

Essentials of a Modern Medical Practice Act

Eleventh 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 *Essentials of a Modern Medical Practice Act*. First published in 1956, the stated purposes of the document have always been the same:

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

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 expresses 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. It is not a natural right of individuals.
- 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.

Section II: Definitions

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:

- A. The definition of the practice of medicine should include
 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 Osteopathy, Doctor of Osteopathic Medicine, 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.

B. The medical practice act shall not apply to

1. students while engaged in training in a medical school approved by the state medical board;
2. those providing service in cases of emergency where no fee or other consideration is contemplated, charged or received;
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;
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 to the sick or suffering by mental or spiritual means in accord with such tenets, provided that no person should be exempt from the public health laws of the jurisdiction or the federal government;
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 with due safeguards to protect the public and individual physicians from the abuse of that responsibility. 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 administer licensing examination(s).
 3. Adopt policies and guidelines related to medical practice and regulation.
 4. Evaluate medical education and training of applicants.
 5. Evaluate previous professional performance of applicants.
 6. Issue or deny initial or endorsement licenses.
 7. Maintain secure and complete records on individual licensees.
 8. Approve or deny applications for license renewal.

9. Develop and implement methods to identify physicians who are in violation of the medical practice act.
10. Receive, review and investigate complaints.
11. Review and investigate reports received from law enforcement agencies, health care organizations, governmental agencies, insurers and other entities having information pertinent to the professional performance of licensees.
12. Share investigative information at the early stages of a complaint investigation with other medical boards.
13. Issue subpoenas, subpoenas duces tecum, administer oaths, receive testimony and conduct hearings.
14. Discipline licensees found in violation of the medical practice act.
15. Institute actions in its own name and enjoin violators of the medical practice act.
16. 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.
17. Develop and implement methods to identify dyscompetent physicians and physicians who fail to meet acceptable standards of care.
18. Develop and implement methods to assess and improve physician practice.
19. Develop and implement methods to ensure the ongoing competence of licensees.
20. Establish appropriate fees and charges to support active and effective pursuit of its legal responsibilities.
21. Develop and adopt its budget.
22. 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.
23. 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. cease 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 found in violation 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 and 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;
 - 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.
 - 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/chair alone or another officer and two Board members 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 of time, 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 Number¹ 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:
 - 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;
 - 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
 - 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, or 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;
 5. a list of all jurisdictions, United States or foreign, in which the applicant has been denied licensure or authorization to practice medicine or has voluntarily surrendered a license or an authorization to practice medicine;
 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);
 9. all websites associated with the applicant's practice; and
 10. 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 so 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. 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.
- D. The applicant should have passed medical licensing examination(s) satisfactory to the Board.
- E. 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.
- F. 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.
- G. 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.
- H. 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.

- I. 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 Physician Data Center and Credentials Verification Service, the files of the American Medical Association and the American Osteopathic Association, and other national data banks and information resources).
- J. 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.
- K. 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 and training 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' basic 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 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.
- 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 Citizen and Immigration Services.

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 approved by the Board if they have 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;
 - Liaison Committee on Medical Education (LCME) or American Osteopathic Association Commission on Osteopathic College Accreditation (COCA); or
 - Fifth Pathway certificate;² or
 - 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
 - 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)
 - Examinations offered by the National Board of Osteopathic Medical Examiners (COMLEX-USA) Levels 1-3 or its predecessor examination(s)
 - 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 PhD 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;

Boards should obtain supplemental documentation including, but not limited to:

8. criminal background check;
9. absence of current/pending investigations in any jurisdiction where licensed ;
10. verification of specialty board certification; and
11. 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:

- medical school diploma
- medical school transcript
- dean's certificate
- examination history
- disciplinary history
- identity (photograph and certified birth certificate or original passport)
- ECFMG certificate, if applicable
- Fifth Pathway certificate, if applicable
- 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:

- a. 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
 - b. automatically terminate within a time frame 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 or 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 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 Board-approved 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 the purpose of postgraduate training shall occur only after the applicant demonstrates that he or she is enrolled in a residency program recognized by the Board. 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 be directed to 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 with the approval of the Board and upon the written recommendation of the supervising institution, including a written evaluation of performance, until such time as 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. 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. 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. Reports should be signed by the Chair of the Graduate Medical Education Committee. 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 will 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 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;
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 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: The Board should be authorized to issue a confidential, non-reportable letter of concern to a licensee when, though evidence does not warrant formal proceedings,

the Board has noted indications of possible errant conduct by the licensee that could lead to serious consequences and formal action. In its letter of concern, 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 gross misdemeanor or a felony, whether or not related to the practice of medicine, or the entry of a guilty or nolo contendere plea to a gross misdemeanor 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. 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;
21. prescribing, selling, administering, distributing, ordering or giving to an habitue 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;
22. 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;

23. violating any state or federal law or regulation relating to controlled substances;
24. obtaining any fee by fraud, deceit or misrepresentation;
25. employing abusive billing practices;
26. 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;
27. disciplinary action of another state or jurisdiction against a license or other authorization to practice medicine 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;
28. failure to report to the Board any adverse action taken against him or her 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;
29. 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;
30. 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;
31. 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;

32. 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;
33. 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.
34. failure to furnish the Board, its investigators or representatives, information legally requested by the Board;
35. failure to cooperate with a lawful investigation conducted by the Board;
36. 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;
37. 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;
38. failure to follow generally accepted infection control procedures;
39. failure to comply with any state statute or board regulation regarding a licensee's reporting responsibility for HIV, HVB (hepatitis B virus) or HVC (hepatitis C virus) sero-positive status;
40. practicing medicine in another state or jurisdiction without appropriate licensure;
41. conduct which violates patient trust and exploits the physician-patient relationship for personal gain;
42. failure to refer, 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; and
43. 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.

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.
- 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 investigation of charges by the Board; notice of charges to the accused; an opportunity for a fair and impartial hearing for the accused before the Board or its examining committee; an opportunity for representation of the accused by counsel; the presentation of testimony, evidence and argument; subpoena power and attendance of witnesses; a record of 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 physician's patient and office records and administrative authority to access otherwise protected peer review records.
- 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.³
- 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 an accused licensee who seeks or agrees to such a conference. Disciplinary action taken against a licensee as a result of such an informal conference and agreed to in writing by the Board

and the accused licensee should be binding and a matter of public record. However, license revocation and suspension should be dealt with in open hearing. The holding of an informal conference should not preclude an open 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 due to 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 (e.g., 15 to 30 days) 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 the provisions 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 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. Such actions and denials should be promptly reported to the Physician Data Center 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.
- 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 physician

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.

Section XI: Impaired Physicians

The medical practice act should provide for the restriction, suspension or revocation of the medical license of any physician whose mental or physical ability to practice medicine with reasonable skill and safety is impaired. These provisions of the act should implement or be consistent with the following:

- A. Impairment should be defined as the inability of a licensee to practice medicine with reasonable skill and safety by reason of:
 - 1. mental illness;
 - 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 or excessive use or abuse of drugs defined by law as controlled substances, of alcohol or of other substances that impair ability.

The Board should have available to it an impaired physician program approved by the Board and charged with the management of physicians who are in need of evaluation and treatment. Such programs may either be provided under the auspices of the Board or through a formalized contract with an independent entity whose program meets the standards set by 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, 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, unless failure was due to circumstances deemed to be beyond the licensee's control, the Board should be permitted to enter a final order upon proper notice, hearing and proof of refusal.

If the Board finds, after examination and hearing, that a licensee is impaired, it should be authorized to take one or more of the following actions:

- direct the licensee to submit to care, counseling or treatment acceptable to the Board;
- suspend, limit or restrict the physician's medical license for the duration of the impairment; and/or
- revoke the physician's medical license.

Any licensee or applicant who is prohibited from practicing medicine under this provision should, at reasonable intervals, be afforded 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 physicians should be reported to the Board in accord with the mandatory reporting requirements of the medical practice act, unidentified and unreported impaired physicians 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 Impaired Physician Program (IPP). Those conducting a Board-approved IPP treatment program should be exempt from the mandatory reporting requirements relating to an impaired physician who is participating satisfactorily in the program, or the Board should hold its report in confidence and without action, unless or until the impaired physician ceases to participate satisfactorily in the program. The Board should require that any impaired physician whose participation in an approved IPP is unsatisfactory be reported to the Board as soon as that determination is made. Participation in an approved IPP should not protect an impaired physician 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 an IPP, 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 IPP should be required to report to the Board information regarding any violation of the medical practice act by an IPP participant even if the violation is unrelated to the individual's impairment.

Section XII: Dyscompetent Physicians

The medical practice act should provide for the restriction, suspension, revocation or denial of the medical license of any physician who is determined by the Board to be dyscompetent or incompetent.

These provisions of the act should implement or be consistent with the following:

- A. Definitions: The following terms should have the meaning given them below.
 - 1. "Competence" means possessing the requisite abilities and qualities (cognitive, non-cognitive, and communicative) to perform effectively in the scope of professional physician practice while adhering to professional ethical standards.
 - 2. "Dyscompetence" means failing to maintain acceptable standards of one or more areas of professional physician practice.
 - 3. "Incompetence" means lacking the requisite abilities and qualities (cognitive, non-cognitive, and communicative) to perform effectively in the scope of professional physician practice.
 - 4. "Assessment Program" means a formal system to evaluate a physician's competence within the scope of professional physician practice.
 - 5. "Remediation" means the process whereby deficiencies in physician performance identified through an assessment program are corrected, resulting in an acceptable state of physician competence.
- B. The Board should be authorized to develop and implement methods to identify dyscompetent physicians and physicians who fail to provide quality care. The Board should also be authorized to develop and implement methods to assess and improve physician practice.
- C. The Board should have access to an assessment program approved by the Board and charged with assessing the clinical competency of physicians.

- D. 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 an independent evaluator designated by the Board. The results of the assessment should be admissible in any hearing before the Board, 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. If a licensee or applicant fails to submit to a competency assessment when properly directed to do so by the Board, unless failure was due to circumstances deemed to be beyond the licensee's control, the Board should be permitted to enter a final order upon proper notice, hearing and proof of refusal to submit to such an evaluation.
- E. 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 physician's medical license;
 2. restrict or limit the physician's practice only to those areas of demonstrated competence; and/or
 3. direct the licensee to submit to a remediation program, aimed at resolving 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 this provision should, at reasonable intervals, be afforded 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 remedial medical education programs for referral of physicians in need of remediation. Such programs shall be approved by the Board and incorporate and comply with standards set by the Board. During remediation, the program shall provide, at intervals determined by the Board, written reports to the Board on the physician'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 physician undergo post-remediation assessment to identify areas of continued deficit. All expenses incurred as part of the assessment and the remediation shall be the sole responsibility of the physician.

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 has reason to believe 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 physicians licensed under the act;
 2. all licensed health care providers;
 3. the state medical association 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 state agencies;
 6. all law enforcement agencies in the state;
 7. all courts in the state;
 8. all peer review bodies in the state; and
 9. resident training program directors.
- C. A medical 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 and the licensee 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 or physical impairment.
- D. Malpractice insurance carriers and affected licensees should be required to file with the Board a report of each final judgment, settlement or award against insured licensees. 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 required to report under this provision of the medical practice act or related rules and regulations, who does so in good faith should not be subject to civil damages or criminal prosecution for so reporting.
- 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. Persons or entities reporting under this section should also be promptly informed 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. 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 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: 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 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 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 such person, institution, agency or organization by whom or on whose behalf such a communication was made 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 declared 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.
- 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. A person, corporation or association performing any act constituting the practice of medicine as defined in the medical practice act, or causing or aiding and abetting such action, should be deemed guilty of a felonious offense.
- 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 application form

for license renewal should be designed 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 against the licensee by:
 - any jurisdiction or authority (United States or foreign) that licenses or authorizes the practice of medicine;
 - any peer review body;
 - any specialty certification board;
 - any health care organization;
 - any professional medical society or association;
 - any law enforcement agency;
 - any court; and
 - any governmental agency for acts or conduct similar to acts or conduct described in the medical practice act as grounds for disciplinary action.
2. Any adverse judgment, settlement or award against the licensee arising from a professional liability claim.
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 or physical 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 or mental or physical impairment.
 7. Whether the licensee has abused or has been addicted to or treated for addiction to alcohol or any chemical substance during the registration period.
 8. Whether the licensee has had any physical injury or disease or mental illness within the registration period that 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 registration 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.
- C. The licensee should be required to sign the application form for license renewal and have it witnessed. Failure to report fully and correctly should be grounds for disciplinary action by the Board.
- 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.

Section XVII: Physician Assistants

The medical practice act should provide for the registration and regulation of physician assistants by the Board. These provisions of the act should implement or be consistent with the following:

- A. Definitions: The following terms should have the meanings given them below.
1. "Licensed physician" means a physician licensed to practice medicine in the jurisdiction.

2. “Supervising physician” means a licensed physician who has submitted an application to the Board for approval to supervise the services of a physician assistant, formally accepted the responsibility for such supervision and has been approved by the Board for this role.
 3. “Physician assistant” means a skilled person who by reason of training, scholarly achievements, submission of acceptable letters of recommendations and satisfaction of other requirements of the Board has been approved for the provision of patient services under the supervision and direction of a licensed physician who is responsible, in a manner determined by the Board, for the performance of that person.
 4. “Registration” is equivalent to the terms certification, licensure or any other language used by the Board to describe the processes it has in place to approve a person as a physician assistant.
 5. “Physician Assistant Council” means a council appointed by the Board that reviews matters relating to physician assistants, reports its findings to the Board and makes recommendations for action.
- B. Administration: The Board should enforce and administer these provisions of the medical practice act with the advice and assistance of the Physician Assistant Council.
- C. Registration as a Physician Assistant
- a. No person should perform or attempt to perform as a physician assistant without first registering with the Board and having his or her employment recorded in accordance with Board rules and regulations.
 - b. An applicant registering as a physician assistant should complete application forms prepared and furnished by the Board and pay a nonreturnable fee. Upon being duly registered by the Board, the applicant should have his or her name and address and other pertinent information enrolled by the Board on a roster of physician assistants.
 - c. Each registered physician assistant should file documentation of his or her employment with the Board annually, stating his or her name and current address, the name and office address of both his or her employer and the supervising licensed physician, submitting a copy of the current protocol governing his or her activities and such additional information

as the Board deems necessary. Upon any change of employment as a physician assistant, such documentation should automatically be void. Each annual filing of employment documentation should be accompanied by a fee set by the Board.

- d. Persons not registered 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 reasonable rules and regulations for:

1. setting qualifications of education, skill and experience for registration of a person as a physician assistant and providing forms and procedures for registration and for annual filing of employment;
2. examining and evaluating applicants for registration as physician assistants as to their skill, knowledge and experience in the field of medical care; and
3. establishing criteria for protocols governing the activities of physician assistants based on the individual's level of competence as demonstrated by formal education and examinations.

E. Disciplinary Actions: The Board should be empowered to deny, revoke or suspend any registration, to limit or restrict the location of practice, to issue reprimands, 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 him or her by the supervising physician that are within his or her training and experience, form a usual component of the supervising physician's scope of practice, and are provided under the direction of the supervising physician.

G. Responsibility of Supervising Physician: Every physician using, supervising or employing a registered physician assistant should be qualified in the medical areas in which the physician assistant is to perform and should be individually responsible and liable for 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 and liability for any

of his or her own acts and omissions. No physician should have under his or her supervision more than two currently registered physician assistants. In the event the supervising physician is absent, he or she must provide for appropriate supervision of the physician assistant by another licensed physician.

- H. The Board should be authorized, at its discretion, to require evidence of satisfactory completion of continuing medical education for registration renewal.

Section XVIII: Rules and Regulations

The medical practice act should provide for 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 and charges be adequate to fund the Board's effective regulation of the practice of medicine under the act and that those fees and charges paid by physicians be used only for purposes related to physician licensure and discipline. 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, charges and reimbursed costs. All such revenues, with the exception of fines, should be deposited in the State Treasury to the credit of a State Medical Board Account, which should also receive all interest earned on the deposit of such revenues. Such funds should be appropriated continuously and should be used by the Board only for administration and enforcement of the medical practice act. All fines levied by the Board should be deposited in the State General Fund.
- 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, at the direction of the Board, should oversee the collection and disbursement of funds. That officer should be bonded by the Board in an amount fixed by the Board.
 - F. The State Auditor's Office (or the equivalent State office) should audit the financial records of the Board annually and report to the Board and the Legislature.
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1. In order to comply with federal statute, the Board must inform applicants that disclosure of their Social Security Number (SSN) is mandatory in order for the Board to comply with requirements of the National Practitioner Data Bank and the Health Integrity and Protection Data Bank. If an applicant's SSN is to be used for other purposes, the Board must state whether the disclosure is mandatory or voluntary and describe how it will be used. State law may also restrict use and release of SSNs.
2. A Fifth Pathway program is an academic year of supervised clinical education provided by a LCME-accredited medical school and is available to persons who meet all of the following conditions:
 - Have completed, in an accredited United State college or university, undergraduate premedical work of the quality acceptable for matriculation in an LCME-accredited United State medical school;
 - Have studied in a medical school located outside the United States, Puerto Rico, and Canada that is listed in the ECFMG International Medical Education Directory (IMED) and that requires an internship and/or social service after completing the school's academic requirements and before receiving the final medical credential;

- Have completed all of the formal requirements of the non-United States medical school except internship and/or social service.

Students who have completed the academic curriculum in residence at a non-United States medical school and who meet the above conditions may be offered the opportunity to substitute, for an internship and/or social service required by a non-United States medical school, an academic year of supervised clinical training in a medical school accredited by the LCME.

3. The Washington Supreme Court, in a 2001 decision, held that revoking a physician's license for alleged misconduct based on a "mere preponderance" of the evidence violates the due process clause of the 14th Amendment to the United States Constitution. The court said that the consequences of taking away a license are so great that the decision to do so requires a higher burden of proof, a "clear" preponderance of evidence, so as to minimize the risk of error. Three of eight justices participating in the decision dissented. They argued that 14th Amendment property and liberty protections did not apply to the physician in such a case and said that public protection would be better served using the preponderance of the evidence standard. *Nguyen V. State*, 144 Wn2d 516 (2001).

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