

2018 Regular Session

SENATE BILL NO. 286

BY SENATOR MILKOVICH

PHYSICIANS. Provides relative to the Physician's Bill of Rights. (8/1/18)

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AN ACT

To enact R.S. 37:1293, relative to the Physician's Bill of Rights; to provide for physician rights against improper investigations; to provide for prohibited acts by the Louisiana State Board of Medical Examiners; to provide for physician due process; to provide for retroactive application; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 37:1293 is hereby enacted to read as follows:

§1293. Physician's Bill of Rights

Notwithstanding any provision of law to the contrary, particularly the provisions of this Chapter regarding complaints, investigations, hearings, and the imposition of disciplinary action against a physician, each licensed physician in Louisiana shall be afforded the protections and rights set forth in this Section against infringement on his due process and fair hearing rights by the Louisiana State Board of Medical Examiners ("LSBME" or "board"). This Section and the rights herein enumerated shall be referred to as the "Physician's Bill of Rights".

(1) Notice of all complaints against a physician shall be provided to the

1 physician in writing within ten days of receipt of the complaint by the board.

2 The notice required in this Paragraph shall include the name of the person who
3 made the complaint against the physician, including the name of an LSBME
4 board or staff member if he is the individual that originated the complaint,
5 along with a detailed description of the complaint sufficient that the physician
6 has a clear understanding of the accusation being made against him and by
7 whom.

8 (2) In the course of an investigation the physician shall have the right to
9 be fairly investigated and if an investigator is alleged to be biased, hostile, or
10 unfair to the physician, the physician shall have the right to request that the
11 executive director remove and disqualify the investigator from further
12 participation in any investigation involving the physician. If the executive
13 director declines to recuse the investigator, the physician shall have a right to
14 make a written motion for recusal and an evidentiary hearing thereon.

15 (3) A board investigator shall have no communication regarding the
16 investigation with the executive director or any member of the board unless the
17 physician that is subject to the complaint is present.

18 (4) When the investigator believes that there is a basis for prosecution or
19 disciplinary action against the physician, his conclusion shall be issued in
20 writing, along with supporting evidence, as a recommendation to the executive
21 director. His recommendation shall not be provided to any member of the
22 board.

23 (5) The decision to proceed with prosecution or disciplinary action shall
24 be that of the executive director.

25 (6) Board members shall take an oath to refrain from any and all
26 communication with the investigator, witnesses, prosecutors, or the executive
27 director regarding a complaint. It shall be cause for dismissal of a case against
28 a physician if there are ex parte communications by any board member
29 regarding the facts of an investigation prior to or during a hearing on the

1 matter.

2 (7) If the board utilizes an independent judge or adjudicator for any
3 hearing, he shall be independently selected and shall have no prior information
4 regarding the nature of the complaint or economic bias to rule for or against the
5 physician or the board.

6 (8) Communication between the investigator, executive director, and
7 person prosecuting the case shall be on the record at a hearing or in written
8 form furnished to the physician contemporaneously with any information
9 provided to the executive director.

10 (9) All files of the board regarding a complaint, investigation, and
11 disciplinary action shall be made available to the physician through full
12 discovery and shall be disclosed to the physician upon request. The physician
13 may issue interrogatories or discovery requests to the investigator, executive
14 director, or any board member, who shall be compelled to respond as provided
15 for in the Code of Civil Procedure. The physician shall have the right to depose
16 the investigator or investigators of the complaint against him as provided for in
17 the Code of Civil Procedure, subject to objections thereunder. Any potentially
18 exculpatory evidence shall be disclosed to the physician whether or not
19 requested or whether or not reduced to recorded or documentary form.

20 (10) All relevant facts gathered in an investigation of a physician shall be
21 noted in the record or file of the case and no separate file shall be maintained.
22 Any violation of this Paragraph by an investigator shall be grounds for
23 dismissal or reversal of any adverse findings made and may be grounds for the
24 termination of the investigator.

25 (11) No anonymous hearsay testimony shall be allowed in any hearing.
26 The physician who is the subject of the action shall have the right to confront
27 witnesses. No hearsay evidence may be admitted by an identified witness except
28 that which is admissible pursuant to the Code of Civil Procedure and the Code
29 of Evidence regarding hearsay evidence. Admission of previous statements of

1 an absent witness or witnesses who are not available under a hearsay exception
2 shall not occur unless advance notice is given to the physician of the board's
3 intent to use the hearsay in order for the physician to have an opportunity to
4 rebut such statements.

5 (12) No order of suspension or termination of license shall be entered by
6 the board without at least ten days notice before the effective date of the order
7 and with an opportunity for the physician to be heard by the board or an
8 administrative law judge. Ex parte communication with an administrative law
9 judge shall be prohibited.

10 (13) If the board believes that the requirement of ten days notice set
11 forth in Paragraph (12) of this Section will endanger the public, the board may
12 seek an injunction pursuant to the Code of Civil Procedure for a temporary
13 restraining order with a post-restraining order hearing to be set immediately
14 thereafter.

15 (14) No inquiry or investigation of a physician may continue for more
16 than thirty days without notice issued to the physician to advise him that he is
17 still under investigation.

18 (15) Once an investigation or inquiry, preliminary or not, is initiated,
19 unless the case is closed, the physician shall have an absolute right to meet with
20 the investigator and the chief investigator who shall receive any rebuttal
21 information provided by the physician. Any rebuttal evidence so received shall
22 be noted by investigators and made available to the executive director prior to
23 any further action being taken. Any meeting between the physician and
24 investigator for the board shall be recorded. If the physician objects to the
25 outcome of the meeting, he shall have the right to meet with the executive
26 director and board attorney.

27 (16) The physician may be accompanied by an attorney at any meeting
28 with the investigator, chief investigator, executive director, or board member.
29 No board staff person or member shall refuse to meet with a physician because

1 **his attorney is present. The physician may also be represented by an attorney**
2 **at any hearing before the board.**

3 **(17) Physicians shall have a right to a prompt hearing on all disciplinary**
4 **complaints.**

5 **(18) Physicians shall have the right to a de novo review in district court**
6 **of any action taken by the board.**

7 **(19) No contract provision in any contract with the board shall require**
8 **a physician to waive any legal or constitutional rights to have access to the**
9 **courts, due process, discovery, evidence, or any right established pursuant to**
10 **this Section.**

11 **(20) Notwithstanding any provision of the law to the contrary, including**
12 **R.S. 49:992, a physician subject to a hearing before the Louisiana State Board**
13 **of Medical Examiners shall have the right to have his case transferred to the**
14 **Division of Administrative Law and have his case tried before an independent**
15 **administrative law judge.**

16 Section 2. The provisions of this Act shall apply to any investigation that has
17 commenced prior to the effective date of the Act, continues after the effective date of the
18 Act, and to any hearing conducted after the date of the Act based on an investigation that
19 concluded prior to the effective date of the Act, affording any physician subject to regulation
20 by the Louisiana State Board of Medical Examiners retroactive application.

The original instrument and the following digest, which constitutes no part
of the legislative instrument, were prepared by Christine Arbo Peck.

DIGEST

SB 286 Original 2018 Regular Session Milkovich

Proposed law enacts the Physician's Bill of Rights to provide for notice of complaints within 10 days of receipt by the Louisiana State Board of Medical Examiners (LSBME), including the name of the person making the complaint and identification of the LSBME staff member making the complaint if it originated with the board staff member. Proposed law requires the notice to the physician to include a detailed description of the complaint.

Proposed law provides an opportunity for the executive director to remove any investigator alleged to be biased, hostile, or unfair to the physician from an investigation upon request of the physician.

Proposed law prohibits the LSBME investigator from having communications with the board

or executive director unless the physician subject to the complaint is present.

Proposed law requires the LSBME investigator to make a written recommendation to the executive director regarding the outcome of the investigation. Proposed law requires the recommendation to be presented only to the executive director and not to any member of the board.

Proposed law provides that a case against a physician shall be dismissed if the investigator, witness, prosecutor, or executive director discuss the case with any board member regarding the facts of the case prior to or during a hearing.

Proposed law provides that all files of the LSBME regarding the complaint and investigation shall be available to the physician that is subject to the complaint through full discovery and that all relevant facts of the case shall be included in the record.

Proposed law prevents the use of anonymous hearsay testimony during a hearing and grants the physician the right to confront witnesses.

Proposed law requires LSBME to give 10 days notice to any physician before suspending or terminating his license. Proposed law allows LSBME to seek a temporary restraining order to terminate the physician's license sooner than the 10 days if LSBME believes the 10 days will be a threat to the public.

Proposed law requires LSBME to conclude all investigations within 30 days or give notice to the physician that the investigation is ongoing.

Proposed law grants a physician the right to an attorney, right to a prompt hearing on the matter, and right to a de novo review in district court of any action taken by the LSBME.

Proposed law prohibits LSBME from entering into any contract with a physician that requires the physician to waive any legal or constitutional rights.

Proposed law allows a physician to have his case.

Proposed law is retroactive to any investigation that commenced prior to the effective date of proposed law, any investigation that continues after the effective date of proposed law, and to any hearing that occurs after the effective date of proposed law based on an investigation that concluded prior to the effective date of proposed law.

Effective August 1, 2018.

(Adds R.S. 37:1293)