



LIZ MURRILL
ATTORNEY GENERAL

STATE OF LOUISIANA
DEPARTMENT OF JUSTICE
OFFICE OF THE ATTORNEY GENERAL
P.O. BOX 94005
BATON ROUGE, LA
70804-9005

To: Mr. M. Joseph Fontenot, Jr.
Executive Director
Louisiana State Board of Pharmacy

From: Farra Mughal
Louisiana Department of Justice
Occupational Licensing Review Program

Date: September 15, 2025

Subject: Louisiana State Board of Pharmacy
Proposed Amendment to LAC 46:LIII.2301 and 2307
Regulatory Project 2025-05 ~ Nonresident Pharmacy

I. SUMMARY

The Louisiana State Board of Pharmacy (the “**Board**”) proposes amending LAC 46:LIII.2301 and 2307 (the “**Proposed Amendments**”), relative to nonresident pharmacies. The Proposed Amendments seek to remove §2301(A) because the language may be confusing and unnecessary when compared to the current language in section §2309 and reduce the minimum experience requirement for a nonresident pharmacist to qualify as a Pharmacist-in-Charge (“**PIC**”) from two years of active practice to one year of active practice.

The Board published a Notice of Intent to promulgate the Proposed Amendments on April 20, 2025.¹ The Notice invited public comments and testimony on the Proposed Amendments on May 27, 2025 and received no written or oral public comments.²

The OLRP reviews proposed occupational regulations of participating state occupational licensing boards.³ An Occupational Regulation is a “rule defined in the Administrative Procedure Act that has reasonably foreseeable anti-competitive effects. Any license, permit, or regulation established by a ... board not composed of a controlling number of active market participants is excluded.”⁴ The Louisiana Administrative Procedure Act (“APA”) defines a rule as an agency (Board) requirement for conduct or action prescribing the procedure or practice requirements of the agency (Board).⁵ Anti-Competitive behavior is an act, or series of acts, that have the effect of harming the

¹ Louisiana Register, Vol. 51, No. 4 April 2025 at pgs. 594-595

² Id. at 595

³ LA RS 49:260 (B)

⁴ LA R.S. 49:260 (G) (4)

⁵ LA R.S. 49:951 (8)

market or the process of competition among businesses, or a tendency to reduce or eliminate competition, with no legitimate business purpose.⁶

The Proposed Amendment to §2301(A) severs duplicative language that can be found in Chapter 11 and does not have any reasonably foreseeable anti-competitive effects on the pharmaceutical practice, as it merely seeks to make clarifying edits.

However, the Proposed Amendment to §2307 is properly considered an occupational regulation with reasonably foreseeable anti-competitive effects,⁷ as qualifying experience requirements are barriers to market competition.

Pursuant to La. R.S. 49:260, the Board submitted the Proposed Amendments to the Louisiana Department of Justice's Occupational Licensing Review Program ("**OLRP**") on July 17, 2025. The OLRP invited public comments on the Proposed Amendments from July 18, 2025 through August 1, 2025 and received no comments. As set forth below, the OLRP has determined the Board's Proposed Amendments to LAC 46: LIII §2301(A) and 2307 adhere to clearly articulated state policy and therefore approves the Amendments for adoption as drafted.

II. ANALYSIS

The Louisiana Pharmacy Practice Act ("**LPPA**"), La. R.S. 37:1161 *et seq.*, subjects the practice of pharmacy in the State of Louisiana to the regulation of the Board to promote, preserve, and protect the public health, safety, and welfare through the effective control of the regulation of the pharmaceutical practice and the licensure, permitting, certification, registration, control, and regulation of all persons or sites in or out of this state that sell drugs or devices within this state.⁸ Specifically, the Board is responsible for issuing and renewing permits deemed necessary to engage in the practice of pharmacy.⁹ It shall adopt the necessary rules and regulations to fulfill the purposes of the LPPA and enforce its provisions,¹⁰ and establish and enforce compliance with the professional standards and rules of conduct applicable to pharmacists engaged in the practice of pharmacy.¹¹

A. Proposed LAC 46:LIII. 2301 (A)

The Board proposes the elimination of §2301(A) because the language may be confusing and unnecessary when compared to the current language in section §2309. Currently, LAC 46:LIII.2301(A) provides that "nonresident pharmacies shall comply with the provisions of this Chapter in order to be and remain permitted to operate in Louisiana as a nonresident pharmacy." Whereas, LAC 46:LIII.2309 states "Louisiana pharmacy laws and regulations shall be applicable to regulate the practice of pharmacy for that portion of the nonresident pharmacy's Louisiana pharmacy practice or operation." The language in §2301(A) is nearly identical in meaning to that

⁶ Black's Law Dictionary, 12th Edition p. 116

⁷ La. R.S. 49:260 G(4)

⁸ LA R.S. 37:1163

⁹ LA R.S. 37:1182 (A)(8)

¹⁰ LA R.S. 37:1182(A)(1)

¹¹ LA R.S. 37:1182(A)(9)

of §2309 and its elimination does not present any foreseeable anticompetitive effects. Therefore, the Board may proceed with the Proposed Amendment without any further input from the OLRP.

B. Proposed Amendment LAC 46:LIII.2307

The Board proposes amending §2307 to reduce the minimum experience required for a nonresident pharmacist to qualify as a Pharmacist-in-Charge (PIC) from two years of active practice to one year of active practice. The Board asserts this reduction in the active practice requirement is necessary to align with the recent change made to LAC 46:LIII.1105 (A)(1)(b) which reduced the minimum active practice requirement to obtain PIC privileges from two years to one year.

The Board has the statutory authority to control and regulate the practice of pharmacy within the state.¹² Thus, it is within the Board's authority to establish the minimum practice requirements for a nonresident pharmacist to obtain PIC privileges within the state.

The Proposed Amendment to reduce the minimum active practice requirement for a nonresident pharmacist to qualify as a Pharmacist-in-Charge (PIC) from two years to one year does not present any foreseeable anticompetitive effects. However, qualifying requirements act as barriers to market competition and this reduction is likely to have a pro-competitive impact by expanding the pool of eligible pharmacists and increasing labor mobility. Therefore, by lowering the threshold for nonresident pharmacist to obtain PIC eligibility, the amendment reduces a barrier to market entry for nonresident pharmacists and is properly consider an occupational regulation.

Furthermore, it is the policy of the state to promote, preserve, and protect public health, safety, and welfare by regulating all persons or sites that sell drugs or devices to consumers and/or patients within the state.¹³ While the Proposed Amendment seeks to reduce the required experience for a nonresident pharmacist to qualify as a PIC, it does not reduce the Board's regulatory oversight. Additionally, the Proposed Amendment is likely to increase the number of pharmacists who are eligible to serve as PICs within the state and may support the opening or continued operation of pharmacies that might otherwise face administrative obstacles due to staffing limitations. As such, the Proposed Amendment adheres to public policy by increasing the pool of pharmacists that may serve as PICs.

Because the Proposed Amendment is within the Board's statutory authority and adheres to public policy, the Board may proceed with promulgation as drafted.

III. DETERMINATION

The Board is a state regulatory body created by the LPPA to "promote, preserve, and protect the public health, safety, and welfare by and through the effective control and regulation of the practice of pharmacy; the licensure of pharmacists; and the licensure, permitting, certification, registration, control, and regulation of all persons or sites in or out of this state that sell drugs or devices to consumers and/or patients or assist in the practice of pharmacy within the state."¹⁴ The Board is

¹² LA R.S. 37:1182(A)

¹³ LA R.S. 37:1163

¹⁴ LA R.S. 37:1163, LA R.S. 37:1171

responsible for the control and regulation of the practice of pharmacy¹⁵ and holds the statutory authority to issue and renew licenses, permits, certifications and any other designations necessary.¹⁶ Because the Proposed Amendments to LAC 46:LIII.2301(A) and 2307 are within the Board's statutory authority and adhere to clearly articulated state policy, the amendments are approved as submitted to the Attorney General and may be adopted by the Board.

OFFICE OF THE ATTORNEY GENERAL
OCCUPATIONAL LICENSING REVIEW PROGRAM



Farra Mughal, OLRP
Public Protection Division
Louisiana Department of Justice
olrp@ag.louisiana.gov

¹⁵ LA R.S. 37:1182

¹⁶ LA R.S. 37:1182 (A)(8)