

Regular Session, 2013

HOUSE BILL NO. 273

BY REPRESENTATIVE LORUSSO

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

BOARDS/COMMISSIONS: Provides relative to reports, records, and adjudicatory functions of the La. State Board of Medical Examiners

1 AN ACT

2 To amend and reenact R.S. 37:1267, 1278(B), 1283, 1285(E) through (I), and 1285.1(B) and

3 (D) and to enact R.S. 37:1285(J) and 1285.1(E), relative to the Louisiana State Board

4 of Medical Examiners; to provide relative to a quorum of the board; to provide for

5 conditions pursuant to which the board may take official action; to provide for

6 written records of certain decisions of the board; to provide for reports; to except

7 certain records of the board from designation as public records; to provide for

8 dispensation of certain records; to provide for informal dispositions of adjudication;

9 to provide relative to hearing panels for adjudicatory functions of the board; and to

10 provide for related matters.

11 Be it enacted by the Legislature of Louisiana:

12 Section 1. R.S. 37:1267, 1278(B), 1283, 1285(E) through (I), and 1285.1(B) and (D)

13 are hereby amended and reenacted and R.S. 37:1285(J) and 1285.1(E) are hereby enacted

14 to read as follows:

15 §1267. Quorum

16 ~~Three~~ Four members of the board constitute a quorum for all purposes

17 including the holding of examinations, the granting of licenses and permits,

18 rulemaking and, except as provided in R.S. 37:1285.1, the adjudication functions of

1 the board. The board shall only act with the concurrence of a majority of board
2 members, provided at least four board members participate and vote.

3 * * *

4 §1278. Application for or acceptance of license or permit; waiver of personal
5 privileges

6 * * *

7 B. Any person applying for, accepting, or holding a license or permit to
8 practice medicine in this state shall be deemed, notwithstanding any privilege of
9 confidentiality, to have given his authorization and consent to the disclosure to the
10 board, by any physician or other health care provider and by any health care
11 institution, of any and all medical records and information pertaining to such person's
12 diagnosis, evaluation, treatment, and prognosis for any physical or mental condition,
13 disease, illness, deficiency, or infirmity, when the board is acting upon a written
14 complaint and it has reasonable cause to believe that his fitness and ability to
15 practice medicine with reasonable skill and safety may be impaired by mental illness
16 or deficiency, or physical illness, including but not limited to deterioration through
17 the aging process or the loss of motor skills, and/or excessive use or abuse of drugs,
18 including alcohol; however, any records or information obtained by the board
19 pursuant to this Section shall not constitute public records and shall be maintained
20 in confidence by the board ~~until and unless such records or information are admitted~~
21 ~~into the record of proceedings before the board pursuant to R.S. 37:1285.~~ In the
22 event a board decision is based upon a medical finding, the board may include such
23 finding in the written decision.

24 * * *

25 §1283. Reports by board

26 The board shall report annually to the governor and to the House and Senate
27 committees on health and welfare upon the condition of the practice of medicine in
28 the state, make recommendations for the improvement of the practice, and send a

1 record of the proceedings of the board during the year, together with the names of
2 all physicians to whom the board issued licenses during the year.

3 * * *

4 §1285. Causes for nonissuance; suspension; revocation; or the imposition of
5 restrictions; fines; reinstatement; publication of action; stays

6 * * *

7 E. The board's final decision in an adjudication proceeding under this
8 Section, other than by consent order, agreement, or other informal disposition, shall
9 constitute a public record, and the board may disclose and provide such final
10 decision to any person, firm, or corporation, or to the public generally. A public
11 report of a final decision by the board shall only include a statement of the basis and
12 reasons for the decision. Any other parts of the record other than those which are
13 disclosed in a public report of the final decision shall not constitute a public record
14 unless the physician seeks judicial review of the board adjudication. The board's
15 disposition of an adjudication proceeding by consent order shall not constitute a
16 public record, but the board shall have authority and discretion to disclose such
17 disposition.

18 F. No informal disposition of adjudication by the board shall constitute a
19 public record; however, the board shall have the authority to report the disposition
20 to the National Practitioner Data Bank if notification of such disposition is required
21 by federal law. Before entering into any informal disposition with a physician, the
22 board shall ensure that the physician fully understands all terms and conditions
23 required by the informal disposition.

24 G. No judicial order staying or enjoining the effectiveness or enforcement
25 of a final decision or order of the board in an adjudication proceeding, whether
26 issued pursuant to R.S. 49:964(C) or otherwise, shall be effective, or be issued to be
27 effective beyond the earlier of:

28 (1) One hundred twenty days from the date on which the board's decision or
29 order was rendered.

1 (2) The date on which the court enters judgment in a proceeding for judicial
2 review of the board's decision or order pursuant to R.S. 49:964.

3 ~~G. H.~~ Notwithstanding any other law to the contrary, no judicial order
4 staying, enjoining, or continuing an adjudication proceeding before, or a preliminary,
5 procedural, or intermediate decision, ruling, order, or action of, the board shall be
6 effective or issued to be effective, whether pursuant to R.S. 49:964 or otherwise,
7 prior to the exhaustion of all administrative remedies and issuance of a final decision
8 or order by the board.

9 ~~H. I.~~ No order staying or enjoining a final decision or order of the board shall
10 be issued unless the district court finds that the applicant or petitioner has established
11 that the issuance of the stay does not do either of the following:

12 (1) Threaten harm to other interested parties, including individuals for whom
13 the applicant or petitioner may render medical services; ~~or~~ .

14 (2) Constitute a threat to the health, safety, and welfare of the citizens of this
15 state.

16 ~~F. J.~~ No stay of a final decision or order of the board shall be granted ex
17 parte. The court shall schedule a hearing on a request for a stay order within ten days
18 from filing of the request. The court's decision to either grant or deny the stay order
19 shall be rendered within five days after the conclusion of the hearing.

20 §1285.1. Hearing panels

21 * * *

22 B. At the direction of the board, a hearing panel; consisting of ~~one~~ two or
23 more board members and totaling less than a quorum; may hear the charges and
24 submit written findings, conclusions, and recommendations to the board to consider
25 in arriving at its decision; however, in no case shall a hearing panel be convened if
26 more than one year has elapsed since the date the initial administrative complaint
27 was lodged with the board.

28 * * *

1 D. ~~The decision of a majority of a quorum shall be adopted as the final~~
2 ~~decision of the board.~~ The board shall only adopt a final decision with the
3 concurrence of a majority of the board members, provided at least four board
4 members participate and vote. A member of the board who serves on a hearing panel
5 shall not participate in the board's deliberations or final decision with respect to the
6 subject matter of such panel, nor shall said member be considered in determining a
7 quorum for a vote on the final decision of the board; however, in no case shall more
8 than one year elapse from the date an administrative complaint is filed to when a
9 final decision is rendered by the board.

10 E. The board shall destroy all records and other evidence of the existence of
11 complaints terminated by dismissals after five years from the date of the dismissal.

12 Section 2. This Act shall become effective upon signature by the governor or, if not
13 signed by the governor, upon expiration of the time for bills to become law without signature
14 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If
15 vetoed by the governor and subsequently approved by the legislature, this Act shall become
16 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)]

Lorusso

HB No. 273

Abstract: Provides relative to reports, records, and adjudicatory functions of the La. State Board of Medical Examiners.

Present law creates the La. State Board of Medical Examiners (board) and authorizes this body to regulate the practice of medicine in the state. Proposed law retains present law and revises or adds to various provisions addressing reports, records, and adjudicatory functions of the board.

Present law requires the board to submit an annual report to the governor on the condition of the practice of medicine in the state which includes recommendations for the improvement of the practice, a record of the proceedings of the board during the year, and the names of all physicians to whom the board issued licenses during the year. Proposed law retains present law and adds the legislative committees on health and welfare as entities to which the board shall also provide the annual report.

Proposed law changes the number of members which constitutes a quorum of the board from three to four.

Proposed law provides that the board shall only act with the concurrence of a majority of board members, provided at least four board members participate and vote.

Proposed law provides that in the event a board decision concerning the fitness of a person to practice medicine is based upon a medical finding, the board may include the finding in the written decision.

Proposed law stipulates that a public report of a final decision by the board shall only include a statement of the basis and reasons for the decision. Further provides that any other parts of the record other than those which are disclosed in a public report of the final decision shall not constitute a public record unless the physician seeks judicial review of the board adjudication.

Proposed law provides that no informal disposition of adjudication by the board shall constitute a public record, but that the board may report the disposition to the National Practitioner Data Bank if required by federal law. Further provides that before entering into any informal disposition with a physician, the board shall ensure that the physician fully understands all terms and conditions required by the informal disposition.

Present law provides that at the direction of the board, a hearing panel consisting of one or more board members and totaling less than a quorum may hear charges and submit written findings, conclusions, and recommendations to the board to consider in arriving at its decision. Proposed law makes the following changes relative to hearing panels:

- (1) Changes the number of board members which may comprise a hearing panel from one or more to two or more.
- (2) Adds a prohibition on convening a hearing panel if more than one year has elapsed since the date the initial administrative complaint was lodged with the board.
- (3) Deletes provision stipulating that pursuant to consideration of a hearing panel's findings, the decision of a majority of a quorum shall be adopted as the final decision of the board.
- (4) Adds provision stipulating that pursuant to consideration of a hearing panel's findings, the board shall only adopt a final decision with the concurrence of a majority of the board members, provided at least four board members participate and vote.

Proposed law stipulates that in no case shall more than one year elapse from the date an administrative complaint is filed to when a final decision is rendered by the board.

Proposed law requires the board to destroy all records and other evidence of the existence of complaints terminated by dismissals after five years from the date of the dismissal.

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

(Amends R.S. 37:1267, 1278(B), 1283, 1285(E)-(I), and 1285.1(B) and (D); Adds R.S. 37:1285(J) and 1285.1(E))