

CONFERENCE COMMITTEE REPORT

HB 778

2018 Regular Session

Jackson

May 17, 2018

To the Honorable Speaker and Members of the House of Representatives and the Honorable President and Members of the Senate.

Ladies and Gentlemen:

We, the conferees appointed to confer over the disagreement between the two houses concerning House Bill No. 778 by Representative Jackson, recommend the following concerning the Reengrossed bill:

1. That Senate Committee Amendments Nos. 1 through 3 by the Committee on Health and Welfare (#3209) be adopted.
2. That Senate Committee Amendments Nos. 4 and 5 by the Committee on Health and Welfare (#3209) be rejected.
3. That the set of Senate Floor Amendments by Senator Claitor (#3419) be rejected.
4. That Senate Floor Amendments Nos. 1 through 8 and 11 through 21 by Senator Morrell (#3973) be adopted.
5. That Senate Floor Amendments Nos. 9 and 10 by Senator Morrell (#3973) be rejected.
6. That the following amendments to the Reengrossed bill be adopted:

AMENDMENT NO. 1

In Senate Floor Amendment No. 1 by Senator Morrell (#3973) on page 1, line 2, after "insert" delete the remainder of the line and insert in lieu thereof ""(A) through (C), 1267,""

AMENDMENT NO. 2

On page 1, line 2, after "R.S. 37:1270(A)(9)" and before the comma "," insert "and 1285.2(E) through (G)"

AMENDMENT NO. 3

In Senate Floor Amendment No. 2 by Senator Morrell (#3973) on page 1, line 4, after "insert" delete the remainder of the line and insert in lieu thereof ""(A) through (C), 1267,""

AMENDMENT NO. 4

On page 1, at the beginning of line 10, change "37:1270(A)(9) is" to "37:1270(A)(9) and 1285.2(E) through (G) are"

AMENDMENT NO. 5

In Senate Floor Amendment No. 4 by Senator Morrell (#3973), on page 1, delete lines 10 and 11 in their entirety and insert in lieu thereof the following:

"At least every other member appointed from a list provided for in this Paragraph shall be a minority appointee. Nothing in this Paragraph shall preclude consecutive minority appointments from lists provided for in this Paragraph."

AMENDMENT NO. 6

In Senate Floor Amendment No. 4 by Senator Morrell (#3973) on page 1, line 13, after "Shreveport." delete the remainder of the line and delete lines 14 and 15 in their entirety and insert in lieu thereof the following:

"At least every other member appointed from a list provided for in this Paragraph shall be a minority appointee. Nothing in this Paragraph shall preclude consecutive minority appointments from lists provided for in this Paragraph."

AMENDMENT NO. 7

On page 2, at the end of line 10, insert the following:

"At least every other member appointed from a list provided for in this Paragraph shall be a minority appointee. Nothing in this Paragraph shall preclude consecutive minority appointments from lists provided for in this Paragraph."

AMENDMENT NO. 8

On page 2, line 11, after "consumer member." delete the remainder of the line and delete lines 12 through 14 in their entirety and insert in lieu thereof the following:

"At least every other consumer member appointed to the board shall be a minority appointee. Nothing in this Paragraph shall preclude consecutive minority appointments of consumer members. The consumer member of the board shall possess all of the qualifications for consumer members provided in this Section and shall have all of the rights and privileges conferred by this Section."

AMENDMENT NO. 9

On page 2, after line 24, delete the remainder of the page and on page 3 delete lines 1 through 28 in their entirety

AMENDMENT NO. 10

In Senate Floor Amendment No. 21 by Senator Morrell (#3973) on page 3, between lines 6 and 7, insert the following:

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

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

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

(b) The board may object to making particular files and records available as provided in Subparagraph (a) of this Paragraph. If the board makes such an objection, then the independent counsel shall review the grounds for the objection to the disclosure and may overrule the objection. If the independent counsel overrules the objection, then the board shall disclose the files and records as provided in Subparagraph (a) of this Paragraph. If the independent counsel does not overrule the

objection, then the board shall not be required to disclose the files and records as provided in Subparagraph (a) of this Paragraph.

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

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

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

AMENDMENT NO. 11

In Senate Floor Amendment No. 21 by Senator Morrell (#3973) on page 3, at the beginning of line 7, change "E." to "G."

Respectfully submitted,

Representative Katrina Jackson

Senator Fred Mills

Representative Frank A. Hoffmann

Senator Jean-Paul J. Morrell

Representative H. Bernard LeBas

Senator Jay Luneau

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)]

CONFERENCE COMMITTEE REPORT DIGEST

HB 778

2018 Regular Session

Jackson

Keyword and oneliner of the instrument as it left the House

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

Report adopts Senate amendments to:

1. Increase the number of members of the La. State Board of Medical Examiners, referred to hereafter as the "board", provided for in proposed law from nine to ten by adding to the board one member from a list of names submitted by the LSU Health Sciences Center at Shreveport.
2. Increase the number of board members constituting a quorum from four to six.
3. Delete the prohibition in proposed law on the consumer member of the board participating in any adverse licensure action initiated by the board.
4. Delete proposed law providing conditions for the board to initiate an investigation of a licensee and provides instead that the conditions are for the board to initiate a preliminary review of a licensee in order to determine if cause exists to warrant a formal investigation.
5. Add to proposed law authorizing the board to initiate an investigation of a licensee based upon a report from a law enforcement or federal or state regulatory agency supporting a conclusion that a violation of present law, or any rule promulgated pursuant to present law, may have occurred to authorize the board also to initiate an investigation based on any of the following:
 - a. Information from a reporting authority verified by the board chairman through electronic means or other means supporting an indication that a possible violation of present law, or any rule promulgated pursuant to present law, may have occurred.
 - b. Information from a physician health program or other treatment program supporting an indication that a possible violation of present law, or any rule promulgated pursuant to present law, may have occurred.
6. Stipulate that the duration of any preliminary review of a licensee initiated in accordance with proposed law shall be no greater than 90 days unless extended by the board.
7. Stipulate that in a preliminary review initiated in accordance with proposed law, the board may obtain all files and records related to the complaint and to the complainant, and may obtain no more than 20 additional files or records in connection with the review unless authorized by the board.
8. Require that prior to the board conducting any site visit or requesting medical records from an individual licensed by the board who is not subject to an active investigation,

the executive director of the board shall request approval of the board through a duly adopted motion by two-thirds vote of the board, meeting in executive session, to conduct the site visit or records request. Require further that the executive director shall include all of the following in the request to conduct the site visit or records request:

- a. The basis upon which the site visit or records request is warranted.
 - b. The number of records to be requested, if applicable.
 - c. The date, time, and anticipated length of the proposed site visit.
 - d. The dates of any previous site visits.
9. Provide that the process established in proposed law by which the board may conduct site visits or request medical records from a licensee who is not subject to an active investigation shall apply to practice performance reviews of physicians practicing telemedicine.
 10. Prohibit the board from disclosing the identity of any individual included in the request to conduct the site visit or records request.
 11. Require that on or before March 1 annually, the board shall submit a report to the legislative committees on health and welfare which encompasses, at minimum, all of the following information from the prior calendar year for each type of healthcare professional licensed by the board, delineated by profession type:
 - a. The number of preliminary reviews conducted in accordance with proposed law.
 - b. The number of complaints that the board received.
 - c. The number of formal investigations that the board initiated.
 - d. The number of consent decrees that licensees of the board entered into and other disciplinary actions that the board took.

Report rejects Senate amendments which would have:

1. Required that the board members appointed from the lists of names submitted by the LSU Health Sciences Center at New Orleans, the LSU Health Sciences Center at Shreveport, and the La. Hospital Association be minority appointments in alternate appointed terms.
2. Provided relative to rights and privileges of the consumer member of the board.

Report amends the bill to:

1. Require that at least every other board member appointed from the lists of names submitted by the LSU Health Sciences Center at New Orleans, the LSU Health Sciences Center at Shreveport, and the La. Hospital Association be a minority appointee, and that at least every other consumer member of the board be a minority appointee.
2. Stipulate that nothing in proposed law shall preclude consecutive minority appointments.
3. Delete proposed law providing relative to rights and privileges of the consumer member of the board and provide instead that the consumer member shall possess all applicable qualifications for consumer members provided in present law, and shall have all of the rights and privileges conferred by present law.

4. Require the board, in connection with the notice of filing of a formal administrative complaint against a physician, to notify the physician that he has the right to face any complainant at the administrative hearing unless the independent counsel rules that the complainant may remain anonymous. Provide that prior to issuing any such ruling, the independent counsel shall review all evidence related to the complaint submitted by the complainant and the physician. Provide, however, that the board, through a duly adopted motion by two-thirds vote of the board, may overrule the ruling of the independent counsel relative to complainant anonymity.
5. Require that prior to offering a consent order to a person licensed by the board, the board shall make available to the person all files and records which pertain to the case against him before the board, and which are not required by law to remain confidential or which are not otherwise privileged.
6. Authorize the board to object to making particular files and records available to a respondent as provided in proposed law. Provide that if the board objects to disclosing any files or records to a respondent, then the independent counsel shall review the grounds for the objection to the disclosure and may overrule the objection. Provide for the following procedure:
 - a. If the independent counsel overrules the objection, then the board shall disclose those files and records to the respondent as provided in proposed law.
 - b. If the independent counsel does not overrule the objection, then the board shall not be required to disclose those files and records to the respondent as provided in proposed law.
7. Provide that upon filing of a formal administrative complaint against a physician, all files of the board regarding the complaint which are not required by law to remain confidential or which are not otherwise privileged shall be made available to the physician through full discovery and shall be disclosed to the physician upon request. Provide that the physician may issue interrogatories or discovery requests to the investigator in the case before the board, and the investigator shall be compelled to respond as provided for in present law, C.C.P. Art. 1 et seq. (Code of Civil Procedure). Provide further that any potential exculpatory evidence shall be disclosed to the physician whether or not requested and whether or not reduced to recorded or documentary form.
8. Stipulate that all relevant information, documents, and records gathered in an investigation of a physician shall be noted in the record or file of the case, except that the board may object to including particular material in the record or file of the case. Provide that if the board objects to including any material in the record or file of the case, then the independent counsel shall review the grounds for the objection and may overrule the objection. Provide for the following procedure:
 - a. If the independent counsel overrules the objection, then the board shall include the material subject to the overruled objection in the record or file of the case.
 - b. If the independent counsel does not overrule the objection, then the board shall not be required to include the material subject to the objection in the record or file of the case.
9. Require that if the board intends to use records from any prior investigation of a physician in the case against the physician before the board, then the board shall notify the physician and his counsel of this intention, and the records shall be deemed to be records of the case before the board and subject to all applicable provisions of proposed law relative to disclosure and discovery.
10. Make technical changes.

Digest of the bill as proposed by the Conference Committee

Present law creates the seven-member La. State Board of Medical Examiners (hereafter, the "board") and provides for powers and duties of the board with respect to regulation of the practice of medicine.

Proposed law increases the number of members of the board from seven to ten by adding to the board the following members:

- (1) One member from a list submitted by the LSU Health Sciences Center at Shreveport.
- (2) One member from a list submitted by the La. Hospital Association.
- (3) One consumer member who shall be a full voting member of the board.

Proposed law requires that at least every other board member appointed from the lists of names submitted by the LSU Health Sciences Center at New Orleans, the LSU Health Sciences Center at Shreveport, and the La. Hospital Association be a minority appointee. Stipulates that nothing in proposed law shall preclude consecutive minority appointments.

Proposed law provides that the consumer member shall possess all applicable qualifications for consumer members provided in present law, and shall have all of the rights and privileges conferred by present law.

Proposed law increases the number of board members constituting a quorum from four to six.

Present law provides that any staff member of the board 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. Proposed law repeals present law.

Proposed law requires 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 in accordance with present law. 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.

Proposed law stipulates that the board shall only initiate a preliminary review to determine if cause exists to warrant formal 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 agency, federal or state regulatory agency, reporting authority verified by the board chairman through electronic means or other means, or physician health program or other treatment program that contains information that supports an indication that a possible violation of present law, 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 present law, or any rule promulgated pursuant to present law, may have occurred.

Proposed law stipulates that the duration of any preliminary review of a licensee initiated in accordance with proposed law shall be no greater than 90 days unless extended by the board. Provides that the board, in conducting such a preliminary review, may obtain all files and

records related to the complaint and to the complainant, and may obtain no more than 20 additional files or records in connection with the review unless authorized by the board.

Proposed law requires that prior to the board conducting any site visit or requesting medical records from an individual licensed by the board who is not subject to an active investigation, the executive director of the board shall request approval of the board through a duly adopted motion by two-thirds vote of the board, meeting in executive session, to conduct the site visit or records request. Requires the executive director to include all of the following in the request to conduct the site visit or records request:

- (1) The basis upon which the site visit or records request is warranted.
- (2) The number of records to be requested, if applicable.
- (3) The date, time, and anticipated length of the proposed site visit.
- (4) The dates of any previous site visits.

Proposed law provides that the process established in proposed law by which the board may conduct site visits or request medical records from a licensee who is not subject to an active investigation shall apply to practice performance reviews of physicians practicing telemedicine.

Proposed law prohibits the board from disclosing the identity of any individual included in the request to conduct the site visit or records request.

Proposed law requires the board, in connection with the notice of filing of a formal administrative complaint against a physician, to notify the physician that he has the right to face any complainant at the administrative hearing unless the independent counsel rules that the complainant may remain anonymous. Provides that prior to issuing any such ruling, the independent counsel shall review all evidence related to the complaint submitted by the complainant and the physician. Stipulates, however, that the board, through a duly adopted motion by two-thirds vote of the board, may overrule the ruling of the independent counsel relative to complainant anonymity.

Proposed law requires that prior to offering a consent order to a person licensed by the board, the board shall make available to the person all files and records which pertain to the case against him before the board, and which are not required by law to remain confidential or which are not otherwise privileged.

Proposed law authorizes the board to object to making particular files and records available to a respondent as provided in proposed law. Provides that if the board objects to disclosing any files or records to a respondent, then the independent counsel shall review the grounds for the objection and may overrule the objection. Provides further for the following procedure:

- (1) If the independent counsel overrules the objection, then the board shall disclose those files and records to the respondent as provided in proposed law.
- (2) If the independent counsel does not overrule the objection, then the board shall not be required to disclose those files and records to the respondent as provided in proposed law.

Proposed law provides that upon filing of a formal administrative complaint against a physician, all files of the board regarding the complaint which are not required by law to remain confidential or which are not otherwise privileged shall be made available to the physician through full discovery and shall be disclosed to the physician upon request. Provides that the physician may issue interrogatories or discovery requests to the investigator in the case before the board, and the investigator shall be compelled to respond as provided for in present law, C.C.P. Art. 1 et seq. (Code of Civil Procedure). Provides further that any

potential exculpatory evidence shall be disclosed to the physician whether or not requested and whether or not reduced to recorded or documentary form.

Proposed law stipulates that all information, documents, and records gathered in an investigation of a physician shall be noted in the record or file of the case, except that the board may object to including particular material in the record or file of the case. Provides that if the board objects to including any material in the record or file of the case, then the independent counsel shall review the grounds for the objection and may overrule the objection. Provides further for the following procedure:

- (1) If the independent counsel overrules the objection, then the board shall include the material subject to the overruled objection in the record or file of the case.
- (2) If the independent counsel does not overrule the objection, then the board shall not be required to include the material subject to the objection in the record or file of the case.

Proposed law requires that if the board intends to use records from any prior investigation of a physician in the case against the physician before the board, then the board shall notify the physician and his counsel of this intention, and the records shall be deemed to be records of the case before the board and subject to all applicable provisions of proposed law relative to disclosure and discovery.

Proposed law requires that on or before March 1 annually, the board shall submit a report to the legislative committees on health and welfare which encompasses, at minimum, all of the following information from the prior calendar year for each type of healthcare professional licensed by the board, delineated by profession type:

- (1) The number of preliminary reviews conducted in accordance with proposed law.
- (2) The number of complaints that the board received.
- (3) The number of formal investigations that the board initiated.
- (4) The number of consent decrees that licensees of the board entered into and other disciplinary actions that the board took.

(Amends R.S. 37:1263(A)-(C), 1267, and 1285.2(A); Adds R.S. 37:1270(A)(9) and 1285.2(E)-(G))