REPORT OF THE BOARD OF DIRECTORS

Subject:  
Elements of a State Medical and Osteopathic Board – 5th Edition

Referred to:  Reference Committee B

The Elements of a Modern State Medical and Osteopathic Board was first drafted in 1988 with the primary focus being to develop a blueprint of the structure and function of a state medical or osteopathic board. The document details powers, duties and protections basic to a state board’s structure and function. The Elements was revised and adopted as policy by the House of Delegates in 1998 and was designed to establish a closer and more functional relationship with the Essentials of a Modern Medical and Osteopathic Practice Act, as well as reflect a style more consistent with other FSMB documents. Revisions proposed this year will result in the publication of the Fifth Edition of the Elements (Attachment 1).

The Advisory Council of Board Executives was asked to provide guidance in reviewing and revising the Elements. The Advisory Council met on September 10, 2014 and worked over the next several months to recommend revisions. A draft document was submitted to the FSMB Board of Directors in February 2015. Members of the Advisory Council include Kevin Bohnenblust, JD, CMBE, Margaret Hansen, PA-C, CMBE, Lyle Kelsey, MBA, CMBE, Kimberly Kirchmeyer, Robert Knittle MS, Kathleen Selzler-Lippert, JD, CMBE, Mari Robinson, JD, and Jacqueline Watson, DO, MBA.

During its review, the Advisory Council determined a number of the provisions to be overly prescriptive and therefore, the proposed revisions are designed to provide greater flexibility while maintaining key elements of board structure and administration. The proposed revisions include:

1) Amend Section II to define “Telemedicine” as contained in the policy, Model Policy for the Use of Telemedicine Technologies in Medical Practice (HoD 2014);
2) Amend the qualifications for public members (III.D.2b);
3) Expand the number of consecutive terms a board member may serve from two to three (III.D.3);
4) Delete “coordinate Board activities” as a duty of Board officers (III.E.2);
5) Provide greater flexibility in regards to board committees, frequency of committee meetings and the use of teleconferences (III.G);
6) Delete language regarding the bonding of staff members charged with the handling of funds (III.I); and
7) Expand the duties and authority of the board to impose "conditions" on the medical license (III.K and L).

A copy of the Elements was distributed for comment to member boards on February 10, 2015. One board suggested modifications based, in part, on the recent Supreme Court decision in the matter of the North Carolina State Board of Dental Examiners vs. Federal
Trade Commission. However, upon review by the Advisory Council of Board Executives and the Board of Directors, the changes were not incorporated but will be included in a broader review and analysis of the Court decision on the structure and operation of state boards of medicine. Accordingly, additional revisions could be forthcoming to the House of Delegates for consideration in 2016.

RECOMMENDATIONS:

The Board of Directors recommends that:

The 5th Edition of the *Elements of a State Medical and Osteopathic Board* be adopted as policy.
Attachment 1
Elements of a State Medical and Osteopathic Board

Approved by the House of Delegates of the Federation of State Medical Boards of the United States, Inc., as policy

April 2015

Preface

In early 1988, the Division of Medicine of the Bureau of Health Professions, Health Resources and Services Administration, U.S. Department of Health and Human Services, requested proposals for the development of a document on a medical board’s structure and function. This document would incorporate the same concepts and principles used in the Federation’s *A Guide to the Essentials of a Modern Medical Practice Act*. The Federation’s knowledge, experience, and resources offered the most responsible and informed effort. The Federation’s proposal was accepted, and the Health Resources and Services Administration contract was awarded to the Federation to develop the document and make it available for consideration by the public, state medical boards, medical organizations and other relevant groups.

A special Federation work panel met throughout the year and drafted the *Elements of a Modern State Medical Board: A Proposal*. The *Elements*’ primary focus was to develop a blueprint of the structure and function of a modern state medical board. It detailed the powers, duties and protections that are basic to a state medical board’s structure and function. In that context, it reflected the study, concepts, opinions, knowledge and experience of the individuals comprising the work panel including members, attorneys and staff of state medical boards. The *Elements* presented a blueprint that is consistent with the principles expressed in the Federation’s policy document, *A Guide to the Essentials of a Modern Medical Practice Act*. It was offered as a stimulus for discussion of a number of issues vital to improving the regulation of the medical profession in the United States. The *Elements* and the *Essentials* are companion documents created with the intent to provide state medical boards a blueprint of a functional and modern state medical board.

In preparing this document, the work panel, chaired by Melvin E. Sigel, MD, carefully studied the basic structural and functional outlines of 65 medical boards, contacted 56 boards in telephone surveys on several specific issues, reviewed in detail the medical statutes of 38 states and analyzed the potential impact of the *Elements* if implemented in 18 widely differing state settings. While developing the document, the work panel benefited greatly from the advice, insight and counsel of 26 state medical board members, 18 of whom were board presidents, and 23 state medical board executives.

In May 1997, then-Federation President Susan Spaulding appointed a special committee to review the *Elements*
of a Modern State Medical Board: A Proposal. Chaired by Lee E. Smith, MD, the committee was charged with revising and updating the Elements to establish a closer, more functional relationship with the Federation’s eighth edition of A Guide to the Essentials of a Modern Medical Practice Act and to reflect a style more consistent with other Federation documents. Through a series of meetings, the committee developed new language based on research conducted by Federation staff. The committee presented the revised edition of the Elements to the House of Delegates at the Federation’s Annual Meeting in May 1998, where it was adopted as Federation policy.

Introduction

The structure and function of each of the 70 medical regulatory boards (allopathic, osteopathic and composite) within the United States and its territories are determined by a unique state statute, usually referred to as a medical practice act. The differences among these statutes are related to the general administrative structure of each jurisdiction and to the needs of the public as they are perceived by each responsible legislative body.

The Elements of a State Medical and Osteopathic Board is not intended to encourage movement toward total uniformity among these statutes. Given the diversity of administrative structures and the variations in perceived needs, that would be a futile exercise. The existing differences do have a positive creative value, allowing the evolution and testing of a range of new approaches in a number of jurisdictions concurrently. In light of the concepts and principles it offers for consideration, the Elements is intended to nurture that creativity by encouraging the public, state legislators, medical boards, medical societies and others who have an interest in the regulation of the medical profession to reexamine existing practice acts as they relate to the composition, structure, functions, responsibilities, powers and funding of medical boards. In doing this, however, the Elements does not address issues relating to standards for licensure, grounds for disciplinary action, or rules and regulations. It is not an effort to provide a template for a complete medical practice act. It includes only those portions of an act the authors believe focus most directly on the medical board itself.

State medical boards—without a doubt—can effectively discharge their important responsibilities to society only if they are properly organized and effectively empowered. The project that resulted in development of the Elements was conceived because of the growing realization that some medical practice acts remain inadequate to enable boards to respond to diverse public needs. The Federation of State Medical Boards encouraged and facilitated the improvement of the various state medical practice acts through its official publication, A Guide to the Essentials of a Modern Medical and Osteopathic Practice Act. Revised every three years, the Essentials serve as a highly effective stimulus to medical boards and state legislatures for periodic review and revision of their statutes. The Elements of a Modern State Medical and Osteopathic Board builds on the foundation of the Essentials and is, in effect, an explanation of the chapters of that publication. Unlike the broad recommendations of A Guide to the Essentials of a Modern Medical and Osteopathic Practice Act, the Elements document is presented in language and detail readily adaptable to statutory formats.

The Elements reflects not only relevant characteristics of effective current practice acts, but also a number of innovative concepts not yet widely implemented. The result is a document worthy of consideration for adaptation to the requirements of any jurisdiction. Although it could hardly be expected that any one jurisdiction would accept the Elements in every particular—the principles of responsibility, empowerment and accountability that the proposal clearly affirms—it should lead each jurisdiction to assess its present board structure and function to determine if it provides maximum potential for public protection. Does the status
quorate provide maximum potential for protection of the public interest? Though presented for consideration as
an integrated whole, the Elements offers significant approaches to a variety of issues that concern many boards.
Issues involving funding and budgeting, confidentiality, board authority, personnel and staffing,
administration, emergency powers, training of board members, immunity and indemnity, standards of
evidence and the public’s right to know are valid concerns.

In some states, responsibility for licensing and disciplinary functions is divided between two separate boards.
In others, boards are subject to supervision or, in some cases, complete control by larger administrative or
umbrella agencies. In a few, the board is simply an advisory body. In most states, the board regulates both
allopathic and osteopathic physicians; in others, separate boards exist. And in some states, narrow
constitutional restrictions inhibit effective board funding. Clearly, the Elements proposes a true working board
with real and effective power and support, a proposal some states are much better prepared to implement than
others. But it is also a reflection of those principles the authors consider to be basic to the operation of any
accountable medical board, regardless of the administrative structure of the state, the size or distribution of
the physician population being regulated, the form of legislation required for funding, or the title of the body
to which responsibility and power for regulation have been entrusted. It may be drawn upon by both
allopathic and osteopathic boards, making appropriate adaptations in the area of board membership. Larger
administrative agencies can use it to better assess their own structures and functions and to explore the
broader roles their medical boards might play in meeting public expectations. The Elements includes significant
material on a wide range of issues, much of which has the potential to benefit any administrative structure.

Recognizing the differences among jurisdictions, the authors have designed the Elements with the flexibility to
accommodate as many of those differences as possible while maintaining the integrity of the overall concept.
In addition, some sections empower a board to adopt alternatives of its choice, provided they are in accord
with other state statutes. Finally, some sections, such as those relating to board committees, are phrased
loosely to allow board-needed discretionary authority. The Elements may be seen not as one proposal, but as
various proposals. Each is applicable, in one form or another, to a diversity of settings, and all are aimed at
increasing or refining the ability of state medical boards to protect the health, safety and welfare of the public.

—The Federation Project Work Panel

Revised by:
Special Committee to Review the Elements of a Modern State Medical Board: A Proposal 1998
The Advisory Council of Board Executives: 2006
The Advisory Council of Board Executives: 2009
The Advisory Council of Board Executives: 2012
The Advisory Council of Board Executives: 2015

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I. Legislative Findings and Declaration

As a matter of public policy, the practice of medicine is a privilege granted by the people of the State acting through their elected representatives by their adoption of the Medical Practice Act. It is not a natural right of individuals. Therefore, in the interests of public health, safety and welfare, and to protect the public from the unprofessional, improper, incompetent, unlawful, fraudulent and/or deceptive practice of medicine, it is necessary to provide laws and regulations to govern the granting and subsequent use of the privilege to practice medicine and to ensure, as much as possible, that only qualified and fit persons hold that privilege. The Board’s primary responsibility and obligation is to protect the public, and any license, certificate or other practice authorization issued pursuant to this statute shall be a revocable privilege and no holder of such a privilege shall acquire thereby any irrevocable right.

II. Definitions

Dyscompetence: Failing to maintain acceptable standards in one or more areas of professional physician practice, as defined in Report of the Special Committee on Quality of Care and Maintenance of Physician Competence. (HOD 1999)

License: any license, certificate or other practice authorization granted by the State Medical or Osteopathic Board pursuant to this or any other applicable statute.

Licensee: the holder of any license, certificate or other practice authorization granted by the State Medical or Osteopathic Board.

Statute: this statute or any other statute applicable to the State Medical or Osteopathic Board.

Telemedicine: the practice of medicine using electronic communications, information technology or other means between a licensee in one location, and a patient in another location with or without an intervening healthcare provider. Generally, telemedicine is not an audio-only, telephone conversation, e-mail/instant messaging conversation, or fax. It typically involves the application of secure videoconferencing or store and forward technology to provide or support healthcare delivery by replicating the interaction of a traditional, encounter in person between a provider and a patient. (HOD 2014)

All other relevant definitions are provided in the Federation’s Essentials of a State Medical and Osteopathic Practice Act.

III. State Medical Board

A. Board Created

There is hereby created the State Medical Board (hereafter referred to as the Board) to protect the public from unlawful, incompetent, unqualified, impaired or unprofessional practitioners of medicine through licensure, regulation and rehabilitation of the profession in this state.

B. Duty
The Board shall determine a physician's initial and continuing qualification and fitness for the practice of medicine, shall initiate proceeding against the unprofessional, improper, incompetent, unlawful, fraudulent, deceptive or unlicensed practice of medicine, and shall enforce this statute. The Board shall discharge this duty in accord with this statute and other governing laws.

C. Interpretation of Powers

It is necessary that the powers conferred on the Board by this statute be liberally construed to protect the health, safety and welfare of the people of the State.

D. Board Membership

1. Number

The Board shall consist of enough members to appropriately discharge the duties of the Board at least 25% of whom should be public members. (The Board should consider several factors when determining the appropriate size and composition of a Medical Board, including the size of a state’s physician population, the composition and functions of Board committees, adequate separation of prosecutorial and judicial powers and the other work of the Board envisioned throughout this document. The Board should be of sufficient size to allow for recusals due to conflicts of interest and other occasional member absences without concentrating final decisions in the hands of too few members or loss of quorum.

2. Qualifications
   a. The membership of the Board shall be drawn from as many different regions of the State, as many different specialties as possible and should reflect the licensee population.
   b. Public members must reside in the State and be persons of recognized ability and integrity, are not licensed physicians or providers of health care or a retired physician or health care provider, have no past or current substantial personal or financial interests in the practice of medicine or with any organization regulated by the Board (except as a patient or care giver of a patient), and have no immediate familial relationships with individuals involved in the practice of medicine or any organization regulated by the Board, unless otherwise required by law.
   c. Physician members must reside in the State and be persons of recognized professional ability, and integrity who actively practice medicine, if appropriate, hold a full and unrestricted medical license in the jurisdiction and have practiced a sufficient time to be knowledgeable with laws, policies and practice in the State (e.g., five years).
   d. Members must be citizens of the United States who have attained the age of majority as defined in the statutes of the State.
   e. Sex, race, national or ethnic origin, creed, religion, disability or age above majority shall not be used as the sole reason for making an individual eligible or ineligible to serve on the Board
   f. No member shall be a registered lobbyist representing any health care interest or association.
   g. No member shall be an officer, board member or employee of a statewide or
national organization established for advocating the interests of individuals involved
in the practice of medicine or any organization regulated by the Board.

3. Terms

The term of Board service shall be four years. A person shall not serve as a member of the Board
for more than two three consecutive full terms, but may be reappointed two years after
completion of such service. A person who serves more than two years of an un-expired term shall
be considered to have served a full term. Terms of service shall be staggered, one fourth of the
Board’s membership being appointed each year. For Boards with up to four public members, the
term of no more than one public member shall expire in any one year. For Boards with more
than four public members, the terms of no more than two public members shall expire in any one
year.

4. Requirements

a. Before assuming the duties of office, each member of the Board shall take the
   constitutional oath or affirmation of office and shall swear or affirm that he or she is
   qualified to serve under all applicable statutes.

b. Before assuming the duties of office, the Board shall require each member to sign a
   statement agreeing that he/she will disclose any potential conflicts of interest that
   may arise for that member in the conduct of Board business.

c. Before assuming duties of office, the Board shall require each member to sign a
   confidentiality and ethics statement agreeing to maintain the confidentiality of
   confidential board business and patient identification and uphold high ethical
   standards in discharging board duties.

d. The Board shall conduct and new members shall attend a training program designed
   to familiarize new members with their duties. The Board shall hold an annual
   training program for new members.

5. Appointment of Members

a. The members of the Board shall be appointed by the Governor, who shall make
   each appointment at least 30 calendar days prior to the beginning of the Board term
   being filled. The Governor shall fill an unexpired term within 30 calendar days of the
   vacancy’s occurrence. The incumbent shall serve until the Governor names a
   replacement. Should the Governor not act as required by this paragraph, the Board,
   by majority vote, shall select a qualified person to serve in the interim until the
   Governor acts.

b. Any individual, organization or group may suggest potential Board appointees to
   the Governor.

6. Removal of Board Members

A Board member shall be automatically removed from the Board should he or she:

a. ceases to be qualified;

b. on death die;

c. on submit written resignation submitted to the board Chair or to the governor;

d. be on absence from the state for a period of more than six months;
e. be found guilty of a felony or an unlawful act involving moral turpitude by a court of competent jurisdiction;

f. be found guilty of malfeasance, misfeasance or nonfeasance in relation to his or her Board duties by a court of competent jurisdiction;

g. be found mentally incompetent by a court of competent jurisdiction;

h. fail to attend three successive Board meetings without just cause as determined by the Board, or, if a new member, fail to attend the new members’ training program without just cause as determined by the Board;

i. be found in violation of the medical practice act; or

j. be found in violation of the conflict of interest/ethics law.

7. Board Compensation/Reimbursement

a. Compensation: Service on the Board should not present an undue economic hardship. Board members shall therefore receive compensation in an amount sufficient to allow full participation and not preclude qualified individuals from serving.

b. Expenses: Each Board member’s travel and expenses necessarily and properly incurred for active Board service shall be paid at the State’s current approved rate.

c. Education/Training: Travel, expenses and daily compensation shall also be paid for each Board member’s attendance, in or out of State, for education or training purposes approved by the Board and directly related to Board duties.

E. Board Structure

1. Officers

The Board shall elect annually from its members a president/chair, a vice president/vice-chair, a secretary-treasurer and those other officers it determines are necessary to conduct its business. The officers shall serve for a one-year term.

2. Duties of Officers

a. The president/chair shall approve Board meeting agendas, preside at Board meetings, appoint Board committees and their chairs, coordinate Board activities and perform those other duties assigned by the Board and this statute.

b. The vice president/vice-chair shall assist the president/chair in all duties as requested by the president/chair and shall perform the duties of the president/chair in that officer’s absence.

c. The secretary-treasurer shall ensure the maintenance of the minutes of all meetings of the Board and that the expenditure of funds complies with State law.

3. Committees

To effectively facilitate its work, fulfill its duties and exercise its powers, the Board may establish standing committees, including, but not limited to, licensing, investigation, finance, administration, personnel, rules, legislative communications and public information committees. The chair may name ad hoc committees as required. The president/chair shall appoint members and chair of committees, who shall serve one-year terms and may reappoint members. In the absence of regular committee members and when necessary to provide a quorum for the conduct of committee business, the president/chair may appoint from the Board temporary members to a
committee. Changes in membership shall not be deemed to affect or hinder the continuing business or activity of any committee. If established, committees of the Board shall conform to the following:

a. A licensing committee shall be responsible for reviewing or directing the review of the qualifications of applicants for licensure in accord with this statute and Board policy and rules. It shall recommend to the Board the issuance or denial of licenses to applicants. A licensing committee may also be responsible for recommending or preparing for the Board’s consideration and approval those examinations to be used in meeting the examination requirements set by this statute for medical licensure and for other evaluative purposes. It may also administer or direct administration of all examinations in keeping with this statute and Board policy and rules.

b. An investigation committee shall be comprised of at least three members of the Board, but less than a quorum or in such number as to deprive the Board of a quorum when the committee members recuse themselves, one of whom must be a public member. An investigation committee shall be responsible for reviewing any complaint or charge referred to it in accord with written Board policy, for conducting an investigation to determine if there is a reasonable basis for the complaint or charge, for determining if a hearing is required and for referring the matter to the appropriate prosecuting authority for presentation to the Board or, if directed to do so by the Board, to a Board-designated hearing officer or State required hearing officer. In performing its duties, it shall have all the powers granted the Board in this statute to compel cooperation and the provision of information by individuals and institutions. The Board shall act in the capacity of the adjudicatory body, and no member of an investigation committee shall sit with the Board to hear or adjudicate a matter considered by his or her investigation committee nor shall he or she be counted as part of the Board in determining a quorum for the conduct of business during such a hearing or adjudication. Should the volume of complaints and charges require it, more than one investigation committee may be named at the Board’s discretion.

c. A finance committee shall be comprised of the secretary-treasurer, acting as chairperson, the president/chair and vice president/vice-chair, and one public member of the Board without constituting a quorum of the Board. It shall be responsible for recommending a budget to the Board for its consideration. It shall also assure a periodic audit of the Board’s accounts by the authority charged by law for auditing State accounts. It shall also coordinate and assist a State mandated audit by the authority charged by law with primary responsibility for auditing the State’s accounts. A report of the audit shall be sent to the Board and the Legislature. Budgets shall be prepared and adopted sufficiently in advance of the fiscal year to allow reasonable notice for increases or decreases in the fees and charges set by the Board.

Other committees created by the Board shall have those responsibilities, consistent with this statute, delegated to them by the Board.

4. Advisory Committees
To assist the Board in the performance of its duty relating to the regulation of health care professionals other than M.D.’s and D.O.’s, the president/chair, with the advice and approval of the Board, shall appoint a separate Advisory Committee for each of the health care fields for which the Board has responsibility under this statute. Each Advisory Committee shall include two Board members, one of whom shall serve as Committee chair, the other to serve as vice chair. The Committee shall also include three or four non-Board members. Each of these non-Board members shall meet the same requirements and be subject to the same limitations and causes for removal as a physician member of the Board, with the requirement for medical licensure being replaced by that for full and unrestricted authorization to practice in the particular health care field of the Advisory Committee to which he or she is appointed. Terms and limitations of service on an Advisory Committee shall be the same as for the Board. The non-Board members of an Advisory Committee may be compensated at an appropriate and reasonable level as determined by the Board and shall be reimbursed for meeting-related travel and expenses at the State’s current approved rate. Advisory Committees shall meet at least once each year to review the regulation of their health care fields and to advise the Board on policy and rules relating to that regulation. The Board may also consult them or their members for advice on particular issues or disciplinary matters. The Board shall determine the specific functions of the Advisory Committees in keeping with this statute.

F. Funding

1. Revenues

The Board shall be fully supported by the revenues generated from its activities, including fees, charges and recovered costs. The Board shall hold all such revenues, with the exception of fines, in a fund for its use, which is hereby established and which shall receive all interest earned on the deposit of such revenues. Such funds are appropriated continuously and shall be used by the Board only for administration and enforcement of this statute. All fines levied by the Board shall be deposited in the State General Fund, unless otherwise allowed by law. In the event the legislature imposes additional responsibilities on the Board beyond the Board’s statutory responsibilities for licensure and discipline, the legislature shall appropriate additional funds to the Board sufficient to carry out such additional responsibilities.

2. Budget

The Board shall develop and adopt its own budget reflecting revenues, including the interest thereon, and costs associated with each health care field regulated. Revenues and interest thereon, from each health care field regulated shall fully support Board regulation of that field. The budget shall include allocations for establishment and maintenance of a reasonable reserve fund.

3. Setting Fees and Charges

All Board fees and charges shall be set by the Board pursuant to its proposed budget needs. The Board shall provide reasonable notice to the regulated healthcare professional and the public of all increases or decreases in fees and charges.

4. Fiscal Year
The Board shall operate on the same fiscal year as the State.

G. Board and Committee Meetings

1. Location

The Board and its several committees shall meet in the Board’s offices or other appropriate facilities in the same city as those offices. At their discretion, however, they may meet from time to time in other areas of the State to facilitate their work or to enhance communication with the public and members of the regulated professions.

2. Frequency, Duration

The Board shall meet at least bimonthly for a period sufficient to complete the work before it at that time. One meeting per quarter may be sufficient for states with small physician populations. Committees shall meet as directed by the Board. However, each standing committee shall meet at least once per year to review its area of responsibility and to prepare a formal annual report for presentation to the Board.

3. Special Meetings, Conferences

a. Emergency meetings of the Board may be called at any time by the president/chair or at the request of an officer and two Board members if required to enforce this statute. The Board may establish procedures by which its committees may call emergency meetings in accordance with the State’s open meeting laws.

b. Informal conferences of an investigation committee may be called by the chair of the committee for the purpose of holding discussions with licensees, accused or otherwise, who seek or agree to such conferences. Any disciplinary action taken as a result of such a conference and agreed to in writing by the Board and licensee shall be binding and a matter of public record. The holding of an informal conference shall be at an investigation committee’s discretion and shall not preclude formal disciplinary investigation, proceedings or action.

c. A telephone or other telecommunication conference shall be an acceptable form of Board meeting for the purpose of taking emergency action to enforce the medical practice act if the president/chair alone or another officer and two Board members believe the situation precludes another form of meeting. The Board’s business can be properly conducted by teleconference. The Board shall be authorized to establish procedures by which its committees may meet by telephone or other telecommunication conference system. to take emergency action.

4. Notice

a. The Board shall establish a system for giving all Board and committee members reasonable advance notice of all Board and committee meetings.

b. The Board shall comply with the State’s open meeting laws.

5. Quorum

a. A majority of members shall constitute a quorum for the transaction of business by the Board or any committee of the Board.

b. Notwithstanding any provision of law to the contrary, the business of the Board
and its committees shall be conducted in accord with this statute and with rules of
parliamentary procedure adopted by the Board.

6. Conflict of Interest

No member of the Board, acting in that capacity or as a member of any Board committee, shall
participate in the deliberation, making of any decision or the taking of any action affecting his or
her own personal, professional or pecuniary interest, or that of a known relative or of a business
or professional associate. With advice of legal counsel, the Board shall adopt and annually review
a conflict of interest policy to enforce this section.

7. Minutes

Minutes of all Board and committee meetings and proceedings, and other Board and committee
materials, shall be prepared and kept in accord with the Board’s adopted rules of parliamentary
procedure and other applicable State laws.

8. Open Meetings, Confidentiality

a. All meetings of the Board and its committees shall be open to the public in
accordance with the State’s Open Meeting laws, with the following exceptions:
   1. meetings or portions of meetings of the Board, acting in its capacity as a
      hearing or adjudicatory body, held to receive testimony or evidence the public
disclosure of which the Board determines would constitute an unreasonable
invasion of personal privacy, to consult with legal counsel, to deliberate
issues and to arrive at disciplinary judgments;
   2. meetings or portions of meetings regarding investigations;
   3. meetings or portions of meetings regarding license applications; and
   4. meetings or portions of meetings regarding personnel actions.

b. The Board shall ratify all recommendations or decisions made in nonpublic meetings
   in public, which shall be matters of public record.

c. The minutes and all records of nonpublic meetings are privileged and confidential
   and shall not be disclosed except to the Board or its designees for the enforcement
   of this statute, except that all licensing decisions made by the Board and all
disciplinary orders, with the associated findings of fact and conclusions of law and
order, issued by the Board shall be matters of public record.

d. The following shall be privileged and confidential:

   1. application and renewal forms and any evidence submitted in proof or
      support of an application to practice, except that the following items of
      information about each applicant or licensee included on such forms shall
      be matters of public record:
      a. full name,
      b. date and place of birth,
      c. name(s) and location(s) of professional schools attended,
      d. school awarding professional degree, date of award, and
designation of degree,
      e. site(s) and date(s) of graduate certification(s) held and date(s)
granted,
f. specialty certifications,
g. year of initial licensure in the State,
h. other states in which licensed to practice, and
i. current office address and telephone number.

2. all investigations and records of investigations;
3. any report from any source concerning the fitness of any person to receive
   or hold a license;
4. any communication between or among the Board and/or its committees,
   staff, advisors, attorneys, employees, hearing officers, consultants,
   experts, investigators and panels occurring outside public meetings; and
5. a complaint and the identity of that an individual or entity filing an initial
   complaint with the Board.

e. Notwithstanding the foregoing provisions, the Board may cooperate with and
   provide documentation to other boards, agencies or law enforcement bodies of the
   State, other states, other jurisdictions or the United States upon written official
   request by such entity(s). The Board should share investigative information at the
   early stages of a complaint investigation in order to reduce the likelihood that a
   licensee may become licensed in one state while under investigation in another state.

f. Nothing herein shall be construed as prohibiting a respondent or his or her
   legal counsel from exercising the respondent’s right of due process under the law.

H. Offices, Administration

1. Offices

   The Board shall maintain offices it determines are adequate in size, staff and equipment to
   effectively carry out the provisions of this statute. At its discretion, it may establish branch
   offices, staffed and equipped as it finds necessary, in as many areas of the State as it believes
   require such branch offices to facilitate the work of the Board.

2. Administration

   The Board shall set out the function, operation and administration structure of its offices.

I. Staff, Special Personnel

1. Board Authority

   The Board is hereby empowered to determine its staff needs and to employ, fix compensation
   for, evaluate and remove its own full-time, part-time and temporary staff in accord with the
   statutory requirements of the State. It The Board shall define the duties of and qualifications for
   staff positions. and shall bond those members of staff charged with the handling of funds. Staff
   benefits shall be provided in accord with the statutes of the State.

2. Staff Positions

   The Board’s staff may include, but need not be limited to, the following:

   a. an executive director, who, among administrative and other delegated
responsibilities, may assist, at the Board’s discretion, in the discharge of the duties of
the secretary-treasurer and if one exists, the licensing committee, the investigation
commitee and any other standing or ad hoc committee;

b. one or more assistant executive directors;
c. one or more medical consultants, who shall be licensed to practice medicine in the
   State without restriction;
d. office and clerical staff;
e. one or more attorneys, who may be full-time employees of the Board, contractors of
   the Board, or assigned from the Office of the State Attorney General by agreement
   between the Board and that office, or in private practice;
f. one or more investigators, who shall be trained in and knowledgeable about the
   investigation of medical and related health care practice; and/or
g. experts and consultants.

3. Special Support Personnel

The Board may enlist, at its discretion, the services of experts, advisors, consultants and others
who are not part of its staff to assist it in more effectively enforcing this statute. Such persons
may serve voluntarily, be reimbursed for expenses in accord with State law and policy, or be
compensated at a level commensurate with services rendered in accord with state law and policy.
When acting for or on behalf of the Board, such persons shall benefit from the same immunity
and indemnification protections afforded by this statute to the members and staff of the Board.

J. Immunity, Indemnity, Protected Communication

1. Immunity

There shall be no liability, monetary or otherwise, on the part of, and no cause of action for
damages shall arise against, any current or former member, officer, administrator, staff member,
committee member, examiner, representative, agent, employee, consultant, witness or any other
person serving or having served the Board, either as a part of the Board’s operation or as an
individual, as a result of any act, omission, proceeding, conduct or decision related to his or her
duties undertaken or performed in good faith and within the scope of the function of the Board.

2. Qualified Immunity and Indemnity

If a current or former member, officer, administrator, staff member, committee member,
examiner, representative, agent employee, consultant or any other person serving or having
served the Board requests the State to defend him or her against any claim or action arising out of
any act, omission, proceeding, conduct or decision related to his or her duties undertaken or
performed in good faith in furtherance of the purposes of this chapter and within the scope of
the function of the Board, and if such a request is made in writing at a reasonable time before
trial, and if the person requesting defense cooperates in good faith in the defense of the claim or
action, the State shall provide and pay for such defense and shall pay any resulting judgment,
compromise, or settlement.

3. Protected Communication

a. Every communication made by or on behalf of any person, institution, agency or
organization to the Board or to any person(s) designated by the Board relating to an
investigation or the initiation of an investigation, whether by way of report,
complaint or statement, shall be privileged. No action or proceeding, civil or
criminal, shall be permitted against any such person, institution, agency or
organization by whom or on whose behalf such a communication was made in good
faith.

b. The protections afforded in this provision shall not be construed as prohibiting a
respondent or his or her legal counsel from exercising the respondent’s
constitutional right of due process under the law.

K. Duties of the Board

In addition to any other duties placed on the Board by this statute, the Board, acting in accord with this
statute, shall:

1. enforce the provisions of this statute;
2. adopt and enforce rules and regulations to effect the provisions of this statute and to fulfill its
duties there under;
3. adopt policies and guidelines related to medical practice, other health care professions
and regulation;
4. develop and use applications and other necessary forms and related procedures it finds
appropriate for purposes of this statute;
5. prepare or select, conduct or direct the conduct of, set passing requirements for, and assure
security of licensing and other required examinations;
6. acquire information about and evaluate the professional education and training of applicants;
7. issue, condition, or deny licenses;
8. process applications for license renewal;
9. review and investigate complaints and adverse information about licensees;
10. establish a mechanism, which at the Board’s discretion, may involve cooperation with and/or
participation by one or more Board-approved professional organizations, for the
identification and monitored treatment of licensees who are dependent on or abuse alcohol
or other addictive substances which have the potential to impair;
11. establish a mechanism by which licensees who believe they abuse or may be dependent on or
addicted to alcohol or other addictive substances which have the potential to impair, and
who have not been identified by the Board through other sources of information, will be
encouraged to report themselves voluntarily to the Board and/or, at the Board’s discretion,
to a professional organization approved by the Board to seek assistance and monitored
treatment;
12. develop and implement methods to identify dyscompetent physicians and physicians who fail
to meet acceptable standards of care. The Board should also be authorized to develop and
implement methods to assess and improve physician practice;
13. develop and implement methods to ensure the ongoing competence of licensees;
14. conduct hearings in accord with this statute;
15. adjudicate those matters that come before it for judgment under this statute and issue final
decisions on such matters;
16. discipline licensees;
17. report all final disciplinary actions, non-administrative license withdrawals as defined by the board, license denials and voluntary license limitations or surrenders related to physicians, with any accompanying license limitations or surrenders related to physicians, with any accompanying Board orders, findings of fact and conclusions of law, to the Federation Physician Data Center of the Federation of State Medical Boards of the United States and to any other data repository required by law, and report all such actions, denials and limitations or surrenders related to other licensees, with the same supporting documentation, to the appropriate national practitioner data repositories recognized by the Board or required by law;
18. act to halt the unlicensed or illegal practice of medicine and to seek penalties against those engaged in such practice;
19. institute proceedings in courts of competent jurisdiction to enforce its orders and the provisions of this statute;
20. establish appropriate fees and charges to ensure active and effective pursuit of its responsibilities;
21. employ, direct, reimburse, evaluate and dismiss staff in accord with State procedures;
22. establish policies for Board operations;
23. maintain secure and complete records on individual licensees, including, but not limited to license application, verified credentials, disciplinary information, and malpractice history;
24. recommend to the Legislature those changes in or amendments to this statute that it determines would benefit the health, safety and welfare of the public; and
25. acknowledge receipt of complaints or other adverse information to persons or entities reporting to the Board and inform them of the final disposition of the matters reported.

L. Powers of the Board

In addition to any other powers provided the Board herein, the Board, when acting in accord with this statute, shall have those powers necessary to fulfill its duties under this statute. Those powers shall include, but not be limited to, the following:

1. to employ or contract with one or more organizations or agencies known to provide acceptable examinations for the preparation and scoring of required examinations; employ or contract with one or more organizations or agencies known to provide acceptable examination services for the administration of required examinations;
2. to impose conditions (e.g., time or attempt limits) for successful completion of the examination sequence to prescribe the time, place, method, manner, scope and subjects of examination;
3. to impose conditions, sanctions, deny licensure, levy fines, seek appropriate civil and/or criminal penalties, or any combination of these, against those who violate or attempt to violate examination security, those who obtain or attempt to obtain licensure by fraud or deception, and those who knowingly assist in such activities;
4. to determine which professional schools, colleges, universities, training institutions and educational programs are acceptable in connection with licensure under this statute and to accept the approval of such facilities and programs by Board-recognized accrediting bodies in
5. to require supporting documentation or other acceptable verifying evidence of any
information provided the Board by an applicant or licensee;
6. to require information on an applicant’s or a licensee’s fitness, qualification and previous
professional record and performance from recognized data sources, including, but not limited
to, the Federation of State Medical Boards’ Federation Physician Data Center, other national
data repositories, licensing and disciplinary authorities of other jurisdictions, professional
education and training institutions, liability insurers, health care institutions and law
enforcement agencies;
7. to require the self-reporting by applicants or licensees of any information the Board
determines may indicate possible deficiencies in practice, performance, fitness or
qualification. This self-reporting requirement is intended to include, but not be limited to, all
pertinent areas outlined in the Federation’s Essentials of a State Medical and Osteopathic Practice
Act;
8. to require all licensees, healthcare professional, healthcare facilities and medical societies and
organizations to report to the Board information that appears to show another licensee is or
may be professionally incompetent, guilty of unprofessional conduct or mentally or
physically unable to engage safely in licensed practice, and to report to the Board and/or to
an agency designated by the Board a licensee’s possible dependence on alcohol or other
addictive substances which have the potential to impair, and require licensees, malpractice
insurance companies, attorneys and healthcare facilities to report any payments on a demand,
claim, settlement, arbitration award or judgment by or on behalf of a licensee;
9. when deemed appropriate by the Board to do so, to require professional competency,
physical, mental or chemical dependency examination, and evaluations of any applicant or
licensee, including withdrawal and laboratory examination of bodily fluids;
10. in establishing mechanisms for dealing with licensees who abuse or are dependent on or
addicted to alcohol or other addictive substances, to conclude agreements, at its discretion,
with professional organizations, whose relevant procedures and techniques it has evaluated
and proved, for their cooperation and/or participation;
11. to issue cease and desist orders and to obtain court orders and injunctions to halt unlicensed
practice, violation of this statute or the rules of the Board;
12. to act on its own motion in disciplinary matters, administer oaths, issue notices, issue
subpoenas in the name of the State, including subpoenas for patient records, hold hearings,
institute court proceedings for contempt to compel testimony or obedience to its orders and
subpoenas, take evidentiary depositions, and perform such other acts as are reasonably
necessary under law to carry out its duties;
13. to use preponderance of the evidence as the standard of proof and to issue final
decisions;
14. to present to the proper authorities information it believes indicates an applicant or licensee
may be subject to criminal prosecution;
15. to issue conditional, restricted or otherwise circumscribed licenses as it
determines necessary;
16. to take the following actions, in accord with applicable State statutes; alone or in combination,
against those found in violation of this statute:
a. revoke, suspend, condition, restrict and/or otherwise limit the license,
b. place the licensee on probation with conditions,
c. levy fines and/or assess the costs of proceedings against the licensee,
d. censure, reprimand and/or otherwise admonish the licensee,
e. require the licensee to provide monetary redress to another party, and/or provide a period of free public or community service,
f. require the licensee to satisfactorily complete an educational, training, and/or treatment program or programs and
g. require the licensee to successfully complete an examination, examinations or evaluations designated by the Board; and

17. to summarily suspend a license if it has cause to believe such action is required to protect public health and safety prior to hearing and final adjudication;

18. to enforce final disciplinary action against a licensee as deemed necessary to protect public health and safety;

19. to determine and direct the Board’s operating, administrative, personnel and budget policies and procedures in accord with applicable State statutes;

20. to acquire real property or other capital for the administration and operation of the Board;

21. to set necessary fees and charges, employ and evaluate the Board’s executive director;

22. to develop and recommend standards governing the profession;

23. to engage in a full exchange of information with the licensing and disciplinary boards and medical associations of other states and jurisdictions of the United States and foreign countries;

24. to direct the preparation and circulation of educational material, policies and guidelines the Board determines is helpful and proper for licensees;

25. to develop and adopt rules regarding the regulation and the qualifications of physicians,

26. to issue subpoenas in the course of an investigation to compel production of documents or testimony to any party or entity that may possess relevant information regarding the subject of the investigation; and

27. to delegate to the executive director the board’s authority to discharge its duties as deemed appropriate by the Board. The Board shall adopt policy statements for each duty delegated to the executive director.

M. Board Reports

1. Annual Report

The Board shall present to the Governor, the Legislature and the public, at the end of each fiscal year, a formal report summarizing its licensing and disciplinary activity for that year. The report shall include, but not limited to, the following information about each of the Board’s regulated professions:

a. the total number of persons fully licensed by the State and the number of those licensees currently practicing in the State;

b. the number of licensees holding each form of limited license authorized by this statute;
c. the number of persons granted a full license by the State for the first time in the past year, the number of those licensees currently practicing in the State, and the number of full licenses denied in the past year;

d. the number of licensees currently practicing in-state about whom a complaint, a charge or an adverse item of information required by law was received in the past year;

e. the number and the source, by category, of complaints, charges and adverse items of information required by law received about licensees practicing in-state in the past year and the number of these found not to warrant action under this statute and the rules of the Board;

f. the number of disciplinary investigations conducted by the Board or its representatives concerning licensees practicing in-state in the past year;

g. the number of disciplinary actions, by category, taken by the Board in the past year against all licensees;

h. a ranking, by frequency, of primary causes for disciplinary action against all licensees in the past year;

i. the efforts of the Board to halt the unlawful practice of medicine in the past year;

j. a review of disciplinary activity related to holders of limited forms of license in the past year;

k. a review of the operations of the Board’s current mechanisms for dealing with a licensee dependent on or addicted to alcohol or other addictive substances which have the potential to impair;

l. a schedule of all current fees and charges;

m. a revenue and expenditure statement for the past year indicating the percentage of revenue from and expenditures for each regulated profession;

n. a summary of other Board activities and a schedule of days met by the Board and each of its committees during the year;

O. a summary of administrative and legislative activity in the past year;

p. a summary of the goals and objectives established by the Board for the coming fiscal year; and

q. a copy of the Board’s strategic plan.

2. Public Record, Action Reports

Each of the Board’s non-administrative license application withdrawals, license denials and final disciplinary orders, including any associated findings of fact and conclusions of law, shall be matters of public record. Voluntary surrenders of or limitations on licenses shall also be matters of public record. The Board shall promptly report all denials, orders, surrenders and limitations to the public, all health care institutions in the State, appropriate State and federal agencies, related professional societies or associations in the State and any data repository. The Board shall make the information readily accessible to the public via the physician’s profile. The Board shall update the profile at least annually and offer the licensee an opportunity to correct erroneous information. A licensee’s profile shall contain, but not limited to:

a. Demographic Information

   1. name and license number;
2. gender;
3. business or practice address; and
4. birth date.

b. Medical Education
1. medical school(s)' name, address, year of graduation and degree; and
2. post-graduate training program(s)' name, address, years attended and year completed.

c. License and Board Certification Information
1. license status;
2. license type;
3. original license date;
4. license renewal date;
5. specialty and type of practice; and
6. board certification by a certifying authority recognized by the Board.

d. Criminal Convictions
A description of any conviction of a felony or a misdemeanor involving moral turpitude within the last five years, including cases with a deferred adjudication or expungement.

e. Malpractice History
1. the number of awards or judgments within the past 10 years;
2. when the number exceeds 3, the number of demands, claims, and/or settlements paid by the licensee or on behalf of the licensee in the past 5 years; and
3. a statement that malpractice payments do not necessarily demonstrate the quality of care provided by a physician, and that the Board independently investigates all reports of payment in malpractice cases, which will appear in the licensee’s disciplinary history if the Board completed the investigation and took disciplinary action.

f. Disciplinary History
1. all disciplinary actions taken by the Board;
2. a brief description of the reason for a disciplinary action;
3. all disciplinary actions taken by other state medical/osteopathic boards and a brief description of the reason for discipline if available;
4. all disciplinary actions taken by hospitals;
5. an explanation of the types of discipline the Board takes and its effects on the licensee’s ability to practice; and
6. a statement that hospitals may take disciplinary actions for reasons that do not violate the governing statutes.
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