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## State of Louisiana

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To: M. Joseph Fontenot, Jr.  
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From: Terrence "Joe" Donahue, Jr.  
Louisiana Department of Justice, Civil Division  
Occupational Licensing Review Program

Date: November 3, 2022

Subject: OLRP File No. 22-09-OR-0005  
Proposed LAC 46:LIII.508 – Preferential Licensing Procedures for Dependents of Healthcare Professionals Relocating to Louisiana (Pharmacists); and  
Proposed LAC 46:LIII.906 – Preferential Licensing Procedures for Dependents of Healthcare Professionals Relocating to Louisiana (Pharmacy Technicians)

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### I. Summary

The Louisiana Board of Pharmacy (the "Board") proposes adopting LAC 46:LIII.508 and 906 to establish expedited procedures for licensing pharmacists and pharmacy technicians who are dependents of certain healthcare professionals who have relocated to Louisiana. The Board published a Notice of Intent to promulgate the proposed regulations on July 20, 2022 and conducted a public hearing on August 26, 2022, during which no comments or testimony were offered.

Although the proposed regulations are likely to have minimal, if any, effects on market competition, because credentialing and registration requirements create barriers to market entry for individuals desiring to engage in a profession or occupation, proposed §§ 508 and 906 are properly considered occupational regulations with reasonably foreseeable anti-competitive effects.<sup>1</sup> Pursuant to La. R.S. 49:260, the Board submitted proposed §§ 508 and 906 for review and the Louisiana Attorney General initiated a review of the proposed regulations on September 25, 2022. The submission was supplemented on October 6, 2022. The Attorney General invited public comment on the proposed regulations for a 30-day period ending on October 29, 2022 and received no comments. The Attorney General has determined that proposed §§ 508 and 906 adhere to clearly

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<sup>1</sup> La. R.S. 49:260(G)(4).

articulated state policy and therefore approves the regulations for adoption as drafted by the Board.

## II. Analysis

Act No. 279 of the 2021 Louisiana Legislative Regular Session, codified at La. R.S. 37:1751, identifies certain circumstances in which occupational licensing boards must issue a license, certification, registration, or permit pending issuance of a license to dependents of healthcare professionals who have relocated to Louisiana and are providing healthcare services within the state.<sup>2</sup> The criteria an occupational licensing board must use to evaluate applications submitted by eligible dependents are identified for three different scenarios:

- When the law provides for licensure by endorsement or reciprocity, the dependent shall apply under the existing provisions;
- Where the dependent holds an out-of-state license, but licensure by endorsement or reciprocity is not provided for in law, the dependent may submit information regarding their out-of-state license when applying for a Louisiana license; and
- Where the dependent worked in a state that does not use an occupational license or government certification to regulate an occupation, but Louisiana subjects occupations with a similar scope of practice to licensing or certification, the dependent may submit proof of their prior experience when applying for their Louisiana license.

An occupational licensing board may still require dependent applicants to pass a jurisprudential examination specific to relevant state laws prior to licensure, if required by statute or administrative rule.<sup>3</sup>

In furtherance of the statutory mandate, La. R.S. 37:1751(E) requires an occupational licensing board to provide the dependent applicant with a written decision regarding the licensing application within 30 days of receipt. The statute also directs occupational licensing boards to adopt rules to implement the provisions of La. R.S. 37:1751.<sup>4</sup> The Board is a "professional or occupational licensing board" as defined by La. R.S. 37:1751(A)(3).

The Louisiana Pharmacy Practice Act, La. R.S. 37:1161 *et seq.*, subjects the practice of pharmacy in the state of Louisiana to regulation by the Board for the purpose of promoting, preserving, and protecting the public health, safety and welfare.<sup>5</sup> In order to achieve this purpose, the legislature has declared it unlawful to engage or assist in the

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<sup>2</sup> La. R.S. 37:1751(B).

<sup>3</sup> La. R.S. 37:1751(D).

<sup>4</sup> La. R.S. 37:1751(I).

<sup>5</sup> La. R.S. 37:1163 and La. R.S. 37:1171.

practice of pharmacy without a current license, registration, or certification.<sup>6</sup> The Board is authorized to license individuals to engage in the practice of pharmacy on the basis of either examination or reciprocity, and may issue such additional permits, certifications, registrations, or other designations as it deems necessary.<sup>7</sup> The Board is similarly charged with regulating, licensing, and certifying pharmacy technicians, as well as registering the training, qualifications, and employment of individuals engaged in this occupation.<sup>8</sup> Both registered pharmacy technician candidates and certified pharmacy technicians may assist a pharmacist in the practice of pharmacy.<sup>9</sup>

#### **A. Proposed LAC 46:LIII.508**

Proposed § 508 incorporates the definitions of “Dependent” and “Healthcare Professional” provided in La. R.S. 37:1751, and provides that the Board shall designate any application for a pharmacist license submitted by an eligible dependent for priority processing.<sup>10</sup> Upon receipt, the applications are marked for priority processing and that designation remains until a final determination has been made. In accordance with La. R.S. 37:1751, proposed § 508(B) requires the Board to provide the dependent applicant with a written decision regarding the licensing application within 30 days.<sup>11</sup> The regulation ensures the Board’s adherence to the statutorily mandated 30-day timeframe for a written decision on a dependent applicant’s licensing application, and is therefore consistent with state policy. The proposed regulation also provides for a nonrenewable, temporary “special work permit” pending permanent licensure for eligible dependents prior to being issued a pharmacist license.<sup>12</sup> The special work permit authorizes a dependent applicant to practice pharmacy while their priority application is pending and is consistent with the state policy articulated in La. R.S. 37:1751. Existing statutes establish appeal procedures for persons aggrieved by Board actions as contemplated in La. R.S. 37:1751(F).<sup>13</sup>

Proposed § 508 expedites the process by which eligible dependents of healthcare providers receive authorization to practice pharmacy in Louisiana. The regulation provides for priority consideration of applications submitted by these dependents, mandates a decision on a dependent’s application within 30 days, and provides an avenue for dependent applicants to begin practicing as a pharmacist prior to full licensure when appropriate. As a result, proposed LAC 46:LIII.508 adheres to clearly articulated state policy by reducing existing barriers to employment as a pharmacist for the category of individuals identified in La. R.S. 37:1751.

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<sup>6</sup> La. R.S. 37:1201.

<sup>7</sup> La. R.S. 37:1182(A)(5)-(8).

<sup>8</sup> La. R.S. 37:1182(A)(12) and La. R.S. 37:1212.

<sup>9</sup> *Id.* It is immaterial for purposes of antitrust law whether pharmacy technician candidates generally receive less compensation than certified pharmacy technicians. See *Sanjuan v. American Bd. Of Psychiatry and Neurology, Inc.*, 40 F.3d 247, 251 (7<sup>th</sup> Cir. 1994), *cert denied* 516 U.S. 1159 (1996) and cases cited therein.

<sup>10</sup> LAC 46:LIII.508.A and B.

<sup>11</sup> LAC 46:LIII.508.B.

<sup>12</sup> LAC 46:LIII.508.C.

<sup>13</sup> La. R.S. 49:950 *et seq.* and La. R.S. 37:1248.

**B. Proposed LAC 46:LIII.906**

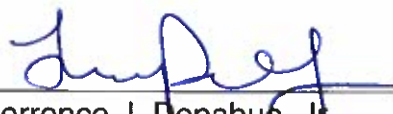
The Louisiana Pharmacy Practice Act, La. R.S. 37:1161 *et seq.*, provides for both the registration and certification of pharmacy technicians. Proposed § 906 specifically pertains to the certification of pharmacy technicians. Like proposed § 508, proposed § 906 substantially incorporates provisions of La. R.S. 37:1751 relevant to the certification of pharmacy technicians. As with applicants for a pharmacist license, the regulation provides for the issuance of a special work permit to eligible dependents who intend to perform work as a pharmacy technician prior to the issuance of a pharmacy technician certificate.<sup>14</sup> In accordance with La. R.S. 37:1751, proposed § 906 requires the Board to notify eligible dependent applicants of its licensing decision within 30 calendar days.<sup>15</sup> Applying the same rationale used to analyze proposed § 508, we likewise find proposed § 906 to be consistent with state policy.

The Board's existing regulations present minimal barriers to employment as a pharmacy technician, requiring only a passing score on the required examination and a high school diploma or similar credential before engaging in this occupation. Proposed § 906 further reduces these barriers for eligible healthcare provider dependents by granting preferential treatment to applications submitted by these dependents, mandating that decisions on dependent applications be issued within 30 days, and by providing an avenue for dependents to begin working as a pharmacy technician prior to certification when appropriate. As a result, proposed LAC 46:LIII.906 adheres to clearly articulated state policy by reducing existing barriers to employment as a pharmacy technician for the category of individuals identified in La. R.S. 37:1751.

**III. Determination**

As the Attorney General has determined the provisions of proposed LAC 46:LIII.508 and LAC 46:LIII.906 adhere to clearly articulated state policy, the regulations are approved and may be finally adopted by the Board.

JEFF LANDRY  
ATTORNEY GENERAL

BY:   
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Assistant Attorney General

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<sup>14</sup> LAC 46:LIII.506.1.C.