One consumer member who shall be a full voting member, except that he shall not participate in any adverse licensure action initiated by the board.
- 3. Establish the qualifications of the consumer member who is to be added to the board's membership.
- 4. Require 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. Provide that the director of investigations shall serve at the pleasure of the board and be answerable directly to the board. Prohibit the director of investigations from concurrently serving as the executive director of the board.
- 5. Require that the board shall only initiate an investigation based upon a complaint received from a person other than an employee of the board, or upon the duly adopted motion of the board making a finding that probable cause exists to conclude that a violation of any provision of present law or present administrative code may have occurred.

## The House Floor Amendments to the engrossed bill:

- 1. Delete <u>proposed law</u> establishing causes for which the La. State Board of Medical Examiners may initiate an investigation and provide instead that such causes shall include the following, exclusively:
  - a. A complaint received from a person other than an employee of the board.
  - b. Any report from a law enforcement or federal or state regulatory agency that contains information that supports a conclusion that a violation of <u>present law</u>, or any rule promulgated pursuant to <u>present law</u>, may have occurred.
  - c. 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 present law, or any rule promulgated pursuant to present law, may have occurred.
- 2. Make technical changes.