



## **Elements of a Modern 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  
May 2009**

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### **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 Modern 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 quo 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

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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.

All other relevant definitions are provided in the Federation's *Essentials of a Modern 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, have no substantial personal or financial interests in the practice of medicine or with any organization regulated by the Board, 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 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;
- c. on written resignation submitted to the board Chair or to the governor;
- d. 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.
- d. 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 regulated professions.

#### 2. Frequency, Duration

- a. 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.
- b. 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 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 regarding investigations;
3. meetings regarding license applications; and
4. meetings regarding personnel actions.

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

b. 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.

c. 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 individual or entity filing an initial complaint with the Board.

d. 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.

e. 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 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 committee 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 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, 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 prescribe the time, place, method, manner, scope and subjects of examination;
3. to impose 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 the United States and Canada;
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 Modern 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, alone or in combination, against those found in violation of this statute:
  - a. revoke, suspend, 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:

1. Demographic Information
  - a. name and license number;
  - b. gender;
  - c. business or practice address; and
  - d. birth date.
  
2. Medical Education
  - a. medical school(s)' name, address, year of graduation and degree; and
  - b. post-graduate training program(s)' name, address, years attended and year completed.
  
3. License and Board Certification Information
  - a. license status;
  - b. license type;
  - c. original license date;
  - d. license renewal date;
  - e. specialty and type of practice; and
  - f. board certification by a certifying authority recognized by the Board.
  
4. Criminal Convictions
  - a. 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.
  
5. Malpractice History

- a. the number of awards or judgments within the past 10 years;
- b. 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
- c. 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.

6. Disciplinary History

- a. all disciplinary actions taken by the Board;
- b. a brief description of the reason for a disciplinary action;
- c. all disciplinary actions taken by other state medical/osteopathic boards and a brief description of the reason for discipline if available;
- d. all disciplinary actions taken by hospitals;
- e. an explanation of the types of discipline the Board takes and its effects on the licensee's ability to practice; and
- f. a statement that hospitals may take disciplinary actions for reasons that do not violate the governing statutes.

**THE FEDERATION PROJECT WORK  
PANEL, 1988–89**

Melvin E. Sigel, M.D., Chair

Minnesota Board of Medical Examiners

Gerald J. Béchamps, M.D.

Virginia Board of Medicine

Leroy B. Buckler, M.D.

Delaware Board of Medical Practice

Thomas L. Conley, M.D.

Alaska State Medical Board

Susan M. Spaulding

Vermont Board of Medical Practice

Deborah Lewis Rodecker, J.D.

West Virginia Board of Medicine

**SPECIAL COMMITTEE TO REVIEW  
THE ELEMENTS OF A MODERN STATE  
MEDICAL BOARD: A PROPOSAL**

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Lee E. Smith, M.D., Chair

West Virginia Board of Medicine

Ann Marie Berger

Executive Director

Arizona Board of Osteopathic Examiners in  
Medicine and Surgery

Thomas J. Busey, Jr., M.D.

Georgia Composite State Board of Medical  
Examiners

Terry L. Connor, D.O.

Oregon Board of Medical Examiners

Kevin B. Earle

Executive Director

New Jersey State Board of Medical Examiners

Gregg R. Fisher

Chief Medical Investigator

Vermont Board of Medical Practice

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Executive Director  
New Jersey State Board of Medical Examiners

Gregg R. Fisher  
Chief Medical Investigator  
Vermont Board of Medical Practice

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