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. This Rule is hereby adopted on the day of promulgation.

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 47:736 (June 2021).

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