

REGULATION OF THE MEDICAL PROFESSION

LOUISIANA STATE BOARD OF MEDICAL EXAMINERS



PERFORMANCE AUDIT SERVICES
ISSUED MAY 15, 2019

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LOUISIANA LEGISLATIVE AUDITOR
DARYL G. PURPERA, CPA, CFE

May 15, 2019

The Honorable John A. Alario, Jr.,
President of the Senate
The Honorable Taylor F. Barras,
Speaker of the House of Representatives

Dear Senator Alario and Representative Barras:

This report provides the results of our performance audit of the Louisiana State Board of Medical Examiners (LSBME). The purpose of the audit was to determine whether LSBME effectively regulated the medical profession to ensure compliance with the Louisiana Medical Practice Act and various other practice acts (Louisiana Revised Statutes 37:1261, *et seq.*). Specifically, we examined LSBME's regulatory efforts between calendar years 2015 and 2017.

We found that LSBME has not developed a formal process to ensure enforcement decisions are consistent and appropriate for the violations being investigated. In addition, unlike other states, LSBME does not require a review of the Director of Investigation's recommendations to the Board regarding enforcement cases.

We also determined that LSBME did not report all licensees found to have violated their Practice Act to the appropriate parties as required by law. We identified 10 licensees who were not reported to the National Practitioners Data Bank as required by federal law after they were suspended, did not renew their licenses, or relinquished their licenses as a result of an investigation. LSBME also did not report all substantiated violations to the prosecuting officer of the state as required.

In addition, LSBME did not effectively monitor all licensees. While the Board monitors licensees on probation, it does not track and monitor licensees who have verbal agreements or other restrictions on their practice. LSBME also did not ensure that individuals with expired licenses were not practicing.

We found as well that LSBME did not ensure licensees complied with all licensing requirements. The Board does not have a formal process for conducting and tracking Continuing Education audits and does not keep supporting documentation in accordance with its records retention schedule.

The Honorable John A. Alario, Jr.,
President of the Senate
The Honorable Taylor F. Barras,
Speaker of the House of Representatives
May 15, 2019
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The report contains our findings, conclusions, and recommendations. Appendix A contains LSBME's response to this report.

I hope this report will benefit you in your legislative decision-making process.

We would like to express our appreciation to the management and staff of LSBME for their assistance during this audit.

Sincerely,

A handwritten signature in blue ink that reads "Daryl G. Purpera". The signature is fluid and cursive, with the first name being the most prominent.

Daryl G. Purpera, CPA, CFE
Legislative Auditor

DGP/aa

LSBME

Louisiana Legislative Auditor

Daryl G. Purpera, CPA, CFE



Regulation of the Medical Profession Louisiana State Board of Medical Examiners

May 2019

Audit Control # 40170012

Introduction

We evaluated whether the Louisiana State Board of Medical Examiners (LSBME or Board) effectively regulated the medical profession during fiscal years 2015 through 2017 to ensure compliance with the Louisiana Medical Practice Act and various other healthcare practice acts (Practice Acts).¹ Under Title 37 of the Louisiana Revised Statutes, LSBME is required to regulate 14 categories of medical professions, including physicians, clinical lab personnel, respiratory therapists, and occupational therapists. During calendar year 2018, LSBME regulated more than 32,000 practitioners, as summarized in Exhibit 1.

The **purpose of healthcare-related Practice Acts** is to protect the public against the unprofessional, improper, and unauthorized practice of medicine.

Source: R.S. 37:1261

LSBME was established in 1894 through Act 49 as a regulatory agency and is responsible for licensing all who engage in the practice of medicine or allied health² and taking appropriate actions, such as suspending, revoking or restricting a license, or imposing probation terms or fines, if it identifies violations.³ We conducted this audit because even though LSBME was created under the authority of the Louisiana Department of Health (LDH),⁴ neither LDH nor any other entity is required to provide oversight of LSBME's operations.

Act 599 of the 2018 Regular Legislative Session increased the number of LSBME board members to 10 by adding three additional members to the original seven physician members, including one consumer

Exhibit 1 Practitioners Regulated by LSBME As of December 2018		
Profession Category	Number	% of Total
Physician, Surgeon, Osteopath	17,752	54.5%
Clinical Lab Personnel	5,790	17.8%
Respiratory Therapist	3,504	10.8%
Occupational Therapist	2,918	9.0%
Physician Assistant	1,245	3.8%
Athletic Trainer	568	1.7%
Polysomnography Technologist	198	0.6%
Podiatrist	190	0.6%
Medical Psychologist	105	0.3%
Acupuncturist	96	0.3%
Perfusionist	93	0.3%
Clinical Exercise Physiologist	57	0.2%
Midwife	22	0.1%
Private Radiological Technician	6	0.0%
Total	32,544	100%

Source: Prepared by legislative auditor's staff using information provided by LSBME.

¹ Louisiana Revised Statutes (R.S.) 37:1261, *et seq.*

² Allied health professions were incorporated under LSBME between 1970 and 2009 and include podiatry, physician assistant, respiratory therapy, occupational therapy, athletic trainer, acupuncture, etc. (R.S. 37:1281).

³ R.S. 37:1270

⁴ R.S. 37:1263

member. In addition, LSBME has 52 staff and two contracted employees that perform administrative functions and assist with licensing, monitoring, and enforcement responsibilities.⁵ Exhibit 2 summarizes LSBME's regulatory responsibilities and the activities it conducts to accomplish these functions.

Exhibit 2	
LSBME's Regulatory Functions	
Function	Examples of Activities to Accomplish Functions
Licensing/ Permitting	<ul style="list-style-type: none"> • Reviews and approves applications • Verifies applicant received required training/Continuing Education (CE) • Provides license verifications upon request to public
Monitoring	<ul style="list-style-type: none"> • Investigates complaints and other allegations of violations • Monitors licensees on probation for compliance with imposed conditions
Enforcement	<ul style="list-style-type: none"> • Disciplines licensees who have been found to violate their Practice Act (probation, license suspension/revocation, etc.) • Reports licensees with violations to appropriate parties as required by state and federal law
Source: Prepared by legislative auditor's staff using information provided by LSBME.	

LSBME is funded solely through self-generated revenues. In calendar year 2018, LSBME's total revenue of approximately \$7.9 million included fees from license applications and renewals as well as fines assessed to licensees. The majority of LSBME's total expenses of approximately \$6.8 million in calendar year 2018 were for salaries and benefits (\$4.3 million, or 63.1%), and professional services (\$1.5 million, or 22.9%) including legal and software costs. See Appendix C for a breakdown of LSBME's revenues and expenses for calendar years 2015 through 2018.

The objective of this audit was to:

Evaluate LSBME's regulation of medical professions to ensure compliance with the Louisiana Medical Practice Act and various other healthcare practice acts.

The issues we identified are summarized on the next page and discussed in further detail throughout the remainder of the report. Appendix A contains LSBME's response to this report, and Appendix B details our scope and methodology. Appendix C summarizes LSBME's revenues, expenses, and net income for calendar years 2015 through 2018, and Appendix D contains an example of a sanctions worksheet used by Virginia's Medical Board.

⁵ LSBME does not rule on medical malpractice claims; these are reviewed by medical review panels assigned by the Louisiana Division of Administration.

Objective: To evaluate LSBME's regulation of medical professions to ensure compliance with the Louisiana Medical Practice Act and various other healthcare practice acts.

We found that LSBME needs to strengthen its monitoring and enforcement activities to meet its statutory responsibilities, better protect the public, and ensure that medical professionals comply with their applicable Practice Act. Specifically, we identified the following issues:

- **LSBME has not developed formal guidance, such as an enforcement guide, to help ensure it follows a consistent, objective approach when making enforcement decisions and that these decisions are appropriate and properly protect the public from unprofessional, improper, unauthorized, and unqualified licensees as required by law. In addition, unlike other states, LSBME does not require that anyone review the Director of Investigation's (DOI) recommendations to the Board regarding enforcement cases.** An enforcement guide that establishes a graduated and equitable system of sanctions and specifies the type and number of violations that should trigger each level of sanctions would also help make LSBME's enforcement process more transparent and help ensure the Board does not over or under-discipline licensees.
- **During calendar years 2015 through 2017, LSBME did not report all licensees who violated their Practice Act to the appropriate parties as required by law.** We identified 10 licensees who LSBME failed to report to the National Practitioners Data Bank as required by federal law when they were suspended, did not renew, or relinquished their licenses as a result of an investigation conducted by the Board. In addition, LSBME did not report all violations substantiated during its investigation process to the prosecuting officer of the state as required by state law.
- **LSBME has not effectively monitored all licensees. While LSBME monitors licensees on probation, it does not track and monitor licensees who have verbal agreements or other restrictions such as prohibitions from prescribing controlled substances or requiring supervision or chaperones while treating patients. LSBME also did not ensure that individuals with expired licenses did not continue to practice.** We reviewed Prescription Monitoring Program (PMP) data from January 2015 through December 2016 and identified 11 licensees who appeared to have prescribed medications in violation of the restrictions imposed by LSBME, as well as 44 licensees with expired licenses who wrote 116 prescriptions for controlled substances during calendar year 2016.
- **LSBME has not ensured that licensees comply with all licensing requirements. LSBME does not have a formal process for conducting and tracking Continuing Education (CE) audits and does not retain supporting audit documentation in accordance with its records retention schedule.** As a

result, it cannot ensure that licensees complied with CE requirements during calendar years 2015 through 2017.

These issues are explained in more detail throughout the remainder of the report along with recommendations to strengthen LSBME's regulation of the medical profession.

LSBME has not developed formal guidance, such as an enforcement guide, to help ensure it follows a consistent, objective approach when making enforcement decisions and that these decisions are appropriate and properly protect the public from unprofessional, improper, unauthorized, and unqualified licensees as required by law. In addition, unlike other states, LSBME does not require that anyone review the Director of Investigation's (DOI) recommendations to the Board regarding enforcement cases.

LSBME's enforcement process includes investigating complaints and determining whether to issue formal or informal actions when licensees violate or are suspected to have violated their Practice Act or administrative rules. LSBME receives complaints in various ways such as written complaints from the public, reports from external entities, and information it gathers internally from news outlets, background checks, license applications, etc.⁶ LSBME received approximately 1,000 complaints per year during calendar years 2015 through 2017. Exhibit 3 categorizes the nature of the 2,984 complaints received that resulted in LSBME opening cases during calendar years 2015 through 2017.

⁶ 801 (26.8%) of the 2,984 cases opened between calendar years 2015 and 2017 were based on information gathered internally from news outlets, background checks, license applications, etc.

Exhibit 3					
LSBME Complaints					
Cases Opened During Calendar Years 2015 through 2017					
Case Nature	2015	2016	2017	Total	% Total
Quality of Care/Practice Issues	220	284	273	777	26.0%
Malpractice	144	152	184	480	16.1%
Arrest/Conviction of a Crime	115	164	130	409	13.7%
Unprofessional Conduct	127	136	118	381	12.8%
Improper Prescribing	136	39	46	221	7.4%
Unauthorized Practice	91	23	34	148	5.0%
Drug or Alcohol Abuse	36	52	47	135	4.5%
Violation of Board Rules and Regulations	43	48	28	119	4.0%
Action by Another State Board	26	41	45	112	3.8%
Fraud/Overcharging/Improper Billing	27	28	10	65	2.2%
Licensure Matter	26	26	10	62	2.1%
Medical Records	17	17	13	47	1.6%
Other*	15	8	5	28	0.9%
Total	1,023	1,018	943	2,984	100%
*Other case natures include false advertising, insurance fraud, violation of consent orders, and probation violations.					
Source: Prepared by legislative auditor's staff using data contained in LSBME's CAVU system.					

LSBME's DOI reviews complaints after they are screened by staff and based on the evidence, makes a recommendation to the Board to either close the case or to formally investigate the complaint. The DOI recommends closure if there is insufficient evidence to support that violation of a Practice Act occurred, and most cases (86-88%) are closed in this manner. However, if evidence indicates a violation occurred and can be substantiated,⁷ the DOI must decide whether to recommend formal or informal actions. Formal actions include disciplinary actions such as probation or license suspension. Informal actions include non-disciplinary actions that are not public such as a letter of concern, as well as public disciplinary actions such as a consent order. Exhibit 4 shows examples of informal and formal actions.

Exhibit 4		
Types of Enforcement Actions		
Informal		Formal
Non-Disciplinary (Non-Public)	Disciplinary (Public Record)	Disciplinary (Public Record)
<ul style="list-style-type: none"> • Correspondence • Informal conference • Letter of Concern • Referral to treatment 	<ul style="list-style-type: none"> • Consent Order • Voluntary surrender of license • Other orders and agreements 	<ul style="list-style-type: none"> • Probation • License suspension • License revocation
Source: Prepared by legislative auditor's staff using information provided by LSBME and LAC Title 46 §9713 and §9901.		

⁷ LSBME only makes a finding that a violation has occurred when the Board makes a ruling against a licensee in a formal hearing. However, this rarely occurs because licensees more frequently settle cases through informal agreements prior to an administrative hearing. According to LSBME, licensees decide to settle cases for a variety of reasons such as when he/she believes the Board's evidence supports a violation. In this case, they may be willing to settle with the Board to save the time and expense of a formal hearing.

According to LSBME, public disciplinary actions are intended to provide the public with greater access to information that they may need when selecting a medical provider. The threat of public disciplinary action is also meant to deter licensees from violating their Practice Act. According to a survey conducted by the Federation of State Medical Boards in 2018, 14 state medical boards (20.6%) do not allow for non-public actions against licensees and a 2006 U.S. Department of Health and Human Services (HHS) study cites medical boards appearing more practitioner-friendly than patient-oriented as a barrier to effective discipline.⁸ LSBME imposes non-public actions, but has not established criteria for determining what types of violations constitute public versus non-public actions. In addition, LSBME does not require that documentation be maintained to support why it decided to impose non-public actions rather than public actions. When we asked LSBME about some of these decisions, staff were not able to answer our questions without consulting with the former DOI, who is no longer employed with LSBME.

During calendar years 2015 through 2017, LSBME issued non-public actions to licensees for violations including failure to maintain records, improper prescribing, substandard care, patient abandonment/unprofessional behavior, and practicing beyond his/her scope. Exhibit 5 lists all public and non-public actions taken by LSBME during calendar years 2015 through 2017.

Exhibit 5					
Actions Imposed by LSBME					
Cases Closed During Calendar Years 2015 through 2017					
Non-Public Actions	2015	2016	2017	Total	% of Total
Licensee Counseled	73	35	28	136	28.8%
Referred to Physician Health Program (PHP) or Allied Health Monitoring Program (AHM)*	31	42	39	112	23.7%
Non-Public Letter of Concern	8	13	25	46	9.7%
Agreements to Let License Lapse	0	2	9	11	2.3%
Non-Public Actions Total	112	92	101	305	64.5%
Public Actions	2015	2016	2017	Total	% of Total
Official Reprimand	62	14	15	91	19.2%
Suspension	12	13	10	35	7.4%
Probation	4	5	14	23	4.9%
Other Public Actions**	6	7	6	19	4.0%
Public Actions Total	84	39	45	168	35.5%
Grand Total	196	131	146	473	100%
*The PHP is an outside entity funded by physician licensing fees and typically used for addiction treatment and mental health counseling. The AHM is maintained by LSBME and used to monitor and treat allied health professionals with addiction problems.					
**Other public actions include voluntary surrenders, license conditioned/limited, and revocations.					
Source: Prepared by legislative auditor's staff using data contained in LSBME's CAVU system.					

State law requires that LSBME take appropriate action to regulate the practice of medicine. However, LSBME has not developed formal guidance, such as an enforcement guide, to help ensure that it follows a consistent, objective approach when making enforcement decisions and that these decisions are appropriate based on the severity of the

⁸["State Discipline of Physicians: Assessing State Medical Boards through Case Studies"](#), HHS, February 2006

violations. Since LSBME has the discretion to impose a wide range of sanctions of a public or non-public nature, it is important that its process of making enforcement decisions is consistent and provides assurances to the public and its licensees that it disciplines licensees appropriately and in accordance with its mission to protect the public. In addition, since no two cases that the Board reviews are exactly alike and thus may not result in similar enforcement actions, it is important that the Board's process for conducting reviews and making decisions is consistent. An enforcement guide that helps make sanction decisions more predictable and explains why a specific decision was made would help ensure a consistent and effective process. Without an enforcement guide or criteria for LSBME to follow when making enforcement decisions, the Board cannot ensure that its enforcement actions are consistent, appropriate, and effective.

The purpose of health-care related Practice Acts⁹ is to protect the public against the unprofessional, improper, and unauthorized practice of medicine. However, both staff and board members cited a need for the Board to balance publicly disciplining licensees with the negative effects they may have on licensees' careers. For example, one board member stated that doctors who are publicly sanctioned become "unemployable" because employers will not hire them and insurers will not insure them.¹⁰ Therefore, the Board encouraged the former DOI to recommend less public discipline and more non-public remediation in recent years. A former board member also told us that "the enforcement process involves a balance of not wanting to destroy a doctor's life while also protecting the public." When asked if the Board's enforcement process was adequate and fair, the former board member stated that he/she "had no point of reference to know." We also asked a current board member about the Board's disciplinary process and he/she told us "based upon my tenure as a board member, I believe that the licensee matters that come before the Board are routinely handled fairly and consistently." While it appears appropriate for the Board to issue non-public actions for minor offenses, doing so without criteria or an enforcement guide increases the risk that the Board may be inconsistent, inappropriate, or ineffective when deciding if a violation should result in a public or a non-public action.

An enforcement guide is also important because, unlike other states, LSBME does not have an additional level of review for the DOI's recommendations to the Board regarding closing cases or imposing enforcement actions. As mentioned previously, LSBME's DOI reviews each complaint after it is screened by staff and based on the evidence, makes a recommendation to the Board to either close the case or to formally investigate the complaint. If the DOI decides that evidence indicates a violation occurred and could be substantiated, the DOI reviews the evidence gathered by investigators for each disciplinary case and recommends either public or non-public action to the Board for the substantiated violation. However, the DOI has sole discretion for all recommendations to the Board. LSBME does not require anyone else to review the cases to confirm the DOI's recommendation to close or proceed with an investigation, or to review the investigation and confirm the DOI's recommendation for the disciplinary action. We found that the Arizona Medical Board requires an independent review of every investigation report for adequacy and completeness by a committee of staff who were not involved in the investigation. The Texas Medical Board also uses a multi-level review process on all investigations, and board members review actual

⁹ R.S. 37:1261

¹⁰ While public sanctions may potentially damage future employment prospects of licensees, the Board's mission is to protect the public, and numerous publicly sanctioned licensees currently work in the state of Louisiana.

investigation files rather than a prepared summary, as does the LSBME. An additional level of review would also help LSBME ensure that its licensees receive due process throughout the investigative process.

Best practices¹¹ for state regulatory programs issued by the National State Auditors Association (NSAA) suggest that regulatory agencies establish a graduated and equitable system of sanctions and specify the number or severity of violations that should trigger each level of sanction. We found examples of other state medical boards and at least one licensing board in Louisiana that have created enforcement guides to ensure consistent sanctions. For instance:

- **Virginia** developed guidelines in 2004 to make decisions more predictable and eliminate inconsistencies. As shown in Appendix D, the guide includes sanction worksheets that allow the Board to score cases on both violation and licensee factors and match the scores to a matrix. Virginia's Board considers factors of the complaint such as the presence of sexual abuse, the injury type (physical or mental), patient vulnerability (e.g., under age 18 or over age 65, physically or mentally handicapped), prior actions against licensee, etc.
- **Kansas** developed guidelines in 2008 because it recognized the value of a predictable and consistent pattern of disciplinary sanctions. In determining which sanction to impose, the guide requires the Board to consider the goal(s) of the sanction (i.e., protect the public, or punish, remediate, and/or rehabilitate the licensee).
- **Texas** created disciplinary guidelines that consider the violation that has occurred and provide its board with a "low sanction" and "high sanction" guide. Texas's guidelines were created, in part, to promote consistent enforcement for similar violations.
- The **Louisiana State Board of Nursing** assesses penalties according to recommended but non-binding tiers that are based on the number and severity of offenses per licensee.

Other states have recognized the risk of over or under-sanctioning licensees. For example, Kansas's guidelines note that sanctions that are too lenient or that do not adequately address the underlying causes for the violations can undermine the goals of discipline. Sanctions that are too restrictive may also result in decreased confidence in the system and fewer reports of violations. According to a 2006 HHS report,¹² a commonly cited barrier to effective discipline is that professional influence, especially by state medical societies, might prevent boards from taking effective action or may appear to make board members or staff more licensee-friendly than patient-oriented. In adopting its sanction guidelines, Kansas cited lending credibility to the disciplinary process as a part of the guidelines' purpose. An enforcement guide would bring

¹¹ ["Carrying Out a State Regulatory Program," A National State Auditors Association Best Practices Document, NSAA 2014](#)

¹² ["State Discipline of Physicians: Assessing State Medical Boards through Case Studies", HHS, February 2006](#)

more transparency to LSBME's enforcement process and allow licensees to better understand the likely outcome of sanctions.

An enforcement guide is also needed because of LSBME staff turnover and legislatively mandated changes to the Board's composition. According to LSBME, during calendar years 2015 through 2017 the DOI's enforcement recommendations to the Board were based on recollections of how the Board acted in past cases. However, according to the Executive Director of Virginia's Board of Health Professionals, Virginia created its enforcement guide because a recollection method such as this is subjective and provides no proof that sanctions imposed relate to the recalled type or severity of misconduct in a given case. Without a documented history of enforcement actions imposed on similar cases, LSBME cannot ensure that it is applying equitable and consistent discipline to licensees.

Another risk with relying on recollection is staff and board member turnover. For example, LSBME hired a new DOI in 2018, replacing its former DOI who had 15 years of experience. Also, Act 162 of the 2017 Regular Legislative Session enacted term limits for board membership, which means that members with the most experience will soon reach term-limits and the Board will lose even more institutional knowledge of how cases have been handled in the past. In addition, Act 599 of the 2018 Regular Legislative Session added a single public member and two additional physician members to Louisiana's board who will have no past disciplinary recollections upon which to base their disciplinary decisions.

Recommendation 1: LSBME should develop criteria for determining whether to issue public or non-public actions to licensees to ensure that its enforcement process is consistent, appropriate, and effective; maintain documentation to support such decisions; and promulgate these criteria in rules under the Administrative Procedure Act.

Summary of Management's Response: LSBME agrees with this recommendation and stated that it will memorialize in writing the criteria currently used in determining the outcome of investigative matters. LSBME has begun the process of formulating written criteria for implementation through internal guidance documents and in due course, subsequent rulemaking pursuant to the Louisiana Administration Procedure Act (APA). See Appendix A for LSBME's full response.

Recommendation 2: LSBME should develop a process that incorporates an additional level of review of a selection of recommendations made by the DOI to the Board for adequacy and completeness by board members and/or employees who were not involved in the investigations and to ensure that all licensees receive due process. The reviews should include recommendations to close cases as well as recommendations to impose disciplinary actions.

Summary of Management's Response: LSBME agrees with this recommendation and stated that it will explore methods to incorporate an additional level of review of a selection of the DOI's recommendations, including recommendations to close cases and impose disciplinary actions, to further insure adequacy and consistency with agency processes. See Appendix A for LSBME's full response.

Recommendation 3: LSBME should develop formal guidance, such as an enforcement guide, that provides a consistent process involving a graduated and equitable system of sanctions that specifies criteria including the type, number, and severity of violations that should trigger each level of sanctions, and promulgate this guidance in rules under the Administrative Procedure Act.

Summary of Management's Response: LSBME agrees with this recommendation and stated that it is in the process of developing a formal guide for promulgation under the APA, which summarizes prior disciplinary outcomes and provides a framework to guide future disciplinary dispositions. See Appendix A for LSBME's full response.

During calendar years 2015 through 2017, LSBME did not report all licensees who violated their Practice Act to the appropriate parties as required by law. We identified 10 licensees who LSBME failed to report to the National Practitioners Data Bank (NPDB) as required by federal law when they were suspended, did not renew, or relinquished their licenses as a result of the Board's investigation. In addition, LSBME did not report all violations substantiated during its investigation process to the prosecuting officer of the state as required by state law.

State medical boards are required under the federal Social Security Act to report suspensions, restrictions, and reprimands imposed on licensees to the NPDB.¹³ The NPDB is a repository of malpractice payments and adverse actions taken against healthcare providers. Reporting to the NPDB is important because it prevents licensees from moving from state to state without disclosure or discovery of previous damaging performance. State medical boards are also required to report instances when licensees are suspended, do not renew their license while under investigation, or retire while under investigation.¹⁴

We reviewed LSBME's investigations and found that during calendar years 2015 through 2017, LSBME did not report at least 10 licensees to the NPDB as required by federal law when they were suspended, did not renew, or agreed to relinquish their license to avoid completion of an investigation. The nature of these cases that should have been reported to the NPDB include an arrest for aggravated battery, an arrest for prohibited sexual conduct between an educator and student, mental impairment, and prescribing controlled substances without medical justification.

¹³ The NPDB Guidebook, which informs healthcare entities of their reporting requirements, was updated in 2015 but the requirements to report suspensions and non-renewals while under investigation have been in place since at least 2001.

¹⁴ Confidentiality laws related to drug and alcohol treatment programs provide that licensees entering such programs are not reported to the NPDB.

In one instance, LSBME opened an investigation on a licensee with 10 previous sexual misconduct complaints. While LSBME investigated each complaint, it ultimately voted to close the last investigation on the condition that the licensee retire from practice. In another instance, a licensee was arrested and charged with indecent behavior with a minor and contributing to the delinquency of juveniles. LSBME ensured this licensee could not renew his/her license in Louisiana, but did not report this case to the NPDB as required. In both of these cases, LSBME closed the investigations with no public disclosure of these violations and did not report either of these cases to the NPDB, so other states could potentially license these individuals without being aware of Louisiana's sanctions, thus allowing them to practice and put the public at risk.

In addition, state law¹⁵ requires LSBME to report licensees in violation of their Practice Act to the prosecuting officer of the state. The prosecuting officer may be the local district attorney or the state Attorney General. Reporting violations to the prosecuting officers is important because LSBME does not have jurisdiction to prosecute criminal violations of the law, and those prosecution decisions should be made by the appropriate prosecuting officers. However, according to LSBME, it has never routinely reported licensees to either state prosecuting entity as required by state law but instead publishes final decisions and consent orders on its website. According to three district attorneys we contacted,¹⁶ none have received reports of violations from LSBME and they do not check LSBME's website for violations. Therefore, LSBME cannot ensure that the Attorney General and local district attorney's offices are aware of Practice Act violations.

Recommendation 4: LSBME should ensure that it reports all Board decisions involving practitioners relinquishing and/or not renewing a license or being suspended from practice to the NPDB as required by federal law. In addition, LSBME should consult with the NPDB regarding the reporting of applicable decisions from closed cases.

Summary of Management's Response: LSBME agrees with this recommendation and stated that it will report to the NPDB all instances where a health care practitioner fails to renew a license while under investigation or is summarily suspended. The Board will also consult with its NPDB representative as to the reporting of applicable decisions from closed cases. See Appendix A for LSBME's full response.

Recommendation 5: LSBME should report any violation of the Practice Acts directly to the prosecuting officer(s) of the state as required by state law. In addition, LSBME should consult with the prosecuting officer(s) of the state regarding the reporting of past violations of Practice Acts from closed cases.

Summary of Management's Response: LSBME agrees with this recommendation and stated that it will provide copies of all future decisions and consent orders to the Attorney General and the District Attorney's office of the parish where the licensee resides and/or practices. In addition, it will notify the prosecuting officer of the state of the availability of enforcement actions on the Board's website and consult with

¹⁵ R.S. 37:1270(A)(3)

¹⁶ We spoke with representatives of the 19th Judicial District (East Baton Rouge Parish), 24th Judicial District (Jefferson Parish), and the Orleans Judicial District (Orleans Parish).

the prosecuting officer of the state regarding the reporting of past violations. See Appendix A for LSBME's full response.

LSBME has not effectively monitored all licensees. While LSBME has a process to monitor licensees on probation, it does not track and monitor licensees who have verbal agreements or other restrictions such as prohibitions from prescribing controlled substances or requiring supervision or chaperones while treating patients. LSBME also did not ensure that individuals with expired licenses did not continue to practice. We reviewed Prescription Monitoring Program (PMP) data and identified licensees who appeared to have prescribed medications in violation of the restrictions imposed by LSBME and despite having expired licenses.

State law allows LSBME to suspend or revoke any license, or impose probation or other restrictions, such as limitations on a licensee's prescribing authority or scope of practice, to protect the public from potentially harmful medical practices. According to LSBME, as of July 2018 it had 119 licensees on probation. LSBME may also place other restrictions on licensees such as obtaining additional continuing medical education, receiving supervision from other practitioners, requiring chaperones be present when treating patients, or obtaining independent evaluations of competency.

While LSBME has a process to monitor licensees placed on probation, it does not track and monitor licensees who have been sanctioned but not put on probation to ensure they are complying with suspensions and other restrictions imposed by the Board. When LSBME places practitioners on probation and restricts their license in some manner, it has a process to monitor the licensee's activity to ensure he/she is complying with all restrictions. LSBME also has the authority to restrict a licensee from performing certain procedures, working in certain settings, treating certain patients, or suspending a licensee from practicing medicine temporarily or indefinitely. For instance, LSBME restricted a licensee in 2017 to practicing only in a setting approved by the Board and not as a solo-practitioner. However, LSBME does not have a process to monitor sanctioned licensees who are not placed on probation to ensure they comply with such imposed restrictions. According to LSBME, it relies on the credentialing or accreditation departments of hospitals and clinics to monitor those restrictions and alert the Board of any violations. We spoke with a director and a manager of these departments at two large Louisiana hospitals who stated that they were unaware that LSBME relied on them to monitor the Board's restrictions imposed during the disciplinary process.

When the Board limits a licensee's prescribing authority, it monitors for compliance with these restrictions by reviewing the PMP database. However, LSBME stated that when licensees have prescription restrictions but are not on probation, it relies on the Louisiana Board of Pharmacy (LABP) to monitor these restrictions. According to LABP, however, while it electronically alerts pharmacists around the state of these restricted licenses, this notification does not detect nor prevent prescribers from writing prescriptions they should not write. Therefore, it is important that LSBME routinely use the PMP to actively monitor licensees with prescribing restrictions and investigate violations of prescribing authority. While we reported issues with the PMP's completeness and accuracy in a 2018 audit,¹⁷ LSBME should still use the PMP as a tool for monitoring the prescribing activity of licensees with restrictions.

Prescription Monitoring Program (PMP)

An electronic system for the monitoring of controlled substances and drugs of concern dispensed in the state and maintained by the Louisiana Board of Pharmacy. This system is used by state regulatory authorities for monitoring and enforcement. It is used by local, state and federal law enforcement agencies and by health care practitioners and providers in the course of their work. Data is entered by individual pharmacists and is subject to human error. Data collected in the PMP includes names of prescribers, names of patients, dates when prescriptions are written and filled, and type of drugs prescribed.

We reviewed PMP data from January 2015 through December 2016 and identified 11 restricted licensees who appeared to have prescribed medications in violation of the restrictions imposed by LSBME. We provided the results of our analysis to LSBME so that it could conduct PMP searches on the licensees. According to LSBME, records associated with two licensees were inaccurately entered into the PMP and therefore erroneous. A third licensee is under formal investigation by the Board, and the remaining eight licensees will require more investigation to verify that they actually prescribed in violation of Board restrictions. While LABP recommends that PMP data be verified with actual prescription records maintained by pharmacies, LSBME should at a minimum query the PMP database on a regular basis to monitor the prescription activity of restricted licensees and investigate those who are not complying with Board-imposed restrictions.

LSBME also does not have a process to routinely monitor individuals with expired licenses to ensure they discontinue practicing and prescribing controlled substances when their licenses expire. State law¹⁸ prohibits the practice of medicine by unlicensed individuals, and it denies those individuals the rights granted to physicians including treating, curing, or relieving health conditions through the use of prescription drugs. In calendar year 2017, 465 practitioners' licenses expired but still had active DEA numbers¹⁹ and were thus able to write prescriptions for controlled substances. Therefore, it is important that LSBME monitor these practitioners to ensure they are not prescribing. Exhibit 6 lists the number of licenses that expired each year and the number of these expired licensees who

Calendar Year	Total Expired	Expired with DEA #
2015	1,627	370
2016	1,768	402
2017	1,748	465
Total	5,143	1,237

Source: Prepared by legislative auditor's staff using information from LSBME's Big Picture data system.

¹⁷ The report can be found here:

[http://app.la.state.la.us/PublicReports.nsf/0/BEF55FA81E8CD40F8625826C007083E4/\\$FILE/000187F2.pdf](http://app.la.state.la.us/PublicReports.nsf/0/BEF55FA81E8CD40F8625826C007083E4/$FILE/000187F2.pdf)

¹⁸ R.S. 37:1262(3) and 1271(A)

¹⁹ A DEA registration number is assigned by the U.S. Drug Enforcement Administration allowing practitioners to write prescriptions for controlled substances.

also had a DEA number on file with LSBME and thus were able to prescribe controlled substances.

We identified 44 practitioners whose licenses expired in calendar year 2015 (and remained inactive as of December 2018) but wrote 116 prescriptions for controlled substances during calendar year 2016. We provided the results of our analysis to LSBME and it determined the PMP records of one practitioner were erroneously entered by pharmacists. According to LSBME, the remaining 43 expired practitioners we identified will require more investigating. Additionally, case notes indicate that LSBME identified an active licensee who prescribed 350 controlled substances with an expired Controlled Dangerous Substance (CDS) license²⁰ in calendar year 2016 and dismissed the case with no action. To ensure it fulfills its mission to protect the public against the unauthorized practice of medicine, LSBME should routinely use the PMP to monitor individuals with expired licenses and investigate any indications of illegal prescribing. In addition, LSBME should develop a method to monitor individuals with expired licenses to ensure that they do not perform any other type of unlicensed practice.

LSBME also makes verbal agreements with licensees regarding their medical practice without consistently documenting, monitoring, and enforcing violations of such verbal agreements. In the course of investigating a case, the DOI may decide that formal discipline is not necessary but will meet with a licensee to discuss the complaint and attempt to avoid future issues. According to data contained in CAVU, LSBME's investigation database, we found that LSBME closed 136 cases during calendar years 2015 through 2017 by having the DOI conduct such counseling sessions with the licensee. During these meetings, LSBME and the licensee may verbally agree that the licensee restrict his/her practice in some manner, such as not treating female patients, not performing certain procedures, not prescribing controlled substances, etc. However, LSBME policy does not require investigators to document the specific restrictions placed on licensees during these verbal agreements nor have the licensee sign or acknowledge their consent. In fact, LSBME staff could not answer our questions regarding these agreements without reaching out to the former DOI, who is no longer employed with LSBME. As a result, LSBME does not have a written agreement of the restriction, does not monitor the licensees' compliance with the restriction, and thus cannot hold him/her accountable and impose an enforcement action if the restriction is violated. If LSBME were to document the terms of these verbal agreements it would be able to monitor compliance with these terms.

We reviewed case notes for the 136 cases and identified two cases where LSBME investigators referenced in the CAVU case notes that they made non-public verbal agreements with licensees to restrict their medical practice:

- In 2010, a LSBME investigator discovered that a licensee was providing hormone replacement therapy for which he/she was not licensed to provide. The case notes stated that the licensee verbally agreed to discontinue prescribing hormones; however, LSBME did not require the licensee to acknowledge this agreement in writing. While investigating a subsequent complaint on this licensee in 2016,

²⁰ R.S. 40:973 requires that every person who prescribes controlled dangerous substances within the state obtain a CDS license from the LABP.

another investigator identified at least four instances where the licensee violated this agreement but proceeded to close the case with no action except for a verbal reminder of the previous agreement. In February 2019, we confirmed that the licensee is currently scheduling appointments for the restricted hormone replacement therapy.

- In 2015, LSBME made a verbal agreement with a licensee to treat only male patients after a complaint from a female patient alleging a sexual assault. LSBME was not able to substantiate that complaint and allowed the licensee to return to practice on the condition that the licensee comply with the stipulations of a behavioral monitoring program. The licensee was suspended two years later after LSBME received a subsequent complaint from a female patient of a sexual assault.

In addition, we identified two cases²¹ where LSBME made verbal agreements with licensees to stop prescribing specific controlled substances; however, we reviewed the PMP database and identified prescription records indicating the licensees had violated their verbal agreements with the Board.

Recommendation 6: LSBME should develop a process to track and monitor all licensees with suspensions or other practice restrictions, as it does for licensees on probation, to ensure compliance with all terms imposed by the Board.

Summary of Management's Response: LSBME agrees with this recommendation and stated that it will develop internal policies to provide for the expansion of tracking and monitoring capabilities of the investigations department. See Appendix A for LSBME's full response.

Recommendation 7: LSBME should use the PMP to monitor individuals with expired licenses for prescribing activity and develop a method to monitor expired licensees for other types of unlicensed practice.

Summary of Management's Response: LSBME agrees with this recommendation and stated that it will develop internal policies to monitor individuals with expired licenses for other types of unlicensed practice. See Appendix A for LSBME's full response.

Recommendation 8: LSBME should follow up on the remaining licensees we identified who prescribed controlled substances in violation of Board restrictions or after their licenses expired, discipline active licensees in accordance with Board policy, and report any unlicensed medical practice to the state's prosecuting officer as required by state law.

²¹ These two cases were not included in the 136 cases we reviewed that received no formal discipline during calendar years 2015 to 2017, as one involved the licensee receiving a non-public Letter of Concern and the other case was closed prior to calendar year 2015.

Summary of Management's Response: LSBME agrees with this recommendation and stated that it will follow up on the remaining individuals identified and develop internal policies to require its investigative department to identify, track, monitor, and investigate inactive practitioners who are potentially writing controlled substance prescriptions. If the results of an investigation conclude that a licensee with an inactive medical license wrote controlled substance prescriptions, the licensee will be reported to the Attorney General or appropriate District Attorney. If an investigation reveals that a licensed individual is writing prescriptions in a manner prohibited by a Board decision or order, the matter will be adjudicated in accordance with the applicable law and Board's rules. See Appendix A for LSBME's full response.

Recommendation 9: LSBME should consistently document meetings held with licensees and verbal agreements made by licensees so that it can track and evaluate any future instances of licensees' noncompliance with agreements and take appropriate action to protect the public when agreements are violated.

Summary of Management's Response: LSBME partially agrees with this recommendation. The Board stated that it will develop internal policies to ensure that appropriate detail is included in the documentation of each licensee meeting. However, tracking licensees would require the Board to keep investigative files open indefinitely to monitor licensees who are investigated, but whose files are closed without formal discipline. Once a file is closed, the investigation is over, and the matter is concluded as Louisiana law prohibits keeping an investigation open indefinitely. While the law and rules allow the Board to extend these time periods for a satisfactory cause, the Board does not interpret the law in such a manner, which would allow licensees to be tracked and monitored indefinitely. See La. R.S. §37:1285.2A(2); La. Admin. C. 46:XLV.9711(H). If a new complaint is received, the Board will proceed accordingly if a violation of the law can be substantiated. See Appendix A for LSBME's full response.

LSBME has not ensured that licensees comply with all licensing requirements. LSBME does not have a formal process for conducting and tracking Continuing Education (CE) audits and does not retain supporting audit documentation in accordance with its records retention schedule. As a result, it cannot ensure that licensees complied with CE requirements during calendar years 2015 through 2017.

State law²² authorizes LSBME to establish minimum requirements relative to CE for the renewal of any license or permit it issues. With this authority, the Board established a rule that requires physicians, for example, to obtain 20 hours of CE annually.²³ CE is important because it helps medical professionals continuously improve their practice and care of patients. LSBME's process for conducting audits involves randomly selecting 3% of physicians and then notifying them in writing that they need to submit proof of completed CE hours. If the physician does not respond within 30 days of this notice, LSBME rules require it to send a second notice letter. Then, if the physician does not comply with this second notice within 60 days, LSBME is required to consider the physician's license expired, not renewed, and subject to revocation without notice.

LSBME lacks an effective method to track its CE audits. By rule,²⁴ LSBME is required to audit the CE documentation of at least 2% of physicians each year, but a more stringent internal policy requires staff to audit 3% of physicians. During fiscal year 2018, LSBME oversaw approximately 17,000 physicians, meaning that it would have had to audit at least 532 physicians during that time. To determine compliance with this rule, we reviewed LSBME's audit-tracking spreadsheets from calendar years 2015 through 2017 and found that LSBME did not consistently track the audits on these spreadsheets and did not include vital information such as correspondence dates and whether physicians were notified in writing of any noncompliance. As a result, the Board cannot ensure that staff conducted audits as required and verified that the selected licensees received all CE hours as required to maintain their continuing education.

While we saw no evidence of completed CE audits, board meeting minutes from February 2017 listed six licensees who failed to comply with CE requirements. According to the minutes, instead of suspending the licenses of the noncompliant practitioners as required by its rules, the Board voted to send the six licensees another written notice requiring compliance. The minutes also stated that the Board was going to contemplate a future rule change but did not specify what this change would be, and the rules have not been changed as of May 2019. According to LSBME staff, the Board no longer wishes to suspend licenses for failure to comply with CE audits but has instead doubled the number of hours required by any licensees who are

²² R.S. 37:1270(A)(8)

²³ CE requirements vary by license (i.e., physician, podiatrist, physician assistant, etc.).

²⁴ LAC 46:XLV.439(D)

found to be noncompliant. However, LSBME's rules have not been revised to reflect this change either.

LSBME did not retain documentation from the annual CE audits in accordance with its records retention schedule; as a result, we could not verify that LSBME's audit results were complete and accurate. In accordance with LSBME's records retention schedule that is filed with the Louisiana Secretary of State's office, LSBME is required to retain audit documentation for six calendar years. However, the Board could not provide audit documentation to support that it had conducted any CE audits during our scope of calendar years 2015 through 2017. According to LSBME, its practice is to shred CE audit documentation after staff completes its review and verifies compliance with CE requirements. However, this practice violates LSBME's records retention schedule. In addition, without this CE documentation, Board management cannot ensure that staff correctly determined whether licensees passed the CE audit and received all required training.

Recommendation 10: LSBME should develop and formalize a process that requires staff to conduct and track CE audits so that management can ensure that audits are complete, accurate, and conducted in a consistent manner.

Summary of Management's Response: LSBME agrees with this recommendation and stated that the manual audit process currently utilized is being abandoned. The Board has recently agreed to partner with an outside software vendor to automate the audit process and attain the capacity to audit 100% of licensees for compliance. See Appendix A for LSBME's full response.

Recommendation 11: LSBME should either comply with its rules that require it to suspend the licenses of practitioners who are noncompliant with CE audits or amend such rules to reflect the Board's current practice.

Summary of Management's Response: LSBME agrees with this recommendation and stated that upon implementation of the new audit software system, any licensee who is not CE compliant will be made aware of his/her deficiencies and processed pursuant to the Board's existing rules or in accordance with rule amendments promulgated under the APA. See Appendix A for LSBME's full response.

Recommendation 12: LSBME should amend its policy to align with its records retention schedule and ensure that it retains documentation of CE audits in accordance with this approved schedule and state law.

Summary of Management's Response: LSBME agrees with this recommendation and stated that upon implementation of the new audit software system, the Board will no longer accept CE compliance documentation. Moving forward, the licensee or the CE provider will upload proof of CE compliance directly into the software system. The Board will insure that related CE software data is retained in accordance with the Board's approved retention schedule. See Appendix A for LSBME's full response.

APPENDIX A: MANAGEMENT'S RESPONSE

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May 6, 2019

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RE: Audit Report No. 40170012 – Regulation of the Medical Profession

Dear Mr. Purpera:

Please accept this response by the Louisiana State Board of Medical Examiners to the performance audit report issued by your office. We appreciated the professionalism of your staff during the audit and likewise appreciate their frequent expressions of gratitude for our efforts to respond timely to their requests from our employees.

The process has resulted in findings and recommendations that will improve the Board's regulation, investigation and monitoring of physicians and the 14 additional licensee categories, which it regulates. In summary, we agree with the majority of the report's recommendations, and as noted below, have already initiated some of the recommended actions.

Finding 1: LSBME has not developed formal guidance, such as an enforcement guide, to help ensure it follows a consistent, objective approach when making enforcement decisions and that these decisions are appropriate and properly protect the public from unprofessional, improper, unauthorized, and unqualified licensees, as required by law. In addition, unlike other states, LSBME does not require that anyone review the Director of Investigation's recommendations to the Board regarding enforcement cases.

LSBME Response to Finding 1: For many years, the Board's enforcement and investigative functions were assured of consistency and stability by the institutional memory of long-serving Board members and Board staff. Term limits imposed on Board members in 2000 did not include prior years of service of existing members. Several of them continued to serve for a number of years, at least one member through 2009 and a number of members appointed after terms limits took hold were reappointed through the entirety of their twelve-year term limit. Similarly, Board staff who had long terms of service to the Board oversaw the investigation and prosecution

functions of the Board. These long-serving Board members and Board staff created an institutional memory that served the Board and its licensees well and ensured that similar enforcement actions resulted in similar outcomes to the extent possible. However, with the increased turnover and expansion of Board membership and the retirement/attrition of Board staff in recent years, it has become more challenging to rely on institutional memory. Finding 1 is consistent with the Board's recognition of this challenge and accords with its recent efforts to create a written framework to further ensure consistency and to guide the Board's enforcement activities.

Recommendation 1: LSBME should develop criteria for determining whether to issue public or non-public actions to licensees to ensure that its enforcement process is consistent, appropriate, and effective; maintain documentation to support such decisions; and promulgate these criteria in rules under the Administrative Procedure Act.

LSBME Response to Recommendation 1: The Board agrees with the recommendation to memorialize in writing the criteria currently used in determining the outcome of investigative matters, and has begun the process of formulating written criteria for implementation through internal guidance documents and in due course, subsequent rulemaking pursuant to the Louisiana Administrative Procedure Act (APA).

Recommendation 2: LSBME should develop a process that incorporates an additional level of review of a selection of recommendations made by the DOI to the Board for adequacy and completeness by Board members and/or employees who were not involved in the investigations and to ensure that all licensees receive due process. The reviews should include recommendations to close cases as well as recommendations to impose disciplinary actions.

LSBME Response to Recommendation 2: Since its inception, the Board has been committed to ensuring protection of the due process rights of its licensees. Licensees are given notice of the Board's concerns, advised of their right to hire counsel, provided the opportunity to conduct discovery and to be heard in a forum up to and including an administrative hearing where the licensee can call and cross-examine witnesses, and obtain judicial review in the district and appellate courts of the Board's written decision to determine any violation of due process. Over many years, not a single court has found that the Board has deprived a licensee of due process.

Currently every complaint receives three levels of review before a decision is made about how to respond to the complaint. First, the complaint is investigated by a member of the investigative staff who has a nursing degree, law enforcement background or investigative training. Second, the investigator's work is reviewed by the Director of Investigations ("DOI") who is himself a licensed physician. When needed, additional investigation is then recommended by the DOI and undertaken by the investigative staff, or outside subject matter experts are consulted to provide an opinion as to the quality of care provided by the licensee. Third, in accordance with law and Board's rules, the recommendation as to how to proceed with the case is then submitted by the DOI to the ten member Board. The ten members review and consider the matter and then vote on a recommended disposition. In addition, the Board has added an attorney compliance officer to its staff to ensure licensee due process rights. While the auditor has identified two state medical boards, which incorporate an additional tier of review of the DOI's recommendations, the Board believes that its current multi-tiered approach of case review is consistent with, if not exceeding,

the level of review undertaken by other state medical boards, and is effective and sufficient. Irrespective of this view, we are not unmindful of the auditor's perspective and rational on this point. For that reason, the Board will explore methods to incorporate an additional level of review of a selection of the DOI's recommendations, including recommendations to close cases and impose disciplinary actions, to further insure adequacy and consistency with agency processes.

Recommendation 3: LSBME should develop formal guidance, such as an enforcement guide, that provides a consistent process involving a graduated and equitable system of sanctions that specifies criteria including the type, number, and severity of violations that should trigger each level of sanctions, and promulgate this guidance in rules under the Administrative Procedure Act.

LSBME Response to Recommendation 3: As noted above, while the Board firmly believes that investigations are handled in a consistent and fair manner, the Board agrees with the auditor's recommendation and is in the process of developing a formal guide for promulgation under the APA, which summarizes prior disciplinary outcomes and provides a framework to guide future disciplinary dispositions.

Finding 2: During calendar years 2015 through 2017, LSBME did not report all licensees with violations of the Medical Practice Acts to appropriate parties as required by law. We identified 10 licensees who LSBME failed to report to the National Practitioners Data Bank as required by federal law when they were suspended, did not renew their licenses, or relinquished their licenses as a result the Board's investigation. In addition, LSBME did not report all violations substantiated during its investigation process to the prosecuting officer of the state as required by state law.

LSBME Response to Finding 2: The NPDB reporting requirements have changed over time and the Board acknowledges that it misapplied some of the guidelines on a few occasions. Of the 10 licensees referenced in Finding 2,¹ eight individuals (three physicians and five allied providers) failed to renew while under investigation and two involved summary suspension of licensees who came into compliance after the approval of their suspension order. To the Board's knowledge, none of these licensees was the subject of further complaints.

With respect to reports to the prosecuting officer of the state, the Louisiana Medical Practice Act requires the Board to "report to the prosecuting officer of the state all persons violating the provisions of this Part." La. R.S. §37: 1270(A)(3). The Board acknowledges it has not been its practice to send notice of Board disciplinary actions to the prosecuting officer of the state as all final disciplinary decisions and consent orders have, for many years, been posted on the Board's

¹While we concede that such reports should have been submitted to the NPDB, as to examples cited by the auditor of individuals 'arrested' and/or 'charged' we note that the law does not permit the Board to take action against a license based only on the fact of an 'arrest' or 'charge.' For instance, the individual cited on page 9 who was arrested for prohibited sexual conduct between an educator and student was not criminally prosecuted while licensed by the agency, there was insufficient evidence to substantiate a practice act violation and he subsequently allowed his license to lapse while under investigation. As to the examples cited of a licensee: with a mental impairment; prescribing without medical justification; and prior sexual complaints, we note that each of these individuals had prior consent orders with the Board for similar violations that placed their licenses on specified terms and conditions and which were reported to the NPDB. As with all such orders, these consent orders were publicly posted on the Board's web page.

website and are thereby equally accessible to the public and law enforcement as well. When Board action is predicated on the conviction of a crime, the facts underlying such action are already known to law enforcement. To our knowledge, no failure to report has ever been brought to the Board's attention by law enforcement, nor has any licensee who was the subject of Board action avoided criminal prosecution because his/her misconduct was unknown to law enforcement. That said, except as noted below, the Board accepts the auditor's recommendations.

Recommendation 4: LSBME should ensure that it reports all board decisions involving practitioners' relinquishing and/or not renewing a license or being suspended from practice to the NPDB as required by federal law. In addition, the LSBME should consult with the NPDB regarding the reporting of applicable decisions from closed cases.

LSBME Response to Recommendation 4: The Board agrees with the recommendation and will report to the NPDB all instances where a health care practitioner fails to renew a license while under investigation or is summarily suspended. The Board will also consult with its NPDB representative as to the reporting of applicable decisions from closed cases.

Recommendation 5: LSBME should report any violation of the Medical Practice Acts directly to the prosecuting officer(s) of the state as required by state law. In addition, the LSBME should consult with the prosecuting officer(s) of the state regarding the reporting of past violations of the Medical Practice Acts from closed cases.

LSBME Response to Recommendation 5: As noted above, all formal decisions and consent orders are posted on the Board's website for public access and are therefore accessible by law enforcement agencies. However, the Board will provide copies of all future decisions and consent orders to the Attorney General and the District Attorney's office of the parish where the licensee resides and/or practices. In addition, it will notify the prosecuting officer of the state of the availability of enforcement actions on the Board's website and consult with the prosecuting officer of the state regarding the reporting of past violations.

Separately, the auditor is recommending that the Board review all closed cases in order to report unadjudicated alleged violations of the Medical Practice Acts administered by the Board to law enforcement. The Board disagrees with this recommendation as it is statutorily prohibited from publically disclosing non-disciplinary dispositions of investigations. The Board is authorized to conclude a matter in a non-disciplinary course of action when the evidence does not warrant formal discipline. Non-disciplinary dispositions consist of correspondence, informal conferences and letters of concern. These dispositions shall not constitute disciplinary action, are not a public record of the Board and are not reported and distributed in the same manner as final decisions of the Board. La. Admin. C. 46:XLV.9713(C).

Finding 3: LSBME has not effectively monitored all licensees. While LSBME has a process to monitor licensees on probation, it does not track and monitor licensees who have verbal agreements or other restrictions such as prohibitions from prescribing controlled substances or requiring supervision or chaperones while treating patients. LSBME also did not ensure that individuals with expired licenses discontinued to practice. We reviewed PMP data and

identified licensees who appeared to have prescribed medications in violation of the restrictions imposed by LSBME and despite having expired licenses.

LSBME Response to Finding 3: Decisions following adjudicated hearings and consent orders entered into with a licensee by agreement, are the two ways that the Board can impose enforceable terms and conditions on the license of an individual under the Board's regulatory authority. With respect to the auditor's findings concerning verbal agreements, we note that recommendations, verbal agreements and other non-disciplinary dispositions, as described in our response to recommendation 5 above, do not constitute disciplinary action and are not enforceable as such. Repeated conduct similar to that, which forms the basis of a non-disciplinary disposition, may form the basis of a new investigation and a disciplinary disposition if a violation of the law can be substantiated. Such was the case with the complaint of sexual assault, cited by the auditor that could not be substantiated by the Board. When a subsequent complaint was received that could be substantiated, the Board suspended the individual's license for two years. In other instances, a subsequent complaint may not provide sufficient information to substantiate a violation of the laws administered by the Board. As noted by the auditor we determined that several of the 11 individuals cited for prescribing controlled substances contrary to a license restriction and one of the 44 with an expired license, were the result of entry error of prescription dispensing information into the PMP. While further investigation would be needed to verify the other instances cited, the Board acknowledges that there may have been instances in which a licensee with a practice restriction or expired license continued to practice medicine.

Recommendation 6: LSBME should develop a process to track and monitor all licensees with suspensions or other practice restrictions, as it does for licensees on probation, to ensure compliance with all terms imposed by the Board.

LSBME Response to Recommendation 6: The Board agrees with the recommendation to formally track those licensees who are no longer on probation, but who have indefinite public restrictions on their licenses. The Board will develop internal policies to provide for the expansion of tracking and monitoring capabilities of the investigations department.

Recommendation 7: LSBME should use the PMP to monitor individuals with expired licenses for prescribing activity and develop a method to monitor expired licensees for other types of unlicensed practice.

LSBME Response to Recommendation 7: The Board agrees with the recommendation to monitor inactive practitioners through the PMP and will develop internal policies to monitor individuals with expired licenses for other types of unlicensed practice.

Recommendation 8: LSBME should follow up on the remaining licensees we identified who prescribed controlled substances in violation of Board restrictions or after their licenses expired, discipline active licensees in accordance with Board policy, and report any unlicensed medical practice to the state's prosecuting officer as required by state law.

LSBME Response to Recommendation 8: The Board will follow up on the remaining individuals identified by the auditor and develop internal policies to require its investigative department to identify, track, monitor and investigate inactive practitioners who are potentially writing controlled substance prescriptions. If the results of an investigation concludes that a licensee with an inactive medical license wrote controlled substance prescriptions, the licensee will be reported to the Attorney General or appropriate District Attorney. If an investigation reveals that a licensed individual is writing prescriptions in a manner prohibited by a Board decision or order, the matter will be adjudicated in accordance with the applicable law and Board's rules.

Recommendation 9: LSBME should consistently document meetings held with licensees and verbal agreements made by licensees so that it can track and evaluate any further instances of licensee's noncompliance with agreements and take appropriate action to protect the public when agreements are violated.

LSBME Response to Recommendation 9: The Board currently documents all meetings held with licensees in an electronic note taking software program or in a physical file. The level of detail provided on each meeting varies with the writing and note taking style of each individual investigator. The Board will develop internal policies to ensure that appropriate detail is included in the documentation of each licensee meeting.

However, the Board disagrees with the recommendation to "track" licensees, which would require keeping investigative files open indefinitely to monitor licenses who are investigated, but whose files are closed without formal discipline. While the Board conducts probation monitoring of those licensees who have been publically disciplined and are on probation, once a file is closed with no public discipline, the Board does not continue to monitor licensees with closed files. Once a file is closed, the investigation is over, and the matter is concluded. Louisiana law prohibits keeping an investigation open indefinitely. *See* La. R.S. §37:1285.2A(2); La. Admin. C. 46:XLV.9711(H). While the law and rules do allow the Board to extend these time periods for satisfactory cause, the Board does not interpret the law in a manner, which would allow licensees to be tracked and monitored indefinitely. If a new complaint is received, the Board will proceed accordingly if a violation of the law can be substantiated.

Finding 4: LSBME has not ensured that licensees comply with all licensing requirements. LSBME does not have a formal process for conducting and tracking Continuing Education (CE) audits and does not retain supporting audit documentation in accordance with its records retention schedule. As a result, it cannot ensure that licensees complied with CE requirements from calendar years 2015 through 2017.

LSBME Response to Finding 4: The Board has a formal process for conducting and tracking CME, which includes an annual audit of 3% of all licensees. Documenting and tracking CME compliance has been performed manually in the past, to the best of staff's ability. In an effort to improve its CME documentation procedures, as well as to ensure 100% practitioner compliance, the Board has recently agreed to partner with an outside software company, which will automate the audit process. Moving forward, 100% of licensees will be annually audited for CME compliance and the licensee or the CME provider will upload CME documentation directly into the system. Those who are not compliant will be processed in accordance with the Board's current

rules or rule amendments promulgated under the APA. The Board has a retention policy with the Secretary of State. A misunderstanding of the policy resulted in the loss/destruction of the hard copies of the CME certificates, after staff noted receipt of proof of CME completion in the licensee's file. The Board will insure that related CME software data is retained in accordance with the agency's retention schedule.

Recommendation 10: LSBME should develop and formalize a process that requires staff to conduct and track CE audits so that management can ensure that audits are complete, accurate, and conducted in a consistent manner.

LSBME Response to Recommendation 10: The Board agrees with this recommendation and the manual audit process currently utilized is being abandoned. As noted above, the Board has recently agreed to partner with an outside vendor to attain the capacity to audit 100% of licensees for compliance.

Recommendation 11: LSBME should either comply with its rules that require it to suspend the licenses of practitioners who are non-compliant with CE audits, or amend such rules to reflect the Board's current practice.

LSBME Response to Recommendation 11: Upon implementation of the new software system described above, any licensee who is not CE compliant will be made aware of his/her deficiencies and processed pursuant to the Board's existing rules or in accordance with rule amendments promulgated under the APA.

Recommendation 12: LSBME should amend its policy to align with its records retention schedule and ensure that it retains documentation of CE audits in accordance with this approved schedule and state law.

LSBME Response to Recommendation 12: Upon implementation of the new software system described above, the Board will no longer accept CME compliance documentation. Moving forward, the licensee or the CME provider will upload proof of CME compliance directly into the software system. The Board will insure that related CME software data is retained in accordance with the agency's approved retention schedule.

* * *

Again, we appreciate the professionalism and diligence of your staff and believe your report provides important opportunities for the Board to build on its history of service to the public through the regulation of healthcare providers while maintaining standards of fairness and due process to its licensees. Thank you for the opportunity to reply to your audit findings and recommendations.

Mr. Daryl G. Purpera, CPA, CFE
Louisiana Legislative Auditor
May 6, 2019

Very truly yours,

**LOUISIANA STATE BOARD OF
MEDICAL EXAMINERS**

By: 

Vincent A. Culotta, Jr., M.D.
Executive Director

APPENDIX B: SCOPE AND METHODOLOGY

This report provides the results of our performance audit of the Louisiana State Board of Medical Examiners (LSBME). We conducted this performance audit under the provisions of Title 24 of the Louisiana Revised Statutes of 1950, as amended. This audit generally covered the period of July 1, 2015, through June 30, 2018. Our audit objective was to:

Evaluate LSBME’s regulation of medical professions to ensure compliance with the Louisiana Medical Practice Act and various other healthcare practice acts.

We conducted this performance audit in accordance with generally-accepted *Government Auditing Standards* issued by the Comptroller General of the United States. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and our conclusions based on our audit objective. We believe the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective. To answer our objective, we reviewed internal controls relevant to the audit objective and performed the following audit steps:

- Researched and reviewed Louisiana Revised Statutes, Administrative Code, LSBME policies, federal regulations and guidance, other state laws and rules, and best practices.
- Interviewed stakeholders including representatives from the Louisiana Hospital Association, Louisiana Medical Association, and Patient’s Compensation Fund. Additionally, we interviewed current and former LSBME board members and attorneys who represent licensees before LSBME.
- Interviewed LSBME staff including the current and former Director of Investigations, the Director of Licensing, staff members of both the Investigations and Licensing Departments, and the LSBME General Counsel.
- Obtained and analyzed LSBME policies including its investigations operation manual, licensing manual, internal policies and procedures, board hearing agendas, original investigation case files, and original licensing files.
- Obtained and analyzed licensing data from LSBME’s Big Picture system as of May 4, 2018, and inspection data from LSBME’s CAVU system as of April 20, 2018. We also used Prescription Monitoring Program (PMP) data provided by the Louisiana Board of Pharmacy covering calendar years 2015 and 2016.
- We used data in the CAVU system to categorize complaints against licensees and determine which investigative files to further review.

- We used data in the CAVU system to identify cases that LSBME was required to report to the National Practitioners Data Bank, cases in which licensees made verbal agreements restricting their practice, and cases in which licensees made written agreements restricting their practice.
- Queried the Big Picture data set provided by LSBME for licensees whose licenses expired in calendar year 2015 (and remained inactive as of the date of our analysis on December 6, 2018) and their respective Drug Enforcement Agency (DEA) numbers. We then used ACL software to compare these DEA numbers to PMP records from calendar year 2016 to detect potentially improper prescriptions that were written by licensees with expired licenses. We provided this information to LSBME for review.
- We reviewed disciplinary actions listed on LSBME’s website (www.lsbme.la.gov) and compiled a list of those that restricted the prescribing of opioids. From this list, we identified 11 sanctioned individuals that could be tested for compliance with their consent order and had a suspended or restricted license during calendar years 2015 and 2016. We used Big Picture to obtain the DEA numbers for these 11 individuals and then used ACL to compare these DEA numbers and restricted dates for each individual to the PMP data for calendar years 2015 through 2016. We provided this information to LSBME for review.
- Observed LSBME board meetings and legislative hearings at which LSBME was called to testify.
- Contacted staff members at the Federation of State Medical Boards to understand the methodology of their U.S. Medical Regulatory Trends and Actions report. We contacted staff members at other state medical boards including Virginia, Texas, and Kansas to understand their sanctions guides and investigations processes. Additionally, we contacted district attorneys from East Baton Rouge, Jefferson, and Orleans parishes to determine if LSBME was reporting violations of the various Practice Acts in accordance with state law.
- Reviewed our scope, methodologies, and results of analyses with LSBME to obtain feedback and further information.
- Reviewed reporting requirements for the National Practitioner’s Data Bank (NPDB). Based on interviews with LSBME staff, we determined that they do not report licensees with violations that result in the licensee being suspended or agreeing not to renew their license during LSBME’s investigation. We then queried the CAVU data set provided by LSBME using the search term “not renew” and “suspended” and generated a list of 222 cases. Of these cases, we identified 10 where LSBME had an agreement with the licensee to not renew their license or were suspended. We confirmed with NPDB representatives that

LSBME should have reported these 10 cases, and confirmed with LSBME that they did not report these 10 cases to NPDB as required.

- Reviewed state law that requires LSBME to report violations to the state prosecuting officer. Confirmed with LSBME that it does not do such reporting. Used Census data to determine the three largest Louisiana parishes (East Baton Rouge, Jefferson, and Orleans) and interviewed the district attorneys in these districts regarding LSBME's reporting.
- Obtained LSBME Continuing Education (CE) audit tracking data for calendar years 2015 through 2017. Reviewed this data and determined that we could not analyze calendar year 2015 data because staff that conducted this audit was no longer employed and current staff could not explain the methodology used to conduct this audit. We could not analyze calendar year 2017 data because LSBME did not track the compliance status of auditees (pass/fail). We analyzed calendar year 2016 data by sorting the data into "Compliance" and "Non-Compliance" categories then requested and reviewed source documentation for both from LSBME. LSBME confirmed that they do not maintain source documentation related to CE audits.

APPENDIX C: LSBME REVENUES, EXPENSES, AND NET INCOME CALENDAR YEARS 2015 THROUGH 2018

Category	Subcategory	CY15	CY16	CY17	CY18 (Est.)*	Total	% of Total
Revenues	Licenses, Permits, and Fees	\$6,791,878	\$7,252,465	\$7,670,098	\$7,817,047	\$29,531,488	98.1%
	Other Revenue	263,974	20,258	163,071	123,527	570,830	1.9%
	Total Revenue	\$7,055,852	\$7,272,723	\$7,833,169	\$7,940,574	\$30,102,318	
Expenses	Salaries and Related Benefits	\$5,458,705	\$3,829,951	\$3,781,162	\$4,265,821	\$17,335,639	60.9%
	Professional Services	1,452,924	1,555,641	923,676	1,545,169	5,477,410	19.2%
	Operating Services	469,881	450,224	766,215	812,421	2,498,741	8.8%
	Contractual Services	581,276	569,631	580,549	9,769	1,741,225	6.1%
	Other	405,060	444,194	435,866	127,177	1,412,297	5.0%
	Total Expenses	\$8,367,846	\$6,849,641	\$6,487,468	\$6,760,357	\$28,465,312	
Net Income		(\$1,311,994)	\$423,082	\$1,345,701	\$1,180,217	\$1,637,006	

*From LSBME estimates received by LLA in December 2018 (unaudited).

Source: Prepared by legislative auditor's staff using information from LSBME's audited financial statements.

APPENDIX D: SANCTIONS WORKSHEET USED BY VIRGINIA MEDICAL BOARD

The Virginia Department of Health Professions approved a study to be conducted on its behalf in 2001 to provide an empirical, systematic analysis of board sanctions to develop reference points for board members.²⁵ The analysis included collecting more than 100 factors on all cases sanctioned by Virginia's Board of Medicine over a six-year period. They measured case seriousness, respondent characteristics, and prior disciplinary history. After identifying the factors that were consistently associated with sanctioning, it was decided that the results provided a solid foundation for the creation of sanctioning reference points. Using both the data and collective input from the Board of Medicine and staff, analysts developed a usable set of sanction worksheets as a way to implement the reference system. In 2010, the worksheets and resulting manual were updated. The Virginia Board of Medicine developed three types of worksheets for different types of cases: Impairment, Patient Care, and Fraud/Unlicensed Activity. The template for the Patient Care worksheet is on the following page.

²⁵ [“Sanctioning Reference Points Instruction Manual,”](#) Prepared for Virginia Department of Health Professions by Visual Research, Inc., revised August 2011

☞ Patient Care Worksheet **Board of Medicine
Adopted 5/11/11**

Offense Score	Points	Score
Case Type (score only one)		
a. Sexual abuse	50	_____
b. Physician performance, patient related	25	_____
c. Inspection deficiency/facility violation	25	_____
Case Circumstances (score all that apply)		
a. Multiple patients involved	30	_____
b. Patient especially vulnerable	20	_____
c. Financial or material gain from offense	20	_____
Patient Injury Level (score only if applicable)		
a. Physical Injury - death	100	_____
b. Physical Injury - medical care	50	_____
c. Mental Injury	50	_____
Priority Level (must score one)		
a. Priority A	75	_____
b. Priority B or C	30	_____
c. Priority D	20	_____
Total Offense Score		<input style="width: 50px; height: 20px;" type="text"/>

Respondent Score		
Respondent Circumstances and Prior Board History (score all that apply)		
a. Concurrent action	60	_____
b. One or more prior board violations	60	_____
c. Any prior "similar" board violations	50	_____
d. Past mental health problems	50	_____
e. Past inappropriate relationship/sexual problems	50	_____
f. Past alcohol problems	25	_____
g. Past drug problems	25	_____
Total Respondent Score		<input style="width: 50px; height: 20px;" type="text"/>

		Offense Score		
		0-50	51-100	101 or more
Respondent Score	0-50	No Sanction <hr style="width: 50%; margin: 0 auto;"/> Reprimand	Reprimand <hr style="width: 50%; margin: 0 auto;"/> Treatment/ Monitoring	Treatment/ Monitoring <hr style="width: 50%; margin: 0 auto;"/> Recommend Formal/ Accept Surrender
	51-100	Treatment/Monitoring	Treatment/Monitoring	Treatment/ Monitoring <hr style="width: 50%; margin: 0 auto;"/> Recommend Formal/ Accept Surrender
	101 or more	Treatment/ Monitoring <hr style="width: 50%; margin: 0 auto;"/> Recommend Formal/ Accept Surrender	Treatment/ Monitoring <hr style="width: 50%; margin: 0 auto;"/> Recommend Formal/ Accept Surrender	Recommend Formal/ Accept Surrender