Bill to shield physicians during investigations advances to Louisiana Senate floor

Despite objections that the public would become more vulnerable to disreputable doctors, legislation to provide physicians enhanced due process rights during investigations sailed through the state Senate Health and Welfare committee Wednesday.

Senate Bill 286 by Sen. John Milkovich, D-Shreveport, would establish more stringent communication requirements during Louisiana State Board of Medical Examiners investigations. He wants to provide doctors more opportunities to protect themselves, their livelihoods and their reputations from improper investigations.

The head of the Medical Examiners Board countered that the provisions would make it more difficult to conduct and complete examinations.

The committee reported SB286 favorable to the full Senate.

Milkovich’s “Physician’s Bill of Rights” would require the Board of Medical Examiners to provide the physician a written notice of complaint within 10 days of receipt, reveal the identity of the complainant, record all communications between investigators, board members and the affected physician related to the case, and provide all evidence and documents related to the case to the physician during discovery.

The bill would also bar investigators from revealing details about ongoing investigations to board members or the board executive director, and allow the affected physician to raise concerns about the investigator being biased and request a new investigator, Milkovich said.

“We give criminals and terrorists more due process than we give doctors,” testified Dr. Greg Stephens.

He and John Gianforte alleged Dr. Cecilia Mouton, the Medical Examiners Board’s director of investigations, coerced them into consenting to voluntary license suspensions and mandated substance abuse treatment without allowing the physicians to rebut the alleged abuse.

Stephens said he was denied the ability to defend himself following claims he allowed unqualified staff members to write and sign prescriptions in his name while the medical director at Mental Health Solutions in Shreveport, among other allegations.

Gianforte, who hired Stephens at the time, said the prescription pad was stolen by a pair of employees and Stephens’ name forged. The duo was fired, and one later charged by law enforcement, Gianforte said.

Milkovich cited several cases of physician suicide over the last decade following the physician’s investigation or penalization by the Medical Examiners Board. The most recent, Dr. Jacques Whitecloud, the medical director for physical and occupational therapy for Tulane Medical Center, committed suicide in November 2017 following the reinstatement of his medical license by the board, Milkovich said.

Whitecloud had his license summarily suspended in June 2017 following an investigation. Though it was reinstated in October 2017, Whitecloud had already lost privileges, positions and future opportunities as a
result of the investigation, Milkovich said.

Louisiana State Board of Medical Examiners president Dr. Christy Valentine and executive director Dr. Vincent Culotta Jr. stated the board and its investigators follow the investigation guidelines “exactly as stated in rules and statute.”

“Nobody likes to be disciplined, nobody likes the board asking them questions, but if we’re going to let the complaints to the Legislature and legislators victimize people who do a thankless job, we’re setting ourselves up for problems in the future,” Culotta said, adding that Milkovich may have overstated some facts when presenting the argument for his bill.

Culotta said each physician has the right to a judicial review of their sentence if they’re displeased or suspect foul play, but the board has not lost a review in 20 years.

Culotta said board investigators conduct a preliminary investigation after receiving a complaint against a physician. The board receives roughly 1,100 to 1,400 physician complaints each year, and about 96 percent are resolved with no action during this fact finding stage, he said.

Complaints that pose a potential danger to the public and may require a formal investigation are presented to the board and a decision is made whether to conduct a formal inquiry. If a full investigation is conducted, the investigator would gather evidence and present it to the full board, Culotta said.

The provisions outlined in Milkovich’s bill would make it more difficult for the board to protect the public from disreputable doctors, he said. The physician’s right to claim an investigator is biased and request a replacement could be repeatedly exercised and used as a means to stall the investigation and delay justice, he said.

Additional requirements, including submitting written copies of complaints within 10 days of receipt and notifying physicians if an investigation lasts longer than 30 days, places administrative burden on the staff and could also place more stress on the affected physician, Culotta said.