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From: Jessica Weimer
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Subject: Louisiana State Board of Medical Examiners
Proposed Amendments to LAC 46:XLV.305, 416, 433, 441, 449, and 4005.
Regarding Licensure and Certifications

I. SUMMARY

The Louisiana State Board of Medical Examiners (the “**Board**”) proposes amending LAC 46: XLV. 305, 416, 433, 441, 449, and 4005 (the “**Proposed Amendments**”), regarding licensure and certification regulations.¹

The Board published a Notice of Intent to promulgate the Proposed Amendments on December 20, 2024.² The Notice invited written comments on these Proposed Amendments until January 28, 2025 and received none³.

Licensing, permitting, training, and continuing education requirements are barriers to market entry for individuals desiring to engage in a profession or occupation. Therefore, the Proposed Amendments may be considered occupational regulations with reasonably foreseeable anti-competitive effects.⁴ 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 February 18, 2025. The OLRP invited public comments on the Proposed Amendments February 21, 2025 through February 28, 2025 and received no comments.

The OLRP has the statutory authority to review the substance of each proposed occupational regulation submitted to ensure compliance with clearly articulated state policy and adherence to applicable state law.⁵ An Occupational Regulation is a “rule defined in the Administrative

¹ Louisiana Register, Vol. 50, No. 12, at pgs. 1900-1904

² Id.

³ Id. at pg. 1903

⁴ La. R.S. 49:260 G(4)

⁵ LSA-R.S. 49:260 (D) (2)

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.”⁶ 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).⁷ Anti-Competitive behavior is an act, or series of acts, that have the effect of harming the market or the process of competition among businesses, or a tendency to reduce or eliminate competition, with no legitimate business purpose.⁸

As set forth below, the OLRP has determined the Board’s Proposed Amendments to LAC 46:XLV §305, 416, 433, 441, 449, and 4005 adhere to clearly articulated state policy and are within the Board’s statutory authority. Therefore, these amendments are approved for promulgation as drafted in accordance with the Louisiana APA.

II. ANALYSIS

The Louisiana Legislature has deemed it the policy of the State of Louisiana in the interest of public health, safety, and welfare to provide laws and provisions covering the practice of medicine and its subsequent use, control, and regulation to protect the public against unprofessional, improper, unauthorized, and unqualified practice of medicine and from unprofessional conduct of persons licensed to practice medicine.⁹ The Board of Medical Examiners was created to control and regulate the practice of medicine in this state.¹⁰ The Board is authorized to take appropriate administrative actions to regulate the practice of medicine in Louisiana in order to promote the established policy of the State.¹¹ The Board may also adopt rules, regulations and standards necessary to carry out the Board’s duties, powers and functions as provided for in LSA R.S. 37:1261 *et seq.*¹²

A. Proposed LAC 46:XLV.305 Regarding General Provisions- Severability

The Board proposes the addition of a severability clause to the Louisiana Administrative Code (LAC) Title 46 (Professional and Occupational Standards) Chapter XLV- Medical Professions under §305. A severability clause is a standard legal provision that ensures if one part of a legal text is judicially declared void, unenforceable or unconstitutional; the remaining provisions may continue to operate in full force.¹³ In regards to occupational licensing regulations, a severability clause helps to maintain licensure systems, consumer protection mechanisms, and professional standards, ensuring the invalidation of a single provision or part does not nullify the entire regulatory scheme while allowing only the problematic provision to be removed from the regulations.

⁶ LSA-R.S. 49:260 (G) (4)

⁷ LSA-R.S. 49:951 (8)

⁸ Black’s Law Dictionary, 12th Edition 2024

⁹ LSA-R.S. 37:1261

¹⁰ LSA-R.S. 37:1263

¹¹ LSA-R.S. 37:1270 (A)(1)

¹² LSA-R.S. 37:1270 (B)(6)

¹³ Black’s Law Dictionary, 12th Edition 2024

The proposed amendment serves to allow the Board to regulate the practice of medicine and enforce licensure standards without disruption, notwithstanding a potential successful legal challenge to other parts of the regulations and protects the Board's ability to mandate to safeguard the public health, safety, and welfare of the citizens of the State of Louisiana.

The Board is authorized to adopt rules, regulations, and standards necessary to carry out the Board's duties, powers and functions. Therefore, this proposed amendment is within the statutory authority of the Board and adheres to clearly articulated state policy. However, the proposed amendment has no foreseeable anti-competitive effects and as such does not require input from the OLRP.

B. Proposed LAC 46:XLV.416 Regarding Requirements Immediately Following Licensure under LA R.S. 37:1310.1

The Board proposes adding §416 to conform the information and data the Board receives from practitioners licensed under the Interstate Medical Licensure Compact (the "*IMLC*") to match the same type of information and data it already receives from licensure applicants who have applied for licensure, renewal, and/or reinstatement under LA R.S. 37:1271-1291.1, LAC 46:XLV.123 *et seq.*, in accordance with LA R.S. 37:1310.1 (5) (d).¹⁴ The IMLC complements the existing licensing and regulatory authority of the state medical Boards and provides a streamlined process allowing physicians to become licensed in multiple states.¹⁵ Physicians licensed via the IMLC must comply with all applicable statutes and rules administered by the Board.

Licensing requirements present a barrier to market entry. Thus, this proposed amendment is properly submitted to the OLRP for review. The Board is required to issue license or permits to those possessing the necessary qualifications.¹⁶ To that end, the Board may also adopt rules and regulations establishing necessary qualifications, requirements, and formalities for the issuance of temporary or limited purpose permits as necessary in order to safeguard the health and welfare of the citizens of Louisiana.¹⁷ The Board is also permitted to request and obtain state and national criminal history record information on all applicants for a license to practice medicine in Louisiana.¹⁸ Further, under the IMLC, the prevailing standard for licensure and practice of medicine occurs where the patient is located at the time of the physician-patient encounter, and therefore, the physician is under the jurisdiction of the state medical Board where the patient is located¹⁹. The IMLC authorizes member states to require physicians to submit certain materials necessary to practice medicine in the state in order to reduce barriers to interstate licensure while preserving the state's authority to regulate the practice of medicine.

The proposed amendment mirrors the licensing requirements set forth in LA RS 37:1261 *et seq.* and LAC Title 46, Chapter XLV for practitioners seeking licensure in the state of

¹⁴ Louisiana Register, Vol. 50, No. 12, at pg. 1900

¹⁵ LSA R.S. 37:1310.1(1)

¹⁶ LSA R.S. 37:1270 (A)(1)

¹⁷ LSA R.S. 37:1275(B)

¹⁸ LSA R.S. 37:1277

¹⁹ LSA R.S. 37:1310.1 (1)

Louisiana outside of the IMLC. The proposed amendment to §416 is within the Board's statutory authority and adheres to clearly articulated state policy.

C. Proposed LAC 46: XLV. 433, 441, and 449 Regarding Continuing Medical Education

i. Summary

The Board proposes adding clarifying language to §433 to indicate the continuing medical education (the "**CME**") standards also apply to licenses issued pursuant to the IMLC License under LA R.S. 37:1310.1 and post renewal requirements for the practice of medicine. The Board has the statutory authority to establish minimum requirements relative to CME for the renewal or reinstatement of any license or permit issued by the Board.²⁰

Currently, §441 outlines failure to satisfy CME requirements deems a physician not eligible for license renewal consideration. A license that has lapsed for noncompliance with CME may be reinstated upon written application, payment of applicable fees, and documentation and certification of completion of Board approved CME. If a license has expired or been revoked due to CME noncompliance, reinstatement requires documentation showing 20 hours of Board approved CME for each year since the last valid license period. Further, repeated or unresolved CME violations may constitute unprofessional conduct under LA R.S. 37:1285(A) (30), providing cause for the Board to suspend, revoke, or restrict licensure to the applicant.

The Board proposes amending §441(A) (1) to outline the CME requirements for the differing medical professions governed by the Board along with the corresponding governing statutes. The Board further proposes, except for licenses issued under the IMLC, any physician who fails to meet CME requirements is ineligible for licensure renewal consideration. However, a license that has been expired, deemed ineligible, or has revoked solely due to CME noncompliance may be reinstated upon written application, payment of reinstatement and related fees, and an affidavit affirming completion of all CME obligations for each year since the license lapsed. However, if a physician has failed to satisfy CME requirements on more than one occasion, the repeated noncompliance constitutes unprofessional conduct and may serve as grounds for disciplinary action, including suspension, revocation, denial, or restriction of licensure under LA R.S. 37:1285(A)(13) and (30).

For physicians licensed pursuant to the IMLC, the Board proposes amending §441(A) (2) governing failure to demonstrate compliance with CME requirements. The Board proposes a 90-day period in which the licensee must submit an affidavit verifying completion of the required CME for each applicable year. If the licensee fails to comply within this timeframe, the matter is referred to the Board's Department of Investigations for informal, non-disciplinary outreach to encourage voluntary compliance with the CME requirements by the licensed physician. Continued noncompliance shall be deemed a violation of the laws and rules and constitutes unprofessional conduct under LA R.S. 37:1285(A) (13) and (30) authorizing

²⁰ LSA R.S. 37:1270(A)(8)

the Board to suspend, revoke, deny, or impose restricts on any license held or applied for by the physician.

The current regulation, effective since January 1, 2002, requires all physicians applying for their first license renewal to attend a Board sponsored or Board approved in person orientation program. The CME must be a minimum of two hours, in person, scheduled at Board-designated times and locations with an hour for hour CME credit for attendance. Further, the Board will notify the licensees of the dates, times, locations, and enrollment procedure to the most recent address. Failure to notify the Board of a change in mailing address does not absolve the applicant of the requirement. Each hour of participation in the orientation is credited on an hour for hour basis towards the annual CME requirement. Generally, in person attendance is required; however, an online alternative is available to physicians who either reside or practice exclusive outside of Louisiana or who have held an unrestricted medical license in any state for at least ten years.

The proposed amendment replaces the current in-person orientation with a standardized online “Laws and Rules Course,” which is available through the Board’s website or licensing department. The amendment expands the requirement to apply to not only physicians but also to allied healthcare provider licensees. Successful completion of the course remains a prerequisite for first time license renewal, with the exception of physicians with their license through the IMLC, who must complete the course within 90 days after their license is renewed. The proposed rule maintains the hour-for-hour CME credit for course participation.

ii. Analysis

CME requirements are a barrier to market entry. However, the Board has the authority to establish, and determine by rule minimum requirements relative to continuing education for the renewal or reinstatement of any license or permit issued by the Board.²¹ CME requirements further ensure licensed physicians maintain competence, keep pace with advancements in medicine, and uphold the standard of care expected by the Board in order to protect the public health, safety, and welfare against the unprofessional, improper, unauthorized, and unqualified practice of medicine and unprofessional conduct of persons licensed to practice medicine in the state.²²

The proposed amendments governing the CME provisions for licenses pursuant to the IMLC offer a more flexible, tiered approach to reinstatement than in-state Non-IMLC physicians in alignment with the IMLC Compact supporting streamlined licensure and maintaining patient safety and professional standards. The Board proposes a more rigid framework that mirrors the reinstatement requirements currently under §441 in regards to non-IMLC physicians. Automatic eligibility, reinstatement procedures, and disciplinary penalties may function as anticompetitive barriers to licensure if not narrowly tailored to public protection. However, as previously stated, CME requirements serve to protect the public health, safety, and welfare and the proposed amendments are not overly burdensome on applicants.

²¹ LSA R.S. 37:1270(A)(8)

²² LSA R.S. 37:1261

The proposed amendment to §449 eliminates barriers associated with the current in-person requirement. By replacing the in-person program with a universally accessible online “Laws and Rules Course”, the proposed amendment removes limits to access to licensure, such as travel costs, location, and scheduling conflicts, and ensures all applicants, regardless of location or experience, are subject to the same objective standards.

The proposed amendments to §433, 441, and 449 are within the Board’s statutory authority and adheres to clearly articulated state policy. The Board may promulgate these amendments in accordance with the APA.

D. Proposed LAC 46:XLV.4005 Regarding Continuing Medical Educational Requirements for Controlled Dangerous Substances

Currently §4005 mandates all prescribers of controlled dangerous substances (CDS) complete three hours of Board approved CME covering drug diversion training, best practices regarding prescribing CDS, appropriate treatment for addiction, and for physicians, treatment of chronic pain. This requirement is required for the first time renewal of a license after January 1, 2019, unless the prescriber certifies they did not prescribe, dispense, or administer CDS during the relevant licensure year. Licenses not renewed due to noncompliance with the CME requirement may be reinstated upon application to the Board and payment of renewal fees. The proposed amendment retains the CME requirement but enforces compliances through a structured reinstatement and disciplinary process. It imposes a 90-day grace period following notice for licensees not in compliance, with the exception of IMLC licensees, to submit proof of CME completion. If the licensee fails to comply after 90 days, the Board may deem the licensee in violation of LA R.S. 37:1285(A) (13) and (30) providing cause for suspension, revocation, or restricts on any license held or applied for by a physician in violation of requirements. The Board will verify the CME hours via an electronic education tracker.

CME requirements are a barrier to market entry. However, the Board has the authority to establish, and determine by rule minimum requirements relative to continuing education for the renewal or reinstatement of any license or permit issued by the Board.²³ The Board may refuse to issue, suspend, revoke, or impose restricts on any license permit, or certificate issued by the Board for unprofessional conduct or violation of any rules and regulations of the Board. CME requirements further ensure licensed physicians maintain competence, keep pace with advancements in medicine, and uphold the standard of care expected by the Board in order to protect the public health, safety, and welfare against the unprofessional, improper, unauthorized, and unqualified practice of medicine and unprofessional conduct of persons licensed to practice medicine in the state.²⁴ Therefore, this proposed amendment is within the statutory authority of the Board and adhere to clearly articulated state policy.

III. Determination

The Board is a state regulatory body created “as a matter of policy in the interests of public health, safety, and welfare to provide laws and provisions covering the granting of [the

²³ LSA R.S. 37:1270(A)(8)

²⁴ LSA R.S. 37:1261

privilege of the practice of medicine] and its subsequent use, control, and regulation to the end that the public shall be properly protected against unprofessional, improper, unauthorized, and unqualified practice of medicine from unprofessional conduct of persons licensed to practice medicine.”²⁵ The Board is statutorily authorized to establish minimum requirements for continuing education for the renewal or reinstatement of any license or permit issued by the Board.²⁶ The Board may adopt rules, regulations, and standards necessary to carry out its duties, powers, and functions as mandated by the legislature.²⁷ Because the Proposed Amendments are within the Board’s statutory authority and adhere to clearly articulated state policy of protecting the public health, safety, and welfare of the citizens of this state, the Proposed Amendments are approved as submitted by the Attorney General and may be adopted by the Board.

OFFICE OF THE ATTORNEY GENERAL
OCCUPATIONAL LICENSING REVIEW PROGRAM



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²⁵ LSA R.S. 37:1261

²⁶ LSA R.S. 37:1270(A)(8)

²⁷ LSA R.S. 37:1270(B)(6)