



**Presentation by Mona Icamina, LFT Field Representative
Livingston Parish School Board
September 1, 2011**

I am here on behalf of the Louisiana Federation of Teachers to urge this board to reconsider a policy requiring all employees to complete a medical history form which is to be given to the employee's immediate supervisor.

It is our understanding that the board is requesting the form under the authority of a Louisiana law passed in 1990 which allows - but does not require - an employer to ask questions about previous injuries, disabilities or other medical conditions.

We know that this board values good relations with its employees, and we don't believe that you intended to offend. But the questionnaire that was sent to employees inquires about highly sensitive and confidential matters. As it stands right now, it is highly offensive.

Let me ask how any of you would feel if you were asked:

- Complete an extensive check list of any disease, surgical treatment or other medical conditions you have ever experienced. List any treatments you have ever received, and list any drugs you have ever been prescribed.
- Has any physician ever restricted your physical activities? List the restrictions.
- Are you presently being treated by a physician, chiropractor, psychiatrist or any other health care provider? List the medical condition being treated.

It would be one thing if your personal physician were asking those questions. It is quite another if it is your immediate supervisor.

A physician is bound by the Hippocratic oath, which prohibits doctors from disclosing confidential medical information and which imposes severe penalties to doctors who violate it. School principals and supervisors are not bound by any similar oath, and therefore they should not have access to this kind of confidential information. Honestly, they should not even want to be privy to that type of information.

Beyond the propriety of asking these questions, we believe this form is in conflict with the Americans With Disabilities Act of 1992. There is a legal precedent, *Williams vs. Holly Hills Nursing Home*, in which the Louisiana Third Circuit Court of Appeal ruled that the ADA "would appear to preempt LSA-R.S. 23:1208.1 (the Louisiana law) as it would seem to prohibit inquiries as to an employee's or job applicant's disabilities."

We also believe that the law could violate state privacy laws and provisions in the state constitution.

The school board has legal exposure – meaning a potential claim for money damages – if it violates the Americans with Disabilities Act. The school board also has legal exposure if it violates privacy laws and constitutional provisions regarding privacy.

I want to emphasize that the state law governing the questionnaire does not require the employer to ask these questions; it only allows it. You do not have to make this unreasonable and offensive demand of your employees.

We understand that you are asking for this form for the benefit of the state second injury fund board. Surely there are ways to satisfy the second injury fund board's needs without violating the privacy of your employees and stirring up this controversy.

A simple step that the board could have taken to avert this whole problem would have been to consult with employees and their organizations.

It is our understanding that some employees have refused to complete the questionnaire. We urge the board to respect their feelings, and not take any disciplinary action against those who strongly believe that this questionnaire violates their rights.

Finally, you can end this controversy tonight by suspending and ultimately rescinding this requirement. That is the course of action that the Louisiana Federation of Teachers strongly recommends that you take.