LOUISIANA LAWS AFFECTING PSYCHOLOGISTS

This section is included as a reference and guide and should not be considered a substitute for competent legal advice.

No claim is made that all of the laws which impact upon psychological practice are included in this section. The legislature continually revises and amends existing statutes, as well as enacts new legislation. **The contents of this section were last updated in 2006.**

Additionally, the LSBEP recommends Psychologists educate themselves on the federal Health Information Portability and Accountability Act (HIPAA). Information regarding HIPAA may be obtained on-line from the Office of Civil Rights, Department of Health and Human Services at http://aspe.hhs.gov/admnsimp/.

CONTENTS

ADULT ABUSE (LA R.S. 14:403.2)

§403.2. Abuse and neglect of adults; reports; investigation; waiver of privileges; penalties; immunity

A. (1) The purpose of this Section is to protect adults who cannot physically or mentally protect themselves and who are harmed or threatened with harm through action or inaction by themselves or by the individuals responsible for their care or by other parties, by requiring mandatory reporting of suspected cases of abuse or neglect by any person having reasonable cause to believe that such a case exists. It is intended that, as a result of such reports, protective services shall be provided by the adult protection agency. Such services shall be available as needed without regard to income.

(2) It is the further intent of the legislature to authorize only the least possible restriction on the exercise of personal and civil rights consistent with the person's need for services and to require that due process be followed in imposing such restrictions.

B. For the purposes of this Section, the following definitions shall apply:

(1) "Abandonment" is the desertion or willful forsaking of an adult by anyone having care or custody of that person under circumstances in which a reasonable person would continue to provide care and custody.

(1.1) "Abuse" is the infliction of physical or mental injury on an adult by other parties, including but not limited to such means as sexual abuse, abandonment, isolation, exploitation, or extortion of funds or other things of value, to such an extent that his health, self-determination, or emotional well-being is endangered.

(2) "Adult" is any person sixty years of age or older, any disabled person eighteen years of age or older, or an emancipated minor.

(3) "Adult protection agency" is the office of elderly affairs in the office of the governor, for any individual sixty years of age or older in need of adult protective services as provided in this Section. Adult protection agency is the Department of Health and Hospitals for any individual between the ages of eighteen and fifty-nine years of age in need of adult protective services as provided in this Section. The secretary of the Department of Health and Hospitals may assign the duties and powers provided in this Section to any office of the department for provision of adult protective services, as provided in Subsection E(1).

(4) "Capacity to consent" means the ability to understand and appreciate the nature and consequences of making decisions concerning one's person, including but not limited to provisions for health or mental health care, food, shelter, clothing, safety, or financial affairs. This determination may be based on assessment or investigative findings, observation, or medical or mental health evaluations.

(5) "Caregiver" is any person or persons, either temporarily or permanently, responsible for the care of an aged person or a physically or mentally disabled adult. Caregiver includes but is not limited to adult children, parents, relatives, neighbors, daycare personnel, adult foster home sponsors, personnel of public and private institutions and facilities, adult congregate living facilities, and nursing homes which have voluntarily assumed the care of an aged person, or disabled adult, have assumed voluntary residence with an aged person or disabled adult, or have assumed voluntary use or tutelage of an aged or disabled person's assets, funds, or property, and specifically shall include city, parish, or state law enforcement agencies.

(5.1) "Disabled person" is a person with a mental, physical, or developmental disability that substantially impairs the person's ability to provide adequately for his own care or protection.

(6) "Exploitation" is the illegal or improper use or management of an aged person's or disabled adult's funds, assets, or property, or the use of an aged person's or disabled adult's power

of attorney or guardianship for one's own profit or advantage.

(7) "Extortion" is the acquisition of a thing of value from an unwilling or reluctant adult by physical force, intimidation, or abuse of legal or official authority.

(7.1) "Isolation" includes:

(a) Intentional acts committed for the purpose of preventing, and which do serve to prevent, an adult from having contact with family, friends, or concerned persons. This shall not be construed to affect a legal restraining order.

(b) Intentional acts committed to prevent an adult from receiving his mail or telephone calls.

(c) Intentional acts of physical or chemical restraint of an adult committed for the purpose of preventing contact with visitors, family, friends, or other concerned persons.

(d) Intentional acts which restrict, place, or confine an adult in a restricted area for the purposes of social deprivation or preventing contact with family, friends, visitors, or other concerned persons. However, medical isolation prescribed by a licensed physician caring for the adult shall not be included in this definition.

(8) "Neglect" is the failure, by a caregiver responsible for an adult's care or by other parties, to provide the proper or necessary support or medical, surgical, or any other care necessary for his well-being. No adult who is being provided treatment in accordance with a recognized religious method of healing in lieu of medical treatment shall for that reason alone be considered to be neglected or abused.

(9) "Protective services" include but are not limited to:

(a) Conducting investigations and assessments of complaints of possible abuse, neglect, or exploitation to determine if the situation and condition of the adult warrant further action.

(b) Preparing a social services plan utilizing community resources aimed at remedying abuse, neglect, and exploitation.

(c) Case management to assure stabilization of the situation.

(d) Referral for legal assistance to initiate any necessary extrajudicial remedial action.

(10) "Self-neglect" is the failure, either by the adult's action or inaction, to provide the proper or necessary support or medical, surgical, or any other care necessary for his own well-being. No adult who is being provided treatment in accordance with a recognized religious method of healing in lieu of medical treatment shall for that reason alone be considered to be self-neglected.

C. Any person, including but not limited to a health, mental health, and social service practitioner, having cause to believe that an adult's physical or mental health or welfare has been or may be further adversely affected by abuse, neglect, or exploitation shall report in accordance with Subsection D of this Section.

D. (1) Reports reflecting the reporter's belief that an adult has been abused or neglected shall be made to any adult protection agency or to any local or state law enforcement agency. These reports need not name the persons suspected of the alleged abuse or neglect.

(2) All reports shall contain the name and address of the adult, the name and address of the person responsible for the care of the adult, if available, and any other pertinent information.

(3) All reports received by a local or state law enforcement agency shall be referred to the appropriate adult protection agency.

(4) When the appropriate adult protection agency receives a report of sexual or physical abuse, whether directly or by referral, the agency shall notify the chief law enforcement agency of the parish in which the incident is alleged to have occurred of such report. Such notification shall be made prior to the end of the business day subsequent to the day on which the adult protection agency received the report. For the purposes of this Paragraph, the chief law enforcement agency of Orleans Parish shall be the New Orleans Police Department.

(5) Upon receipt of a report from an adult protection agency, the chief law enforcement agency shall initiate an incident report and shall notify the referring adult protection agency of the disposition of the report.

E. (1) The adult protection agency shall make prompt investigation and assessment. When the report concerns care in a facility or program under the supervision of the Department of Health and Hospitals, the secretary of the department may assign the duties and powers enumerated in Paragraph (2) of this Subsection to any office or entity within the department to carry out the purposes of this Section.

(2) The investigation and assessment shall include the nature, extent, and cause of the abuse and neglect, the identity of the person or persons responsible for the abuse and neglect, if known, and an interview with the adult and a visit to the adult's home, if possible. Consultation with others having knowledge of the facts of the particular case shall also be included in the investigation.

(3) In the event that admission to the adult's home or access to the adult for purposes of conducting the investigation, including a face-to-face private interview with the adult and with other members of the household and inspection of the home is refused, the adult protection agency may apply to a court of competent civil jurisdiction for an order to be granted access to the adult and to the location where the alleged abuse or neglect occurred to make such an investigation.

(4) To secure further information and coordinate community service efforts, the adult protection agency shall contact other appropriate local or state agencies.

(5) The adult protection agencies shall convene a regional level coordinating council composed of representatives of both public and private agencies providing services, with the objectives of identifying resources, increasing needed supportive services, avoiding duplication of effort, and assuring maximum community coordination of effort.

(6) If it appears after investigation that an adult has been abused and neglected by other parties and that the problem cannot be remedied by extrajudicial means, the adult protection agency may refer the matter to the appropriate district attorney's office or may initiate judicial proceedings as provided in Subsection F of this Section. Evidence that abuse or neglect has occurred must be presented together with an account of the protective services given or available to the adult and a recommendation as to what services, if ordered, would eliminate the abuse or neglect.

(7) Protective services may not be provided in cases of self-neglect to any adult having the capacity to consent, who does not consent to such service or who, having consented, withdraws such consent. Nothing herein shall prohibit the adult protection agency, the district attorney, the coroner, or the judge from petitioning for interdiction pursuant to Civil Code Articles 389 through 399 or petitioning for an order for protective custody or for judicial commitment pursuant to R.S. 28:50 et seq. seeking an order for emergency protective services pursuant to Subsection N of this Section, or from seeking an order for involuntary protective services pursuant to Subparagraph (F)(1)(e) of this Section.

(8) (a) The adult protection agency shall have access to any records or documents, including client-identifying information and medical, psychological, criminal or financial records necessary to the performance of the agency's duties under this Section. The duties include the provision of protective services to an adult, or the investigation of abuse, neglect, exploitation or extortion of an adult. A person or agency that has a record or document that the adult protection agency needs to perform its duties under this Section shall, without unnecessary delay, make the record or document available to the agency.

(b) The adult protection agency is exempt from the payment of a fee otherwise required or authorized by law to obtain a record if the request for a record is made in the course of an investigation or in the provision of protective services by the agency.

(c) If the adult protection agency is unable to obtain access to a record or document

that is necessary to properly conduct an investigation or to provide protective services, the agency may petition a court of competent jurisdiction for access to the record or document. The person or agency in possession of this necessary record or document and the patient, in the case of a medical record, is entitled to notice and a hearing on the petition.

(d) Upon a showing by the adult protection agency that the record or document is necessary, the court shall order the person or agency who denied access to a record or document to allow the adult protection agency to have access under the terms and conditions prescribed by the court.

(e) Access to a confidential record under this Section does not constitute a waiver of confidentiality. No cause of action shall exist against any person or agency who in good faith provides a record or document to the adult protection agency under the provisions of this Section.

(9) (a) Information contained in the case records of the adult protection agency shall be confidential and shall not be released without a handwritten authorization from the adult or his legal representative, except that the information may be released to law enforcement agencies pursuing enforcement of criminal statutes related to the abuse of the adult or the filing of false reports of abuse or neglect, or to social service agencies, licensed health care providers, and appropriate local or state agencies where indicated for the purpose of coordinating the provision of services or treatment necessary to reduce the risk to the adult from abuse, neglect, exploitation, or extortion and to state regulatory agencies for the purpose of enforcing federal or state laws and regulations relating to abuse, neglect, exploitation, or extortion by persons compensated through state or federal funds.

(b) The identity of any person who in good faith makes a report of abuse, neglect, exploitation, or extortion shall be confidential and shall not be released without the handwritten authorization of the person making the report, except that the information may be released to law enforcement agencies pursuing enforcement of criminal statutes related to the abuse of the adult or to the filing of false reports of abuse or neglect.

(c) Prior to releasing any information, except information released to law enforcement agencies as provided herein, the adult protection agency shall edit the released information to protect the confidentiality of the reporter's identity and to protect any other individual whose safety or welfare may be endangered by disclosure.

F. (1) The district attorney or adult protective services agency may petition a court of competent civil jurisdiction for a hearing with respect to the alleged abuse or neglect. The petitioner shall notify the adult of the hearing and the proposed action. The adult shall be advised of his right to be represented by an attorney. The district attorney or adult protective services agency may apply for an order to:

(a) Provide mandatory counseling for the parties involved to prevent further abuse or neglect of the adult.

(b) Enjoin the parties contributing to the abuse or neglect of the adult from continuing such acts.

(c) Have the adult receive a medical examination or psychiatric/psychological evaluation which will help to determine the least restrictive setting the adult may need.

(d) Enjoin any party interfering with the provision of protective services to an adult from continuing such interference.

(e) Provide protective services, if the adult lacks the capacity to consent to services, and the adult is suffering harm or deterioration or is likely to suffer harm or deterioration from abuse, neglect, or self-neglect, if protective services are not provided, and no other person authorized by law or by court order to give consent for the adult is available or willing to arrange for protective services. Such an order shall specify the services needed to protect the adult, which may include medical treatment, social services, placement in a safer living situation, the services of law enforcement or emergency medical services to transport the adult to a treatment facility or safe living location and other services needed to protect the adult. Such an order shall be

effective for a period of one hundred eighty days, but an order may be renewed one time for another one hundred eighty days and thereafter annually upon a showing to the court that continuation of the order is necessary to prevent further harm to the adult. However, admission to a mental health treatment facility shall be made only in accordance with the provisions of R.S. 28:1 et seq.

(2) The district attorney may likewise institute any criminal proceedings he deems appropriate in accordance with existing laws.

(3) Pursuant to Code of Criminal Procedure Art. 66, the district attorney or the attorney general may cause to be issued a subpoena or subpoena duces tecum for the purpose of requiring a person having knowledge, written material, or other evidence pertinent to alleged abuse, neglect, or exploitation of the adult to produce such evidence to the district attorney, attorney general or the adult protection agency.

G. Upon application under the provisions of Subsection F of this Section, the court shall fix a date for a hearing to be held not more than twenty days, excluding Saturdays, Sundays, and legal holidays, from receipt of the petition. If the alleged abused or neglected adult has no attorney, the court shall appoint an attorney to represent him. The adult's attorney shall be granted access to all records of the adult.

H. (1) The court shall cause the alleged abused or neglected adult and his attorney to be served with notice of the appointment and of the time, date, and place of the hearing no later than five days prior to the hearing. The notice shall inform such respondent that he has a right to be present at the hearing, that he has a right to choose his own privately retained and paid counsel or have a court-appointed attorney if he cannot afford one, that he has a right to subpoena witnesses to testify on his behalf, and that he has a right to cross-examine any witness testifying against him. The alleged abused or neglected adult shall have the right to attend the hearing; however, this may be waived by his attorney for cause with approval of the court.

(2) In order to protect the confidentiality and dignity of the alleged abused or neglected adult, any hearing conducted by the court may be closed and the record of the hearing may be sealed.

I. (1) The adult protection agency may adopt such rules and regulations as may be necessary in carrying out the provisions of this Section. Specifically, such rules shall provide for cooperation with local agencies, including but not limited to hospitals, clinics, and nursing homes, and cooperation with other states. The adult protection agencies may enter into cooperative agreements with other state agencies or contractual agreements with private agencies to carry out the purposes of this Section. The immunity granted to the staff of the adult protection agencies defined in Paragraph (3) of this Subsection shall extend to the staff of those agencies carrying out the provisions of this Section through cooperative or contractual agreement.

(2) The adult protection agencies shall implement adult protective services for aged and disabled adults in accordance with an agency plan and shall submit an annual funding request in accordance with its plan. No funds shall be expended to implement the plan until the budget is approved by the commissioner of administration and by the legislature in the annual state appropriations act.

(3) When the adult protection agency's staff is not sufficient to respond promptly to all reported cases, the adult protection agency shall set priorities for case response and allocate staff resources to cases in accordance with the rules and regulations promulgated in accordance with Paragraph (1) of this Subsection. Until the funding becomes available for a protective services program for disabled adults within the Department of Health and Hospitals and in view of the office of elderly affairs' earlier implementation date for adult protective service, this office shall have the authority to intervene, as provided in this Section, on an emergency basis in reported cases of imminent life-threatening circumstances involving disabled adults age eighteen to fifty-nine. Absent evidence of willful or intentional misconduct or gross negligence in carrying out the investigative functions of the adult protective services program, caseworkers, supervisors,

program managers, and agency heads shall be immune from civil or criminal liability in any legal action arising from any decision by the adult protection agency relative to the setting of priorities for cases and targeting of staff resources.

J. (1) Any person who knowingly and willfully fails to report as provided by Subsection C, shall be fined not more than five hundred dollars or imprisoned not more than six months, or both.

(2) Any person who knowingly files a false report of abuse or neglect shall be fined not more than one thousand dollars, imprisoned with or without hard labor for not more than one year, or both.

K. No cause of action shall exist against any person who in good faith makes a report, cooperates in an investigation by an adult protective agency, or participates in judicial proceedings authorized under the provisions of this Section, or any adult protective services caseworker who in good faith conducts an investigation or makes an investigative judgment or disposition, and such person shall have immunity from civil or criminal liability that otherwise might be incurred or imposed. This immunity shall not be extended to:

(1) Any alleged principal, conspirator, or accessory to an offense involving the abuse or neglect of the adult.

(2) Any person who makes a report known to be false or with reckless disregard for the truth of the report.

(3) Any person charged with direct or constructive contempt of court, any act of perjury as defined in Subpart C of Part VII of Chapter 1 of this Title, or any offense affecting judicial functions and public records as defined in Subpart D of Part VII of Chapter 1 of this Title.

L. The adult protection agency shall also be responsible for ongoing inservice training for its staff which assures adequate performance.

M. In any proceeding concerning the abuse, neglect, or self-neglect of an adult, evidence may not be excluded on any ground of privilege, except in the case of communications between an attorney and his client or between a priest, rabbi, duly ordained minister, or Christian Science practitioner and his communicant.

N. (1) (a) If the adult protection agency has reasonable cause to believe that an adult is at immediate and present risk of substantial harm or deterioration from abuse, neglect, or self-neglect, and the adult lacks the capacity to consent, or with the consent of an adult who has capacity, the agency or any entity named in Paragraph (E)(7) of this Section may petition a court of competent civil jurisdiction for an ex parte order to provide emergency protective services. The petition shall contain an affidavit setting forth the facts upon which the agency relied in making the determination.

(b) When the circumstances placing the adult at risk are such that there is insufficient time to file a petition for emergency protective services, the facts supporting an ex parte order to provide emergency protective services may be relayed to the court orally or telephonically and the court may issue its order orally. In such cases, a written verified petition for ex parte order shall be filed with the court by the close of the following business day and a written order shall be issued.

(2) The ex parte order shall specify the services needed to protect the adult, which may include medical treatment, social services, placement in a safer living situation, the services of law enforcement or emergency medical services to transport the adult to a treatment facility or safe living location, and other services needed to protect the adult and may contain any remedy outlined in Subsection F of this Section or any remedy deemed by the court as needed to protect the adult. However, admission to a mental health treatment facility shall be made only in accordance with the provisions of R.S. 28:1 et seq.

(3) The ex parte order shall be effective for fifteen days but may be extended one time for another fifteen days upon a showing to the court that continuation of the order is necessary to prevent further harm to the adult.

(4) (a) There shall be a hearing held by the court before the expiration of the ex parte order or the extension thereof but no earlier than fifteen days from the effective date of the ex parte order.

(b) The adult has the right to be represented by an attorney. If the alleged abused or neglected adult has no attorney, the court shall appoint an attorney to represent him.

(c) At the hearing, the adult protection agency has the burden to prove that the adult lacks the capacity to consent, and that the adult is at immediate and present risk of substantial harm or deterioration from abuse, neglect, or self-neglect.

(d) The adult shall have the right to present evidence, call witnesses, be heard on his own behalf, and cross-examine witnesses called by the adult protection agency.

(e) Reasonable notice of the hearing and rights set forth in this Section shall be given to the adult.

(f) After the hearing, if the court grants an order in favor of the adult protection agency, the court's order shall specify the services needed to protect the adult, which may include medical treatment, social services, temporary placement in a safer living situation, and other services needed to protect the adult and may contain any remedy outlined in Subsection F of this Section or any remedy deemed by the court as needed to protect the adult. However, admission to a mental health treatment facility shall be made only in accordance with the provisions of R.S. 28:1 et seq.

(g) Such an order shall be effective for a period of one hundred eighty days, but the order may be renewed one time for another one hundred eighty days and thereafter annually upon a showing to the court that continuation of the order is necessary to prevent further harm to the adult.

CHILD ABUSE (LA R.S. 14:403)

§403. Abuse of children; reports; waiver of privilege

A. (1) Any person who, under Children's Code Article 609(A), is required to report the abuse or neglect or sexual abuse of a child and knowingly and willfully fails to so report shall be guilty of a misdemeanor and upon conviction shall be fined not more than five hundred dollars or imprisoned for not more than six months, or both.

(2) Any person, any employee of a local child protection unit of the Department of Social Services, any employee of any local law enforcement agency, any employee or agent of any state department, or any school employee who knowingly and willfully violates the provisions of Chapter 5 of Title VI of the Children's Code, or who knowingly and willfully obstructs the procedures for receiving and investigating reports of child abuse or neglect or sexual abuse, or who discloses without authorization confidential information about or contained within such reports shall be guilty of a misdemeanor and upon conviction shall be fined not more than five hundred dollars or imprisoned for not more than six months, or both.

(3) Any person who reports a child as abused or neglected or sexually abused to the department or to any law enforcement agency, knowing that such information is false, shall be guilty of a misdemeanor and upon conviction shall be fined not more than five hundred dollars or imprisoned for not more than six months, or both.

B. In any proceeding concerning the abuse or neglect or sexual abuse of a child or the cause of such condition, evidence may not be excluded on any ground of privilege, except in the case of communications between an attorney and his client or between a priest, rabbi, duly ordained minister or Christian Science practitioner and his communicant.

CHILD ABUSE (CHILDRENS CODE, TITLE VI: CHILD IN NEED OF CARE)

Chapter 1. Preliminary Provisions; Definitions

Art. 601. Purpose

The purpose of this Title is to protect children whose physical or mental health and welfare is substantially at risk of harm by physical abuse, neglect, or exploitation and who may be further threatened by the conduct of others, by providing for the reporting of suspected cases of abuse, exploitation, or neglect of children; by providing for the investigation of such complaints; and by providing, if necessary, for the resolution of child in need of care proceedings in the courts. The proceedings shall be conducted expeditiously to avoid delays in achieving permanency for children. This Title is intended to provide the greatest possible protection as promptly as possible for such children. The health, safety, and best interest of the child shall be the paramount concern in all proceedings under this Title. This Title shall be construed in accordance with Article 102. This Title shall be administered and interpreted to avoid unnecessary interference with family privacy and trauma to the child, and yet, at the same time, authorize the protective and preventive intervention needed for the health, safety, and well-being of children.

Art. 602. General applicability

Except as otherwise specified in this Title, all provisions of the Code remain applicable.

Art. 603. Definitions

As used in this Title:

(1) "Abuse" means any one of the following acts which seriously endanger the physical, mental, or emotional health and safety of the child:

(a) The infliction, attempted infliction, or, as a result of inadequate supervision, the allowance of the infliction or attempted infliction of physical or mental injury upon the child by a parent or any other person.

(b) The exploitation or overwork of a child by a parent or any other person.

(c) The involvement of the child in any sexual act with a parent or any other person, or the aiding or toleration by the parent or the caretaker of the child's sexual involvement with any other person or of the child's involvement in pornographic displays, or any other involvement of a child in sexual activity constituting a crime under the laws of this state.

(2) "Administrative review body" means a panel of appropriate persons, at least one of whom is not responsible for the case management of or delivery of services to either the child or the parents who are the subject of the review, including the citizen review boards, state hearing examiners, special department reviewers, or department personnel.

(3) "Caretaker" means any person legally obligated to provide or secure adequate care for a child, including a parent, tutor, guardian, legal custodian, foster home parent, an employee of a public or private day care center, an operator or employee of a family child day care home, or other person providing a residence for the child.

(4) "Case review hearing" means a review hearing by a court or administrative review body for the purpose of determining the continuing necessity for and appropriateness of the child's placement, to determine the extent of compliance with the case plan, to determine the extent of progress which has been made toward alleviating or mitigating the causes necessitating placement, and to project a likely date by which the child may be permanently placed.

(5) "Child" means a person under eighteen years of age who, prior to juvenile proceedings, has not been judicially emancipated under Civil Code Article 385 or emancipated by marriage under Civil Code Articles 379 through 384.

(6) "Child care agency" means any public or private agency exercising custody of a child.

(7) "Child pornography" means visual depiction of a child engaged in actual or simulated sexual intercourse, deviate sexual intercourse, sexual bestiality, masturbation, sadomasochistic abuse, or lewd exhibition of the genitals.

(7.1) "Concurrent planning" means departmental efforts to preserve and reunify a family, or to place a child for adoption or with a legal guardian which are made simultaneously.

(8) "Court-appointed or court-approved administrative body" means a body appointed or approved by a court and subject to the court's supervision for the purposes of assisting the court with permanency hearings, including magistrates or other court or noncourt personnel. This body shall not be a part of the Department of Social Services or the Department of Public Safety and Corrections, nor subject to the supervision or direction of either department.

(9) "Crime against the child" shall include the commission of or the attempted commission of any of the following crimes against the child as provided by federal or state statutes:

(a) Homicide.
(b) Battery.
(c) Assault.
(d) Rape.
(e) Sexual battery.
(f) Kidnapping.
(g) Criminal neglect.
(h) Criminal abandonment.
(i) Incest.
(j) Carnal knowledge of a juvenile.
(k) Indecent behavior with juveniles.
(l) Pornography involving juveniles.
(m) Molestation of a juvenile.
(n) Crime against nature.
(o) Cruelty to juveniles.
(p) Contributing to the delinquency or dependency of children.
(q) Sale of minor children.

(10) "Department" means the Louisiana Department of Social Services.

(11) Repealed by Acts 449, §2, eff. July 1, 1999.

(12) "Foster care" means placement in a foster family home, a relative's home, a residential child caring facility, or other living arrangement approved and supervised by the state for provision of substitute care for a child in the department's custody. Such placement shall not include a detention facility.

(12.1) "Institutional abuse or neglect" means any case of child abuse or neglect that occurs in any public or private facility that provides residential child care, treatment, or education.

(13) "Mandatory reporter" is any of the following individuals performing their occupational duties:

(a) "Health practitioner" is any individual who provides health care services, including a physician, surgeon, physical therapist, dentist, resident, intern, hospital staff member, podiatrist, chiropractor, licensed nurse, nursing aide, dental hygienist, any emergency medical technician, a paramedic, optometrist, medical examiner, or coroner, who diagnoses, examines, or treats a child or his family.

(b) "Mental health/social service practitioner" is any individual who provides mental health care or social service diagnosis, assessment, counseling, or treatment, including a psychiatrist, psychologist, marriage or family counselor, social worker, member of the clergy, aide, or other individual who provides counseling services to a child or his family.

(c) "Member of the clergy" is any priest, rabbi, duly ordained clerical deacon or minister, Christian Science practitioner, or other similarly situated functionary of a religious organization, except that he is not required to report a confidential communication, as defined in

Code of Evidence Article 511, from a person to a member of the clergy who, in the course of the discipline or practice of that church, denomination, or organization, is authorized or accustomed to hearing confidential communications, and under the discipline or tenets of the church, denomination, or organization has a duty to keep such communications confidential. In that instance, he shall encourage that person to report the allegations to the appropriate authorities in accordance with Article 610.

(d) "Teaching or child care provider" is any person who provides training and supervision of a child, including any public or private teacher, teacher's aide, instructional aide, school principal, school staff member, social worker, probation officer, foster home parent, group home or other child care institutional staff member, personnel of residential home facilities, a licensed or unlicensed day care provider, or any individual who provides such services to a child.

(e) Police officers or law enforcement officials.

(f) "Commercial film and photographic print processor" is any person who develops exposed photographic film into negatives, slides, or prints, or who makes prints from negatives or slides for compensation.

(g) Mediators appointed pursuant to Chapter 6 of Title IV.

(14) "Neglect" means the refusal or unreasonable failure of a parent or caretaker to supply the child with necessary food, clothing, shelter, care, treatment, or counseling for any injury, illness, or condition of the child, as a result of which the child's physical, mental, or emotional health and safety is substantially threatened or impaired. Neglect includes prenatal neglect. Consistent with Article 606(B), the inability of a parent or caretaker to provide for a child due to inadequate financial resources shall not, for that reason alone, be considered neglect. Whenever, in lieu of medical care, a child is being provided treatment in accordance with the tenets of a well-recognized religious method of healing which has a reasonable, proven record of success, the child shall not, for that reason alone, be considered to be neglected or maltreated. However, nothing herein shall prohibit the court from ordering medical services for the child when there is substantial risk of harm to the child's health or welfare.

(14.1) "Other suitable individual" means a person with whom the child enjoys a close established significant relationship, yet not a blood relative, including a neighbor, godparent, teacher and close friend of the parent. Relative for the purpose of this title means an individual with whom the child has established a significant relationship by blood, adoption, or affinity.

(14.2) "Permanency hearing" means a hearing for the purpose of determining the permanent plan for the child.

(15) "Permanent placement" means:

(a) Return of the legal custody of a child to his parent(s).

(b) Placement of the child with adoptive parents pursuant to a final decree of adoption.

(c) Placement of the child with a legal guardian.

(16) "Person" means any individual, partnership, association, agency, or corporation, and specifically shall include city, parish, or state law enforcement agencies, and a parish or city school board or a person employed by a parish or city school board.

(16.1) "Prenatal neglect" means the unlawful use by a mother during pregnancy of a controlled dangerous substance, as defined by R.S. 40:961 et seq., which results in symptoms of withdrawal in the infant or the presence of a controlled substance in the infant's body.

(17) "Reasonable efforts" means the exercise of ordinary diligence and care by department caseworkers and supervisors and shall assume the availability of a reasonable program of services to children and their families.

(18) "Removal" means placing a child in the custody of the state or with someone other than the parent or caretaker during or after the course of an investigation of abuse and neglect to secure the child's protection and safeguard the child's welfare.

(19) "Safety plan" means a short-term plan for the purpose of assuring a child's immediate

health and safety by imposing conditions for the continued placement of the child with a custodian and terms for contact between the child and his parents or other persons.

Art. 603.1. Required education; reporting child abuse

Commencing May 1, 2006, every person graduating from any teacher preparation program in Louisiana shall have had in his curriculum instruction on the requirements of and how to report suspected child abuse cases pursuant to Children's Code Article 601 et seq., as well as instruction on how to identify the signs and symptoms of child neglect and abuse, including sexual abuse, in order to receive his teacher certification.

Art. 604. Persons subject to proceedings

A court exercising juvenile jurisdiction shall have exclusive original jurisdiction, in conformity with any special rules prescribed by law, over any child alleged to be in need of care and the parents of any such child.

Chapter 3. Grounds; Child In Need Of Care

Art. 606. Grounds; child in need of care

A. Allegations that a child is in need of care must assert one or more of the following grounds:

(1) The child is the victim of abuse perpetrated, aided, or tolerated by the parent or caretaker, by a person who maintains an interpersonal dating or engagement relationship with the parent or caretaker, or by a person living in the same residence with the parent or caretaker as a spouse whether married or not, and his welfare is seriously endangered if he is left within the custody or control of that parent or caretaker.

(2) The child is a victim of neglect.

(3) The child is without necessary food, clothing, shelter, medical care, or supervision because of the disappearance or prolonged absence of his parent or when, for any other reason, the child is placed at substantial risk of imminent harm because of the continuing absence of the parent.

(4) As a result of a criminal prosecution, the parent has been convicted of a crime against the child who is the subject of this proceeding, or against another child of the parent, and the parent is now unable to retain custody or control or the child's welfare is otherwise endangered if left within the parent's custody or control.

(5) The conduct of the parent, either as principal or accessory, constitutes a crime against the child or against any other child of that parent.

B. A child whose parent is unable to provide basic support, supervision, treatment, or services due to inadequate financial resources shall not, for that reason alone, be determined to be a child in need of care.

Chapter 5. Child Abuse Reporting And Investigation

Art. 609. Mandatory and permitted reporting

A. With respect to mandatory reporters:

(1) Notwithstanding any claim of privileged communication, any mandatory reporter who has cause to believe that a child's physical or mental health or welfare is endangered as a result of abuse or neglect or that abuse or neglect was a contributing factor in a child's death shall report in accordance with Article 610.

(2) Violation of the duties imposed upon a mandatory reporter subjects the offender to criminal prosecution authorized by R.S. 14:403(A)(1).

B. With respect to permitted reporters, any other person having cause to believe that a child's physical or mental health or welfare is endangered as a result of abuse or neglect, including a judge of any court of this state, may report in accordance with Article 610.

C. The filing of a report, known to be false, may subject the offender to criminal prosecution authorized by R.S. 14:403(A)(3).

Art. 610. Reporting procedure

A. Reports of child abuse or neglect or that such was a contributing factor in a child's death, where the abuser is believed to be a parent or caretaker, a person who maintains an interpersonal dating or engagement relationship with the parent or caretaker, or a person living in the same residence with the parent or caretaker as a spouse whether married or not, shall be made immediately to the local child protection unit of the department. Reports in which the abuse or neglect is believed to be perpetrated by someone other than a caretaker, a person who maintains an interpersonal dating or engagement relationship with the parent or caretaker, or a person living in the same residence with the parent or caretaker as a spouse whether married or not, and the caretaker is not believed to have any responsibility for the abuse or neglect shall be made immediately to a local or state law enforcement agency. Dual reporting to both the local child protection unit of the department and the local or state law enforcement agency is permitted.

B. The report shall contain the following information, if known:

(1) The name, address, age, sex, and race of the child.

(2) The nature, extent, and cause of the child's injuries or endangered condition, including any previous known or suspected abuse to this child or the child's siblings.

(3) The name and address of the child's parent(s) or other caretaker.

(4) The names and ages of all other members of the child's household.

(5) The name and address of the reporter.

(6) An account of how this child came to the reporter's attention.

(7) Any explanation of the cause of the child's injury or condition offered by the child, the caretaker, or any other person.

(8) The number of times the reporter has filed a report on the child or the child's siblings.

(9) Any other information which the reporter believes might be important or relevant.

C. The report shall also name the person or persons who are thought to have caused or contributed to the child's condition, if known, and the report shall contain the name of such person if he is named by the child.

D. If the initial report was in oral form by a mandatory reporter, it shall be followed by a written report made within five days to the local child protection unit of the department or, if necessary to the local law enforcement agency. The reporter may use a form for the written report, which shall be developed, approved and made available by the Department of Social Services. The form is optional and may be available electronically on the department's website.

E. (1) All reports made to any local or state law enforcement agency involving abuse or neglect in which the child's parent or caretaker, a person who maintains an interpersonal dating or engagement relationship with the parent or caretaker, or a person living in the same residence with the parent or caretaker as a spouse whether married or not, is believed responsible shall be promptly communicated to the local child protection unit of the department in accordance with a written working agreement developed between the local law enforcement agency and child protection unit.

(2) A local child protection unit shall promptly communicate abuse or neglect cases not involving a parent, caretaker, or occupant of the household to the appropriate law enforcement agency in accordance with a written working agreement developed between the local child protection unit and law enforcement agency. The local child protection unit also shall report all cases of child death which involve a suspicion of abuse or neglect as a contributing factor in the child's death to the local and state law enforcement agencies, the office of the district attorney, and the coroner.

(3) Reports involving a felony-grade crime against a child shall be promptly communicated to the appropriate law enforcement authorities as part of the interagency protocols

for multidisciplinary investigations of child abuse and neglect in each judicial district as provided in Children's Code Articles 509 and 510.

F. Any commercial film or photographic print processor who has knowledge of or observes, within the scope of this professional capacity or employment, any film, photograph, video tape, negative, or slide depicting a child who he knows or should know is under the age of seventeen years, which constitutes child pornography as defined in Article 603, shall report immediately to the local law enforcement agency having jurisdiction over the case. The reporter shall provide a copy of the film, photograph, videotape, negative, or slide to the agency receiving the report.

G. If a physician has cause to believe that a mother of an infant unlawfully used during pregnancy a controlled dangerous substance, as defined by R.S. 40:961 et seq., the physician shall order a toxicology test upon the infant, without the consent of the infant's parents or guardian, to determine whether there is evidence of prenatal neglect. If the test results are positive, the physician shall report the results, as soon as possible, in accordance with this Article. If the test results are negative, all identifying information shall be obliterated if the record is retained, unless the parent approves the inclusion of identifying information. Positive test results shall not be admissible in a criminal prosecution.

Art. 611. Immunity from civil or criminal liability

A. (1) No cause of action shall exist against any:

(a) Person who in good faith makes a report, cooperates in any investigation arising as a result of such report, or participates in judicial proceedings authorized under the provisions of this Chapter.

(b) Caseworker who in good faith conducts an investigation, makes an investigative judgment or disposition, or releases or uses information contained in the central registry for the purpose of protecting a child.

(2) Such individuals shall have immunity from civil or criminal liability that otherwise might be incurred or imposed.

B. This immunity shall not be extended to:

(1) Any alleged principal, conspirator, or accessory to an offense involving the abuse or neglect of the child.

(2) Any person who makes a report known to be false or with reckless disregard for the truth of the report.

C. (1) In any action to establish damages against a defendant who has made a false report of child abuse or neglect, the plaintiff shall bear the burden of proving that the defendant who filed the false report of child abuse or neglect knew the report was false or that the report was filed with reckless disregard for the truth of the report.

(2) A plaintiff who fails to meet his burden of proof provided in Subparagraph (1) of this Paragraph shall pay all court costs and attorney fees of the defendant.

DOMESTIC ABUSE ASSISTANCE (LA R.S. 46:2131-2136)

§2131. Purposes

The purpose of this Part is to recognize and address the complex legal and social problems created by domestic violence. The legislature finds that existing laws which regulate the dissolution of marriage do not adequately address problems of protecting and assisting the victims of domestic abuse. The legislature further finds that previous societal attitudes have been reflected in the policies and practices of law enforcement agencies and prosecutors which have resulted in different treatment of crimes occurring between family or household members and those occurring between strangers. It is the intent of the legislature to provide a civil remedy for domestic violence which will afford the victim immediate and easily accessible protection. Furthermore, it is the intent of the legislature that the official response of law enforcement

agencies to cases of domestic violence shall stress the enforcement of laws to protect the victim and shall communicate the attitude that violent behavior is not excused or tolerated.

§2132. Definitions

As used in this Part:

(1) "Adult" means any person eighteen years of age or older, or any person under the age of eighteen who has been emancipated by marriage or otherwise.

(2) "Court" shall mean any court of competent jurisdiction in the state of Louisiana.

(3) "Domestic abuse" includes but is not limited to physical or sexual abuse and any offense against the person as defined in the Criminal Code of Louisiana, except negligent injury and defamation, committed by one family or household member against another. "Domestic abuse" also includes abuse of adults as defined in R.S. 14:403.2 when committed by an adult child or adult grandchild.

(4) "Family members" means spouses, former spouses, parents and children, stepparents, stepchildren, foster parents, and foster children. "Household members" means any person of the opposite sex presently or formerly living in the same residence with the defendant as a spouse, whether married or not, who is seeking protection under this Part. If a parent or grandparent is being abused by an adult child, adult foster child, or adult grandchild, the provisions of this Part shall apply to any proceeding brought in district court.

§2133. Jurisdiction; venue; standing

A. Any court in the state of Louisiana which is empowered to hear family or juvenile matters shall have jurisdiction over proceedings appropriate to it under this Part.

B. Venue lies:

(1) In the parish where the marital domicile is located or where the household is located.

(2) In the parish where the defendant resides.

(3) In the parish where the abuse is alleged to have been committed.

(4) In the parish where the petitioner resides.

(5) In the parish where an action for annulment of marriage or for a divorce could be brought pursuant to Code of Civil Procedure Article 3941(A).

C. An adult may seek relief under this Part by filing a petition with the court alleging abuse by the defendant. Any parent, adult household member, or district attorney may seek relief on behalf of any minor child or any person alleged to be incompetent by filing a petition with the court alleging abuse by the defendant. A petitioner's right to relief under this Part shall not be affected by leaving the residence or household to avoid further abuse.

§2134. Petition

A. A petition filed under the provisions of this Part shall contain the following:

(1) The name of each petitioner and each person on whose behalf the petition is filed, and the name, address, and parish of residence of each individual alleged to have committed abuse, if known; if the petition is being filed on behalf of a child or person alleged to be incompetent, the relationship between that person and the petitioner.

(2) The facts and circumstances concerning the alleged abuse.

(3) The relationship between each petitioner and each individual alleged to have committed abuse.

(4) A request for one or more protective orders.

B. The address and parish of each petitioner and each person on whose behalf the petition is filed may remain confidential with the court.

C. If the petition requests a protective order for a spouse and alleges that the other spouse has committed abuse, the petition shall state whether a suit for divorce is pending.

D. If the petition requests the issuance of an ex parte temporary restraining order, the petition shall contain an affidavit signed by each petitioner that the facts and circumstances contained in

the petition are true and correct to the best knowledge, information, and belief of petitioner. Any false statement under oath contained in the affidavit shall constitute perjury and shall be punishable by a fine of not more than one thousand dollars, or by imprisonment, with or without hard labor, for not more than five years, or both.

E. If a suit for divorce is pending, any application for a protective order shall be filed in that proceeding and shall be heard within the delays provided by this Part. Any decree issued in a divorce proceeding filed subsequent to a petition filed or an order issued pursuant to this Part may, in the discretion of the court hearing the divorce proceeding, supersede in whole or in part the orders issued pursuant to this Part. Such subsequent decree shall be forwarded by the rendering court to the court having jurisdiction of the petition for a protective order and shall be made a part of the record thereof. The findings and rulings made in connection with such protective orders shall not be res judicata in any subsequent proceeding.

F. A petitioner shall not be required to prepay or be cast with court costs or costs of service or subpoena for the filing of the petition or the issuance of a temporary restraining order or protective order pursuant to this Part, and the clerk of court shall immediately file and process the petition and temporary restraining order issued pursuant to this Part, regardless of the ability of the petitioner to pay court costs.

G. If the court orders the issuance of a temporary restraining order, the defendent may be cast for all costs.

§2135. Temporary restraining order

A. Upon good cause shown in an ex parte proceeding, the court may enter a temporary restraining order, without bond, as it deems necessary to protect from abuse the petitioner, any minor children, or any person alleged to be an incompetent. Any person who shows immediate and present danger of abuse shall constitute good cause for purposes of this Subsection. The order may include but is not limited to the following:

(1) Directing the defendant to refrain from abusing, harassing, or interfering with the person or employment or going near the residence or place of employment of the petitioner, the minor children, or any person alleged to be incompetent, on whose behalf a petition was filed under this Part.

(2) Awarding to a party use and possession of specified jointly owned or leased property, such as an automobile.

(3) Granting possession to the petitioner of the residence or household to the exclusion of the defendant, by evicting the defendant or restoring possession to the petitioner where:

(a) The residence is jointly owned in equal proportion or leased by the defendant and the petitioner or the person on whose behalf the petition is brought;

(b) The residence is solely owned by the petitioner or the person on whose behalf the petition is brought; or

(c) The residence is solely leased by defendant and defendant has a duty to support the petitioner or the person on whose behalf the petition is brought.

(4) Prohibiting either party from the transferring, encumbering, or otherwise disposing of property mutually owned or leased by the parties, except when in the ordinary course of business, or for the necessary support of the party or the minor children.

(5) Awarding temporary custody of minor children or persons alleged to be incompetent.

B. If a temporary restraining order is granted without notice, the matter shall be set within fifteen days for a rule to show cause why the protective order should not be issued, at which time the petitioner must prove the allegations of abuse by a preponderance of the evidence. The defendant shall be given notice of the temporary restraining order and the hearing on the rule to show cause by service of process as required by law within twenty-four hours of the issuance of the order.

C. During the existence of the temporary restraining order, a party shall have the right to return to the family residence once to recover his or her personal clothing and necessities, provided that

the party is accompanied by a law enforcement officer to insure the protection and safety of the parties.
D. If no temporary restraining order has been granted, the court shall issue a rule to show cause why the protective order should not be issued, and set the rule for hearing on the earliest day that the business of the court will permit, but in any case within ten days from the date of service of the petition, at which time the petitioner must prove the allegations of abuse by a preponderance of the evidence. The defendant shall be given notice by service of process as required by law.
E. If the hearing pursuant to R.S. 46:2135(B) or (D) is continued, the court shall make or extend such temporary restraining orders as it deems necessary. Any continuance of a hearing ordered pursuant to R.S. 46:2135(B) or (D) shall not exceed ten days.
F. The court may, in its discretion, grant an emergency temporary restraining order outside regular court hours.
G. Immediately upon entering a temporary restraining order, the judge shall cause to have prepared a Uniform Abuse Prevention Order, as provided in R.S. 46:2136.2(C), shall sign such order, and shall forward it to the clerk of court for filing, all without delay.
H. The clerk of the issuing court shall transmit the Uniform Abuse Prevention Order to the Louisiana Protective Order Registry, R.S. 46:2136.2(A), by facsimile transmission, mail, or direct electronic input, where available, as expeditiously as possible, but no later than the end of the next business day after the order is filed with the clerk of court.
I. The initial rule to show cause hearing required pursuant to Subsection B or D may be conducted by a hearing officer who is qualified and selected in the same manner provided in R.S. 46:236.5(C). The hearing officer shall be subject to the applicable limitations and shall follow the applicable procedures provided in R.S. 46:236.5(C). The hearing officer shall make recommendations to the court as to the action that should be taken in the matter.

§2136. Protective orders; content; modification; service

A. The court may grant any protective order or approve any consent agreement to bring about a cessation of abuse of a party, any minor children, or any person alleged to be incompetent, which relief may include but is not limited to:

(1) Granting the relief enumerated in R.S. 46:2135.

(2) Where there is a duty to support a party, any minor children, or any person alleged to be incompetent living in the residence or household, ordering payment of temporary support or provision of suitable housing for them, or granting possession to the petitioner of the residence or household to the exclusion of the defendant, by evicting the defendant or restoring possession to the petitioner where the residence is solely owned by the defendant and the petitioner has been awarded the temporary custody of the minor children born of the parties.

(3) Awarding temporary custody of or establishing temporary visitation rights and conditions with regard to any minor children or person alleged to be incompetent.

(4) Ordering counseling or professional medical treatment for the defendant or the abused person, or both.

B. A protective order may be rendered pursuant to this Part if the court has jurisdiction over the parties and subject matter and either of the following occurs:

(1) The parties enter into a consent agreement.

(2) Reasonable notice and opportunity to be heard is given to the person against whom the order is sought sufficient to protect that person's right to due process.

C. Any protective order issued within this state or outside this state that is consistent with Subsection B of this Section shall be accorded full faith and credit by the courts of this state and enforced as if it were the order of the enforcing court.
D. On the motion of any party, the court, after notice to the other parties and a hearing, may modify a prior order to exclude any item included in the prior order, or to include any item that could have been included in the prior order.

E. A protective order made under this Part shall be served on the person to whom the order applies in open court at the close of the hearing, or in the same manner as a writ of injunction. The clerk of the issuing court shall send a copy of the Uniform Abuse Prevention Order, R.S. 46:2136.2(C), or any modification thereof to the chief law enforcement official of the parish where the person or persons protected by the order reside. A copy of the Uniform Abuse Prevention Order shall be retained on file in the office of the chief law enforcement officer as provided herein until otherwise directed by the court.

F. Any final protective order or approved consent agreement shall be for a fixed period of time, not to exceed eighteen months, and may be extended by the court, after a contradictory hearing, in its discretion. Such protective order or extension thereof shall be subject to a devolutive appeal only.

G. Immediately upon granting a protective order or approving any consent agreement, the judge shall cause to have prepared a Uniform Abuse Prevention Order, as provided in R.S. 46:2136.2(C), shall sign such order, and shall forward it to the clerk of court for filing, all without delay.

H. The clerk of the issuing court shall transmit the Uniform Abuse Prevention Order to the Louisiana Protective Order Registry, R.S. 46:2136.2(A), by facsimile transmission, mail, or direct electronic input, where available, as expeditiously as possible, but no later than the end of the next business day after the order is filed with the clerk of court.

POST-SEPARATION FAMILY VIOLENCE RELIEF ACT (LA R.S. 9:361-369)

§361. Legislative findings

The legislature hereby reiterates its previous findings and statements of purpose set forth in R.S. 46:2121 and 2131 relative to family violence and domestic violence. The legislature further finds that the problems of family violence do not necessarily cease when the victimized family is legally separated or divorced. In fact, the violence often escalates, and child custody and visitation become the new forum for the continuation of the abuse. Because current laws relative to child custody and visitation are based on an assumption that even divorcing parents are in relatively equal positions of power, and that such parents act in the children's best interest, these laws often work against the protection of the children and the abused spouse in families with a history of family violence. Consequently, laws designed to act in the children's best interest may actually effect a contrary result due to the unique dynamics of family violence.

§362. Definitions

As used in this Part:

(1) "Abused parent" means the parent who has not committed family violence.

(2) "Court" means any district court, juvenile court, or family court having jurisdiction over the parents and/or child at issue.

(3) "Family violence" includes but is not limited to physical or sexual abuse and any offense against the person as defined in the Criminal Code of Louisiana, except negligent injuring and defamation, committed by one parent against the other parent or against any of the children. Family violence does not include reasonable acts of self-defense utilized by one parent to protect himself or herself or a child in the family from the family violence of the other parent.

(4) "Injunction" means a temporary restraining order or a preliminary or a permanent court ordered injunction, as defined in the Code of Civil Procedure, which prohibits the violent parent from in any way contacting the abused parent or the children except for specific purposes set forth in the injunction, which shall be limited to communications expressly dealing with the education, health, and welfare of the children, or for any other purpose expressly agreed to by the abused parent. All such injunctions shall prohibit the violent parent, without the express consent of the abused parent, from intentionally going within fifty yards of the home, school, place of

employment, or person of the abused parent and the children, or within fifty feet of any of their automobiles, except as may otherwise be necessary for court ordered visitation or except as otherwise necessitated by circumstances considering the proximity of the parties' residences or places of employment. Such injunctions shall be issued in the form of a Uniform Abuse Prevention Order and transmitted to the Louisiana Protective Order Registry, as required by this Part.

(5) "Sexual abuse" includes but is not limited to acts which are prohibited by R.S. 14:41, 42, 42.1, 43, 43.1, 43.2, 43.4, 78, 80, 81, 81.1, 81.2, 89 and 89.1.

(6) "Supervised visitation" means face-to-face contact between a parent and a child which occurs in the immediate presence of a supervising person approved by the court under conditions which prevent any physical abuse, threats, intimidation, abduction, or humiliation of either the abused parent or the child. The supervising person shall not be any relative, friend, therapist, or associate of the parent perpetrating family violence. With the consent of the abused parent, the supervising person may be a family member or friend of the abused parent. At the request of the abused parent, the court may order that the supervising person shall be a police officer or other competent professional. The parent who perpetrated family violence shall pay any and all costs incurred in the supervision of visitation. In no case shall supervised visitation be overnight or in the home of the violent parent.

(7) "Treatment program" means a course of evaluation and psychotherapy designed specifically for perpetrators of family violence, and conducted by licensed mental health professionals.

§363. Ordered mediation prohibited

Notwithstanding any other provision of law to the contrary, in any separation, divorce, child custody, visitation, child support, alimony, or community property proceeding, no spouse or parent who satisfies the court that he or she, or any of the children, has been the victim of family violence perpetrated by the other spouse or parent shall be court ordered to participate in mediation.

§364. Child custody; visitation

A. There is created a presumption that no parent who has a history of perpetrating family violence shall be awarded sole or joint custody of children. The court may find a history of perpetrating family violence if the court finds that one incident of family violence has resulted in serious bodily injury or the court finds more than one incident of family violence. The presumption shall be overcome only by a preponderance of the evidence that the perpetrating parent has successfully completed a treatment program as defined in R.S. 9:362, is not abusing alcohol and the illegal use of drugs scheduled in R.S. 40:964, and that the best interest of the child or children requires that parent's participation as a custodial parent because of the other parent's absence, mental illness, or substance abuse, or such other circumstances which affect the best interest of the child or children. The fact that the abused parent suffers from the effects of the abuse shall not be grounds for denying that parent custody.

B. If the court finds that both parents have a history of perpetrating family violence, custody shall be awarded solely to the parent who is less likely to continue to perpetrate family violence. In such a case, the court shall mandate completion of a treatment program by the custodial parent. If necessary to protect the welfare of the child, custody may be awarded to a suitable third person, provided that the person would not allow access to a violent parent except as ordered by the court.

C. If the court finds that a parent has a history of perpetrating family violence, the court shall allow only supervised child visitation with that parent, conditioned upon that parent's participation in and completion of a treatment program. Unsupervised visitation shall be allowed only if it is shown by a preponderance of the evidence that the violent parent has completed a treatment program, is not abusing alcohol and psychoactive drugs, and poses no danger to the

child, and that such visitation is in the child's best interest.
D. If any court finds, by clear and convincing evidence, that a parent has sexually abused his or her child or children, the court shall prohibit all visitation and contact between the abusive parent and the children, until such time, following a contradictory hearing, that the court finds, by a preponderance of the evidence, that the abusive parent has successfully completed a treatment program designed for such sexual abusers, and that supervised visitation is in the children's best interest.

§365. Qualification of mental health professional

Any mental health professional appointed by the court to conduct a custody evaluation in a case where family violence is an issue shall have current and demonstrable training and experience working with perpetrators and victims of family violence.

§366. Injunctions

A. All separation, divorce, child custody, and child visitation orders and judgments in family violence cases shall contain an injunction as defined in R.S. 9:362. Upon issuance of such injunction, the judge shall cause to have prepared a Uniform Abuse Prevention Order as provided in R.S. 46:2136.2(C), shall sign such order, and shall forward it to the clerk of court for filing, all without delay. The clerk of the issuing court shall transmit the Uniform Abuse Prevention Order to the Louisiana Protective Order Registry, R.S. 46:2136.2(A) by facsimile transmission, mail, or direct electronic input, where available, as expeditiously as possible, but no later than the end of the next business day after the order is filed with the clerk of court.
B. Any violation of the injunction, if proved by the appropriate standard, shall be punished as contempt of court, and shall result in a termination of all court ordered child visitation.

§367. Costs

In any family violence case, all court costs, attorney fees, evaluation fees, and expert witness fees incurred in furtherance of this Part shall be paid by the perpetrator of the family violence, including all costs of medical and psychological care for the abused spouse, or for any of the children, necessitated by the family violence.

§368. Other remedies not affected

This Part shall in no way affect the remedies set forth in R.S. 46:2131 through 2142, the Criminal Code, the Children's Code, or elsewhere; however, the court, in any case brought under R.S. 46:2131 et seq., may impose the remedies provided herein.

§369. Limitations

No public funds allocated to programs which provide services to victims of domestic violence shall be used to provide services to the perpetrator of domestic violence.

CHILD CUSTODY EVALUATION AND MEDIATION (LA R.S. 9:331-334)

§331. Custody or visitation proceeding; evaluation by mental health professional

A. The court may order an evaluation of a party or the child in a custody or visitation proceeding for good cause shown. The evaluation shall be made by a mental health professional selected by the parties or by the court. The court may render judgment for costs of the evaluation, or any part thereof, against any party or parties, as it may consider equitable.
B. The court may order a party or the child to submit to and cooperate in the evaluation, testing, or interview by the mental health professional. The mental health professional shall provide the court and the parties with a written report. The mental health professional shall serve as the witness of the court, subject to cross-examination by a party.

§331.1. Drug testing in custody or visitation proceeding

The court for good cause shown may, after a contradictory hearing, order a party in a custody or

visitation proceeding to submit to specified drug tests and the collection of hair, urine, tissue, and blood samples as required by appropriate testing procedures within a time period set by the court. The refusal to submit to the tests may be taken into consideration by the court. The provisions of R.S. 9:397.2 and 397.3(A), (B), and (C) shall govern the admissibility of the test results. The fact that the court orders a drug test and the results of such test shall be confidential and shall not be admissible in any other proceedings. The court may render judgment for costs of the drug tests against any party or parties, as it may consider equitable.

§332. Custody or visitation proceeding; mediation

A. The court may order the parties to mediate their differences in a custody or visitation proceeding. The mediator may be agreed upon by the parties or, upon their failure to agree, selected by the court. The court may stay any further determination of custody or visitation for a period not to exceed thirty days from the date of issuance of such an order. The court may order the costs of mediation to be paid in advance by either party or both parties jointly. The court may apportion the costs of the mediation between the parties if agreement is reached on custody or visitation. If mediation concludes without agreement between the parties, the costs of mediation shall be taxed as costs of court. The costs of mediation shall be subject to approval by the court.

B. If an agreement is reached by the parties, the mediator shall prepare a written, signed, and dated agreement. A consent judgment incorporating the agreement shall be submitted to the court for its approval.

C. Evidence of conduct or statements made in mediation is not admissible in any proceeding. This rule does not require the exclusion of any evidence otherwise discoverable merely because it is presented in the course of mediation. Facts disclosed, other than conduct or statements made in mediation, are not inadmissible by virtue of first having been disclosed in mediation.

§333. Duties of mediator

A. The mediator shall assist the parties in formulating a written, signed, and dated agreement to mediate which shall identify the controversies between the parties, affirm the parties' intent to resolve these controversies through mediation, and specify the circumstances under which the mediation may terminate.

B. The mediator shall advise each of the parties participating in the mediation to obtain review by an attorney of any agreement reached as a result of the mediation prior to signing such an agreement.

C. The mediator shall be impartial and has no power to impose a solution on the parties.

§334. Mediator qualifications

A. In order to serve as a qualified mediator under the provisions of this Subpart, a person shall meet all of the following criteria:

(1) (a) Possess a four-year college degree and complete a minimum of forty hours of general mediation training and twenty hours of specialized training in the mediation of child custody disputes; or

(b) Possess a four-year college degree and hold a license as an attorney, psychiatrist, psychologist, social worker, marriage and family counselor, professional counselor, or clergyman and complete a minimum of twelve hours of general mediation training and twenty hours of specialized training in the mediation of child custody disputes.

(2) Complete a minimum of eight hours of co-mediation training under the direct supervision of a mediator who is qualified in accordance with the provisions of Paragraph (B)(1) of this Section and who has served a minimum of fifty hours as a dispute mediator.

B. (1) Mediators who prior to August 15, 1997, satisfied the provisions of Paragraph (A)(1) of this Section and served a minimum of fifty hours as a child custody dispute mediator are not required to complete eight hours of co-mediation training in order to serve as a qualified mediator and are qualified to supervise co-mediation training as provided in Paragraph (A)(2) of this

Section.

(2) Any person who has served as a Louisiana city, parish, family, juvenile, district, appellate, or supreme court judge for at least ten years, who has completed at least twenty hours of specialized mediation training in child custody disputes, and who is no longer serving as a judge shall be deemed qualified to serve as a mediator under the provisions of this Section.

C. The training specified in Paragraph (A)(1) of this Section shall include instruction as to the following:

(1) The Louisiana judicial system and judicial procedure in domestic cases.

(2) Ethical standards, including confidentiality and conflict of interests.

(3) Child development, including the impact of divorce on development.

(4) Family systems theory.

(5) Communication skills.

(6) The mediation process and required document execution.

D. A dispute mediator initially qualified under the provisions of this Subpart shall, in order to remain qualified, complete a minimum of twenty hours of clinical education in dispute mediation every two calendar years.

E. Upon request of the court, a mediator shall furnish satisfactory evidence of the following:

(1) Educational degrees, licenses, and certifications.

(2) Compliance with qualifications established by this Subpart.

(3) Completion of clinical education.

F. The Louisiana State Bar Association, Alternative Dispute Resolution Section, may promulgate rules and regulations governing dispute mediator registration and qualifications and may establish a fee not to exceed one hundred dollars for registration sufficient to cover associated costs. A person denied listing in the approved register may request a review of that decision by a panel of three members of the Louisiana State Bar Association Alternative Dispute Resolution Section.

G. For the purposes of this Section, an "hour" means a period of at least sixty minutes of actual instruction.

CHILD CUSTODY (CHILDREN'S CODE ART. 131- 137)

Art. 131. Court to determine custody

In a proceeding for divorce or thereafter, the court shall award custody of a child in accordance with the best interest of the child.

Art. 132. Award of custody to parents

If the parents agree who is to have custody, the court shall award custody in accordance with their agreement unless the best interest of the child requires a different award.

In the absence of agreement, or if the agreement is not in the best interest of the child, the court shall award custody to the parents jointly; however, if custody in one parent is shown by clear and convincing evidence to serve the best interest of the child, the court shall award custody to that parent.

Art. 133. Award of custody to person other than a parent; order of preference

If an award of joint custody or of sole custody to either parent would result in substantial harm to the child, the court shall award custody to another person with whom the child has been living in a wholesome and stable environment, or otherwise to any other person able to provide an adequate and stable environment.

Art. 134. Factors in determining child's best interest

The court shall consider all relevant factors in determining the best interest of the child. Such factors may include:

(1) The love, affection, and other emotional ties between each party and the child.

(2) The capacity and disposition of each party to give the child love, affection, and spiritual guidance and to continue the education and rearing of the child.

(3) The capacity and disposition of each party to provide the child with food, clothing, medical care, and other material needs.

(4) The length of time the child has lived in a stable, adequate environment, and the desirability of maintaining continuity of that environment.

(5) The permanence, as a family unit, of the existing or proposed custodial home or homes.

(6) The moral fitness of each party, insofar as it affects the welfare of the child.

(7) The mental and physical health of each party.

(8) The home, school, and community history of the child.

(9) The reasonable preference of the child, if the court deems the child to be of sufficient age to express a preference.

(10) The willingness and ability of each party to facilitate and encourage a close and continuing relationship between the child and the other party.

(11) The distance between the respective residences of the parties.

(12) The responsibility for the care and rearing of the child previously exercised by each party.

Art. 135. Closed custody hearing

A custody hearing may be closed to the public.

Art. 136. Award of visitation rights

A. A parent not granted custody or joint custody of a child is entitled to reasonable visitation rights unless the court finds, after a hearing, that visitation would not be in the best interest of the child.

B. Under extraordinary circumstances, a relative, by blood or affinity, or a former stepparent or stepgrandparent, not granted custody of the child may be granted reasonable visitation rights if the court finds that it is in the best interest of the child. In determining the best interest of the child, the court shall consider:

(1) The length and quality of the prior relationship between the child and the relative.

(2) Whether the child is in need of guidance, enlightenment, or tutelage which can best be provided by the relative.

(3) The preference of the child if he is determined to be of sufficient maturity to express a preference.

(4) The willingness of the relative to encourage a close relationship between the child and his parent or parents.

(5) The mental and physical health of the child and the relative.

C. In the event of a conflict between this Article and R.S. 9:344 or 345, the provisions of the statute shall supersede those of this Article.

Art. 137. Denial of visitation; felony rape

In a proceeding in which visitation of a child is being sought by a natural parent, if the child was conceived through the commission of a felony rape, the natural parent who committed the felony rape shall be denied visitation rights and contact with the child.

DUTY TO WARN: LIMITATION OF LIABILITY, PSYCHOLOGISTS AND PSYCHIATRIST (LA R.S. 9:2088.2)

§2800.2. Psychologist, psychiatrist, marriage and family therapist, licensed professional counselor, and social worker; limitation of liability

A. When a patient has communicated a threat of physical violence, which is deemed to be significant in the clinical judgment of the treating psychologist or psychiatrist, or marriage and family therapist, or licensed professional counselor, or social worker, against a clearly identified victim or victims, coupled with the apparent intent and ability to carry out such threat, the psychologist, licensed under R.S. 37:2351 through 2369, or the psychiatrist, licensed under R.S. 37:1261 through 1291, or the social worker, credentialed under R.S. 37:2701 through 2723, treating such patient and exercising reasonable professional judgment, shall not be liable for a breach of confidentiality for warning of such threat or taking precautions to provide protection from the patient's violent behavior.

B. A psychologist's, psychiatrist's, or marriage and family therapist, or licensed professional counselor, or social worker's duty to warn or to take reasonable precautions to provide protection from violent behavior arises only under the circumstance specified in Subsection A of this Section. This duty shall be discharged by the psychologist, psychiatrist, or marriage and family therapist, or licensed professional counselor, or social worker if the treating professional makes a reasonable effort to communicate the threat to the potential victim or victims and to notify law enforcement authorities in the vicinity of the patient's or potential victim's residence.

C. No liability or cause of action shall arise against any psychologist, psychiatrist, or marriage and family therapist, or licensed professional counselor, or social worker based on an invasion of privacy or breach of confidentiality for any confidence disclosed to a third party in an effort to discharge the duty arising under Subsection A of this Section.

HEALTH CARE INFORMATION (LA R.S. 40:1299.96)

§1299.96. Health care information; records

A. (1) Each health care provider shall furnish each patient, upon request of the patient, a copy of any information related in any way to the patient which the health care provider has transmitted to any company, or any public or private agency, or any person.

(2) (a) Medical records of a patient maintained in a health care provider's office are the property and business records of the health care provider.

(b) Except as provided in R.S. 44:17, a patient or his legal representative, or in the case of a deceased patient, the executor of his will, the administrator of his estate, the surviving spouse, the parents, or the children of the deceased patient, or, after suit has been instituted, the defense counsel or the defense insurance company seeking any medical, hospital, or other record relating to the patient's medical treatment, history, or condition, either personally or through an attorney, shall have a right to obtain a copy of such record upon furnishing a signed authorization and upon payment of a reasonable copying charge, not to exceed one dollar per page for the first twenty-five pages, fifty cents per page for twenty-six to five hundred pages, and twenty-five cents per page thereafter, a handling charge not to exceed fifteen dollars for hospitals, nursing homes, and other health care providers, and actual postage. The individuals named herein shall also have the right to obtain copies of patient X-rays, microfilm, and electronic and imaging media, upon payment of reasonable reproduction costs and a handling charge of twenty dollars for hospitals and ten dollars for other health care providers. In the event a hospital record is not complete, the copy of the records furnished hereunder may indicate, through a stamp, coversheet, or otherwise, that the record is incomplete.

(c) If a copy of the record is not provided within a reasonable period of time, not to exceed fifteen days following the receipt of the request and written authorization, and production

of the record is obtained through a court order or subpoena duces tecum, the health care provider shall be liable for reasonable attorney fees and expenses incurred in obtaining the court order or subpoena duces tecum. Such sanctions shall not be imposed unless the person requesting the copy of the record has by certified mail notified the health care provider of his failure to comply with the original request, by referring to the sanctions available, and the health care provider fails to furnish the requested copies within five days from receipt of such notice. Except for their own gross negligence, such health care providers shall not otherwise be held liable in damages by reason of their compliance with such request or their inability to fulfill the request.

(d) A health care provider may deny access to a record if the health care provider reasonably concludes that knowledge of the information contained in the record would be injurious to the health or welfare of the patient or could reasonably be expected to endanger the life or safety of any other person.

(e) Nothing in this Section shall be construed to limit or prohibit access to the information contained in the records of a patient maintained by a health care provider in any legally permissible manner other than those delineated pursuant to R.S. 22:213.2 and in this Section, subject to the provisions of R.S. 13:3734.

(3) (a) Medical and dental records shall be retained by a physician or dentist in the original, microfilmed, or similarly reproduced form for a minimum period of six years from the date a patient is last treated by a physician or dentist.

(b) Graphic matter, images, X-ray films, and like matter that were necessary to produce a diagnostic or therapeutic report shall be retained, preserved and properly stored by a physician or dentist in the original, microfilmed or similarly reproduced form for a minimum period of three years from the date a patient is last treated by the physician or dentist. Such graphic matter, images, X-ray film, and like matter shall be retained for a longer period when requested in writing by the patient.

B. As used in this Section:

(1) "Health care provider" means a "health care provider" as defined in R.S. 40:1299.41 or a "state health care provider" as defined in R.S. 40:1299.39.

(2) "Patient" means a natural person who receives or should have received health care from a licensed health care provider, under a contract, express or implied.

C. The provisions of this Section shall not be applicable to a health care provider who has evaluated or examined a patient at the request of any agency of the state or federal government in charge of the administration of any of the assistance or entitlement programs under the Social Security Act. The records of such evaluation or examination shall be retained for ninety days after mailing or upon proof of receipt of the records, whichever period is shorter. Nothing herein shall be construed as limiting or prohibiting the access to health care information and records of a patient that are retained by the Social Security Administration in any legally permissible manner under state law that is not contrary to federal law or regulation.

HOSPITALS AND MEDICAL EXPENSE POLICIES; PSYCHOLOGISTS (LA R.S. 22.665)

§665. Hospital and medical expense policies; services of licensed psychologists

A. Whenever any hospital or medical expense policy or hospital or medical service contract issued, or issued for delivery in this state provides for the reimbursement of health related services that can lawfully be performed by a duly licensed psychologist as regulated under the provisions of R.S. 37:2351-2368, the insured or other person entitled to benefits under such contract shall be entitled to reimbursements for such services performed by a duly licensed psychologist notwithstanding any provisions of the contract to the contrary.

B. The provisions of Subsection A of this section shall apply only to those insurance policy

contracts issued or issued for delivery after the effective date of this section.
C. The provisions of this section shall apply only to those services which a duly licensed psychologist is authorized to perform under the provisions of Chapter 28 of Title 37 of the Louisiana Revised Statutes of 1950.
D. Nothing in this section shall be construed to mandate or require an insurance company to include mental health services in a contract, or to expand the scope or nature of benefits provided, when such benefits are included in a contract.

INSANITY PROCEEDINGS (CODE OF CRIMINAL PROCEDURE ARTICLES 641- _

Art. 641. Mental incapacity to proceed defined

Mental incapacity to proceed exists when, as a result of mental disease or defect, a defendant presently lacks the capacity to understand the proceedings against him or to assist in his defense

Art. 642. How mental incapacity is raised; effect

The defendant's mental incapacity to proceed may be raised at any time by the defense, the district attorney, or the court. When the question of the defendant's mental incapacity to proceed is raised, there shall be no further steps in the criminal prosecution, except the institution of prosecution, until the defendant is found to have the mental capacity to proceed

Art. 643. Order for mental examination

The court shall order a mental examination of the defendant when it has reasonable ground to doubt the defendant's mental capacity to proceed. Prior to the ordering of any such mental examination, the court shall appoint counsel to represent the defendant if he has not already retained counsel.

Art. 644. Appointment of sanity commission; examination of defendant

A. Within seven days after a mental examination is ordered, the court shall appoint a sanity commission to examine and report upon the mental condition of the defendant. The sanity commission shall consist of at least two and not more than three members who are licensed to practice medicine in Louisiana, who have been in the actual practice of medicine for not less than three consecutive years immediately preceding the appointment, and who are qualified by training or experience in forensic evaluations. The court may appoint, in lieu of one physician, a clinical psychologist who is licensed to practice psychology in Louisiana, who has been engaged in the practice of clinical or counseling psychology for not less than three consecutive years immediately preceding the appointment, and who is qualified by training or experience in forensic evaluations. Every sanity commission shall have at least one psychiatrist as a member of the commission, unless one is not reasonably available, in which case, the commission shall have at least one clinical psychologist as a member of the commission. No more than one member of the sanity commission shall be the coroner or any of his deputies.
B. The members of the sanity commission appointed to make the examination shall have free access to the defendant at all reasonable times. The court shall subpoena witnesses to attend the examination at the request of the defendant, the commission, or any member thereof.
C. For the purpose of the mental examination, the court may order a defendant previously released on bail to appear for mental examinations and hearings in the same manner as other criminal proceedings.
D. (1) The court, in any judicial district which enters into a cooperative endeavor agreement with the local mental health unit, in lieu of appointing a sanity commission as provided in Paragraph A, may appoint the local mental health unit to examine and report on the mental condition of the defendant. If the local mental health unit is ordered to conduct the examination, it shall form a clinical team, consisting of at least two but not more than three members, to

conduct the examination. The clinical team shall be composed of one or more licensed physicians with at least three years experience in the study of psychiatry in an approved United States General Psychiatry Residency Program; if only one such licensed physician is a member of the clinical team, the remaining members of the clinical team may be composed of clinical psychologists, or licensed clinical social workers, who are qualified by training or experience in forensic evaluations.

(2) (a) With respect to all other provisions of the Code of Criminal Procedure in which the term "sanity commission" is designated, it shall also mean and include, for the exclusive purpose of this Article, a clinical team designated by the local health unit to conduct the examination of the defendant in accordance with this Paragraph.

(b) "Local mental health unit" as used in this Paragraph shall mean a legislatively created Human Services Authority.

Art. 644.1. Sanity proceedings for juvenile defendants transferred to criminal court

A. Any juvenile transferred for criminal trial in accordance with Articles 305 and 857 of the Louisiana Children's Code may seek a special sanity hearing. That hearing shall be conducted in accordance with Articles 833 through 836 of the Louisiana Children's Code.

B. The provisions of Code of Criminal Procedure Articles 648 through 649.1 shall govern the determination of capacity or incapacity to proceed to trial.

Art. 645. Report of sanity commission

A. (1) The report of the sanity commission members shall address their specific findings with regard to all of the following:

(a) The defendant's capacity to understand the proceedings against him.

(b) His ability to assist in his defense.

(c) His need for inpatient hospitalization in the event he is found incompetent.

(2) The fact that the defendant claims to be unable to remember the time period surrounding the alleged offense shall not, by itself, bar a finding of competency if the defendant otherwise understands the charges against him and can assist in his defense.

B. The report of the sanity commission shall be filed in triplicate with the presiding judge within thirty days after the date of the order of appointment. The time for filing may be extended by the court. The clerk shall make copies of the report available to the district attorney and to the defendant or his counsel without cost.

Art. 646. Examination by physician retained by defense or district attorney

The court order for a mental examination shall not deprive the defendant or the district attorney of the right to an independent mental examination by a physician or mental health expert of his choice, and such physician or mental health expert shall be permitted to have reasonable access to the defendant for the purposes of the examination.

Art. 647. Determination of mental capacity to proceed

The issue of the defendant's mental capacity to proceed shall be determined by the court in a contradictory hearing. The report of the sanity commission is admissible in evidence at the hearing, and members of the sanity commission may be called as witnesses by the court, the defense, or the district attorney. Regardless of who calls them as witnesses, the members of the commission are subject to cross-examination by the defense, by the district attorney, and by the court. Other evidence pertaining to the defendant's mental capacity to proceed may be introduced at the hearing by the defense and by the district attorney.

Art. 648. Procedure after determination of mental capacity or incapacity

A. The criminal prosecution shall be resumed unless the court determines by clear and convincing evidence that the defendant does not have the mental capacity to proceed. If the court determines that the defendant lacks mental capacity to proceed, the proceedings shall be

suspended and one of the following dispositions made:

(1) If the court determines that the defendant's mental capacity is likely to be restored within ninety days by outpatient care and treatment at an institution as defined by R.S. 28:2(28) while remaining in the custody of the criminal authorities, and if the person is not charged with a felony or a misdemeanor classified as an offense against the person and is considered by the court to be unlikely to commit crimes of violence, then the court may order outpatient care and treatment at any institution as defined by R.S. 28:2(28).

(2) (a) If the person is charged with a felony or a misdemeanor classified as an offense against the person and considered by the court to be likely to commit crimes of violence, and if the court determines that his mental capacity is likely to be restored within ninety days as a result of treatment, the court may order immediate jail-based treatment by the Department of Health and Hospitals not to exceed ninety days; otherwise, if his capacity cannot be restored within ninety days and inpatient treatment is recommended, the court shall commit the defendant to the Feliciana Forensic Facility.

(b) If a defendant committed to the Feliciana Forensic Facility is held in a parish jail for one hundred eighty days after the court's determination that he lacks the mental capacity to proceed, the court shall order a status conference to be held with the defense and the district attorney present, and for good cause shown and on motion of the defendant or the district attorney or on the court's own motion, the court shall order a contradictory hearing to determine whether there has been a change in the defendant's condition or other circumstances sufficient to warrant a modification of the previous order.

B. (1) In no instance shall such custody, care, and treatment exceed the time of the maximum sentence the defendant could receive if convicted of the crime with which he is charged. At any time after commitment and on the recommendation of the superintendent of the institution that the defendant will not attain the capacity to proceed with his trial in the foreseeable future, the court shall, within sixty days and after at least ten days notice to the district attorney and defendant's counsel, conduct a contradictory hearing to determine whether the mentally defective defendant is, and will in the foreseeable future be, incapable of standing trial and whether he is a danger to himself or others.

(2) If, after the hearing, the court determines the defendant is, and will in the foreseeable future be, incapable of standing trial and may be released without danger to himself or others, the court shall release the defendant on probation. The probationer shall be under the supervision of the Department of Public Safety and Corrections, division of probation and parole, and subject to such conditions as may be imposed by the court.

(3) If, after the hearing, the court determines the mentally defective defendant incapable of standing trial, is a danger to himself or others, and is unlikely in the foreseeable future to be capable of standing trial, the court shall order commitment to a designated and medically suitable treatment facility. Such a judgment shall constitute an order of civil commitment. However, the director of the institution designated for the patient's treatment shall, in writing, notify the court and the district attorney when the patient is to be discharged or conditionally discharged, as long as the charges are pending. If not dismissed without prejudice at an earlier trial, charges against an unrestorable incompetent defendant shall be dismissed on the date upon which his sentence would have expired had he been convicted and received the maximum sentence for the crime charged, or on the date five years from the date of his arrest for such charges, whichever is sooner, except for the following charges:

(a) Charges of a crime of violence as defined in R.S. 14:2(B).
(b) R.S. 14:46 (false imprisonment).
(c) R.S. 14:46.1 (false imprisonment; offender armed with dangerous weapon).
(d) R.S. 14:52 (simple arson).
(e) R.S. 14:62 (simple burglary).
(f) R.S. 14:62.3 (unauthorized entry of an inhabited dwelling).

(g) R.S. 14:78 (incest).
(h) R.S. 14:78.1 (aggravated incest).
(i) R.S. 14:801 (carnal knowledge of a juvenile).
(j) R.S. 14:81 (indecent behavior with juveniles).
(k) R.S. 14:81.1 (pornography involving juveniles).
(l) R.S. 14:81.2 (molestation of a juvenile).
(m) R.S. 14:92 (contributing to the delinquency of juveniles).
(n) R.S. 14:92.1 (encouraging or contributing to child delinquency, dependency, or neglect).
(o) R.S. 14:93 (cruelty to juveniles).
(p) R.S. 14:93.2.3 (second degree cruelty to juveniles).
(q) R.S. 14:93.3 (cruelty to the infirmed).
(r) R.S. 14:93.4 (exploitation of the infirmed).
(s) R.S. 14:93.5 (sexual battery of the infirm).
(t) R.S. 14:102 (cruelty to animals).
(u) R.S. 14:106 (obscenity).
(v) R.S. 14:283 (video voyeurism).
(w) R.S. 14:284 (Peeping Tom).
(x) Charges against a defendant who has been convicted of a felony offense within ten years prior to the date on which he was charged for the current offense.

C. The superintendent of the forensic unit of the Feliciana Forensic Facility shall admit only those persons specified in R.S. 28:25.1 and those persons found not guilty by reason of insanity on conditional release who have a physician's emergency certificate or who seek voluntary admission pursuant to Article 658(B)(4).

Art. 648.1. Information required prior to admission

No superintendent of an institution shall admit a defendant found by the court to lack the mental capacity to proceed pursuant to Article 648 unless he is furnished by the court the following information:

(1) The name and address of the defendant's attorney.

(2) The crime or crimes with which the defendant is charged and the date of such charge or charges.

(3) A copy of the report of the sanity commission.

(4) Any other pertinent information concerning the defendant's health which has come to the attention of the court such as injuries sustained at the time of arrest or injuries sustained following incarceration.

(5) A copy of the defendant's criminal history record.

(6) A copy of the police report concerning the charged offense.

(7) A copy of the judgment and order specifying the nature and purpose of the commitment or recommitment to the state institution.

Art. 649. Procedure when capacity regained

A. At any time after a defendant's commitment, if either the superintendent of the mental institution or the administrator of outreach forensic services reports to the committing court that the defendant presently has the mental capacity to proceed, the defendant, if hospitalized, shall be discharged from the mental institution and released to the custody of the sheriff of the parish from which the defendant was committed, and the court shall hold a contradictory hearing within thirty days on that issue. No defendant shall be released prior to the holding of the contradictory hearing on his release unless the office of the district attorney in charge of the prosecution of the defendant receives seven days notice of the pending release of the defendant.

B. Prior to such a hearing, the court shall appoint counsel to represent the defendant, if the defendant does not have counsel, and may order a mental examination by a sanity commission

appointed in conformity with Article 644. The report of the superintendent of the mental institution or the administrator of outreach services may be stipulated to and submitted by the state and the defense in lieu of a mental examination by a sanity commission. If the committing court does not hold a hearing within thirty days, the sheriff of the parish from which the defendant was committed shall appear at the institution within seven days thereafter and shall receive and hold the defendant in custody pending further orders of the committing court. If the sheriff fails to appear with a court order and accept custody of the defendant, the superintendent of the state mental institution or the director of the mental health unit shall notify the judicial administrator and the attorney general of such fact. Thereafter the Criminal Court Fund of the parish from which the defendant was committed shall pay to the general fund of the state the sum of one hundred dollars a day until the sheriff appears and accepts custody of the defendant for the court.

C. The district attorney or the defense may apply to the court to have the proceedings resumed, on the ground that the defendant presently has the mental capacity to proceed. Upon receipt of such application the court shall hold a contradictory hearing to determine if there is reasonable ground to believe that the defendant presently has the mental capacity to proceed. The court may direct the superintendent of the mental institution where the defendant is committed or the administrator of outreach forensic services, if treatment is initiated in jail, to make a report and recommendation prior to such hearing as to whether the defendant presently has capacity to proceed, or may order an independent mental examination by a sanity commission appointed in conformity with Article 644.

D. Reports as to present mental capacity to proceed shall be filed in conformity with Article 645, and the court's determination of present mental capacity to proceed shall be made in conformity with the appropriate provisions of Articles 646 and 647.

E. If the court determines that the defendant has the mental capacity to proceed, the proceedings shall be promptly resumed.

Art. 649.1. Prescribed medication; administration

When a person is returned to the committing court from an institution pursuant to Article 649 pending a sanity hearing, and the superintendent of the committing institution deems it necessary that the patient receive prescribed medication, it shall be the duty of the chief administrative officer of the parish jail to make such medication available to the person until such time as the coroner or another physician finds that the medication or its prescribed dosage is no longer necessary.

Art. 650. Mental examination after plea of insanity

When a defendant enters a combined plea of "not guilty and not guilty by reason of insanity," the court may appoint a sanity commission as provided in Article 644 to make an examination as to the defendant's mental condition at the time of the offense. The court may also order the commission to make an examination as to the defendant's present mental capacity to proceed. Mental examinations and reports under this article shall be conducted and filed in conformity with Articles 644 through 646.

Art. 651. When defense of insanity at time of offense is available; method of trial

When a defendant is tried upon a plea of "not guilty", evidence of insanity or mental defect at the time of the offense shall not be admissible.

The defenses available under a combined plea of "not guilty and not guilty by reason of insanity" shall be tried together.

Art. 652. Burden of proof

The defendant has the burden of establishing the defense of insanity at the time of the offense by a preponderance of the evidence.

Art. 653. Testimony of members of sanity commission

Upon the trial of the defense of insanity at the time of the offense, the members of the sanity commission may be called as witnesses by the court, the defense, or the district attorney. Regardless of who calls them as witnesses, the members of the commission are subject to cross-examination by the defense, by the district attorney, and by the court. Other evidence pertaining to the defense of insanity at the time of the offense may be introduced at the trial by the defense and by the district attorney.

Art. 655. Application for discharge or release on probation; review panel

A. When the superintendent of a mental institution is of the opinion that a person committed pursuant to Article 654 can be discharged or can be released on probation, without danger to others or to himself, he shall recommend the discharge or release of the person in a report to a review panel comprised of the person's treating physician, the clinical director of the facility to which the person is committed, and a physician or psychologist who served on the sanity commission which recommended commitment of the person. If any member of the panel is unable to serve, a physician or a psychologist engaged in the practice of clinical or counseling psychology with at least three years' experience in the field of mental health shall be appointed by the remaining members. The panel shall review all reports received promptly. After review, the panel shall make a recommendation to the court by which the person was committed as to the person's mental condition and whether he can be discharged, conditionally or unconditionally, or placed on probation, without being a danger to others or himself. If the review panel recommends to the court that the person be discharged, conditionally or unconditionally, or placed on probation, the court shall conduct a contradictory hearing following notice to the district attorney.

B. A person committed pursuant to Article 654 may make application to the review panel for discharge or for release on probation. Such application by a committed person may not be filed until the committed person has been confined for a period of at least six months after the original commitment. If the review panel recommends to the court that the person be discharged, conditionally or unconditionally, or placed on probation, the court shall conduct a hearing following notice to the district attorney. If the recommendation of the review panel or the court is adverse, the applicant shall not be permitted to file another application until one year has elapsed from the date of determination.

C. The superintendent of the mental institution shall, under both Paragraphs A and B of this article, transmit a copy of this report and recommendation to the person committed or his attorney and to the district attorney of the parish from which the person was committed.

Art. 656. Additional mental examinations

A. Upon receipt of the superintendent's report, filed in conformity with Article 655, the review panel may examine the committed person and report, to the court promptly, whether he can be safely discharged, conditionally or unconditionally, or be safely released on probation, without danger to others or to himself.

B. The committed person or the district attorney may also retain a physician to examine the committed person for the same purpose. The physician's report shall be filed with the court.

C. Upon receipt by the superintendent of the state hospital or other treatment facility to which the person has been committed of the recommendation of the hospital-based treatment team that the person is appropriate for probated outpatient status as set forth in this Chapter, the superintendent shall immediately forward such recommendation to the administrator of the conditional release program, together with the proposed aftercare plans. The administrator or a designee shall submit to the review panel a recommended plan, if appropriate, for outpatient supervision and monitoring. The plan shall set forth any additional terms and conditions to be followed during outpatient status, if recommended.

MEDIATOR IN JUVENILE COURT DISPUTE (CHILDREN'S CODE ARTICLES 439-445)

Art. 439. Qualifications of mediator

A. In order to serve as a qualified mediator in any juvenile court dispute, a person must complete the educational and training requirements of Paragraph B and the co-mediation requirements of Paragraph C, unless he met the requirements of Paragraph B prior to August 15, 1999.

B. A mediator must either:

(1) Possess a four-year college degree and complete a minimum of forty hours of general mediation training and twenty hours of specialized training in the mediation of juvenile court disputes.

(2) Possess a four-year college degree and hold a license as an attorney, psychiatrist, psychologist, social worker, marriage and family counselor, or professional counselor or clergyman who, for purposes of this Chapter, is a minister, priest, rabbi, or other similar functionary of a religious organization and complete a minimum of twelve hours of general mediation training and twenty hours of specialized training in the mediation of juvenile court disputes.

C. A mediator must complete a minimum of eight hours of co-mediation training under a course that has been approved by the Louisiana State Bar Association, Alternative Dispute Resolution Section, or under the direct supervision of a mediator who is qualified in accordance with this Article or in accordance with the provisions of R.S. 9:334 and who has served as a dispute mediator for a minimum of fifty hours.

D. A mediator shall furnish satisfactory evidence of his qualifications.

E. General mediation training shall include theoretical and clinical training in the development and practice of negotiation and mediation skills.

F. Specialized training in the mediation of juvenile court disputes shall include clinical training in the development and practice of negotiation and mediation skills and instruction concerning these subjects:

(1) Judicial procedure in juvenile cases.

(2) Ethical standards, including confidentiality and conflicts of interest.

(3) Child development.

(4) Family systems theory, including family conflict.

(5) Mediation process and required document execution.

(6) The dynamics of child abuse and neglect, delinquency, and rehabilitation.

(7) Substantive state and federal law, including but not limited to Adoption and Safe Families Act of 1997 (Public Law 105-89).

G. In order to remain qualified, a mediator shall complete a minimum of twenty hours of clinical education in dispute mediation every two years.

H. The Louisiana State Bar Association Dispute Resolution Section shall prepare and maintain an approved register of those persons qualified under the criteria established pursuant to Paragraph B of this Article. A person denied listing in the approved register may request a review of that decision by a panel of three members of the Louisiana State Bar Association Dispute Resolution Section.

I. The Louisiana State Bar Association Dispute Resolution Section shall make available to participating courts and parties the approved register of mediators and a summary of their professional qualifications.

J. The Louisiana State Bar Association Dispute Resolution Section may assess such reasonable fees as are necessary to perform the functions associated with administering the provisions of this Chapter and creating and maintaining the approved register of qualified mediators.

K. For purposes of this Article, an "hour" means a period of at least sixty minutes of actual instruction.

Art. 439.1. Duties of mediator

A. The mediator shall assist the parties in formulating an agreement to mediate. The agreement shall be in writing, dated, and signed by the parties. It shall identify the controversies between the parties, affirm the parties' intent to resolve these controversies through mediation, and specify the circumstances under which the mediation may continue.

B. A mediator shall not knowingly assist the parties in reaching an agreement which would be unenforceable for reasons such as fraud, duress, overreaching, the absence of bargaining ability, or unconscionability.

C. Prior to signing such an agreement, the mediator shall advise the parties that each of them may obtain review by an attorney of any agreement reached as a result of the mediation.

D. The mediator shall at all times be impartial.

Art. 440. Stay of proceeding; extension

Upon issuing a referral for mediation, the court may stay the proceeding and order a review of the mediation within sixty days of the referral. The court may extend such period for an additional thirty days.

Art. 441. Confidentiality

A. All oral and written communications and records made during the mediation of a juvenile proceeding are not subject to disclosure and may not be used as evidence in any judicial or administrative proceeding unless:

(1) The communication or record presented in the course of mediation is otherwise subject or is otherwise admissible if based on proof independent of the mediation.

(2) All parties and the mediator specifically agree in writing to waive confidentiality.

(3) Whenever the mediator has cause to believe that a child's physical or mental health or welfare is endangered by abuse or neglect, he shall report and refer the charges to the local child protection unit of the Department of Social Services in accordance with Article 610.

(4) Disclosure is permitted by Paragraph B of this Article.

B. The mediator, parties, counsel, and other participants shall not be required to testify or otherwise make disclosure through discovery and are not subject to subpoena except:

(1) The mediator may report to the court whether the parties appeared as ordered, whether mediation took place, and whether a settlement resulted.

(2) The mediator may maintain records of mediation cases and may use data for research, training, or statistical reports to the court, provided all individual identifying information about the clients is removed.

(3) The court may compel testimony or documents in a contempt proceeding alleging that a party failed to comply with a court order referring the case for mediation; however, the disclosure of any communications and records made during the course of the mediation shall be strictly limited to the issue of noncompliance with the court's order.

(4) A court or administrative tribunal may compel testimony in a proceeding concerning the professional competence or ethics of the mediator or otherwise if necessary to prevent fraud or manifest injustice.

C. In any judicial or administrative proceeding in which disclosure is sought, the court shall determine in camera whether the facts, circumstances, and context of the communications or records warrant a breach of confidentiality in accordance with this Article.

D. The confidentiality protections of this Article are in addition to other provisions governing the confidentiality of juvenile court proceedings contained in this Code.

Art. 442. Termination of mediation

A. Either party may withdraw and terminate further participation in mediation at any time.

B. The mediator shall terminate mediation when:

(1) The mediator concludes that the participants are unable or unwilling to participate meaningfully in the process or that an agreement is unlikely.

(2) The mediator concludes that a party lacks the capacity to perceive and assert his own interests to the degree that a fair agreement cannot be reached.

Art. 443. Preparation of agreement; court approval

A. If any agreement is reached by the parties, the mediator shall prepare a written document that contains the details of the agreement between or among the parties.

B. A proposed consent judgment incorporating the agreement shall be prepared by the mediator, signed by the parties, and submitted to the court for its consideration. If approved, the judgment shall be signed and filed in the record.

C. If no agreement has been reached, the mediator shall report that fact to the court without violating the policy of confidentiality of Article 441.

Art. 444. Judicial oversight; periodic evaluation; contempt proceedings

A. The court has the continuing responsibility for monitoring the conduct of any mediator to whom the court has referred a case. In fulfilling that responsibility to ensure quality control, the court shall order the mediator to prepare regular statistical reports regarding cases referred for mediation. The court shall also seek evaluations of mediator competence from the parties, counsel, or other participants.

B. For the violation of the provisions of this Chapter, the court may institute proceedings for contempt against a mediator, party, counsel, or other participants.

Art. 445. Supplementary local rules

Pursuant to Article 401, each court is authorized to adopt additional local rules as needed in order to implement mediation to resolve disputes in juvenile proceedings.

MENTAL HEALTH FACILITIES, ADMITTING AND STAFF PRIVILEGES FOR PSYCHOLOGISTS (LA R.S. 40:2114)

§2114. Organization of medical and dental staff

A. Each hospital shall have a single, organized medical and dental staff. Medical and dental staff membership shall include doctors of medicine or osteopathy who are currently licensed to practice medicine or osteopathy by the Louisiana State Board of Medical Examiners and dentists licensed to practice dentistry by the Louisiana State Board of Dentistry.

B. Each hospital offering care or services within the scope of the practice of psychology, as defined in R.S. 37:2352(5), prior to January 1, 1993, shall establish rules, regulations, and procedures for consideration of an application for medical staff membership and clinical privileges submitted by a psychologist licensed to practice psychology by the Louisiana State Board of Examiners of Psychologists. No hospital shall deny such medical staff membership and clinical privileges solely because the applicant is licensed under R.S. 37:2351 et seq.

C. No individual shall be automatically entitled to membership on the medical and dental staff or to the exercise of any clinical privilege solely on the basis of his license to practice in any state, his membership in any professional organization, his certification by any clinical examining board, or his clinical privileges or staff membership at another hospital without meeting the reasonable criteria for membership established by the governing body of the respective hospital.

D. The provisions of this Section shall in no way affect the provisions of R.S. 37:1301.

E. A hospital shall establish rules, regulations, and procedures setting forth the nature, extent, and type of staff membership and clinical privileges, as well as the limitations placed by the hospital on said staff membership and clinical privileges for all health care providers practicing therein.

MENTAL HEALTH LAW 28:2-66, 171, 181-185, 221-237

PART I. SHORT TITLE, INTERPRETATIONS, AND DEFINITIONS

§2. Definitions

Whenever used in this Title, the masculine shall include the feminine, the singular shall include the plural, and the following definitions shall apply:

(1) "Conditional discharge" means the physical release of a judicially committed person from a treatment facility by the director or by the court. The patient may be required to report for outpatient treatment as a condition of his release. The judicial commitment of such persons shall remain in effect for a period of up to one hundred twenty days and during this time the person may be hospitalized involuntarily for appropriate medical reasons upon court order.

(2) "Court" means any duly constituted district court or court having family or juvenile jurisdiction. "Court" does not include a city court, which shall have no jurisdiction to commit persons to mental health treatment facilities in civil or criminal proceedings, except when exercising juvenile jurisdiction.

(3) "Dangerous to others" means the condition of a person whose behavior or significant threats support a reasonable expectation that there is a substantial risk that he will inflict physical harm upon another person in the near future.

(4) "Dangerous to self" means the condition of a person whose behavior, significant threats or inaction supports a reasonable expectation that there is a substantial risk that he will inflict physical or severe emotional harm upon his own person.

(5) "Diagnosis" means the art and science of determining the presence of disease in an individual and distinguishing one disease from another.

(6) "Director" or "superintendent" means a person in charge of a treatment facility or his deputy.

(7) "Discharge" means the full or conditional release from a treatment facility of any person admitted or otherwise detained under this Chapter.

(8) "Department" means the Department of Health and Hospitals.

(9) "Formal voluntary admission" means the admission of a person suffering from mental illness or substance abuse desiring admission to a treatment facility for diagnosis and/or treatment of such condition who may be formally admitted upon his written request. Such persons may be detained following a request for discharge pursuant to R.S. 28:52.2.

(10) "Gravely disabled" means the condition of a person who is unable to provide for his own basic physical needs, such as essential food, clothing, medical care, and shelter, as a result of serious mental illness or substance abuse and is unable to survive safely in freedom or protect himself from serious harm; the term also includes incapacitation by alcohol, which means the condition of a person who, as a result of the use of alcohol, is unconscious or whose judgment is otherwise so impaired that he is incapable of realizing and making a rational decision with respect to his need for treatment.

(11) "Informal voluntary admission" means the admission of a person suffering from mental illness or substance abuse, desiring admission to a treatment facility for diagnosis and/or treatment of such condition who may be admitted upon his request without making formal application.

(12) "Major surgical procedure" means an invasive procedure of a serious nature with incision upon the body or parts thereof under general, local or spinal anesthesia, utilizing surgical instruments, for the purpose of diagnosis or treatment of a medical condition. Diagnostic procedures, including, but not limited to, the following, shall not be considered as major surgical procedures:

(a) Endoscopy through natural body openings, such as the mouth, anus, or urethra,

to view the trachea, bronchi, esophagus, stomach, pancreas, small or large intestine, urethra, urinary bladder, or ureters, and to obtain from such organs specimens of fluids or tissues for chemical or microscopic analysis.

(b) Sub-cutaneous percutaneous liver biopsy.

(c) Punch biopsy of skeletal muscles.

(d) Bone marrow biopsy.

(e) Lumbar puncture.

(f) Myelogram.

(g) Thoracocentesis.

(h) Abdominocentesis.

(i) Conization of the uterine cervix.

(j) Renal angiography.

(k) Femoral angiography.

(l) Carotid angiography.

(m) Vertebral angiography.

(12.1) "Medical psychologist" means a psychologist who has undergone specialized training in clinical psychopharmacology and has passed a national proficiency examination in psychopharmacology approved by the State Board of Examiners of Psychologists and who holds from the board a current certificate of prescriptive authority, as defined in R.S. 37:2371(2). For the purposes of this Chapter a medical psychologist shall have at least three years training, primary experience, or both, in diagnosis and treatment of mental illness.

(13) "Mental health advocacy service" means a service established by the state of Louisiana for the purpose of providing legal counsel and representation for mentally disabled persons and for children and to ensure that their legal rights are protected.

(14) "Mentally ill person" means any person with a psychiatric disorder which has substantial adverse effects on his ability to function and who requires care and treatment. It does not refer to a person suffering solely from mental retardation, epilepsy, alcoholism, or drug abuse.

(15) "Minor" means a person under eighteen years of age.

(16) "Parent" means a person who is the biological mother or father of an individual or the legally adoptive mother or father of an individual.

(17) "Patient" means any person detained and taken care of as a mentally ill person or person suffering from substance abuse.

(18) "Peace officer" means any sheriff, police officer, or other person deputized by proper authority to serve as a peace officer.

(19) "Person of legal age" means any person eighteen years of age or older.

(20) "Petition" means a written civil complaint filed by a person of legal age alleging that a person is mentally ill or suffering from substance abuse and requires judicial commitment to a treatment facility.

(21) "Physician" means an individual licensed to practice medicine by the Louisiana State Board of Medical Examiners in active practice or an individual in a post-graduate medical training program of an accredited medical school in Louisiana or a medical officer similarly qualified by the government of the United States while in the state in the performance of his official duties.

(21.1) "Primary care provider" means the principal, treating health care professional, excluding a physician, or psychiatrist, rendering mental health care services to a person including a psychologist, medical psychologist, or psychiatric mental health nurse practitioner.

(21.2) "Psychiatric mental health nurse practitioner" means an advanced practice registered nurse licensed to practice as a nurse practitioner or clinical nurse specialist by the Louisiana State Board of Nursing, in accordance with the provisions of R.S. 37:911, et seq., who focuses clinical practice on individuals, families, or populations across the life span at risk for developing or having a diagnosis of psychiatric disorders, mental health problems, or both. A

psychiatric mental health nurse practitioner means a specialist who provides primary mental health care to patients seeking mental health services in a wide range of settings. Primary mental health care provided by a psychiatric mental health nurse practitioner involves the continuous and comprehensive services necessary for the promotion of optimal mental health, prevention and treatment of psychiatric disorders, and health maintenance. Such primary health care includes the assessment, diagnosis, and management of mental health problems and psychiatric disorders. A psychiatric mental health nurse practitioner means a provider of direct mental health care services who synthesizes theoretical, scientific, and clinical knowledge for the assessment and management of both health and illness states and who is licensed to practice as a nurse practitioner in Louisiana, in accordance with R.S. 37:911, et seq. For purposes of this Chapter, a psychiatric mental health nurse practitioner shall have at least two years training, primary experience, or both, in diagnosis and treatment of mental illness. For purposes of this Chapter, a psychiatric mental health nurse practitioner shall also have authority from the Louisiana State Board of Nursing to prescribe legend and certain controlled drugs, in accordance with the provisions of R.S. 37:913(3)(b), (8), and (9).

(22) (a) "Psychiatrist" means a physician who has at least three years of formal training or primary experience in the diagnosis and treatment of mental illness.

(b) "Psychologist" means an individual licensed to practice psychology in Louisiana in accordance with R.S. 37:2351 et seq., and who has been engaged in the practice of a clinical specialty for not less than three years.

(23) "Respondent" means a person alleged to be mentally ill or suffering from substance abuse and for whom an application for commitment to a treatment facility has been filed.

(24) "Restraint" means the partial or total immobilization of any or all of the extremities or the torso by mechanical means for psychiatric indications. Restraint does not include the use of mechanisms usually and customarily used during medical or surgical procedures, including but not limited to body immobilization during surgery and arm immobilization during intravenous administration. Restraint does not include orthopedic appliances used to posturally support the patient, such as posies.

(25) "Seclusion" means the involuntary confinement of a patient alone in a room where the patient is physically prevented from leaving for any period of time, except that seclusion does not include the placement of a patient alone in a room or other area for no more than thirty minutes at a time and no more than three hours in any twenty-four-hour period pursuant to behavior-shaping techniques, such as "time-out".

(26) "Substance abuse" means the condition of a person who uses narcotic, stimulant, depressant, soporific, tranquilizing, or hallucinogenic drugs or alcohol to the extent that it renders the person dangerous to himself or others or renders the person gravely disabled.

(27) "Transfer" means the removal of a patient from one mental institution to another without any procedure for admission other than is prescribed by the department.

(28) "Treatment" means an active effort to accomplish an improvement in the mental condition or behavior of a patient or to prevent deterioration in his condition or behavior. Treatment includes but is not limited to hospitalization, partial hospitalization, outpatient services, examination, diagnosis, training, the use of pharmaceuticals, and other services provided for patients by a treatment facility.

(29) (a) "Treatment facility" means any public or private hospital, retreat, institution, mental health center, or facility licensed by the state in which any mentally ill person or person suffering from substance abuse is received or detained as a patient. The term includes Veterans Administration and public health hospitals and forensic facilities. "Treatment facility" includes but is not limited to the following, and shall be selected with consideration of first, medical suitability; second, least restriction of the person's liberty; third, nearness to the patient's usual residence; and fourth, financial or other status of the patient, except that such considerations shall not apply to forensic facilities:

(i) Community mental health centers.
(ii) Private clinics.
(iii) Public or private halfway houses.
(iv) Public or private nursing homes.
(v) Public or private general hospitals.
(vi) Public or private mental hospitals.
(vii) Detoxification centers.
(viii) Substance abuse clinics.
(ix) Substance abuse in-patient facility.
(x) Forensic facilities.

(b) Patients involuntarily hospitalized by emergency certificate or mental health treatment shall not be admitted to the facilities listed in Items (ii), (iii), (iv), (viii), or (x) of Subparagraph (a), except that patients in custody of the Department of Public Safety and Corrections may be admitted to forensic facilities by emergency certificate provided that judicial commitment proceedings are initiated during the period of treatment at the forensic facility authorized by emergency certificate. Patients involuntarily hospitalized by emergency certificate for substance abuse treatment shall not be admitted to the facilities listed in Items (ii), (iii), (iv), or (x) of Subparagraph (a). Judicial commitments, however, may be made to any of the above facilities except forensic facilities. However, in the case of any involuntary hospitalization as a result of such emergency certificate for substance abuse or in the case of any judicial commitment as the result of substance abuse, such commitment or hospitalization may be made to any of the above facilities, except forensic facilities, provided that such facility has a substance abuse in-patient operation maintained separate and apart from any mental health in-patient operation at such facility.

(c) "Treatment facility" shall not include a jail or prison of any kind, or any facility under the control or supervision of the Department of Public Safety and Corrections unless the facility has been designated by the Department of Health and Hospitals and the Department of Public Safety and Corrections as a treatment facility pursuant to R.S. 15:830.1(B); however, a jail or prison shall not be construed as a forensic facility. Only adult inmates sentenced to the Department of Public Safety and Corrections may be admitted to a treatment facility designated pursuant to R.S. 15:830.1(B).

PART III. EXAMINATION, ADMISSION, COMMITMENT, AND TREATMENT OF PERSONS SUFFERING FROM MENTAL ILLNESS AND SUBSTANCE ABUSE

§50. Declaration of policy

The underlying policy of this Chapter is as follows:

(1) That mentally ill persons and persons suffering from substance abuse be encouraged to seek voluntary treatment.

(2) That any involuntary treatment or evaluation be accomplished in a setting which is medically appropriate, most likely to facilitate proper care and treatment that will return the patient to the community as soon as possible, and is the least restrictive of the patient's liberty.

(3) That continuity of care for the mentally ill and persons suffering from substance abuse be provided.

(4) That mental health and substance abuse treatment services be delivered as near to the place of residence of the person receiving such services as is reasonably possible and medically appropriate.

(5) That individual rights of patients be safeguarded.

(6) That no person solely as a result of mental illness or alcoholism or incapacitation by

alcohol shall be confined in any jail, prison, correctional facility, or criminal detention center. This shall not apply to persons arrested, charged, or convicted under Title 14 of the Louisiana Revised Statutes of 1950.

(7) That no person shall be denied treatment solely because he has withdrawn from treatment against medical advice on a prior occasion or because he has relapsed after an earlier treatment.

§51. Procedures for admission

A. The director of a treatment facility, subject to the availability of suitable accommodations, shall receive for observation, diagnosis, care, and treatment, any person whose admission is authorized under any of the procedures provided for in R.S. 28:52 through R.S. 28:54 and R.S. 28:64.

B. The failure by any director to obey an order or judgment committing a patient to a treatment facility shall not be construed as contempt of any court, if it appears that the failure to obey is due to the inability to comply with the order or judgment because medically suitable accommodations for the patient are unavailable. C. The Department of Health and Hospitals, through its hospitals, mental health clinics and similar institutions, shall have the duty to assist petitioners and other persons in the preparation of petitions for commitment, requests for protective custody orders and requests for emergency certificates, upon request of such persons.

§51.1. Treatment facility; staff membership and institutional privileges; certain health care providers

A. (1) Notwithstanding any provision of the law to the contrary, the governing body of a treatment facility, as defined in R.S. 28:2, may grant staff membership, specifically delineated institutional privileges, or both, to any duly licensed, certified or registered health care provider, including but not limited to a physician, psychiatrist, psychologist, medical psychologist or psychiatric mental health nurse practitioner, as defined in R.S. 28:2.

(2) Staff membership, specifically delineated institutional privileges, or both, granted to a medical psychologist shall be conditioned upon all of the following requirements:

(a) The applicant medical psychologist shall have a valid, current, unrestricted certificate of prescriptive authority issued to him by the Louisiana State Board of Examiners of Psychologists.

(b) The applicant medical psychologist shall prescribe medications in the treatment facility only in consultation, collaboration and concurrence with the patient's primary or attending physician or psychiatrist and only in accordance with the treatment facility's staff membership or privilege granting process and restrictions, if any.

(c) The patient's primary or attending physician or psychiatrist shall have staff membership, institutional privileges, or both, at the treatment facility.

(3) Staff membership, specifically delineated institutional privileges, or both, granted to a psychiatric mental health nurse practitioner shall be conditioned upon all of the following requirements:

(a) The applicant psychiatric mental health nurse practitioner shall have a valid, current, collaborative practice agreement, as defined in R.S. 37:913(9), with a psychiatrist.

(b) The applicant psychiatric mental health nurse practitioner shall have a valid, current and unrestricted advanced practice registered nurse license, as a nurse practitioner or clinical nurse specialist, issued by the Louisiana State Board of Nursing, and have been granted limited prescriptive authority pursuant to LAC 46:XLV.4513.

(c) The applicant psychiatric mental health nurse practitioner's collaborating physician shall have staff membership, institutional privileges, or both, at the treatment facility.

(d) The applicant psychiatric mental health nurse practitioner shall prescribe medications or the use of seclusion or restraint on patients in the treatment facility only in accordance with the collaborative practice agreement and in accordance with the treatment

facility's staff membership or privilege granting process and restrictions, if any.
B. Nothing in this Section shall be construed to require the governing body of a treatment facility to grant staff membership, specifically delineated institutional privileges, or both, to any applicant health care provider, provided that each such applicant is considered on an individual basis regarding his qualifications.
C. Nothing in this Section shall be construed to prohibit the governing body of a treatment facility from granting or denying staff membership, specifically delineated institutional privileges, or both, on the basis of individual character, competence, experience and judgment of the applicant health care provider seeking staff membership, or specifically delineated institutional privileges, or both, from requiring the character recommendation of not more than three members of the staff for which membership is sought as a prerequisite to consideration for staff membership or specifically delineated clinical privileges.
D. "Governing body" for purposes of this Section, means the group or the individual ultimately responsible for a treatment facility's general policies with respect to staff membership and professional clinical privileges and shall include but not be limited to a board of trustees, a board of directors, a board of governors, a board of managers, a medical board, a medical director or any other official of the treatment facility with comparable responsibilities.

§52. Voluntary admissions; general provisions

A. Any mentally ill person or person suffering from substance abuse may apply for voluntary admission to a treatment facility. The admitting physician may admit the person on either a formal or informal basis, as hereinafter provided.
B. Admitting physicians are encouraged to admit mentally ill persons or persons suffering from substance abuse to treatment facilities on voluntary admission status whenever medically feasible.
C. No director of a treatment facility shall prohibit any mentally ill person or person suffering from substance abuse from applying for conversion of involuntary or emergency admission status to voluntary admission status. Any patient on an involuntary admission status shall have the right to apply for a writ of habeas corpus in order to have his admission status changed to voluntary status.
D. No employee of a mental health care program or treatment facility, peace officer, physician, or psychiatric mental health nurse practitioner shall state to any person that involuntary admission may result if such person does not voluntarily admit himself to a mental health care program or treatment facility unless the employee, peace officer, physician, or psychiatric mental health nurse practitioner is prepared to execute a certificate pursuant to R.S. 28:53 or a petition pursuant to R.S. 28:54.
E. Each person admitted on a voluntary basis shall be informed of any other medically appropriate alternative treatment programs and treatment facilities known to the admitting physician and be given an opportunity to seek admission to alternative treatment programs or facilities.
F. Every patient admitted on a voluntary admission status shall be informed in writing at the time of admission of the procedures for requesting release from the treatment facility, the availability of counsel, information about the mental health advocacy service, the rights enumerated in R.S. 28:171 and rules and regulations applicable to or concerning his conduct while a patient in the treatment facility. If the person is illiterate or does not read or understand English, appropriate provisions should be made to supply him this information. In addition, a copy of the information listed in this Subsection must be posted in any area where patients are confined and treated.
G. No admission may be deemed voluntary unless the admitting physician determines that the person to be admitted has the capacity to make a knowing and voluntary consent to the admission.
Knowing and voluntary consent shall be determined by the ability of the individual to understand:
(1) That the treatment facility to which the patient is requesting admission is one for

mentally ill persons or persons suffering from substance abuse;

(2) That he is making an application for admission, and

(3) The nature of his status and the provisions governing discharge or conversion to an involuntary status.

H. (1) Voluntary patients may receive medications or treatment, but no major surgical procedure or electroshock therapy may be performed upon such patient, without the patient's written and informed consent. If it is determined by the director of the treatment facility that a voluntary patient has become incapable of making an informed consent for such procedure, he shall apply to a court of competent jurisdiction for a determination of the patient's specific incompetence to give informed consent for the procedure. If the director, in consultation with two physicians, determines that the condition of a voluntary patient who is incapable of informed consent is of such critical nature that it may be life-threatening unless major surgical procedures or electroshock treatment is administered, the emergency measures may be taken without the consent otherwise provided for in this Section.

(2) (a) Notwithstanding the provision of Paragraph (1) of this Subsection, any licensed physician may administer medication to a patient without his consent and against his wishes in a situation which, in the reasonable judgment of the physician who is observing the patient during the emergency, constitutes a psychiatric or behavioral emergency. For purposes of this Paragraph a "psychiatric or behavioral emergency" occurs when a patient, as a result of mental illness, substance abuse, or intoxication engages in behavior which, in the clinical judgment of the physician, places the patient or others at significant and imminent risk of damage to life or limb. The emergency administration of medication may be continued until the emergency subsides, but in no event shall it exceed forty-eight hours, except on weekends or holidays when it may be extended for an additional twenty-four hours.

(b) The physician shall make a reasonable effort to consult with the primary physician or primary care provider outside the facility that has previously treated the patient for his mental condition at the earliest possible time, but in no event more than forty-eight hours after the emergency administration of medication has begun, except on weekends or holidays, when the time period may be extended an additional twenty-four hours. The physician shall record in the patient's file either the date and time of the consultation and a summary of the comments of the primary physician or primary care provider or, if the physician is unable to consult with the primary physician or primary care provider, the date and time that a consultation with the primary physician or primary care provider was attempted.

§ 52.1. Informal voluntary admission

A. In the discretion of the director, any mentally ill person or person suffering from substance abuse desiring admission to a treatment facility for diagnosis or treatment of a psychiatric disorder or substance abuse may be admitted upon the patient’s request without a formal application.

B. Any patient admitted pursuant to this Section shall have the right to leave the treatment facility at any time during the normal day-shift hours of operation, which shall include but not be limited to nine a.m. to five p.m.

§ 52.2. Formal voluntary admission

A. Any mentally ill person or person suffering from substance abuse desiring admission to a treatment facility for diagnosis and/or treatment of a psychiatric disorder or substance abuse and who is deemed suitable for formal voluntary admission by the admitting physician may be so admitted upon his written request.

B. A patient admitted under the provisions of this Section shall not be detained in the treatment facility for longer than seventy-two hours after making a valid written request for discharge to the director unless an emergency certificate is executed pursuant to R.S. 28:53, or unless judicial commitment is instituted pursuant to R.S. 28:54, after making a valid written request for

discharge to the director of the treatment facility.

§ 52.3. Noncontested admission

A. A mentally ill person or person suffering from substance abuse who does not have the capacity to make a knowing and voluntary consent to a voluntary admission status and who does not object to his admission to a treatment facility may be admitted to a treatment facility as a noncontested admission. Such person shall be subject to the same rules and regulations as a person admitted on a voluntary admission status and his treatment shall be governed by the provisions of R.S. 28:52H.

B. A noncontested admission may be made by a physician to a treatment facility in order to initiate a complete diagnostic and evaluative study. The diagnosis and evaluation shall include complete medical, social, and psychological studies and, when medically indicated, any other scientific study which may be necessary in order to make decisions relative to the treatment needs of the patient. In the absence of specified medical reasons, the diagnostic studies shall be completed in fourteen days. Alternative community-based services shall be thoroughly considered. Following a review of the diagnostic evaluation study, the director of the treatment facility shall determine if the person is to remain on noncontested status, is to be discharged, is to be converted to formal or informal voluntary status, or is to be involuntarily hospitalized pursuant to R.S. 28:53 or R.S. 28:54. Nothing in this Section shall be interpreted to prohibit the director of a treatment facility from transferring the patient to another treatment facility when it is medically indicated.

C. A person admitted pursuant to this Section may object to his admission at any time. If the person informs a staff member of his desire to object to his admission, a staff member shall assist him in preparing and submitting a valid written objection to the director. Upon receipt of a valid objection, the director shall release the person within seventy-two hours unless proceedings are instituted pursuant to R.S. 28:53 and R.S. 28:54.

D. In no case shall a patient remain on noncontested status longer than three months. Within that time, the patient must be converted to either a formal or an informal voluntary status, or be involuntarily hospitalized pursuant to R.S. 28:53 or R.S. 28:54, or be discharged.

§ 52.4. Admission by relative

A. A person suffering from substance abuse may be admitted and detained at a public or private general hospital or a substance abuse in-patient facility for observation, diagnosis, and treatment for a period not to exceed twenty-eight days, when a parent, spouse, or the major child of the person if that child has attained the age of 18 years has admitted the person or caused him to be admitted pursuant to the provisions of R.S. 28:53.2.

B. At the time of admission of the person, the parent, spouse, or the major child of the person if that child has attained the age of 18 years shall execute or provide a written statement of facts, including personal observations, leading to the conclusion that the person is suffering from substance abuse and is dangerous to himself or others or is gravely disabled, specifically describing any dangerous acts or threats, and stating that the person has been encouraged to seek treatment but is unwilling to be evaluated on a voluntary basis.

C. As soon as practicable, but in no event more than twelve hours after admission to the hospital or in-patient facility, a physician shall examine the person and either execute an emergency certificate in accordance with R.S. 28:53(B) or order the person discharged. lf an emergency certificate is executed, the physician or the director of the hospital or in-patient facility shall immediately notify the coroner, and the coroner or his deputy shall conduct an independent examination, in accordance with R.S. 28:53(G). If the coroner or his deputy executes a second emergency certificate, the person may be detained for treatment for a period not to exceed twenty-eight days from the date of his admission. Otherwise, he shall be discharged.

D. Except as inconsistent with the provisions of this Section, all other provisions of this Part applicable to persons admitted by emergency certificate shall be applicable to persons admitted

pursuant to this Section.

§53. Admission by emergency certificate; extension

A. (1) A mentally ill person or a person suffering from substance abuse may be admitted and detained at a treatment facility for observation, diagnosis, and treatment for a period not to exceed fifteen days under an emergency certificate.

(2) A person suffering from substance abuse may be detained at a treatment facility for one additional period, not to exceed fifteen days, provided that a second emergency certificate is executed. A second certificate may be executed only if and when a physician at the treatment facility and any other physician have examined the detained person within seventy-two hours prior to the termination of the initial fifteen day period and certified in writing on the second certificate that the person remains dangerous to himself or others or gravely disabled, and that his condition is likely to improve during the extended period. The director shall inform the patient of the execution of the second certificate, the length of the extended period, and the specific reasons therefor, and shall also give notice of the same to the patient's nearest relative or other designated responsible party initially notified pursuant to Subsection F.

B. (1) Any physician, psychiatric mental health nurse practitioner, or psychologist may execute an emergency certificate only after an actual examination of a person alleged to be mentally ill or suffering from substance abuse who is determined to be in need of immediate care and treatment in a treatment facility because the examining physician, psychiatric mental health nurse practitioner, or psychologist determines the person to be dangerous to self or others or to be gravely disabled. Failure to conduct an examination prior to the execution of the certificate will be evidence of gross negligence.

(2) The certificate shall state:

(a) The date of the physician's, psychiatric mental health nurse practitioner's, or psychologist's examination of the person, which shall not be more than seventy-two hours prior to the date of the signature of the certificate.

(b) The objective findings of the physician, psychiatric mental health nurse practitioner, or psychologist relative to the physical or mental condition of the person, leading to the conclusion that the person is dangerous to self or others or is gravely disabled as a result of substance abuse or mental illness.

(c) The history of the case, if known.

(d) The determination of whether the person examined is in need of immediate care and treatment in a treatment facility because the patient is either:

(i) Dangerous to himself.

(ii) Dangerous to others.

(iii) Gravely disabled.

(e) That the person is unwilling or unable to seek voluntary admission.

(3) The certificate shall be dated and executed under the penalty of perjury, but need not be notarized. The certificate shall be valid for seventy-two hours and shall be delivered to the director of the treatment facility where the person is to be further evaluated and treated.

C. A patient may request the director of the treatment facility to advise the executive director of the mental health advocacy service of his admission and may request representation.

D. Prior to or during confinement, under the provisions of this Title, any person or his attorney shall have the right to demand a judicial hearing to determine if probable cause exists for his continued confinement under an emergency certificate. The hearing shall be held within five days of the filing of the petition. The petition shall be filed in the court of the jurisdiction in which the patient is confined. The hearing shall be held in that court and no other except for good cause shown. If the person is confined, the judge of the court where the petition was filed may hold the hearing at the treatment facility where the person is confined, if in the opinion of the director of the treatment facility it will be detrimental to the patient's health, welfare or dignity, to

travel to the court where the petition was filed. Pending the decision of the court, the patient shall remain confined unless the court orders release or a less restrictive status.

E. The attorney of any patient in a treatment facility may review his client's medical record. If deemed essential by the attorney, portions of the record specifically required for proper representation pursuant to this Title, may be copied and given to the patient's attorney. The attorney shall return all copies of his client's medical record to the treatment facility upon completion of their use.

F. An emergency certificate shall constitute legal authority to transport a patient to a treatment facility and shall permit the director of such treatment facility to detain the patient for diagnosis and treatment for a period not to exceed fifteen days, and to return the patient to the facility if he is absent with or without permission during authorized periods of detention. If necessary, peace officers shall apprehend and transport, or ambulance services, under appropriate circumstances, may locate and transport, a patient on whom an emergency certificate has been completed to a treatment facility at the request of either the director of the facility, the certifying physician, psychiatric mental health nurse practitioner, or psychologist, the patient's next of kin, the patient's curator, or the agency legally responsible for his welfare. The director of the treatment facility shall notify the patient's nearest relative, if known, or designated responsible party, if any, in writing, of the patient's admission by emergency certificate as soon as reasonably possible.

G. (1) Upon admission of any person by emergency certificate to a treatment facility, the director of the treatment facility shall immediately notify the coroner of the parish in which the treatment facility is located of the admission, giving the following information if known:

(a) The person's name.

(b) Address.

(c) Date of birth.

(d) Name of certifying physician, psychiatric mental health nurse practitioner, or psychologist.

(e) Date and time of admission.

(f) The name and address of the treatment facility.

(2) Within seventy-two hours of admission, the person shall be independently examined by the coroner or his deputy who shall execute an emergency certificate, pursuant to Subsection B, which shall be a necessary precondition to the person's continued confinement.

(3) However, in the event that the coroner has made the initial examination and executed the first emergency commitment certificate then a second examination shall be made within the seventy-two hour period set forth in this Part by any physician at the treatment facility where the person is confined.

(4) In making either the initial examination or the second examination, when the coroner or his deputy examines the person and executes an emergency certificate and a reexamination of the person and reexecution of a certificate is necessary for any reason to insure the validity of the certificate, both the first examiner and the reexaminer shall be entitled to the fee for the service, unless they are one and the same.

(5) If, from his examination, the coroner concludes that the person is not a proper subject for emergency admission, then the person shall not be further detained in the treatment facility and shall be discharged by the director forthwith.

(6) When a person is confined in a treatment facility other than a state mental institution, the examining coroner in the parish where the patient is confined shall be entitled to the usual fee paid for this service to the coroner of the parish in which the patient is domiciled or residing. When a person is confined in a state mental institution in a parish other than his parish of domicile or residence, the examining coroner shall be entitled to the fee authorized by law in his parish for the service. In either case, the fee shall be paid and accurate records of such payments kept by the governing authority of the parish in which the patient is domiciled or residing from parish funds designated for the purpose of payment to the coroner. All coroners shall keep

accurate records showing the number of patients confined in their parishes pursuant to this Section.

H. If the patient admitted to a treatment facility pursuant to this Section is a proper candidate for judicial commitment pursuant to R.S. 28:54, the director of the treatment facility, or any interested party, may apply for such commitment under provisions of that Section. Such a patient, hospitalized on an emergency certificate, for whom a petition for judicial commitment has been filed in court may continue to be detained for a further period on order of the court.

I. Every patient admitted by emergency certificate shall be informed in writing at the time of his admission of the procedures of requesting release from the treatment facility, the availability of counsel, information about the mental health advocacy service, the rights enumerated in R.S. 28:171 and the rules and regulations applicable to or concerning his conduct while a patient in the treatment facility. If the person is illiterate or does not read or understand English, appropriate provisions should be made to supply him this information. In addition, a copy of the information mentioned in this Subsection must be posted in any area where patients are confined and treated.

J. (1) Upon the request of a credible person of legal age who is financially unable to afford a private physician or who cannot immediately obtain an examination by a physician, the parish coroner may render, or the coroner or a judge of a court of competent jurisdiction may cause to be rendered by a physician, an actual examination of a person alleged to be mentally ill or suffering from substance abuse and in need of immediate medical treatment because he is dangerous to himself or others or is gravely disabled. If the coroner is not a physician he may deputize a physician to perform this examination. To accomplish the examination authorized by this Subsection, if the coroner or the judge is apprehensive that his own safety or that of the deputy or other physician may be endangered thereby, he shall issue a protective custody order pursuant to R.S. 28:53.2.

(2) If the examining physician determines that the above standard is met, he shall execute an emergency certificate and shall transport or cause to be transported the person named in the emergency certificate to a treatment facility. Failure to render an actual examination prior to execution of the emergency certificate shall be evidence of gross negligence.

(3) In any instance where the coroner or his deputy executes the first emergency certificate, the second emergency certificate shall not be executed by the coroner or his deputy, but the second emergency certificate may be executed by any other physician including a physician at the treatment center.

K. (1) (a) Patients admitted by emergency certificate may receive medication and treatment without their consent, but no major surgical procedure or electroshock therapy may be performed without the written consent of a court of competent jurisdiction after a hearing. With regard to the administration of medicine, if the patient objects to being medicated, prior to making a final decision, the treating physician shall make a reasonable effort to consult with the primary physician or primary care provider outside of the facility that has previously treated the patient for his mental condition. The treating physician shall, prior to the administration of such medication, record in the patient's file either the date and time of the consultation and a summary of the comments of the primary physician or primary care provider or, if the treating physician is unable to consult with the primary physician or primary care provider, the date and time that a consultation with the primary physician or primary care provider was attempted.

(b) Notwithstanding the provisions of Subparagraph (a) of this Paragraph, any licensed physician may administer medication to a patient without his consent and against his wishes in a situation which, in the reasonable judgment of the physician who is observing the patient during the emergency, constitutes a psychiatric or behavioral emergency. For purposes of this Paragraph a "psychiatric or behavioral emergency" occurs when a patient, as a result of mental illness, substance abuse, or intoxication engages in behavior which, in the clinical judgment of the physician, places the patient or others at significant and imminent risk of damage to life or limb. The emergency administration of medication may be continued until the

emergency subsides, but in no event shall it exceed forty-eight hours, except on weekends or holidays when it may be extended for an additional twenty-four hours.

(c) The physician shall make a reasonable effort to consult with the primary physician or primary care provider outside the facility that has previously treated the patient for his mental condition at the earliest possible time, but in no event more than forty-eight hours after the emergency administration of medication has begun, except on weekends or holidays, when the time period may be extended an additional twenty-four hours. The physician shall record in the patient's file either the date and time of the consultation and a summary of the comments of the primary physician or primary care provider or, if the physician is unable to consult with the primary physician or primary care provider, the date and time that a consultation with the primary physician or primary care provider was attempted.

(2) If the director of the treatment facility, in consultation with two physicians, determines that the condition of such a patient is of such a critical nature that it may be life-threatening unless major surgical procedures or electroshock treatment is administered, such emergency measures may be performed without the consent otherwise provided for in this Section.

L. (1) A peace officer or a peace officer accompanied by an emergency medical service trained technician may take a person into protective custody and transport him to a treatment facility for a medical evaluation when, as a result of his personal observation, the peace officer or emergency medical service technician has reasonable grounds to believe the person is a proper subject for involuntary admission to a treatment facility because the person is acting in a manner dangerous to himself or dangerous to others, is gravely disabled, and is in need of immediate hospitalization to protect such a person or others from physical harm. The person may only be transported to one of the following:

(a) A community mental health center.
(b) A public or private general hospital.
(c) A public or private mental hospital.
(d) A detoxification center.
(e) A substance abuse clinic.
(f) A substance abuse in-patient facility.

(2) Upon arrival at the treatment facility, the escorting peace officer shall then be relieved of any further responsibility and the person shall be immediately examined by a physician, preferably a psychiatrist, who shall determine if the person shall be voluntarily admitted, admitted by emergency certificate, or discharged.

(3) In the case of a person suffering from substance abuse and where any of the above facilities are unavailable, the peace officer and emergency medical service technician may use whatever means or facilities available to protect the health and safety of the person suffering from substance abuse until such time as any of the above facilities become available. In taking a person into protective custody the peace officer and emergency medical service technician may take reasonable steps to protect themselves. A peace officer or emergency medical service technician who acts in compliance with this section is acting in the course of his official duty and cannot be subjected to criminal or civil liability as a result thereof.

M. Under the provisions of this Part no person shall be placed in protective custody for a period in excess of seventy-two hours. Any person placed in protective custody under the provisions of this Part shall be considered as an inmate for maintenance purposes only.

N. (1) Public and private general hospitals and their personnel who provide services in good faith for commitments defined in this Part shall not be liable for damages suffered by the patient as a result of the commitment or damages caused by the patient during the term of the commitment, unless the damage or injury was caused by willful or wanton negligence or gross misconduct. This limitation of liability shall only apply to public and private general hospital personnel who within the preceding twelve-month period have received appropriate training in nonviolent crisis intervention and such training has been documented in their personnel files. The

training shall be provided by an instructor who has attended a course in crisis intervention taught by a certified instructor.

(2) The provisions of this Subsection shall not affect the provisions of R.S. 40:2113.6 or the Federal Emergency Medical Treatment and Active Labor Act, 42 USC 1395dd.

O. (1) For the purposes of this Chapter, "public and private general hospital personnel" shall mean all persons who provide services or furnish assistance to a public or private general hospital in connection with the operations or delivery of patient care, including employees, independent contractors or volunteers.

(2) Notwithstanding the provisions of this Section or R.S. 28:63, "public and private general hospital personnel" does not include physician, psychiatric mental health nurse practitioner, medical psychologist, or psychologist as defined in R.S. 28:2, for the purpose of nonviolent crisis intervention training.

§53.2. Order for custody; grounds; civil liability; criminal penalty for making a false statement

A. Any parish coroner or judge of a court of competent jurisdiction may order a person to be taken into protective custody and transported to a treatment facility or the office of the coroner for immediate examination when a peace officer or other credible person executes a statement under private signature specifying that, to the best of his knowledge and belief, the person is mentally ill or suffering from substance abuse and is in need of immediate treatment to protect the person or others from physical harm. The statement may include the following information:

(1) A statement of facts, including the affiant's observations, leading to the conclusion that the person is mentally ill or suffering from substance abuse and dangerous to himself or others or gravely disabled.

(2) The date and place of any dangerous acts or threats.

(3) The name and surname, if known, of any other person who is in danger.

(4) Facts showing that the person sought has been encouraged to seek treatment and is unwilling to be evaluated on a voluntary basis, and

(5) Facts showing that the affiant has attempted to contact a specific treatment facility or a specific physician in order to obtain an examination of the person sought to be treated.

B. The order for custody shall be in writing, in the name of the state of Louisiana, signed by the district judge or parish coroner, and shall state the following:

(1) The date and hour of issuance and the municipality or parish where issued.

(2) The name of the person to be taken into custody, or if his name is not known a designation of the person by any name or description by which he can be identified with reasonable certainty.

(3) A description of the acts or threats which have led to the belief that the person is mentally ill or suffering from substance abuse and is in need of immediate hospitalization to protect the person or others from physical harm,

(4) That the person shall be taken to a community mental health center, a public or private general hospital, a public or private mental hospital, coroner's office or a detoxification center.

(5) That law enforcement officers are to use reasonable and necessary precautions when appropriate, in the execution of an order for custody pursuant to Subsection A and Paragraph (F)(1) of this Section, to avoid a violent encounter with the person being taken into custody. For the purposes of this Paragraph, "reasonable and necessary precautions" include crisis management strategies.

C. The order for custody shall be effective for seventy-two hours from its issuance and shall be delivered to the coroner or director of the treatment facility by the individual who has transported the person. The date and hour that the person is taken into protective custody shall be written on the order. Without delay, and in no event more than twelve hours after being taken into protective custody, the person shall be delivered to a treatment facility or the office of the coroner

or he shall be released. Upon arrival, the person in custody shall be examined immediately by the coroner or, if at a treatment facility, by a physician, preferably a psychiatrist, medical psychologist or psychiatric mental health nurse practitioner, who shall determine if the person shall be voluntarily admitted, admitted by emergency certificate, admitted as a noncontested admission, or discharged. The person in custody shall be examined within twelve hours of his arrival at the treatment facility or coroner's office or he shall be released.

D. Coroners and assistant coroners who act in good faith to order persons to be taken into protective custody and transported for examination in accordance with this Section shall not be civilly liable for damages to such persons resulting from those actions.

E. Any person who is found guilty of executing a statement that another person is mentally ill or suffering from substance abuse and is in need of immediate treatment to protect the person or others that the affiant knows or should know is false may be imprisoned, with or without hard labor, for not more than one year, or fined not more than one thousand dollars.

F. (1) If refused or obstructed from admittance, any elected coroner or his support staff, accompanied by a law enforcement officer, who has announced his authority and purpose, may apply to a court of competent jurisdiction for an order to break open an outer or inner door or window of any vehicle, water craft, aircraft, structure or dwelling in order to restrain and transport the person subject to a request and order for protective custody and examination after a mental health professional has intervened and attempted to counsel the person regarding his voluntary surrender.

(2) The application for a court order allowing forcible entry pursuant to Paragraph (1) of this Subsection shall be accompanied by a copy of the order for protective custody and an affidavit of the coroner or his support staff reciting facts establishing probable cause for forced entry. In exceptional circumstances, the facts supporting the order and the exceptional circumstances may be relayed orally, including telephonically, to the judge, and the order of the judge may be issued orally. In such cases, a copy of the order for protective custody and an affidavit containing the information relayed orally to the judge, including any telephonic communication, shall be provided to the judge within twenty four hours of taking the person into protective custody. Upon the timely presentation of the copy of the order for protective custody and the affidavit of the oral communications, the judge shall issue a written order acknowledging receipt of the required information and of his oral order allowing forcible entry.

(3) Any elected coroner or his support staff, accompanied by a law enforcement officer required to make a forceful entry to comply with a request and order for protective custody shall be immune from civil liability for or resulting from any act, decision, omission, communication, or any act or failure to act, made in good faith while engaged in the performance of his duty.

(4) The civil immunity provided for in this Subsection shall not extend to any action for the serious bodily injury or wrongful death occasioned as a result of the restraint or transportation of the person subject to the request and order for protective custody. Neither shall such immunity from civil liability extend to actions by any third party who is physically injured during the execution of a request and order for protective custody.

G. (1) Public and private general hospitals and their personnel who provide services in good faith for defined commitments in this Part shall not be liable for damages suffered by the patient as a result of the commitment or damages caused by the patient during the term of the commitment, unless the damage or injury was caused by willful or wanton negligence or gross misconduct. This limitation of liability shall only apply to public and private general hospital personnel who within the preceding twelve-month period have received appropriate training in nonviolent crisis intervention and such training has been documented in their personnel files. The training shall be provided by an instructor who has attended a course in crisis intervention taught by a certified instructor.

(2) The provisions of this Subsection shall not affect the provisions of R.S. 40:2113.6 or the Federal Emergency Medical Treatment and Active Labor Act, 42 USC 1395dd.

§54. Judicial commitment; procedure

A. Any person of legal age may file with the court a petition which asserts his belief that a person is suffering from mental illness which contributes or causes that person to be a danger to himself or others or to be gravely disabled, or is suffering from substance abuse which contributes or causes that person to be a danger to himself or others or to be gravely disabled and may thereby request a hearing. The petition may be filed in the judicial district in which the respondent is confined, or if not confined, in the judicial district where he resides or may be found. The hearing shall not be transferred to another district except for good cause shown. A petitioner who is unable to afford an attorney may seek the assistance of any legal aid society or similar agency if available.

B. The petition shall contain the facts which are the basis of the assertion and provide the respondent with adequate notice and knowledge relative to the nature of the proceedings.

C. Upon the filing of the petition, the court shall assign a time, not later than eighteen calendar days thereafter, shall assign a place for a hearing upon the petition, and shall cause reasonable notice thereof to be given to the respondent, respondent's attorney and the petitioner. The notice shall inform such respondent that he has a right to be present at the hearing; that he has a right to counsel; that he, if indigent or otherwise qualified, has the right to have counsel appointed to represent him by the Mental Health Advocacy Service, and that he has the right to cross examine witnesses testifying at any hearing on such application.

D. (1) As soon as practical after the filing of the petition, the court shall review the petition and supporting documents, and determine whether there exists probable cause to believe that the respondent is suffering from mental illness which contributes to his being or causes him to be a danger to himself or others or gravely disabled, or is suffering from substance abuse which contributes to his being or causes him to be a danger to himself or others or gravely disabled. If the court determines that probable cause exists, the court shall appoint a physician, preferably a psychiatrist, to examine the respondent and make a written report to the court and the respondent's attorney on the form provided by the office of human services of the Department of Health and Hospitals. The court-appointed physician may be the respondent's treating physician. The written report shall be made available to counsel for the respondent at least three days before the hearing. This report shall set forth specifically the objective factors leading to the conclusion that the person has a mental illness or suffers from substance abuse, the actions or statements by the person leading to the conclusion that the mental illness or substance abuse causes the person to be dangerous to himself or others or to be gravely disabled and in need of immediate treatment as a result of such illness or abuse, and why involuntary confinement and treatment are indicated. The following criteria should be considered by the physician:

(a) The respondent is suffering from serious mental illness which contributes or causes him to be dangerous to himself or others or to be gravely disabled or from substance abuse which contributes or causes him to be dangerous to himself or others or to be gravely disabled.

(b) The respondent's condition is likely to deteriorate needlessly unless he is provided appropriate medical treatment.

(c) The respondent's condition is likely to improve if he is provided appropriate medical treatment.

(2) The respondent or his attorney shall have the right to seek an additional independent medical opinion, when necessary, in their discretion. If the respondent is indigent, this opinion may be paid for by the Mental Health Advocacy Service, upon the approval of its executive director. Reasonable compensation of the appointed examining physicians and all court costs shall be established by the court and ordered paid by respondent or petitioner in the discretion of the court. If it is determined by the court that the costs shall not be borne by the respondent or the petitioner, then compensation to the physicians and all court costs shall be paid from funds appropriated to the judiciary, but such court costs shall not exceed the sum of seventy-five

dollars.

(3) If the respondent refuses to be examined by the court appointed physician as herein provided, or if the judge, after reviewing the petition and an affidavit filed pursuant to R.S. 28:53.2 or the report of the treating physician or the court appointed physician, finds that the respondent is mentally ill or suffering from substance abuse and is in need of immediate hospitalization to protect the person or others from physical harm, or that the respondent's condition may be markedly worsened by delay, then the court may issue a court order for custody of the respondent, and a peace officer shall deliver the respondent to a treatment facility designated by the court. The court shall also issue an order to the treatment facility authorizing detention of the respondent until the commitment hearing is completed, unless he is discharged by the director.

(4) Unless the individual is currently hospitalized or under an emergency certificate, he shall be allowed to remain in his home or other place of residence pending an ordered examination and to return to his home or other place of residence upon completion of the examination. An examining physician may execute an emergency certificate pursuant to R.S. 28:53 if he deems that action appropriate. In such a case, the respondent shall be admitted pursuant to R.S. 28:53 pending the hearing on the petition.

E. (1) Public and private general hospitals and their personnel who provide services in good faith for commitments defined in this Part shall not be liable for damages suffered by the patient as a result of the commitment or damages caused by the patient during the term of the commitment, unless the damage or injury was caused by willful or wanton negligence or gross misconduct. This limitation shall only apply to public and private general hospital personnel who within the preceding twelve-month period have received appropriate training in nonviolent crisis intervention and such training has been documented in their personnel files. The training shall be provided by an instructor who has attended a course in crisis intervention taught by a certified instructor.

(2) The provisions of this Subsection shall not affect the provisions of R.S. 40:2113.6 or the Federal Emergency Medical Treatment and Active Labor Act, 42 USC 1395dd.

§55. Judicial hearings

A. At the appointed time, the court shall conduct a hearing on the petition. Before the hearing, the respondent may move for a change of venue to the parish of his domicile, which motion shall be granted only for compelling reasons. If the respondent is confined to a hospital, the judge of the court where the petition was filed may hold the hearing on such commitment at the treatment facility where the person is confined, if in the opinion of at least one of the physicians appointed by the court to examine him, it will be detrimental to his health, welfare, or dignity to travel to the court where the petition was filed.

B. The court shall provide respondent a reasonable opportunity to select his own counsel. In the event the respondent does not select counsel and is unable to pay for counsel, or in the event counsel selected by respondent refuses to represent said respondent or is not available for such representation, then the court shall appoint counsel for respondent provided by the mental health advocacy service. Reasonable compensation of appointed counsel shall be established by the court and may be ordered paid by respondent or petitioner in the discretion of the court if either is found financially capable. If it is determined by the court that the costs shall not be borne by the respondent or the petitioner, then compensation to the attorney shall be paid from funds appropriated to the judiciary.

C. The respondent shall have the right to privately retained and paid counsel at any time. However, all respondents must be represented by counsel as early as possible in every proceeding. If attorneys are available through the mental health advocacy service, the court shall contact the office of the service and request the assignment of an attorney who will be appointed. In cases where the service is unable to provide representation, the court shall select and appoint

an attorney to represent the respondent, whose fee shall be set by the court. An attorney appointed to represent a person by a court pursuant to this Title has a continuing duty toward that person even after admission. That duty shall include, but not be limited to, follow-up investigation of the circumstances of the person and representation in subsequent proceedings relating to admission, status, and discharge. The duty shall continue until it is terminated by the court making the appointment.

D. On the day appointed, the hearing shall take precedence over all other matters, except pending cases of the same type. The court shall conduct the hearing in as formal a manner as is possible under the circumstances and shall admit evidence according to the usual rules of evidence. Witnesses and evidence tending to show that the person who is the subject of the petition is a proper subject for judicial commitment shall be presented first. The respondent has a right to be present unless the court finds that he knowingly, voluntarily, and intelligently waives his presence. The respondent or his counsel shall have the right to present evidence and cross examine witnesses who may testify at the hearing. If the respondent is present at the hearing and is medicated, the court shall be informed of the medication and its common effects. If the respondent or his attorney notifies the court not less than three days before the hearing that he wishes to cross examine the examining physicians, the court shall order such physicians to appear in person or by deposition. The court shall cause a recording of the testimony of the hearing to be made, which shall be transcribed only in the event of an appeal from the judgment. A copy of such transcript shall be furnished without charge, to any appellant whom the court finds unable to pay for the same. The cost of such transcript shall be paid from funds appropriated to the judicial department.

E. (1) If the court finds by clear and convincing evidence that the respondent is dangerous to self or others or is gravely disabled, as a result of substance abuse or mental illness, it shall render a judgment for his commitment. After considering all relevant circumstances, including any preference of the respondent or his family, the court shall determine whether the respondent should be committed to a treatment facility which is medically suitable and least restrictive of the respondent's liberty. However, if the placement determined by the court is unavailable, the court shall commit the respondent to the Department of Health and Hospitals for placement in a state treatment facility until such time as an opening is available for transfer to the treatment center determined by the court, unless the respondent waives the requirement for such transfer. Within fifteen days following an alternative placement, the department shall submit a report to the court stating the reasons for such placement and seeking court approval of the placement.

(2) Following commitment of the respondent to the department, the department shall consider all of the following in determining the appropriate state treatment facility in which to place the respondent:

(a) The medical needs of the respondent.

(b) The treatment programs available at each treatment facility.

(c) The facility which would be least restrictive of the respondent's liberty.

(d) The availability of space at the respective treatment facilities.

(e) The preference of the respondent and the proximity of the respondent's family to the location of the facility.

(3) Unless prohibited by the respondent, the department shall notify the respondent's family of his placement at and/or transfer to a state treatment facility.

(4) The director shall notify the court in writing when a patient has been discharged or conditionally discharged.

(5) The court order shall order a suitable person to convey such person to the treatment facility and deliver respondent, together with a copy of the judgment and certificates, to the director. In appointing a person to execute the order, the court should give preference to a near relative or friend of the respondent.

(6) The court may, if it finds it to be in the best interest of the respondent, revoke the

certificate or judgment of commitment.

F. Notice of any action taken by the court shall be given to the respondent and his attorney as well as to the director of the designated treatment facility in such manner as the court concludes would be appropriate under the circumstances.

G. Each court shall keep a record of the cases relating to mentally ill persons coming before it under this Title and the disposition of them. It shall also keep on file the original petition and certificates of physicians required by this Section, or a microfilm duplicate of such records. All records maintained in the courts under the provisions of this Section shall be sealed and available only to the respondent or his attorney, unless the court, after hearing held with notice to the respondent, determines such records should be disclosed to a petitioner for cause shown.

H. Every patient admitted by judicial commitment shall be informed in writing at the time of admission of the procedures for requesting release from the treatment facility, the availability of counsel, information about the mental health advocacy service, the rights enumerated in R.S. 28:171, and the rules and regulations applicable to or concerning his conduct while a patient in the treatment facility. If the person is illiterate or does not read or understand English, appropriate provisions should be made to supply him this information. In addition a copy of the information listed in this Subsection must be posted in any area where patients are confined and treated.

I. (1) (a) A patient confined to a treatment facility by judicial commitment may receive medication and treatment without his consent, but no major surgical procedures or electroshock therapy may be performed without the written authority of a court of competent jurisdiction after a hearing. With regard to the administration of medicine, if the patient objects to being medicated, prior to making a final decision, the treating physician shall make a reasonable effort to consult with the primary physician or the primary care provider outside of the facility that has previously treated the patient for his mental condition. The treating physician shall, prior to the administration of such medication, record in the patient's file either the date and time of the consultation and a summary of the comments of the primary physician or primary care provider or, if the treating physician is unable to consult with the primary physician or primary care provider the date and time that a consultation with the primary physician or primary care provider was attempted.

(b) Notwithstanding the provisions of Subparagraph (a) of this Paragraph, any licensed physician may administer medication to a patient without his consent and against his wishes in situations which, in the reasonable judgment of the physician who is observing the patient during the emergency, constitutes a psychiatric or behavioral emergency. For purposes of this Paragraph, a "psychiatric or behavioral emergency" occurs when a patient, as a result of mental illness, substance abuse, or intoxication engages in behavior which, in the clinical judgment of the physician, places the patient or others at significant and imminent risk of damage to life or limb. The emergency administration of medication may be continued until the emergency subsides, but in no event shall it exceed forty-eight hours, except on weekends or holidays when it may be extended for an additional twenty-four hours.

(c) The physician shall make a reasonable effort to consult with the primary physician or primary care provider outside the facility that has previously treated the patient for his mental condition at the earliest possible time, but in no event more than forty-eight hours after the emergency administration of medication has begun, except on weekends or holidays, when the time period may be extended an additional twenty-four hours. The physician shall record in the patient's file either the date and time of the consultation and a summary of the comments of the primary physician or primary care provider or, if the physician is unable to consult with the primary physician or primary care provider the date and time that a consultation with the primary physician or primary care provider was attempted.

(2) If the director of the hospital, in consultation with two physicians, determines that the condition of a committed patient is of such critical nature that it may be life-threatening unless

major surgical procedures or electroshock treatment is administered, such measures may be performed without the consent otherwise provided for in this Section.

J. No director of a treatment facility shall prohibit any mentally ill person or person suffering from substance abuse from applying for conversion of involuntary or emergency admission status to voluntary admission status. Any patient on an involuntary admission status shall have the right to apply for a writ of habeas corpus to have his admission status changed to voluntary status.

§56. Judicial commitment; review; appeals

A. (1)(a) Except as provided in Subparagraph (b) of this Paragraph, all judicial commitments except those for alcoholism shall be for a period not to exceed one hundred eighty days. The period of commitment shall expire at the end of the judicial commitment period, and the patient, if not converted to a voluntary status, shall be discharged unless a petition for judicial commitment has been filed prior to the expiration of the commitment period. If the court finds by clear and convincing evidence that the patient is dangerous to self or others or is gravely disabled as a result of mental illness, it shall render a judgment for his commitment for an additional period. Except as provided in Subparagraph (b) of this Paragraph, each additional judicial commitment shall expire at the end of one hundred eighty days.

(b) If a person has been judicially committed for four consecutive one- hundred-eighty-day periods pursuant to the provisions of Subparagraph (a) of this Paragraph and during this time has not been conditionally discharged, the period of a subsequent judicial commitment may exceed one hundred eighty days but shall not exceed one year.

(2) (a) The hearing on the petition shall be conducted according to the procedures and standards set forth in R.S. 28:54 and 55, and this Section. The hearing may be held by the district court for the judicial district in which the patient is being confined, or if not confined, by the district court for the judicial district where he resides or may be found. The hearing shall not be transferred to another district except for good cause shown.

(b) All judicial commitments shall be reviewed by the court issuing the order for commitment every ninety days, except those for alcoholism and except those individuals committed pursuant to Code of Criminal Procedure Article 648(B) whose cases shall continue to be reviewed annually. The director of the treatment facility to which the person has been judicially committed shall issue reports to the court and to counsel of record at these intervals setting forth the patient's response to treatment, his current condition, and the reasons why continued involuntary treatment is necessary to improve the patient's condition or to prevent it from deteriorating. These reports shall be treated by the court as confidential and shall not be available for public examination, nor shall they be subject to discovery in any proceedings other than those initiated pursuant to this Title.

(3) The court may at any time, upon application or upon its own motion, order a new hearing to be held in order to determine whether the involuntary status should be continued.

B. A commitment for alcoholism shall expire after forty-five days and the patient, if not converted to a voluntary status, shall be discharged, unless the court, upon application by the director of the treatment facility, finds that continued involuntary treatment is necessary and orders the patient recommitted for a period not to exceed sixty days; however, not more than two such sixty-day recommitments may be ordered in connection with the same continuous confinement.

C. Notwithstanding an order of judicial commitment, the director of the treatment facility to which the individual is committed is encouraged to explore treatment measures that are medically appropriate and less restrictive. The director may at any time convert an involuntary commitment to a voluntary one should he deem that action medically appropriate. He shall inform the court of any action in that regard. The director may discharge any patient if in his opinion discharge is appropriate. The director shall not be legally responsible to any person for the subsequent acts or behavior of a patient discharged in good faith.

D. A person who is judicially committed shall be allowed to appeal devolutively from the order to the court of appeal. If the lower court finds the individual indigent, it shall allow the appeal to be taken in forma pauperis. Upon perfection of an appeal, it shall be heard in a summary manner, taking preference over all other cases except similar matters.

E. Upon affirmation of the order of commitment, the individual may apply for appropriate writs from the supreme court which shall be heard in a summary manner.

F. Nothing in this Title shall deny the right of habeas corpus, including an application based upon a change of circumstances.

G. (1) A person who is judicially committed may be conditionally discharged for a period of up to one hundred twenty days by the director or by the court. The patient may be required to report for outpatient treatment as a condition of his release. The terms and conditions of the conditional discharge shall be specifically set forth in writing and signed by the patient. A copy of the conditional discharge shall be given to the patient and explained to him before he is discharged.

(2) If the patient is conditionally discharged by the director, a copy of the conditional discharge shall be sent to the court which judicially committed him. If the patient is conditionally discharged by the court, a copy of the conditional discharge shall be sent to the facility to which the patient has been committed.

(3) If a patient does not comply with the terms and conditions of his conditional discharge, he is subject to any of the procedures for involuntary treatment, including but not limited to the issuance of an order for custody and the execution of an emergency certificate. A conditionally discharged patient who is confined pursuant to any of these involuntary procedures shall have all rights of an involuntary patient, including the right to demand a probable cause hearing, the right to periodic reports and review, and a hearing pursuant to Subsections A and B.

(4) An extension of a conditional discharge may be granted upon application by the director of the treatment facility to the court and notification to respondent's counsel of record. The court may grant the extension of the conditional discharge for a period of up to one hundred twenty days. No further extension may be made without a contradictory hearing. The burden of proof is on the director of the treatment facility to show why continued treatment is necessary.

H. All patients presently unrepresented by privately retained counsel and who are the subject of involuntary commitment under any prior statute shall have their cases reviewed by attorneys provided by the mental health advocacy service within one year from the effective date of this Section, or be discharged or be committed again according to the provisions of this Chapter.

I. All judicial commitments involving a patient who has been found not guilty by reason of insanity or who has been found to lack the capacity to proceed, shall be reviewed in the manner as set forth in R.S. 15:211.

§ 59. Commitment of prisoners

A. Any person acquitted of a crime or misdemeanor by reason of insanity or mental defect may be committed to the proper institution in accordance with the Code of Criminal Procedure Arts. 654 et seq.

B. Any person who is determined to lack the capacity to proceed, who will not attain the capacity to proceed with his trial in the foreseeable future, and who is not a danger to himself or others, shall be discharged in accordance with Code of Criminal Procedure Arts. 648 et seq. However, this release is without prejudice to any right the state may have to institute civil commitment proceedings pursuant to R.S. 28:53 or R.S. 28:54. Furthermore, this person may be held in a treatment facility for a reasonable time period pending the judicial commitment hearing. If judicial commitment proceedings are necessary, they shall be instituted within seventy-two hours after a determination that the person will not attain the capacity to proceed with his trial.

C. Any person serving sentence who becomes mentally ill may be committed to the proper institution in the manner provided for judicial commitment by the district court of the place of

incarceration and contradictorily with the superintendent of the place of incarceration or with the sheriff of that parish. The period of commitment shall be credited against the sentence imposed by the court. The superintendent may transfer patients under sentence from one ward to another only upon authority of the committing court.

D. The department shall designate institutions for the care of mental patients committed in accordance with this Section.

§63. Standard of care; limitation of liability; penalties

A. (1) Any licensed physician, psychologist, medical psychologist, psychiatric mental health nurse practitioner, or public and private general hospital personnel exercising that degree of skill and care ordinarily employed, under similar circumstances by members of his profession in good standing in the same community or locality, and using reasonable care and diligence with his best judgment in the application of his skill, shall not be held civilly liable or subject to criminal prosecution for acts arising from his professional opinions which fall within the scope of his duties, judgments, actions, or duties pursuant to any of the provisions of this Part, unless the damage or injury was caused by willful or wanton negligence or gross misconduct. This limitation of liability shall apply only to public and private general hospital personnel who within the preceding twelve-month period have received appropriate training in nonviolent crisis intervention. Such training shall be documented in their personnel files. The training shall be provided by an instructor who has attended a course in crisis intervention taught by a certified instructor.

(2) The provisions of this Subsection shall not affect the provisions of R.S. 40:2113.6 or the Federal Emergency Medical Treatment and Active Labor Act, 42 USC 1395dd.

B. Any licensed physician, psychologist, medical psychologist, or psychiatric mental health nurse practitioner who executes an emergency certificate shall be held to that degree of skill and care ordinarily employed, under similar circumstances, by members of his profession in good standing in the same community or locality, and using reasonable care and diligence with his best judgment in the application of his skill.

C. (1) Any person who acts in good faith to assist in the apprehension or taking into protective custody, examination and confinement of a patient will not be subject to civil or criminal penalties, unless the damage or injury was caused by willful or wanton negligence or gross misconduct. This limitation of liability shall only apply to public and private general hospital personnel who within the preceding twelve-month period have received appropriate training in nonviolent crisis intervention and such training has been documented in their personnel files. The training shall be provided by an instructor who has attended a course in crisis intervention taught by a certified instructor.

(2) The provisions of this Subsection shall not affect the provisions of R.S. 40:2113.6 or the Federal Emergency Medical Treatment and Active Labor Act, 42 USC 1395dd.

(3) Any public or private general hospital to which a patient has been transported pursuant to an order of protective custody or an emergency certificate or for the purpose of examination for an emergency commitment certificate shall not be held civilly liable or subject to criminal prosecution for damage or injury to the patient arising from the detention or treatment of the patient if the public or private general hospital personnel have used reasonable care and diligence and their best judgment in the application of their skills under similar circumstances in the same or a similar community or locality, unless the damage or injury was caused by willful or wanton negligence or gross misconduct. This limitation of liability shall only apply to public and private general hospital personnel who within the preceding twelve-month period have received appropriate training in nonviolent crisis intervention and such training has been documented in their personnel file. The training shall be provided by an instructor who has attended a course in crisis intervention taught by a certified instructor.

(4) The provisions of this Subsection shall not affect the provisions of R.S. 40:2113.6 or

the Federal Emergency Medical Treatment and Active Labor Act, 42 USC 1395dd.

(5) A person who willfully advises or participates in the making of a false application or certificate shall be imprisoned with or without hard labor for not more than two years or fined not more than ten thousand dollars, or both.

D. (1) Any apprehension or taking into protective custody and confinement made by law enforcement officers, pursuant to any authorized procedure provided in this Title, is hereby declared to be an administrative act relative to the functions of their office, as required by law, and for which act they are specifically granted personal immunity.

(2) Upon arrival at any treatment or examination facility, a law enforcement officer escorting a person apprehended or taken into protective custody and confinement under any provision of this Title shall be relieved of any further responsibility.

§64. Mental Health Advocacy Service; creation; board of trustees; organization; powers; duties

A. (1) A Mental Health Advocacy Service is hereby created and shall be governed by a board of trustees. The Mental Health Advocacy Service shall be in the executive branch of state government, in the office of the governor pursuant to R.S. 36:4(B)(1)(v).

(2) The service shall provide legal counsel to all patients requesting such service and who are admitted for treatment pursuant to this Chapter, including, but not limited to, voluntary or involuntary admission, commitment, legal competency, change of status, transfer, and discharge.

(3) The service shall be governed by a board of trustees consisting of nine members to be made up of the deans of the law schools or their designated faculty members from Loyola University of the South, Southern University and Agricultural and Mechanical College Law Schools and from the medical and law schools of Louisiana State University and Agricultural and Mechanical College and Tulane University of Louisiana, the president of the Mental Health Association of Louisiana or his representative, and a selected member from the Louisiana Medical Society and the Louisiana State Bar Association.

B. Members of the board shall be reimbursed actual expenses incurred in the performance of their duties.

The board of trustees shall:

(1) Appoint a director of the service.

(2) Establish general policy guidelines for the operation of the service to provide legal counsel and representation for the mentally disabled of this state in order to ensure that their legal rights are protected. However, the board shall not have supervisory power over the conduct of particular cases.

(3) Review and evaluate the operations of the service and emphasize special training for attorneys hired by the service.

(4) Review and approve an annual budget for the service.

(5) Review and approve an annual report on the operation of the service and submit such report to the legislature, the governor and the chief justice of the supreme court, and

(6) Approve and authorize contractual arrangements sought by the director.

C. The director shall be an attorney at law licensed to practice in the state. The director shall be qualified by experience to perform the duties of his office. The director shall devote full time to the duties of his office and shall not engage in the private practice of law.

The director shall:

(1) Organize and administer programs to provide legal counsel and representation for the mentally disabled of this state in order to ensure that their rights are protected, subject to the approval of the board of trustees.

(2) Identify the needs of mentally disabled persons for legal counsel and representation within the state and the resources necessary to meet those needs, subject to the approval of the board of trustees.

(3) Institute or cause to be instituted such legal proceedings as may be necessary to enforce and give effect to any of the duties or powers of the service.

(4) Hire and train attorneys and other professional and nonprofessional staff that may be necessary to carry out the functions of the service. All attorneys employed shall be licensed to practice law in Louisiana.

(5) Establish official rules and regulations for the conduct of work of the service, subject to the approval of the board of trustees.

(6) Take such actions as he deems necessary and appropriate to secure private, federal, and other public funds to help support the service, subject to the approval of the board of trustees, and

(7) The director may contract with organizations or individuals for the provision of legal services for the mentally disabled, subject to the approval of the board of trustees.

D. Any attorney representing a mentally ill person or a respondent as defined herein shall have ready access to view and copy all mental health and developmental disability records pertaining to his client, unless the client objects. If the patient or respondent later retains a private attorney to represent him, the mental health advocacy service shall destroy all copies of records pertaining to his case.

Any attorney representing a mentally ill person or a respondent as defined herein shall have the opportunity to consult with his client whenever necessary in the performance of his duties. A treatment facility shall provide adequate space and privacy for the purpose of attorney-client consultation.

E. Nothing in this Title shall be construed to prohibit a mentally disabled person or respondent to be represented by privately retained counsel. If a service attorney has been appointed by the court and the mentally disabled person or respondent secures his own counsel, the court shall discharge the service attorney.

F. Any respondent or mentally disabled person shall have the right to demand that the records in the possession of his attorney regarding his mental condition be destroyed or returned to the treatment facility, and he shall have the right to assurance by the director that such records have been so destroyed by the mental health advocacy service attorney.

G. The mental health advocacy service shall establish official rules and regulations for evaluating a client's financial resources, for the purpose of determining whether a client has the ability to pay for services received.

A client found to have sufficient financial resources shall be required to pay the service in accordance with standards established by the director. An indigent client shall be provided legal counsel and representation without charge.

§ 65. Medication or treatment

A. Emergency situations.

(1) A physician may order the necessary medication or treatment without the patient's consent required in R.S. 28:52(H), 53(K), or 55(1), when the physician reasonably believes that the condition of a patient who refuses medication or treatment is of such critical nature that the patient presents an imminent danger of physical harm to himself or others.

(2) A physician may order the emergency administering of medication or treatment after personally examining the patient or the physician may give the order by telephone if he is not immediately available to examine the patient and the patient presents an imminent threat to life. If the order is given by telephone, the physician must personally examine the patient within twelve hours after the telephone order has been given. All telephone orders for medication must be recorded on the patient's chart.

(3) The emergency administering of medication or treatment may be continued until the emergency subsides, but in no case shall it exceed seventy-two hours unless written notice of an administrative review has been given pursuant to R.S. 28:66(A).

(4) In all emergency cases requiring medicine or treatment, the director shall be notified as

soon as practicable and shall review the continued necessity for these measures.

(5) The decision to administer emergency medication or treatment pursuant to this Subsection is subject to judicial review as to reasonableness pursuant to R.S. 28:66(G).

B. Nonemergency situations.

(1) When a patient who is being held involuntarily does not consent to medication or treatment and the physician believes such measures are necessary, but it is not an emergency as provided in Subsection A hereof, the director shall conduct an administrative review pursuant to R.S. 28:66 to determine whether the patient is competent to consent.

(2) An administrative review need not be held if the director obtains the necessary consent from the patient's curator has been expressly authorized in the interdiction order to consent to medication or treatment on behalf of an interdict.

§ 66. Administrative review

A. (1) The facility shall provide written notice to the patient, his representative, and an attorney from the Mental Health Advocacy Service (MHAS) no less than forty-eight hours, excluding weekends and holidays, before the administrative review. The notice shall include the time and place of the administrative review, the diagnosis, and reasons why the physician believes medication or treatment to be necessary. The patient may continue to refuse medication pending the outcome of the administrative review. The administrative review shall be held no later than seventy-two hours after the time that the MHAS attorney or other representative has been notified, excluding weekends and holidays, unless the patient and the facility agree to a continuance.

(2) The MHAS attorney shall represent the patient at the administrative review unless the patient chooses someone else to represent him.

B. A patient may be medicated without his consent if, based on the patient's medical record and after personally examining the patient, the director determines all of the following:

(1) The patient lacks the competence to make a decision about the medication or treatment. In deciding the issue of incompetency, the director shall consider the medical record and the testimony of at least one nontreating physician. The director shall also consider several factors, including but not limited to:

(a) The patient's ability to understand the long-term medical risks commonly associated with medication or treatment.

(b) The patient's ability to understand the short-term side effects commonly associated with the medication or treatment.

(c) The patient's ability to understand the risks associated with the failure to take the medication or treatment.

(2) The patient is mentally ill or suffering from substance abuse and is dangerous to himself or others or gravely disabled without the medication or treatment.

(3) The medication or treatment is the least restrictive alternative.

(4) The medication or treatment is medically appropriate.

(5) The medication or treatment offers a significant likelihood of improvement in the patient's condition or a speedier recovery.

(6) The expected benefits from the medication outweigh the known risks and potential side effects.

C. (1) The director shall require the attendance of the patient at the hearing unless extraordinary circumstances exist precluding his attendance.

(2) The patient and the hospital have the right to present evidence and crossexamine witnesses. The patient or his attorney shall have the right to call an independent expert as provided for in R.S. 28:54(D)(2).

D. (1) The director's decision shall be in writing, shall address each of the criteria listed in Subsection B hereof, and shall give reasons for the decision. All of the criteria must be met in

order to medicate a patient who does not consent.

(2) The director's decision to administer medication or treatment without the consent of the patient should specify the length of time the decision to medicate or treat the patient is to remain valid. The decision shall be effective for no more than sixty days or until termination of the patient's stay at the treatment facility, whichever occurs first. However, an administrative review to modify the director's decision may be held before the expiration of that period if the patient's condition or other circumstances have changed so that the findings of R.S. 28:66(B) are no longer met.

E. The physician shall provide a written report to the director after the first fourteen days of medication or treatment. Thereafter, such reports must be made every fourteen days. If at any time the director believes that the medication or treatment is no longer necessary, he shall order such measures discontinued.

F. The director shall provide the patient and his representative with a copy of the decision, as well as the reports required under Subsection E hereof.

G. The patient may file a petition for review of the director's decision in the court in the judicial district where the patient is confined. The hearing may be transferred to another district for good cause shown. The hearing shall be held within seven days of the time the petition is filed. The court review shall be de novo, and shall independently determine whether there is clear and convincing evidence to support the director's findings and conclusions. The court shall take into consideration the right of the patient to rely on nonmedical treatment in accordance with the tenets and practices of a well recognized religious method of healing by a duly accredited practitioner thereof. While a patient is under such nonmedical treatment, he may not be ordered medically treated unless the court has determined that he is, as a result of a mental disorder, a danger to others or to himself. Further review may be taken pursuant to the procedures in R.S. 28:56(D) and (E).

H. For purposes of this Section and R.S. 28:65, the director of a treatment facility must be a psychiatrist who is not involved in providing medication or treatment to the patient. If the director does not meet those criteria, he shall designate a psychiatrist who is not involved in the treatment or medication of the patient.

PART VI. RIGHTS OF PERSONS SUFFERING FROM MENTAL ILLNESS AND SUBSTANCE ABUSE

§171. Enumerations of rights guaranteed

A. No patient in a treatment facility pursuant to this Chapter shall be deprived of any rights, benefits, or privileges guaranteed by law, the Constitution of the state of Louisiana, or the Constitution of the United States solely because of his status as a patient in a treatment facility. These rights, benefits, and privileges include, but are not limited to, civil service status; the right to vote; the right to privacy; rights relating to the granting, renewal, forfeiture, or denial of a license or permit for which the patient is otherwise eligible; and the right to enter contractual relationships and to manage property.

B. No patient in a treatment facility shall be presumed incompetent, nor shall such person be held incompetent except as determined by a court of competent jurisdiction. The determination of incompetence shall be separate from the judicial determination of whether the person is a proper subject for involuntary commitment.

C. (1) The patient in a treatment facility shall be permitted unimpeded, private, and uncensored communication with persons of his choice by mail, telephone, and visitation. These rights may be restricted by the director of the treatment facility if sufficient cause exists and is so documented in the patient's medical records. The patient's legal counsel, as well as his next of kin

or responsible party must be notified in writing of any such restrictions and the reasons therefor. When the cause for any restriction ceases to exist, the patient's full rights shall be reinstated. A patient shall have the right to communicate in any manner in private with his attorney at all times.

(2) The director of a treatment facility shall ensure that correspondence can be conveniently received and mailed, that telephones are reasonably accessible, and that space for visits is available. Writing materials, postage, and telephone usage funds shall be provided in reasonable amounts to recipients who are unable to procure such items.

(3) Reasonable times and places for the use of telephones and for visits may be established in writing by the director of any treatment facility. However, the times and places established by the director must allow patients, at a minimum, reasonable daily communication by telephone and visitation. These rights may be restricted by the director of the treatment facility if sufficient cause exists and is so documented in the patient's medical records. The patient's legal counsel, as well as his next of kin or responsible party, must be notified in writing of any such restrictions and the reasons therefor. When the cause for any restriction ceases to exist, the patient's full rights shall be reinstated.

(4) (a) The director of any substance abuse treatment facility may restrict the visitation rights of a patient who is voluntarily admitted to such treatment facility under the provisions of R.S. 28:52, 52.1, 52.2, 52.3, and 52.4 for the initial phase of treatment but no longer than seven days unless good cause exists to extend the restriction and is so documented in the patient's record. This restriction shall not apply to visitation by the patient's attorney, or if he is not represented by counsel, the mental health advocate, or the patient's minister. This restriction shall also not apply to a parent or legal guardian of a patient who is a minor unless the director determines that good cause exists that such restriction shall be in the best interest of the patient and is so documented in the patient's record. When the facility director determines the need to restrict visitation of new patients he shall post notice of such restriction in places prominent to all new admissions, and shall inform each new patient of the restriction prior to the admission of the patient, and the length and duration thereof, and further, that such restriction may be extended on an individual basis as determined to be in the patient's interest by the treatment staff with the concurrence of the medical director.

(b) Nothing herein shall be construed to further restrict other forms of patient communication as permitted in this Section, nor shall this restriction apply to mental health treatment facilities.

D. Seclusion or restraint shall only be used to prevent a patient from physically injuring himself or others. Seclusion or restraint may not be used to punish or discipline a patient or used as a convenience to the staff of the treatment facility. Seclusion or restraint shall be used only in accordance with the following standards:

(1) Seclusion or restraint shall only be used when verbal intervention or less restrictive measures fail. Use of seclusion or restraint shall require documentation in the patient's record of the clinical justification for such use as well as the inadequacy of less restrictive intervention techniques.

(2) Seclusion or restraint shall only be used in an emergency. An emergency occurs when there is either substantial risk of self-destructive behavior, as evidenced by clinically significant threats or attempts to commit suicide or to inflict serious harm to self, or a substantial risk or serious physical assault on another person, as evidenced by dangerous actions or clinically significant threats that the patient has the apparent ability to carry out.

(3) A written order from a physician, psychologist, medical psychologist, or psychiatric mental health nurse practitioner acting within the scope of his institutional privileges shall be required for any use of seclusion or restraint. If, however, no physician, psychologist, medical psychologist, or psychiatric mental health nurse practitioner is immediately available, a registered nurse who has been trained in management of disturbed behavior may utilize seclusion or restraint. The nurse or the nursing supervisor shall then immediately notify a physician,

psychologist, medical psychologist, or psychiatric mental health nurse practitioner with institutional authority to order seclusion or restraint and provide him with sufficient information to determine whether seclusion is necessary and whether less restrictive interventions have been tried or considered. The physician, psychologist, medical psychologist, or psychiatric mental health nurse practitioner may issue a telephone order for seclusion or restraint, if such order is indicated.

(4) Written orders for the use of seclusion or restraint shall be time limited and not more than twelve hours in duration. The written order shall include the date and time of the actual examination of the patient, the date and time that the patient was placed in seclusion or restraint, and the date and time that the order was signed.

(5) A renewal order for up to twelve hours of seclusion or restraint may be issued by a physician, psychologist, medical psychologist, or psychiatric mental health nurse practitioner with institutional authority to order seclusion or restraint after determining that there is no less restrictive means of preventing injury to the patient or others. If any patient is held in seclusion or restraint for twenty-four hours, the physician, psychologist, medical psychologist, or psychiatric mental health nurse practitioner with institutional authority shall conduct an actual examination of the patient and document the reason why the use of seclusion or restraint beyond twenty-four hours is necessary, and the next of kin or responsible party shall be notified by the twenty-sixth hour.

(6) Staff who implement written orders for seclusion or restraint shall have documented training in the proper use of the procedure for which the order was written.

(7) Periodic monitoring and care of the patient shall be provided by responsible staff. A patient in seclusion or restraint shall be evaluated every fifteen minutes, especially in regard to regular meals, water, and snacks, bathing, the need for motion and exercise, and use of the bathroom, and documentation of these evaluations shall be entered in the patient's record.

(8) Patients shall be released from seclusion or restraint as soon as the reasons justifying the use of seclusion or restraint subside. If at any time during the period of seclusion or restraint a registered nurse determines that the emergency which justified the seclusion or restraint has subsided and a physician, psychologist, medical psychologist, or psychiatric mental health nurse practitioner with institutional authority to order seclusion or restraint is not immediately available, the patient shall be released. At the end of the period of seclusion or restraint ordered by the physician, psychologist, medical psychologist, or psychiatric mental health nurse practitioner the patient shall be released unless a renewal order is issued.

(9) Mechanical restraints shall be designed and used so as not to cause physical injury to the patient and so as to cause the least possible discomfort.

(10) Facilities using seclusion or restraint shall have written policies concerning their use in place before they can be used. These policies shall include standards and procedures for placing a patient in seclusion or restraint, and for informing him of the reason he was put in seclusion or restraint and the means of terminating such seclusion or restraint.

(11) Nothing in this Section shall be construed to expand the scope of practice of psychology as defined in R.S. 37:2351 et seq. to authorize the ordering, administering, or dispensing of medications, or to authorize any practice not permitted under the privileges granted by the institution.

(12) The department shall adopt rules and regulations in accordance with the Administrative Procedure Act to govern the use of seclusion and restraint. Such rules and regulations shall respect the patient's individual rights, protect the patient's health, safety, and welfare, and be the least restrictive of the patient's liberty. The department shall adopt rules and regulations to provide for enforcement procedures and penalties applicable to a person who violates the requirements of this Section.

E. A patient may be placed alone in a room or other area pursuant to behavior shaping techniques such as "time-out". Such confinement may only be used as part of a written treatment plan, shall

not be used for the convenience of staff, and may be used only according to the following standards and procedures:

(1) Placement alone in a room or other area shall be imposed only when less restrictive measures are inadequate.

(2) Placement alone in a room or other area shall only be ordered by a qualified professional trained in behavior-shaping techniques and authorized in accordance with the written policies and procedures of the facility to order the use of behavioral-shaping techniques.

(3) The period of placement alone in a room or other area shall not exceed thirty minutes.

(4) The patient shall be observed and supervised by a staff member.

(5) The period of placement alone in a room or other area shall not exceed a total of three hours in any twenty-four-hour time period. If the placement alone in a room or other area exceeds a total of three hours in any twenty-four-hour time period, it shall then be considered seclusion and shall be governed by the procedures and standards set forth in Subsection D of this Section.

(6) The date, time, and duration of the placement shall be documented.

(7) In treatment facilities where patients are placed alone in a room or other area as a behavior-shaping technique, there shall be written policies and procedures governing use of such behavior-shaping technique.

F. No patient confined by emergency certificate, judicial commitment, or non contested status shall receive major surgical procedures or electroshock therapy without the written consent of a court of competent jurisdiction after a hearing. If the director of the treatment facility, in consultation with two physicians, determines that the condition of such a patient is of such a critical nature that it may be life threatening unless major surgical procedures or electroshock therapy are administered, such emergency measures may be performed without the consent otherwise provided for in this Section. No physician shall be liable for a good faith determination that a medical emergency exists.

G. Every patient shall have the right to wear his own clothes; to keep and use his personal possessions, including toilet articles, unless determined by a physician, medical psychologist, or psychiatric mental health nurse practitioner that these are medically inappropriate and the reasons therefor are documented in his medical record. The patient shall also be allowed to spend a reasonable sum of his own money for canteen expenses and small purchases, and to have access to individual storage spaces for his private use. If the patient is financially unable to provide these articles for himself, the treatment facility shall provide a reasonable supply of clothing and toiletries.

H. Every patient shall have the right to be employed at a useful occupation depending upon his condition and available facilities.

I. Every patient shall have the right to sell the products of his personal skill and labor at the discretion of the director of the treatment facility and to keep or spend the proceeds thereof or to send them to his family.

J. Every patient shall have the right to be discharged from a treatment facility when his condition has changed or improved to the extent that confinement and treatment at the treatment facility are no longer required. The director of the treatment facility shall have the authority to discharge a patient admitted by judicial commitment without the approval of the court which committed him to the treatment facility. The court shall be advised of any such discharge. The director shall not be legally responsible to any person for the subsequent acts or behavior of a patient discharged by him in good faith.

K. Every patient shall have the right to engage a private attorney. If a patient is indigent, he shall be provided an attorney by the mental health advocacy service, if he so requests. The attorneys provided by the mental health advocacy service or appointed by a court shall be interested in and qualified by training and/or experience in the field of mental health statutes and jurisprudence.

L. Every patient shall have the right to request an informal court hearing to be held at the

discretion of the court within five days of the receipt of the request by the court. If the court determines that a hearing is appropriate and if the patient is not represented by an attorney of his own or from the mental health advocacy service, the court shall appoint an attorney to represent the patient. The purpose of the hearing shall be to determine whether or not the patient should be discharged from the treatment facility or transferred to a less restrictive and medically suitable treatment facility.

M. No provision hereof shall abridge or diminish the right of any patient to avail himself of the right of habeas corpus at any time.

N. Every patient shall have the right to be visited and examined at his own expense by a physician, psychologist, medical psychologist, or a psychiatric mental health nurse practitioner designated by him or a member of his family or an interested party. The physician, psychologist, medical psychologist, or psychiatric mental health nurse practitioner may consult and confer with the medical staff of the treatment facility and have the benefit of all information contained in the patient's medical record.

O. Prefrontal lobotomy shall be prohibited as a treatment solely for mental or emotional illness.

P. No medication may be administered to a patient pursuant to the provisions of this Chapter except upon the order of a physician, medical psychologist, or psychiatric mental health nurse practitioner. The physician, medical psychologist, or psychiatric mental health nurse practitioner is responsible for all medications which he has ordered and which are administered to a patient. A record of medications administered to each patient shall be kept in his medical record including all instances when a patient is administered medication without his consent. Medication shall not be used for nonmedical reasons such as punishment or for convenience of the staff.

Q. A person admitted to a treatment facility has the right to an individualized treatment plan and periodic review to determine his progress. The appropriate staff of the facility shall review the person's progress at least at intervals of thirty days. The staff shall enter into the person's medical record his response to medical treatment, his current mental status, and specific reasons why continued treatment is necessary in the current setting or whether a treatment facility is available which is medically suitable and less restrictive of the patient's liberty.

R. A person admitted to a treatment facility has the right to have available such treatment as is medically appropriate to his condition. Should the treatment facility be unable to provide an active and appropriate medical treatment program, the patient shall be discharged.

S. Any patient known by a director of a treatment facility to be practicing a well-recognized religious method of healing under the care of a duly accredited practitioner thereof shall not be ordered medically treated, unless he is, as a result of a mental disorder, a danger to himself or to others.

§181. Improper commitment

Any person who, alone or in conspiracy with others, unlawfully, willfully, maliciously, and without reasonable cause, commits or attempts to commit to any mental institution any person not sufficiently ill to require care shall be fined not more than one thousand dollars, or imprisoned for not more than one year, or both.

§185. Unlicensed counseling

A. No person shall hold himself out to be a counselor with a specific specialty to provide mental health or substance abuse services, or attempt to provide counseling services in this state, and receive fees either from the patient or a third party, unless he is authorized to practice in the specific specialty area by the appropriate state or regulatory authority.

B. Any person found to be in violation of this Section shall be fined not more than five hundred dollars, or imprisoned for not more than one year or both.

C. All persons found to be in violation of this Section, shall be reported to the Department of Health and Hospitals where a database shall be kept of all violators.

PART X. ADVANCE DIRECTIVES FOR MENTAL HEALTH TREATMENT

§221. Definitions

As used in this Part:

(1) "Advance directive for mental health treatment" or "advance directive" means a written document voluntarily executed by a principal in accordance with the requirements of this Part and includes a declaration or the appointment of a representative or both.

(2) "Declaration for mental health treatment" or "declaration" means a written document executed by a principal, in accordance with the requirements of this Part, setting forth preferences or instructions regarding mental health treatment in the event the principal is determined to be incapable and mental health treatment is necessary.

(3) "Director" or "superintendent" means a person in charge of a treatment facility or his deputy.

(4) "Incapable" means that, due to any infirmity, the principal is currently unable to make or to communicate reasoned decisions regarding the principal's mental health treatment.

(5) "Mental health treatment" shall have the same meaning as provided in R.S. 28:2(28) and includes but is not limited to electroshock therapy, treatment of mental illness with psychoactive medication, admission to and retention in a treatment facility, and outpatient services. However, "mental health treatment" shall not include admission to or retention in a mental health treatment facility for a period in excess of fifteen days.

(6) "Outpatient services" means treatment for a mental or emotional disorder that is obtained on an outpatient basis.

(7) "Physician" means an individual licensed to practice medicine by the Louisiana State Board of Medical Examiners.

(8) "Principal" means an individual who has executed an advance directive for mental health treatment.

(9) "Provider" means a mental health treatment provider.

(10) "Psychologist" means a clinical psychologist who is licensed to practice psychology in Louisiana.

(11) "Representative" means a competent adult validly appointed under R.S. 28:223 to make mental health treatment decisions for a principal and also means an alternative representative.

(12) "Treating physician" means the physician who has primary responsibility for the mental health treatment of the principal.

(13) "Treatment facility" shall have the same meaning as provided in R.S. 28:2(29)(a).

§222. Individuals who may make an advance directive for mental health treatment; period of validity

A. An adult who is not incapable may make an advance directive for mental health treatment. The preferences or instructions may include consent to or refusal of mental health treatment.

B. An advance directive for mental health treatment shall continue in effect for a period of five years or until revoked, whichever occurs first. The authority of a named representative and any alternative representative named in the advance directive for mental health treatment shall continue in effect as long as the advance directive appointing the representative is in effect or until the representative has withdrawn.

C. If an advance directive for mental health treatment has been delivered to the principal's treating physician or other provider and the principal has been determined to be incapable pursuant to R.S. 28:226, at the expiration of five years after its execution, it shall remain effective until the principal is no longer incapable.

§223. Designation of representative for decisions about mental health treatment

In advance directive for mental health treatment may designate a competent adult to act as a

representative to make decisions about mental health treatment. An alternative representative may also be designated to act as representative if the original designee is unable or unwilling to act at any time. A representative who has accepted the appointment in writing may make decisions about mental health treatment on behalf of the principal only when the principal is determined to be incapable pursuant to R.S. 28:226. The decisions shall be consistent with any desires the principal has expressed in the declaration.

§224. Execution of advance directive; witnesses; mental status examination

An advance directive for mental health treatment shall be valid only if it is signed by the principal and two competent witnesses and accompanied by a written mental status examination performed by a physician or psychologist attesting to the principal's ability to make reasoned decisions concerning his mental health treatment. The witnesses shall attest that the principal is known to them, signed the advance directive in their presence, and does not appear to be unable to make reasoned decisions concerning his mental health treatment or under duress, fraud, or undue influence. Individuals specified in R.S. 28:234 may not act as witnesses. In determining the principal's ability, the physician or psychologist should consider (1) whether the principal demonstrates an awareness of the nature of his illness and situation; (2) whether the principal demonstrates an understanding of treatment and the risks, benefits, and alternatives; and (3) whether the principal communicates a clear choice regarding treatment that is a reasoned one, even though it may not be in the person's best interest.

§225. Operation of advance directive; physician or provider to act in accordance with advance directive

A. An advance directive shall become operative when it is delivered to the principal's treating physician or other mental health treatment provider and shall remain valid until revoked or expired.

B. The treating physician or provider shall act in accordance with an operative advance directive when the principal has been found to be incapable pursuant to R.S. 28:226. Notwithstanding the operative advance directive, the treating physician or provider shall endeavor to communicate with the principal regarding his proposed mental health treatment and even continue to obtain the principal's informed consent to all mental health treatment decisions if the principal is capable of providing informed consent or refusal.

§226. Determination of incapacity

A. The incapacity of a principal shall be established by two physicians who have personally examined the principal, determined that he is incapable, and signed a written certificate. The written certificate shall be made part of the principal's medical record.

B. The determination that the principal has regained his capacity while in the treatment facility shall be made by any licensed physician and entered in the principal's medical record. The principal automatically regains his capacity when he is discharged from the treatment facility.

§227. Scope of authority of representative; powers and duties; limitation on liability

A. The representative shall not have the authority to make mental health treatment decisions unless the principal is determined to be incapable as provided in R.S. 28:226.

B. The representative shall not be, as a result of acting in that capacity, personally liable for the cost of treatment provided to the principal.

C. Except to the extent the right is limited by the advance directive or any federal law, a representative shall have the same right as the principal to receive information regarding both proposed and administered mental health treatment and to receive, review, and consent to disclosure of medical records relating to that treatment. This representative's right of access to the principal's mental health treatment information shall not waive any evidentiary privilege.

D. In exercising authority under the advance directive, the representative shall act consistently with the expressed desires of the principal. If the principal's desires are not expressed in the

advance directive and not otherwise known by the representative, the representative shall act in what the representative in good faith believes to be the best interests of the principal.

E. A representative shall not be subject to criminal prosecution, civil liability, or professional disciplinary action for any action taken in good faith pursuant to an advance directive for mental health treatment.

§228. Prohibitions against requiring an individual to execute or refrain from executing advance directive

An individual shall not be required to execute or to refrain from executing an advance directive for mental health treatment as a criterion for insurance, as a condition for receiving mental or physical health services, or as a condition of discharge from a treatment facility.

§229. Advance directive for mental health treatment; part of medical record; physician or provider compliance; withdrawal of physician or provider

A. Upon being presented with an advance directive for mental health treatment, a physician or other provider shall make the advance directive a part of the principal's medical record. When acting under authority of an advance directive, a physician or provider shall comply with it to the fullest extent possible, consistent with the appropriate standard of care, reasonable medical practice, the availability of treatments requested, and applicable law. If the physician or other provider is unable or unwilling at any time to carry out preferences or instructions contained in an advance directive for mental health treatment or the decisions of the representative, the physician or provider may withdraw from providing treatment to the principal.

B. Such withdrawal shall be consistent with the continuity of the appropriate standard of care by the withdrawing physician or provider ensuring that another physician or provider agrees to treat the principal prior to the effectiveness of his withdrawal. Upon withdrawal, a physician or provider shall promptly notify the principal and the representative and document the notification in the principal's medical record. A withdrawal of a physician or provider pursuant to the provisions of this Section shall not be construed to constitute patient abandonment.

C. For the purposes of this Section, "physician" means the treating physician or any other physician proposing or administering mental health treatment to the principal.

§230. Disregarding advance directives; circumstances

A. The physician or provider may subject a principal determined to be incapable pursuant to R.S. 28:226 to mental health treatment in a manner contrary to the principal's wishes as expressed in an advance directive for mental health treatment only:

(1) In case of an emergency when the principal's instructions have not been effective in reducing the severity of the behavior that has caused the emergency. An emergency occurs when the principal presents an imminent and significant danger of physical harm to himself or others.

(2) When the treating physician determines that psychotropic medication is essential and after compliance with the following procedures:

(a) When a principal's advance directive or his representative refuses medication that the treating physician believes is essential, the director of the treatment facility shall conduct an administrative review to determine whether the principal should be forcibly medicated contrary to his wishes.

(b) The director shall provide written notice to the principal, his representative, if any, and an attorney from the Mental Health Advocacy Service (MHAS) no less than forty-eight hours, excluding weekends and holidays, before the administrative review. The notice shall include the time and place of the administrative review, the diagnosis, and reasons why the physician believes the medication is necessary. The principal's expressed wishes shall be followed pending the administrative review. The administrative review shall be held no later than seventy-two hours after the time that the MHAS has been notified, excluding weekends and holidays, unless the patient and the facility agree to a continuance.

(c) The MHAS attorney shall represent the principal at the administrative review unless the principal chooses someone else to represent him.

(d) A principal may be medicated contrary to the wishes expressed in his advance directive if, based on a review of the advance directive and the reasons stated therein, the patient's medical chart, a personal examination of the patient, the wishes of the principal's representative, if any, and the recommendations of the treating physician, the director determines that the medication is medically essential. The director shall consider the following criteria in making that decision:

(i) The patient is mentally ill and is dangerous to himself or others or gravely disabled without the medication.

(ii) The medication is the least restrictive alternative.

(iii) The medication is the most medically appropriate.

(iv) The medication offers a significant likelihood of improvement in the patient's condition or a speedier recovery and his condition is of such severity that unless the medication is administered the patient's medical condition is very unlikely to improve.

(v) The expected benefits from the medication outweigh the known risks and potential side effects.

(vi) All other reasonable alternatives, including those set forth in the advance directive, have been exhausted.

(e) The director shall require the attendance of the patient at the hearing unless extraordinary circumstances exist precluding his attendance. The principal and the hospital have the right to present evidence and cross-examine witnesses.

(f) The director's decision shall be in writing, shall address each of the criteria, and shall give reasons for the decision. All of the criteria in Subparagraph (d) of this Paragraph shall be met in order to medicate the principal against his expressed wishes.

(g) The director's decision to administer medication contrary to the advance directive should specify the length of time the decision to medicate the principal is to remain valid. The decision shall be effective for no more than sixty days or termination of the principal's stay at the treatment facility, whichever occurs first, unless a new request for an administrative review is made prior to the expiration of the original order and the patient is still hospitalized. If at any time the director believes that the medication is no longer necessary, he shall order the measures discontinued.

(h) The director shall provide the principal, his representative, if any, and the attorney from the Mental Health Advocacy Service with a copy of the decision.

(i) For purposes of this Section, the director of a treatment facility must be a psychiatrist who is not involved in providing medication to the patient. If the director does not meet those criteria, he shall designate a psychiatrist who is not involved in the medication of the patient.

B. An advance directive shall not limit the authority provided in R.S. 28:2 et seq., to take a principal into protective custody or to involuntarily admit or commit a principal to a treatment facility.

C. An advance directive shall not authorize admission to or retention in a mental health treatment facility for a period in excess of fifteen days.

§231. Revocation of advance directive

An advance directive for mental health treatment may be revoked in whole or in part at any time by the principal if the principal is not incapable. Revocation shall be effective when a principal who is not capable communicates the revocation to the treating physician or other provider. The treating physician or other provider shall note the revocation as part of the principal's medical record.

§232. Limitations on liability of physician or provider

A physician or provider who administers or does not administer mental health treatment according to and in good faith reliance upon the validity of an advance directive for mental health treatment shall not be subject to criminal prosecution, civil liability, or professional disciplinary action resulting from a subsequent finding of an advance directive's invalidity.

§233. Individuals prohibited from serving as representative

The following individuals shall be prohibited from serving as a representative:

(1) The treating physician, provider, or an employee of the physician or provider if the physician, provider, or employee is unrelated to the principal by blood, marriage, or adoption.

(2) An owner, operator, or employee of a health care facility in which the principal is a patient or resident if the owner, operator, or employee is unrelated to the principal by blood, marriage, or adoption.

§234. Individuals prohibited from serving as witnesses to advance directive for mental health treatment

The following individuals shall be prohibited from serving as a witness to the signing of an advance directive for mental health treatment:

(1) The treating physician, provider, or a relative of the physician or provider.

(2) An owner, operator, or relative of an owner or operator of a mental health treatment facility in which the principal is a patient or resident.

(3) An individual related to the principal by blood, marriage, or adoption.

§235. Withdrawal of representative; rescission of withdrawal

A. A representative may withdraw by giving notice to the principal. If a principal is incapable, the representative may withdraw by giving notice to the treating physician or provider. The treating physician or provider shall document the withdrawal as part of the principal's medical record.

B. An individual who has withdrawn under the provisions of Subsection A of this Section may rescind the withdrawal by executing an acceptance after the date of the withdrawal. An individual who rescinds a withdrawal shall give notice to the principal if the principal is capable or to the principal's physician or provider if the principal is incapable.

§236. Form

The Department of Health and Hospitals, in consultation with the Mental Health Advocacy Service, shall develop a form to implement the provisions of this Part.

§237. Status report to the House and Senate Committees on Health and Welfare

The Department of Health and Hospitals, office of mental health, and the Mental Health Advocacy Service shall jointly review the implementation of this Part and report their findings to the House and Senate Committees on Health and Welfare no later than January 15, 2003.

MENTAL HEALTH PROCEEDINGS FOR CHILDREN (CHILDREN'S CODE ARTICLE 1401 -1471)

Art. 1401. Purpose

The purpose of this Title is to facilitate the proper treatment of children suffering from mental illness or substance abuse. The manner of treatment should be medically appropriate, least restrictive of the child's liberty, and respectful of the child's individual rights. A preference for outpatient treatment should prevail unless the admission to a treatment facility is determined necessary for the recovery of the child from the mental illness or substance abuse.

Art. 1402. Declaration of policy

The underlying policy of this Title is as follows:

(1) That mentally ill minors and minors suffering from substance abuse and their caretakers on their behalf be encouraged to seek voluntary treatment.

(2) That any involuntary treatment or evaluation be accomplished in a setting which is medically appropriate, most likely to facilitate proper care and treatment that will return the minor patient to the community as soon as possible, and is the least restrictive of the minor's liberty.

(3) That continuity of care for the mentally ill and minors suffering from substance abuse be provided.

(4) That mental health and substance abuse treatment services be delivered as near to the place of residence of the minor receiving such services as is reasonably possible and medically appropriate.

(5) That individual rights of minor patients be safeguarded.

(6) That no minor solely as a result of mental illness or alcoholism or incapacitation by alcohol shall be confined in any jail, prison, correctional facility, or juvenile detention center.

(7) That no minor shall be denied treatment solely because he has withdrawn from treatment against medical advice on a prior occasion or because he has relapsed after an earlier treatment.

(8) That minors be protected from unnecessary institutionalization and be afforded proper treatment for their special mental health needs.

(9) That, in view of the liberty interest at issue in any commitment decision, proper respect for the parental decisionmaking role be balanced with the individual rights of the minor.

Art. 1403. General applicability

Except as otherwise specified in this Title, all provisions of the Children's Code remain applicable.

Art. 1404. Definitions

As used in this Title:

(1) "Caretaker" means any person legally obligated to provide or secure adequate care for a child, including a parent, tutor, guardian, legal custodian, foster home parent, or other person providing a residence for the child.

(2) "Conditional discharge" means the physical release of a judicially committed minor from a treatment facility by the director or by the court.

(3) "Dangerous to others" means the condition of a person whose behavior or significant threats support a reasonable expectation that there is a substantial risk that he will inflict physical harm upon another person in the near future.

(4) "Dangerous to self" means the condition of a person whose behavior, significant threats, or inaction supports a reasonable expectation that there is a substantial risk that he will inflict physical or severe emotional harm upon his own person.

(5) "Department" means the Department of Health and Hospitals.

(6) "Diagnosis" means the art and science of determining the presence of disease in an individual and distinguishing one disease from another.

(7) "Director" or "superintendent" means a person in charge of a treatment facility or his deputy.

(8) "Discharge" means the full or conditional release from a treatment facility of any minor admitted or otherwise detained under this Title.

(9) "Formal voluntary admission" means the admission of a minor suffering from mental illness or substance abuse desiring admission to a treatment facility for diagnosis or treatment of such condition, or both, who may be formally admitted upon his written request.

(10) "Grave disability" means the condition of a person who is unable to provide for his own basic physical needs, such as essential food, clothing, medical care, and shelter, as a result of serious mental illness or substance abuse and is unable to survive safely in freedom or protect

himself from serious harm; the term also includes incapacitation by alcohol, which means the condition of a person who, as a result of the use of alcohol, is unconscious or whose judgment is otherwise so impaired that he is incapable of realizing and making a rational decision with respect to his need for treatment.

(11) "Informal voluntary admission" means the admission of a minor suffering from mental illness or substance abuse, desiring admission to a treatment facility for diagnosis or treatment of such condition, or both, who may be admitted upon his request without making formal application.

(12) "MHAS" means Mental Health Advocacy Service, as established by R.S. 28:64.

(13) "Major surgical procedure" means an invasive procedure of a serious nature with incision upon the body or parts thereof under general, local, or spinal anesthesia, utilizing surgical instruments, for the purpose of diagnosis or treatment of a medical condition. Diagnostic procedures, including but not limited to the following, shall not be considered as major surgical procedures:

(a) Endoscopy through natural body openings, such as the mouth, anus, or urethra, to view the trachea, bronchi, esophagus, stomach, pancreas, small or large intestine, urethra, urinary bladder, or ureters, and to obtain from such organs specimens of fluids or tissues for chemical or microscopic analysis.

(b) Subcutaneous percutaneous liver biopsy.

(c) Punch biopsy of skeletal muscles.

(d) Bone marrow biopsy.

(e) Lumbar puncture.

(f) Myelogram.

(g) Abdominocentesis.

(h) Conization of the uterine cervix.

(i) Renal angiography.

(j) Femoral angiography.

(k) Carotid angiography.

(l) Vertebral angiography.

(14) "Mental Health Advocacy Service" means a service established by the state of Louisiana for the purpose of providing legal counsel and representation for mentally disabled persons and for children and to ensure that their legal rights are protected.

(15) "Mentally ill person" means any person with a psychiatric disorder which has substantial adverse effects on his ability to function and who requires care and treatment. It does not include a person suffering solely from mental retardation, epilepsy, alcoholism, or drug abuse.

(16) "Patient" means any person detained and taken care of as a mentally ill person or person suffering from substance abuse.

(17) "Respondent" means a person alleged to be mentally ill or suffering from substance abuse and for whom an application for commitment to a treatment facility has been filed.

(18) "Restraint" means the partial or total immobilization of any or all of the extremities or the torso by mechanical means for psychiatric indications. Restraint does not include the use of mechanisms usually and customarily used during medical or surgical procedures, including but not limited to body immobilization during surgery and arm immobilization during intravenous administration. Restraint does not include orthopedic appliances used to posturally support the patient, such as posies.

(19) "Seclusion" means the involuntary confinement of a patient alone in a room, which the patient is physically prevented from leaving, for any period of time, except that seclusion does not include the placement of a patient alone in a room or other area for no more than thirty minutes at a time and no more than three hours in any twenty-four hour time period pursuant to behavior-shaping techniques such as "time-out".

(20) "Substance abuse" means the condition of a person who uses narcotic, stimulant,

depressant, soporific, tranquilizing, or hallucinogenic drugs or alcohol to the extent that it renders the person dangerous to himself or others or renders the person gravely disabled.

(21) "Treatment" means an active effort to accomplish an improvement in the mental condition or behavior of a patient or to prevent deterioration in his condition or behavior. Treatment includes but is not limited to hospitalization, partial hospitalization, outpatient services, examination, diagnosis, training, the use of pharmaceutical, and other services provided for patients by a treatment facility.

(22) "Treatment facility" means any public or private hospital, retreat, institution, mental health center, or facility licensed by the state of Louisiana in which any mentally ill minor or minor suffering from substance abuse is received or detained as a patient except a facility under the control or supervision of the Department of Public Safety and Corrections unless otherwise provided in Title VIII of this Code.

Art. 1405. Mental Health Advocacy Service (MHAS); representation; fees

A. MHAS shall provide legal counsel to all patients who request such service and who are admitted for treatment pursuant to this Title, including but not limited to voluntary or involuntary admission, commitment, legal competency, change of status, transfer, and discharge.

B. MHAS shall provide legal counsel, as availability is determined by its executive director, to minors admitted for mental health or substance abuse treatment pursuant to the dispositional alternatives as provided in the other Titles of this Code, including but not limited to Titles VI and VIII.

C. Nothing in this Title shall be construed to prohibit a mentally ill person or respondent from being represented by privately retained counsel. If a MHAS attorney has been appointed by the court and the mentally ill minor or respondent secures his own counsel, the court shall discharge the MHAS attorney.

D. MHAS shall establish official rules and regulations for evaluating a client's financial resources, for the purpose of determining whether a client has the ability to pay for services received. A client found to have sufficient financial resources shall be required to pay in accordance with standards established by the executive director. An indigent client shall be provided legal counsel and representation without charge.

E. MHAS shall be empowered with all of the same rights and responsibilities to represent their clients whether appointed through the provisions of this Code or Title 28 of the Louisiana Revised Statutes of 1950. These rights include but are not limited to:

(1) A request for a judicial hearing pursuant to Article 1411.

(2) An independent medical examination as requested and approved by the MHAS executive director.

Art. 1406. Selection of facilities; judicial commitments

A. Any treatment facility, except a forensic facility, shall be selected with consideration for the following:

(1) Medical suitability.

(2) Least restriction of the minor's liberty.

(3) Nearness to the minor patient's usual residence.

(4) Financial status of the minor patient.

B. Treatment facilities include but are not limited to the following:

(1) Community mental health centers.

(2) Private clinics.

(3) Public or private halfway houses.

(4) Public or private group homes.

(5) Residential facilities for children.

(6) Public or private general hospitals.

(7) Public or private mental hospitals.

(8) Detoxification centers.
(9) Substance abuse clinics.
(10) Substance abuse inpatient facilities.
(11) Forensic facilities.

C. Judicial commitments may be made to any facility, except forensic facilities, which is listed in Paragraph B of this Article.

Art. 1407. Facilities prohibited; emergency certificate for mental health treatment

A. Minor patients involuntarily hospitalized by emergency certificate for mental health treatment shall not be admitted to the following facilities:
(1) Private clinics.
(2) Public or private halfway houses.
(3) Public or private group homes.
(4) Substance abuse clinics.
(5) Forensic facilities.
(6) Residential facilities for children.

B. Minor patients in the custody of the Department of Public Safety and Corrections may be admitted to forensic facilities by emergency certificate provided that judicial commitment proceedings are initiated during the period of treatment at the forensic facility authorized by emergency certificate.

Art. 1408. Facilities prohibited; emergency certificate for substance abuse treatment

A. Minor patients involuntarily hospitalized by emergency certificate for substance abuse treatment shall not be admitted to the following facilities:
(1) Private clinics.
(2) Public or private halfway houses.
(3) Public or private group homes.
(4) Forensic facilities.
(5) Residential facilities for children.

B. Judicial commitment or hospitalization by emergency certificate may be made to any facility listed in Article 1406(B), except forensic facilities, provided that such facility has a substance abuse inpatient operation maintained separate and apart from any mental health inpatient operation in such facility.

Art. 1409. Rights guaranteed

A. Each minor patient has a right to care provided in a dignified and humane manner, and to such privacy as is possible consistent with the minor's treatment plan.

B. The confinement of a minor to an institution shall not of itself cause him to lose any of the rights enjoyed by citizens of Louisiana and of the United States. No minor patient shall be deprived of these rights except when the determination is made by an appropriate court.

C. (1) The minor patient in a treatment facility shall be permitted unimpeded, private, and uncensored communication with persons of his choice by mail, telephone, and visitation. These rights may be restricted by the director of the treatment facility if sufficient cause exists and is so documented in the minor's medical records. The minor's legal counsel, as well as his next of kin or responsible party, must be notified in writing of any such restrictions and the reasons therefor. When the cause for any restriction ceases to exist, the minor's full rights shall be reinstated. A minor shall have the right to communicate in any manner in private with his attorney at all times.

(2) The director of a treatment facility shall ensure that correspondence can be conveniently received and mailed, that telephones are reasonably accessible, and that space for visits is available. Writing materials, postage, and telephone usage funds shall be provided in reasonable amounts to minor patients who are unable to procure such items.

(3) Reasonable times and places for the use of telephones and for visits may be established in writing by the director of any treatment facility. However, the times and places established by the director must allow patients, at a minimum, reasonable daily communication by telephone and visitation. These rights may be restricted by the director of the treatment facility if sufficient cause exists and is so documented in the patient's medical records. The patient's legal counsel, as well as his next of kin or responsible party, must be notified in writing of any such restrictions and the reasons therefor. When the cause for any restriction ceases to exist, the patient's full rights shall be reinstated.

(4) (a) The director of any substance abuse treatment facility may restrict the visitation rights of a minor who is voluntarily admitted to such treatment facility for substance abuse treatment under provisions of this Title for the initial phase of treatment but no longer than seven days unless good cause exists to extend the restriction and is so documented in the patient's record. This restriction shall not apply to visitation by the minor's attorney, or if he is not represented by counsel, the MHAS attorney or the minor's minister. This restriction shall also not apply to the parent or legal guardian of a minor unless the director determines that good cause exists that such restriction shall be in the best interests of the minor and is so documented in the minor's record. When the facility director determines the need to restrict visitation of new minor patients, he shall post notice of such restriction in places prominent to all new admissions, and shall inform each new patient of the restriction prior to his admission and the length and duration thereof, and further that such restriction may be extended on an individual basis as determined to be in the minor's interest by the treatment staff with the concurrence of the medical director.

(b) Nothing herein shall be construed to further restrict other forms of patient communication by and to minor patients as permitted in this Article nor shall this restriction apply to mental health treatment facilities.

D. Physical restraints or seclusion shall only be used to prevent a minor patient from physically injuring himself or others. Physical restraints or seclusion may not be used to punish or discipline a patient or used as a convenience to the staff of the treatment facility. Restraint and seclusion shall be used only in accordance with the following standards:

(1) Restraint or seclusion shall only be used when verbal intervention or less restrictive measures fail. Use of restraint or seclusion shall require documentation in the patient's record of the clinical justification for such use as well as the inadequacy of less restrictive intervention techniques.

(2) A written order from a physician or a psychologist acting within the scope of his institutional privileges shall be required for any use of restraint or seclusion. If, however, no physician or psychologist is immediately available, a registered nurse who has been trained in management of disturbed behavior may utilize restraint or seclusion. The nurse or the nursing supervisor shall then immediately notify a physician or a psychologist with institutional authority to order seclusion and provide him with sufficient information to determine whether restraints or seclusion are necessary and whether less restrictive interventions have been tried or considered. The physician or psychologist may then issue a telephone order for seclusion or restraint, if such order is indicated.

(3) Written orders for the use of restraint or seclusion shall be time limited and not more than twelve hours in duration. The written order shall include the date and time of the actual examination of the patient, the date and time that the patient was placed in restraint or seclusion, and the date and time that the order was signed.

(4) A renewal order for up to twelve hours of restraint or seclusion may be issued by a physician or a psychologist with institutional authority to order seclusion or restraint after determining that there is no less restrictive means of preventing injury to the patient or others. If any patient is held in restraint or seclusion for twenty-four hours, the physician or psychologist with institutional authority shall conduct an actual examination of the patient and document the reason why the use of seclusion or restraint beyond twenty-four hours is necessary, and the

parent, tutor, or caretaker shall be notified by the twenty-sixth hour.

(5) Staff who implement written orders for restraints and seclusion shall have documented training in the proper use of the procedure for which the order was written.

(6) Periodic monitoring and care of the patient shall be provided by responsible staff. A patient in restraint or seclusion shall be evaluated every fifteen minutes, especially in regard to regular meals, water, and snacks, bathing, the need for motion and exercise, and use of the bathroom, and documentation of these evaluations shall be entered in the patient's record.

(7) Patients shall be released from restraint or seclusion as soon as the reasons justifying the use of restraints or seclusion subside. If at any time during the period of restraint or seclusion a registered nurse determines that the emergency which justified the seclusion or restraint has subsided and a physician or psychologist is not immediately available, the patient shall be released. At the end of the period of restraint or seclusion ordered by the physician or psychologist the patient shall be released unless a renewal order is issued.

(8) Mechanical restraints shall be designed and used so as not to cause physical injury to the patient and so as to cause the least possible discomfort.

(9) Facilities using seclusion or restraint shall have written policies concerning their use. These policies shall include standards and procedures for placing a patient in seclusion or restraint, and for informing him of the reason he was put in seclusion or restraint and the means of terminating such seclusion or restraint.

(10) Nothing in this Article shall be construed to expand the scope of practice of psychology as defined in R.S. 37:2351 et seq. to authorize the ordering, administering, or dispensing of medications, or to authorize any practice not permitted under the privileges granted by the institution.

(11) The department shall adopt rules and regulations in accordance with the Administrative Procedure Act to govern the use of seclusion and restraint. Such rules and regulations shall respect the minor patient's individual rights, protect the minor patient's health, safety, and welfare, and be the least restrictive of the minor patient's liberty. The department shall adopt rules and regulations to provide for enforcement procedures and penalties applicable to a person who violates the requirements of this Section.

E. A patient may be placed alone in a room or other area pursuant to behavior shaping techniques such as "time-out". Such placement may only be used as part of a written treatment plan, shall not be used for the convenience of staff, and may be used only according to the following standards and procedures:

(1) Placement alone in a room or other area shall be imposed only when less restrictive measures are inadequate.

(2) Placement alone in a room or other area shall only be ordered by a qualified professional trained in behavior-shaping techniques and authorized in accordance with written policies and procedures of the facility to order the use of behavior-shaping techniques.

(3) The period of placement alone in a room or other area shall not exceed thirty minutes.

(4) The patient shall be observed and supervised by a staff member.

(5) The period of placement alone in a room or other area shall not exceed a total of three hours in any twenty-four hour time period. If the placement alone in a room or other area exceeds a total of three hours in any twenty-four hour time period, it shall then be considered seclusion and shall be governed by the procedures and standards set forth in Paragraph D of this Article.

(6) The date, time, and duration of the placement shall be documented.

(7) In treatment facilities where patients are placed alone in a room or other area as a behavior-shaping technique, there shall be written policies and procedures governing use of such behavior-shaping technique.

F. No minor patient confined by emergency certificate, judicial commitment, court order, or noncontested status shall receive major surgical procedures or electroshock therapy without the

written consent of a court of competent jurisdiction after a hearing. However, if the director of the treatment facility, in consultation with two physicians, determines that the condition of the minor is of such a critical nature that it may be life threatening unless major surgical procedures or electroshock therapy are administered, such emergency measures may be performed without the consent otherwise provided for in this Paragraph. No physician shall be liable for a good faith determination that a medical emergency exists.

G. Every minor patient shall have the right to wear his own clothes and keep and use his personal possessions, including toilet articles, unless determined by a physician that these are medically inappropriate and the reasons therefor are documented in his medical record. The minor shall also be allowed to spend a reasonable sum of his own money for canteen expenses and small purchases, and to have access to individual storage spaces for his private use. If the minor is financially unable to provide these articles for himself, the treatment facility shall provide a reasonable supply of clothing and toiletries.

H. The following rules shall govern performance of work by minor patients:

(1) No minor shall be required to perform work of any kind that involves the operation and maintenance of an institution, nor shall privileges or release from an institution be conditioned upon performance of any work, except as follows:

(a) A minor patient may be required to perform vocational training tasks, provided each task is:

(i) Part of the minor's individual treatment plan and has been approved as a program activity by a professional responsible for supervising the program.

(ii) Supervised by a qualified professional.

(iii) Not continued for longer than six months, unless it is specifically reinstated by the minor's treatment plan.

(b) A minor patient may be required to perform without compensation such housekeeping tasks as would be performed by a minor in a natural home, foster home, or group home, provided that nothing in the minor's individual treatment plan forbids such work. In no case, however, may a minor be required to perform housekeeping tasks for more than twelve other people.

(2) A minor may voluntarily engage in work during nonprogram hours, provided that:

(a) The minor's individual treatment plan does not forbid it.

(b) The particular work has been approved by the qualified professional responsible for supervising the implementation of the minor treatment plan.

(c) The particular work is supervised by qualified staff.

(d) The conditions of employment and the compensation are in full compliance with all applicable federal laws.

(3) No minor patient shall be involved in the care, feeding, clothing, training, or supervision of other minors unless the qualified professional responsible for supervising the implementation of the treatment plan certifies in writing in the minor's record that the particular task will not in any way endanger the life or health or be detrimental to the development of the particular children who receive such care or of the minor patient providing it.

I. Under appropriate supervision, each minor patient shall be provided with suitable opportunities for interaction with members of the opposite sex, except where a qualified professional responsible for the formulation of a particular minor's treatment plan writes an order to the contrary and explains the reasons therefor.

J. Every minor patient shall have the right to be discharged from a treatment facility when his condition has changed or improved to the extent that confinement and treatment at the treatment facility are no longer required. The director of the treatment facility shall have the authority to discharge a patient admitted by judicial commitment pursuant to Chapter 9 of this Title without the approval of the court which committed him to the treatment facility. The court shall be

advised of any such discharge. The director shall not be legally responsible to any person for the subsequent acts of behavior of a patient discharged by him in good faith.

K. Every minor patient shall have the right to engage a private attorney. If the minor is indigent, he shall be provided an attorney by the MHAS, if he so requests. The attorneys provided by the MHAS or appointed by a court shall be interested in and qualified by training or experience, or both, in the field of mental health statutes and jurisprudence.

L. Every minor patient shall have the right to request a court hearing pursuant to Article 1411. The purpose of the hearing shall be to determine whether or not he should be discharged from the treatment facility or transferred to a less restrictive and medically suitable treatment facility.

M. No provision hereof shall abridge or diminish the right of any minor patient to avail himself of the right of habeas corpus at any time.

N. Every minor patient shall have the right to be visited and examined at his own expense by a physician designated by him, a member of his family, or an interested party. The physician may consult and confer with the medical staff of the treatment facility and have the benefit of all information contained in the patient's medical record.

O. Prefrontal lobotomy shall be prohibited as a treatment solely for medical or emotional illness of a minor patient.

P. No medication shall be administered to a minor patient unless a written order of a physician prescribes it in writing. The physician is responsible for all medications which he has ordered and which are administered to a minor patient. The medication prescribed shall be noted in the minor patient's records. At least monthly, the attending physician shall review the drug regimen of each minor patient under his care. All prescriptions shall be written with a termination date, which shall not exceed thirty days. The minor's records shall state the effects of psychoactive medication on him. Unnecessary or excessive medication shall not be administered to any minor patient. Medication shall not be used as punishment, for the convenience of staff, as a substitute for a treatment program, or in quantities that interfere with the minor's treatment program. No medication shall be administered except by persons who have been appropriately trained.

Q. A minor patient admitted to a treatment facility has the right to an individualized treatment plan and periodic review to determine his progress. The appropriate staff of the facility shall review the minor's progress at least at intervals of thirty days. The staff shall enter into the minor's medical record his response to medical treatment, his current mental status, and specific reasons why continued treatment is necessary in the current setting or whether a treatment facility is available which is medically suitable and less restrictive of the minor patient's liberty.

R. A minor patient admitted to a treatment facility has the right to have available such treatment as is medically appropriate to his condition. Should the treatment facility be unable to provide an active and appropriate medical treatment program, the minor shall be discharged.

S. Each minor patient shall have the right to receive prompt and adequate medical treatment for any physical ailments and for the prevention of any illness or disability. Such medical treatment shall meet the standards of medical practice in the community.

T. The institution shall prohibit the mistreatment, neglect, or abuse of any minor child in any way.

Art. 1410. Violation of rights; reports; reports of abuse or neglect

A. Alleged violations of the rights established by Article 1409 shall be reported immediately to the superintendent and there shall be a written record that:

(1) Each alleged violation has been thoroughly investigated and findings stated.

(2) The results of such investigation were reported to the superintendent within twenty-four hours of the report of the incident.

B. Abuse or neglect of any child shall be reported to a child protection agency in accordance with Chapter 5 of Title VI.

Art. 1411. Right to hearing

A minor or his attorney shall have the right to demand a hearing to determine whether the minor should receive treatment on an inpatient basis, be discharged from the treatment facility, or placed in a less restrictive setting.

Art. 1412. Petition; venue

A. The petition shall be filed in the court of the jurisdiction in which the patient is confined or, if the minor is currently under a disposition by a juvenile court, the hearing shall be held in that juvenile court.

B. The hearing shall be held in that court and no other except for good cause shown.

C. The judge of the court where the petition was filed may hold the hearing at the treatment facility where the minor is confined, if in the opinion of the director of the treatment facility it will be detrimental to the patient's health, welfare, or dignity to travel to the court where the petition was filed.

Art. 1413. Time for hearing

The hearing shall be held within five days of the filing of the petition.

Art. 1414. Order of hearing

A. Witnesses and evidence tending to show that the child needs to be in a treatment facility shall be presented first.

B. Counsel for the child shall have the opportunity to present evidence and to cross-examine witnesses.

Art. 1415. Burden of proof; order

If the court finds by clear and convincing evidence that the minor has a mental illness or suffers from substance abuse of such severity that hospitalization is necessary and that he can benefit from inpatient treatment, it shall order his continued confinement in a designated treatment facility which is medically suitable and least restrictive of his liberty.

Art. 1416. Facility records; confidentiality; disclosure; destruction

A. Complete records for each minor shall be maintained and all information contained in a minor patient's records shall be considered privileged and confidential and shall not be disclosed except as provided herein.

B. A minor patient's record shall be readily available to both the qualified professionals and the residential care workers who are directly involved with the minor.

C. The parent or tutor of the minor shall be permitted access to his records. These records shall include:

(1) Identification data, including the minor's legal status.

(2) The minor's history, including but not limited to:

(a) Family data, educational background, and employment record.

(b) Prior medical history, both physical and mental, including prior institutionalization.

(3) The minor patient's grievances if any.

(4) An inventory of the minor's life skills.

(5) A record of each physical examination describing the results of the examination.

(6) A copy of the minor's individual plan and any modifications thereto and an appropriate summary to guide and assist resident care workers in implementing the minor's program.

(7) The findings made in periodic reviews of the plan, including an analysis of the successes and failures of the minor patient's program and recommendations for any modifications deemed necessary.

(8) A copy of the post-institutionalization plan and any modifications thereto, and a summary of the steps that have been taken to implement that plan.

(9) History and present status with respect to medication.

(10) A summary of each significant contact with the minor by a qualified professional.

(11) A summary of the minor patient's response to his program, prepared by a qualified professional involved in his treatment and recorded at least monthly. Such response wherever possible, shall be scientifically documented.

(12) A signed order by a qualified professional for any physical restraints or seclusion, and documentation of the clinical justification for the use of restraints, seclusion, and placement as required by Articles 1409(D) and (E).

(13) A description of any extraordinary incident or accident in the institution involving the minor, to be entered by a staff member noting personal knowledge of the incident or accident or other source of information, including any reports of investigations of mistreatment of the child, as required by Article 1410.

(14) A summary of family visits and contacts.

(15) A summary of attendance and leaves from the institution.

(16) A record of any seizures, illnesses, treatments thereof, and immunizations.

D. Any attorney representing a mentally ill minor or a respondent as defined herein shall have ready access to view and copy all mental health and developmental disability records pertaining to his client unless the client objects. The attorney shall return all copies of his client's medical record to the treatment facility upon completion of their use. If the patient or respondent later retains a private attorney to represent him, the MHAS shall destroy all copies of records pertaining to his case.

E. Any respondent or mentally disabled minor shall have the right to demand that the records in the possession of his attorney regarding his mental condition be destroyed or returned to the treatment facility and he shall have the right to assurance by the director that such records have been so destroyed by the MHAS attorney.

Art. 1417. Court records

A. Each court shall keep a record of the cases relating to mentally ill minors coming before it under this Title and the disposition of them. It shall also keep on file the original petition and certificates of physicians required by this Chapter, or a microfilm duplicate of such records.

B. All records maintained in the courts under the provisions of this Article shall be sealed and available only to the respondent or his attorney unless the court, after a hearing held with notice to the respondent, determines such records should be disclosed to a petitioner for cause shown.

Art. 1418. Physician's standard of care

Any licensed physician who acts pursuant to the provisions of this Title, including execution of an emergency certificate, shall be held to that degree of skill and care ordinarily employed under similar circumstances by members of his profession in good standing in the same community or locality and using reasonable care and diligence with his best judgment in the application of his skill.

Art. 1419. Immunity

A. Any licensed physician exercising that degree of skill and care ordinarily employed under similar circumstances by members of his profession in good standing in the same community or locality and using reasonable care and diligence with his best judgment in the application of his skill, shall not be held civilly liable or subject to criminal prosecution for acts arising from his medical opinions, judgments, actions, or duties pursuant to any of the provisions of this Title.

B. Any person who acts in good faith to assist in the apprehension or taking into protective custody and examination of a minor patient will not be subject to civil or criminal penalties. However, a person who willfully advises or participates in the making of a false application or certificate shall be imprisoned with or without hard labor for not more than two years or fined not more than ten thousand dollars, or both.

C. Any apprehension or taking into protective custody and confinement made by law enforcement officers, ordered by a court or upon the certificate of a physician under the procedures provided in this Title, is hereby declared to be an administrative act relative to the functions of their office, as required by law, and for which act they are specifically granted personal immunity, but not thereby relieved of their official responsibilities.

D. Coroners and assistant coroners who act in good faith to order persons to be taken into protective custody and transported for examination in accordance with Article 1432 shall not be civilly liable for damages to such persons resulting from those actions.

Art. 1420. Admission by emergency certificate; extension

A. A mentally ill minor or a minor suffering from substance abuse may be admitted and detained at a treatment facility for observation, diagnosis, and treatment for a period not to exceed fifteen days under an emergency certificate.

B. A minor suffering from substance abuse may be detained at a treatment facility for one additional period, not to exceed fifteen days, provided that a second emergency certificate is executed. A second certificate may be executed only if and when a physician at the treatment facility and any other physician have examined the detained minor within seventy-two hours prior to the termination of the initial fifteen-day period and certified in writing on the second certificate that the minor remains dangerous to himself or others or gravely disabled, and that his condition is likely to improve during the extended period. The director shall inform the minor patient of the execution of the second certificate, the length of the extended period, and the specific reasons therefor, and shall also give notice of the same to the minor's nearest relative or other designated responsible party initially notified pursuant to Article 1428.

Art. 1421. Examination required

Any physician may execute an emergency certificate only after an actual examination of a minor alleged to be mentally ill or suffering from substance abuse who is determined to be in need of immediate medical treatment in a treatment facility because the examining physician determines him to be dangerous to himself or others or to be gravely disabled. Failure to conduct an examination prior to the execution of the certificate will be evidence of gross negligence.

Art. 1422. Certificate; contents

A. The emergency certificate shall state all of the following:

(1) The date of the physician's examination of the minor, which shall not be more than seventy-two hours prior to the date of the signature of the certificate.

(2) The objective findings of the physician relative to the physical and mental condition of the minor, leading to the conclusion that he is dangerous to himself or others or is gravely disabled as a result of substance abuse or mental illness.

(3) The history of the case, if known.

(4) The determination of whether the minor examined is in need of immediate psychiatric treatment in a treatment facility because he is either:

(a) Dangerous to himself.

(b) Dangerous to others.

(c) Gravely disabled.

(5) A statement that the minor is unwilling or unable to seek voluntary admission.

B. The certificate shall be dated and executed under the penalty of perjury, but need not be notarized. The certificate shall be valid for seventy-two hours and shall be delivered to the director of the treatment facility where the person is to be further evaluated and treated.

Art. 1423. Coroner; notice; independent examination; discharge

A. Upon admission of any minor by emergency certificate to a treatment facility, it shall be the duty of the director of the treatment facility immediately to notify the coroner of the parish in which the treatment facility is located of the admission, giving the following information if

known:

(1) The minor's name, address, date of birth.

(2) Name of certifying physician.

(3) Date and time of admission.

(4) The name and address of the treatment facility.

B. Within seventy-two hours of admission, the minor patient shall be independently examined by the coroner or his deputy who shall execute an emergency certificate pursuant to Article 1422, which shall be a necessary precondition to the person's continued confinement.

C. However, in the event that the coroner has made the initial examination and executed the first emergency commitment certificate, then a second examination shall be made within the seventy-two hour period set forth in this Article by any physician at the treatment facility where the minor patient is confined.

D. If from his examination the coroner concludes that the minor is not a proper subject for emergency admission, then the minor shall not be further detained in the treatment facility and shall be discharged by the director forthwith.

Art. 1424. Coroner; fees; records

A. In making either the initial examination or the second examination, when the coroner or his deputy examines the patient and executes an emergency certificate and a reexamination of the minor and reexecution of a certificate is necessary for any reason to insure the validity of the certificate, both the first examiner and the reexaminer shall be entitled to a fee for the service, unless they are one and the same.

B. When a minor patient is confined in a treatment facility other than a state mental institution, the examining coroner in the parish where the minor is confined shall be entitled to the usual fee paid for this service to the coroner of the parish in which the patient is domiciled or residing.

C. When a minor patient is confined in a state mental institution in a parish other than his parish of domicile or residence, the examining coroner shall be entitled to the fee authorized by law in his parish for the service.

D. In either case, the fee shall be paid and accurate records of such payments kept by the governing authority of the parish in which the minor patient is domiciled or residing from parish funds designated for the purpose of payment to the coroner.

E. All coroners shall keep accurate records showing the number of patients confined in their parishes pursuant to this Article.

Art. 1425. Request for MHAS representation

Upon admission by emergency certificate, a patient may request the director of the treatment facility to advise the executive director of MHAS of his admission and may request representation.

Art. 1426. Right to hearing

A. Prior to or during confinement under the provisions of this Title, any minor or his attorney shall have the right to demand a judicial hearing to determine if probable cause exists for his continued confinement under an emergency certificate.

B. The hearing shall be held within five days of the filing of the petition.

C. Pending the decision of the court, the minor patient shall remain confined unless the court orders release or a less restrictive status.

Art. 1427. Authority to transport and detain

A. An emergency certificate shall constitute legal authority to transport a patient to a treatment facility and shall permit the director of such treatment facility to detain the minor patient for diagnosis and treatment for a period not to exceed fifteen days, and to return him to the facility if he is absent with or without permission during authorized periods of detention.

B. If necessary, peace officers shall apprehend and transport, or ambulance services, under

appropriate circumstances, may locate and transport a minor patient on whom an emergency certificate has been completed to a treatment facility at the request of either the director of the facility, the certifying physician, the minor's next of kin or tutor, or the agency legally responsible for his welfare.

Art. 1428. Notice of admission

The director of the treatment facility shall notify the minor patient's nearest relative, if known, or designated responsible party, if any, in writing of the minor's admission by emergency certificate as soon as reasonably possible.

Art. 1429. Application for judicial commitment

A. If the minor patient admitted to a treatment facility pursuant to this Chapter is a proper candidate for judicial commitment pursuant to Chapter 9 of this Title, the director of the treatment facility, or any interested party, may apply for such commitment under provisions of Chapter 9 of this Title.

B. Such a minor patient, hospitalized on an emergency certificate, for whom a petition for judicial commitment has been filed in court may continue to be detained for a further period on order of the court.

Art. 1430. Advice of rights

A. Every minor patient admitted by emergency certificate shall be informed in writing at the time of his admission of the procedures of requesting release from the treatment facility, the availability of counsel, information about MHAS, the rights enumerated in Chapter 3 of this Title, and the rules and regulations applicable to or concerning his conduct while a patient is in the treatment facility.

B. If the minor is illiterate or does not read or understand English, appropriate provisions should be made to supply him this information.

C. In addition, a copy of the information mentioned in this Article must be posted in any area where patients are confined and treated.

Art. 1431. Coroner's examination; emergency certificate

A. Upon the request of a credible adult who is financially unable to afford a private physician or who cannot immediately obtain an examination by a physician, the parish coroner may render, or the coroner or a judge of a court of competent jurisdiction may cause to be rendered by a physician, an actual examination of a minor alleged to be mentally ill or suffering from substance abuse and in need of immediate medical treatment because he is dangerous to self or others or gravely disabled. If the coroner is not a physician he may deputize a physician to perform this examination.

B. Failure to render an actual examination prior to execution of the emergency certificate shall be evidence of gross negligence.

C. To accomplish the examination authorized by this Article, if the coroner or the judge is apprehensive that his own safety or that of the deputy or other physician may be endangered thereby, he shall issue a protective custody order pursuant to Chapter 8 of this Title.

D. If the examining physician determines that the provisions of this Article are met, he shall execute an emergency certificate and shall transport or cause to be transported the minor named in the emergency certificate to a treatment facility.

Art. 1432. Order for custody; grounds

A. Any parish coroner or judge of a court of competent jurisdiction may order a minor to be taken into protective custody and transported to a treatment facility or the office of the coroner for immediate examination when a peace officer or other credible person executes a statement under private signature specifying that, to the best of his knowledge and belief, the minor is mentally ill or suffering from substance abuse and is in need of immediate treatment to protect the minor

patient or others from physical harm. The statement may include the following information:

(1) A statement of facts, including the affiant's observations leading to the conclusion that the minor is mentally ill or suffering from substance abuse and dangerous to himself or others or gravely disabled.

(2) The date and place of any dangerous acts or threats.

(3) The name and surname, if known, of any other person who is in danger.

(4) Facts showing that the minor sought has been encouraged to seek treatment and is unwilling to be evaluated on a voluntary basis.

(5) Facts showing that the affiant has attempted to contact a specific treatment facility or a specific physician in order to obtain an examination of the minor sought to be treated.

B. The order for custody shall be in writing, in the name of the state of Louisiana, signed by the judge or parish coroner, and shall state all of the following:

(1) The date and hour of issuance and the municipality or parish where issued.

(2) The name of the minor to be taken into custody or, if his name is not known, a designation of the minor by any name or description by which he can be identified with reasonable certainty.

(3) A description of the acts or threats which have led to the belief that the minor is mentally ill or suffering from substance abuse and is in need of immediate hospitalization to protect the person or others from physical harm.

(4) That the minor shall be taken to a community mental health center, a public or private general hospital, a public or private mental hospital, coroner's office, or a detoxification center.

C. The order for custody shall be effective for seventy-two hours from its issuance and shall be delivered to the coroner or director of the treatment facility by the individual who has transported the minor. The date and hour that the minor is taken into protective custody shall be written on the order. Without delay, and in no event more than twelve hours after being taken into protective custody, the minor shall be delivered to a treatment facility or the office of the coroner or he shall be released. Upon arrival, the minor in custody shall be examined immediately by the coroner or, if at a treatment facility, by a physician, preferably a psychiatrist, who shall determine if the minor shall be voluntarily admitted, admitted by emergency certificate, admitted as a noncontested admission, or discharged. The minor in custody shall be examined within eight hours of his arrival at the treatment facility or coroner's office or he shall be released.

Art. 1433. Protective custody without court order

A. A peace officer or a peace officer accompanied by an emergency medical service trained technician may take a minor into protective custody and transport him to a treatment facility for a medical evaluation when, as a result of his personal observation, the peace officer or emergency medical service technician has reasonable grounds to believe the minor is a proper subject for involuntary admission to a treatment facility because he is acting in a manner dangerous to himself or dangerous to others, is gravely disabled, and is in need of immediate hospitalization to protect the minor or others from physical harm.

B. The minor may only be transported to one of the following:

(1) A community mental health center.

(2) A public or private general hospital.

(3) A public or private mental hospital.

(4) A detoxification center.

(5) A substance abuse clinic.

(6) A substance abuse inpatient facility.

C. Upon arrival at the treatment facility, the escorting peace officer shall then be relieved of any further responsibility and the minor shall be immediately examined by a physician, preferably a psychiatrist, who shall determine if the minor shall be voluntarily admitted, admitted by emergency certificate, or discharged.

D. In the case of a minor suffering from substance abuse and where any of the facilities stated in Paragraph B of this Article are unavailable, the peace officer and emergency medical service technician may use whatever means or facilities available to protect the health and safety of the minor suffering from substance abuse until such time as any of the above facilities become available. In taking a minor into protective custody, the peace officer and emergency medical service technician may take reasonable steps to protect themselves. A peace officer or emergency medical service technician who acts in compliance with this Article is acting in the course of his official duty and cannot be subjected to criminal or civil liability as a result thereof.

E. Under the provisions of this Article no minor shall be placed in protective custody for a period in excess of seventy-two hours. Any minor placed in protective custody under the provisions of this Article shall be considered as an inmate for maintenance purposes only.

Art. 1434. Judicial commitment; petition

A. Any adult may file with the court a petition which asserts his belief that a minor is suffering from mental illness which contributes or causes him to be a danger to himself or others or to be gravely disabled, or is suffering from substance abuse which contributes or causes the minor to be a danger to himself or others or to be gravely disabled, and may thereby request a hearing.

B. The petition shall contain the facts which are the basis of the assertion and provide the minor respondent with adequate notice and knowledge relative to the nature of the proceedings.

C. A petitioner who is unable to afford an attorney may seek the assistance of any legal aid society or similar agency if available.

Art. 1435. Filing; venue

A. The petition may be filed in the judicial district in which the minor respondent is confined or, if not confined, in the judicial district where he resides or may be found.

B. Before the hearing, the minor respondent may move for a change of venue to the parish of his domicile, which motion shall be granted only for compelling reasons. If the minor respondent is confined to a hospital, the judge of the court where the petition was filed may hold the hearing on such commitment at the treatment facility where he is confined, if in the opinion of at least one of the physicians appointed by the court to examine him, it will be detrimental to the minor's health, welfare, or dignity to travel to the court where the petition was filed.

Art. 1436. Hearing; notice

A. Upon the filing of the petition, the court shall assign a time, not later than eighteen calendar days thereafter, shall assign a place for a hearing upon the petition, and shall cause reasonable notice thereof to be given to the minor, his attorney, and the petitioner.

B. The notice shall inform the minor respondent that he has a right to be present at the hearing, that he has a right to counsel, that he, if indigent or otherwise qualified, has the right to have counsel appointed to represent him by the MHAS, and that he has the right to cross examine witnesses testifying at any hearing on such application.

Art. 1437. Probable cause; order for examination

A. As soon as practical after the filing of the petition, the court shall review the petition and supporting documents and determine whether there exists probable cause to believe that the minor respondent is suffering from mental illness which contributes or causes him to be a danger to himself or others, or to be gravely disabled, or is suffering from substance abuse which contributes or causes him to be a danger to himself or others or to be gravely disabled.

B. If the court determines that probable cause exists, the court may appoint the minor respondent's treating physician if available or, if none, then another physician, preferably a psychiatrist, to examine the minor and make a written report to the court and respondent's attorney on the form provided by the office of human services of the Department of Health and Hospitals.

Art. 1438. Report of examination

A. Any report ordered pursuant to Article 1437 shall set forth specifically the objective factors leading to the conclusion that the minor has a mental illness or suffers from substance abuse, the actions or statements by the person leading to the conclusion that the mental illness or substance abuse causes the minor to be dangerous to himself or others or to be gravely disabled and in need of immediate treatment as a result of such illness or abuse, and why involuntary confinement and treatment are indicated.

B. The following criteria should be considered by the physician:

(1) The minor is suffering from serious mental illness which contributes or causes him to be dangerous to himself or others or to be gravely disabled or from substance abuse which contributes or causes him to be dangerous to himself or others or to be gravely disabled.

(2) The minor's condition is likely to deteriorate needlessly unless he is provided appropriate medical treatment.

(3) The minor's condition is likely to improve if he is provided appropriate medical treatment.

Art. 1439. Independent examination

A. The minor respondent or his attorney shall have the right to seek an additional independent medical opinion, when necessary, in their discretion.

B. If the respondent is indigent, this opinion may be paid for by the MHAS, upon the approval of its executive director.

C. Reasonable compensation of the appointed examining physicians and all court costs shall be established by the court and ordered paid by the minor respondent or the petitioner in the discretion of the court. If it is determined by the court that the costs shall not be borne by the minor respondent or the petitioner, then compensation to the physicians and all court costs shall be paid from funds appropriated to the judiciary, but such court costs shall not exceed the sum of seventy-five dollars.

Art. 1440. Order for custody and detention

A. If the minor respondent refuses to be examined by the court appointed physician as herein provided or if the judge, after reviewing the petition and an affidavit filed pursuant to Article 1432, the report of the treating physician, or the court-appointed physician, finds that the minor is mentally ill or suffering from substance abuse and is in need of immediate hospitalization to protect himself or others from physical harm, or that the minor respondent's condition may be markedly worsened by delay, then the court may issue a court order for custody of the minor and a peace officer shall deliver him to a treatment facility designated by the court.

B. The court shall also issue an order to the treatment facility authorizing detention of the minor until the commitment hearing is completed, unless he is discharged by the director.

Art. 1441. Placement pending hearing

A. Unless the minor is currently hospitalized or under an emergency certificate, he shall be allowed to remain in his home or other place of residence pending an ordered examination and to return to his home or other place of residence upon completion of the examination.

B. An examining physician may execute an emergency certificate pursuant to Article 1422 if he deems that action appropriate. In such a case, the respondent shall be admitted pursuant to Article 1420 pending the hearing on the petition.

Art. 1442. Right to counsel

A. The court shall provide the minor respondent a reasonable opportunity to select his own counsel. In the event he does not select counsel and is unable to pay for counsel or in the event counsel selected by him refuses to represent said minor or is not available for such representation, then the court shall appoint counsel for him provided by the MHAS.

B. Reasonable compensation of appointed counsel shall be established by the court and may be ordered paid by the minor respondent or petitioner in the discretion of the court if either is found financially capable. If it is determined by the court that the costs shall not be borne by the respondent or the petitioner, then compensation to the attorney shall be paid from funds appropriated to the judiciary.
C. The minor respondent shall have the right to privately retained and paid counsel at any time. However, all minor respondents must be represented by counsel as early as possible in every proceeding. If attorneys are available through the MHAS, the court shall contact the MHAS and request the assignment of an attorney who will be appointed.
D. In cases where the service is unable to provide representation, the court shall select and appoint an attorney to represent the minor respondent, whose fee shall be set by the court.
E. An attorney appointed by a court to represent a minor respondent pursuant to this Chapter has a continuing duty toward that minor even after admission. That duty shall include but not be limited to follow-up investigation of the circumstances of the person and representation in subsequent proceedings relating to admission, status, and discharge. The duty shall continue until it is terminated by the court making the appointment.

Art. 1443. Hearing; priority

On the day appointed, the hearing shall take precedence over all other matters, except pending cases of the same type.

Art. 1444. Nature of hearing; evidence

The court shall conduct the hearing in as formal a manner as is possible under the circumstances and shall admit evidence according to the usual rules of evidence.

Art. 1445. Order of hearing

A. Witnesses and evidence tending to show that the minor who is the subject of the petition is a proper subject for judicial commitment shall be presented first.
B. The minor respondent or his counsel shall have the right to present evidence and cross-examine witnesses who may testify at the hearing.
C. If the minor respondent or his attorney notified the court not less than three days before the hearing that he wishes to cross-examine the examining physicians, the court shall order such physicians to appear in person or by deposition.
D. If the minor respondent is present at the hearing and is medicated, the court shall be informed of the medication and its common effects.

Art. 1446. Record; transcription

A. The court shall cause a recording of the testimony of the hearing to be made, which shall be transcribed only in the event of an appeal from the judgment.
B. A copy of such transcript shall be furnished without charge, to any appellant whom the court finds unable to pay for the same.
C. The cost of such transcript shall be paid from funds appropriated to the judicial department.

Art. 1447. Burden of proof; order

A. If the court finds by clear and convincing evidence that the minor respondent is dangerous to himself or others or is gravely disabled as a result of substance abuse or mental illness, it shall render a judgment for his commitment to a designated treatment facility which is medically suitable and least restrictive of his liberty.
B. The court order shall order a suitable person to convey the minor to the treatment facility and deliver respondent, together with a copy of the judgment and certificates, to the director.
C. In appointing a person to execute the order, the court should give preference to a near relative or friend of the minor.

Art. 1448. Discharge; revocation

A. The director shall notify the court in writing when a minor patient has been discharged or conditionally discharged.
B. The court may, if it finds it to be in the best interests of the minor, revoke the certificate or judgment of commitment.

Art. 1449. Notice of court action

Notice of any action taken by the court shall be given to the minor respondent and his attorney as well as to the director of the designated treatment facility in such manner as the court concludes would be appropriate under the circumstances.

Art. 1450. Advisement of rights

A. Every minor patient admitted by judicial commitment shall be informed in writing at the time of his admission of the procedures for requesting release from the treatment facility, the availability of counsel, information about the MHAS, the rights enumerated in Article 1409, and the rules and regulations applicable to or concerning his conduct while a patient in the treatment facility.
B. If the minor patient is illiterate or does not read or understand English, appropriate provisions should be made to supply him this information.
C. In addition, a copy of the information listed in this Article must be posted in any area where patients are confined and treated.

Art. 1451. Conversion to voluntary status

A. No director of a treatment facility shall prohibit any mentally ill minor or minor suffering from substance abuse from applying for conversion of involuntary or emergency admission status to voluntary admission status.
B. Any minor patient on an involuntary admission status shall have the right to apply for a writ of habeas corpus to have his admission status changed to voluntary status.

Art. 1452. Mandatory review of commitments

A. All judicial commitments, except those for alcoholism, shall be reviewed by the court issuing the order for commitment every ninety days.
B. A commitment for alcoholism shall expire after forty-five days and the minor patient, if not converted to a voluntary status, shall be discharged, unless the court, upon application by the director of the treatment facility, finds that continued involuntary treatment is necessary and orders the minor patient recommitted for a period not to exceed sixty days; provided, that not more than two such sixty-day recommitments may be ordered in connection with the same continuous confinement.
C. All judicial commitments involving a minor patient who has been found not guilty by reason of insanity or who has been found to lack the capacity to proceed, shall be reviewed in the manner as set forth in Title VIII.

Art. 1453. Reports to court

A. The director of the treatment facility to which the minor has been judicially committed shall issue reports to the court at the intervals provided in Article 1452, setting forth the minor patient's response to the treatment, his current condition, and the reasons why continued involuntary treatment is necessary to improve his condition or to prevent it from deteriorating.
B. These reports shall be treated by the court as confidential and shall not be available for public examination, nor shall they be subject to discovery in any proceedings other than those initiated pursuant to this Title.

Art. 1454. Hearing to determine continued involuntary commitment

A. The court may at any time upon application or upon its own motion order a new hearing to be held in order to determine whether the involuntary status of the minor patient should be

continued.
B. Minor patients committed judicially shall have their cases reviewed in a hearing every one hundred twenty days.
C. The review hearing shall be conducted according to the procedures and standards set forth in this Chapter and may be held by the juvenile court in the parish in which the minor patient is being confined or, if not confined, by the juvenile court in the parish in which he resides or may be found. The hearing shall not be transferred to another district except for good cause shown.

Art. 1455. Discretion of director

A. Notwithstanding an order of judicial commitment, the director of the treatment facility to which the minor patient is committed is encouraged to explore treatment measures that are medically appropriate and less restrictive.
B. The director may at any time convert an involuntary commitment to a voluntary one should he deem that action medically appropriate. He shall inform the court of any action in that regard.
C. The director may discharge any minor patient if in his opinion discharge is appropriate. The director shall not be legally responsible to any person for the subsequent acts of behavior of a patient discharged in good faith.

Art. 1456. Appeal; writs

A. A minor who is judicially committed shall be allowed to appeal devolutively from the order to the court of appeal. If the lower court finds the minor indigent, it shall allow the appeal to be taken in forma pauperis.
B. Upon perfection of an appeal, it shall be heard in a summary manner, taking preference over all other cases except similar matters.
C. Upon affirmation of the order of commitment, the minor may apply for appropriate writs from the supreme court which shall be heard in a summary manner.

Art. 1457. Right of habeas corpus

Nothing in this Title shall deny the right of habeas corpus, including an application based upon a change of circumstances.

Art. 1458. Conditional discharge

A. A minor who is judicially committed as a result of mental illness may be conditionally discharged for a period of up to one hundred twenty days by the director or by the court during which time the judicial commitment of the minor shall remain in effect. The minor patient may be required to report for outpatient treatment as a condition of his release. The terms and conditions of the conditional discharge shall be specifically set forth in writing and signed by the minor patient. A copy of the conditional discharge shall be given to him and explained to him before he is discharged.
B. If the minor patient is conditionally discharged by the director, a copy of the conditional discharge shall be sent to the court which judicially committed him. If the minor patient is conditionally discharged by the court, a copy of the conditional discharge shall be sent to the facility to which he has been committed.
C. If a minor patient does not comply with the terms and conditions of his conditional discharge, he is subject to any of the procedures for involuntary treatment, including but not limited to the issuance of an order for custody and the execution of an emergency certificate. A conditionally discharged minor patient who is confined pursuant to any of these involuntary procedures shall have all rights of an involuntary patient, including the right to demand a probable cause hearing, the right to periodic reports and review, and a review hearing pursuant to Article 1454.
D. An extension of a conditional discharge may be granted upon application by the director of the treatment facility to the court and notification to the minor's counsel of record. The court may grant the extension of the conditional discharge for an additional period of up to one hundred twenty days. No further extension may be made without a contradictory hearing. The burden of

proof is on the director of the treatment facility to show why continued treatment is necessary.

Art. 1459. Review by MHAS

All minor patients presently unrepresented by privately retained counsel and who are the subject of involuntary commitment under any prior statute shall have their cases reviewed by attorneys provided by the MHAS within one year from the effective date of this Code, or be discharged or be committed again according to the provisions of this Chapter.

Art. 1460. Parental admission of minor; objection request for discharge

A. Any minor may be admitted to a treatment facility for inpatient care and treatment upon application of a parent, tutor, or, in the absence of a parent or tutor, of a caretaker to the director of a treatment facility if the director finds that the minor has a mental illness or suffers from substance abuse which has a substantial adverse effect on his ability to function and requires care and treatment in an institution. Within twenty-four hours of admission, the minor shall be examined by a physician who shall set forth in detail in the patient's medical record the reasons for the continued need of confinement and treatment of the minor. The parent, tutor, or caretaker may request the minor's discharge pursuant to the provisions of Paragraph C.

B. A minor who is eligible for admission pursuant to Paragraph A of this Article and who is in such a condition that immediate hospitalization is necessary may be admitted upon the application of any interested adult, when after diligent effort the minor's parent, tutor, or caretaker cannot be located. Following the admission of the minor, the director of the treatment facility shall continue efforts to locate the minor's parent, tutor, or caretaker. If such person is located and consents in writing to the admission, the minor may continue to be hospitalized. However, upon notification of the admission, the parent, tutor, or caretaker, may request the minor's discharge pursuant to the provisions of Paragraph C.

C. Upon receipt of a request for discharge, the director of the treatment facility shall release such minor within seventy-two hours unless proceedings are begun pursuant to Chapter 7 or 9 of this Title.

Art. 1461. Advice of rights

A. On admission to a treatment facility, the minor and the minor's parent, tutor, or caretaker, if the minor is admitted pursuant to Article 1460, shall be informed in writing of the procedures for requesting release and of the availability of counsel, information about the MHAS, the rights enumerated in Article 1409, and the rules and regulations applicable to or concerning his conduct while a patient in the program or facility.

B. This information shall also be prominently posted in any area where the patient is to be confined or treated.

Art. 1461.1. Communication with parent or guardian of minor child

A. Notwithstanding the provisions of Article 1409, any treating facility to which a minor is admitted under the provisions of Article 1460 shall provide to the parent or guardian of the minor child the following notifications from the facility during all times that the minor is confined to the facility:

(1) No less than one telephone or face-to-face communication each seventy-two hours for the first twenty-one days that the minor is confined to the facility and at least once a week thereafter. All communications shall be made by a physician, case manager, registered nurse, or licensed practical nurse familiar with treatment of the patient and available to answer questions. Each communication shall include but not be limited to the following:

(a) Diagnosis.
(b) Prognosis.
(c) Treatment plan.
(d) Anticipated length of treatment.
(e) Current physical condition of the patient.

(f) Current mental condition of the patient.

(g) All medications administered and potential side effects.

(h) Any incidents of self-injury or injury to others.

(2) Verbal notice within two hours and detailed written notice within forty-eight hours of all occurrences in which the physical or mental safety of the minor was placed at risk, including but not limited to unwanted or improper physical contact, physical assault, or sexual contact with another patient or staff member. Additionally, any such detailed written notice shall also be transmitted within forty-eight hours to the local protection and advocacy system established under 42 U.S.C.A. §15041 et seq.

B. Any minor subjected to unwanted or improper physical contact, physical assault, or sexual contact with another patient or staff member shall be given immediate access to contact his parent or guardian.

C. The obligations set forth in Paragraph (A) of this Article shall only be waived by knowledgeable written consent authorized by a document separate from admission documents which clearly sets out the specific rights granted by this Article.

D. A physician, case manager, registered nurse, or licensed practical nurse may deny access to communication with a parent or guardian if the treating physician has so indicated in the patient's record because he has reasonably concluded that communication of the information to the parent or guardian would be injurious to the health or welfare of the patient or could reasonably be expected to endanger the life or safety of any other person.

Art. 1462. Objection to admission by the minor who has been admitted

A. Objection may be made by the minor who has been admitted if the minor is sixteen years of age or older.

B. If the minor informs any staff person of his desire to object to the admission, a staff person shall assist him in preparing and submitting his objection.

C. Upon receipt of an objection, the director of the treatment facility shall release such minor within seventy-two hours unless proceedings are begun pursuant to Chapter 7 or 9 of this Title.

Art. 1463. Physician's certificate for a minor

A. A minor shall not be detained at a treatment facility pursuant to parental admission more than seventy-two hours unless a physician's certificate for a minor has been executed and delivered to the MHAS.

B. The certificate may be executed by any licensed physician after an actual examination.

C. Failure to conduct an actual examination prior to the execution of the certificate will be evidence of gross negligence.

D. The certificate shall be dated and executed under penalty of perjury, but need not be notarized. The certificate shall state:

(1) The date and time of the physician's examination of the minor, which shall not be more than seventy-two hours prior to the signature of the certificate.

(2) The name and age of the minor and the patient's identification number, if known.

(3) The date and time of admission.

(4) The name and address of the parent, tutor, caretaker, or responsible person admitting the minor.

(5) The objective findings of the physician relative to the physical and mental condition of the minor, leading to the determination of whether the minor examined is in need of inpatient psychiatric treatment because all of the following conditions exist:

(a) The minor suffers from mental illness or substance abuse which has a substantial adverse effect on his ability to function and requires care and treatment in an institution.

(b) The minor can benefit from inpatient treatment.

(c) The treatment facility where the minor is confined is medically appropriate.

(6) The history pertinent to this admission.

(7) A statement as to whether the minor wishes to remain in the treatment facility.

E. The certificate shall be delivered to the MHAS located nearest to the treatment facility. Delivery may be accomplished either by:

(1) Personal delivery to any MHAS employee.

(2) Mailing a copy of the certificate to the nearest MHAS, certified mail, return receipt requested.

F. MHAS shall have the authority to represent the interests of any minor they suspect has been inappropriately placed or who had requested their services. Services may be rendered as deemed necessary including but not limited to the provisions of Article 1405.

Art. 1464. Voluntary admission of minors

A. Any minor sixteen years of age or older may apply for voluntary admission to a treatment facility pursuant to this Chapter.

B. A minor so admitted shall have the same rights as an adult patient.

C. The admitting physician may admit the person on either a formal or informal basis, as hereinafter provided.

Art. 1465. Voluntary admissions favored

A. Admitting physicians are encouraged to admit mentally ill minors or minors suffering from substance abuse to treatment facilities on voluntary admission status whenever medically feasible.

B. No director of a treatment facility shall prohibit any mentally ill minor or minor suffering from substance abuse from applying for conversion of involuntary or emergency admission status to voluntary admission status. Any minor patient on an involuntary admission status shall have the right to apply for a writ of habeas corpus in order to have his admission status changed to voluntary status.

C. No employee of a mental health care program or treatment facility, peace officer, or physician shall state to any person that involuntary admission may result if the minor does not voluntarily admit himself to a mental health care program or treatment facility unless the employee, peace officer, or physician is prepared to execute a certificate pursuant to Chapter 7 or a petition pursuant to Chapter 9 of this Title.

Art. 1466. Advice of rights

A. Each minor admitted on a voluntary basis shall be informed of any other medically appropriate alternative treatment programs and treatment facilities known to the admitting physician and be given an opportunity to seek admission to alternative treatment programs or facilities.

B. Every minor patient admitted on a voluntary admission status shall be informed in writing at the time of admission of the procedures for requesting release from the treatment facility, the availability of counsel, information about the mental health advocacy service, the rights enumerated in Article 1409, and rules and regulations applicable to or concerning his conduct while a patient in the treatment facility.

C. If the minor is illiterate or does not read or understand English, appropriate provisions should be made to supply him this information.

D. In addition, a copy of the information listed in this Article must be posted in any area where minor patients are confined and treated.

Art. 1467. Capacity required

A. No admission may be deemed voluntary unless the admitting physician determines that the minor to be admitted has the capacity to make a knowing and voluntary consent to the admission.

B. Knowing and voluntary consent shall be determined by the ability of the minor to understand:

(1) That the treatment facility to which the minor patient is requesting admission is one for mentally ill persons or persons suffering from substance abuse.

(2) That he is making an application for admission.

(3) The nature of his status and the provisions governing discharge or conversion to an involuntary status.

Art. 1468. Informal voluntary admission

A. In the discretion of the director, any mentally ill minor or minor suffering from substance abuse, who is sixteen years of age or older and who desires admission to a treatment facility for diagnosis or treatment of a psychiatric disorder or substance abuse, may be admitted upon the minor patient's request without a formal application.

B. Any minor patient admitted pursuant to this Article shall have the right to leave the treatment facility at any time during the normal day-shift hours of operation, which shall include but not be limited to nine a.m. to five p.m.

Art. 1469. Formal voluntary admission

A. Any mentally ill minor or minor suffering from substance abuse who is sixteen years old or older and who desires admission to a treatment facility for diagnosis and/or treatment of a psychiatric disorder or substance abuse and who is deemed suitable for formal voluntary admission by the admitting physician may be so admitted upon his written request.

B. A minor patient admitted under the provisions of this Article shall not be detained in the treatment facility for longer than seventy-two hours after making a valid written request for discharge to the director of the treatment facility unless an emergency certificate is executed pursuant to Article 1422 or unless judicial commitment is instituted pursuant to Chapter 9 of this Title.

Art. 1470. Admission by parent

A. A minor suffering from substance abuse may be admitted and detained at a public or private general hospital or a substance abuse inpatient facility for observation, diagnosis, and treatment for a period not to exceed twenty-eight days, when a parent has admitted the person or caused him to be admitted pursuant to the provisions of Chapter 8 of this Title.

B. At the time of admission, the parent shall execute or provide a written statement of facts, including personal observations, leading to the conclusion that the minor is suffering from substance abuse and is dangerous to himself or others or is gravely disabled, specifically describing any dangerous acts or threats, and stating that the minor has been encouraged to seek treatment but is unwilling to be evaluated on a voluntary basis.

C. As soon as practicable, but in no event more than eight hours after admission to the hospital or inpatient facility, a physician shall examine the minor and either execute an emergency certificate in accordance with Article 1422 or order the minor discharged. If an emergency certificate is executed, the physician or the director of the hospital or inpatient facility shall immediately notify the coroner and the coroner or his deputy shall conduct an independent examination in accordance with Article 1423. If the coroner or his deputy executes a second emergency certificate, the minor patient may be detained for treatment for a period not to exceed twenty-eight days from the date of his admission. Otherwise, he shall be discharged.

D. Except as inconsistent with the provisions of this Article, all other provisions of this Title applicable to persons admitted by emergency certificate shall be applicable.

Art. 1471. Transfer of patients between institutions

A. Except as otherwise provided in this Article, the department may transfer any patient from one mental institution to another. Moreover, the superintendent of an institution may request the department to transfer a patient when he believes that a transfer is necessary.

(1) A patient may be transferred to or from a private mental institution only upon the joint application of the superintendent of that institution and of the legal or natural guardian or the person liable for the support of the minor patient. However, no private mental institution shall be obligated to retain a minor patient because of the refusal to sign the application by the guardian or the person liable for support.

(2) A person under an order of commitment or acquitted of a delinquent act on the ground of mental illness shall be transferred only upon authority of the committing court.

(3) A minor patient voluntarily admitted pursuant to Article 1464 shall be transferred only with his written consent.

(4) A minor patient admitted by a parental commitment pursuant to Article 1460 shall be transferred only upon the written consent of the parent, tutor, or caretaker who originally sought his admission.

B. The following documents, as applicable, shall accompany a minor patient upon his transfer:

(1) The transfer order of the department.

(2) Certified copies of the application for admission, the physician's certificate, the report of the commission, and the order of the committing court.

(3) All of the minor patient's clinical records or a full abstract thereof, including the results of medical, physical, and laboratory examinations.

MEDICAL MALPRACTICE (LA R.S. 40:1299.41-1299.49)

§1299.41. Definitions and general applications

A. As used in this Part:

(1) "Health care provider" means a person, partnership, limited liability partnership, limited liability company, corporation, facility, or institution licensed or certified by this state to provide health care or professional services as a physician, hospital, nursing home, community blood center, tissue bank, dentist, registered or licensed practical nurse or certified nurse assistant, offshore health service provider, ambulance service under circumstances in which the provisions of R.S. 40:1299.39 are not applicable, certified registered nurse anesthetist, nurse midwife, licensed midwife, pharmacist, optometrist, podiatrist, chiropractor, physical therapist, occupational therapist, psychologist, social worker, licensed professional counselor, licensed perfusionist, or any nonprofit facility considered tax-exempt under Section 501(c)(3), Internal Revenue Code, pursuant to 26 U.S.C. 501(c)(3), for the diagnosis and treatment of cancer or cancer-related diseases, whether or not such a facility is required to be licensed by this state, or any professional corporation a health care provider is authorized to form under the provisions of Title 12 of the Louisiana Revised Statutes of 1950, or any partnership, limited liability partnership, limited liability company, management company, or corporation whose business is conducted principally by health care providers, or an officer, employee, partner, member, shareholder, or agent thereof acting in the course and scope of his employment.

(2) "Physician" means a person with an unlimited license to practice medicine in this state.

(3) "Patient" means a natural person, including a donor of human blood or blood components and a nursing home resident who receives or should have received health care from a licensed health care provider, under contract, expressed or implied.

(4) "Hospital" means any hospital as defined in R.S. 40:2102; any "nursing home" or "home" as defined in R.S. 40:2009.2; or any physician's or dentist's offices or clinics containing facilities for the examination, diagnosis, treatment or care of human illnesses.

(5) "Board" means the Patient's Compensation Fund Oversight Board created in R.S. 40:1299.44(D).

(6) "Representative" means the spouse, parent, guardian, trustee, attorney or other legal agent of the patient.

(7) "Tort" means any breach of duty or any negligent act or omission proximately causing injury or damage to another. The standard of care required of every health care provider, except a hospital, in rendering professional services or health care to a patient, shall be to exercise that degree of skill ordinarily employed, under similar circumstances, by the members of his profession in good standing in the same community or locality, and to use reasonable care and diligence, along with his best judgment, in the application of his skill.

(8) "Malpractice" means any unintentional tort or any breach of contract based on health care or professional services rendered, or which should have been rendered, by a health care provider, to a patient, including failure to render services timely and the handling of a patient, including loading and unloading of a patient, and also includes all legal responsibility of a health care provider arising from acts or omissions during the procurement of blood or blood components, in the training or supervision of health care providers, or from defects in blood, tissue, transplants, drugs, and medicines, or from defects in or failures of prosthetic devices implanted in or used on or in the person of a patient.

(9) "Health care" means any act or treatment performed or furnished, or which should have been performed or furnished, by any health care provider for, to, or on behalf of a patient during the patient's medical care, treatment, or confinement, or during or relating to or in connection with the procurement of human blood or blood components.

(10) "Risk manager" means an insurance company with no less than an "A" rating according to the then current annual edition of Best's Insurance Reports or a domestic insurance company with assets in excess of ten million dollars chosen by the commissioner according to the public bid laws of the state, to manage the authority.

(11) "Risk" means any health care provider which shall apply for malpractice liability insurance coverage under the provisions of Section 1299.46.

(12) "Insurer" means the authority or the entity chosen to manage the authority or an insurer writing policies of malpractice insurance.

(13) "Authority" means the Residual Malpractice Insurance Authority established under Section 1299.46.

(14) "Proof of financial responsibility" as provided for in this Part shall be determined by the board in accordance with regulations promulgated under the Administrative Procedure Act.

(15) "Court" means a court of competent jurisdiction and proper venue over the parties.

(16) "Ambulance service" means an entity under circumstances in which the provisions of R.S. 40:1299.39 are not applicable which operates either ground or air ambulances, using a minimum of two persons on each ground ambulance, at least one of whom is trained and registered at the level of certified emergency medical technician-basic, or at the intermediate or paramedic levels, or one who is a registered nurse, and using a minimum on any air ambulance of one person trained and registered at the paramedic level or a person who is a registered nurse, or any officer, employee, or agent thereof acting in the course and scope of his employment, including any student enrolled in a qualified emergency medical services educational program under the direct supervision of a licensed health care provider.

(17) "Community blood center" means any independent nonprofit nonhospital based facility which collects blood and blood products from donors primarily to supply blood and blood components to other health care facilities.

(18) "Tissue bank" means any independent nonprofit facility procuring and processing human organs or tissues for transplantation, medical education, research, or therapy.

(19) "Executive director" means the executive director of the board, appointed and employed pursuant to R.S. 40:1299.44(D)(2)(f).

(20) "Claims manager" means the claims manager appointed and employed by the board pursuant to R.S. 1299.44(D)(2)(g).

(21) "Offshore health service provider" means any individual or entity which provides any health care service rendered by an emergency medical technician-basic, or at the intermediate or paramedic levels, or one who is a registered nurse, when such medical care is rendered on a fixed platform in Louisiana territorial waters or on the Outer Continental Shelf, adjacent to Louisiana territorial waters, or any instance on the Outer Continental Shelf where the applicable law, under the Outer Continental Shelf Lands Act, 43 U.S.C. 1331 et seq., would be the laws of the state of Louisiana.

B. Wherever necessary to the context of this Part the masculine shall mean and include the

feminine and the singular shall mean and include the plural.

C. No liability shall be imposed upon any health care provider on the basis of an alleged breach of contract, whether by express or implied warranty, assuring results to be obtained from any procedure undertaken in the course of health care, unless such contract is expressly set forth in writing and signed by such health care provider or by an authorized agent of such health care provider.

D. A health care provider who fails to qualify under this Part is not covered by the provisions of this Part and is subject to liability under the law without regard to the provisions of this Part. If a health care provider does not so qualify, the patient's remedy will not be affected by the terms and provisions of this Part, except as hereinafter provided with respect to the suspension and the running of prescription of actions against a health care provider who has not qualified under this Part when a claim has been filed against the health care provider for review under this Part.

E. (1) Subject to R.S. 40:1299.47, a person having a claim under this Part for bodily injuries to or death of a patient on account of malpractice may file a complaint in any court of law having requisite jurisdiction.

(2) No dollar amount or figure shall be included in the demand in any malpractice complaint, but the prayer shall be for such damages as are reasonable in the premises.

(3) This Section shall not prevent a person from alleging a requisite jurisdictional amount in a malpractice claim filed in a court requiring such an allegation.

(4) All claims and complaints submitted by a patient, claimant, or their representative, as a result of malpractice as defined in this Section, shall, once the parties have certified to the court that discovery is complete, be given priority on the court's docket, to the extent practicable, over any other civil action before the court, provided that the provisions of this Paragraph shall not supersede the provisions of Code of Civil Procedure Article 1573.

F. The provisions of this Part do not apply to any act of malpractice which occurred before September 1, 1975. The provisions of this Part that provide for the suspension and the running of prescription with respect to a health care provider who has not qualified under this Part, but against whom a claim has been filed under this Part, do not apply to any act of malpractice which occurred before September 1, 1981.

G. Notwithstanding the provisions of Subsection D, the running of prescription against a health care provider who is answerable in solido with a qualified health care provider against whom a claim has been filed for review under this Part shall be suspended in accordance with the provisions of R.S. 40:1299.47(A)(2)(a).

H. The provisions of this Part do not apply to any act of malpractice which occurred before September 1, 1975. The provisions of this Part that provide for the suspension of the running of prescription with respect to a health care provider who is answerable in solido with another health care provider apply to an act of malpractice which has been duly submitted for review prior to September 1, 1981 but in which the third health care provider panelist has not been selected. The provision for the suspension of the running of prescription does not apply to any act of malpractice which has not been duly submitted for review and which has prescribed on September 1, 1981.

I. Nothing in this Part shall be construed to make the patient's compensation fund liable for any sums except for those arising from medical malpractice. Notwithstanding any other law to the contrary, including but not limited to R.S. 13:5106, the provisions of this Part shall not apply to medical malpractice actions against the state or any political subdivision thereof with the exception of a hospital service district and a municipally owned hospital and any entities, organizations, or subsidiary owned, operated, or controlled by such a hospital service district or municipally owned hospital. However, this Part shall apply to any certified emergency medical technician-basic, or at the intermediate or paramedic level, employed by any political subdivision of the state, and to any medical advisor or registered nurse performing emergency medical services under contract with any political subdivision of the state.

J. The board shall appoint legal counsel for the Patient's Compensation Fund. It shall be the responsibility of the board to establish minimum qualifications and standards for lawyers who may be appointed to defend professional liability cases. The minimum qualifications and the appointments procedure shall be published at least annually in the Louisiana Bar Journal or such other publication as will reasonably assure dissemination to the membership of the Louisiana State Bar Association. The primary counsel may be permitted by the board to continue the professional liability litigation on behalf of the Patient's Compensation Fund where no conflict of interest exists or where there is no potential conflict of interest. The function of establishing reserves shall be carried out by the board.

§1299.42. Limitation of recovery

A. To be qualified under the provisions of this Part, a health care provider shall:

(1) Cause to be filed with the board proof of financial responsibility as provided by Subsection E of this Section.

(2) Pay the surcharge assessed by this Part on all health care providers according to R.S. 40:1299.44.

(3) For self-insureds, qualification shall be effective upon acceptance of proof of financial responsibility by and payment of the surcharge to the board. Qualification shall be effective for all others at the time the malpractice insurer accepts payment of the surcharge.

B. (1) The total amount recoverable for all malpractice claims for injuries to or death of a patient, exclusive of future medical care and related benefits as provided in R.S. 40:1299.43, shall not exceed five hundred thousand dollars plus interest and cost.

(2) A health care provider qualified under this Part is not liable for an amount in excess of one hundred thousand dollars plus interest thereon accruing after April 1, 1991, for all malpractice claims because of injuries to or death of any one patient.

(3) (a) Any amount due from a judgment or settlement or from a final award in an arbitration proceeding which is in excess of the total liability of all liable health care providers, as provided in Paragraph (2) of this Subsection, shall be paid from the patient's compensation fund pursuant to the provisions of R.S. 40:1299.44(C).

(b) The total amounts paid in accordance with Paragraphs (2) and (3) of this Subsection shall not exceed the limitation as provided in Paragraph (1) of this Subsection.

C. Except as provided in R.S. 40:1299.44(C), any advance payment made by the defendant health care provider or his insurer to or for the plaintiff, or any other person, may not be construed as an admission of liability for injuries or damages suffered by the plaintiff or anyone else in an action brought for medical malpractice.

D. (1) Evidence of an advance payment is not admissible until there is a final judgment in favor of the plaintiff, in which event the court shall reduce the judgment to the plaintiff to the extent of the advance payment.

(2) The advance payment shall inure to the exclusive benefit of the defendant or his insurer making the payment.

(3) In the event the advance payment exceeds the liability of the defendant or the insurer making it, the court shall order any adjustment necessary to equalize the amount which each defendant is obligated to pay, exclusive of costs.

(4) In no case shall an advance payment in excess of an award be repayable by the person receiving it.

(5) In the event that a partial settlement is executed between the defendant and/or his insurer with a plaintiff for the sum of one hundred thousand dollars or less, written notice of such settlement shall be sent to the board. Such settlement shall not bar the continuation of the action against the patient's compensation fund for excess sums in which event the court sha1l reduce any judgment to the plaintiff in the amount of malpractice liability insurance in force as provided for in R.S. 40:1299.42(B)(2).

E. (1) Financial responsibility of a health care provider under this Section may be established only by filing with the board proof that the health care provider is insured by a policy of malpractice liability insurance in the amount of at least one hundred thousand dollars per claim with qualification under this Section taking effect and following the same form as the policy of malpractice liability insurance of the health care provider, or in the event the health care provider is self-insured, proof of financial responsibility by depositing with the board one hundred twenty-five thousand dollars in money or represented by irrevocable letters of credit, federally insured certificates of deposit, bonds, securities, cash values of insurance, or any other security approved by the board. In the event any portion of said amount is seized pursuant to the judicial process, the self-insured health care provider shall have five days to deposit with the board the amounts so seized. The health care provider's failure to timely post said amounts with the board shall terminate his enrollment in the Patient's Compensation Fund.

(2) For the purposes of this Subsection, any group of self-insured health care providers organized to and actually practicing together or otherwise related by ownership, whether as a partnership, professional corporation or otherwise, shall be deemed a single health care provider and shall not be required to post more than one deposit. In the event any portion of the deposit of such a group is seized pursuant to judicial process, such group shall have five days to deposit with the board the amounts so seized. The group's failure to timely post said amounts with the board will terminate its enrollment and the enrollment of its members in the Patient's Compensation Fund.

§1299.43. Future medical care and related benefits

A. (1) In all malpractice claims filed with the board which proceed to trial, the jury shall be given a special interrogatory asking if the patient is in need of future medical care and related benefits that will be incurred after the date of the response to the special interrogatory, and the amount thereof.

(2) In actions upon malpractice claims tried by the court, the court's finding shall include a recitation that the patient is or is not in need of future medical care and related benefits that will be incurred after the date of the court's finding and the amount thereof.

(3) If the total amount is for the maximum amount recoverable, exclusive of the value of future medical care and related benefits that will be incurred after the date of the response to the special interrogatory by the jury or the court's finding, the cost of all future medical care and related benefits that will be incurred after the date of the response to the special interrogatory by the jury or the court's finding shall be paid in accordance with R.S. 40:1299.43(C).

(4) If the total amount is for the maximum amount recoverable, including the value of the future medical care and related benefits, the amount of future medical care and related benefits that will be incurred after the date of the response to the special interrogatory by the jury or the court's finding shall be deducted from the total amount and shall be paid from the patient's compensation fund as incurred and presented for payment. The remaining portion of the judgment, including the amount of future medical care and related benefits incurred up to the date of the response to the special interrogatory by the jury or the court's finding shall be paid in accordance with R.S. 40:1299.44(A)(7) and R.S. 40:1299.44(B)(2)(a), (b), and (c).

(5) In all cases where judgment is rendered for a total amount less than the maximum amount recoverable, including any amount awarded on future medical care and related benefits that will be incurred after the date of the response to the special interrogatory by the jury or the court's finding, payment shall be in accordance with R.S. 40:1299.44(A)(7) and R.S. 40:1299.44(B)(2)(a), (b), and (c).

(6) The provisions of this Subsection shall be applicable to all malpractice claims.

B. (1) "Future medical care and related benefits" for the purpose of this Section means all of the following:

(a) All reasonable medical, surgical, hospitalization, physical rehabilitation, and

custodial services and includes drugs, prosthetic devices, and other similar materials reasonably necessary in the provision of such services, incurred after the date of the injury up to the date of the settlement, judgment, or arbitration award.

(b) All reasonable medical, surgical, hospitalization, physical rehabilitation, and custodial services and includes drugs, prosthetic devices, and other similar materials reasonably necessary in the provisions of such services, after the date of the injury that will be incurred after the date of the settlement, judgment, or arbitration award.

(2) "Future medical care and benefits" as used in this Section shall not be construed to mean non-essential specialty items or devices of convenience.

C. Once a judgment is entered in favor of a patient who is found to be in need of future medical care and related benefits that will be incurred after the date of the response to the special interrogatory by the jury or the court's finding or a settlement is reached between a patient and the patient's compensation fund in which the provision of medical care and related benefits that will be incurred after the date of settlement is agreed upon and continuing as long as medical or surgical attention is reasonably necessary, the patient may make a claim to the patient's compensation fund through the board for all future medical care and related benefits directly or indirectly made necessary by the health care provider's malpractice unless the patient refuses to allow them to be furnished.

D. Payments for medical care and related benefits shall be paid by the patient's compensation fund without regard to the five hundred thousand dollar limitation imposed in R.S. 40:1299.42.

E. (1) The district court from which final judgment issues shall have continuing jurisdiction in cases where medical care and related benefits are determined to be needed by the patient.

(2) The court shall award reasonable attorney fees to the claimant's attorney if the court finds that the patient's compensation fund unreasonably fails to pay for medical care within thirty days after submission of a claim for payment of such benefits.

F. Nothing in this Section shall be construed to prevent a patient and a health care provider and/or the patient's compensation fund from entering into a court-approved settlement agreement whereby medical care and related benefits shall be provided for a limited period of time only or to a limited degree.

G. The patient's compensation fund shall be entitled to have a physical examination of the patient by a physician of the patient's compensation fund's choice from time to time for the purpose of determining the patient's continued need of future medical care and related benefits, subject to the following requirements:

(1) (a) Notice in writing shall be delivered to or served upon the patient or the patient's counsel of record, specifying the time and place where it is intended to conduct the examination.

(b) Such notice must be given at least ten days prior to the time stated in the notice.

(c) Delivery of the notice may be by certified mail.

(2) Such examination shall be by a licensed medical physician or chiropractic physician licensed under the laws of this state or of the state, parish, or county wherein the patient resides.

(3) (a) The place at which such examination is to be conducted shall not involve an unreasonable amount of travel for the patient considering all circumstances.

(b) It shall not be necessary for a patient who resides outside this state to come into this state for such an examination unless so ordered by the court.

(4) Within thirty days after the examination, the patient shall be compensated by the party requesting the examination for all necessary and reasonable expenses incidental to submitting to the examination including the reasonable costs of travel, meals, lodging, loss of pay, or other direct expenses.

(5) (a) Examinations may not be required more frequently than at six months intervals except that, upon application to the court having jurisdiction of the claim and after reasonable cause shown therefor, examination within a shorter interval may be ordered.

(b) In considering such application, the court should exercise care to prevent

harassment to the patient.

(6) (a) The patient shall be entitled to have a physician or an attorney of his own choice or both present at such examination.

(b) The patient shall pay such physician or attorney himself.

(7) The patient shall be promptly furnished with a copy of the report of the examination made by the physician making the examination on behalf of the patient's compensation fund.

H. If a patient fails or refuses to submit to examination in accordance with a notice and if the requirements of Subsection G of this Section have been satisfied, then the patient shall not be entitled to attorney fees in any action to enforce rights pursuant to Subsection E of this Section.

I. (1) Any physician selected by the patient's compensation fund and paid by the patient's compensation fund who shall make or be present at an examination of the patient conducted in pursuance of this Section may be required to testify as to the conduct thereof and the findings made.

(2) Communications made by the patient upon such examination by such physician or physicians shall not be considered privileged.

J. The patient's compensation fund shall pay all reasonable fees and costs of medical examinations and the costs and the fees of the medical expert witnesses in any proceeding in which the termination of medical care and related benefits is sought.

§1299.44. Patient's Compensation Fund

A. (1) Subject to the exceptions contained in Article VII, Section 9(A) of the Constitution of Louisiana, all funds collected pursuant to the provisions hereof shall be paid into the state treasury and shall be credited to the Bond Security and Redemption Fund. Out of the funds remaining in the Bond Security and Redemption Fund after a sufficient allocation is allocated from that fund to pay all obligations secured by the full faith and credit of the state due and payable within any fiscal year, the treasurer shall, prior to placing such remaining funds in the state general fund, pay into a special fund, which is hereby created in the state treasury and designated as the "Patient's Compensation Fund", in an amount equal to the total amount of funds paid into the treasury as a result of the voluntary collections from private health care providers provided for hereunder. The state recognizes and acknowledges that the fund and any income from it are not public monies, but rather are private monies which shall be held in trust as a custodial fund by the state for the use, benefit, and protection of medical malpractice claimants and the fund's private health care provider members, and all of such funds and income earned from investing the private monies comprising the corpus of this fund shall be subject to use and disposition only as provided by this Section.

(2) (a) In order to provide monies for the fund, an annual surcharge shall be levied on all health care providers in Louisiana qualified under the provisions of this Part.

(b) The surcharge shall be determined by the Louisiana Insurance Rating Commission based upon actuarial principles and in accordance with an application for rates or rate changes, or both, filed by the Patient's Compensation Fund Oversight Board, established and authorized pursuant to Subsection D of this Section.

(c) The application for rate changes filed by the board shall be submitted to the Louisiana Insurance Rating Commission at least annually on the basis of an annual actuarial study of the patient's compensation fund.

(d) The surcharge shall be collected on the same basis as premiums by each insurer, the risk manager, and surplus line agent.

(e) The board shall collect the surcharge from health care providers qualified as self-insureds.

(f) The surcharge for self-insureds shall be the amount determined by the board in accordance with regulations promulgated under the Administrative Procedure Act and in accordance with the rate set by the Louisiana Insurance Rating Commission to be the amount of

surcharge which the health care provider would reasonably be required to pay were his qualification based upon filing a policy of malpractice liability insurance.

(3) (a) Such surcharge shall be due and payable to the patient's compensation fund within forty-five days after the premiums for malpractice liability insurance have been received by the agent of the insurer, risk manager, or surplus line agent from the health care provider in Louisiana.

(b) It shall be the duty of the insurer, risk manager, or surplus line agent to remit the surcharge to the Patient's Compensation Fund within forty-five days of the date of payment by the health care provider. Failure of the insurer, risk manager, or surplus line agent to remit payment within forty-five days shall subject the insurer, risk manager, or surplus line agent to a penalty, the amount of which will be set by the board on an annual basis, not to exceed a total of twelve percent of the annual surcharge. Upon the failure of the insurer, risk manager, or surplus line agent to remit as provided herein, the board is authorized to institute legal proceedings if necessary to collect the surcharge, any penalty amount to be assessed, legal interest, and all reasonable attorney fees.

(4) If the annual premium surcharge is not paid within the time limited above, upon written notice of such nonpayment given by the board concurrently to the commissioner of insurance and the insurer, risk manager, or surplus line agent, the certificate of authority of the insurer, risk manager, and surplus line agent shall be suspended until the annual premium surcharge is paid.

(5) (a) All expenses of collecting, protecting, and administering the fund shall be paid from the fund.

(b) The functions of collecting, administering, and protecting the fund, including all matters relating to establishing reserves, the evaluating and settlement of claims, and relating to the defense of the fund, shall be carried out by the board.

(c) The function of selecting the list of attorney names from which the selection of the attorney chairman of the medical review panels is to be made shall be the responsibility of the office of the clerk of the Louisiana Supreme Court.

(d) These expenses of the board and office of the clerk of the Louisiana Supreme Court shall be paid from the fund by the state treasurer in accordance with the law.

(e) The fund shall be a budget unit of this state.

(f) The legislature shall appropriate from the fund sufficient monies for the carrying out by the board and office of the clerk of the Louisiana Supreme Court of the duties, functions, and responsibilities imposed upon them in this Section and shall also appropriate all remaining monies in the fund for use by the board to pay approved claims based upon final judgments, court-approved settlements, final arbitration awards, and judgments awarding medical care and related benefits rendered pursuant to R.S. 40:1299.43 and vouchers drawn by the board pursuant to a judgment reciting that a patient is in need of future medical and related benefits under the provisions of R.S. 40:1299.43 in accordance with Paragraph (7) of this Subsection and in accordance with Subsection B of this Section.

(g) Any purchases from the fund of furniture, fixtures, equipment, or other property shall be specifically designated, by such method of identification as is reasonable and practical for each item, as the property of the fund.

(h) Repealed by Acts 2002, No. 86, §2.

(6) (a) At all times the fund shall be maintained so as to provide a surplus of thirty percent of the annual surcharge premiums, reserves established for individual claims, reserves established for incurred but not reported claims, and expenses.

(b) No reduction in the surcharge shall be made unless such surplus is available in the fund.

(7) (a) Claims from the patient's compensation fund exclusive of those provided for in R.S. 40:1299.43 shall be computed at the time the claim becomes final.

(b) A final claim shall be paid within forty-five days of the board's receipt of a certified copy of the settlement, judgment, or arbitration award, unless the fund is exhausted and the proration provision contained in Subparagraph (7)(c) applies.

(c) If the fund would be exhausted by payment in full of all final claims then the amount paid to each claimant shall be prorated.

(d) Any amounts due and unpaid shall be prorated.

(e) Any amounts due and unpaid shall be paid in the following semi-annual periods.

B. (1) Subject to the other provisions of this Section, the board shall issue payment in the amount of each claim submitted to and approved by it, or prorated payment, as the case may be, against the fund within thirty days of receipt of a certified copy of the settlement, judgment, or arbitration award except that payment for claims made pursuant to Subparagraph (2)(d) or (e) of this Subsection, or both, shall be made upon receipt of such certified copy.

(2) The only claim against the fund shall be a voucher or other appropriate request by the board after it receives:

(a) A certified copy of a final judgment in excess of one hundred thousand dollars against a health care provider.

(b) A certified copy of a court approved settlement in excess of one hundred thousand dollars against a health care provider.

(c) A certified copy of a final award in excess of one hundred thousand dollars in an arbitration proceeding against a health care provider.

(d) A certified copy of a judgment awarding medical care and related benefits rendered pursuant to R.S. 40:1299.43.

(e) A voucher drawn by the board through the patient's compensation fund defense counsel pursuant to a judgment reciting that a patient is in need of future medical care and related benefits under the provisions of R.S. 40:1299.43.

C. If the insurer of a health care provider or a self-insured health care provider has agreed to settle its liability on a claim against its insured and claimant is demanding an amount in excess thereof from the patient's compensation fund for a complete and final release, then the following procedure must be followed:

(1) A petition shall be filed by the claimant with the court in which the action is pending against the health care provider, if none is pending in the parish where plaintiff or defendant is domiciled seeking (a) approval of an agreed settlement, if any, and/or (b) demanding payment of damages from the patient's compensation fund.

(2) A copy of the petition shall be served on the board, the health care provider and his insurer, at least ten days before filing and shall contain sufficient information to inform the other parties about the nature of the claim and the additional amount demanded.

(3) The board and the insurer of the health care provider or the self-insured health care provider as the case may be, may agree to a settlement with the claimant from the patient's compensation fund, or the board and the insurer of the health care provider or the self-insured health care provider as the case may be, may file written objections to the payment of the amount demanded. The agreement or objections to the payment demanded shall be filed within twenty days after the petition is filed.

(4) As soon as practicable after the petition is filed in the court the judge shall fix the date on which the petition seeking approval of the agreed settlement and/or demanding payment of damages from the fund shall be heard, and shall notify the claimant, the insurer of the health care provider or the self-insured health care provider as the case may be, and the board thereof as provided by law.

(5) (a) At the hearing the board, the claimant, and the insurer of the health care provider or the self-insured health care provider, as the case may be, may introduce relevant evidence to enable the court to determine whether or not the petition should be approved if it is submitted on agreement without objections. If the board, the insurer of the health care provider or the self-

insured health care provider, as the case may be, and the claimant cannot agree on the amount, if any, to be paid out of the patient's compensation fund, then the trier of fact shall determine at a subsequent trial which shall take place only after the board shall have been given an adequate opportunity to conduct discovery, identify and retain expert witnesses, and prepare a defense, the amount of claimant's damages, if any, in excess of the amount already paid by the insurer of the health care provider or self-insured health care provider. The trier of fact shall determine the amount for which the fund is liable and render a finding and judgment accordingly. The board shall have a right to request trial by jury whether or not a jury trial has been requested by the claimant or by any health care provider.

(b) The board shall not be entitled to file a suit or otherwise assert a claim against any qualified health care provider as defined in R.S. 40:1299.41(A)(1) on the basis that the qualified health care provider failed to comply with the appropriate standard of care in treating or failing to treat any patient.

(c) The board may apply the provisions of Civil Code Article 2323 or 2324, or both, to assert a credit or offset for the allocated percentage of negligence or fault of a qualified health care provider provided at least one of the following conditions is met:

(i) A payment has been made to the claimant by, in the name of, or on behalf of the qualified health care provider whose percentage of fault the board seeks to allocate.

(ii) A payment has been made to the claimant by, in the name of, or on behalf of another qualified health care provider in order to obtain a dismissal or release of liability of the qualified health care provider whose percentage of fault the board seeks to allocate, provided that there shall be no separate credit or offset for the fault of an employer or other vicariously liable entity who was not independently negligent or otherwise at fault and who makes a payment in order to obtain a dismissal or release of liability of a single qualified health care provider for whom the payor is vicariously liable.

(iii) All or a portion of a payment made by another qualified health care provider, by the insurer of another qualified health care provider, or by the employer of another qualified health care provider has been attributed to or allocated to the qualified health care provider whose percentage of fault the board seeks to allocate, provided that there shall be no separate credit or offset for the fault of an employer or other vicariously liable entity who was not independently negligent or otherwise at fault and who makes a payment in order to obtain a dismissal or release of liability of a single qualified health care provider for whom the payor is vicariously liable.

(iv) A medical review panel has determined that the qualified health care provider whose percentage of fault the board seeks to allocate failed to comply with the appropriate standard of care and that the failure was a cause of the damage or injury suffered by the patient, or a medical review panel has determined that there is a material issue of fact, not requiring expert opinion, bearing on liability of the qualified health care provider whose percentage of fault the board seeks to allocate for consideration by the trier of fact.

(v) The qualified health care provider does not object within thirty days after notice of the board's intention to allocate the health care provider's percentage of fault is delivered via certified mail to the plaintiff, the qualified health care provider, and the qualified health care provider's professional liability insurer or to their attorneys.

(vi) The court determines, after a hearing in which the qualified health care provider whose percentage of fault the board seeks to allocate shall be given an opportunity to appear and participate, that there has been collusion or other improper conduct between the defendant health care providers to the detriment of the interests of the fund.

(d) Except where the sum of one hundred thousand dollars has been paid by, in the name of, or on behalf of the qualified health care provider whose percentage of fault the board seeks to allocate, in any case in which the board is entitled pursuant to the provisions of Civil Code Article 2323 or 2324, or both, to assert a credit or offset for the allocated percentage of

negligence or fault of a qualified health care provider, the board shall have the burden of proving the negligence or fault of the qualified health care provider whose percentage of fault the board seeks to allocate.

(e) In approving a settlement or determining the amount, if any, to be paid from the patient's compensation fund, the trier of fact shall consider the liability of the health care provider as admitted and established where the insurer has paid its policy limits of one hundred thousand dollars, or where the self-insured health care provider has paid one hundred thousand dollars.

(f) In each instance in which a claimant seeks to recover any sum from the board, each qualified health care provider or insurer or employer of a qualified health care provider who has made or has agreed to make any payment, including any reimbursement of court costs, medical expenses, or other expenses, to the claimant, the claimant's attorney, or any other person or entity shall be required, not later than ten days after the filing of the petition for approval of the settlement, to file and serve upon the board an answer to the petition for approval of the settlement which sets forth a complete explanation of each such payment, to include the identity of each payee, the identity of each entity by or on whose behalf each payment has been or is to be made, each amount paid or to be paid directly or indirectly by, on behalf of, or which has been or is to be attributed or allocated to any qualified health care provider, the purpose of each such payment, and the precise nature of any collateral agreement which has been made or is to be made in connection with the proposed settlement.

(6) Any settlement approved by the court shall not be appealed. Any judgment of the court fixing damages recoverable in any such contested proceeding shall be appealable pursuant to the rules governing appeals in any other civil court case tried by the court.

(7) For the benefit of both the insured and the patient's compensation fund, the insurer of the health provider shall exercise good faith and reasonable care both in evaluating the plaintiff's claim and in considering and acting upon settlement thereof. A self-insured health care provider shall, for the benefit of the patient's compensation fund, also exercise good faith and reasonable care both in evaluating the plaintiff's claim and in considering and acting upon settlement thereof.

(8) The parties may agree that any amounts due from the patient's compensation fund pursuant to R.S. 40:1299.44(B) be paid by annuity contract purchased by the patient's compensation fund for and on behalf of the claimant.

(9) Notwithstanding any other provision of this Part, any self-insured health care provider who has agreed to settle its liability on a claim and has been released by the claimant for such claim or any other claim arising from the same cause of action shall be removed as a party to the petition, and his name shall be removed from any judgment that is rendered in the proceeding. Such release shall be filed with the clerk of court in the parish in which the petition is filed upon the filing of a properly executed, sworn release and settlement of claim.

D. (1) (a) The Patient's Compensation Fund Oversight Board is hereby created and established in the office of the governor. The board shall be comprised of nine members, appointed by the governor subject to Senate confirmation.

(b) Nine members of the board shall be a representative of and for one or more classes of health care providers enrolled in the fund, and the board's membership shall be apportioned according to the distribution of aggregate surcharges paid to the fund among the several classes of health care providers enrolled with the fund, as follows:

(i) Four members of the board shall be representatives of the class of health care providers contributing the greatest percentage of the fund's aggregate surcharges.

(ii) Two members of the board shall be representatives of the class of health care providers contributing the second greatest percentage of the fund's aggregate surcharges.

(iii) One member of the board shall be a representative of the class of health care providers contributing the third greatest percentage of the fund's aggregate surcharges.

(iv) One member of the board shall be appointed to represent all other classes of health care providers enrolled with the fund.

(c) The ninth member of the board shall be appointed from nominees provided by the principal professional organization of insurance executives, and this member must be an executive of a property and casualty insurance company that is licensed in this state which does not sell medical professional liability insurance.

(d) Appointments of members representing a single class of health care providers shall be made from nominations solicited from the respective principal professional organizations of such health care providers in the state. The member of the board representing all other classes of health care providers shall be nominated by concurrence of the respective principal professional organizations of such health care providers in the state. In the absence of such concurrence each such professional organization shall name a representative to an ad hoc committee which shall, from among its number, nominate a representative to the board.

(e) For the purpose of apportioning representation on the board, the percentage surcharge contribution of each distinct class of health care providers listed by R.S. 40:1299.41 to the aggregate surcharges paid to the fund shall be calculated for each fiscal year of the fund, and apportionment with respect to an initial or subsequent appointment to the board shall be based on such percentage contributions for the fund fiscal year preceding any such appointment.

(f) Two of the initial members of the board appointed pursuant to Item (1)(b)(i) of this Subsection, one of the initial members appointed pursuant to Item (1)(b)(ii), and the member appointed pursuant to Item (1)(b)(iii) shall serve for terms of three years. One of the members of the initial board appointed pursuant to Item (1)(b)(i) of this Subsection and one of the initial members appointed pursuant to Item (1)(b)(ii) shall serve for terms of two years. The remaining members of the initial board shall serve for terms of one year. Thereafter, each member of the board shall serve for a term of three years, with any vacancy occurring in any such position being filled for the unexpired term of such position in the manner of the original appointment, in accordance with the apportionment of representation provided for by this Subsection.

(g) The board shall annually elect a chairman and secretary from among its members and shall meet not less frequently than quarterly during the calendar year on the call of the chairman at such times and places as he may designate.

(h) The members of the board shall receive seventy-five dollars per day while engaged in board business and for attendance at all meetings of the board. Reasonable expenses incurred by board members in their travel to and attendance at meetings of the board shall be reimbursed by the fund in accordance with applicable laws and administrative regulations. The members of the board shall not be reimbursed for any expenses incurred for board meetings outside of the state.

(2) (a) The board shall be responsible, and have full authority under law, for the management, administration, operation and defense of the fund in accordance with the provisions of this Part.

(b) In addition to such other powers and authority elsewhere expressly or impliedly conferred on the board by this Part, the board shall have the authority, to the extent not inconsistent with the provisions of this Part, to:

(i) Collect all surcharges and other monies due the fund.

(ii) Establish and define the standards and forms of financial responsibility required of self-insured health care providers, and the standards and forms of malpractice liability insurance policies issued by admitted insurance companies and the standards, forms, acceptable ratings and other criteria for medical malpractice liability insurance policies issued by non-admitted insurance companies which are acceptable as proof of financial responsibility pursuant to R.S. 40:1299.42, as a condition to initial and continuing enrollment with the fund.

(iii) Collect, accumulate, and maintain claims experience data from enrolled health care providers and insurance companies providing professional liability insurance coverage to health care providers in this state, in such form as may be necessary or appropriate to permit the fund to develop appropriate surcharge rates for the fund.

(iv) Employ, or in accordance with the provisions of law applicable to contracting for personal, professional or consulting services, retain the services of a qualified competent actuary to perform the annual actuarial study of the fund required by this Section and to advise the board on all aspects of the fund's administration, operation and defense which require application of the actuarial science.

(v) Contract for any services necessary or advisable to implement the authority and discharge the responsibilities conferred and imposed on the board by this Part.

(vi) Employ, in the unclassified service, an appropriately qualified executive director and delegate to such executive director all or any portion of the authority for administration and operation of the fund vested in the board, subject to the superseding authority of the board.

(vii) Employ, in the unclassified service, an appropriately qualified claims manager and delegate to such claims manager all or any portion of the authority for the protection and defense of the fund vested in the board, subject to the superseding authority of the board.

(viii) Employ, or contract with, legal counsel to advise and represent the board and represent the fund in proceedings pursuant to this Part.

(ix) Employ such clerical personnel as may be necessary or appropriate to carry out the responsibilities of the board under this Part.

(x) Defend the fund from all claims due wholly or in part to the negligence or liability of anyone other than a qualified health care provider regardless of whether a qualified health care provider has settled and paid its statutory maximum or has been adjudged liable or negligent.

(xi) Defend the fund from all claims arising under R.S. 40:1299.44(D)(2)(b)(x) and obtain indemnity and reimbursement to the fund of all amounts for which anyone other than a qualified health care provider may be held liable. The right of indemnity and reimbursement to the fund shall be limited to that amount that the fund may be cast in judgment.

(xii) Intervene as a matter of right, at its discretion, in any civil action or proceeding in which the constitutionality of this Part, R.S. 9:5628, R.S. 9:5628.1 or any other Louisiana law related to medical malpractice as defined in this Part is challenged.

(xiii) The right to apply the provisions of Civil Code Article 2323 or 2324, or both, to assert a credit or offset for the allocated percentage of negligence or fault of a qualified health care provider shall be governed by the provisions of Subparagraph (C)(5)(c) of this Section.

(3) The board shall have authority, in accordance with applicable provisions of the Administrative Procedure Act, to adopt and promulgate such rules, regulations and standards as it may deem necessary or advisable to implement the authority and discharge the responsibilities conferred and imposed on the board by this Part.

(4) All communications made and all documents and records developed by, between or among the attorney general, claims manager, the oversight board, any person or entity contracted to provide services to or on behalf of the fund under this Part, and enrolled health care providers and their insurers, relative to or in anticipation of defense of the fund or enrolled health care providers against, establishment of reserves with respect to, or prospective settlement of, individual malpractice claims shall be confidential and privileged against disclosure to any third party, pursuant to request, subpoena, or otherwise.

(5) Any meeting of the board or any portion of any meeting of the board which is restricted to consideration of and/or action upon pending or threatened claims against the fund or health care providers with the fund shall not be subject to the provisions of R.S. 42:4.1 or R.S. 42:12.

§1299.45. Malpractice coverage

A. (1) Only while malpractice liability insurance remains in force, or in the case of a self-insured health care provider, only while the security required by regulations of the board remains undiminished, are the health care provider and his insurer liable to a patient, or his representative, for malpractice to the extent and in the manner specified in this Part.

(2) When, and during the period that each shareholder, partner, member, agent, officer, or employee of a corporation, partnership, limited liability partnership, or limited liability company, who is eligible for qualification as a health care provider under this Part, and who is providing health care on behalf of such corporation, partnership, or limited liability company, is qualified as a health care provider under the provisions of R.S. 40:1299.42(A), such corporation, partnership, limited liability partnership, or limited liability company shall, without the payment of an additional surcharge, be deemed concurrently qualified and enrolled as a health care provider under this Part. Any such corporation, partnership, limited liability partnership, or limited liability company which fails to provide proof of financial responsibility upon request of the fund after the filing of a request for review of a claim under R.S. 40:1299.47 or after the filing of a lawsuit alleging medical malpractice, shall not be deemed concurrently qualified and enrolled as a health care provider under this Part.

B. The filing of proof of financial responsibility with the board shall constitute, on the part of the insurer, a conclusive and unqualified acceptance of the provisions of this Part.

C. Any provision in a policy attempting to limit or modify the liability of the insurer contrary to the provisions of this Part is void, except that a provision in a malpractice liability insurance policy approved by the board which limits the aggregate sum for which the insurer may be liable during the policy period shall be valid.

D. Every policy issued under this Part is deemed to include the following provisions, and any change which may be occasioned by legislation adopted by the legislature of the state of Louisiana as fully as if it were written therein:

(1) The insurer assumes all obligations to pay an award imposed against its insured under the provisions of this Part; and

(2) Any termination of this policy by cancellation is not effective as to patients claiming against the insured covered hereby, unless at least thirty days before the taking effect of the cancellation, a written notice giving the date upon which termination becomes effective has been received by the insured and the board at their offices. In no event shall said cancellation affect in any manner any claim which arose against the insurer or its insured during the life of the policy.

E. If an insurer fails or refuses to pay a final judgment, except during the pendency of an appeal, or fails, or refuses to comply with any provisions of this Part, in addition to any other legal remedy, the board may also revoke the approval of its policy form until the insurer pays the award or judgment or has complied with the violated provisions of this Part and has resubmitted its policy form and received the approval of the board.

§1299.46. Risk management; authority

A. The purpose of this Section is to make malpractice liability insurance available to qualified risks as defined in this Part.

B. There is created the Residual Malpractice Insurance Authority. The authority is empowered to engage in making malpractice liability insurance available in this state. Governance and administration of the authority shall be vested with the board.

C. (1) The board shall choose a risk manager for the authority according to the public bid laws of the state.

(2) Unless otherwise agreed between the risk manager and the board, the separate, personal or independent assets of the risk manager shall not be liable for or subject to use or expenditure for the purpose of providing insurance by the authority.

(3) All contracts between the authority and the risk manager, and any amendment thereto,

and any adjustments made by the board in the compensation or duties of the risk manager permitted by such contracts shall require the approval of the division of administration.

D. In the administration and provision for malpractice liability insurance by the authority, the risk manager shall:

(1) Be subject to all laws and regulations of this state which apply to insurance. Except as provided by this Part the Residual Malpractice Insurance Authority shall not be subject to the taxes provided by the Louisiana Insurance Code.

(2) Prepare and file appropriate forms with the Department of Insurance.

(3) Prepare and file premium rates with the Department of Insurance.

(4) Perform the underwriting functions; and subject to the approval of the board, shall formulate underwriting standards for insuring health care providers who by reason of training, experience, claims history and other generally accepted underwriting standards are reasonable insurance risks.

(5) Dispose of all claims and litigations arising out of insurance policies.

(6) Maintain complete books and records.

(7) File an annual financial statement regarding its operations under this Section with the Department of Insurance on forms prescribed by the commissioner.

(8) Obtain private reinsurance for the authority, if necessary.

(9) Prepare and file for approval of the commissioner, a schedule of agent's compensation.

(10) Prepare and file a plan of operations with the commissioner for approval.

E. Unless otherwise agreed between the risk manager and the board, the risk manager shall receive as compensation for its services only a percentage of all premiums received by it under the terms of this Section, as determined by the board and approved by the division of administration.

F. If a health care provider desires malpractice liability insurance under this Part, he shall forward his application to the risk manager. The risk manager shall not consider any application unless a health care provider furnishes in his application evidence of his having either been refused coverage by at least two private insurers writing medical malpractice insurance in the state, or having been refused coverage by the only private insurer writing medical malpractice insurance in the state, or that no private insurer is writing such insurance in the state. Upon written application therefor, the risk manager shall provide a malpractice liability insurance binder to a health care provider who has applied for medical malpractice insurance to any private insurer writing medical malpractice insurance in the state. Such binder shall remain in effect for no more than sixty days from the date of the application by the health care provider to such private insurer. Upon proof by the health care provider submitted to the risk manager that he has not been accepted by any private insurer during the sixty day period, the risk manager shall assume that the health care provider has been rejected for private insurance coverage. In that case, the risk manager shall, if the health care provider meets the underwriting standards called for in Paragraph (4) of Subsection D of this Section, issue a policy of insurance to the health care provider. If within the sixty day period the applicant is accepted by a private insurer, the binder shall expire at the time of such acceptance.

G. If the risk manager declines to accept the risk, notice of declination, together with reasons, shall be sent to the applicant and the board. The applicant shall have ten days from the date of notice to file an appeal for review by the board. On appeal, the board shall review the decision of the risk manager to determine whether the approved underwriting standards have been fairly applied by the risk manager and shall enter an appropriate order.

H. The surplus of premiums over losses and expenses received by the authority shall be placed in a segregated fund and shall be invested and reinvested by the risk manager with the concurrence of the board in accordance with the insurance code of the state of Louisiana and investment income generated shall remain in the fund. These funds shall not be considered public or state

funds.

I. The authority may issue malpractice liability insurance policies only to health care providers who are residents of Louisiana and to corporations, foreign or domestic, with regard to health care facilities operated within Louisiana. Insofar as practicable, only the claims experience of Louisiana health care providers shall be considered in the determination of rates for such policies. The rates for such policies shall otherwise be determined and approved according to the same procedures and principles as rates for malpractice liability policies issued by private insurers in Louisiana. The rates for such policies shall be at least equal to the highest rate established for any particular category of malpractice liability insurance of a like policy issued by private insurers in the state.

J. The state of Louisiana assumes no liability for medical malpractice insurance policies written by the authority. Every policy issued by the authority shall contain a statement that the authority's liability or the liability of the policy is limited to the authority's reserves.

§1299.47. Medical review panel

A. (1) (a) All malpractice claims against health care providers covered by this Part, other than claims validly agreed for submission to a lawfully binding arbitration procedure, shall be reviewed by a medical review panel established as hereinafter provided for in this Section. The filing of a request for review by a medical review panel as provided for in this Section shall not be reportable by any health care provider, the Louisiana Patient's Compensation Fund, or any other entity to the Louisiana State Board of Medical Examiners, to any licensing authority, committee, or board of any other state, or to any credentialing or similar agency, committee, or board of any clinic, hospital, health insurer, or managed care company.

(b) A request for review of a malpractice claim or malpractice complaint shall contain, at a minimum, all of the following:

(i) A request for the formation of a medical review panel.

(ii) The name of the patient.

(iii) The names of the claimants.

(iv) The names of defendant health care providers.

(v) The dates of the alleged malpractice.

(vi) A brief description of the alleged malpractice as to each named defendant state health care provider.

(vii) A brief description of alleged injuries.

(c) A claimant shall have forty-five days from the mailing date of the confirmation of receipt of the request for review in accordance with Subparagraph (3)(a) of this Subsection to pay to the board a filing fee in the amount of one hundred dollars per named defendant qualified under this Part.

(d) Such filing fee may be waived only upon receipt of one of the following:

(i) An affidavit of a physician holding a valid and unrestricted license to practice his specialty in the state of his residence certifying that adequate medical records have been obtained and reviewed and that the allegations of malpractice against each defendant health care provider named in the claim constitute a claim of a breach of the applicable standard of care as to each named defendant health care provider.

(ii) An in forma pauperis ruling issued in accordance with Louisiana Code of Civil Procedure Article 5181 et seq. by a district court in a venue in which the malpractice claim could properly be brought upon the conclusion of the medical review panel process.

(e) Failure to comply with the provisions of Subparagraph (c) or (d) of this Paragraph within the specified time frame in Subparagraph (c) of this Paragraph shall render the request for review of a malpractice claim invalid and without effect. Such an invalid request for review of a malpractice claim shall not suspend time within which suit must be instituted in Subparagraph (2)(a) of this Subsection.

(f) All funds generated by such filing fees shall be private monies and shall be applied to the costs of the Patient's Compensation Fund Oversight Board incurred in the administration of claims.

(g) The filing fee of one hundred dollars per named defendant qualified under this Part shall be applicable in the event that a claimant identifies additional qualified health care providers as defendants. The filing fee applicable to each identified qualified health care provider shall be due forty-five days from the mailing date of the confirmation of receipt of the request for review for the additional named defendants in accordance with R.S. 40:1299.47(A)(3)(a).

(2) (a) The filing of the request for a review of a claim shall suspend the time within which suit must be instituted, in accordance with this Part, until ninety days following notification, by certified mail, as provided in Subsection J of this Section, to the claimant or his attorney of the issuance of the opinion by the medical review panel, in the case of those health care providers covered by this Part, or in the case of a health care provider against whom a claim has been filed under the provisions of this Part, but who has not qualified under this Part, until ninety days following notification by certified mail to the claimant or his attorney by the board that the health care provider is not covered by this Part. The filing of a request for review of a claim shall suspend the running of prescription against all joint and solidary obligors, and all joint tortfeasors, including but not limited to health care providers, both qualified and not qualified, to the same extent that prescription is suspended against the party or parties that are the subject of the request for review. Filing a request for review of a malpractice claim as required by this Section with any agency or entity other than the division of administration shall not suspend or interrupt the running of prescription. All requests for review of a malpractice claim identifying additional health care providers shall also be filed with the division of administration.

(b) The request for review of a malpractice claim under this Section shall be deemed filed on the date of receipt of the request stamped and certified by the division of administration or on the date of mailing of the request if mailed to the division of administration by certified or registered mail only upon timely compliance with the provisions of Subparagraph (1)(c) or (d) of this Subsection. Upon receipt of any request, the division of administration shall forward a copy of the request to the board within five days of receipt.

(c) An attorney chairman for the medical review panel shall be appointed within one year from the date the request for review of the claim was filed. Upon appointment of the attorney chairman, the parties shall notify the board of the name and address of the attorney chairman. If the board has not received notice of the appointment of an attorney chairman within nine months from the date the request for review of the claim was filed, then the board shall send notice to the parties by certified or registered mail that the claim will be dismissed in ninety days unless an attorney chairman is appointed within one year from the date the request for review of the claim was filed. If the board has not received notice of the appointment of an attorney chairman within one year from the date the request for review of the claim was filed, then the board shall promptly send notice to the parties by certified or registered mail that the claim has been dismissed for failure to appoint an attorney chairman and the parties shall be deemed to have waived the use of the medical review panel. The filing of a request for a medical review panel shall suspend the time within which suit must be filed until ninety days after the claim has been dismissed in accordance with this Section.

(3) It shall be the duty of the board within fifteen days of the receipt of the claim by the board to:

(a) Confirm to the claimant by certified mail, return receipt requested, that the filing has been officially received and whether or not the named defendant or defendants have qualified under this Part.

(b) In the confirmation to the claimant pursuant to Subparagraph (a) of this Paragraph, notify the claimant of the amount of the filing fee due and the time frame within which such fee is due to the board, and that upon failure to comply with the provisions of

Subparagraph (1)(c) or (d) of this Subsection, the request for review of a malpractice claim is invalid and without effect and that the request shall not suspend the time within which suit must be instituted in Subparagraph (2)(a) of this Subsection.

(c) Notify all named defendants by certified mail, return receipt requested, whether or not qualified under the provisions of this Part, that a filing has been made against them and request made for the formation of a medical review panel; and forward a copy of the proposed complaint to each named defendant at his last and usual place of residence or his office.

(4) The board shall notify the claimant and all named defendants by certified mail, return receipt requested, of any of the following information:

(a) The date of receipt of the filing fee.

(b) That no filing was due because the claimant timely provided the affidavit set forth in Item (1)(d)(i) of this Subsection.

(c) That the claimant has timely complied with the provisions of Item (1)(d)(ii) of this Subsection.

(d) That the required filing fee was not timely paid pursuant to Subparagraph (1)(c) of this Subsection.

(5) In the event that any notification by certified mail, return receipt requested, provided for in Paragraphs (3) and (4) of this Subsection is not claimed or is returned undeliverable, the board shall provide such notification by regular first class mail, which date of mailing shall have the effect of receipt of notice by certified mail.

B. (1) (a) (i) No action against a health care provider covered by this Part, or his insurer, may be commenced in any court before the claimant's proposed complaint has been presented to a medical review panel established pursuant to this Section.

(ii) A certificate of enrollment issued by the board shall be admitted in evidence.

(b) However, with respect to an act of malpractice which occurs after September 1, 1983, if an opinion is not rendered by the panel within twelve months after the date of notification of the selection of the attorney chairman by the executive director to the selected attorney and all other parties pursuant to Paragraph (1) of Subsection C of this Section, suit may be instituted against a health care provider covered by this Part. However, either party may petition a court of competent jurisdiction for an order extending the twelve-month period provided in this Subsection for good cause shown. After the twelve month period provided for in this Subsection or any court-ordered extension thereof, the medical review panel established to review the claimant's complaint shall be dissolved without the necessity of obtaining a court order of dissolution.

(c) By agreement of all parties, the use of the medical review panel may be waived.

(d) By agreement of all parties and upon written request to the attorney chairman, an expedited medical review panel process may be selected. Unless otherwise specified in the provisions of Subsection N of this Section, the expedited process shall be governed by other provisions of this Section.

(2) (a) A health care provider, against whom a claim has been filed under the provisions of this Part, may raise any exception or defenses available pursuant to R.S. 9:5628 in a court of competent jurisdiction and proper venue at any time without need for completion of the review process by the medical review panel.

(b) If the court finds that the claim had prescribed or otherwise was perempted prior to being filed, the panel, if established, shall be dissolved.

(3) Ninety days after the notification to all parties by certified mail by the attorney chairman of the board of the dissolution of the medical review panel or ninety days after the expiration of any court-ordered extension as authorized by Paragraph (1) of this Subsection, the suspension of the running of prescription with respect to a qualified health care provider shall cease.

C. The medical review panel shall consist of three health care providers who hold unlimited licenses to practice their profession in Louisiana and one attorney. The parties may agree on the attorney member of the medical review panel. If no attorney for or representative of any health care provider named in the complaint has made an appearance in the proceedings or made written contact with the attorney for the plaintiff within forty-five days of the date of receipt of the notification to the health care provider and the insurer that the required filing fee has been received by the patient's compensation board as required by R.S. 40:1299.47(A)(1)(c), the attorney for the plaintiff may appoint the attorney member of the medical review panel for the purpose of convening the panel. Such notice to the health care provider and the insurer shall be sent by registered or certified mail, return receipt requested. If no agreement can be reached, then the attorney member of the medical review panel shall be selected in the following manner:

(1) (a) The office of the clerk of the Louisiana Supreme Court, upon receipt of notification from the board, shall draw five names at random from the list of attorneys who reside or maintain an office in the parish which would be proper venue for the action in a court of law. The names of judges, magistrates, district attorneys and assistant district attorneys shall be excluded if drawn and new names drawn in their place. After selection of the attorney names, the office of the clerk of the supreme court shall notify the board of the names so selected. It shall be the duty of the board to notify the parties of the attorney names from which the parties may choose the attorney member of the panel within five days. If no agreement can be reached within five days, the parties shall immediately initiate a procedure of selecting the attorney by each striking two names alternately, with the claimant striking first and so advising the health care provider of the name of the attorney so stricken; thereafter, the health care provider and the claimant shall alternately strike until both sides have stricken two names and the remaining name shall be the attorney member of the panel. If either the plaintiff or defendant fails to strike, the clerk of the Louisiana Supreme Court shall strike for that party within five additional days.

(b) After the striking, the office of the board shall notify the attorney and all other parties of the name of the selected attorney.

(2) The attorney shall act as chairman of the panel and in an advisory capacity but shall have no vote. It is the duty of the chairman to expedite the selection of the other panel members, to convene the panel, and expedite the panel's review of the proposed complaint. The chairman shall establish a reasonable schedule for submission of evidence to the medical review panel but must allow sufficient time for the parties to make full and adequate presentation of related facts and authorities within ninety days following selection of the panel.

(3) (a) The plaintiff shall notify the attorney chairman and the named defendants of his choice of a health care provider member of the medical review panel within thirty days of the date of certification of his filing by the board.

(b) The named defendant shall then have fifteen days after notification by the plaintiff of the plaintiff's choice of his health care provider panelist to name the defendant's health care provider panelist.

(c) If either the plaintiff or defendant fails to make a selection of health care provider panelist within the time provided, the attorney chairman shall notify by certified mail the failing party to make such selection within five days of the receipt of the notice.

(d) If no selection is made within the five day period, then the chairman shall make the selection on behalf of the failing party. The two health care provider panel members selected by the parties or on their behalf shall be notified by the chairman to select the third health care provider panel member within fifteen days of their receipt of such notice.

(e) If the two health care provider panel members fail to make such selection within the fifteen day period allowed, the chairman shall then make the selection of the third panel member and thereby complete the panel.

(f) A physician who holds an unrestricted license to practice medicine by the Louisiana State Board of Medical Examiners and who is engaged in the active practice of

medicine in this state, whether in the teaching profession or otherwise, shall be available for selection as a member of a medical review panel.

(g) Each party to the action shall have the right to select one health care provider and upon selection the health care provider shall be required to serve.

(h) When there are multiple plaintiffs or defendants, there shall be only one health care provider selected per side. The plaintiff, whether single or multiple, shall have the right to select one health care provider, and the defendant, whether single or multiple, shall have the right to select one health care provider.

(i) A panelist so selected and the attorney member selected in accordance with this Subsection shall serve unless for good cause shown may be excused. To show good cause for relief from serving, the panelist shall present an affidavit to a judge of a court of competent jurisdiction and proper venue which shall set out the facts showing that service would constitute an unreasonable burden or undue hardship. A health care provider panelist may also be excused from serving by the attorney chairman if during the previous twelve-month period he has been appointed to four other medical review panels. In either such event, a replacement panelist shall be selected within fifteen days in the same manner as the excused panelist.

(j) If there is only one party defendant which is not a hospital, community blood center, tissue bank, or ambulance service, all panelists except the attorney shall be from the same class and specialty of practice of health care provider as the defendant. If there is only one party defendant which is a hospital, community blood center, tissue bank, or ambulance service, all panelists except the attorney shall be physicians. If there are claims against multiple defendants, one or more of whom are health care providers other than a hospital, community blood center, tissue bank, or ambulance service, the panelists selected in accordance with this Subsection may also be selected from health care providers who are from the same class and specialty of practice of health care providers as are any of the defendants other than a hospital, community blood center, tissue bank, or ambulance service.

(4) When the medical review panel is formed, the chairman shall within five days notify the board and the parties by registered or certified mail of the names and addresses of the panel members and the date on which the last member was selected.

(5) Before entering upon their duties, each voting panelist shall subscribe before a notary public the following oath:

"I, (name) do solemnly swear/affirm that I will faithfully perform the duties of medical review panel member to the best of my ability and without partiality or favoritism of any kind. I acknowledge that I represent neither side and that it is my lawful duty to serve with complete impartiality and to render a decision in accordance with law and the evidence."

The attorney panel member shall subscribe to the same oath except that in lieu of the last sentence thereof the attorney's oath shall state:

"I acknowledge that I represent neither side and that it is my lawful duty to advise the panel members concerning matters of law and procedure and to serve as chairman."

The original of each oath shall be attached to the opinion rendered by the panel.

(6) The party aggrieved by the alleged failure or refusal of another to perform according to the provisions of this Section may petition any district court of proper venue over the parties for an order directing that the parties comply with the medical review panel provisions of the medical malpractice act.

(7) A panelist or a representative or attorney for any interested party shall not discuss with other members of a medical review panel on which he serves a claim which is to be reviewed by the panel until all evidence to be considered by the panel has been submitted. A panelist or a representative or attorney for any interested party shall not discuss the pending claim with the claimant or his attorney asserting the claim or with a health care provider or his attorney against whom a claim has been asserted under this Section. A panelist or the attorney chairman shall disclose in writing to the parties prior to the hearing any employment relationship or financial

relationship with the claimant, the health care provider against whom a claim is asserted, or the attorneys representing the claimant or health care provider, or any other relationship that might give rise to a conflict of interest for the panelists.

D. (1) The evidence to be considered by the medical review panel shall be promptly submitted by the respective parties in written form only.

(2) The evidence may consist of medical charts, x-rays, lab tests, excerpts of treatises, depositions of witnesses including parties, interrogatories, affidavits and reports of medical experts, and any other form of evidence allowable by the medical review panel.

(3) Depositions of the parties and witnesses may be taken prior to the convening of the panel.

(4) Upon request of any party, or upon request of any two panel members, the clerk of any district court shall issue subpoenas and subpoenas duces tecum in aid of the taking of depositions and the production of documentary evidence for inspection and/or copying.

(5) The chairman of the panel shall advise the panel relative to any legal question involved in the review proceeding and shall prepare the opinion of the panel as provided in Subsection G.

(6) A copy of the evidence shall be sent to each member of the panel.

E. Either party, after submission of all evidence and upon ten days notice to the other side, shall have the right to convene the panel at a time and place agreeable to the members of the panel. Either party may question the panel concerning any matters relevant to issues to be decided by the panel before the issuance of their report. The chairman of the panel shall preside at all meetings. Meetings shall be informal.

F. The panel shall have the right and duty to request and procure all necessary information. The panel may consult with medical authorities, provided the names of such authorities are submitted to the parties with a synopsis of their opinions and provided further that the parties may then obtain their testimony by deposition. The panel may examine reports of such other health care providers necessary to fully inform itself regarding the issue to be decided. Both parties shall have full access to any material submitted to the panel.

G. The panel shall have the sole duty to express its expert opinion as to whether or not the evidence supports the conclusion that the defendant or defendants acted or failed to act within the appropriate standards of care. After reviewing all evidence and after any examination of the panel by counsel representing either party, the panel shall, within thirty days, render one or more of the following expert opinions, which shall be in writing and signed by the panelists, together with written reasons for their conclusions:

(1) The evidence supports the conclusion that the defendant or defendants failed to comply with the appropriate standard of care as charged in the complaint.

(2) The evidence does not support the conclusion that the defendant or defendants failed to meet the applicable standard of care as charged in the complaint.

(3) That there is a material issue of fact, not requiring expert opinion, bearing on liability for consideration by the court.

(4) When Paragraph (1) of this Subsection is answered in the affirmative, that the conduct complained of was or was not a factor of the resultant damages. If such conduct was a factor, whether the plaintiff suffered: (a) any disability and the extent and duration of the disability, and (b) any permanent impairment and the percentage of the impairment.

H. Any report of the expert opinion reached by the medical review panel shall be admissible as evidence in any action subsequently brought by the claimant in a court of law, but such expert opinion shall not be conclusive and either party shall have the right to call, at his cost, any member of the medical review panel as a witness. If called, the witness shall be required to appear and testify. A panelist shall have absolute immunity from civil liability for all communications, findings, opinions and conclusions made in the course and scope of duties prescribed by this Part.

I. (1) (a) Each physician member of the medical review panel shall be paid at the rate of

twenty-five dollars per diem, not to exceed a total of three hundred dollars for all work performed as a member of the panel exclusive of time involved if called as a witness to testify in a court of law regarding the communications, findings, and conclusions made in the course and scope of duties as a member of the medical review panel, and in addition thereto, reasonable travel expenses.

(b) The attorney chairman of the medical review panel shall be paid at the rate of one hundred dollars per diem, not to exceed a total of two thousand dollars for all work performed as a member of the panel exclusive of time involved if called as a witness to testify in a court of law regarding the communications, findings, and conclusions made in the course and scope of duties as a member of the medical review panel, and in addition thereto, reasonable travel expenses. Additionally, the attorney chairman shall be reimbursed for all reasonable out-of-pocket expenses incurred in performing his duties for each medical review panel. The attorney chairman shall submit the amount due him for all work performed as a member of the panel by affidavit, which shall attest that he has performed in the capacity of chairman of the medical review panel and that he was personally present at all the panel's meetings or deliberations.

(2) (a) The costs of the medical review panel shall be paid by the health care provider if the opinion of the medical review panel is in favor of said defendant health care provider.

(b) The claimant shall pay the costs of the medical review panel if the opinion of the medical review panel is in favor of the claimant. However, if the claimant is unable to pay, the claimant shall submit to the attorney chairman prior to the convening of the medical review panel an in forma pauperis ruling issued in accordance with Louisiana Code of Civil Procedure Article 5181 et seq. by a district court in a venue in which the malpractice claim could properly be brought upon the conclusion of the medical review panel process. Upon timely receipt of the in forma pauperis ruling, the costs of the medical review panel shall be paid by the health care provider, with the proviso that if the claimant subsequently receives a settlement or receives a judgment, the advance payment of the medical review panel costs will be offset.

(c) In a medical malpractice suit filed by the claimant in which a unanimous opinion was rendered in favor of the defendant health care provider as provided in the expert opinion stated in Paragraph (G)(2) of this Section, the claimant who proceeds to file such a suit shall be required to post a cash or surety bond, approved by the court, in the amount of all costs of the medical review panel. Upon the conclusion of the medical malpractice suit, the court shall order that the cash or surety bond be forfeited to the defendant health care provider for reimbursement of the costs of the medical review panel, unless a final judgment is rendered finding the defendant liable to the claimant for any damages. If a final judgment is rendered finding the defendant liable to the claimant for any damages, the court shall order that the defendant health care provider reimburse the claimant an amount equal to the cost of obtaining the cash or surety bond posted by the claimant.

(d) In the event a medical review panel renders a unanimous opinion in favor of the claimant as provided in the expert opinions stated in Paragraphs (G)(1) and (4) of this Section, and the claimant has not timely submitted an in forma pauperis ruling to the panel's attorney chairman, and thereafter the defendant health care provider failed to settle the claim with the claimant resulting in the claimant filing a malpractice suit in a court of competent jurisdiction and proper venue against the defendant health care provider based on the same claim which was the subject of the unanimously adverse medical review panel opinion against the defendant health care provider, the defendant health care provider shall be required to post a cash or surety bond, approved by the court, in the amount of all costs of the medical review panel. Upon the conclusion of the medical malpractice suit, the court shall order that the cash or surety bond be forfeited to the claimant for reimbursement of the costs of the medical review panel, unless a final judgment is rendered finding that the defendant health care provider has no liability for damages to the claimant. If a final judgment is rendered finding that the defendant health care provider has no liability for damages to the claimant, the court shall order that the claimant reimburse the

defendant health care provider an amount equal to the cost of obtaining the cash or surety bond posted by the defendant health care provider.

(3) If the medical review panel decides that there is a material issue of fact bearing on liability for consideration by the court, the claimant and the health care provider shall split the costs of the medical review panel. However, in those instances in which the claimant is unable to pay his share of the costs of the medical review panel, the claimant shall submit to the attorney chairman prior to the convening of the medical review panel an in forma pauperis ruling issued in accordance with Louisiana Code of Civil Procedure Article 5181 et seq., by a district court in a venue in which the malpractice claim could properly be brought upon the conclusion of the medical review panel process. Upon timely receipt of the in forma pauperis ruling, the costs of the medical review panel shall be paid by the defendant health care provider with the proviso that if the claimant subsequently receives a settlement or receives a judgment, the advance payment of the claimant's share of the costs of the medical review panel will be offset.

(4) Upon the rendering of the written panel decision, if any one of the panelists finds that the evidence supports the conclusion that a defendant health care provider failed to comply with the appropriate standard of care as charged in the complaint, each defendant health care provider as to whom such a determination was made shall reimburse to the claimant that portion of the filing fee applicable to the claim against such defendant health care provider or if any one of the panelists finds that the evidence supports the conclusion that there is a material issue of fact, not requiring expert opinion, bearing on liability of such defendant health care provider for consideration by the court, each such defendant health care provider as to whom such a determination was made shall reimburse to the claimant fifty percent of that portion of the filing fee applicable to the claim against such defendant health care provider.

J. The chairman shall submit a copy of the panel's report to the board and all parties and attorneys by registered or certified mail within five days after the panel renders its opinion.

K. Repealed by Acts 2005, No. 127, §2.

L. Where the medical review panel issues its opinion required by this Section, the suspension of the running of prescription shall not cease until ninety days following notification by certified mail to the claimant or his attorney of the issuance of the opinion as required by Subsection J of this Section.

M. Legal interest shall accrue from the date of filing of the complaint with the board on a judgment rendered by a court in a suit for medical malpractice brought after compliance with this Part.

N. (1) (a) (i) Parties seeking an expedited panel process pursuant to the provisions of Subparagraph (B)(1)(d) of this Section shall request such process in writing sixty days from the date of the letter of notification of the selection of the attorney chairman pursuant to Paragraph (1) of Subsection C of this Section. When a written request for an expedited medical review panel process has been made to the attorney chairman, the chairman shall establish a schedule for submission of evidence to the medical review panel within ninety days following selection of the third physician member of the panel so that a panel opinion is rendered within twelve months of the date of notification of the selection of the attorney chairman.

(ii) In accordance with Subsection J of this Section, the chairman shall submit a copy of the panel's report to the board and all parties and attorneys by registered or certified mail within five days after the panel renders its opinion. In accordance with Subsection L of this Section, where the medical review panel issues its opinion required by this Section, the suspension of the running of prescription shall not cease until ninety days following notification by certified mail to the claimant or his attorney of the issuance of the opinion as required by Subsection J of this Section.

(b) (i) No party may petition a court for an order extending the twelve month period provided in Subsection (B)(1)(b). If an opinion is not rendered by the panel within the twelve month period established in this Subsection, suit may be instituted against the health care

provider.

(ii) In accordance with R.S. 40:1299.47(B)(1)(b), after the twelve month period provided for in this Subsection, the medical review panel established to review the claimant's complaint shall be dissolved without the necessity of obtaining a court order of dissolution.

(iii) In accordance with R.S. 40:1299.47(B)(3), ninety days after the notification to all parties by certified mail by the attorney chairman of the board of the dissolution of the medical review panel, the suspension of the running of prescription with respect to a qualified health care provider shall cease.

(2) During selection of the physician members of the medical review panel, the plaintiff shall notify the attorney chairman and the named defendants of his choice of a health care provider member of the medical review panel within ten days of the date of written request to the chairman for an expedited panel process. The named defendant shall then have five days after notification by the plaintiff of the plaintiff's choice of his health care provider panelist to name the defendant's health care provider panelist. If no selection is made within the five and ten day respective periods, then the chairman shall make the selection on behalf of the failing party. The two health care provider panel members selected by the parties or on their behalf shall be notified by the chairman to select the third health care provider panel member within fifteen days of their receipt of such notice from the chairman to make the selection. If no selection is made within the fifteen day period, then the chairman shall make the selection on behalf of the two health care provider panel members.

(3) (a) Within thirty days of the parties' written request for an expedited medical review panel process to the attorney chairman, the claimant shall provide all defendants with a list of the names and addresses of all known health care providers, including individuals and entities, who have treated the patient during the time period starting from three years prior to the date of the alleged malpractice up to and including the date that the list is provided. The claimant shall make a good faith effort to identify the treating health care providers.

(b) The claimant shall execute and provide all defendants with a HIPAA Compliant Authorization form to permit the defendants to obtain the medical records.

(c) An order to protect the medical records may be sought as provided in La. Code of Civil Procedure Article 1426 or the HIPAA regulations at 45 CFR 164.512(e) in a court of competent jurisdiction and proper venue.

(d) If an authorization is not provided or a protective order is not obtained within thirty days following the written request by the parties to the chairman for an expedited medical review panel process, the medical review panel shall lose its expedited status and no longer be governed by the provisions of this Subsection. The attorney chairman shall provide notice of this to the board and all parties by registered or certified mail.

(4) (a) The evidence to be considered by the medical review panel shall be promptly submitted by the respective parties in written form only, according to the schedule established by the chairman.

(b) The evidence may consist only of medical charts, x-rays or other film studies, lab tests, other diagnostic or medical tests, and a position paper submitted by or on behalf of each party.

(c) Neither interrogatories to nor depositions of the parties and witnesses may be taken prior to the convening of the panel.

(d) No party or panel member shall be permitted to request the clerk of any district court to issue subpoenas and subpoenas duces tecum in aid of the taking of depositions and the production of documentary evidence. However, if a copy of the medical record is not produced by a health care provider within a reasonable period of time, not to exceed fifteen days, following a health care provider's receipt of a medical authorization executed by the claimant pursuant to

Subparagraph (3)(b) of this Subsection then the party who forwarded the authorization to the health care provider may request the clerk of any district court to issue subpoenas and subpoenas duces tecum in aid of the production of the medical records.

(5) The attorney chairman, after submission of all evidence and upon ten days notice, shall convene the panel at a time and place agreeable to the members of the panel, but in no event shall the opinion be rendered later than twelve months from the date of notification of the selection of the attorney chairman by the executive director to the selected attorney and all other parties pursuant to Paragraph (1) of Subsection C of this Section. Either party may informally question the panel concerning any matters relevant to issues to be decided by the panel before and after the issuance of their report. The panel deliberation and the questioning of the panel shall not be recorded. The chairman of the panel shall preside at all meetings.

(6) The panel shall have the sole duty to express its expert opinion as to whether or not the evidence supports the conclusion that the defendant or defendants acted or failed to act within the appropriate standards of care. After reviewing all evidence and after any examination of the panel by counsel representing either party, the panel shall, within thirty days, but in no event later than twelve months of the date of notification of the selection of the attorney chairman pursuant to Paragraph (1) of Subsection C of this Section, render one or more of the following expert opinions, which shall be in writing and signed by the panelists, together with written reasons for their conclusions:

(a) The evidence supports the conclusion that the defendant or defendants failed to comply with the appropriate standard of care as charged in the complaint.

(b) The evidence does not support the conclusion that the defendant or defendants failed to meet the applicable standard of care as charged in the complaint.

(c) That there is a material issue of fact, not requiring expert opinion, bearing on liability for consideration by the court.

(7) The report of the expert opinion reached by the expedited medical review panel process pursuant to the provisions of this Subsection shall not be admissible as evidence in any action subsequently brought by the claimant in a court of law. Neither party shall have the right to call any member of the medical review panel as a witness. A panelist shall have absolute immunity from civil liability for all communications, findings, opinions and conclusions made in the course and scope of duties prescribed by this Part.

(8) The provisions of Subparagraphs (I)(2)(c) and (d) of this Section shall not apply to a medical review panel governed by the expedited medical review panel process.

§1299.48. Reporting of claims

A. For the purpose of providing the various licensing boards of Louisiana health care providers, as defined by R.S. 40:1299.41(A)(1), with information on malpractice claims paid by insurers or self insurers on behalf of health care providers in this state, each insurer of such health care provider, and each health care provider in Louisiana who is self insured shall, within thirty days of the date of payment, provide a written report to the licensing board of this state having licensing authority over the health care provider on whose behalf payment was made, and each such report shall contain:

(1) The name and address of the health care provider.

(2) A brief description of the acts of omission or commission which gave rise or allegedly gave rise to the claim, and the date thereof.

(3) The name of the patient and the injury which resulted or allegedly resulted therefrom.

(4) The amount paid in settlement or discharge of the claim, whether paid by compromise, by payment of judgment, by payment of arbitration award, or otherwise; and

(5) Where any judicial opinion has been rendered with regard to a claim, a copy of all such opinions shall be attached to the report.

Provided, however, no report shall be required for compromise settlements of claims where the

amount paid is one thousand dollars or less, except where such payments were made in satisfaction or compromise of judgment of court or of award of arbitrators.
B. The provisions of this Section shall apply to all health care providers in Louisiana, whether or not such health care provider has qualified under the provisions of this Part.
C. There shall be no liability on the part of any insurer or person acting for said insurer, for any statements made in good faith in the reports required by this Section.

§1299.49. Medical review panel; one panel for state and private claims

The following provisions shall apply when, for the same injury to or death of a patient, a malpractice claim alleges liability of both a state health care provider under the provisions of this Part and a health care provider under the provisions of Part XXI-A of this Chapter:

(1) Unless all parties have agreed otherwise, only one medical review panel shall be convened in such instance to review the claims under this Part and Part XXI-A of this Chapter.

(2) The panel shall consist of a single attorney chairperson and three health care providers who hold unlimited licenses to practice their profession in Louisiana.

(3) The panel shall be considered a joint medical review panel, and its actions shall be deemed to have the same force and effect as if a separate medical review panel had been convened under each of the respective Parts.

(4) The panel shall be governed by the law applicable under both Parts. In the event of a procedural conflict between the provisions of the Parts, the provisions of R.S. 40:1299.47 shall govern.

MEDICAL MALPRACTICE, ACTIONS FOR (LA R.S. 9:5628)

§5628. Actions for medical malpractice

A. No action for damages for injury or death against any physician, chiropractor, nurse, licensed midwife practitioner, dentist, psychologist, optometrist, hospital or nursing home duly licensed under the laws of this state, or community blood center or tissue bank as defined in R.S. 40:1299.41(A), whether based upon tort, or breach of contract, or otherwise, arising out of patient care shall be brought unless filed within one year from the date of the alleged act, omission, or neglect, or within one year from the date of discovery of the alleged act, omission, or neglect; however, even as to claims filed within one year from the date of such discovery, in all events such claims shall be filed at the latest within a period of three years from the date of the alleged act, omission, or neglect.
B. The provisions of this Section shall apply to all persons whether or not infirm or under disability of any kind and including minors and interdicts.
C. The provisions of this Section shall apply to all healthcare providers listed herein or defined in R.S. 40:1299.41 regardless of whether the healthcare provider avails itself of the protections and provisions of R.S. 40:1299.41 et seq., by fulfilling the requirements necessary to qualify as listed in R.S. 40:1299.42 and 1299.44.

OPINIONS AND EXPERT TESTIMONY (LA CODE OF EVDIENCE ARTICLES 701-706)

Art. 701. Opinion testimony by lay witnesses

If the witness is not testifying as an expert, his testimony in the form of opinions or inferences is limited to those opinions or inferences which are:

(1) Rationally based on the perception of the witness; and

(2) Helpful to a clear understanding of his testimony or the determination of a fact in issue.

Art. 702. Testimony by experts

If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise.

Art. 703. Bases of opinion testimony by experts

The facts or data in the particular case upon which an expert bases an opinion or inference may be those perceived by or made known to him at or before the hearing. If of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject, the facts or data need not be admissible in evidence.

Art. 704. Opinion on ultimate issue

Testimony in the form of an opinion or inference otherwise admissible is not to be excluded solely because it embraces an ultimate issue to be decided by the trier of fact. However, in a criminal case, an expert witness shall not express an opinion as to the guilt or innocence of the accused.

Art. 705. Disclosure of facts or data underlying expert opinion; foundation

A. Civil cases. In a civil case, the expert may testify in terms of opinion or inference and give his reasons therefor without prior disclosure of the underlying facts or data, unless the court requires otherwise. The expert may in any event be required to disclose the underlying facts or data on cross-examination.

B. Criminal cases. In a criminal case, every expert witness must state the facts upon which his opinion is based, provided, however, that with respect to evidence which would otherwise be inadmissible such basis shall only be elicited on cross-examination.

Art. 706. Court appointed experts

A. Civil cases. In a civil case, the court may on its own motion or on the motion of any party enter an order to show cause why expert witnesses should not be appointed, and may request the parties to submit nominations. The court may appoint any expert witnesses agreed upon by the parties, and may appoint expert witnesses of its own selection. An expert witness shall not be appointed by the court unless he consents to act. A witness so appointed shall be informed of his duties by the court in writing, a copy of which shall be filed with the clerk, or at a conference in which the parties shall have opportunity to participate. A witness so appointed shall advise the parties of his findings, if any; his deposition may be taken by any party; and he may be called to testify by the court or any party.

B. Disclosure of appointment. In a civil case, in the exercise of its discretion, the court may authorize disclosure to the jury of the fact that the court appointed the expert witness.

C. Parties' experts of own selection. Nothing in this Article limits the parties in calling expert witnesses of their own selection.

D. Criminal cases. In a criminal case, the court may appoint an expert witness only when specifically authorized by statute, or as constitutionally required.

PROFESSIONAL PSYCHOLOGY CORPORATIONS (LA R.S. 12:1130-1144)

§1130. Terms defined

As used in this Chapter:

A. "Professional psychology corporation" means a corporation organized pursuant to this Chapter for the practice of psychology.

B. All terms used both in this Chapter and in Chapter 1 of this Title shall have the same meaning when used in this Chapter, as when used in Chapter 1.

§1131. Professional corporations

One or more natural persons, of full age and duly licensed to practice psychology in this state,

may form a corporation under Chapter 1 of this Title for the purpose of practicing psychology. Such corporations shall be subject to all of the provisions of Chapter 1, as the same may from time to time be amended, except to the extent that such provisions are inconsistent with the provisions of this Chapter.

§1132. The corporate name

The corporate name may consist of the full or last name or names of one or more voting shareholders, former voting shareholders, or members of a predecessor psychology partnership, or it may consist of any other name approved by the secretary of state. The name shall end with one of the phrases (which may be in parentheses) "A Professional Psychology Corporation," "A Professional Corporation" or "A Psychology Corporation." The name may include "Limited" or "Ltd." The name need not contain "Incorporated" or "Inc."

§1133. Corporate authority

A professional psychology corporation shall engage in no business other than the practice of psychology, but may hold property for investment or in connection with its psychology practice.

§1134. Shares

A. There shall be only one class of shares of a professional psychology corporation, denominated common shares, which shall be either with or without par value.

B. Either a shareholder who is a natural person duly licensed to practice psychology in this state, and who holds his shares in his own right, or another professional psychology corporation, shall be entitled to vote such shares, and to participate in the corporation's earnings. Any other shareholder shall have no voting rights for any purpose whatever, shall not participate in the corporation's earnings, and shall have no access to any records or communications pertaining to psychological services rendered by, or any other affairs of, the corporation, except as provided in R.S. 12:1142.

C. R.S. 12:33 shall not apply to professional psychology corporations.

§1135. Certificate of stock

A. Each certificate of stock shall contain the corporation's full name, and the following statement: "Except when held in his own right by a natural person duly licensed to practice psychology or another professional psychology corporation in the state of Louisiana, the shares represented by this certificate are not entitled to be voted or to participate in the earnings of the corporation, and the holder is not entitled to participate in the management of, or in the rendition of psychological services by, the corporation, or to have access to any records or communications pertaining to psychological services rendered by, or any other affairs of, the corporation."

B. Each certificate of stock shall contain a reference to any and all agreements among the corporation's voting shareholders made pursuant to R.S. 12:1138.

C. There shall be no provision for compulsory offer of shares for purchase or by sale to the corporation, and, except as provided in R.S. 12:22,1 no restriction upon the transfer of shares, unless, in either event, such provision or restriction is stated or summarized on the certificate representing the shares.

(1So in enrolled bill. Present R.S. 12:22 deals with purposes for incorporation. Former R.S. 12:22, repealed by Acts 1968, No. 105, §1, provided: "If a shareholder be indebted to the corporation on account of unpaid subscriptions for shares, the corporation shall have a vendor's privilege upon such shares to the extent of this indebtedness." See, now, R.S. 12:71.)

§1136. Liability of incorporators, subscribers, shareholders, directors, officers and agents

A. A subscriber to, or holder of, shares of a professional psychology corporation shall be under no liability to the corporation with respect to such shares, other than the obligation of complying with the terms of the subscription therefor, and said obligation shall continue whether or not his

rights or shares have been assigned or transferred.
B. A shareholder shall not be personally liable for any debt or liability of the corporation.
C. Nothing in this Chapter shall be construed as in derogation of any rights which any person may by law have against an incorporator, subscriber, shareholder, director, officer or agent of the corporation because of any fraud practiced upon him, or because of any breach of professional duty or other negligent or wrongful act by such person, or in derogation of any right which the corporation may have against any of such persons because of any fraud practiced upon it by him.

§1137. Action of shareholders

Any action by, or requiring the assent of, the shareholders of a professional psychology corporation may be taken on the affirmative vote of majority (or such greater proportion as the articles of incorporation may specify) in interest of the voting shareholders present or represented at a meeting duly called and held on due notice at which a quorum is present or represented.

§1138. Shareholders' agreements

A. Any lawful provision regulating the affairs of a professional psychology corporation or the rights and liabilities of its shareholders, which is not required to be set forth in the articles of incorporation, may be set forth in an agreement among all of the voting shareholders, and such agreement shall be binding on the corporation and all persons who are at the time such agreement is made, or who thereafter become, shareholders of the corporation. Such agreement may be terminated at any time by a majority in interest of the voting shareholders.
B. A duplicate copy of such agreement shall be filed in the corporation's registered office which shall be open daily during business hours to the inspection of any shareholder or his attorney or legal representative.

§1139. Directors

Only voting shareholders, or voting shareholders of another professional psychology corporation, may be directors. If there are fewer than three voting shareholders, there need be only as many directors as voting shareholders. The office of a director shall become vacant if he ceases to be a voting shareholder.

§1140. Officers and agents

A. Only voting shareholders, or voting shareholders of another professional psychology corporation, may be officers. If there is only one voting shareholder, all officers may be combined in his person. The office or offices held by an officer shall become vacant if he ceases to be a voting shareholder.
B. Only natural persons duly licensed to practice psychology in this state may render psychological services on behalf of a professional psychology corporation.

§1141. Merger and consolidation

Professional psychology corporations may be merged into or consolidated only with other professional psychology corporations.

§1142. Dissolution

A. The fact that it has no voting shareholders shall be an additional ground for involuntary dissolution of a professional psychology corporation.
B. In the event of the death of a shareholder of a professional psychology corporation, said shareholder's succession representative, or those placed in possession of the shares of said shareholder if there be no administration of the succession, as the case may be, shall be entitled to vote the shares of said shareholder and to be elected a director and officer of the corporation for the purpose of effectuating a voluntary dissolution and liquidation of the corporation, in or out of court, pursuant to the Louisiana Business Corporation Law.

§1143. Regulation by the Louisiana State Board of Examiners of Psychologists

Professional psychology corporations shall be subject to the discipline of the Louisiana State Board of Examiners of Psychologists and to its authority to adopt rules and regulations governing the practice of psychology.

§1144. Short title

This Chapter shall be known and may be referred to by the short title "Professional Psychology Corporations Act".

RESPONSE TO SUBPOENA DUCES TECUM TO HEALTH CARE PROVIDERS (LA R.S. 13:3715.1)

§3715. Court order for chart or record of state operated health care facility; certified copy as sufficient compliance

Whenever a certified copy of a chart or record of any state operated health care facility is offered in evidence or when any court of competent jurisdiction has ordered the production of any chart or record of a state operated health care facility, certified copies of such chart or record, signed by the administrator or the medical records librarian of such hospital and attested by the seal of the hospital, shall be received in evidence with the same force and effect as though the original document were produced, and it shall be a sufficient compliance with any such order of court to furnish copies so certified.

§3715.1. Medical or hospital records of a patient; subpoena duces tecum and court order to a health care provider; reimbursement for records produced

A. As used in this Section, the following terms shall have the respective meanings ascribed thereto:

(1) Patient "records" shall not be deemed to include x-rays, electrocardiograms, and like graphic matter unless specifically referred to in the subpoena, summons, or court order.

(2) "Health care provider" shall mean a person, partnership, corporation, facility, or institution defined in R.S. 40:1299.41(A)(1).

B. The exclusive method by which medical, hospital, or other records relating to a person's medical treatment, history, or condition may be obtained or disclosed by a health care provider, shall be pursuant to and in accordance with the provisions of R.S. 40:1299.96 or Code of Evidence Article 510, or a lawful subpoena or court order obtained in the following manner:

(1) A health care provider shall disclose records of a patient who is a party to litigation pursuant to a subpoena issued in that litigation, whether for purposes of deposition or for trial and whether issued in a civil, criminal, workers' compensation, or other proceeding, but only if: the health care provider has received an affidavit of the party or the party's attorney at whose request the subpoena has been issued that attests to the fact that such subpoena is for the records of a party to the litigation and that notice of the subpoena has been mailed by registered or certified mail to the patient whose records are sought, or, if represented, to his counsel of record, at least seven days prior to the issuance of the subpoena; and the subpoena is served on the health care provider at least seven days prior to the date on which the records are to be disclosed, and the health care provider has not received a copy of a petition or motion indicating that the patient has taken legal action to restrain the release of the records. If the requesting party is the patient or, if represented, the attorney for the patient, the affidavit shall state that the patient authorizes the release of the records pursuant to the subpoena. No such subpoena shall be issued by any clerk unless the required affidavit is included with the request.

(2) Any attorney requesting medical records of a patient, who is not a party to the litigation in which the records are being sought may obtain the records by written authorization of the

patient whose records are being sought or if no such authorization is given, by court order, as provided in Paragraph (5) hereof.

(3) Any attorney requesting medical records of a patient who is deceased may obtain the records by subpoena, as provided in Paragraph (1) hereof, by written authorization of the person authorized under Louisiana Civil Code Article 2315.1 or the executor or administrator of the deceased's estate, or by court order, as provided in Paragraph (5) hereof.

(4) Any subpoena for medical records issued by the office of workers' compensation administration in the Department of Labor, or by a hearing officer or agent employed by such office, shall for all purposes be considered a subpoena within the meaning of this Section.

(5) A court shall issue an order for the production and disclosure of a patient's records, regardless of whether the patient is a party to the litigation, only: after a contradictory hearing with the patient, or, if represented, with his counsel of record, or, if deceased, with those persons identified in Paragraph (3) hereof, and after a finding by the court that the release of the requested information is proper; or with consent of the patient.

(6) Records of the identity, diagnosis, prognosis, or treatment of any patient which are maintained in connection with the performance of any program or activity relating to substance or alcohol abuse, education, training, treatment, rehabilitation, or research, which is conducted, regulated, or directly or indirectly assisted by any department or agency of the United States shall be confidential and disclosed only for the purposes and under the circumstances expressly authorized in 42 CFR Part 2. Under this Section, said programs shall include but not be limited to any alcohol or substance abuse clinic or facility operated by the Department of Health and Hospitals. No subpoena or court order shall compel disclosure of any record or patient-identifying information of an individual who has applied for or been given diagnosis or treatment for alcohol or drug abuse in a federally assisted program, unless said court order or subpoena meets the criteria set forth in 42 CFR 2.61, 2.64, or 2.65. No health care provider, employee, or agent thereof shall be held civilly or criminally liable for refusing to disclose protected alcohol and substance abuse records or patient-identifying information unless first presented with a valid consent signed by the individual, which complies with 42 CFR 2.31 or a court order and subpoena which complies with 42 CFR Part 2.

C. No health care provider, employee, or agent thereof shall be held civilly or criminally liable for disclosure of the records of a patient pursuant to the procedure set forth in this Section, R.S. 40:1299.96, or Code of Evidence Article 510, provided that the health care provider has not received a copy of the petition or motion indicating that legal action has been taken to restrain the release of the records.

D. Unless the subpoena or court order otherwise specifies, it shall be sufficient compliance therewith if the health care provider delivers by registered or certified mail, at least forty-eight hours prior to the date upon which production is due, or delivers by hand on the date upon which production is due a true and correct copy of all records described in such subpoena. However, no subpoena or court order shall require the production of original, nonreproducible materials and records unless accompanied by a court order or stipulation of the parties and the health care provider which specifies the person who will be responsible for the care of the items to be produced, the date and manner of the return to the provider of the items to be produced, and that the items to be produced are not to be destroyed or subject to destructive testing. Any subpoena duces tecum not timely served shall be quashed by the trial court without the necessity of an appearance by the hospital, health care facility, or medical physician.

E. The records shall be accompanied by the certificate of the health care provider or other qualified witness, stating in substance each of the following:

(1) That the copy is a true copy of all records described in the subpoena.

(2) That the records were prepared by the health care provider in the ordinary course of the business of the health care provider at or near the time of the act, condition, or event.

F. If the health care provider has none of the records described, or only part thereof, the health

care provider shall so state in the certificate, and deliver the certificate and such records as are available.

G. The health care provider shall be reimbursed by the person causing the issuance of the subpoena, summons, or court order in accordance with the provisions of R.S. 40:1299.96.

H. Notwithstanding any other provision of law to the contrary, no health care provider, as defined in R.S. 40:1299.96, shall be required to grant access to or copying of photographs, or both, of any minor or part of a minor's body who is alleged to be the victim of child sexual abuse unless a court of competent jurisdiction, after a contradictory hearing at which the health care provider may but need not be present, orders the health care provider to grant access to or copying of said photographs to the moving party's counsel of record or experts qualified in the medical diagnosis of child sexual abuse, or to both. The court's order granting the access to or copying of said photographs shall be limited to the movant's counsel of record or the experts qualified in the medical diagnosis of child sexual abuse, or both; shall be limited solely to use of said photographs for the purposes of trial preparation; shall prohibit further copying, reproduction, or dissemination of said photographs; and shall prohibit counsel of record or the experts qualified in the medical diagnosis of child sexual abuse from allowing any other person access to said photographs without court order and for good cause shown.

I. A coroner, deputy coroner, or other assistant, while acting in his official capacity relating to a physical or mental investigation and examination or an investigation into the cause and manner of a death, is exempt from complying with the provisions of this Section.

J. The Louisiana State Board of Medical Examiners, Louisiana State Board of Dentistry, Louisiana State Board of Psychologists, Louisiana State Board of Nursing, Louisiana Board of Pharmacy, Louisiana State Board of Social Work Examiners, Louisiana State Board of Physical Therapy Examiners, and the Louisiana State Board of Chiropractic Examiners, while acting in an official capacity relating to an investigation of an individual over whom such board has regulatory authority shall be exempt from complying with the notice provisions of this Section when the subpoena clearly states that no notice or affidavit is required. Notwithstanding any privilege of confidentiality recognized by law, no health care provider or health care institution with which such health care provider is affiliated shall, acting under any such privilege, fail or refuse to respond to a lawfully issued subpoena of such board for any medical information, testimony, records, data, reports or other documents, tangible items, or information relative to any patient treated by such individual under investigation; however, the identity of any patient identified in or by such records or information shall be maintained in confidence by such board and shall be deemed a privilege of confidentiality existing in favor of any such patient. For the purpose of maintaining such confidentiality of patient identity, such board shall cause any such medical records or the transcript of any such testimony to be altered so as to prevent the disclosure of the identity of the patient to whom such records or testimony relates.

K. Any attorney who causes the issuance of a subpoena or court order for medical, hospital, or other records relating to a person's medical treatment, history, or condition and who intentionally fails to provide notice to the patient or to the patient's counsel of record in accordance with the requirements of this Section shall be subject to sanction by the court.

L. No provision of this Section shall preclude a patient from personally receiving a copy or synopsis of his medical records as provided by law.

SCHOOL PSYCHOLOGISTS CERTIFIED BY THE BOARD OF ELEMENTARY AND SECONDARY EDUCATION (R.S.17:7.1)

§7.1. Certification of teachers; certification of principals and superintendents; certification of school psychologists

A. In carrying out its responsibility to prescribe the qualifications and provide for the

certification of teachers under authority of R.S. 17:7(6), the qualifications and requirements established by the State Board of Elementary and Secondary Education for certification of any applicant for certification who completes an approved teacher education program in Louisiana shall include but not be limited to the following:

(1) Repealed by Acts 1985, No. 399, §1, eff. July 10, 1985.

(2) That the applicant shall have attained a 2.20 average on a 4.00 scale as a condition for entrance into a teacher education program.

(3) That the applicant shall have achieved a 2.50 average on a 4.00 scale at graduation from an approved program.

(4) (a) For applicants who have participated in any undergraduate teacher education program, that the applicant shall complete the prescribed number of semester hours in the teaching of reading as established in policy by the State Board of Elementary and Secondary Education in accordance with the level of certification to be awarded, such requirement to be in addition to requirements for English courses, and such courses in the teaching of reading shall emphasize techniques of teaching reading and the recognition and correction of reading problems of the student. For certification at the secondary level, not more than three semester hours in the teaching of reading shall be considered for purposes of meeting certification requirements.

(b) For applicants who have participated in any alternate teacher education program as provided pursuant to rules and regulations adopted by the State Board of Elementary and Secondary Education, that the applicant shall be given the option of either completing the same amount of semester hours as required for the teaching of reading for undergraduate program applicants pursuant to this Paragraph or, in lieu of such semester hour requirements, shall possess the reading and literacy competencies identified in scientifically based reading research at the national level and approved by the State Board of Elementary and Secondary Education for the teaching of reading.

(5) That the applicant shall have spent a minimum of 270 clock hours in student teaching with at least 180 of such hours spent in actual teaching.

(6) That the applicant shall have completed a substantial portion of his 180 hours of actual student teaching on an all-day basis.

NOTE: PARAGRAPH (7) AS PER ACTS 1984, NO. 836, §1, EFF. JULY 13, 1984.

(7) That, beginning with the fall semester of 1985, each applicant, prior to entry into a teacher education program in an institution of higher education, shall take a standardized teaching aptitude test which has predictive value for passage of the examination required for teacher certification by R.S. 17:7(6)(b). The dean of each college of education of an institution which offers a teacher education program shall oversee the administration of the examination and shall see that each student shall be informed of the results of the test and shall be counselled with regard to the significance of the results. The deans of the colleges of education of the institutions which offer a teacher education program shall meet and collectively choose the entrance examination and shall determine the level at which the examination indicates probable success. They shall submit their recommendations to the Board of Regents for approval no later than December 31, 1984. Such examination shall not be required or administered until approved by the Board of Regents. Nothing herein shall be construed as preempting or diminishing the teacher education program admission standards previously adopted by the Board of Regents.

NOTE: PARAGRAPH (7) AS PER ACTS 1984, NO. 318, §1, EFF. JULY 2, 1984. (7) That, beginning with the fall semester of 1985, each applicant, prior to entry into a teacher education program in an institution of higher education, shall have satisfactorily passed a standardized teaching aptitude test which has predictive value for passage of the examination required for teacher certification by R.S. 17:7(6)(b). The dean of each college of education of an institution which offers a teacher education program shall oversee the administration of the examination and may at his discretion, make exceptions for students in certain cases. The deans of the colleges of education of each institution which offers a teacher education program shall meet and collectively

choose the entrance examination and shall determine the level at which the examination is satisfactorily completed. They shall submit their recommendations to the Board of Regents for approval no later than December 31, 1984. Such examination shall not be required or administered until approved by the Board of Regents.

B. (1) After August 15, 1986, except as otherwise provided in Paragraph (2) of this Subsection, any persons applying for initial certification as a principal or vice, assistant, or deputy principal, hereafter referred to as a principal, in addition to any other requirements of the State Board of Elementary and Secondary Education, shall have passed the administrative portion of the National Teachers Examination produced by the Educational Testing Service at a level determined by the State Board of Elementary and Secondary Education not later than August 1, 1986, which determination shall be based on a validation study to be completed by the board no later than July 31, 1986. The validation study shall be submitted to the Joint Committee on Education for its review prior to adoption of a passage score.

(2) Beginning August 15, 2003, and thereafter, any person applying for initital certification as a principal or superintendent, in addition to any other requirements of the State Board of Elementary and Secondary Education, shall have satisfactorily passed the appropriate assessment instrument selected by the board at a level determined by the board.

(3) Any principal who holds valid out-of-state certification as a principal, has at least four years of successful experience as a principal in another state as determined by the board, and has completed one year of successful employment as a principal in a Louisiana public school system shall not be required to take the examination administered in accordance with the provisions of this Subsection or to submit any examination scores from any examination previously taken in another state as a prerequisite to the granting of certification in Louisiana provided that all of the following conditions are met:

(a) The principal meets all other requirements for a Louisiana certificate as may be required by law or board policy.

(b) The local superintendent or his designee of the public school system employing the principal has recommended the principal for employment for the following school year subject to the receipt of a valid Louisiana certificate as a principal.

(c) The local superintendent or his designee has requested, on behalf of the principal, that the principal be granted a valid Louisiana certificate as a principal.

(4) A principal who holds valid out-of-state certification as a principal, and who applies to the State Board of Elementary and Secondary Education for certification as a principal, shall be granted a three-year nonrenewable provisional certificate to be used while such principal completes the requirements set forth in this Subsection.

C. The State Board of Elementary and Secondary Education may adopt such rules as are necessary for the orderly implementation of this Section and may make further provisions with regard to qualifications and requirements not inconsistent with this Section.

D. The State Board of Elementary and Secondary Education shall, by regulation, prescribe the qualifications, provide for the certification, and provide for the supervision of school psychologists in the employ of any public agency regulated by the board, notwithstanding the provisions of R.S. 37:2363 or any other provisions of law to the contrary. The certification requirements shall not be less than those requirements established by the National Association of School Psychology. Nothing herein shall be construed as permitting a person certified under the provisions of this Subsection to offer to render, or to render his services as a psychologist in any setting other than his institutional employment unless he has been licensed under the provisions of R.S. 37:2356.

E. Notwithstanding any provision of law to the contrary, any person certified as a Level A school psychologist prior to September 1, 1986 shall be allowed to continue in the employment in which he was engaged and which was not specifically prohibited at the time of receiving such certificate and may use the title "certified school psychologist" in the context of that employment.

F. In carrying out its responsibility to prescribe the qualifications and provide for the certification of teachers under authority of R.S. 17:7(6), if the State Board of Elementary and Secondary Education enters into any agreement for the certification to teach in Louisiana of teachers certified to teach in another state, such agreement shall:

(1) Be reciprocal, making applicable to any other state which is a party to such agreement and teachers certified to teach in such other state who seek certification in Louisiana equivalent to requirements as determined by the Louisiana state Department of Education to those the agreement places on Louisiana and teachers certified to teach in Louisiana who apply for certification in another state.

(2) Provide for the certification in Louisiana of a teacher certified to teach in another state only if such teacher has been employed in a professional educational capacity requiring certification as a teacher for the three years immediately preceding application for Louisiana teacher certification unless the teacher completes such additional educational requirements as shall be approved by the State Board of Elementary and Secondary Education. The provisions of this Paragraph shall not apply to a teacher who has been certified to teach in another state for less than three years and has been employed in a professional educational capacity requiring certification as a teacher for the entire period of certification.

TESTIMONIAL PRIVILEGES (LA CODE OF EVIDENCE ARTICLES 501-503, 510, 1101)

Art. 501. Scope of privileges

Privileges as recognized in this Chapter are evidentiary in nature, do not of themselves create causes of action or other substantive rights, and are applicable to proceedings enumerated in Article 1101. Nothing in this Chapter is intended to regulate the content or waiver of constitutional rights, nor inferences to be drawn from their invocation.

Art. 502. Waiver of privilege

A. Waiver. A person upon whom the law confers a privilege against disclosure waives the privilege if he or his predecessor while holder of the privilege voluntarily discloses or consents to disclosure of any significant part of the privileged matter. This rule does not apply if the disclosure itself is privileged.

B. Disclosure under compulsion or without opportunity to claim. A claim of privilege is not defeated by a disclosure which was compelled or made without opportunity to claim the privilege.

C. Joint holders. Where two or more persons are joint holders of a privilege, a waiver of the right of one joint holder to claim the privilege does not affect the right of another joint holder to claim the privilege.

Art. 503. Comment on or inference from claim of privilege; instructions; exception

A. Comment, inference, and instructions.

(1) The claim of privilege, whether in the present proceeding or upon a prior occasion, is not a proper subject of comment by judge or counsel. No inferences may be drawn therefrom.

(2) In jury cases, proceedings shall be conducted, to the extent practicable, so as to facilitate the making of claims of privilege without the knowledge of the jury.

(3) Upon request, any party against whom the jury might draw an adverse inference from a claim of privilege is entitled to an instruction that no inference may be drawn therefrom.

B. Exception in non-criminal proceedings. In non-criminal proceedings, under exceptional circumstances in the interest of justice, if a claim of privilege is sustained counsel may comment thereon, and, upon request, the court shall instruct the trier of fact that it may draw all reasonable inferences therefrom.

Art. 510. Health care provider-patient privilege

A. Definitions. As used in this Article:

(1) "Patient" is a person who consults or is examined or interviewed by another for the purpose of receiving advice, diagnosis, or treatment in regard to that person's health.

(2) "Health care provider" is a person or entity defined as such in R.S. 13:3734(A)(1), and includes a physician and psychotherapist as defined below, and also includes a person who is engaged in any office, center, or institution referred to as a rape crisis center, who has undergone at least forty hours of sexual assault training and who is engaged in rendering advice, counseling, or assistance to victims of sexual assault.

(3) "Physician" is a person licensed to practice medicine in any state or nation.

(4) "Psychotherapist" is:

(a) A physician engaged in the diagnosis or treatment of a mental or emotional condition, including a condition induced by alcohol, drugs, or other substance.

(b) A person licensed or certified as a psychologist under the laws of any state or nation.

(c) A person licensed as a licensed professional counselor or social worker under the laws of any state or nation.

(5) "Representative of a patient" is any person who makes or receives a confidential communication for the purpose of effectuating diagnosis or treatment of a patient.

(6) "Representative" of a physician, psychotherapist, or other health care provider is:

(a) A person acting under the supervision, direction, control, or request of a physician, psychotherapist, or health care provider engaged in the diagnosis or treatment of the patient.

(b) Personnel of a "hospital", as defined in R.S. 13:3734(A)(3), whose duties relate to the health care of patients or to maintenance of patient records.

(7) The definitions of health care provider, physician, psychotherapist, and their representatives include persons reasonably believed to be such by the patient or his representative.

(8) (a) "Confidential communication" is the transmittal or acquisition of information not intended to be disclosed to persons other than:

(i) A health care provider and a representative of a health care provider.

(ii) Those reasonably necessary for the transmission of the communication.

(iii) Persons who are participating in the diagnosis and treatment under the direction of the physician or psychotherapist.

(iv) A patient's health care insurer, including any entity that provides indemnification to a patient.

(v) When special circumstances warrant, those who are present at the behest of the patient, physician, or psychotherapist and are reasonably necessary to facilitate the communication.

(b) "Confidential communication" includes any information, substance, or tangible object, obtained incidental to the communication process and any opinion formed as a result of the consultation, examination, or interview and also includes medical and hospital records made by health care providers and their representatives.

(9) "Health condition" is a physical, mental, or emotional condition, including a condition induced by alcohol, drugs, or other substance.

B. (1) General rule of privilege in civil proceedings. In a non-criminal proceeding, a patient has a privilege to refuse to disclose and to prevent another person from disclosing a confidential communication made for the purpose of advice, diagnosis or treatment of his health condition between or among himself or his representative, his health care provider, or their representatives.

(2) Exceptions. There is no privilege under this Article in a noncriminal proceeding as to a

communication:

(a) When the communication relates to the health condition of a patient who brings or asserts a personal injury claim in a judicial or worker's compensation proceeding.

(b) When the communication relates to the health condition of a deceased patient in a wrongful death, survivorship, or worker's compensation proceeding brought or asserted as a consequence of the death or injury of the deceased patient.

(c) When the communication is relevant to an issue of the health condition of the patient in any proceeding in which the patient is a party and relies upon the condition as an element of his claim or defense or, after the patient's death, in any proceeding in which a party deriving his right from the patient relies on the patient's health condition as an element of his claim or defense.

(d) When the communication relates to the health condition of a patient when the patient is a party to a proceeding for custody or visitation of a child and the condition has a substantial bearing on the fitness of the person claiming custody or visitation, or when the patient is a child who is the subject of a custody or visitation proceeding.

(e) When the communication made to the health care provider was intended to assist the patient or another person to commit or plan to commit what the patient knew or reasonably should have known to be a crime or fraud.

(f) When the communication is made in the course of an examination ordered by the court with respect to the health condition of a patient, the fact that the examination was so ordered was made known to the patient prior to the communication, and the communication concerns the particular purpose for which the examination was made, unless the court in its order directing the examination has stated otherwise.

(g) (i) When the communication is made by a patient who is the subject of an interdiction or commitment proceeding to his current health care provider when such patient has failed or refused to submit to an examination by a health care provider appointed by the court regarding issues relating to the interdiction or commitment proceeding, provided that the patient has been advised of such appointment and the consequences of not submitting to the examination.

(ii) Notwithstanding the provisions of Subitem (i) of this Item, in any commitment proceeding, the court-appointed physician may review the medical records of the patient or respondent and testify as to communications therein, but only those which are essential to determine whether the patient is dangerous to himself, dangerous to others, or unable to survive safely in freedom or protect himself from serious harm. However, such communications shall not be disclosed unless the patient was informed prior to the communication that such communications are not privileged in any subsequent commitment proceedings. The court-appointed examination shall be governed by Item B(2)(f).

(h) When the communication is relevant in proceedings held by peer review committees and other disciplinary bodies to determine whether a particular health care provider has deviated from applicable professional standards.

(i) When the communication is one regarding the blood alcohol level or other test for the presence of drugs of a patient and an action for damages for injury, death, or loss has been brought against the patient.

(j) When disclosure of the communication is necessary for the defense of the health care provider in a malpractice action brought by the patient.

(k) When the communication is relevant to proceedings concerning issues of child abuse, elder abuse, or the abuse of disabled or incompetent persons.

(l) When the communication is relevant after the death of a patient, concerning the capacity of the patient to enter into the contract which is the subject matter of the litigation.

(m) When the communication is relevant in an action contesting any testament executed or claimed to have been executed by the patient now deceased.

C. (1) General rule of privilege in criminal proceedings. In a criminal proceeding, a patient

has a privilege to refuse to disclose and to prevent another person from disclosing a confidential communication made for the purpose of advice, diagnosis or treatment of his health condition between or among himself, his representative, and his physician or psychotherapist, and their representatives.

(2) Exceptions. There is no privilege under this Article in a criminal case as to a communication:

(a) When the communication is relevant to an issue of the health condition of the accused in any proceeding in which the accused relies upon the condition as an element of his defense.

(b) When the communication was intended to assist the patient or another person to commit or plan to commit what the patient knew or reasonably should have known to be a crime or fraud.

(c) When the communication was made in the course of an examination ordered by the court in a criminal case to determine the health condition of a patient, provided that a copy of the order was served on the patient prior to the communication.

(d) When the communication is a record of the results of a test for blood alcohol level or drugs taken from a patient who is under arrest, or who was subsequently arrested for an offense related to the test.

(e) When the communication is in the form of a tangible object, including a bullet, that is removed from the body of a patient and which was in the body as a result of the crime charged.

(f) When the communication is relevant to an investigation of or prosecution for child abuse, elder abuse, or the abuse of disabled or incompetent persons.

D. Who may claim the privilege. In both civil and criminal proceedings, the privilege may be claimed by the patient or by his legal representative. The person who was the physician, psychotherapist, or health care provider or their representatives, at the time of the communication is presumed to have authority to claim the privilege on behalf of the patient or deceased patient.

E. Waiver. The exceptions to the privilege set forth in Paragraph B(2) shall constitute a waiver of the privilege only as to testimony at trial or to discovery of the privileged communication by one of the discovery methods authorized by Code of Civil Procedure Article 1421 et seq., or pursuant to R.S. 40:1299.96 or R.S. 13:3715.1.

F. Medical malpractice. (1) There shall be no health care provider-patient privilege in medical malpractice claims as defined in R.S. 40:1299.41 et seq. as to information directly and specifically related to the factual issues pertaining to the liability of a health care provider who is a named party in a pending lawsuit or medical review panel proceeding.

(2) In medical malpractice claims information about a patient's current treatment or physical condition may only be disclosed pursuant to testimony at trial, pursuant to one of the discovery methods authorized by Code of Civil Procedure Article 1421 et seq., pursuant to R.S. 40:1299.96 or R.S. 13:3715.1.

G. Sanctions. Any attorney who violates a provision of this Article shall be subject to sanctions by the court.

Art. 1101. Applicability

A. Proceedings generally; rule of privilege.

(1) Except as otherwise provided by legislation, the provisions of this Code shall be applicable to the determination of questions of fact in all contradictory judicial proceedings and in proceedings to confirm a default judgment. Juvenile adjudication hearings in delinquency proceedings shall be governed by the provisions of this Code applicable to civil cases. Juvenile adjudication hearings in delinquency proceedings shall be governed by the provisions of this Code applicable to criminal cases.

(2) Furthermore, except as otherwise provided by legislation, Chapter 5 of this Code with

respect to testimonial privileges applies to all stages of all actions, cases, and proceedings where there is power to subpoena witnesses, including administrative, juvenile, legislative, military courts-martial, grand jury, arbitration, medical review panel, and judicial proceedings, and the proceedings enumerated in Paragraphs B and C of this Article.

B. Limited applicability. Except as otherwise provided by Article 1101(A)(2) and other legislation, in the following proceedings, the principles underlying this Code shall serve as guides to the admissibility of evidence. The specific exclusionary rules and other provisions, however, shall be applied only to the extent that they tend to promote the purposes of the proceeding.

(1) Worker's compensation cases.

(2) Child custody cases.

(3) Revocation of probation hearings.

(4) Preliminary examinations in criminal cases, and the court may consider evidence that would otherwise be barred by the hearsay rule.

(5) All proceedings before mayors' courts and justice of the peace courts.

(6) Peace bond hearings.

(7) Extradition hearings.

(8) Hearings on motions and other summary proceedings involving questions of fact not dispositive of or central to the disposition of the case on the merits, or to the dismissal of the case, excluding in criminal cases hearings on motions to suppress evidence and hearings to determine mental capacity to proceed.

C. Rules inapplicable. Except as otherwise provided by Article 1101(A)(2) and other legislation, the provisions of this Code shall not apply to the following:

(1) The determination of questions of fact preliminary to admissibility of evidence when the issue is to be determined by the court under Article 104.

(2) Proceedings with respect to release on bail.

(3) Disposition hearings in juvenile cases.

(4) Sentencing hearings except as provided in Code of Criminal Procedure Article 905.2 in capital cases.

(5) Small claims court proceedings except as provided in R.S. 13:5203 and 13:5207.

(6) Proceedings before grand juries except as provided by Code of Criminal Procedure Article 442.

D. Discretionary applicability. Notwithstanding the limitations on the applicability of this Code stated in Paragraphs A, B, and C of this Article, in all judicial proceedings a court may rely upon the provisions of this Code with respect to judicial notice, authentication and identification, and proof of contents of writings, recordings, and photographs as a basis for admitting evidence or making a finding of fact.

{{NOTE: SECTION 12 OF ACTS 1988, NO. 515, PROVIDES AS FOLLOWS:Section 12.(1) The provisions of this Act shall govern and regulate all civil proceedings commenced and criminal prosecutions instituted on or after the effective date of this Act. (2) Furthermore, it shall govern and regulate all hearings, trials or retrials, and other proceedings to which it is applicable which are commenced on or after the effective date of this Act, except to the extent that its application in a particular action pending when the Act takes effect would not be feasible or would work injustice, in which event former evidentiary rules apply. (3) All of the provisions of this Act shall become effective on January 1, 1989.}}.