

NEWSLETTER

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The News is published on our web site when it occurs at <http://www.lsbme.la.gov/>. RSS subscription is available. Links to citations in the printed Newsletter may be found on the website.

We will switch to electronic distribution of the Newsletter with the next issue.

If you would like to continue receiving a printed copy please contact us at Newsletter@lsbme.la.gov.

We welcome your feedback on the topics that are presented and recommendations regarding future topics as well as legislative and/or rule making efforts and board services.

Legislation (2012)

Medical Disclosure Panel

[Act 759 \(2012\)](#) amends existing law to create the Louisiana Medical Disclosure Panel. The amendments continue the protections provided by existing law but: (1) give the responsibility for implementing the law to the newly created panel which is placed within the Department of Health and Hospitals and; (2) requires the Department to maintain a searchable database of all current medical disclosure lists which is available to the public through the Department's website.

Members are nominated by various professional organizations and are appointed by the Governor. There are 15 members consisting of physicians nominated by LSMS (6), lawyers (4), dentists (2), nurse practitioners (1) chiropractors (1) and podiatrists (1).

As set forth in the Act, the Panel shall identify and make a thorough examination of all medical treatments and surgical procedures in which physicians and other health care providers may be involved in order to determine which of those treatments and procedures do and do not require disclosure of the risks and hazards to the patient or person authorized to consent for the patient and shall establish the form in which the disclosure shall be made. If the disclosure form is used correctly, a rebuttable presumption that consent was properly obtained is thereby created.

In order to be covered by the provisions of law, however, the physician or other health care provider who will actually perform the contemplated medical or surgical procedure shall:

- (1) Disclose the risks and hazards in the form and to the degree required by the panel;
- (2) Disclose additional risks, if any, particular to a patient because of a complicating medical condition, either told to the physician or other health care provider by the patient or his representative in a medical history of the patient or reasonably discoverable by such physician or other health care provider;
- (3) Disclose reasonable therapeutic alternatives and risks associated with such alternatives;
- (4) Relate that he is obtaining consent to medical treatment pursuant to the lists formulated by the Louisiana Medical Disclosure Panel; and
- (5) Provide an opportunity to ask any questions about the contemplated medical or surgical procedure, risks, or alternatives and acknowledge in writing that he answered such questions, to the patient or other person authorized to give consent to medical treatment, receipt of which shall be acknowledged in writing.

Of note, the consent process MAY NOT BE DELEGATED and ADDITIONAL RISKS due to a patient's underlying medical condition MUST BE DISCLOSED on the form. Otherwise the protections are LOST.

The Panel held its first meeting on December 5, 2012 and will meet quarterly. Updates will be published on the Board's web site and elsewhere.

Allied Health Providers (August 15, 2012)

[Act 431 \(2012\)](#): (1) establishes an annual assessment of \$25 on each medical psychologist, physician assistant, and podiatrist to be used 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 reasonable skill and safety (2) provides that the assessment established by existing law is due at the time of application for the issuance, renewal, or reinstatement of a license, permit, certificate, or registration; (3) provides that a medical psychologist, physician assistant, or podiatrist has a self-reporting waiver if a violation of his practice act is related 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; and (4) provides that the provisions of existing law governing protected actions and communications must 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.

Examination Requirements for Athletic Trainers (August 15, 2012)

[HCR 69 \(2012\)](#) Amends prior rule of the La. State Board of Medical Examiners to delete a requirement that an applicant for certification as an athletic trainer who has failed to attain a passing score upon taking the certification examination four times shall not thereafter be considered and shall not be eligible to take the examination again. New rule provides that an applicant having failed to attain a passing score upon taking the athletic trainer certification examination may take a subsequent examination upon payment of the applicable fee.

Polysomnographic Practice (August 15, 2012)

[Act 678 \(2012\)](#) Changes various requirements for licensure including a requirement that after July 2017: (1) the applicant has graduated from a CAAHEP accredited program; and (2) the applicant has passed an examination that is administered as a component of a certification program that is accredited by the National Commission for Certifying Agencies, the American National Standards Institute, or other national accrediting organizations approved by the La. State Board of Medical Examiners.

Use of the Title "Doctor" (August 15, 2012)

[Act 772 \(2012\)](#) Provides that: (1) no healthcare provider, while providing direct patient care, shall present himself, whether orally or in writing, to a patient using the title of "Doctor" or the abbreviation of "Dr." as a prefix to his name without using a sufficient suffix to denote either the type of professional license held by the healthcare provider or the degree to which he is entitled by reason of his diploma of graduation from a school or other entity, professional or otherwise; and (2) any healthcare provider who uses the title of "Doctor" or the abbreviation of "Dr." in any manner inconsistent with the provisions of proposed law may be sanctioned in accordance with rules promulgated by the licensing board for that provider's profession or occupation. There is an exception whereby the new law shall not apply to a physician as defined by Medicare pursuant to 42 USC 1395x(r).

Mental Health Counselors (August 15, 2012)

[Act 636 \(2012\)](#) allows a person licensed under prior law to assess, diagnose, or provide treatment to any individual suffering from a serious mental illness when medication may be indicated only when the counselor, in accordance with industry best practices, consults and collaborates with a practitioner who holds a license or permit with the La. State Board of Medical Examiners or an advanced practice registered nurse licensed by the La. State Board of Nursing who is certified as a psychiatric nurse practitioner. Prior law defined "serious mental illness" to include a diagnosis of major depressive disorder. New law amends prior law to provide that "serious mental illness" includes a diagnosis of major depressive disorder-moderate to severe.

Rules – Notices of Intent

[Eligibility for Licensure as a Physician](#) (September 2012)

A Notice of Intent to amend the Board's rules with respect to eligibility for licensure as a physician was published in the September issue of the Louisiana Register. The amendment provides that to be eligible for a license, an applicant shall have been primarily engaged in the practice of medicine, medical education, or postgraduate medical education or training, or any combination of the foregoing, for the four years immediately preceding the date of the submission of an application. An applicant who does not satisfy this requirement, shall demonstrate his or her clinical competency by the successful passage of an assessment examination or such other competency testing or evaluation, monitoring or supervision as may be designated by the Board. *Primarily Engaged* is defined as that activity to which the applicant devotes the majority of his or her time.

[Reporting certain matters to the Board](#) (September 2012)

A Notice of Intent to amend the Board's rules with respect to reporting suspension, termination, non renewal, surrender, resignation or withdrawal from participation in a Graduate Medical Education Program to the Board was published in the September issue of the Louisiana Register. The amendment provides that a physician participating in an accredited postgraduate medical training program (program) in this state under the authority of a registration, permit or license issued by the board shall report, and shall request that the program report, to the Board in writing his or her suspension, termination, non-renewal, surrender, resignation or withdrawal from the program within thirty days of such action.

[PA Prescriptive Authority](#) (September 2012)

A Notice of Intent to amend the Board's rules with respect to prescriptive authority of Physician Assistants was published in the September issue of the Louisiana Register. The amendment provides that to be eligible for registration of prescriptive authority for legend drugs or medical devices, or both, a physician assistant shall possess a current license to practice as a physician assistant duly issued by the Board and not be the subject of a current investigation or pending disciplinary proceeding by the Board – (con't on last page)

Rules – Adopted and Promulgated**Physician Assistants** (May 2012)

A Notice of Adoption and promulgation of amendments to the Board's rules with respect to the supervision of physician assistants was published in the May issue of the *Louisiana Register*. The amendments provide that the supervising physician (SP) is responsible for the responsible supervision, control, and direction of the physician assistant (PA) and retains responsibility to the patient for the competence and performance of the PA. An SP may delegate medical services identified as core competencies by the National Commission on Certification of Physician Assistants ("core competencies"), under general supervision. An SP may delegate certain medical services beyond core competencies to a PA provided (1) the SP is trained and qualified in and performs the service in the course and scope of his or her practice. If the service is provided in a hospital the SP and the PA shall be credentialed to provide the service; (2) PA credentialing shall be in the manner specified in the rule. The SP delegates the service to a PA who has obtained additional training and has documented the ability to perform the service safely and effectively, (3) the SP provides a level of supervision appropriate to the risk to the patient and the potential for complications requiring the physician's personal attention, and (4) the primary SP ("PSP") shall maintain a credentials file for each PA for whom he or she serves as a PSP and at least annually assess and document therein the PA's performance as evidenced by the PSP's dated signature. The credentials file shall include a list of services beyond core competencies that the PA may perform and with respect to each shall also document: the PA's training in the service; the PA's ability to provide or perform the service safely and effectively; and the protocols to be followed for the service. A PSP who is employed or under contract with a hospital is not required maintaining a credentials file for a PA who is also employed or under contract with the same hospital, provided that the PA is individually credentialed by the medical staff organization of the hospital, based on established criteria similar to those utilized for physicians, which takes into consideration the PA's training and qualifications to provide or perform a service beyond core competencies safely and effectively; and the PSP annually reviews, dates and signs the PA's credentials file. A SP may not serve as a PSP for more than two PAs; and shall not act as a SP for more than four PAs simultaneously at the same time.

Notices**Electronic Death Registration (LEERS)** August 13, 2012.

The state is asking physicians to use a new online system (LEERS) for reporting deaths and will ultimately require all physicians to do so. As a physician, you will be able to digitally sign a death certificate instantly from anywhere with an internet connection, 24 hours a day, 7 days a week. <http://new.dhh.louisiana.gov>.

Induced Termination of Pregnancy December 20, 2012

State law requires that the attending physician report each induced termination of pregnancy performed to the Vital Records Registry within 15 days of the procedure (La. Rev. Stat. §40:48(B) and La. Rev. Stat. §40:32(7)). More information is available on the State Office of Vital Statistics web site. www.vitalrecords.dhh.la.gov

Guidance

[Ethics of Commercial Screening Tests](#): Annals of Internal Medicine November 2012

[Responsible Opioid Prescribing: Revised and Expanded Second Edition](#) from the Federation of State Medical Boards www.fsmb.org.

[Patient Evaluation Resources for Opioid Risk Management – interactive case studies and resources](#) from Purdue Pharma L.P. <http://www.purduepharmamededresources.com/>.