

## NOTICE OF INTENT

### Department of Health, Board of Medical Examiners

Rules of Procedure;

Complaints and Investigations

(LAC 46:XLV Chapter 97)

Notice is hereby given that in accordance with the Louisiana Administrative Procedure Act, R.S. 49:950 *et seq.*, and pursuant to the authority vested in the Louisiana State Board of Medical Examiners (board) by the Louisiana Medical Practice Act, R.S. 37:1270, the board proposes to amend its rules governing adjudication, by inserting a new section (9714), dealing with guidelines for determining whether to issue public or non-public actions. The proposed amendments are set forth below.

## TITLE 46

### PROFESSIONAL AND OCCUPATIONAL STANDARDS

#### Part XLV. Medical Professions

#### Subpart 5. Rules of Procedure

#### Chapter 97. Complaints and Investigations

##### **§9714. Guidelines for determining whether to issue public or non-public actions**

A. The board has the responsibility to consider and determine appropriate action as to all conduct alleged to violate the Louisiana Medical Practice Act, R.S. 37:1261-1292 *et seq.*, other practice acts respecting allied health care practitioners governed by the board, and the rules and regulations promulgated by the board in carrying out the provisions of this Part.

B. This Section provides guidance as to the criteria the board may consider in determining whether informal complaint disposition is non-disciplinary (not public) or disciplinary (public).

C. This Section is intended to compliment, but not limit the board's authority to make such dispositions as it may deem appropriate under the particular facts and circumstances presented in any matter.

D. In determining whether informal complaint disposition is non-disciplinary or disciplinary, as well as the terms and conditions of disciplinary dispositions, the board may consider aggravating or mitigating circumstances. A list of aggravating and mitigating circumstances is set forth below but is neither intended to be nor shall it be construed as an exclusive listing of circumstances.

1. Aggravating circumstances may warrant a disciplinary disposition or, in the case of a disciplinary disposition, justify revocation, the duration of suspension and enhancement of the period and type of probationary terms, conditions and/or restrictions of a consent or other board order. Aggravating circumstances include, but are not limited to:

- a. a danger to public health, safety and welfare;
- b. patient(s) harm or one or more violations that involve more than one patient;
- c. severity of patient harm;
- d. prior similar violations or board disciplinary action;
- e. disciplinary action in another jurisdiction or by a government agency, peer review or professional organization or health care entity;
- f. conduct involving patient exploitation;
- g. failure to provide professional service to a person because of such person's race, creed, color or national origin;
- h. failure to cooperate with board investigation or failure to adhere/comply with previous board order;
- i. dishonesty or selfish motive;
- j. attempt to conceal, or refusal to acknowledge nature of conduct;
- k. financial benefit to licensee or applicant;
- l. other relevant circumstances increasing the seriousness of the misconduct.

2. Mitigating circumstances may result in a non-disciplinary disposition or, in the case of a disciplinary disposition, justify reduction of the duration of suspension or period and type of probationary terms, conditions and/or restrictions of a consent or other board order. Mitigating circumstances include, but are not limited to:

- a. those that do not constitute an aggravating circumstance as set forth in this Section;
- b. practice-related or other professional or competency concerns that do not rise to a level of a violation of the practice act or board rules;
- c. isolated, minor or technical violation with adequate explanation that is not likely to recur;
- d. steps taken to insure nonoccurrence of future similar violation;
- e. timely and good faith efforts to rectify or mitigate consequences of misconduct;
- f. remorse, recognition/acknowledgment of wrongdoing;
- g. cooperation with board and board staff;

- h. potential for rehabilitation;
- i. voluntary participation in board approved continuing medical or professional education;
- j. absence of adverse patient impact;
- k. remoteness of misconduct;
- l. other relevant circumstances reducing the seriousness of the misconduct.

E. By setting forth the above guidelines the board does not intend to restrict, and indeed reserves unto itself, its authority and discretion to take such action it may determine appropriate in any particular matter with respect to informal and formal complaint disposition.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1261-1292 and 37:1270(A)(5).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR

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## TITLE 46

### PROFESSIONAL AND OCCUPATIONAL STANDARDS

#### Part XLV. Medical Professions

#### Subpart 5. Rules of Procedure

#### Chapter 97. Complaints and Investigations

##### §9716. Complaint Disposition Guidelines

A. These complaint disposition guidelines are designed to:

1. provide guidance to the board in assessing administrative disciplinary dispositions for violations of the Louisiana Medical Practice Act and the various practice acts governing allied healthcare practitioners regulated by the board; and

2. promote consistency in administrative disciplinary dispositions for similar violations.

B. In the event that the practice act or rules administered by the board for a category of allied healthcare providers do not contain the exact charges identified below, but instead refer to *unprofessional conduct* or a violation of the code of ethics of a national or professional organization, such violations will to the extent applicable be addressed by the guidance set forth below.

C. Special definitions. As used in this Section the following terms shall have the meanings specified:

a. *Continuing Medical Education* or *CME*, may include, but is not limited to, one or a combination of courses on:

1. medical ethics;

2. professional boundaries;

3. professionalism;

4. proper prescribing of controlled or other substances;

5. risk management;

6. medical record keeping;

7. any CME program developed by the board; and

8. any designated CME specified by the board;

b. *Probationary Terms and Conditions (T&C)* may include, but is not limited to, any restriction, limitation, condition, requirement, stipulation, or other provision that the board may determine appropriate. Probationary T&C may also include CME, a fine and payment of investigator and attorney fees and all costs of the proceeding. The duration of probationary T&C rests with the discretion of the board following consideration of aggravating and mitigating circumstances defined in Section [insert].

D. The maximum administrative disciplinary disposition that may be imposed by the board is denial or revocation of a license or permit to practice medicine or the license, certificate, registration or permit to practice as an allied healthcare practitioner regulated by the board, and an administrative fine of \$5,000 as to physician and the amount, if any, specified by the act governing the allied healthcare practitioner. The board may also assess investigator and attorney fees and all costs of the proceeding in accordance with the applicable practice act.

E. The administrative disciplinary dispositions identified in this Section provide a range from *minimum* to *maximum*. Each violation constitutes a separate offense. A:

1. greater disciplinary disposition may be imposed based on the number of violations;

2. disciplinary disposition may be greater or lower based on the presence or absence of aggravating or mitigation circumstances, identified in Section [insert] of these rules.

F. This Section is intended to compliment, and in no event shall it be construed to limit the board's authority to make such administrative disciplinary dispositions as it may deem appropriate under the particular facts and circumstances presented and as authorized by the applicable practice act in question.

1. Conviction/plea to a felony:

a. minimum—suspension for period of incarceration plus supervised release. If no incarceration, suspension for the duration of the supervised release and probationary terms and conditions (T&C) for a minimum of 1 year;

b. maximum—suspension with probationary terms and conditions or revocation;

2. Conviction/plea to charge related to practice:

a. minimum—suspension of license for period of incarceration plus supervised release. If no incarceration, suspension for the duration of the supervised release and reprimand and CME or a fine or both;

b. maximum—suspension or revocation;

3. Fraud, deceit, or perjury obtaining a diploma, license, or permit:

a. minimum—letter of concern, resubmission of corrected application and new application fee;

b. maximum— if violation renders applicant/licensee ineligible for license, suspension or revocation; if violation does not render applicant/licensee ineligible for license, resubmission of corrected application, new application fee and probationary T&C;

4. Providing false testimony/information to the board:

a. minimum—letter of concern and CME;

b. maximum—probationary T&C;

5. Abuse of drugs or alcohol.

a. minimum—when no prior treatment, referral to Healthcare Professionals Foundation of Louisiana, Inc.; when prior treatment, probationary T&C for minimum of 1 year;

b. maximum—suspension, probationary T&C and/or revocation;

6. Providing controlled substances without medical justification therefor or in illegitimate manner:

a. minimum—letter of concern;

b. maximum—suspension with probationary T&C for or revocation;

7. Solicitation of patients or self-promotion that is fraudulent, false, deceptive, or misleading:

a. minimum—letter of concern;

b. maximum—suspension and/or probationary T&C;

8. currently not enforceable;

9. currently not enforceable;

10. Efforts to deceive the public:

a. minimum—letter of concern;

b. maximum—probationary T&C;

11. Making or submitting false, deceptive, or unfounded claims or reports:

a. minimum—letter of concern and CME or a fine or both;

b. maximum—suspension and/or probationary T&C;

12. Inability to practice medicine with skill or safety:

a. minimum—practice restrictions, probationary T&C;

b. maximum—suspension with probationary T&C or revocation;

13. Unprofessional conduct:

a. minimum— letter of concern and CME or a fine or both;

b. maximum—suspension and/or probationary T&C or revocation;

14. Medical incompetency:

a. minimum—letter of concern and CME or a fine or both;

b. maximum—suspension and/or probationary T&C or revocation;

15. Immoral conduct:

a. minimum—reprimand and CME or a fine or both;

b. maximum—suspension and/or probationary T&C or revocation;

16. Gross overcharging for professional services:

a. minimum—letter of concern and CME or a fine or both;

b. maximum—probationary T&C;

17. Abandonment of a patient:

a. minimum—letter of concern and CME or a fine or both;

b. maximum—probationary T&C;

18. Assisting an unlicensed person to practice or professional association with illegal practitioner:

a. minimum—letter of concern and/or CME;

b. maximum—suspension and/or probationary T&C;

19. Soliciting or accepting, or receiving anything of economic value for referral:

a. minimum—letter of concern and CME or a fine or both;

b. maximum—suspension and/or probationary T&C or revocation;

20. Violation of federal or state laws relative to control of social diseases:

a. minimum—letter of concern and CME;

b. maximum—probationary T&C;

21. Interdiction or commitment:

a. minimum—suspension, demonstration of competency to resume practice;

b. maximum—suspension and/or probationary T&C or revocation;

22. Utilizing a physician's assistant without Board registration:

a. minimum—letter of concern and/or CME.

b. maximum—reprimand and CME or a fine or both;

23. Employing a physician's assistant whose conduct includes any of the causes enumerated in this Section:

a. minimum—reprimand and CME or a fine or both;

b. maximum—probationary T&C for 1 year and fine;

24. Misrepresenting the qualifications of physician' assistant:

a. minimum—letter of concern and CME or a fine or both;

b. maximum—probationary T&C.

25. Inability to practice medicine with skill or safety:

a. minimum—restriction/limitation of practice and CME;

b. maximum—suspension and/or probationary T&C or revocation;

26. Refusing to submit to evaluation:

a. minimum—suspension and/or probationary terms and conditions;

b. maximum—suspension and probationary T&C;

27. Currently not enforceable;

28. Currently not enforceable;

29. Action by another state that denies, prevents or restricts practice in that state:

a. minimum—letter of concern or probationary T&C;

b. maximum—suspension and/or probationary T&C or revocation;

30. Violation of rules of the board, or any provisions of the practice act:

a. minimum—letter of concern and CME or a fine or both;

b. maximum—suspension and/or probationary T&C or revocation;

31. Failure by a physician to self-report personal action constituting a violation of this Act within thirty days:

a. minimum—letter of concern and CME or a fine or both;

b. maximum—probationary T&C;

32. Holding oneself out as "board certified", without meeting required criteria:

a. minimum—letter of concern and CME or a fine or both;

b. maximum—reprimand and CME or a fine or both.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1261-1292 and 37:1270(A)(5).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR

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