

**A Guide to the Essentials
Of a Modern Medical
Practice Act**

PUBLISHED BY

**The Federation of State Medical
Boards of the United States, Inc.**

**1970
Revised Edition**

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The Federation of State Medical Boards of the United States, Incorporated and its members, the individual state and territorial licensing agencies have recognized the need for a brochure on "A Guide to the Essentials of a Modern Medical Practice Act".

The initial guide was first published in 1956. Its purpose was stated:

1. To serve as a guide in those states and territories which may adopt a new medical practice act or may amend existing laws.

2. To encourage the standardization of requirements and of regulations to better facilitate reciprocity and endorsement.

It was emphasized that, "A Guide to the Essentials of a Modern Medical Practice Act is intended to serve only as advisory to licensing agencies".

The original guide has served a useful purpose and has been helpful in the ways that it was planned. It is still basically sound in its recommendation.

There are now changes in medical education and the practice of medicine that must be taken into consideration.

1. Medical school curricula and post-graduate training is in a state of change and the old patterns no longer exist or may long exist. Legislation that fails to recognize these changes may prove unduly restrictive.

2. In the original Guide, the intent was listed to "facilitate reciprocity and endorsement". The need for this has become increasingly greater with population growth, physician shortage and the increasing mobility of our population, lay and professional.

3. The "foreign physician" has become a permanent member of the medical profession. Recognition and standardization of licensure for this group is desirable.

A Guide to the Essentials of a Modern Medical Practice Act

I. Purpose of a Medical Practice Act

A general statement of policy should introduce an act and should emphasize the following facts:

Recognizing that the practice of medicine is a PRIVILEGE granted by legislative authority and is not a NATURAL RIGHT of individuals, it is deemed necessary as a matter of policy in the interests of public health, safety and welfare to provide laws and provisions covering the granting of that privilege and its subsequent use, control and regulations to the end that the public shall be properly protected against unprofessional, improper, unauthorized and unqualified practice of medicine and from unprofessional conduct by persons licensed to practice medicine.

II. Definition

The definition of the "Practice of Medicine" means:

(a) to diagnose, treat, correct, advise, or prescribe for any human disease, ailment, injury, infirmity, deformity, pain or other condition, physical or mental, real or imaginary, by any means or instrumentality.

(b) to maintain an office or place of business for the purpose of doing acts described in clause (a) whether for compensation or not;

(c) to use, in the conduct of any occupation or profession pertaining to the diagnosis or treatment of human disease or conditions the designation "Doctor", "Doctor of Medicine", "Physician", "Surgeon", "Physician and Surgeon", "Dr.", "M.D." or any combination thereof unless such a designation additionally contains the description of another branch of the healing arts for which a person has a license.

(a) Exceptions to an act:

1. An act should not have application to a student in training in a professional school approved by the licensing agency, while performing the duties of an intern or similar function in a hospital under the supervision of its staff.

2. An act should not have application to students who have had training in approved schools of medicine and who are continuing their training and performing the duties of an intern or engaged in post-graduate work deemed the equivalent of an internship by a licensing agency in any hospital or institution maintained and operated by a state or territory of the United States, or

in any Hospital within a state or territory operating under the supervision of a medical staff, the members of which are licensed to practice medicine and which hospital is approved for internship by a state or territorial licensing agency.

3. An act should not apply to the rendition of service in cases of emergency where no fee or other consideration is contemplated, charged or received.

4. An act should not be construed to apply to commissioned medical officers of the Armed Forces of the United States, the United States Public Health Service, and medical officers of the Veterans Administration of the United States, in the discharge of their official duties.

5. An act should not apply to an individual residing in another state or country and authorized to practice medicine there, who is called in consultation by an individual licensed to practice medicine.

(b) Exclusions to an act:

The definitions of the practice of medicine should not apply to a person licensed to practice a limited field of the healing arts which constitutes a part of the practice of medicine; and the provisions of an act should never be construed to effect in any manner the practice of the religious tenets of any church or religious belief. The definitions of the practice of medicine should not include an individual administering a domestic or family remedy to a member of his family.

III. Recommendations of Establishment of Licensing Agency or Board and its Composition

From ancient times heads of governments and legislative authorities granted to the professions and trades the right to license and regulate their own members. In more modern time, partly due to abuse and partly due to inaction on the part of professions and trades, this privilege has frequently been removed by legislative authority. In many states and territories the authority is vested in non-professional political appointees with professional persons serving without authority and only as advisory. There is a trend to streamline government with the result that licensing boards and agencies are abolished with responsibilities placed in large, multipurpose political departments of government with all authority vested from without the profession. The medical profession should insist on the privilege of licensing and regulating its profession with safeguards to protect the public and the individual physician from abuses of privilege.

There should be established in jurisdictional governments an independent board or agency or within an established branch of government, an independent division or board, delegating to it full authority to regulate itself and to carry into effect the provisions of an act. This licensing agency should be allowed full use of funds obtained from licensure fees but under the same regulations applying to other branches of government. The tenure of appointment to the agency should be fixed staggering terms, subject to reappointment and subject to removal **only** when guilty of malfeasance, mis-feasance or non-feasance.

IV. Recommendations on Licensure Requirements

A board should have authority to prescribe and establish rules and regulations to carry into effect provisions of an act, including, but without limitation, regulations prescribing all requisite qualifications of education, residence, citizenship, training and character for admission to an examination for licensure.

(a) Minimum requirements should be:

1. That an applicant be at least 21 years of age.
2. He is a citizen of the United States, or has filed a petition for naturalization, or, not having fulfilled the residence requirements for naturalization, has declared his intentions to become a citizen of the United States.
3. That applicant be of good character.
4. That an applicant received the degree of Doctor of Medicine from a medical college or school in the United States or Canada which was approved by the licensing agency as of the time this degree was conferred.
5. That an applicant has satisfactorily completed a 12 month internship or equivalent training in a program and institution approved by the licensing agency.
6. That the applicant is physically and mentally capable of safely engaging in the practice of medicine and will submit to an examination deemed necessary by the licensing agency to determine such capability.
7. That an applicant has not been guilty of any conduct which would constitute grounds for refusal, suspension or revocation of license under the regulations of the licensing agency.

cy involved. This action may be modified at the discretion of the licensing agency.

8. The applicant has not had his license revoked or suspended by a licensing agency by reasons of his ability and safety to practice medicine.

9. That an applicant make a personal appearance before the licensing agency at the discretion of the licensing agency.

(b) Fees should be determined by each licensing agency.

(c) Annual renewals should be required.

V. Examinations

It is recommended that licensing agencies have the authority to adopt rules and regulations relative to examinations.

(a) The licensing agency shall prepare and give, or approve the preparation and giving, of an examination which shall cover those general subjects and topics, a knowledge of which is commonly and generally required of candidates for the degree of Doctor of Medicine conferred by approved colleges or schools of medicine in the United States.

(b) Examinations should be given in such a way that persons grading the papers shall have no knowledge of the identity of an individual being examined.

(c) Examinations should be conducted at least semi-annually, provided there are applicants.

(d) The minimum general average should be 75%.

VI. Licensure of Foreign Graduates

Qualifications for Admission to Examination:

To procure a regular license to practice medicine, an applicant who is a graduate of a school of medicine located elsewhere than in the United States, District of Columbia, its territories or Canada shall submit satisfactory proof to the licensing agency that he meets all of the requirements.

(a) That an applicant meets all the requirements of Section IV, except for Paragraph 4.

(b) That an applicant has received the degree of Doctor of Medicine from a foreign medical college determined by the licensing agency to be acceptable.

(c) That an applicant has satisfactorily passed the examination for foreign grad-

uates given by the Educational Council for Foreign Medical Graduates.

(d) That an applicant has the working ability to read, write, speak, understand and be understood in the English language.

VII. Licenses without Examination

(a) Endorsement: It is recommended that a licensing agency may issue a license by endorsement to an applicant who has complied with licensure requirements and who has passed an examination for licensure to practice medicine in all its branches in any other state or territory of the United States, provided that the examination endorsed was, in the opinion of that agency, equivalent in every respect to its examination.

(b) Certifying Agency Examinations: A licensing agency may in its discretion endorse an applicant who has complied with licensure requirements and who has passed an examination given by a recognized certifying agency approved by the licensing agency, provided such examination was, in the opinion of the agency, equivalent in every respect to its examination.

(c) Temporary and Special Licenses: It may be desirable to make provision for temporary and special licenses to be in effect in the interval between licensing agency meetings and in order to meet specific needs. If a special license or temporary license is issued, it should be subject to a uniform automatic termination.

VIII. Grounds for Suspension and Revocation of Licenses

To promote more endorsement and reciprocity between the several states and territories, mutual understanding on the grounds for suspension and revocation of licenses is necessary.

The Following Charges are Recommended:

1. The use of any false, fraudulent or forged statement or document, or the use of any fraudulent, deceitful, dishonest or immoral practice, in connection with any of the licensing requirements.

2. The commission or conviction of a felony.

3. Becoming addicted to a drug or intoxicant to such a degree as to render the licensee unsafe or unfit to practice medicine and surgery.

4. Sustaining any physical or mental disability which renders the further practice of medicine dangerous.

5. Except as otherwise permitted by law, the prescribing, selling or administering any drug classified as a narcotic, addicting or dangerous drug to a habitue or addict.

6. The performance of any dishonorable, unethical or unprofessional conduct likely to deceive, defraud or harm the public.

7. The use of any false or fraudulent statement in any document connected with the practice of medicine.

8. Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of or conspiring to violate any provision or terms of a medical practice act.

9. In case any person holding a license to practice medicine shall by any final order or adjudication of any court of competent jurisdiction be adjudged to be mentally incompetent or insane, the license should automatically be suspended by the licensing agency, and anything in the act to the contrary notwithstanding, such suspension shall continue until the licentiate is found or adjudged by such court to be restored to reason or until he is duly discharged as restored to reason in any other manner provided by law.

10. The practice of medicine under a false or assumed name.

11. The advertising for the practice of medicine in any unethical or unprofessional manner.

12. Obtaining a fee as personal compensation or gain for an employer or for a person on fraudulent representation that a manifestly incurable condition can be permanently cured.

13. The wilful violation of privileged communication.

IX. Definition of Unlawful Practice of Medicine and Violations and Penalties.

It should be unlawful for any person to do or perform any act which constitutes the practice of medicine as defined without first having obtained a license to practice medicine.

It is recommended that a person, corporation or association which violates the provisions of a medical practice act or an officer or director of a corporation or association causing or aiding and abetting such violation, shall be deemed guilty of a felony, and upon conviction thereof shall be punished by imprisonment for a term not ex-

ceeding two years or by a fine not exceeding \$1,000.00 or by both such fine and imprisonment.

X. Proceedings for Revocation and Suspension

It is recommended that a procedure be enacted placing full authority in a licensing agency. An agency should have discretion concerning probation, suspension and revocation. The findings of an agency should be subject to review by courts, but the courts' authority should be limited to sustain or reverse a decision, not to modify.

XI. Injunction Clause

Such a clause is recommended to institute proceedings against unlawful practice. An agency should maintain a suit for injunction against any person, corporation or association and its officers and directors of any such corporation or association, violating the provisions of a medical practice act. Any such person, corporation or association, and the officers and directors thereof so enjoined should be punished for contempt for violation of such injunction by the court issuing the same. An injunction should be issued without proof of actual damage sustained by any person. An injunction should not relieve a person, corporation or association, nor the officers or directors thereof from criminal prosecution for violation of the medical practice act.

XII. Rules and Regulations to be Adopted by Licensing Agency

A Medical Practice Act should authorize each licensing agency to adopt rules and regulations to carry into effect the provisions of its medical practice act.