

Federation of  
**STATE**  
**MEDICAL**  
**BOARDS**



Twelfth Edition

# Essentials of a Modern Medical and Osteopathic Practice Act

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# Essentials of a Modern Medical and Osteopathic Practice Act

## Twelfth Edition

### Introduction

As early as 1914, the Federation of State Medical Boards of the United States and its member boards recognized the need for what was to become *A Guide to the Essentials of a Modern Medical Practice Act*. First published in 1956, the stated purposes of the document have always been the same:

1. to serve as a guide to those states that may adopt new medical practice acts or may amend existing laws and
2. to encourage the development and use of consistent standards, language, definitions and tools by boards responsible for physician and physician assistant regulation.

Changes in medical education, in the practice of medicine and in the diverse responsibilities that face medical boards necessitate regular revision of medical practice acts. The *Essentials* has undergone numerous revisions in order to respond to these changes and to provide assistance to member boards in the evaluation and revision of their medical practice acts. The Federation urges member boards to consider including any recommendation contained in the *Essentials* in its medical practice act or under its rules.

The *Essentials* applies equally to practice acts that govern physicians who have acquired the M.D. or D.O. degree in the same statute or in separate statutes. The terms used herein should be interpreted throughout with this understanding.

### Preamble

An essential is that element, quality or property that is indispensable in making a body, character or structure what it is. It constitutes the essence. The Federation of State Medical Boards of the United States believes that each of the 19 sections of this document express an essential of a modern medical practice act and that the recommendations in each section are basic to the realization of that essential.

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## Section I: Statement of Purpose

The medical practice act should be introduced by a statement of policy specifying the purpose of the act. This statement should include language expressing the following concepts:

- A. The practice of medicine is a privilege granted by the people acting through their elected representatives.
- B. 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.
- C. The primary responsibility and obligation of the state medical board is to protect the public through licensing, regulation and education.

## Section II: Definitions

- A. Definitions: As used in this Act, the following terms shall have the following meanings:

“Assessment Program” means a formal system to examine or evaluate a physician’s competence within the scope of the physician’s practice.

“Competence” means possessing the requisite abilities and qualities (cognitive, non-cognitive and communicative) to perform effectively within the scope of the physician’s practice while adhering to professional ethical standards.

“Dyscompetence” means failing to maintain acceptable standards of one or more areas of the physician’s practice.

Impairment means a physician’s inability to practice medicine with reasonable skill and safety due to:

1. mental, psychological or psychiatric illness, disease or deficit;
2. physical illness or condition, including, but not limited to, those illnesses or conditions that would adversely affect cognitive, motor or perceptive skills; or
3. habitual, excessive or illegal use or abuse of drugs defined by law as controlled substances, illegal drugs or alcohol or of other impairing substances.

“Incompetence” means lacking the requisite abilities and qualities (cognitive, non-cognitive, and communicative) to perform effectively in the scope of the physician’s practice.

“Licensed physician” means a physician licensed to practice medicine in the jurisdiction.

“Physician assistant” means a skilled person who by training, scholarly achievements, submission of acceptable letters of recommendations and satisfaction of other requirements of the Board has been licensed for the provision of patient services under the supervision and direction of a licensed physician who is responsible for the performance of that person.

“Physician Assistant Council” means a council appointed by the Board or other means that reviews matters relating to physician assistants reports its findings to the Board and makes recommendations for action.

The medical practice act should provide definitions of the practice of medicine as governed by the act as well as exceptions to the act. These provisions of the act should implement or be consistent with the following:

“Practice of medicine means”

1. advertising, holding out to the public or representing in any manner that one is authorized to practice medicine in the jurisdiction;
2. offering or undertaking to prescribe, order, give or administer any drug or medicine for the use of any other person;
3. offering or undertaking to prevent or to diagnose, correct and/or treat in any manner or by any means, methods, or devices any disease, illness, pain, wound, fracture, infirmity, defect or abnormal physical or mental condition of any person, including the management of pregnancy and parturition;
4. offering or undertaking to perform any surgical operation upon any person;
5. rendering a written or otherwise documented medical opinion concerning the diagnosis or treatment of a patient or the actual rendering of treatment to a patient within a state by a physician located outside the state as a result of transmission of individual patient data by electronic or other means from within a state to such physician or his or her agent;
6. rendering a determination of medical necessity or a decision affecting the diagnosis and/or treatment of a patient and
7. using the designation Doctor, Doctor of Medicine, Doctor of Osteopathic Medicine/Doctor of Osteopathy, Physician, Surgeon, Physician and Surgeon, Dr., M.D., D.O. or any combination thereof in the conduct of any occupation or profession pertaining to the prevention, diagnosis or treatment of human disease or condition unless such a designation additionally contains the description of another branch of the healing arts for which one holds a valid license in the jurisdiction.

“Remediation” means the process whereby deficiencies in physician performance identified through an examination or assessment program are corrected, resulting in an acceptable state of physician competence.

“Supervising physician” means a licensed physician in good standing in the same jurisdiction as the physician assistant who the Board approved to supervise the services of a physician assistant, and who has in writing formally accepted the responsibility for such supervision.

B. The medical practice act shall not apply to:

1. students while engaged in training in a medical school approved or recognized by the state medical board, unless the Board licenses the student;
2. those providing service in cases of emergency where no fee or other consideration is contemplated, charged or received by the physician or anyone on behalf of the physician;
3. commissioned medical officers of the armed forces of the United States and medical officers of the United States Public Health Service or the Veterans Administration of the United States in the discharge of their official duties and/or within federally controlled facilities, provided that such persons who hold medical licenses in the jurisdiction should be subject to the provisions of the act and

provided that all such persons should be fully licensed to practice medicine in one or more jurisdictions of the United States, further the military physician should be subject to the Military Health System Clinical Quality Assurance (CQA) Program 10 U.S.C.A. § 1094; Regulation DOD 6025.13-R;

4. those practicing dentistry, nursing, optometry, podiatry, psychology or any other of the healing arts in accord with and as provided by the laws of the jurisdiction;
  5. those practicing the tenets of a religion or ministering religious based medical procedures or ministering to the sick or suffering by mental or spiritual means in accord with such tenets;
  6. a person administering a lawful domestic or family remedy to a member of his or her own family and
  7. those fully licensed to practice medicine in another jurisdiction of the United States who briefly render emergency medical treatment or briefly provide critical medical service at the specific lawful direction of a medical institution or federal agency that assumes full responsibility for that treatment or service and is approved by the state medical board.
- C. For the purpose of the medical practice act, the practice of medicine is determined to occur where the patient is located in order that the full resources of the state are available for the protection of that patient.

### Section III: The State Medical Board

The medical practice act should provide for a separate state medical board (referred to hereafter as the Board) to regulate the practice of medicine, including the licensure and discipline of physicians, in the jurisdiction. These provisions of the act should implement or be consistent with the following:

- A. Whatever the professional regulatory structure established by the jurisdiction, physicians should bear the primary responsibility for licensing and regulating the medical profession for the protection of the public, without abusing physicians in the discharge of that duty. Every Board should include both physician and public members.
- B. Whatever the professional regulatory structure established by the jurisdiction, the Board, within the context of the act and the requirements of due process, should have, at a minimum, the following powers and responsibilities:
  1. Promulgate rules and regulations
  2. Select and/or administer licensing examination(s)
  3. Develop and adopt policies and guidelines related to medical practice and regulation
  4. Evaluate medical education and training of applicants
  5. Evaluate or verify certification of medical and training programs to determine if these programs are appropriately preparing physicians for the practice of medicine
  6. Evaluate previous professional performance of applicants
  7. Issue or deny initial or endorsement licenses
  8. Maintain secure and complete records on individual licensees

9. Provide the public with a profile of all licensed physicians
  10. Approve or deny applications for license renewal
  11. Develop and implement methods to identify physicians who are in violation of the medical practice act
  12. Develop and implement methods to identify and rehabilitate, if appropriate, physicians with an alcohol, drug and/or psychiatric illness
  13. Receive, review and investigate complaints including sua sponte complaints
  14. Review and investigate reports received from entities having information pertinent to the professional performance of licensees
  15. Share investigative information at the early stages of a complaint investigation with other Boards.
  16. Issue subpoenas, subpoenas duces tecum, administer oaths, receive testimony and conduct hearings
  17. Discipline licensees found in violation of the medical practice act
  18. Develop policies for disciplining or rehabilitating physicians that demonstrate inappropriate sexual behavior with patients or other professional boundaries violations
  19. Institute actions in its own name and enjoin violators of the medical practice act
  20. Acknowledge receipt of complaints or other adverse information to persons or entities reporting to the Board and to the physician, and inform them of the final disposition of the matters reported
  21. Develop and implement methods to identify dyscompetent physicians and physicians who fail to meet acceptable standards of care
  22. Develop or identify and implement methods to assess and improve physician practice
  23. Develop or identify and implement methods to ensure the ongoing competence of licensees
  24. Establish appropriate fees and charges to support the effective pursuit of its legal responsibilities
  25. Develop and adopt its budget
  26. Develop educational programs to facilitate licensee awareness of provisions contained in the medical practice act and to facilitate public awareness of the role and function of state medical boards and
  27. Acquire real property or other capital for the administration and operation of the Board
- C. Members of the Board, whether appointed or elected, should serve staggered terms to ensure continuity.
- D. The length of terms on the Board should be set to permit development of effective skill and experience by members (e.g., three or four years). However, a limit should be set on consecutive terms of service (e.g., two or three).
- E. Members of the Board should receive appropriate compensation for services and reimbursement for expenses.
- F. A member of the Board should be subject to removal only when he or she
1. ceases to be qualified;

2. is found guilty of a felony or an unlawful act involving moral turpitude by a court of competent jurisdiction;
  3. is found guilty of malfeasance, misfeasance or nonfeasance in relation to his or her Board duties by a court of competent jurisdiction;
  4. is found mentally incompetent by a court of competent jurisdiction;
  5. fails to attend three successive Board meetings without just cause as determined by the Board or, if a new member, fails to attend a new members' training program without just cause as determined by the Board;
  6. is disciplined for violations of the medical practice act or
  7. is found in violation of the conflict of interest/ethics law.
- G. All physician members of the Board should hold full and unrestricted medical licenses in the jurisdiction, should be persons of recognized professional ability and integrity, and should have resided, practiced in the jurisdiction long enough to have become familiar with policies and practice in the jurisdiction (e.g., five years).
- H. The Board should include public members who:
1. are not licensed physicians or providers of health care;
  2. have no substantial personal or financial interests in the practice of medicine or with any organization regulated by the Board;
  3. have no immediate familial relationships with individuals involved in the practice of medicine or any organization regulated by the Board;
  4. are residents of the State; and
  5. are individuals of recognized ability and integrity.
- I. The Board should be authorized to appoint committees from its membership. To effectively perform its duties under the Act, the Board should also be authorized to hire, discipline and terminate staff, including an executive secretary or director. It should also (be assigned adequate legal counsel by the office of the attorney general and/or be authorized to employ private counsel or its own full-time attorney.)
- J. The Board should conduct and new members should attend a training program designed to familiarize new members with their duties and the ethics of public service.
- K. Travel, expenses and daily compensation should 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.
- L. Telephone or other telecommunication conference should be an acceptable form of Board meeting for the purpose of taking emergency action to enforce the medical practice act if the president alone or another officer and two Board members (if allowed by open meeting laws) believe the situation precludes another form of meeting. The Board should be authorized to establish procedures by which its committees may meet by telephone or other telecommunication conference system to take emergency action.

## Section IV: Examinations

The medical practice act should provide for medical licensing examination(s), examination application, and examination security. These provisions of the act should implement or be consistent with the following:

### A. Medical Licensing Examination(s)

1. No person should receive a license to practice medicine in the jurisdiction unless he or she has passed an examination or examinations satisfactory to the Board.
2. The Board should approve the preparation and administration of an examination or examinations, in English, that it deems must be satisfactorily passed as part of its procedure for determining an applicant's qualification for the practice of medicine.
3. Examinations should be scored in a way to ensure the anonymity of applicants.
4. The Board should stipulate the score required for passing the examination(s). The required passing score should be set before the administration of the examination(s).
5. The Board should be authorized to limit the number of times an examination may be taken, to require applicants to pass all examinations within a specified period, and to specify further medical education required for applicants unable to do so.
6. An applicant should pay all examination fees prior to the examination being administered and no later than a date set by the Board.

### B. Examination Application

To apply for examination(s), an applicant should provide the Board or its agent and attest to the following information and documentation no later than a date set by the Board:

1. his or her full name and all aliases or other names ever used, current address, Social Security Number and date and place of birth;
2. a recent signed photograph and/or other documentation of identity;
3. name and location of medical school of graduation, degree earned and date of graduation;
4. a history of graduate medical education, including name and address of all programs and hospitals;
5. original of all documents and credentials or notarized photocopies or other verification of such documents and credentials acceptable to the Board or its agent and
6. any other information or documentation the Board or its agent determines necessary.

### C. Examination Security

1. Any individual found by the Board to have engaged in conduct that subverts or attempts to subvert the medical licensing examination process should, at the discretion of the Board, have his or her scores on the licensing examination withheld and/or declared invalid, be disqualified from the practice of medicine and/or be subject to the imposition of other appropriate sanctions. The Federation of State Medical Boards of the United States should be informed of all such actions.
2. Conduct that subverts or attempts to subvert the medical licensing examination process should include, but not be limited to:
  - a. conduct that violates the security of the examination materials, such as removing from the examination room any of the examination materials; reproducing or reconstructing any portion

- of the licensing examination; aiding by any means in the reproduction or reconstruction of any portion of the licensing examination; selling, distributing, buying, receiving or having unauthorized possession of any portion of a future, current or previously administered licensing examination;
- b. conduct that violates the standard of test administration, such as communicating with any other examinee during the administration of the licensing examination; copying answers from another examinee or permitting one's answers to be copied by another examinee during the administration of the licensing examination; having in one's possession during the administration of the licensing examination any books, notes, written or printed materials or data of any kind, other than the examination distributed and/or
  - c. conduct that violates the credentialing process, such as falsifying or misrepresenting educational credentials or other information required for admission to the licensing examination, impersonating an examinee or having an impersonator take the licensing examination on one's behalf.
3. The Board should provide written notification to all applicants for medical licensure of the prohibitions on conduct that subverts or attempts to subvert the licensing examination process and of the sanctions imposed for such conduct. A copy of such notification attesting that he or she has read and understood the notification should be signed by the applicant and filed with his or her application.

## Section V: Requirements for Full Licensure

The medical practice act should provide minimum requirements for full licensure for the independent practice of medicine that bear a reasonable relationship to the qualifications and fitness necessary for such practice. These provisions of the act should implement or be consistent with the following:

- A. The applicant should provide the Board and attest to, or provide the means to obtain and verify the following information and documentation in a manner required by the Board:
  1. his or her full name and all aliases or other names ever used, current address, Social Security number and date and place of birth;
  2. a recent signed photograph and, at the board's discretion, other documentation of identity;
  3. originals of all documents and credentials required by the Board, notarized photocopies or other verification acceptable to the Board of such documents and credentials;
  4. a list of all jurisdictions, United States or foreign, in which the applicant is licensed or has applied for licensure to practice medicine or is authorized or has applied for authorization to practice medicine and all licenses or applications to practice as any health care professional;
  5. a list of all jurisdictions, United States or foreign, in which the applicant has been denied licensure or authorization to practice medicine or as any other health care professional or has voluntarily surrendered a license or an authorization to practice medicine or as any other health care professional;
  6. a list of all sanctions, judgments, awards, settlements or convictions against the applicant in any jurisdiction, United States or foreign, that would constitute grounds for disciplinary action under the medical practice act or the Board's rules and regulations;

7. a detailed educational history, including places, institutions, dates and program descriptions of all his or her education beginning with secondary schooling and including all college, pre-professional, professional and professional postgraduate education;
  8. a detailed chronological life history, including places and dates of residence, employment and military service (United States or foreign) including periods of absence from the active practice of medicine;
  9. all Web sites associated with the applicant's practice;
  10. a list of all specialty certifications and the name of certifying organization; and
  11. any other information or documentation the Board determines necessary.
- B. The applicant should possess the degree of Doctor of Medicine or Doctor of Osteopathic Medicine/Doctor of Osteopathy from a medical college or school located in the United States, its territories or possessions or Canada that was approved by the Board or by a private nonprofit accrediting body approved by the Board at the time the degree was conferred. No person who graduated from a medical school that was not approved at the time of graduation should be examined for licensure or be licensed in the jurisdiction based on credentials or documentation from that school nor should such a person be licensed by endorsement.
- C. Should the applicant graduate from a medical school in a foreign country, other than Canada, the applicant should meet all the requirements established by the Board to determine the applicant's fitness to practice medicine.
- D. The applicant should have satisfactorily completed at least thirty-six (36) months of progressive postgraduate medical training approved by the Board or by a private nonprofit accrediting body approved by the Board in an institution in the United States, its territories or possessions or Canada approved by the Board or by a private nonprofit accrediting body approved by the Board.
- E. The applicant should have passed medical licensing examination(s) satisfactory to the Board.
- F. The applicant should have demonstrated a familiarity with the statutes and regulations of the jurisdiction relating to the practice of medicine and the appropriate use of controlled or dangerous substances.
- G. The applicant should be physically, mentally and professionally capable of practicing medicine in a manner acceptable to the Board and should be required to submit to a physical, mental, professional competency or chemical dependency examination(s) or evaluation(s) if deemed necessary by the Board.
- H. The applicant should not have been found guilty by a competent authority, United States or foreign, of any conduct that would constitute grounds for disciplinary action under the regulations of the Board or the act. The Board should be authorized, at its discretion, to modify this restriction for cause, but it should be directed to use such discretionary authority in a consistent manner.
- I. If the applicant's license is denied or in accordance with Board policy, the applicant should make a personal appearance before the Board or a representative thereof for interview, examination or review of credentials. At the discretion of the Board, the applicant should be required to present his or her original medical education credentials for inspection at the time of personal appearance.

- J. The applicant should be held responsible for verifying to the satisfaction of the Board the validity of all credentials required for his or her medical licensure. The Board should verify medical licensure credentials directly from primary sources, and utilize recognized national physician information services (e.g., the Federation of State Medical Boards' Board Action Data Bank and Credentials Verification Service, the files of the American Medical Association and the American Osteopathic Association, and other national data banks and information resources).
- K. The applicant should have paid all fees and have completed and attested to the accuracy of all application and information forms required by the Board. The Board should require the applicant to authorize the Board to investigate and/or verify any information provided to it on the licensure application.
- L. Applicants should have satisfactorily passed a criminal background check.

## Section VI: Graduates of Foreign Medical Schools

The medical practice act should provide minimum requirements, in addition to those otherwise established, for full licensure of applicants who are graduates of schools located outside the United States, its territories or possessions, or Canada. These provisions of the act should implement or be consistent with the following:

- A. Such applicants should possess the degree of Doctor of Medicine, Bachelor of Medicine or a Board-approved equivalent based on satisfactory completion of educational programs acceptable to the Board.
- B. Such applicants should be eligible by virtue of their medical education, training and examination for unrestricted licensure or authorization to practice medicine in the country in which they received that education and training.
- C. Such applicants should have passed an examination acceptable to the Board that adequately assesses the applicants' medical knowledge.
- D. Such applicants should be certified by the Educational Commission for Foreign Medical Graduates or its Board-approved successor(s), or by an equivalent Board-approved entity.
- E. Such applicants should have a demonstrated command of the English language satisfactory to the Board.
- F. Such applicants should have satisfactorily completed at least thirty-six (36) months of progressive post-graduate medical training approved by the Board or by a private nonprofit accrediting body approved by the Board in an institution in the United States, its territories or possessions or Canada or by a private nonprofit accrediting body.
- G. All credentials, diplomas and other required documentation in a foreign language submitted to the Board by or on behalf of such applicants should be accompanied by notarized English translations acceptable to the Board.
- H. Such applicants should have satisfied all of the applicable requirements of the United States Immigration and Naturalization Service.

## Section VII: Licensure by Endorsement, Expedited Licensure by Endorsement, and Temporary and Special Licensure

The medical practice act should provide for licensure by endorsement, expedited licensure by endorsement, and in certain clearly defined cases, for temporary and special licensure. These provisions of the act should implement or be consistent with the following:

- A. Endorsement for Licensed Applicants: The Board should be authorized, at its discretion, to issue a license by endorsement to an applicant who:
  1. has complied with all current medical licensing requirements save that for examination;
  2. has passed a medical licensing examination given in English in another state, the District of Columbia, a territory or possession of the United States or Canada, provided the Board determines that examination was equivalent to its own current examination;
  3. has a valid current medical license in another state, the District of Columbia, a territory or possession of the United States or Canada and
  4. notwithstanding any other provisions of the act, has passed a written and/or oral examination within the past ten (10) years approved by the Board if the applicant has not been formally tested by a United States or Canadian medical licensing jurisdiction, a Board-approved medical certifying agency or a Board-approved medical specialty board within a specific period of time before application.
  
- B. Expedited Licensure by Endorsement: The Board should be authorized, at its discretion, to issue an expedited license by endorsement to an applicant who provides documentation of:
  1. identity as required by the Board;
  2. all jurisdictions in which the applicant holds a full and unrestricted license;
  3. graduation from an approved medical school;
    - a. Liaison Committee on Medical Education (LCME) or American Osteopathic Association (AOA) approved medical school; or
    - b. Fifth Pathway certificate or
    - c. Educational Commission for Foreign Medical Graduates (ECFMG) certificate
  4. passing one or more of the following examinations acceptable for initial licensure within three attempts per step/level
    - a. United States Medical Licensing Examination (USMLE) Steps 1-3 or its predecessor examinations (National Board of Medical Examiners (NBME) I-III or the Federation Licensing Examination (FLEX).
    - b. Examinations offered by the National Board of Osteopathic Medical Examiners (COMLEX-USA) Levels 1-3 or its predecessor examination(s).
    - c. Medical Council of Canada Qualifying Examinations (MCCQE) or its predecessor examination(s) offered by the Licentiate Medical Council of Canada.

5. successful completion of the total examination sequence within seven (7) years, except when in combination with a Ph.D. program
6. successful completion of three (3) years of progressive postgraduate training in a program accredited by the Accreditation Council on Graduate Medical Education (ACGME) or the AOA and/or
7. certification or recertification by a medical specialty board recognized by the American Board of Medical Specialties (ABMS) or the AOA within the previous ten (10) years. Lifetime certificate holders who have not passed a written specialty recertification examination must demonstrate successful completion of the Special Purpose Examination (SPEX), Comprehensive Osteopathic Medical Variable Purpose Examination (COMVEX) or applicable recertification examination.
8. Boards should obtain supplemental documentation including, but not limited to:
  - a. Criminal background check;
  - b. Absence of current/pending investigations in any jurisdiction where licensed;
  - c. Verification of specialty board certification and
  - d. Professional experience.

Physicians desiring an expedited process for licensure must utilize the Federation Credentials Verification Service (FCVS), or credentials verification meeting equivalent standards for verification of core credentials, including:

1. medical school diploma,
  2. medical school transcript,
  3. dean's certificate,
  4. examination history,
  5. disciplinary history,
  6. identity (photograph and certified birth certificate or original passport),
  7. ECFMG certificate, if applicable,
  8. Fifth Pathway certificate, if applicable and
  9. postgraduate training verification.
- C. Temporary Licensure: The Board should be authorized to establish regulations for issuance of a temporary medical license for the intervals between Board meetings. Such a license should:
1. be granted only to an applicant demonstrably qualified for a full and unrestricted medical license under the requirements set by the medical practice act and the regulations of the Board and
  2. automatically terminate within a period specified by the Board.
- D. Special Purpose License to Practice Medicine Across State Lines: The Board should be authorized, at its discretion, to issue a special purpose license to practice medicine across state lines to an applicant who:
1. holds a full and unrestricted license to practice in at least one other United States jurisdiction; and
  2. has not had previous disciplinary or other action taken against him or her by any state or jurisdiction.

Exceptions to the requirements for a special purpose license to practice medicine across state lines include the following:

1. the practice of medicine across state lines by a licensed physician on an irregular or infrequent basis, as defined by the Board and
  2. the informal practice of medicine by a licensed physician without compensation, expectation of compensation (Note: The practice of medicine conducted within the parameters of a contractual relationship shall not be considered informal and shall be subject to regulation by the state medical board).
- E. Special Licensure: The Board should be authorized to issue conditional, restricted, probationary, limited or otherwise circumscribed licenses as it determines necessary.

### Section VIII: Limited Licensure for Physicians in Postgraduate Training

The medical practice act should provide that all physicians in all postgraduate training in the state or jurisdiction who are not otherwise fully licensed to practice medicine should be licensed on a limited basis for educational purposes. These provisions of the act should implement or be consistent with the following:

- A. To be eligible for limited licensure, the applicant should have completed all the requirements for full and unrestricted medical licensure except postgraduate training or specific examination requirements.
- B. Issuance of a limited license specifically for postgraduate training shall occur only after the applicant demonstrates that he or she is accepted in a residency program. The application for limited licensure should be made directly to the Board in the jurisdiction where the applicant's postgraduate training is to take place.
- C. The Board should establish by regulation restrictions for the limited license to assure that the holder will practice only under appropriate supervision and within the confines of the program within which the resident is enrolled.
- D. The limited license should be renewable annually and upon the written recommendation of the supervising institution, including a written evaluation of performance, until the Board regulations require the achievement of full and unrestricted medical licensure.
- E. Program directors responsible for postgraduate training should be required annually to provide the Board a written report on the status of program participants having a limited license.
  1. The report should inform the Board about program participants who have successfully completed the program, have departed from the program, have had unusual absences from the program, or have had problematic occurrences during the course of the program.
  2. The report should include an explanation of any disciplinary action taken against a limited licensee for performance or behavioral reasons which, in the judgment of the program director, could be a threat to public health, safety and welfare; unapproved or unexplained absences from the program; resignations from the program or nonrenewal of the program contract; dismissals from the program for performance or behavioral reasons; and referrals to substance abuse programs not approved by the Board.
  3. Failure to submit the annual program director's report shall be considered a violation of the mandatory reporting provisions of the Medical Practice Act and shall be grounds to initiate such disciplinary action as the Board deems appropriate, including fines levied against the supervising institution and suspension of the program director's medical license.

- F. The disciplinary provisions of the medical practice act should apply to the holders of the limited license as if they held full and unrestricted medical licensure.
- G. The issuance of a limited license should not be construed to imply that a full and unrestricted medical license would be issued at any future date.

## Section IX: Disciplinary Action against Licensees

The medical practice act should provide for disciplinary action against licensees and the grounds on which such action may be taken. These provisions of the act should implement or be consistent with the following:

- A. Range of Actions: A range of progressive disciplinary actions should be made available to the Board. These should include, but not be limited to, the following:
  1. revocation of the medical license;
  2. suspension of the medical license;
  3. probation;
  4. stipulations, limitations, restrictions and conditions relating to practice;
  5. censure (including specific redress, if appropriate);
  6. reprimand;
  7. chastisement, letters of concern and advisory letters;
  8. monetary redress to another party;
  9. a period of free public or charity service, either medical or non-medical;
  10. satisfactory completion of an educational, training and/or treatment program or programs;
  11. fine and
  12. payment of administrative and disciplinary costs.

The Board should be authorized, at its discretion, to take such actions singly or in combination as the nature of the violation requires.

- B. Letter of Concern or Advisory Letter: The Board should be authorized to issue a confidential (if allowed by state law), non-reportable, non-disciplinary letter of concern or advisory letter to a licensee when evidence does not warrant formal discipline, the Board has noted indications of possible errant conduct by the licensee that could lead to serious consequences and formal action if the conduct were to continue. In its letter of concern or advisory letter, the Board should also be authorized, at its discretion, to request clarifying information from the licensee.
- C. Examination/Evaluation: The Board should be authorized, at its discretion, to require professional competency, physical, mental or chemical dependency examination(s) or evaluation(s) of any applicant or licensee, including withdrawal and laboratory examination of bodily fluids.
- D. Grounds for Action: The Board should be authorized to take disciplinary action for unprofessional or dishonorable conduct, which should be defined to mean, but not be limited to, the following:
  1. fraud or misrepresentation in applying for or procuring a medical license or in connection with applying for or procuring periodic renewal of a medical license;
  2. cheating on or attempting to subvert the medical licensing examination(s);

3. the commission or conviction of a misdemeanor involving moral turpitude or a felony, whether or not related to the practice of medicine, or the entry of a guilty, nolo contendere plea, or deferred adjudication (without without expungement) to a misdemeanor involving moral turpitude or a felony charge;
4. conduct likely to deceive, defraud or harm the public;
5. disruptive behavior and/or interaction with physicians, hospital personnel, patients, family members or others that interferes with patient care or could reasonably be expected to adversely impact the quality of care rendered to a patient;
6. making a false or misleading statement regarding his or her skill or the efficacy or value of the medicine, treatment or remedy prescribed by him or her or at his or her direction in the treatment of any disease or other condition of the body or mind;
7. representing to a patient that an incurable condition, sickness, disease or injury can be cured;
8. willfully or negligently violating the confidentiality between physician and patient except as required by law;
9. negligence in the practice of medicine as determined by the Board;
10. being found mentally incompetent or of unsound mind by any court of competent jurisdiction;
11. being physically or mentally unable to engage safely in the practice of medicine;
12. practice or other behavior that demonstrates an incapacity or incompetence to practice medicine;
13. the use of any false, fraudulent or deceptive statement in any document connected with the practice of medicine;
14. giving false, fraudulent, or deceptive testimony while serving as an expert witness;
15. practicing medicine under a false or assumed name;
16. aiding or abetting the practice of medicine by an unlicensed, incompetent or impaired person;
17. allowing another person or organization to use his or her license to practice medicine;
18. commission of any act of sexual misconduct, including sexual contact with patient surrogates or key third parties, which exploits the physician-patient relationship in a sexual way;
19. habitual or excessive use or abuse of drugs, alcohol or other substances that impair ability;
20. failing or refusing to submit to a body fluid examination or any other examination that detects the presence of alcohol or drugs upon Board order;
21. prescribing, selling, administering, distributing, ordering or giving any drug legally classified as a controlled substance or recognized as an addictive or dangerous drug for other than medically accepted therapeutic purposes;
22. knowingly prescribing, selling, administering, distributing, ordering or giving to a habitual user or addict or any person previously drug dependent, any drug legally classified as a controlled substance or recognized as an addictive or dangerous drug, except as otherwise permitted by law or in compliance with rules, regulations or guidelines for use of controlled substances and the management of pain as promulgated by the Board;
23. prescribing, selling, administering, distributing, ordering or giving any drug legally classified as a controlled substance or recognized as an addictive or dangerous drug to a family member or to himself or herself;
24. violating any state or federal law or regulation relating to controlled substances;
25. signing a blank, undated or predated prescription form;
26. obtaining any fee by fraud, deceit or misrepresentation;

27. employing abusive or illegal billing practices;
28. directly or indirectly giving or receiving any fee, commission, rebate or other compensation for professional services not actually and personally rendered, though this prohibition should not preclude the legal functioning of lawful professional partnerships, corporations or associations;
29. disciplinary action of another state or federal jurisdiction against a license or other authorization to practice medicine or participate in a federal program (payment or treatment) based upon acts or conduct by the licensee similar to acts or conduct that would constitute grounds for action as defined in this section, a certified copy of the record of the action taken by the other state or jurisdiction being conclusive evidence thereof;
30. failure to report to the Board any adverse action taken against oneself by another licensing jurisdiction (United States or foreign), by any peer review body, by any health care institution, by any professional or medical society or association, by any governmental agency, by any law enforcement agency or by any court for acts or conduct similar to acts or conduct that would constitute grounds for action as defined in this section;
31. failure to report or cause a report to be made to the Board any physician upon whom a physician has evidence or information that appears to show that the physician is incompetent, guilty of negligence, guilty of a violation of this act, engaging in inappropriate relationships with patients, is mentally or physically unable to practice safely or has an alcohol or drug abuse problem;
32. failure of physician who is the chief executive officer, medical officer or medical staff to report to the Board any adverse action taken by a health care institution or peer review body, in addition to the reporting requirement in 31. (note: a report under 32 may need to wait until the peer review and due process procedures are completed, but the report under 31 must be reported immediately without waiting for the final action of the health care institution and applies to all physicians not just staff physicians);
33. failure to report to the Board surrender of a license or other authorization to practice medicine in another state or jurisdiction, or surrender of membership on any medical staff or in any medical or professional association or society while under disciplinary investigation by any of those authorities or bodies for acts or conduct similar to acts or conduct that would constitute grounds for action as defined in this section;
34. any adverse judgment, award or settlement against the licensee resulting from a medical liability claim related to acts or conduct similar to acts or conduct that would constitute grounds for action as defined in this section;
35. failure to report to the Board any adverse judgment, settlement or award arising from a medical liability claim related to acts or conduct similar to acts or conduct that would constitute grounds for action as defined in this section;
36. failure to provide pertinent and necessary medical records to another physician or patient in a timely fashion when legally requested to do so by the subject patient or by a legally designated representative of the subject patient regardless of whether the patient owes a fee for services;
37. improper management of medical records, including failure to maintain timely, legible, accurate, and complete medical records and to comply with the Standards for Privacy of Individually Identifiable Health Information, 45 CFR Part 160 and 164, of the Health Insurance Portability and Accountability Act of 1996.
38. failure to furnish the Board, its investigators or representatives, information legally requested by the Board or to fail to comply with a Board subpoena or order;
39. failure to cooperate with a lawful investigation conducted by the Board;

40. violation of any provision(s) of the medical practice act or the rules and regulations of the Board or of an action, stipulation or agreement of the Board;
41. engaging in conduct calculated to or having the effect of bringing the medical profession into disrepute, including but not limited to, violation of any provision of a national code of ethics acknowledged by the Board;
42. failure to follow generally accepted infection control procedures;
43. failure to comply with any state statute or board regulation regarding a licensee's reporting responsibility for HIV, HVB (hepatitis B virus), HVC (hepatitis C virus) sero-positive status or any other reportable condition (including child abuse and vulnerable adult abuse) or disease;
44. practicing medicine in another state or jurisdiction without appropriate licensure;
45. conduct which violates patient trust, exploits the physician-patient relationship or violates professional boundaries;
46. failure to offer appropriate procedures/studies, failure to protest inappropriate managed care denials, failure to provide necessary service or failure to refer to an appropriate provider when such actions are taken for the sole purpose of positively influencing the physician's or the plan's financial well being;
47. providing treatment or consultation recommendations, including issuing a prescription, via electronic or other means, unless the physician has obtained a history and physical evaluation of the patient adequate to establish diagnosis and identify underlying conditions and/or contra-indications to the treatment recommended/provided;
48. violating a Board formal order, condition of probation, consent agreement or stipulation;
49. representing, claiming or causing the appearance that the physician possesses a particular medical specialty certification by a Board recognized certifying organization (ABMS, AOA) if not true;
50. failing to obtain adequate patient informed consent;
51. using experimental treatments without appropriate patient consent and adhering to all necessary and required guidelines and constraints, and
52. any conduct that may be harmful to the patient or the public;
53. failing to divulge to the Board upon legal demand the means, method, procedure, modality or medicine used in the treatment of an ailment, condition or disease.

## Section X: Procedures for Enforcement and Disciplinary Action

The medical practice act should provide for procedures that will permit the Board to take appropriate enforcement and disciplinary action when and as required, while assuring fairness and due process to licensees. These provisions of the act should implement or be consistent with the following:

- A. **Board Authority:** The Board should be empowered to commence legal action to enforce the provisions of the medical practice act and to exercise full discretion and authority with respect to disciplinary actions. In the course of an investigation, the Board's authority should include the ability to issue subpoenas to licensees, health care organizations, complainants, patients and witnesses to produce documents or appear before the Board or staff to answer questions or be deposed. The Board should have the power to enforce its subpoenas, including disciplining a non-compliant licensee, and it is incumbent upon the subpoenaed party to seek a motion to quash the subpoena.

- B. Separation of Functions: In the exercise of its power, the Board's investigative and judicial functions should be separated to assure fairness and the Board should be required to act in a consistent manner in the application of disciplinary sanctions.
- C. Administrative Procedures: The existing administrative procedures act or similar statute, in whole or in part, should either be applicable to or serve as the basis of the procedural provisions of the medical practice act. The procedural provisions should provide for Board investigation of complaints; notice of charges or allegations to the licensee; a fair and impartial hearing for the licensee before the Board, an examining committee or hearing officer; an opportunity for representation of the licensee by counsel; the presentation of testimony, evidence and arguments; subpoena power and attendance of witnesses; a record of the proceedings; and judicial review by the courts in accordance with the standards established by the jurisdiction for such review. The Board should have subpoena authority to conduct comprehensive reviews of a licensee's patient and office records and administrative authority to access otherwise protected peer review records. The Board should not need the patients' consent to obtain copies of medical records, nor shall health care institutions' peer-review privilege bar the Board from obtaining copies of peer review information. Once in the Board's possession, the patient records and peer review records should have the same legal protection from disclosure as they have when in the possession of the licensee, the patient or the peer-review organization.
- D. Standard of Proof: The Board should be authorized to use preponderance of the evidence as the standard of proof in its role as trier of fact for all levels of discipline.
- E. Informal Conference: Should there be an open meeting law, an exemption to it should be authorized to permit the Board, at its discretion, to meet in informal conference with a licensee who seeks or agrees to such a conference. Disciplinary action taken against a licensee because of such an informal conference and agreed to in writing by the Board and the licensee should be binding and a matter of public record. However, license revocation and suspension should be held in open formal hearing, unless executive session is permitted by the State's open meetings law. The holding of an informal conference should not preclude an open formal hearing if the Board determines such is necessary.
- F. Summary Suspension: The Board should be authorized to summarily suspend a license prior to a formal hearing when it believes such action is required to protect the public from an imminent threat to public health and safety. The Board should be permitted to summarily suspend a license by means of a vote conducted by telephone conference call or other electronic means if appropriate Board officials believe such prompt action is required. Proceedings for a formal hearing should be instituted simultaneously with the summary suspension. The hearing should be set within a reasonable time of the date of the summary suspension. No court should be empowered to lift or otherwise interfere with such suspension while the Board proceeds in a timely fashion.
- G. Cease and Desist Orders/Injunctions: The Board should be authorized to issue a cease-and-desist order and/or obtain an injunction to restrain any person or any corporation or association and its officers and directors from violating any provision of the medical practice act. Violation of an injunction should be punishable as contempt of court. No proof of actual damage to any person should be required for issuance of a cease-and-desist order and/or an injunction, nor should issuance of an injunction relieve those enjoined from criminal prosecution, civil action or administrative process for violation of the medical practice act.
- H. Board Action Reports: All the Board's final disciplinary actions and license denials, including related findings of fact and conclusions of law, should be matters of public record. The Board should report such

actions and denials to the Board Action Data Bank of the Federation of State Medical Boards of the United States within 30 days of the action being taken, to any other data repository required by law and to the media. Voluntary surrender of and voluntary limitation(s) on the medical license of any person should also be matters of public record and should also be reported to the Federation of State Medical Boards of the United States and to any other data repository required by law. The Board should have the authority to keep confidential practice limitations and restrictions due to physical impairment when the licensee has not violated any provision in the medical practice act.

- I. Tolling Periods of License Suspension or Restriction: The Board should provide, in cases of license suspension or restriction, that any time during which the disciplined licensee practices in another jurisdiction without comparable restriction shall not be credited as part of the period of suspension or restriction.
- J. The Board should have the authority, at its discretion, to share investigative and adjudicatory files with other state and territorial medical boards at any time during the investigational or adjudicative process.

## Section XI: Impaired Physicians

The medical practice act should provide for the limitation, restriction, suspension or revocation of the medical license of any licensee whose mental or physical ability to practice medicine with reasonable skill and safety is impaired.

The Board should have available to it a confidential impaired physician program approved by the Board and charged with the evaluation and treatment of licensees who are in need of rehabilitation. The Board may directly provide such programs or through a formalized contractual relation with an independent entity whose program meets standards set by the Board. The Board shall have authority over such program and the ability to monitor or audit the program to ensure the program meets the requirements of the Board.

The Board should be authorized, at its discretion, to require a licensee or applicant to submit to a mental or physical examination or a chemical dependency evaluation conducted by an independent evaluator designated by the Board. The results of the examination or evaluation should be admissible in any hearing before the Board or hearing officer, despite any claim of privilege under a contrary rule or statute. Every person who receives a license to practice medicine or who files an application for a license to practice medicine should be deemed to have given consent to submit to mental or physical examination or a chemical dependency evaluation, and to have waived all objections to the admissibility of the results in any hearing before the Board. If a licensee or applicant fails to submit to an examination or evaluation when properly directed to do so by the Board, the Board should be permitted to enter a final order upon proper notice, hearing and proof of refusal.

If the Board finds, after an evaluation, examination or hearing, that a licensee is mentally, psychologically, physically or chemically impaired, it should be authorized to take one or more of the following actions:

1. direct the licensee to submit to therapy, medical care, counseling or treatment acceptable to the Board
2. suspend, limit or restrict the licensee's medical license for the duration of the impairment and/or
3. revoke the licensee's medical license.

Any licensee or applicant who is prohibited from practicing medicine under this provision should be afforded at reasonable intervals an opportunity to demonstrate to the satisfaction of the Board that he or she can resume or begin

the practice of medicine with reasonable skill and safety. A license should not be reinstated, however, without the payment of all applicable fees and the fulfillment of all requirements as if the applicant had not been prohibited.

While all impaired licensees should be reported to the Board in accord with the mandatory reporting requirements of the medical practice act, unidentified and unreported impaired licensees should be encouraged to seek treatment. To this end, the Board should be authorized, at its discretion, to establish rules and regulations for the review and approval of a medically directed Physician Health Program (PHP). Those conducting a Board-approved PHP should be exempt from the mandatory reporting requirements relating to an impaired licensee who is participating satisfactorily in the program, or the Board should hold its report in confidence and without action, unless or until the impaired licensee ceases to participate satisfactorily in the program. The Board should require a PHP to report any impaired licensee whose participation is unsatisfactory to the Board as soon as that determination is made. Participation in an approved PHP should not protect an impaired licensee from Board action resulting from a report of his or her impairment from another source. The Board should be the final authority for approval of a PHP, should conduct a review of its approved program(s) on a regular basis and should be permitted to withdraw or deny its approval at its discretion. The PHP should be required to report to the Board information regarding any violation of the medical practice act by a PHP participant, other than the impairment, even if the violation is unrelated to the licensee's impairment.

## Section XII: Dyscompetent and Incompetent Licensees

The medical practice act should provide for the restriction, suspension, revocation or denial of the medical license of any licensee who the Board determines to be dyscompetent or incompetent. These provisions of the act should implement or be consistent with the following:

- A. The Board should be authorized to develop and implement methods to identify dyscompetent or incompetent licensees and licensees who fail to provide the appropriate quality of care. The Board should also be authorized to develop and implement methods to assess and improve licensee practices.
- B. The Board should have access to a Board approved assessment program charged with assessing licensees' clinical competency.
- C. The Board should be authorized, at its discretion, to require a licensee or an applicant for licensure to undergo a physician competency evaluation conducted by a Board designated independent evaluator. The results of the assessment should be admissible in any hearing before the Board or hearing officer, despite any claim of privilege under a contrary rule or statute. Every person who receives a license to practice medicine or who files an application for a license to practice medicine should be deemed to have given consent to submit to a physician competency evaluation, and to have waived all objections to the admissibility of the results in any hearing before the Board or hearing officer. If a licensee or applicant fails to submit to a competency assessment when properly directed to do so by the Board, the Board should be permitted to enter a final order upon proper notice, hearing and proof of refusal to submit to such an evaluation.
- D. If the Board finds, after evaluation by the assessment program, that a licensee or applicant for licensure is unable to competently practice medicine, it should be authorized to take one or more of the following actions:
  1. suspend, revoke or deny the licensee's medical license or application;
  2. restrict or limit the licensee's practice to those areas of demonstrated competence and/or

3. direct the licensee to submit to a Board approved remediation program to resolve any identified deficits in medical knowledge or clinical skills, acceptable to the Board.
- F. Any licensee or applicant for licensure who is prohibited from practicing medicine under the provision referenced in paragraph D should be afforded, at reasonable intervals, an opportunity to demonstrate to the satisfaction of the Board that he or she can resume or begin the practice of medicine with reasonable skill and safety. A license should not be reinstated, however, without the payment of all applicable fees and the fulfillment of all requirements as if the applicant had not been previously prohibited.
  - G. The Board should be authorized to require the assessment program to provide to the Board a written report of the results of the assessment with recommendations for remediation of the identified deficiencies.
  - H. The Board should have access to Board approved remedial medical education programs for referral of licensees in need of remediation. Such programs shall incorporate and comply with standards set by the Board. During remediation, the program shall provide, at Board determine intervals, written reports to the Board on the licensee's progress. Upon completion of the remediation program, the program shall provide a written report to the Board addressing the remediation of the previously identified areas of deficiency. The Board should be authorized to mandate that the licensee undergo post-remediation assessment to identify areas of continued deficit. The licensee shall be responsible for all expenses incurred as part of the assessment and the remediation.

### Section XIII: Compulsory Reporting and Investigation

The medical practice act should provide that certain persons and entities report to the Board any possible violation of the act or of the Board's rules and regulations by a licensee. These provisions of the act should implement or be consistent with the following:

- A. Any person should be permitted to report to the Board in a manner prescribed by the Board, any information he or she believes indicates a medical licensee is or may be medically incompetent, guilty of unprofessional conduct, or mentally or physically unable to engage safely in the practice of medicine.
- B. The following should be required to report to the Board promptly and in writing any information that indicates a licensee is or may be medically incompetent, guilty of unprofessional conduct or mentally or physically unable to engage safely in the practice of medicine; and any restriction, limitation, loss or denial of a licensee's staff privileges or membership that involves patient care:
  1. all licensees licensed under the act,
  2. all licensed health care providers,
  3. the state medical associations and its components,
  4. all hospitals and other health care organizations in the state, to include hospitals, medical centers, managed care organizations, ambulatory surgi-centers, clinics, group practices, etc.,
  5. all chiefs of staff, medical directors, department administrators, service directors, attending physicians, residency directors, etc.,
  6. all state agencies,

7. all law enforcement agencies in the state,
  8. all courts in the state,
  9. all peer review bodies in the state and
  10. resident training program directors.
- C. A licensee's voluntary resignation from the staff of a health care organization or voluntary limitation of his or her staff privileges at such an organization should be promptly reported to the Board by the organization if that action occurs while the licensee is under formal or informal investigation by the organization or a committee thereof for any reason related to possible medical incompetence, unprofessional conduct or mental, physical, alcohol or drug impairment.
- D. Malpractice insurance carriers, the licensee's attorney, a hospital, a group practice and the affected licensees should be required to file with the Board a report of each final judgment, settlement, arbitration award, or any form of payment by the licensee or on the licensee's behalf by any source upon any demand, claim or case alleging medical malpractice, battery, dyscompetence, incompetence or failure of informed consent. Licensees not covered by malpractice insurance carriers should be required to file the same information with the Board regarding themselves. All such reports should be made to the Board promptly (e.g., within 30 days).
- E. The Board should be permitted to investigate any evidence that appears to show a licensee is or may be medically incompetent, guilty of unprofessional conduct, or mentally or physically unable to engage safely in the practice of medicine.
- F. Any person, institution, agency or organization who reports in good faith a licensee pursuant to subsections (A) or (B) of this section should not be subject to civil damages or criminal prosecution for so reporting. A bad faith report is grounds for disciplinary action under the medical practice act.
- G. To assure compliance with compulsory reporting requirements, specific civil penalties should be established for demonstrated failure to report (e.g., up to \$10,000 per instance).
- H. The Board should promptly acknowledge all reports received under this section. The Board should promptly notify persons or entities reporting under this section of the Board's final disposition of the matters reported.

#### Section XIV: Protected Action and Communication

The medical practice act should provide legal protection for the members of the Board and its staff and for those providing information to the Board in good faith. These provisions of the act should implement or be consistent with the following:

- A. **Qualified Immunity:** There should be no monetary liability on the part of, and no cause of action for damages should arise against, any current or former member, officer, administrator, staff member, committee member, examiner, representative, agent, employee, consultant, witness, contractor 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.

- B. **Indemnity:** The state should defend a current or former member, officer, administrator, staff member, committee member, examiner, representative, agent, employee, consultant, witness, contractor or any other person serving or having served the Board 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 and within the scope of the function of the Board. The State should provide and pay for such defense and should pay any resulting judgment, compromise or settlement.
- C. **Protected Communication**
  - 1. 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, should be privileged. No action or proceeding, civil or criminal, should be permitted against any person, institution, agency or organization that made such a communication in good faith.
  - 2. The protections afforded in this provision should 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.

### **Section XV: Unlawful Practice of Medicine: Violations and Penalties**

The medical practice act should provide a definition of the unlawful practice of medicine and penalties for such unlawful practice. These provisions of the act should implement or be consistent with the following:

- A. It should be unlawful for any person, corporation or association to perform any act constituting the practice of medicine as defined in the medical practice act without first obtaining a medical license in accord with that act and the rules and regulations of the Board. Other licensed health care professionals may provide medical services within the scope of their authorizing license.
- B. The Board should be authorized to issue a cease-and-desist order and/or obtain injunctive relief against the unlawful practice of medicine by any person, corporation or association.
- C. It should be a felony crime for any person, corporation or association that performs any act constituting the practice of medicine as defined in the medical practice act, or causing or aiding and abetting such actions.
- D. A physician located in another state practicing within the state by electronic or other means without a license (full, special purpose or otherwise) issued by the Board should be deemed guilty of a felonious offense.

### **Section XVI: Periodic Renewal**

The medical practice act should provide for the periodic renewal of medical licenses to permit the Board to review the qualifications of licensees on a regular basis. These provisions of the act should implement or be consistent with the following:

- A. At the time of periodic renewal, the Board should require the licensee to demonstrate to its satisfaction his or her continuing qualification for medical licensure. The Board should design the application for license renewal to require the licensee to update and/or add to the information in the Board's file relating to the licensee and his or her professional activity. It should also require the licensee to report to the Board the following information:
1. Any action taken for acts or conduct similar to acts or conduct described in the medical practice act as grounds for disciplinary action against a licensee by:
    - any jurisdiction or authority (United States or foreign) that licenses or authorizes the practice of medicine or participation in a payment or practice program;
    - any peer review body;
    - any specialty certification board;
    - any health care organization;
    - any professional medical society or association;
    - any law enforcement agency;
    - any health insurance company;
    - any malpractice insurance company;
    - any court, and
    - any governmental agency.
  2. Any adverse judgment, settlement or award against the licensee or payment by or on behalf of the licensee arising from a professional liability demand, claim or case.
  3. The licensee's voluntary surrender of or voluntary limitation on any license or authorization to practice medicine in any jurisdiction, including military, public health and foreign.
  4. Any denial to the licensee of a license or authorization to practice medicine by any jurisdiction, including military, public health and foreign.
  5. The licensee's voluntary resignation from the medical staff of any health care organization or voluntary limitation of his or her staff privileges at such an organization if that action occurred while the licensee was under formal or informal investigation by the organization or a committee thereof for any reason related to possible medical incompetence, unprofessional conduct or mental, physical, alcohol or drug impairment.
  6. The licensee's voluntary resignation or withdrawal from a national, state or county medical society, association or organization if that action occurred while the licensee was under formal or informal investigation or review by that body for any reason related to possible medical incompetence, unprofessional conduct mental, physical, alcohol or drug impairment.
  7. Whether the licensee has abused or has been addicted to or treated for addiction to alcohol or any chemical substance.
  8. Whether the licensee has had any physical injury, impairment, condition, disease or mental or psychological illness that adversely affected or interrupted his or her practice of medicine.

9. The licensee's completion of continuing medical education or other forms of professional maintenance and/or evaluation, including specialty board certification or recertification, within the renewal period.
- B. The Board should be authorized, at its discretion, to require continuing medical education for license renewal and to require documentation of that education. The Board should have the authority to audit, randomly or specifically, licensees for compliance.
  - C. The Board should require the licensee to sign the application form for license renewal and have it witnessed.
  - D. The Board should be directed to establish an effective system for reviewing renewal forms. It should also be authorized to initiate investigations and/or disciplinary proceedings based on information submitted by licensees for license renewal.
  - E. Failure to report fully and correctly should be grounds for disciplinary action by the Board.

## Section XVII: Physician Assistants

The medical practice act should provide for the Board to license and regulate physician assistants. These provisions of the act should implement or be consistent with the following:

- A. Administration: The Board should administer and enforce these provisions of the medical practice act with the advice and assistance of the Physician Assistant Council.
- B. Physician Assistant Licensing
  1. No person should perform or attempt to perform as a physician assistant without first obtaining a license from the Board and having a supervising physician.
  2. An applicant for licensure as a physician assistant should complete all Board application forms and pay a nonrefundable fee. The forms should request the applicant provide their name and address and such additional information as the Board deems necessary. The Board may issue a license to a physician assistant applicant who fulfills all board requirements for licensure. However, a licensed physician assistant is prohibited from practicing until they have a delegation agreement with a supervising physician(s).
  3. Each licensed physician assistant should renew their license and file updated documentation stating their name and current address and any additional information as required by the Board. A fee set by the Board should accompany each renewal and filing of updated documentation.
  4. The Board may require written notification by the supervising physician and the physician assistant if the relationship is changed or severed for any reason. The notification should include a detailed explanation of when and why the relationship changed and/or ended.
  5. Persons not licensed by the Board who hold themselves out as physician assistants should be subject to penalties applicable to the unlicensed practice of medicine.

- D. Rules and Regulations: The Board should be empowered to adopt and enforce rules and regulations for:
1. setting qualifications of education, skill and experience for the licensing of a person as a physician assistant and providing forms and procedures for licensure and for renewal; and
  2. evaluating applicants for licensure as physician assistants as to their skill, knowledge and experience in the field of medical care.
- E. Disciplinary Actions: The Board should be empowered to deny, revoke or suspend any license, to limit or restrict the location of practice, to issue reprimands, to remove the authorization of a supervising physician and to limit or restrict the practice of a physician assistant upon grounds and according to procedures similar to those for such disciplinary actions against licensed physicians. Such actions should be reported to the Federation of State Medical Boards.
- F. Duties and Scope of Practice: A physician assistant should be permitted to provide those medical services delegated to them by the supervising physician that are within their training and experience, form a usual component of the supervising physician's scope of practice, and are provided pursuant to the supervising physician's instructions.
- G. Responsibility of Supervising Physician: Every physician supervising or employing a physician assistant should practice in the medical areas in which the physician assistant is to perform and should be legally responsible for the delegation of health care tasks, the performance and the acts and omissions of the physician assistant. Nothing in these provisions, however, should be construed to relieve the physician assistant of any responsibility for any of their own acts and omissions. No physician should have under their supervision more staff, physician assistant or otherwise than the physician can adequately supervise. In the event the supervising physician is absent, he or she must provide for appropriate supervision of the physician assistant by another licensed physician. Each and every relationship should adhere to all statutory requirements for licensure.
- H. The Board should be authorized, at its discretion, to require evidence of satisfactory completion of continuing medical education for license renewal.

### Section XVIII: Rules and Regulations

The medical practice act should authorize the Board to promulgate rules and regulations to facilitate the enforcement of the act. These provisions of the act should implement or be consistent with the following:

- A. The Board should be authorized to adopt and enforce rules and regulations to carry out the provisions of the medical practice act and to fulfill its duties under the act.
- B. The Board should adopt rules and regulations in accord with administrative procedures established in the jurisdiction.

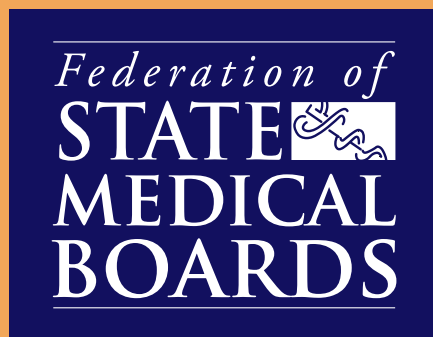
## Section XIX: Funding and Fees

The medical practice act should provide that Board fees be adequate to fund the Board's effective regulation of the practice of medicine under the act and that those fees paid by licensees be used only for purposes related to licensee licensure, discipline and Board administration. These provisions of the act should implement or be consistent with the following:

- A. The Board should be fully supported by the revenues generated from its activities, including fees and reimbursed costs, which the Board should deposit in an appropriate account, and the Board should also receive all interest earned on the deposit of such revenues. Such funds should be appropriated continuously. All fines levied by the Board may be deposited in the State General Fund, but all administrative, investigative and adjudicatory costs recoupment should be deposited in the Board's account.
- B. The Board should 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 should fully support Board regulation of that field. The budget should include allocations for establishment and maintenance of a reasonable reserve fund.
- C. The Board should be authorized to set fees and charges pursuant to its proposed budget needs. Reasonable notice should be provided for all increases or decreases in fees and charges.
- D. The Board should operate on the same fiscal year as the State.
- E. A designated officer of the Board or employee, at the direction of the Board, should oversee the collection and disbursement of funds.
- F. The State Auditor's Office (or the equivalent State office) should routinely audit the financial records of the Board and report to the Board and the Legislature.

# The FSMB Mission . . .

*FSMB leads by promoting excellence in medical practice, licensure, and regulation as the national resource and voice on behalf of state medical boards in their protection of the public.*



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