OVERVIEW OF THE BOARD’S COMPLAINT AND INVESTIGATION PROCEDURES

INTRODUCTION and GENERAL CONCEPTS

One of the ways in which the Board fulfills its mission to protect the health and safety of the public is to take action against a physician or other allied healthcare professional under its jurisdiction. Any action against a licensee must originate from a complaint filed with or by the Board and be substantiated by investigation.

The standard of medical and allied health practice in Louisiana is governed by various provisions of Louisiana law, including La. R.S. 37:1261, et seq., by corollary federal laws, and by administrative rules promulgated by the Board which have the force of law, Louisiana Administrative Code (LAC) Title 46, Part 45. Links to these laws and rules can be found on the opening page of the Board’s website.

The purpose of this document is to give licensees, patients, healthcare consumers, other stakeholders, and the public a general overview of the Board’s complaint and investigation process. Where applicable, references are provided to pertinent Louisiana laws and the Louisiana Administrative Code. Please note that it does not constitute a legal interpretation or legal advice. Persons with specific legal questions should contact their individual attorneys.

THE COMPLAINT PROCESS

Who can file?

A complaint may be filed by any person other than an employee of the board or initiated by the Board on its own motion with a 2/3s vote of its members. (La. R.S. 37:1285.2(A); LAC 46:45.9705 & 9709). Many complaints are received by patients or relatives, but complaints can also be initiated based on information from other credible and verifiable sources such as law enforcement, other regulatory boards, or the media. Additionally, licensees are required to self-report any acts or circumstances that place them in violation of the laws and rules by which they are governed. (See, e.g., La. R.S. 37:1285(A)(31)).

How To File a Complaint

A complaint should be submitted in writing. The Board provides a complaint form on its website, www.lsbme.la.gov, to be completed, dated, and signed by the person making the complaint. Use of the form is preferred but not required. (LAC 46:45.9705(B)) The complaint may be received by mail (630 Camp Street, New Orleans, LA 70130), email, (lsbme@lsbme.la.gov), fax (504) 324-0994, or even by phone call to the investigations department (504) 568-6820. The complainant should identify him/herself and provide contact information such as an address, phone number
or email. The Board will respond with a written acknowledgement of all written complaints. A complaint may be filed anonymously, but action will only be taken by the Board if the complaint is supported by apparently reliable information, is supported by evidence provided with the complaint, or can be verified independently.

**Complaint Processing and Preliminary review (LAC 46:45.9707 & 9709)**

The complaint process begins with a preliminary review of a legally filed complaint. First, the Board determines whether it has jurisdiction over both the individual and the activity identified in the complaint. (In addition to physicians, the Board regulates 15 other allied health professionals, including: Acupuncturists, Athletic Trainers, Clinical Exercise Physiologists, Clinical Laboratory Personnel, Genetic Counselors, Medical Psychologists, Midwives, Military Provisional Licensees, Occupational Therapists, Perfusionists, Physician Assistants, Podiatrists, Polysomnographic Technologists, Private Radiological Technologists, and Respiratory Therapists.) The unauthorized practice of medicine by a non-licensed individual also falls within the Board’s jurisdiction to investigate and take action.

Next, the Board evaluates whether the allegations of the complaint demonstrate sufficient cause to believe that a violation of an applicable law or rule has occurred. “Sufficient cause” is defined as “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.” (LAC 46:45.9703(A) (pending promulgation)).

During the preliminary review, a Board investigator may obtain all files and records related to the complaint and to the complainant, which may be needed to determine if the complaint is jurisdictional and whether sufficient cause exists to warrant formal investigation; provided, however, no more than twenty additional files or records of patients may be obtained in connection with the review unless authorized by the Board. In general, a Board investigator may conduct interviews and obtain affidavits from the complainant and the complainant’s witness, issue subpoenas for medical, hospital, pharmacy, and law enforcement records, and review patient records or other documentation, including prior complaints, to make the necessary determinations of jurisdiction and possible violation.

Additionally, the Board may provide the licensee with written notice of the initiation of a preliminary review, a copy or summary of the complaint (with the complainant’s consent), the opportunity to submit a written response, and inform the licensee of his/her right to retain counsel at his/her expense. A complainant has the right to remain anonymous during the preliminary review.

The preliminary review is to be concluded within 90 days unless the Board votes to authorize an extension of the review period. Among other reasons, the 90-day time period may be suspended for pending proceedings by law enforcement and other agencies.
Possible outcomes of preliminary review

Case closure

If the preliminary review determines that the Board does not have jurisdiction, the complainant is notified of this determination and the preliminary review is concluded, the case is closed, and the licensee is provided written notice of the case disposition.

Non-disciplinary action

If the preliminary review determines that the act or behavior does not rise to the level of a possible violation that requires disciplinary action but shows that the conduct is cause for concern and/or requires additional education, the Board may take non-disciplinary action in the form of a non-public and non-reportable letter of concern. The licensee will be monitored for compliance.

Request for formal investigation

If it is determined that the Board has jurisdiction and there is sufficient cause to believe that a violation may have occurred, a request to initiate a formal investigation must be submitted to the Board to determine if a violation of the law or rules has occurred.

If it is determined that the complaint requires immediate action because the licensee poses an imminent and immediate danger or potential risk of harm to the health or welfare of a patient or the public, the Board can impose a summary suspension.

THE INVESTIGATION PROCESS

Formal Investigation (La. R.S. 37:1285.2 et seq.; LAC 46:45.9711 et seq.)

Formal investigation first steps

If the Board approves a request for formal investigation, the licensee must be provided with written notice within five days of the Board’s decision. The notice must include a summary of the complaint and must inform the licensee of his/her right to have an attorney, at his/her expense, during the process.

The Board has subpoena powers for records and witnesses, beyond that permitted in a preliminary review. A formal investigation will review a variety of evidence including, but not limited to, review of past complaints and investigations to determine whether the licensee has demonstrated a pattern of practice or recurring conduct in violation of the rules or laws. Past complaints or investigations will be used to determine a possible pattern in the current investigation. Evidence of impairment, drug/alcohol abuse, sexual misconduct, acts of violence...
or cognitive impairment might require the licensee to submit to an evaluation, testing, or treatment at a Board approved facility. A formal investigation should conclude within two years unless extended by the Board.

**Bertucci hearing**

If it is determined that an Administrative Hearing may be required, once the formal investigation is completed, and prior to filing formal charges (an Administrative Complaint) with the Board, the licensee must be provided with a draft of the Administrative Complaint and a letter providing a reasonable opportunity for a conference, called a “Bertucci hearing” (La. R.S. 49:961(C)). This meeting serves to give the licensee an opportunity to show that the complaint is unfounded or show compliance with all lawful requirements for the retention of the license. This conference may be attended by the Director of Investigations, the Board’s assigned investigator, the attorney assigned to the case, Compliance Counsel, the licensee, and the licensee’s attorney.

**Possible outcomes of Formal Investigation**

**Case closure**

When the evidence does not support a finding that a violation has occurred, a formal investigation may be closed, with or without a Letter of Concern. A Letter of Concern is not public, but the formal investigation is a reportable event.

**Disciplinary action**

When there is sufficient evidence to support a determination that a violation has occurred, a recommendation may be made for disciplinary action. Discipline imposed by the Board is a public action such as revocation of license, suspension of a license, a public reprimand, and, in accordance with LAC 46:45.9713(C)(2), a negotiated consent order. Suspensions, orders and reprimands may or may not restrict the licensee’s privileges and/or practice, include probation and/or include practice monitoring. All formal investigations are reportable events, even if closed with or without a Letter of Concern.

**Administrative complaint and Adjudication (LAC 46:45.9901 et seq.)**

If an informal or negotiated resolution is not reached, or the licensee waives or fails to attend a Bertucci hearing or is unable to demonstrate lawful compliance or that the complaint is unfounded, an Administrative Complaint may be filed. Where necessary to protect the public during the administrative proceedings, an emergency action or summary suspension may be ordered. When an Administrative Complaint is filed with the Board, the licensee-respondent is served with a copy of the complaint and must file a response within 15 days unless a request for more time is approved by the Board. Any potential exculpatory evidence must be disclosed to
the licensee, whether requested or not. Other documents can be requested through discovery. The Board’s administrative rules provide further information as to the procedures and processes, culminating in an administrative hearing before the Board or a designated hearing panel of the Board which must determine by a preponderance of evidence whether a violation of the law or the rules has occurred.

CONCLUSION

We hope that this brief overview of the LSBME’s Complaint and Investigation Procedures has been informative and helpful. For further information or interpretation, please consult the applicable laws and regulations governing the practice of medicine and allied health and/or an attorney.