

2015 Regular Session

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

BY REPRESENTATIVES HAZEL, JACKSON, AND CONNICK

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

BOARDS/COMMISSIONS: Provides for the investigation and adjudication of violations by the Louisiana State Board of Medical Examiners

1 AN ACT

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

8 Be it enacted by the Legislature of Louisiana:

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

11 §1267. Quorum

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

16 \* \* \*

17 §1285. Causes for nonissuance; suspension; revocation; or the imposition of  
18 restrictions; fines; reinstatement; publication of action; stays

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

4   \*       \*       \*

5           (12) ~~Professional or medical incompetency;~~ An inability to practice  
6 medicine with reasonable skill or safety due to mental illness or deficiency, including  
7 but not limited to deterioration through the aging process or the loss of motor skills  
8 or excessive use or abuse of drugs, including alcohol.

9           (13) Unprofessional conduct; manifested as sexual misconduct, disruptive  
10 behavior, failing to cooperate with the board, failing to maintain independent  
11 medical judgment, improperly delegating or supervising, exercising undue influence,  
12 enabling the unauthorized practice of medicine, practicing or enabling practice by  
13 an impaired provider, failing to practice within the scope of education, training, and  
14 experience, or failure to create or maintain medical records.

15          (14) ~~Continuing~~ Medical incompetency, manifested by continuing or  
16 recurring medical practice which fails to satisfy the prevailing and usually accepted  
17 standards of medical practice in this state;

18   \*       \*       \*

19          §1285.2. Investigations and adjudications; staff; complaints; board procedure;  
20 rulemaking authority

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

25          B.(1) An initial complaint regarding a physician may be made by any person  
26 or by the board on its own initiative. Except for complaints involving egregious  
27 conduct, the initial complaint shall be made in writing, dated, and at a minimum  
28 include all of the following information:

29                  (a) The name and contact information of the complainant.

1                   (b) The name of the physician against whom the complaint is filed.

2                   (c) The time and place of the alleged violation.

3                   (d) If applicable, the name and birth date of the patient whom the physician  
4 has allegedly harmed.

5                   (2) Except in cases of egregious conduct, the board shall not do either of the  
6 following:

7                   (a) Take any action upon receipt of an anonymous complaint against a  
8 physician.

9                   (b) Initiate or take any action upon a complaint involving conduct by a  
10 physician that occurred more than three years from the date the complaint is received  
11 by the board.

12                   (3) For the purposes of this Section, "egregious conduct" means any action  
13 which threatens substantial or irreparable harm to other parties, including individuals  
14 for whom the physician may render medical services, or constitutes a threat to the  
15 health, safety, and welfare of the citizens of this state.

16                   C. The board shall promulgate rules, in accordance with the Administrative  
17 Procedure Act, to provide for the investigation of complaints against physicians and  
18 adjudication of alleged violations by physicians of any provision of this Chapter.  
19 The rules shall satisfy the minimum due process requirements of the constitution of  
20 this state and the Constitution of the United States and shall address, at a minimum,  
21 all of the following:

22                   (1) Notice of the investigation including a brief summary of the facts  
23 constituting the alleged violation to be provided to the physician no later than five  
24 business days after the investigation is initiated.

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

27                   (3) Informal settlements and consent decrees.

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

29                   (5) Pleadings and other motions.

- 1                   (6) Discovery.
- 2                   (7) Subpoenas and subpoenas duces tecum.
- 3                   (8) Representation of the physician by counsel of choice.
- 4                   (9) Prehearing conferences.
- 5                   (10) Procedure for conducting the adjudicatory hearing including  
6                   examination of witnesses and the placement of evidence into the record.
- 7                   (11) Notice of the final decision of the board to be provided to the physician.
- 8                   D. Any final decision of the board shall be supported by a preponderance of  
9                   the evidence presented at the adjudicatory hearing.
- 10                  E. The board shall promulgate the rules required by this Section no later than  
11                  January 1, 2016. Beginning July 1, 2015, the board shall report monthly on the  
12                  progress of the promulgation of the required rules to the House and Senate  
13                  committees on health and welfare.
- 14                  Section 2. This Act shall become effective upon signature by the governor or, if not  
15                  signed by the governor, upon expiration of the time for bills to become law without signature  
16                  by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If  
17                  vetoed by the governor and subsequently approved by the legislature, this Act shall become  
18                  effective on the day following such approval.

## 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 843 Original

2015 Regular Session

Hazel

**Abstract:** Requires the promulgation of 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.

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.

Proposed law authorizes any staff member of the board, except the executive director, 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.

Proposed law provides that an initial complaint may be made by any person or by the LSBME on its own initiative and requires the initial complaint, except in cases of egregious conduct, to be made in writing and dated and provides for the minimum required content for the complaint.

Proposed law prohibits the board, except in cases of egregious conduct, from taking any action upon receipt of an anonymous complaint or a complaint involving conduct that occurred more than three years from the date the complaint is received by the board.

Proposed law requires the board to promulgate rules to provide for the investigation of complaints against physicians and adjudication of alleged violations by physicians. Further requires the rules to satisfy the minimum due process requirements of the constitution of this state and the Constitution of the United States and to address certain issues such as notice, discovery, and hearing procedure.

Proposed law requires any final decision of the board to be supported by a preponderance of the evidence presented at the adjudicatory hearing.

Proposed law requires the board to promulgate the rules required by proposed law no later than Jan. 1, 2016. Further requires the board to report monthly on the progress of the promulgation of the required rules to the House and Senate committees on health and welfare.

Effective upon signature by the governor or lapse of time for gubernatorial action.

(Amends R.S. 37:1267 and 1285(A)(12)-(14); Adds R.S. 37:1285.2)