

2018 Regular Session

# ACT No. 599

HOUSE BILL NO. 778

BY REPRESENTATIVES JACKSON, BAGNERIS, TERRY BROWN, STEVE CARTER, CHANEY, COX, FALCONER, FOIL, HAZEL, HOWARD, JORDAN, LYONS, MARCELLE, NORTON, SMITH, AND STAGNI AND SENATOR THOMPSON

1 AN ACT

2 To amend and reenact R.S. 37:1263(A) through (C), 1267, and 1285.2(A) and (D) and to  
3 enact R.S. 37:1270(A)(9) and 1285.2(E) through (G), relative to regulation of the  
4 practice of medicine; to provide for the membership, powers, and duties of the  
5 Louisiana State Board of Medical Examiners; to provide requirements relative to  
6 investigations of physicians by the Louisiana State Board of Medical Examiners; to  
7 establish restrictions relative to such investigations; and to provide for related  
8 matters.

9 Be it enacted by the Legislature of Louisiana:

10 Section 1. R.S. 37:1263(A) through (C), 1267, and 1285.2(A) and (D) are hereby  
11 amended and reenacted and R.S. 37:1270(A)(9) and 1285.2(E) through (G) are hereby  
12 enacted to read as follows:

13 §1263. Louisiana State Board of Medical Examiners; membership; qualifications;  
14 appointment; removal; terms

15 A. The Louisiana State Board of Medical Examiners is hereby created within  
16 the Louisiana Department of Health and is subject to the provisions of R.S. 36:803.

17 B. ~~Beginning on January 1, 2017, the~~ The board shall consist of ~~seven~~ ten  
18 voting members, all appointed by the governor and subject to Senate confirmation  
19 as follows:

1 (1) Two members from a list of names submitted by the Louisiana State  
2 Medical Society. One of the members so appointed shall practice in a parish or  
3 municipality with a population of less than twenty thousand people.

4 (2) One member from a list of names submitted by the Louisiana State  
5 University Health Sciences Center at New Orleans. At least every other member  
6 appointed from a list provided for in this Paragraph shall be a minority appointee.  
7 Nothing in this Paragraph shall preclude consecutive minority appointments from  
8 lists provided for in this Paragraph.

9 (3) One member from a list of names submitted by the Louisiana State  
10 University Health Sciences Center at Shreveport. At least every other member  
11 appointed from a list provided for in this Paragraph shall be a minority appointee.  
12 Nothing in this Paragraph shall preclude consecutive minority appointments from  
13 lists provided for in this Paragraph.

14 ~~(3)~~(4) One member from a list of names submitted by the Tulane Medical  
15 School.

16 ~~(4)~~(5) Two members from a list submitted by the Louisiana Medical  
17 Association.

18 ~~(5)~~(6) One member from a list submitted by the Louisiana Academy of  
19 Family Practice Physicians.

20 (7) One member from a list submitted by the Louisiana Hospital Association.  
21 At least every other member appointed from a list provided for in this Paragraph  
22 shall be a minority appointee. Nothing in this Paragraph shall preclude consecutive  
23 minority appointments from lists provided for in this Paragraph.

24 (8) One consumer member. At least every other consumer member  
25 appointed to the board shall be a minority appointee. Nothing in this Paragraph shall  
26 preclude consecutive minority appointments of consumer members. The consumer  
27 member of the board shall possess all of the qualifications for consumer members  
28 provided in this Section and shall have all of the rights and privileges conferred by  
29 this Section.

1 C. Each physician member of the board shall, at the time of appointment,  
2 meet all of the following qualifications:

3 (1) ~~Be~~ He has been a resident of this state for not less than six months.

4 (2) ~~Be~~ He is currently licensed and in good standing to engage in the practice  
5 of medicine in this state.

6 (3) ~~Be~~ He is actively engaged in the practice of medicine in this state.

7 (4) ~~Have~~ He has had five years of experience in the practice of medicine in  
8 this state after licensure.

9 (5) ~~Have~~ He has not been convicted of a felony.

10 (6) ~~Have~~ He has not been placed on probation by the board.

11 \* \* \*

12 §1267. Quorum

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

16 \* \* \*

17 §1270. Duties and powers of the board

18 A. The board shall:

19 \* \* \*

20 (9) Appoint a director of investigations to act as the lead investigator for any  
21 complaint regarding a physician received by the board or any investigation regarding  
22 a physician initiated by the board upon its own motion in accordance with R.S.  
23 37:1285.2(A). The director of investigations shall serve at the pleasure of the board  
24 and be answerable directly to the board. The director of investigations shall be  
25 prohibited from concurrently serving as the executive director of the board. Any  
26 person appointed by the board to serve as director of investigations shall be a  
27 Louisiana-licensed physician who maintains board certification and has engaged in  
28 the active practice of medicine for at least five years.

29 \* \* \*

1 §1285.2. Investigations and adjudications; staff; complaints; board procedure;  
2 rulemaking authority

3 A.(1) ~~Any staff member of the board, except the executive director, may be~~  
4 ~~appointed to act as the lead investigator for any complaint regarding a physician~~  
5 ~~received by the board or any investigation regarding a physician initiated by the~~  
6 ~~board upon its own motion.~~ The board shall initiate a preliminary review to  
7 determine if cause exists to warrant formal investigation only upon one or more of  
8 the following:

9 (a) A complaint received from a person other than an employee of the board.

10 (b) Any report from a law enforcement agency, federal or state regulatory  
11 agency, reporting authority verified by the board chairman through electronic means  
12 or other means, or physician health program or other treatment program that contains  
13 information that supports an indication that a possible violation of this Part, or any  
14 rule promulgated pursuant to this Part, may have occurred.

15 (c) The duly adopted motion in an executive session of the board by a  
16 two-thirds vote of the members of the board making an affirmative finding that  
17 sufficient evidence exists to conclude that a violation of this Part, or any rule  
18 promulgated pursuant to this Part, may have occurred.

19 (2) The duration of any preliminary review initiated in accordance with this  
20 Subsection shall be no greater than ninety days unless extended by the board.

21 (3) In a preliminary review initiated in accordance with this Subsection, the  
22 board may obtain all files and records related to the complaint and to the  
23 complainant, and may obtain no more than twenty additional files or records in  
24 connection with the review unless the board authorizes review of additional files or  
25 records.

26 \* \* \*

27 D.(1) ~~The board shall adopt the rules required by this Section no later than~~  
28 ~~January 1, 2016. Beginning July 1, 2015, the board shall report monthly on the~~  
29 ~~progress of the promulgation of the required rules to the House and Senate~~  
30 ~~committees on health and welfare.~~ Prior to the board's conducting any site visit or

1 requesting medical records from an individual licensed by the board who is not  
2 subject to an active investigation the executive director shall request approval of the  
3 board through a duly adopted motion by two-thirds vote of the board, meeting in  
4 executive session, to conduct the site visit or make the records request. The executive  
5 director shall include in the request for approval the basis upon which the site visit  
6 or records request is warranted, the number of records to be requested, if applicable,  
7 the date, time, and anticipated length of the proposed site visit, and the dates of any  
8 previous site visits. The board shall be prohibited from disclosing the identity of any  
9 individual included in the request for approval.

10 (2) The provisions of Paragraph (1) of this Subsection shall apply to practice  
11 performance reviews of physicians practicing telemedicine.

12 E.(1) Except as provided in Paragraph (2) of this Subsection, in connection  
13 with the notice of filing of a formal administrative complaint, the board shall notify  
14 the physician that he has the right to face any complainant at the administrative  
15 hearing unless the independent counsel rules that the complainant may remain  
16 anonymous. Prior to issuing any such ruling, the independent counsel shall review  
17 all evidence related to the complaint submitted by the complainant and the physician.

18 (2) The board, through a duly adopted motion by two-thirds vote of the  
19 board, may overrule the ruling of the independent counsel relative to complainant  
20 anonymity provided for in Paragraph (1) of this Subsection.

21 F.(1)(a) Subject to the conditions of Subparagraph (b) of this Paragraph,  
22 prior to offering a consent order to a person licensed by the board, the board shall  
23 make available to the person all files and records which pertain to the case against  
24 him before the board, and which are not required by law to remain confidential or  
25 which are not otherwise privileged.

26 (b) The board may object to making particular files and records available as  
27 provided in Subparagraph (a) of this Paragraph. If the board makes such an  
28 objection, then the independent counsel shall review the grounds for the objection  
29 to the disclosure and may overrule the objection. If the independent counsel  
30 overrules the objection, then the board shall disclose the files and records as provided

1 in Subparagraph (a) of this Paragraph. If the independent counsel does not overrule  
2 the objection, then the board shall not be required to disclose the files and records  
3 as provided in Subparagraph (a) of this Paragraph.

4 (2)(a) Upon filing of a formal administrative complaint against a physician,  
5 all files of the board regarding the complaint which are not required by law to remain  
6 confidential or which are not otherwise privileged shall be made available to the  
7 physician through full discovery and shall be disclosed to the physician upon request.  
8 The physician may issue interrogatories or discovery requests to the investigator in  
9 the case before the board, and the investigator shall be compelled to respond as  
10 provided for in the Code of Civil Procedure. Any potential exculpatory evidence  
11 shall be disclosed to the physician whether or not requested and whether or not  
12 reduced to recorded or documentary form.

13 (b) All relevant information, documents, and records gathered in an  
14 investigation of a physician shall be noted in the record or file of the case, except that  
15 the board may object to including particular material in the record or file of the case.  
16 If the board objects to including any material in the record or file of the case, then  
17 the independent counsel shall review the grounds for the objection and may overrule  
18 the objection. If the independent counsel overrules the objection, then the board  
19 shall include the material subject to the overruled objection in the record or file of  
20 the case. If the independent counsel does not overrule the objection, then the board  
21 shall not be required to include the material subject to the objection in the record or  
22 file of the case.

23 (3) If the board intends to use records from any prior investigation of a  
24 physician in the case against the physician before the board, then the board shall  
25 notify the physician and his counsel of this intention, and the records shall be  
26 deemed to be records of the case before the board and subject to all applicable  
27 provisions of this Subsection.

28 G. On or before March 1 annually, the board shall submit a report to the  
29 House and Senate committees on health and welfare which encompasses, at

1           minimum, all of the following information from the prior calendar year for each type  
2           of healthcare professional licensed by the board, delineated by profession type:

3                   (1) The number of preliminary reviews conducted in accordance with  
4           Subsection A of this Section.

5                   (2) The number of complaints that the board received.

6                   (3) The number of formal investigations that the board initiated.

7                   (4) The number of consent decrees that licensees of the board entered into  
8           and other disciplinary actions that the board took.

\_\_\_\_\_  
SPEAKER OF THE HOUSE OF REPRESENTATIVES

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

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

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