

CHAPTER 15: PHYSICIANS, SURGEONS, AND MIDWIVES**PART I: MEDICINE, SURGERY, MIDWIFERY****§1261. Declaration of purpose**

Recognizing that the practice of medicine, surgery, and midwifery is a privilege granted by legislative authority and is not a natural right of individuals, the state of Louisiana deems it necessary as a matter of policy in the interests of public health, safety, and welfare to provide laws and provisions covering the granting of that privilege and its subsequent use, control, and regulation to the end that the public shall be properly protected against unprofessional, improper, unauthorized, and unqualified practice of medicine and from unprofessional conduct of persons licensed to practice medicine, surgery, and midwifery.

Acts 1975, No. 350, §1; Acts 1985, No. 302, §2; Acts 2001, No. 17, §1, eff. May 17, 2001.

§1262. Definition

As used in this Part the following words and phrases shall have the meanings ascribed to them:

(1) "Board" means the Louisiana State Board of Medical Examiners.

(2) "Physician" means a natural person who is the holder of an allopathic (M.D.) degree or an osteopathic (D.O.) degree from a medical college in good standing with the board who holds a license, permit, certification, or registration issued by the board to engage in the practice of medicine in the state of Louisiana.

Doctors of allopathic medicine (M.D.) and doctors of osteopathic medicine (D.O.) shall be accorded equal professional status and unrestricted privileges in the practice of medicine. The use of the term "physician" in this Part shall not be construed to prohibit the use of such term by other health care providers specifically authorized to use such term by any other lawful provision of this state.

(3) "The practice of medicine", whether allopathic or osteopathic, means the holding out of one's self to the public as being engaged in the business of, or the actual engagement in, the diagnosing, treating, curing, or relieving of any bodily or mental disease, condition, infirmity, deformity, defect, ailment, or injury in any human being, other than himself, whether by the use of any drug, instrument or force, whether physical or psychic, or of what other nature, or any other agency or means; or the examining, either gratuitously or for compensation, of any person or material from any person for such purpose whether such drug, instrument, force, or other agency or means is applied to or used by the patient or by another person; or the attending of a woman in childbirth without the aid of a licensed physician or midwife.

NOTE: Paragraph 4 as enacted by Acts 2008, No. 850, §1, eff. upon the final adoption of the necessary rules and regulations promulgated by the La. St. Bd. of Medical Examiners.

(4) "Telemedicine" means the practice of health care delivery, diagnosis, consultation, treatment, and transfer of medical data

using interactive telecommunication technology that enables a health care practitioner and a patient at two locations separated by distance to interact via two-way video and audio transmissions simultaneously. Neither a telephone conversation nor an electronic mail message between a health care practitioner and patient, or a true consultation as may be defined by rules promulgated by the board pursuant to the Administrative Procedure Act, constitutes telemedicine for the purposes of this Part.

Acts 1975, No. 350, §1; Acts 1985, No. 302, §2; Acts 2001, No. 17, §1, eff. May 17, 2001; Acts 2008, No. 850, §1, eff. upon the final adoption of the necessary rules and regulations promulgated by the La. St. Bd. of Medical Examiners.

§1263. Louisiana State Board of Medical Examiners; appointment; removal; terms

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

B. The board shall consist of ten voting members, all appointed by the governor and subject to Senate confirmation as follows:

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

(2) One member from a list of names submitted by the Louisiana State University Health Sciences Center at New Orleans. 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.

(3) One member from a list of names submitted by the Louisiana State University Health Sciences Center at Shreveport. 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.

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

(5) Two members from a list submitted by the Louisiana Medical Association.

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

(7) One member from a list submitted by the Louisiana Hospital Association. 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.

(8) One consumer member. 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

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members provided in this Section and shall have all of the rights and privileges conferred by this Section.

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

- (a) Has been a resident of this state for not less than six months.
- (b) Is currently licensed and in good standing to engage in the practice of medicine in this state.
- (c) Is actively engaged in the practice of medicine in this state.
- (d) Has had five years of experience in the practice of medicine in this state after licensure.
- (e) Has not been convicted of a felony.
- (f) Has not been placed on probation by the board.

(2)(a) The consumer member of the board shall possess all of the following qualifications:

- (i) Is a citizen of the United States and has been a resident of Louisiana for at least one year immediately prior to appointment.
- (ii) Has attained the age of majority.
- (iii) Has never been licensed by any of the licensing boards identified in R.S. 36:259(A), nor shall he have a spouse who has ever been licensed by a board identified in R.S. 36:259(A).
- (iv) Has never been convicted of a felony.
- (v) Does not have and has never had a material financial interest in the healthcare profession.

(b) The consumer member shall be a full voting member of the board with all rights and privileges conferred on board members, except that the consumer member shall not participate in the grading of individual examinations.

D.(1) The governor shall appoint the members of the board in accordance with other provisions of this Section and the state constitution.

(2) When a vacancy occurs in the membership of the board for any reason, including expiration of term, removal, resignation, death, disability, or disqualification, the vacancy shall be filled in the same manner as the original appointment.

(3) Each member of the board appointed to fill a vacancy occurring by death, resignation, inability to act, or other cause, shall serve for the remainder of the term of his predecessor.

E.(1) A board member may be removed upon one or more of the following grounds:

- (a) The refusal or inability for any reason to perform his duties as a member of the board in an efficient, responsible, and professional manner.
- (b) The misuse of office to obtain personal, pecuniary, or material gain or advantage for himself or another through such office.
- (c) The violation of the laws governing the practice of medicine.

(2) Removal of a member of the board shall be in accordance with the Administrative Procedure Act or other applicable laws.

(3) The governor may remove any member of the board for good cause.

F. Except as provided in Paragraph (D)(3) of this Section, members of the board shall be appointed for a term of four years, beginning on July first of the year in which the appointment is made. No member shall serve more than three consecutive terms.

Acts 1975, No. 350, §1. Amended by Acts 1977, No. 684, §14; Acts 1979, No. 433, §1; Acts 1999, No. 497, §2; Acts 2016, No. 584, §1; Acts 2017, No. 162, §1, eff. June 12, 2017; Acts 2018, No. 515, §2; Acts 2018, No. 599, §1.

§1264. Repealed by Acts 2016, No. 584, §2.

§1265. Repealed by Acts 2016, No. 584, §2.

§1266. Meetings of board

The board shall hold at least one regular meeting each year and special meetings as are necessary. A special meeting of the board may be called by the president at any place when a majority of the board, or its president, deems it expedient. Acts 1975, No. 350, §1; Acts 2001, No. 17, §1, eff. May 17, 2001.

§1267. Quorum

Six 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 R.S. 37:1285.1, the adjudication functions of the board. Acts 1975, No. 350, §1; Acts 2003, No. 209, §1, eff. June 5, 2003; Acts 2015, No. 441, §1, eff. July 1, 2015; Acts 2018, No. 599, §1.

§1268. Compensation and expenses of board

The members of the board shall receive the amount set by the board, but not to exceed one hundred dollars per diem when actually attending to the work of the board or any of its committees, and for the time spent in necessary preparation and travel. In addition, the board shall be reimbursed for the actual traveling, incidental, and clerical expenses incurred in carrying out the provisions of this Chapter. These expenses shall be paid out of the treasury of the board. Acts 1975, No. 350, §1. Amended by Acts 1977, No. 521, §1; Acts 2001, No. 17, §1, eff. May 17, 2001.

§1269. Receipts and disbursements

All monies collected by the board shall be deposited in the treasury of the board. All expenses of the board and compensation of board members and employees shall be paid out of the funds of the board only and shall never be a charge on the state. Acts 1975, No. 350, §1

§1270. Duties and powers of the board

A. The board shall:

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- (1) Examine all applicants for the practice of medicine; issue licenses or permits to those possessing the necessary qualifications therefor; and take appropriate administrative actions to regulate the practice of medicine in the state of Louisiana;
- (2) Have its seal; and
- (3) Report to the prosecuting officer of the state all persons violating the provisions of this Part.
- (4)(a) Examine all persons who perform diagnostic or therapeutic radiological examination or treatment or both in a private office of a physician;
- (b) Issue certification to those possessing the necessary qualifications therefor; and
- (c) Take appropriate administrative actions to regulate the administering of radiological examination or treatment or both in the private offices of physicians or in clinics in which physicians practice in the state;
- (d) However, the Louisiana State Board of Dentistry shall regulate those personnel who perform such procedures under the direct on premises supervision of a licensed dentist.
- (5)(a) Examine individuals who engage in the practice of clinical laboratory science in conjunction with the Clinical Laboratory Personnel Committee to the Louisiana State Board of Medical Examiners established by R.S. 37:1314.
- (b) Issue licenses or certificates to those possessing the necessary qualifications therefor upon the recommendation of the Clinical Laboratory Personnel Committee.
- (c) Take appropriate administrative actions to regulate the practice of clinical laboratory science in conjunction with the Clinical Laboratory Personnel Committee.
- (d) Undertake all administrative actions, regulatory activities, and rules and regulations relative to the qualifications of individuals engaged in the practice of clinical laboratory science consistent with and not exceeding the scope and standards contained in the Clinical Laboratory Improvement Amendments of 1988 and the rules and regulations promulgated pursuant thereto.
- (6)(a) Examine individuals who engage in the practice of clinical exercise physiology.
- (b) Issue licenses to those possessing the necessary qualifications therefor.
- (c) Take appropriate administrative actions to regulate the practice of clinical exercise physiology.
- (7) Have the authority to:
 - (a) Request and obtain state and national criminal history record information on any person applying for any license, permit, certification, or registration which the board is authorized by law to issue.
 - (b) Require any applicant for any license, permit, certification, or registration issued by the board to submit a full set of fingerprints, in a form and manner prescribed by the board, as a condition to the board's consideration of his or her application.

- (c) Charge and collect from an applicant for any license, permit, certification, or registration issued by the board, in addition to all other applicable fees and costs, such amount as may be incurred by the board in requesting and obtaining criminal history record information on the applicant.
 - (8) Have the authority to establish and determine by rule minimum requirements relative to continuing education for the renewal or reinstatement of any license or permit issued by the board.
 - (9) Appoint a director of investigations 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 R.S. 37:1285.2(A). The director of investigations shall serve at the pleasure of the board and be answerable directly to the board. The director of investigations shall be prohibited from concurrently serving as the executive director of the board. Any person appointed by the board to serve as director of investigations shall be a Louisiana-licensed physician who maintains board certification and has engaged in the active practice of medicine for at least five years.
- B. The board may:
- (1) Select officers and adopt rules and bylaws necessary for the efficient operation of the board;
 - (2) Authorize any member of the board to make any affidavit necessary to the issuance of any injunction or other legal process authorized under this Part;
 - (3) Employ counsel to carry out the provisions of this Part, if the fees of the counsel and the costs of all proceedings except criminal prosecutions, are paid by the board out of its own funds;
 - (4) Employ inspectors, special agents, and investigators; issue subpoenas to require attendance and testimony and the production of documents and things for the purpose of enforcing the laws relative to the practice of medicine and securing evidence of violations thereof; employ necessary clerical assistance to carry out the administrative work of the board, fix the compensation thereof; incur other necessary expenses; and acquire, develop, maintain, expand, sell, lease, mortgage, borrow funds or otherwise contract with respect to immovable property and improvements thereon as it may deem necessary or appropriate to accomplish the provisions of this Part. All revenue derived from the sale or lease of the land and improvements thereon shall be retained by the board and shall not be subject to reversion to the state general fund. Prior to a sale authorized by this Paragraph, the commissioner of administration shall review the terms of the sale to ascertain that the sale amount constitutes fair market value or greater for the property.
 - (5) Appoint or designate an examining committee of physicians, possessing appropriate qualifications, to conduct physical and mental examinations on a physician, to otherwise inquire into the physician's fitness and ability to practice medicine with reasonable skill and safety to patients, and to submit advisory reports and recommendations to the board, when the board has reasonable cause to believe that such physician's fitness and

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ability is affected by mental illness or deficiency, or physical illness, including but not limited to deterioration through the aging process or the loss of motor skills, and/or excessive use or abuse of drugs, including alcohol; and

(6) Adopt rules, regulations, and standards necessary to carry out the board's duties, powers, and functions provided for in this Part.

C. The president and secretary of the board or any other member of the board so authorized by the board, may administer oaths in the taking of testimony upon any matters appertaining to the duties of the board.

Acts 1975, No. 350, §1; Acts 1984, No. 533, §1, eff. Jan. 1, 1985; Acts 1985, No. 302, §2; Acts 1987, No. 884, §1; Acts 1993, No. 396, §2, eff. Aug. 1, 1993; Acts 1995, No. 630, §1; Acts 1997, No. 295, §1; Acts 1999, No. 661, §1; Acts 2001, No. 17, §1, eff. May 17, 2001; Acts 2007, No. 218, §1, eff. July 2, 2007; Acts 2018, No. 599, §1.

§1270.1. Physician assistants advisory committee

A. The Louisiana State Board of Medical Examiners Physician Assistants Advisory Committee is hereby created within the Louisiana Department of Health.

B.(1) The advisory committee shall consist of five members.

(2) Three members of the committee shall be licensed physician assistants. The physician assistant members of the advisory committee shall be appointed by the governor from a list of names submitted by the Louisiana Academy of Physician Assistants. At least one of the members of the advisory committee shall be a physician assistant practicing in a parish or municipality with a population of less than twenty thousand people.

(3) Each physician assistant member of the advisory committee shall:

(a) Be a citizen of the United States and a resident of Louisiana for one year immediately prior to appointment.

(b) Hold a current Louisiana license to practice as a physician assistant.

(c) Have had three years of experience in his respective field of practice.

(d) Be actively engaged in practice as a physician assistant at the time of appointment.

(4) There shall be two members of the advisory committee who shall be licensed supervising physicians who are appointed by the governor from a list of names submitted by the Louisiana State Board of Medical Examiners.

C. The duties and purpose of the advisory committee shall be to advise the Louisiana State Board of Medical Examiners on all matters specifically dealing with licensing or disciplining of physician assistants or the drafting and promulgating of regulations related to physician assistants. The advisory committee shall also review and make recommendations to the board on applications for licensure as physician assistants. The board shall not act on any matter relating to a physician assistant without first consulting with the advisory committee.

D. The advisory committee shall elect a chairman, vice chairman, and secretary.

E. Each member of the advisory committee shall serve a term of six years commencing from the date of his appointment. Each member will succeed himself in each subsequent term thereafter unless removed or replaced by the governor.

F. The advisory committee shall meet at least twice each year or more frequently as necessary as determined by the chairman or a majority of the members of the advisory committee.

G. Four members of the advisory committee shall constitute a quorum.

H. Each member of the advisory committee shall receive fifty dollars per day while engaged in the business of the advisory committee and also his hotel and traveling expenses if traveled by the most direct route to and from his respective place of residence. These expenses shall be paid out of the treasury of the Louisiana State Board of Medical Examiners upon the certificates of its president and secretary-treasurer.

Acts 1993, No. 662, §2, eff. June 16, 1993; Acts 1997, No. 316, §1.

§1271. License to practice medicine or telemedicine required

A. No person shall practice medicine as defined herein until he possesses a duly recorded license issued under this Part or a permit or registration as provided for herein.

B.(1) No person shall practice or attempt to practice medicine across state lines without first complying with the provisions of this Part and without being a holder of either an unrestricted license to practice medicine in Louisiana or a telemedicine license entitling him to practice medicine pursuant to R.S. 37:1276.1.

(2) Except as provided in R.S. 37:1271.1 and 1276.1, all of the following shall apply to any physician practicing telemedicine as defined in this Part:

(a) The physician practicing telemedicine shall use the same standard of care as if the healthcare services were provided in person.

(b) The physician practicing telemedicine shall not be required to conduct an in-person patient history or physical examination of the patient before engaging in a telemedicine encounter if the physician satisfies all of the following conditions:

(i) Holds an unrestricted license to practice medicine in Louisiana.

(ii) Has access to the patient's medical records upon consent of the patient.

(iii) Creates a medical record on each patient and makes such record available to the board upon request.

(iv) If necessary, provides a referral to a physician in this state or arranges for follow-up care in this state as may be indicated.

(3) Except as authorized by R.S. 37:1271.1 or otherwise by rule promulgated by the board, no physician practicing telemedicine pursuant to this Subsection shall prescribe any controlled dangerous substance prior to conducting an appropriate in-person patient history or physical examination of the patient as determined by the board.

(4)(a) A patient receiving telemedicine services may be in any location at the time that the telemedicine services are rendered.

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A physician practicing telemedicine may be in any location when providing telemedicine services to a patient.

(b) A physician practicing telemedicine may utilize interactive audio without the requirement of video if, after access and review of the patient's medical records, the physician determines that he is able to meet the same standard of care as if the healthcare services were provided in person.

(5) A physician practicing telemedicine shall document the telemedicine services rendered in the patient's medical records according to the same standard as that required for nontelemedicine services. Medical records including but not limited to video, audio, electronic, or other records generated as a result of providing telemedicine services shall be considered as confidential and shall be subject to all applicable state and federal laws and regulations relative to the privacy of health information.

(6) Venue in any suit filed involving care rendered via telemedicine shall be in accordance with the provisions of R.S. 40:1223.5.

Acts 1975, No. 350, §1; Acts 1985, No. 302, §2; Acts 2001, No. 17, §1, eff. May 17, 2001; Acts 2008, No. 850, §1; Acts 2014, No. 442, §1; Acts 2016, No. 252, §1, eff. May 26, 2016; Acts 2016, No. 630, §1, eff. June 17, 2016.

§1271.1. Practice of telemedicine in licensed healthcare facilities

A. All of the following restrictions and authorizations apply to a physician who holds an unrestricted license to practice medicine from the board and who practices telemedicine upon any patient who is being treated at a healthcare facility that is required to be licensed pursuant to the laws of this state and which holds a current registration with the United States Drug Enforcement Administration:

(1) The physician shall use the same standard of care as if the healthcare services were provided in person.

(2) The physician shall be authorized to prescribe any controlled dangerous substance without necessity of conducting an appropriate in-person patient history or physical examination of the patient as otherwise would be required by R.S. 37:1271(B)(2).

(3) The physician shall not be subject to any regulatory prohibition or restriction on the practice of telemedicine, including prohibitions or restrictions related to prescribing controlled dangerous substances, which are in any manner more restrictive than the prohibitions and restrictions that are otherwise applicable to the entire practice of medicine.

B. Nothing in this Section shall prohibit or otherwise restrict the board from taking any action allowed by law or regulation in the administration of any disciplinary matter.

Acts 2016, No. 252, §1, eff. May 26, 2016.

1272. Qualifications of applicants

Any person who wishes to practice medicine shall:

(1) Be twenty-one years of age;

(2) Be a citizen of the United States;

(3) Be of good moral character;

(4) Present to the board a valid diploma from a medical college in good standing with the board or have been actively engaged in the practice of medicine, in a manner determined by the board to have been satisfactory, for not less than four years under a temporary permit issued pursuant to R.S. 37:1275; and

(5) Pass an examination which the board deems sufficient to test the applicant's fitness to practice medicine in this state.

The board may design or administer its own examination, or it may use examinations from any national examining agency, either public or private as long as such examinations are, in its view, sufficient for such purpose.

Acts 1975, No. 350, §1; Acts 1985, No. 302, §2; Acts 1988, No. 887, §1; Acts 2001, No. 17, §1, eff. May 17, 2001.

§1273. Repealed by Acts 2001, No. 17, §2, eff. May 17, 2001.

§1274. Issuance of license

If the requirements of R.S. 37:1272 or R.S. 37:1276 are met to the satisfaction of the board, the board shall issue to the applicant a license to practice medicine.

Acts 1975, No. 350, §1.

§1274.1. Laser surgery; requirements

Only persons licensed under the laws of this state to practice medicine, veterinary medicine, dentistry, or podiatry shall perform laser surgery.

Acts 1991, No. 433, §1.

§1275. Temporary or limited purpose permits

A. The board may issue temporary permits authorizing the practice of medicine for a designated period of time; may issue permits for specific purposes with restrictions as to the type of medical activities that may be engaged in; or may issue permits to, or require registration and approval of, medical personnel participating in educational and training programs which include the administration of medical services to patients.

B. The board may adopt rules and regulations establishing the necessary qualifications, requirements, and formalities for the issuance of such permits as are necessary for the adequate protection of the health and welfare of the citizens of this state.

Acts 1975, No. 350, §1; Acts 1985, No. 302, §2; Acts 2001, No. 17, §1, eff. May 17, 2001.

§1275.1. Canadian and Philippine doctors

A. Under the authority granted by R.S. 37:1275, the board may issue a temporary permit authorizing the practice of medicine for a time not to exceed five years, to a person licensed to practice medicine in Canada and a citizen of Canada or licensed to practice medicine in the Republic of the Philippines and a citizen of the Republic of the Philippines, if that person has obtained a work visa from the United States government.

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Thereafter, that person must obtain an immigration visa before his permit may be extended.

B. Such persons who wish to practice medicine under this Section shall:

- (1) Be twenty-one years of age;
- (2) Be of good moral character;
- (3) Present to the board a valid diploma from a medical college in good standing with the board; and
- (4) Pass an examination which the board deems sufficient to test the applicant's fitness to practice medicine in this state.

The board may design or administer its own examination, or it may use examinations from any national examining agency, either public or private as long as such examinations are, in its view, sufficient for such purpose.

Added by Acts 1976, No. 370, §1; Acts 1985, No. 302, §2; Acts 2001, No. 17, §1, eff. May 17, 2001.

§1276. Reciprocity; other states

The board may issue a license as provided for in R.S. 37:1274, without examination in this state, to any applicant possessing a valid, unrestricted license to practice medicine, whether allopathic or osteopathic, or osteopathy in any other state of the United States provided the board is satisfied that the license from the other state is based upon an examination and other requirements substantially equivalent to the requirements of this Part.

Acts 1975, No. 350, §1; Acts 1985, No. 302, §2; Acts 2001, No. 17, §1, eff. May 17, 2001.

§1276.1. Telemedicine license

A. The board shall issue a telemedicine license to allow the practice of medicine across state lines to an applicant who holds a full and unrestricted license to practice medicine in another state or territory of the United States.

B. The board shall establish by rule in accordance with the Administrative Procedure Act the requirements for licensure under this Section provided the rules include the following:

- (1) The physician licensed under this Section shall not open an office in this state, shall not meet with patients in this state, and shall not receive calls in this state from patients.
- (2) The physician, when examining a patient by telemedicine, shall establish a bona fide physician-patient relationship by:
 - (a) Conducting an appropriate examination of the patient as determined by the board.
 - (b) Establishing a diagnosis through the use of accepted medical practices including but not limited to patient history, mental status, and appropriate diagnostic and laboratory testing.
 - (c) Discussing with the patient any diagnosis as well as the risks and benefits of various treatment options.
 - (d) Ensuring the availability for appropriate follow-up care.
 - (e) Fulfilling any other requirements as deemed appropriate and necessary by the board.

(3) The board may establish by rule additional qualifications, requirements, scope, and limitations of the use of telemedicine in this state as the board may deem appropriate.

C. Any physician licensed to practice telemedicine in accordance with this Section shall be subject to the provisions of this Part, the jurisdiction of the board, applicable state law, and, with respect to providing medical services to state residents, to the jurisdiction of Louisiana courts.

Acts 2008, No. 850, §1, eff. upon the final adoption of the necessary rules and regulations promulgated by the La. St. Bd. of Medical Examiners.

§1277. Louisiana State Board of Medical Examiners; authorization to obtain criminal history record information

A. As used in this Section the following terms shall have the following meaning:

- (1) "Applicant" means an individual who has made application to the board for the issuance, renewal, or reinstatement of any form of health care practitioner licensure which the board is authorized by law to issue, including but not limited to licensure as a physician or surgeon pursuant to R.S. 37:1261 et seq.; as a podiatrist pursuant to R.S. 37:611 et seq.; as a physician assistant pursuant to R.S. 37:1360.21 et seq.; as a midwife practitioner pursuant to R.S. 37:3240 et seq.; as a respiratory therapist or respiratory therapy assistant pursuant to R.S. 37:3351 et seq.; as an occupational therapist or occupational therapy assistant pursuant to R.S. 37:3001 et seq.; as a clinical laboratory scientist pursuant to R.S. 37:1311 et seq.; as a clinical exercise physiologist pursuant to R.S. 37:3421 et seq.; as an athletic trainer pursuant to R.S. 37:3301 et seq.; as an acupuncturist or acupuncturist's assistant pursuant to R.S. 37:1356 et seq.; as a private radiologic technologist pursuant to R.S. 37:1292; or as a dispensing physician pursuant to LAC 46:XLV.6501 et seq.

(2) "Board" means the Louisiana State Board of Medical Examiners.

(3) "Bureau" means the Louisiana Bureau of Criminal Identification and Information of the office of state police within the Department of Public Safety and Corrections.

(4) "Criminal history record information" means information collected by state and federal criminal justice agencies on individuals consisting of identifiable descriptions and notations of arrests, detentions, indictments, bills of information, or any formal criminal charges, and any disposition arising therefrom, including sentencing, criminal correctional supervision and release, but does not include intelligence for investigatory purposes, nor does it include any identification information which does not indicate involvement of the individual in the criminal justice system.

(5) "FBI" means the Federal Bureau of Investigation of the United States Department of Justice.

(6) "Licensure" means any license, permit, certification, or registration which the board is authorized to issue.

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B. In addition to any other requirements established by board rules, the board shall require an applicant, as a condition for eligibility for licensure:

(1) To submit a full set of fingerprints, in a form and manner prescribed by the board.

(2) To permit the board to request and obtain state and national criminal history record information on the applicant.

(3) To charge and collect from the applicant, in addition to all other applicable fees and costs, such amount as may be incurred by the board in requesting and obtaining state and national criminal history record information on the applicant.

C. In accordance with the provisions and procedure prescribed by this Section, the board shall request and obtain state and national criminal history record information from the Louisiana Bureau of Criminal Identification and Information of the office of state police within the Department of Public Safety and Corrections and the Federal Bureau of Investigation of the United States Department of Justice relative to any applicant for licensure whose fingerprints the board has obtained pursuant to this Section for the purpose of determining the applicant's suitability and eligibility for licensure.

D. Upon request by the board and upon the board's submission of an applicant's fingerprints, and such other identifying information as may be required, the bureau shall conduct a search of its criminal history record information relative to the applicant and report the results of its search to the board within sixty days from receipt of any such request. The bureau may charge the board a reasonable processing fee for conducting and reporting on any such search.

E. If the criminal history record information reported by the bureau to the board does not provide grounds for disqualification of the applicant for licensure under the applicable law administered by the board, the board shall have the authority to forward the applicant's fingerprints and such other identifying information as may be required to the FBI with a request for a search of national criminal history record information relative to the applicant.

F. Any and all state or national criminal history record information obtained by the board from the bureau or FBI which is not already a matter of public record shall be deemed nonpublic and confidential information restricted to the exclusive use of the board, its members, officers, investigators, agents, and attorneys in evaluating the applicant's eligibility or disqualification for licensure. No such information or records related thereto shall, except with the written consent of the applicant or by order of a court of competent jurisdiction, be released or otherwise disclosed by the board to any other person or agency.

Acts 1997, No. 295, §1; Acts 2018, No. 206, §§3, 7.

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

A. Any person applying for or accepting a license or permit to practice medicine or midwifery in this state shall, by applying for or accepting said license or permit, be deemed to have given his consent to submit to physical or mental examinations when so directed by the board and to waive all objections as to admissibility or disclosure of findings, reports, or recommendations pertaining thereto on the grounds of privileged communications or other personal privileges provided for by law.

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

Acts 1975, No. 350, §1; Acts 1985, No. 302, §2; Acts 1987, No. 884, §1; Acts 2001, No. 17, §1, eff. May 17, 2001.

§1278.1. Production of patient records; maintenance of confidentiality

Notwithstanding any privilege of confidentiality recognized by law, no physician or health care institution with which such physician is affiliated shall, acting under any such privilege, fail or refuse to respond to a lawfully issued subpoena of the board for any medical information, testimony, records, data, reports or other documents, tangible items, or information relative to any patient treated by such physician under investigation; provided, however, that the identity of any patient identified in or by such records or information shall be maintained in confidence by the board and shall be deemed a privilege of confidentiality existing in favor of any such patient. For the purpose of maintaining such confidentiality of patient identity, the board shall cause any such medical records or the transcript of any such testimony to be altered so as to prevent the disclosure of the identity of the patient to whom such records or testimony relates.

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Acts 1987, No. 884, §1.

§1279. Suspension, revocation, or restriction of license; notice

A. In the event a license issued under this Part is suspended, revoked, or otherwise restricted by the board, the board shall notify the clerk of court in each parish where the licensed person has been practicing if the license was recorded in accordance with prior law. When a license is revoked, the clerk of court shall cancel such recordation. When a license is suspended, or otherwise restricted, the clerk shall note the suspension or restriction imposed thereon in the original recordation.

B. In addition thereto, the board shall also notify all agencies, boards, and organizations having reasonable need for such notice of any suspension, revocation, or restriction imposed upon a license or permit provided for in this Part.

Acts 1983, No. 153, §1; Acts 2001, No. 299, §1.

§1280. Renewals

A. Every license issued under this Part shall be renewed annually upon payment of the required renewal fee.

B. Any license not renewed may be suspended by unanimous vote of the board. The suspension is subject to review by the courts.

Acts 1975, No. 350, §1; Acts 2001, No. 17, §1, eff. May 17, 2001.

§1281. Fees and costs

A.(1) As used in this Section, the following terms shall have the following meaning:

(a) "Allied health care practitioner" means an individual who holds any form of health care practitioner licensure that the board is authorized to issue, other than as a physician, including but not limited to licensure as a podiatrist pursuant to R.S. 37:611 et seq.; as a physician assistant pursuant to R.S. 37:1360.21 et seq.; as a midwife pursuant to R.S. 37:3240 et seq.; as a respiratory therapist or respiratory therapy assistant pursuant to R.S. 37:3351 et seq.; as an occupational therapist or occupational therapy assistant pursuant to R.S. 37:3001 et seq.; as a clinical laboratory scientist pursuant to R.S. 37:1311 et seq.; as a clinical exercise physiologist pursuant to R.S. 37:3421 et seq.; as an athletic trainer pursuant to R.S. 37:3301 et seq.; as an acupuncturist or acupuncturist's assistant pursuant to R.S. 37:1356 et seq.; or as a private radiologic technologist pursuant to R.S. 37:1292.

(b) "Physician" means an individual lawfully entitled to engage in the practice of medicine in the state of Louisiana, as evidenced by a current license, certificate, registration, or permit duly issued by the board.

(2) The board shall establish, by rule, a reasonable fee schedule for the issuance, renewal, and reinstatement of any form of license, certificate, registration, or permit issued to a physician or allied health care practitioner and for the fees and costs associated with any other administrative function that it

performs, and the receipts from the payment of such fees and costs are to be collected, held, and maintained by the board and used only to carry out the purposes of this and such other Parts as are administered by the board. Such fee and cost schedules may be modified from time to time as deemed necessary by the board.

(3) Notwithstanding the provisions of any other Chapter, the fees and costs established and collectable by the board for the issuance, renewal, or reinstatement of any license, certificate, registration, or permit issued to a physician or allied health care practitioner shall not exceed the following amounts:

(a) Physicians:

(i) Any initial application and license issued by the board to a physician shall not exceed three hundred fifty dollars.

(ii) Any initial restricted, provisional, or temporary license, certificate, registration, or permit issued by the board to a physician, including but not limited to an institutional license or permit, graduate education temporary permit, military physician permit, military intern permit, mini-residency preceptorship permit, post graduate training registration or permit, dispensing registration, reduced fee license, or visiting physician permit, shall not exceed three hundred dollars.

(iii) The renewal of any license, certificate, registration, or permit issued by the board shall not exceed three hundred dollars.

(b) Allied health care practitioners:

(i) Any initial application and license, permit, certificate, or registration issued by the board to an allied health care practitioner shall not exceed three hundred dollars.

(ii) The renewal of any license, certificate, registration, or permit issued by the board to any allied health care practitioner shall not exceed two hundred dollars.

(c) A physician or allied health care practitioner applicant who has failed to renew a license, certificate, registration, or permit timely, shall pay a delinquency fee, in addition to the renewal fee and all other applicable fees and costs, not to exceed an amount equal to the renewal fee.

(d) Miscellaneous costs, fees, and charges for the following information, products, or services shall not exceed the following amounts:

(i) Dishonored negotiable instrument; a fee not to exceed fifty dollars per instrument.

(ii) The actual cost for creation and provision of electronic information, data, product, or service.

(iii) The actual costs associated with electronic or credit card payments and transactions.

(iv) Annual report or official listing of holders of licenses, permits, certificates, or registrations issued by the board; a fee not to exceed fifty dollars.

(v) Actual cost of courier services.

(vi) Actual cost of competency examination approved by the board.

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- (vii) Administrative costs for competency examination shall be prorated among the examinees as follows: a fee not to exceed one hundred dollars per hour, multiplied by the number of board employees actually administering the competency examination, and divided by the number of examinees.
 - (viii) Official documents or publications of the board; a fee not to exceed one dollar and fifty cents per page.
 - (ix) Certification of document as true copy; a fee not to exceed twenty-five dollars.
 - (x) Certification of document as official record; a fee not to exceed twenty-five dollars.
 - (xi) Verification or certification of good standing of license, permit, certificate, or registration; a fee not to exceed one hundred dollars.
 - (xii) Duplicate original of license, permit, registration, certificate, or wallet identification card; a fee not to exceed one hundred dollars.
 - (xiii) Issuance and service of subpoena; a fee not to exceed fifty dollars, in addition to mileage authorized by state regulations.
 - (xiv) Compliance or probation officer monitoring fee with respect to licensees on probation; a fee not to exceed four hundred dollars per year.
- (4) The cost and expense of any examination or test required by the board as a prerequisite to the issuance, renewal, or restatement of any license, certificate, registration, or permit, shall be paid by the physician or allied health care practitioner applicant directly to the entity, association, or organization administering such examination or test.
- (5) In the event of a conflict between the provisions of this Part respecting fees and costs and those contained elsewhere in this Title, including but not limited to Chapters 7, 39, 46, 48, 49, and 52 of this Title and Parts II, IV, and V of this Chapter, the provisions of this Section shall govern.
- B.(1) In addition to all other applicable fees and costs attendant to the issuance, renewal, or reinstatement of any license, certificate, permit, or registration issued to a physician by the board pursuant to this Part, the board shall charge and collect an additional annual fee of twenty-five dollars from each physician to be utilized for the identification, monitoring, assistance, and procurement of treatment of physicians suffering from substance abuse, chemical dependency, psychiatric conditions, or physical deficiencies which may interfere with their ability to practice medicine with reasonable skill and safety as defined in R.S. 37:1285(A)(25).
- (2) The twenty-five dollar fee established in this Subsection shall be due and payable at the time of application for the issuance, renewal, or reinstatement of any license, permit, certificate, or registration.
- C.(1) In addition to all other applicable fees and costs attendant to the issuance, renewal, or reinstatement of any license, certificate, permit, or registration issued to a physician by the board pursuant to this Part, the board shall charge and collect an additional annual fee of seven dollars from each physician

- for the purpose of establishing and maintaining a continuing education program for physicians.
- (2) The seven dollar fee established by this Subsection shall be due and payable at the time of application for the issuance, renewal, or reinstatement of any license, permit, certificate, or registration.
- D.(1) The fees established in Subsections B and C of this Section shall not be collected from a licensed physician who has retired from active practice.
- (2) The board may adopt rules and regulations to provide for certain other exemptions from payment of such fees.
- Acts 1975, No. 350, §1; Acts 2000, 1st Ex. Sess., No. 138, §1, eff. April 19, 2000; Acts 2003, No. 656, §1, eff. June 27, 2003; Acts 2018, No. 206, §3.

§1281.1. Volunteers; waiver of fees

- A. The board may waive the fees and costs established and otherwise collectable by the board for the issuance, renewal, or reinstatement of any license, certificate, registration, or permit that it is authorized to issue to an individual who satisfies all of the following requirements:
- (1) Attests that his practice shall be limited exclusively to the provision of gratuitous, uncompensated, volunteer health care services in this state.
 - (2) Satisfies all qualifications, requirements, and procedures prescribed by law.
 - (3) Complies with all of the board's rules for the type of licensure held or applied for.
- B. A license, certificate, registration, or permit issued under this Section shall bear the designation "volunteer". A physician or an allied health care provider shall not, acting under the authority of such a license, certificate, registration, or permit, provide health care services in exchange for compensation.
- Acts 2010, No. 298, §1.

§1281.2. Allied practitioner health program; assessment, and self-reporting waiver protected action and communication

- A. In addition to all other assessments attendant to the issuance, renewal, or reinstatement of a license, permit, certificate, or registration issued by the board pursuant to this Part, the board shall charge and collect an annual assessment of twenty-five dollars from each medical psychologist, physician assistant, and podiatrist to be utilized for the identification, monitoring, assistance, and procurement of treatment of medical psychologists, physician assistants, and podiatrists suffering from substance abuse, chemical dependency, psychiatric conditions, or physical deficiencies which may interfere with their ability to practice their profession with

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reasonable skill and safety. The assessment established in this Section shall be due at the time of application for the issuance, renewal, or reinstatement of a license, permit, certificate, or registration.

B. With respect to any duty pursuant to this Part for a medical psychologist, physician assistant, or podiatrist to self-report a violation of his practice act to the board, either immediately or within a prescribed period of time of the occurrence, a report shall not be required if the violation relates to the individual's ability to practice his profession with reasonable skill and safety by reason of substance abuse or psychiatric condition, provided that since the occurrence the medical psychologist, physician assistant, or podiatrist has executed a monitoring agreement with an allied practitioner health program designated by the board and he is in full compliance with the terms and conditions of the agreement.

C. The provisions of R.S. 37:1287 shall be equally applicable to any nonprofit corporation, foundation, or organization, and to any person who serves as a director, trustee, officer, employee, consultant, or attorney for or who otherwise works for or is associated with any nonprofit corporation, foundation, or organization, that enters into any agreement with the board related to the operation of any committee or program to identify, investigate, counsel, monitor, or assist a medical psychologist, physician assistant, or podiatrist who suffers or may suffer from alcohol or substance abuse or a physical or mental condition, which could compromise his ability to practice with reasonable skill and safety to patients, for any investigation, action, report, recommendation, decision, or opinion undertaken, performed, or made in connection with or on behalf of such committee or program, without malice and in the reasonable belief that such investigation, action, report, recommendation, decision, or opinion was warranted.

Acts 2012, No. 431, §1.

§1282. Annual publication of list of license holders; evidence

The board shall publish annually a list of the names and residences of the holders of licenses issued under this Part. This published list shall be received in evidence by the courts as proof that the individuals named are duly registered. The board may strike from this list the name of any person whose license has been suspended or revoked, or may state therein any restriction imposed on such license.

The board may furnish such list to any agency, board, or organization having a reasonable need for such list.

Acts 1975, No. 350, §1.

§1283. Reports by board

The board shall report annually to the governor upon the condition of the practice of medicine in the state, make recommendations for the improvement of the practice, and send a record of the proceedings of the board during the year, together with the names of all physicians to whom the board issued licenses during the year.

Acts 1975, No. 350, §1; Acts 1985, No. 302, §2; Acts 2001, No. 17, §1, eff. May 17, 2001.

§1284. Provisions relative to unlicensed physicians

Unlicensed physicians shall not be permitted to collect any fees or charges for services rendered, or be allowed to testify as a medical expert in any court, or execute public or legal documents as a physician, or hold any medical office, or be recognized by the state or parish or municipal corporation as a physician, or be entitled to enjoy any of the privileges, rights, or exemptions granted to physicians by the laws of this state.

Acts 1975, No. 350, §1; Acts 1985, No. 302, §2; Acts 2001, No. 17, §1, eff. May 17, 2001.

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

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

- (1) Conviction of a crime or entry of a plea of guilty or nolo contendere to a criminal charge constituting a felony under the laws of Louisiana or of the United States.
- (2) Conviction of a crime or entry of a plea of guilty or nolo contendere to any criminal charge arising out of or in connection with the practice of medicine;
- (3) Fraud, deceit, or perjury in obtaining any diploma, license, or permit pertaining to this Part.
- (4) Providing false testimony before the board or providing false sworn information to the board.
- (5) Habitual or recurring abuse of drugs, including alcohol, which affect the central nervous system and which are capable of inducing physiological or psychological dependence.
- (6) Prescribing, dispensing, or administering legally controlled substances or any dependency-inducing medication without legitimate medical justification therefor or in other than a legal or legitimate manner.
- (7) Solicitation of patients or self-promotion through advertising or communication, public or private, which is fraudulent, false, deceptive, or misleading.
- (8)(a) Performing, or assisting in the performance of, or procuring or abetting in procuring an abortion or termination of pregnancy during the third trimester of pregnancy or after viability of the fetus, unless the physician determines that such abortion or termination of pregnancy is necessary, in his best

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medical judgment, in order to save the life or health of the pregnant woman and/or of the fetus (unborn child):

(b) Performing or assisting in the performance of, or procuring, or abetting in the procuring of an abortion or termination of pregnancy after the first trimester:

(i) When the abortion or termination of pregnancy is contrary to or unnecessary in the best medical judgment of that physician; or,

(ii) When the operating physician lacks the training and experience to perform the procedure; or,

(iii) When the procedure is performed outside of a hospital licensed by the Department of Health and Hospitals, or its successor.

(9) Performing, or assisting in the performance of, or procuring, or abetting in the procuring of an abortion or termination of pregnancy:

(a) When the abortion or termination of pregnancy is contrary to or unnecessary in the best medical judgment of that physician; or,

(b) When the operating physician lacks the training and experience to perform the procedure; or,

(c) When the procedure is performed outside of a hospital licensed by the Louisiana Health and Hospitals Administration, or its successor.

(10) Efforts to deceive or defraud the public.

(11) Making or submitting false, deceptive, or unfounded claims, reports, or opinions to any patient, insurance company or indemnity association, company, individual, or governmental authority for the purpose of obtaining anything of economic value.

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

(13) Unprofessional conduct, including but not limited to, conduct manifested as sexual misconduct, disruptive behavior, failing to cooperate with the board, failing to maintain independent medical judgment, improperly delegating or supervising, exercising undue influence, enabling the unauthorized practice of medicine, practicing or enabling practice by an impaired provider, failing to practice within the scope of education, training, and experience, intentionally falsifying or fraudulently altering records, or failing to create or maintain medical records.

(14) Medical incompetency, including but not limited to, incompetency manifested by continuing or recurring medical practice which fails to satisfy the prevailing and usually accepted standards of medical practice in this state.

(15) Immoral conduct in exercising the privileges provided for by license or permit issued under this Part;

(16) Gross, willful, and continued overcharging for professional services.

(17) Abandonment of a patient.

(18) Knowingly performing any act which, in any way, assists an unlicensed person to practice medicine, or having professional connection with or lending one's name to an illegal practitioner.

(19) Soliciting, accepting, or receiving anything of economic value in return for and based on the referral of patients to another person, firm, or corporation or in return for the prescription of medications or medical devices.

(20) Persistent violation of federal or state laws relative to control of social diseases;

(21) Interdiction or commitment by due process of law.

(22) Utilizing a physician's assistant without approval and recordation as required by law or permitting a physician's assistant, within his employment, to conduct activities outside of the designated scope of the assistant's approval and registration.

(23) Knowingly employing a physician's assistant whose conduct includes any of the causes enumerated in this Section.

(24) Knowingly misstating or misrepresenting the qualifications and certification of competency of any physician's assistant in order to obtain approval and registration of such person.

(25) Inability to practice medicine with reasonable skill or safety to patients because of mental illness or deficiency; physical illness, including but not limited to deterioration through the aging process or loss of motor skills; and/or, excessive use or abuse of drugs, including alcohol.

(26) Refusing to submit to the examinations and inquiry of an examining committee of physicians appointed or designated by the board to inquire into the physician's physical and mental fitness and ability to practice medicine with reasonable skill and safety to patients.

(27) Failure, by any physician or person performing, inducing or assisting an abortion, to exercise that degree of professional care and diligence and failure to take such measures as may constitute good medical practice, necessary to encourage or sustain the life and health of an aborted viable infant, when the death of the infant results. "Viable" means that stage of fetal development when the life of the unborn child may be continued indefinitely outside the womb by natural or artificial life-supporting systems.

(28) Taking the life of a viable infant aborted alive.

(29) The refusal of a licensing authority of another state to issue or renew a license, permit, or certificate to practice medicine in that state or the revocation, suspension, or other restriction imposed on a license, permit, or certificate issued by such licensing authority which prevents or restricts practice in that state, or the surrender of a license, permit, or certificate issued by another state when criminal or administrative charges are pending or threatened against the holder of such license, permit, or certificate.

(30) Violation of any rules and regulations of the board, or any provisions of this Part.

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(31) Failure by a physician to self-report in writing to the board any personal action which constitutes a violation of this Part within thirty days of the occurrence. A report shall not be required if the violation relates to a physician's ability to practice medicine with reasonable skill and safety by reason of substance abuse or psychiatric condition, provided such physician has, since the occurrence, executed a treatment contract with the Louisiana State Medical Society's Physicians Health Program, its successor program, or such other program as may be designated by the board, and is in full compliance with the terms and conditions of such contract.

(32) Holding oneself out to the public in any manner as being certified by a public or private board including but not limited to a multidisciplinary board or "board certified", unless all of the following criteria are satisfied:

(a) The full name of the board from which the physician is certified and the name of the specialty or subspecialty is included in the advertisement.

(b) The board meets any of the following qualifications:

(i) The board is an American Board of Medical Specialties member board or an American Osteopathic Association certifying board.

(ii) The board has been approved by the Louisiana State Board of Medical Examiners.

(iii) The board requires an Accreditation Council for Graduate Medical Education or American Osteopathic Association approved postgraduate training program that provides complete training in that specialty or subspecialty.

(c) If the physician advertises and does not meet any of the criteria articulated in this Paragraph, the physician shall list his qualifications for performing the advertised medical procedures in the advertisement.

B. The board may, in instances it deems proper, implement the above recited causes, by establishing appropriate regulations and standards pertaining thereto.

C.(1) The board may, as part of a decision, consent order, or other agreed order, require a license or permit holder or an applicant to pay all costs of the board proceedings, including but not limited to investigators', stenographers', and attorney fees, witness fees and expenses, and the per diem and expenses of the members of the board's hearing panel, and to pay a fine not to exceed the sum of five thousand dollars.

(2) If for any reason the costs or fines imposed by the board under this Section are not paid within the time specified by the board, the board may recover costs and attorney fees associated with their collection.

(3) The board may authorize any member of the board to sign an affidavit, petition, or other legal process authorized by this Part, including but not limited to a petition in any court of competent jurisdiction, for a money judgment for any and all costs and fines payable pursuant to a final decision, consent order, or other agreed order.

D. Any license or permit suspended, revoked, or otherwise restricted by the board may be reinstated by the board.

E. The board's final decision in an adjudication proceeding under this Section, other than by consent order, agreement, or other informal disposition, shall constitute a public record, and the board may disclose and provide such final decision to any person, firm, or corporation, or to the public generally. The board's disposition of an adjudication proceeding by consent order shall not constitute a public record, but the board shall have authority and discretion to disclose such disposition.

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

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

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

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

H. No order staying or enjoining a final decision or order of the board shall be issued unless the district court finds that the applicant or petitioner has established that the issuance of the stay does not:

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

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

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

Acts 1975, No. 350, §1; Amended by Acts 1977, No. 498, §1; Acts 1977, No. 500, §1; Acts 1977, No. 525, §1; Acts 1985, No. 302, §2; Acts 1987, No. 884, §1; Acts 1988, No. 741, §1; Acts 1995, No. 993, §1; Acts 1999, No. 660, §1; Acts 1999, No. 788, §2; Acts 2001, No. 17, §1, eff. May 17, 2001; Acts 2004, No. 155, §1; Acts 2010, No. 602, §1, eff. June 25, 2010; Acts 2011, No. 337, §1; Acts 2015, No. 441, §1, eff. July 1, 2015.

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§1285.1. Hearing panels

A. All adjudicatory functions of the board, including alleged violations of the provisions of this and any other Chapter administered by the board, shall be heard by a quorum of the board.

B. At the direction of the board, a hearing panel, consisting of one or more board members and totaling less than a quorum, may hear the charges and submit written findings, conclusions and recommendations to the board to consider in arriving at its decision.

C. Having considered the report of the hearing panel and having reviewed the record of the proceedings, the board may affirm, adopt, modify or reject the findings and recommendations of the hearing panel or it may determine findings and recommendations of its own.

D. The decision of a majority of a quorum shall be adopted as the final decision of the board. A member of the board who serves on a hearing panel shall not participate in the board's deliberations or final decision with respect to the subject matter of such panel, nor shall said member be considered in determining a quorum for a vote on the final decision of the board.

Acts 2003, No. 209, §1, eff. June, 5, 2003.

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

A.(1) The board shall initiate a preliminary review to determine if cause exists to warrant formal investigation only upon one or more of the following:

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

(b) 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 this Part, or any rule promulgated pursuant to this Part, may have occurred.

(c) 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 this Part, or any rule promulgated pursuant to this Part, may have occurred.

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

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

B. The board shall adopt rules, in accordance with the Administrative Procedure Act, to provide for the investigation of complaints against physicians and adjudication of alleged violations by physicians of any provision of this Chapter. The rules shall satisfy the minimum due process requirements of the Constitution of Louisiana and the Constitution of the United States of America and shall address, at a minimum, all of the following:

(1) Notice of the investigation including a brief summary of the facts constituting the alleged violation to be provided to the physician no later than five business days after the board's formal investigation is initiated by a majority vote of the board members present and voting.

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

(3) Informal settlements and consent decrees.

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

(5) Pleadings and other motions.

(6) Discovery.

(7) Subpoenas and subpoenas duces tecum.

(8) Representation of the physician by counsel of choice.

(9) Prehearing conferences.

(10) Procedure for conducting the adjudicatory hearing including examination of witnesses and the placement of evidence into the record.

(11) Notice of the final decision of the board to be provided to the physician.

C. Any final decision of the board shall be supported by a preponderance of the evidence presented at the adjudicatory hearing.

D.(1) Prior to the board's 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 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 make the records request. The executive director shall include in the request for approval the basis upon which the site visit or records request is warranted, the number of records to be requested, if applicable, the date, time, and anticipated length of the proposed site visit, and the dates of any previous site visits. The board shall be prohibited from disclosing the identity of any individual included in the request for approval.

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

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

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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.

G. On or before March first annually, the board shall submit a report to the House and Senate 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 Subsection A of this Section.

(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.

Acts 2015, No. 441, §1, eff. July 1, 2015; Acts 2018, No. 599, §1.

§1285.3. Security for judicial review of an adjudication

A.(1) A party seeking judicial review or appeal of a final decision or order of the board in an adjudication proceeding shall furnish the following security:

(a) For that portion of a decision or an order pertaining to payment of a sum of money, whether costs, expenses, a fine, or any combination thereof, the amount of security shall be equal to the amount of the money portion of the decision; however, for good cause shown, it may exceed by one-half the amount of the money portion of the decision.

(b) In all other aspects of judicial review, the security shall be fixed by the court at an amount sufficient to assure satisfaction of and compliance with the decision or order rendered by the board.

(2) Any security furnished under the provisions of this Section shall be posted in favor of the board and shall be furnished by the petitioner in the district court as security for the judicial review, and any judgment by the district court against him shall be paid or satisfied from the proceeds of the sale of his property, or from the security posted under the provisions of this Section. A mortgage on immovable property is adequate security, but only when the mortgage is applied to an unencumbered immovable; a mortgage in other than a first position is unacceptable as security under this Section.

(3) The security required under the provisions of this Section shall be annexed by the petitioner to the petition for judicial review or appeal filed in the district court. In the event the petitioner seeking judicial review or appeal fails to annex satisfactory security to the petition for judicial review or appeal within the time specified for the filing of said judicial review or appeal, then the trial court, on its own motion or upon motion by the board, shall hold an adversarial hearing within five days of service of the motion and either enter a formal order of dismissal of the petition for judicial review or appeal with prejudice or grant a three-day period within which said security shall be filed in the record, in default of which the petition for judicial review or appeal shall be dismissed with prejudice.

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(4) Service of the motion described in Paragraph (A)(3) of this Section may be effected by the methods provided in Code of Civil Procedure Article 1313.

B. Notwithstanding petitioner's compliance with the requirements of this Section, the district court shall not issue a stay for that portion of the board's decision or order which does not involve a sum of money unless the petitioner satisfies the requirements of R.S. 37:1285(H).

C. The provisions of this Section shall also apply to any individual who does not possess a license, permit, or other authority issued by the board to engage in the practice of medicine in this state who violates the provisions of this Part.

Acts 2004, No. 152, §1.

§1286. Injunction; penalty; attorney fees; costs

A. The board, through its proper officer, may cause to issue in any competent court, a writ of injunction enjoining any person from practicing medicine as defined herein until such person obtains a license under the provisions of this Part. This injunction shall not be subject to being released upon bond.

B. In the suit for an injunction, the board, through its president, may demand of the defendant a penalty of not more than five hundred dollars, and attorney's fees not to exceed one hundred dollars, besides the costs of court. This judgment for penalty, attorney's fees, and costs may be rendered in the same judgment in which the injunction is made absolute.

C. The trial of the proceeding by injunction shall be summary and by the judge without a jury.

Acts 1975, No. 350, §1; Acts 1985, No. 302, §2; Acts 2001, No. 17, §1, eff. May 17, 2001.

§1287. Protected action and communication

A. There shall be no liability on the part of and no action for damages against any member of the board, or its agents or employees, or any member of an examining committee of physicians appointed or designated by the board, for any action undertaken or performed by such person within the scope of the duties, powers, and functions of the board or such examining committee as provided for in this Part when such person is acting without malice and in the reasonable belief that the action taken by him is warranted.

B. No person, committee, association, organization, firm, or corporation providing information to the board without malice and in the reasonable belief that such information is accurate and, whether as a witness or otherwise, shall be held, by reason of having provided such information, to be liable in damages under any law of the state of Louisiana or any political subdivision thereof.

C. In any suit brought against the board, its employees or agents, any member of an examining committee appointed by the board or any person, firm, or other entity providing information to the board, when any such defendant substantially prevails in such suit, the court shall, at the

conclusion of the action, award to any such substantially prevailing party defendant against any such claimant the cost of the suit attributable to such claim, including a reasonable attorney's fee, if the claim was frivolous, unreasonable, without foundation, or in bad faith. For the purposes of this Section, a defendant shall not be considered to have substantially prevailed when the plaintiff obtains an award for damages or permanent injunctive or declaratory relief.

D. There shall be no liability on the part of and no action for damages against any nonprofit corporation, foundation, or organization that enters into any agreement with the board related to the operation of any committee or program to identify, investigate, counsel, monitor, or assist any licensed physician who suffers or may suffer from alcohol or substance abuse or a physical or mental condition which could compromise such physician's fitness and ability to practice medicine with reasonable skill and safety to patients, for any investigation, action, report, recommendation, decision, or opinion undertaken, performed, or made in connection with or on behalf of such committee or program, without malice and in the reasonable belief that such investigation, action, report, recommendation, decision, or opinion was warranted.

E. There shall be no liability on the part of and no action for damages against any person who serves as a director, trustee, officer, employee, consultant, or attorney for or who otherwise works for or is associated with any nonprofit corporation, foundation, or organization that enters into any agreement with the board related to the operation of any committee or program to identify, investigate, counsel, monitor, or assist any licensed physician who suffers or may suffer from alcohol or substance abuse or a physical or mental condition which could compromise such physician's fitness and ability to practice medicine with reasonable skill and safety to patients, for any investigation, action, report, recommendation, decision, or opinion undertaken, performed, or made in connection with or on behalf of such committee or program, without malice and in the reasonable belief that such investigation, action, report, recommendation, decision, or opinion was warranted.

F. In any suit brought against any nonprofit corporation, foundation, organization, or person described in Subsection D or E of this Section, when any such defendant substantially prevails in the suit, the court shall, at the conclusion of the action, award to any substantially prevailing party defendant against any claimant the cost of the suit attributable to such claim, including reasonable attorney fees, if the claim was frivolous or brought without a reasonable good faith basis. For purposes of this Subsection, a defendant shall not be considered to have substantially prevailed when the plaintiff obtains a judgment for damages, permanent injunction, or declaratory relief.

G. The immunity granted under Subsections D and E of this Section shall be retroactive.

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Acts 1975, No. 350, §1; Acts 1987, No. 884, §1; Acts 1988, No. 741, §1; Acts 1997, No. 314, §1, eff. June 17, 1997.

§1287.1. Reports to the board of convictions and entry of pleas of guilty or nolo contendere of felonies; immunity

A. Within thirty days of the conviction or entry of a plea of guilty or nolo contendere of or by a physician licensed under the laws of the state to a crime which constitutes a felony, or for any crime which is related to the practice of medicine, the court imposing sentence upon such physician shall make a reasonable effort to cause notice of the conviction or plea to be forwarded to the board.

B. There shall be no liability on the part of and no action for damages against any court or member of the judiciary for providing the information required under Subsection A of this Section.

Acts 1999, No. 763, §1.

§1288. Anesthetics; administering by midwives

No person holding a certificate to practice midwifery shall administer any form of anesthetic to any person under his care unless done by the direction and under the supervision of a licensed physician or unless otherwise expressly authorized to do so by the board.

Acts 1975, No. 350, §1.

§1289. Itinerant vendors of drugs

No itinerant vendor shall profess to cure or treat disease or deformity by any drug, nostrum, manipulation, or other expedient which he may offer for sale or demonstration.

Acts 1975, No. 350, §1.

§1290. Penalties

Whoever violates any of the provisions of this Part shall, for each offense, be fined not less than two hundred and fifty dollars nor more than five hundred dollars, or imprisoned for not less than ten days nor more than five months, or both.

Acts 1975, No. 350, §1.

§1291. Exemptions

None of the provisions of this Part shall apply to:

- (1) Any commissioned physician or surgeon of the United States Army, Navy, or Public Health Service, practicing in the discharge of his official duties;
- (2) The administration of first aid in cases of emergency;
- (3) Practitioners of allied health fields, duly licensed, certified, or registered under other laws of this state;
- (4) Anyone attending a woman in childbirth in an emergency;
- (5) The practice of Christian Science or religious rules or ceremonies as a form of religious worship, devotion or healing, if the persons administering, making use of, assisting, or prescribing this practice rely on faith and prayer alone, do not prescribe or administer drugs, or medicine, or perform surgical

or physical operations, or assume the title of, or hold themselves out to be, physicians or surgeons.

(6)(a) An individual licensed to practice medicine in another state or country when he attends to the acute care needs of the official traveling party of athletes and staff of an athletic team or organization domiciled in another state or country during or in connection with an athletic contest or event conducted in this state.

(b) The exemption provided in this Paragraph shall not be construed to allow the performance of any elective procedure by a physician who is not duly licensed to practice medicine in accordance with the provisions of this Part.

Acts 1975, No. 350, §1; Acts 2014, No. 535, §1.

§1291.1. Out-of-state physician orders

A. The board may adopt rules, in accordance with the Administrative Procedure Act, exempting application of this Part to an out-of-state physician who orders routine diagnostic testing for an established patient, provided the physician-patient relationship was initiated through an in-person, face-to-face visit with the physician in another state, the order can be verified, and the results of all testing are provided directly to the ordering out-of-state physician. A health care facility or provider that is presented such an order may choose not to recognize such an order.

B. For the purposes of this Section, "out-of-state physician" means a physician who is duly licensed to practice medicine in any state or jurisdiction in the United States other than Louisiana.

Acts 2011, No. 44, §1.