
DIGEST

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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 required 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)