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May 5, 2015

Members, Louisiana House of Representatives
Senators, Louisiana Senate
State Capitol
900 North Third Street
Baton Rouge, Louisiana 70804

RE: Louisiana House of Representatives Bill No. 573 by Representatives Hazel, Hoffman, and Jackson providing for the investigation and adjudication of violations by the Louisiana State Board of Medical Examiners

Dear Representative/Senator:

Public Citizen, a consumer advocacy group with 350,000 members and supporters nationwide, calls on the Louisiana State Legislature to reject House of Representatives Bill No. 573 (HB 573) because it would seriously compromise patient safety in Louisiana. In particular, multiple provisions of the proposed legislation would substantially impede the Louisiana State Board of Medical Examiners' (LSBME's) ability to appropriately investigate allegations of physician incompetence or unprofessional conduct, to subsequently discipline physicians determined to have engaged in such misconduct, and thereby to protect the public from dangerous doctors.

Key provisions of the proposed legislation that would cause the most harm to patients and public health in Louisiana include:

- (1) The bill would prohibit the LSBME from accepting and investigating anonymous complaints and would mandate that the board only accept complaints made in writing (see §1345.11A). Many individuals who are in a position to witness physician misconduct are afraid to use their names when reporting serious concerns about physicians. This is particularly the case when physician impairment, incompetence, or unprofessional conduct is witnessed by a spouse, family member, colleague, nurse, or employee of the physician. Forty-five state medical and osteopathic boards currently accept and investigate anonymous complaints.¹ Precluding the acceptance of anonymous complaints and establishing other hurdles for making complaints — such as mandating that all complaints be in writing — will endanger the public and serve to protect impaired, incompetent, or unprofessional physicians.
- (2) In order for the LSBME to take a disciplinary action against a physician, the bill would require that a minimum of four board members concur with taking such action (see

¹ Federation of State Medical Boards. *U.S. Medical Regulatory Trends and Actions*. May 2014. https://www.fsmb.org/Media/Default/PDF/FSMB/Publications/us_medical_regulatory_trends_actions.pdf. Accessed April 29, 2015. (PDF page 59).

§1267). Currently, only a simple majority of a quorum (i.e., two of three convened members) is required before the board takes a disciplinary action against a physician. With a maximum of only six voting members serving on the board and a proposed minimum quorum requirement of four voting members, this provision would tilt the adjudication process overwhelmingly in favor of physicians facing charges of incompetence or unprofessional conduct.

- (3) The bill inappropriately would limit the scope of the definition of “unprofessional conduct” by stipulating a specific list of behaviors that could be considered unprofessional (see §1285A(13)). The current statute governing the LSBME does not define unprofessional conduct. Under the proposed definition, the LSBME would lack the flexibility to discipline physicians for other behaviors that could reasonably be judged to constitute unprofessional conduct.
- (4) The bill would decrease transparency and deprive the public of important information regarding physician incompetence or unprofessional conduct by removing the ability of the LSBME to make consent orders, agreements, and other informal dispositions public (see §1285E). Under this provision, the board would be able to tell the public that a physician was disciplined, but not why, unlike the board’s current policy, which allows disclosure of the actual misconduct that led to the board’s action.
- (5) The bill would mandate that all LSBME records and information related to a complaint and initial board investigation that is dismissed be destroyed (see §1345.13D(1)). This provision would cause the loss of records that may be critically important in establishing a pattern of incompetence or unprofessional conduct by a physician.
- (6) The bill would eliminate the current 120-day limit on judicial orders staying or enjoining the effectiveness or enforcement of a final disciplinary decision or order of the LSBME (see ~~strikeout at §1285F~~). This provision thereby could unnecessarily delay implementation of disciplinary actions against physicians who are incompetent or have engaged in unprofessional conduct.
- (7) The bill would prohibit the LSBME from acting on complaints alleging medical incompetence — even incompetence that may have resulted in the serious injury or death of a patient — if the care related to the complaint was provided more than three years before the date on which the complaint is received by the board (see §1345.12A). Imposing such an arbitrary statute of limitations on board investigations of complaints of physician incompetence would prevent the board from identifying dangerously incompetent physicians and taking appropriate disciplinary action to protect future patients from harm.
- (8) The bill would impose numerous arbitrary and unnecessary procedural deadlines at multiple steps in the LSBME’s investigation and adjudication process regarding complaints of physician incompetence or unprofessional conduct (for examples, see §1345.13D(1) and (2); §1345.21A(1); and §1345.31A and B(1)). These deadlines likely would handicap the ability of the board to fully and properly investigate substantive

allegations of physician misconduct. It also would provide expanded opportunities for challenges and appeals by physicians facing appropriate disciplinary action based on unreasonable procedural grounds, which would delay and obstruct the implementation of the board's disciplinary actions intended to protect patients.

- (9) The bill would prohibit the LSBME from expending funds on any activity or function sponsored by the Federation of State Medical Boards (FSMB) (see §1269B). This provision would block the board from using the FSMB verification credentialing service. As a result, the LSBME would have to return to primary source verification, which would require hiring additional staff and would increase dramatically the time that it now takes to issue and renew licenses. The FSMB also provides other important tools and resources that enhance the performance of its member boards, such as the ability to receive and submit data through the Physician Data Center, training grants, and educational programs.

As far as we could determine, no other state medical board is prohibited from expending funds on critically important services provided by the FSMB. The short-sighted proposal to sever ties between the LSBME and the FSMB would weaken the board and ultimately harm patients throughout Louisiana.

In summary, HB 573 would seriously undermine the mission of the LSBME to protect patients from incompetent or unprofessional physicians. The bill represents a transparent attempt to tilt the board process for investigating and disciplining physicians from one that protects patients and public health to one that protects dangerous physicians.

Of note, Public Citizen's most recent ranking of the oversight performance of state medical boards placed the Louisiana Board of Medical Examiners in second place for its rate of serious disciplinary actions per 1,000 physicians. Louisiana has been among the top 10 states for such actions since the ranking for 2006 through 2008.² It is our understanding that the Louisiana State Medical Society (LSMS) helped draft this dangerous legislation. Apparently, the LSMS believes the LSBME is performing too well when it comes to investigating and disciplining physicians and protecting patients. There is little question that if this legislation passes, little time will elapse before the rate of serious disciplinary actions against Louisiana physicians will decrease, to the detriment of patient safety.

² Wolfe SM, Williams C, Zaslow A. *Public Citizen's Health Research Group Ranking of the Rate of State Medical Boards' Serious Disciplinary Actions, 2009-2011*. May 17, 2012. <http://www.citizen.org/documents/2034.pdf>. Accessed April 29, 2015.

In closing, Public Citizen urges the Louisiana State Legislature to place the health interests of patients above those of the protection of incompetent and unprofessional physicians by rejecting HB 573.

Sincerely,

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