

## NOTICE OF INTENT

### Department of Health, Board of Medical Examiners

Rules of Procedure;  
(LAC 46:XLV.9703, 9707, 9709)

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 rule 9703 to define the “Executive Director” position and “sufficient cause”; to amend rule 9707B and 9709A to ensure that the language comports with the law, R.S. 37:1285.2 on the same topic; to amend rule 9709B3 to add a provision that ensure licensee-respondents will receive notice where the board elects to utilize prior complaints in investigation and adjudication proceedings; and to revise 9709D to eliminate unnecessary language. 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

#### §9703. Definitions

A. As used in this Chapter, the following terms shall have the meanings specified.

....

Executive Director – a physician possessing qualifications specified by the board who serves as the Chief Executive Officer of the Agency.

....

Sufficient Cause – information received by the Board pursuant to La. R.S. 37:1285(A)(2) and Rule 9705 which indicates that a violation of the law or of a rule administered by the board may have occurred.

....

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 41:2628 (December 2015), amended by the Department of Health, Board of Medical Examiners, LR 46:339 (March 2020); amended LR 48: (2022).

#### §9707. Complaint Processing

A. ....

B. Upon delegation by the DOI. ~~Any staff member of the board, except the executive director, may act as the lead investigator on any complaint, received by the board regarding a physician or any investigation regarding a physician initiated by the board on its own motion.~~

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 41:2628 (December 2015), amended LR 42:571 (April 2016); amended LR 48: (2022).

#### §9709. Preliminary Review

A. A preliminary review ~~shall~~may be initiated to determine if information received by the board pursuant to La. R.S. 37:1285.2 and Rule 9705~~if the complaint is jurisdictional and whether sufficient cause exists to warrant formal investigation only upon one or more of the following:~~

1.-3. ....

B. A preliminary review is initiated upon the receipt, review and assignment of a case number at the direction of the DOI or the assigned investigator. During a preliminary review such action may be initiated and taken as deemed necessary or appropriate and additional information may be obtained to assist in the determination. As part of the preliminary review:

1.-2. ....

3. the licensee may be provided the opportunity to respond to the complaint or provide related information; provided, at the time of the first communication from the board to a licensee regarding a complaint the licensee shall be provided:

a. ....

b. notice that the licensee may, at his own expense, retain legal counsel of his choice to represent his interest; ~~and~~

c. ~~such other information as may be deemed appropriate.~~ notice that past complaints and investigations may be utilized in all phases of the disciplinary process; and,

d. such other information as may be deemed appropriate.

C. ....

D. Preliminary review of a complaint shall be completed as promptly as possible within ninety days of initiation unless extended by the board for satisfactory cause. However, this period shall not apply to information received from local, state or federal agencies or officials relative to on-going criminal, civil or administrative investigations or proceedings, ~~which do not provide a basis for preliminary review.~~

E.-F. ....

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1261-1292 and 37:1270(A)(5) and 37:1285.2.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 41:2628 (December 2015), amended LR 42:571 (April 2016), amended by the Department of Health, Board of Medical Examiners, LR 46:340 (March 2020); amended LR 48: (2022).