May 4, 2021

Hon. Fred H. Mills, Jr.
Chairman
Committee on Health and Welfare
Senate of the State of Louisiana
P.O. Box 94183
Baton Rouge, LA 70804
apa.s-h&w@legis.la.gov

Hon. Patrick Page Cortez
President
Senate of the State of Louisiana
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Hon. Lawrence A. “Larry” Bagley
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Committee on Health and Welfare
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Hon. Clay Schexnayder
Speaker
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Re: 2ND Report on Proposed Rules governing: MEDICAL PROFESSIONS; RULES OF
PROCEDURE; MISCELLANEOUS PROVISIONS; PETITIONS FOR RULEMAKING
(LAC 46:XLV-9301-9311)

Dear Sirs:

Pursuant to La. Rev. Stat. §49:968(D), please accept this letter as the second report to the legislature
on the Louisiana State Board of Medical Examiners’ proposed rules/amendments to its administrative rules
governing administrative procedure.

As indicated in the First Report to your office, dated October 13, 2020, the Board is amending its rules
to implement the requirements of Act 454 of the 2018 Regular Session of the Louisiana Legislature by
providing the procedures by which interested persons may petition, and the Board may consider and respond
to, petitions for the adoption, amendment or repeal of its rules.

The Occupational Licensing Review Commission (OLRC) approved the proposed rules at its
September 2020 meeting. Subsequent to the publication of our Notice of Intent in the October 2020 Louisiana
Register, we conducted a public hearing on November 24, 2020 to receive comments and testimony on the
proposed amendment. We received no comments or testimony on the proposed rule changes. During its
meeting on December 14, 2020, the Board considered the lack of substantive comments and determined that
no changes were necessary to the proposed rules. The Occupational Licensing Review Commission approved the continuation of the promulgation process during their March 25, 2021 meeting. In connection with this regulatory project, you should find the following documents in this package:

- OLRC Resolution indicating approval of the proposed rules/amendments at the September 10, 2020 meeting and OLRC Resolution indicating final review and approval at the March 25, 2021 meeting;
- Notice of Intent published in the October 2020 Louisiana Register;
- Full text of the proposed rule; and,
- Transcript and Record of the November 24, 2020 Public Hearing.

Subject to the review of the Joint Legislative Oversight Committee on Health and Welfare, the Board proposes to publish the original proposal without amendment as a Rule in the June 2021 edition of the Louisiana Register with an immediate effective date. If you have any questions about the enclosed information or our procedures, please contact me at vculotta@lsbme.la.gov or 504-568-1079.

Sincerely,

Vincent A. Culotta, Jr., M.D.
Executive Director
WHEREAS, it is necessary for the Occupational Licensing Review Commission (OLRC) to issue a resolution regarding the approval or denial of specific occupational regulations submitted for its review:

NOW, THEREFORE, BE IT RESOLVED BY THE OCCUPATIONAL LICENSING REVIEW COMMISSION, that the following occupational regulations, as defined by Louisiana Revised Statutes 37:43(7), shall be known to have been approved by the OLRC at a duly called meeting of its members on September 10, 2020. The OLRC finds that these occupational regulations comply with the state policy set forth in Louisiana Revised Statutes 37:44 and authorizes the respective occupational licensing boards to initiate promulgation of the regulations in accordance with the Administrative Procedure Act.

- **Louisiana Behavioral Analyst Board**
  - LAC 46:VIII.305 Licensing and Administrative Fees

- **Louisiana Licensed Professional Counselors Board of Examiners**
  - LAC 46:LX.2109 Relationships with Other Professionals

- **Louisiana State Board of Medical Examiners**
  - LAC 46:XLV.9301-9311C Rules of Procedure; Petitions for Rulemaking

- **Louisiana Board of Examiners and Certified Shorthand Reporters**
  - LAC 46:XXI.1109 Digital Signature Certification Procedures
  - LAC 46:XXI.1111 Technological Standards and Criteria

- **Louisiana State Board of Dentistry**
  - LAC 46:XXXIII.105 Restricted Licensees
  - LAC 46:XXXIII.203 Teledentistry
  - LAC 46:XXXIII.701 Dental Hygienists Authorized duties
- **Louisiana Board of Pharmacy**
  
  i. LAC 46:LIII.506 Preferential Licensing Procedures for Military Trained Applicants and their Dependents
  
  ii. LAC 46:LIII.904 Preferential Licensing Procedures for Military Trained Applicants and their Dependents

  iii. LAC 46:LIII.2457 Standards of Practice

  iv. LAC 46:LIII.3001 Pharmacy Benefits Managers; Definitions

  v. LAC 46:LIII.3003 Pharmacy Benefit Manager Permit

  vi. LAC 46:LIII.3005 Permitting Procedures

This Resolution was ADOPTED by unanimous vote of the Commission on November 17, 2020.

[Signature]

Leslie Ricard Chambers, Chair
WHEREAS, it is necessary for the Occupational Licensing Review Commission (OLRC) to issue a resolution regarding the approval or denial of specific occupational regulations submitted for its review:

NOW, THEREFORE, BE IT RESOLVED BY THE OCCUPATIONAL LICENSING REVIEW COMMISSION, that the following occupational regulations, as defined by Louisiana Revised Statutes 37:43(7), shall be known to have been approved by the OLRC at a duly called meeting of its members on March 25, 2021. The OLRC finds that these occupational regulations comply with the state policy set forth in Louisiana Revised Statutes 37:44 and authorizes the respective occupational licensing boards to initiate promulgation of the regulations in accordance with the Administrative Procedure Act.

- **Louisiana Department of Agriculture and Forestry**
  - i. LAC 7:XXXIX.111 Horticulture; Minimum Examination Performance Levels Required

- **Louisiana Manufactured Housing Commission**
  - i. LAC 55:V Manufactured and Modular Housing (*final review*)

- **Louisiana Liquefied Petroleum Gas Commission**
  - i. LAC 55:IX.103, 107, 119, 131 General Requirements (*final review*)

- **Louisiana Board of Medical Examiners**
  - i. LAC 46:XLV.323, 361, 363 Physicians (*final review*)
  - ii. LAC 46:XLV.315, 415, 417 Physician Licensure and Certification (*final review*)
  - iii. LAC 46:XLV.402, 412 Licensure and Certification (*final review*)
  - iv. LAC 46:XLV.433, 435, 439, 441, 443 Continuing Medical Education (*final review*)
  - v. LAC 46:XLV.1307 Qualifications for Certification for Advanced Practice; Scope of Practice (*final review*)
vi. LAC 46:XLV.9301-9311C Rules of Procedure; Petitions for Rulemaking (final review)

vii. LAC 46:XLV.9714, 9716 Complaints and Investigations (final review)

viii. LAC 46:XLV.9935 Assessment of Costs and Fees (final review)

○ Louisiana Board of Pharmacy

  i. LAC 46:LIII.519 State of Emergency (final review)
  ii. LAC 46:LIII.2443 2451 Limited Service Providers (final review)
  iii. LAC 46:LIII.2457 Standards of Practice
  iv. LAC 46:LIII.3001 Pharmacy Benefits Managers; Definitions (final review)
  v. LAC 46:LIII.3003 Pharmacy Benefit Manager Permit (final review)
  vi. LAC 46:LIII.3005 Permitting Procedures (final review)

○ Louisiana Professional Engineering and Land Surveying Board

  i. LAC 46:LXI.105 General Provisions (final review)
  ii. LAC 46:LXI.705, 709 Bylaws
  iii. LAC 46:LXI.903 Professional Engineer Licensure
  iv. LAC 46:LXI.903, 905, 909, 911 Requirements for Certification and Licensure of Individuals and Temporary Permit to Practice Engineering or Land Surveying (final review)
  v. LAC 46:LXI.1101 Curricula (final review)
  vi. LAC 46:LXI.1301, 1305, 1309, 1311, 1313, 1315 Examinations
  vii. LAC 46:LXI.1509 Experience
  viii. LAC 46:LXI.1901 Disciplines of Engineering
  ix. LAC 46:LXI.2103 Certificates of Licensure and Certification of Individuals or Firms
  x. LAC 46:LXI.2301, 2305 Firms
  xi. LAC 46:LXI.2501 Professional Conduct
  xii. LAC 46:LXI.3117 Audit and Review of Records
  xiii. LAC 46:LXI.3109, 3115, 3117 Continuing Professional Development
  xiv. LAC 46:LXI.3105, 3109, 3113, 3115, 3119, 3121 Continuing Professional Development (final review)
○ Louisiana Physical Therapy Board
  i. LAC 46:LIV.115, 121, 123, 145, 151, 153, 155, 157, 159, 169, 175, 180, 181, 185, 187, 194, 195, 199 Licensing and Certification
  ii. LAC 46:LIV.303, 309, 311, 319, 325, 331, 333, 337, 341, 345, 357, 387, 392, 396, 397 Practice

This Resolution was ADOPTED by unanimous vote of the Commission on April 6, 2021.

[Signature]
Leslie Ricard Chambers, Chair
NOTICE OF INTENT

Department of Health
Board of Medical Examiners

Licensure and Certification;
Physicians (LAC 46:XLV Chapter 3)

Notice is hereby given that in accordance with the Louisiana Administrative Procedure Act, R.S. 49:950 et seq., and pursuant to the authority vested in the Louisiana State Board of Medical Examiners (board) by the Louisiana Medical Practice Act, R.S. 37:1270, the board proposes to amend its rules governing all licensees (443) as to the method of providing the board with proof of continuing medical education by use of an electronic education tracker (435 and 439), and the rules on renewal ineligibility where the licensee fails to satisfy the continuing medical education requirement (441). The proposed amendments are set forth below.

Title 46
PROFESSIONAL AND OCCUPATIONAL STANDARDS
Part XLV. Medical Professions
Subpart 2. Licensure and Certification
Chapter 3. Physicians
Subchapter K. Continuing Medical Education
§433. Scope of Subchapter
A. The rules of this Subchapter provide standards for the continuing medical education ("CME") requisite to the renewal or reinstatement of licensure, as provided by §§417 and 419 of these rules and prescribe the procedures applicable to satisfaction and documentation of continuing medical education in connection with applications for renewal or reinstatement of licensure.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270 and 37:1270(A)(8).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 26:695 (April 2000), amended LR 46:

§435. Continuing Medical Educational Requirement
A. Subject to the waiver of and exceptions to CME prescribed by §§445 and 447 and the special requirements attendant to initial renewal of licensure specified in §449, every physician seeking the renewal or reinstatement of licensure shall annually evidence and document, in a manner specified by the board, the successful completion of not less than 20 hours of board approved CME.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270 and 37:1270(A)(8).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 26:695 (April 2000), amended LR 46:

§437. Qualifying Continuing Medical Education Programs
A. Any program, course, seminar or other activity offering Category 1 CME shall be deemed approved for purposes of satisfying the continuing medical education requirements under this Subchapter, if sponsored or offered by:
  1. an organization or entity accredited by the Accreditation Council for Continuing Medical Education (ACCME);
  2. a member board of the American Board of Medical Specialties or a specialty board recognized by the AOA;
  3. the American Academy of Family Physicians (AAFP);
  4. the American College of Obstetricians and Gynecologists (ACOG);
  5. the American Osteopathic Association (AOA); or
  6. an organization or entity accredited by the Louisiana State Medical Society or any other ACCME recognized state medical society.


HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 26:695 (April 2000), amended LR 31:1584 (July 2005), LR 46:

§439. Documentation Procedure
A. Licensees shall insure that documentation of CME (or "continuing education") sufficient to satisfy the annual continuing education requirement is submitted to the board. Each licensee shall request the organization or entity sponsoring or offering the activity to submit proof of the licensee’s completion of a continuing education activity to the board’s designated electronic education tracker ("EET"). In the event the sponsoring or offering organization fails or refuses to do so, the licensee shall submit such proof directly to the EET.

B. Each licensee shall be:
  1. sent a transcript of the hours/credits/units of qualifying continuing education, which the board has then received from its designated EET for the licensee. The transcript shall reflect the amount of continuing education needed to satisfy the continuing education requirement for license renewal. The transcript shall be electronically transmitted to the licensee’s preferred email address on file with the board at periodic intervals in advance of the date for licensure renewal;
  2. obligated and responsible for reviewing his/her continuing education transcript for accuracy and resolving any discrepancies in the amount of credit awarded, lack of reporting to the board, or other issues, with the organization or entity sponsoring or offering the continuing education activity. If issues remain unresolved, the licensee shall attempt resolution by way of the board’s designated EET. If still unsuccessful, the licensee may then supply documentation of his/her efforts to resolve the discrepancy or other issues to the board and request its assistance;
  3. A licensee’s failure to notify the board of a change in preferred email address will not absolve the licensee from his/her obligations and responsibilities under this Section.

C. A physician shall maintain a record or certificate of attendance for at least four years from the date of completion of the continuing medical education activity. Satisfactory evidence shall consist of a certificate or other documentation which shall, at a minimum, contain the:
  1. program title;
  2. sponsor’s name;
  3. physician’s name;
  4. inclusive date or dates and location of the CME event; and
  5. documented verification of successful completion of 20 hours of Category 1 CME by stamp, signature, official or other proof acceptable to the board.

D. In addition, the board has the right to audit any questionable documentation of activities.

E. Verification of continuing medical education satisfying the requirements of this Subchapter shall be submitted by a physician to the board within 30 days of the date of mailing of notification of audit or such longer period as the board may designate in such notification. A physician’s failure to notify the
board of a change of mailing address will not absolve the licensee from the audit requirement.

F. Any certification of continuing medical education which is not approved by the board pursuant to §437 shall not be considered as qualifying for CME recognition by the board.

HISTORICAL NOTE: Promulgated in accordance with R.S. 37:1270 and 37:1270(A)(8).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 26:696 (April 2000), amended LR 46:

§441. Failure to Satisfy Continuing Medical Education Requirements

A. Non-Compliance; Reinstatement of Licensure. A licensee:
1. who fails to satisfy the continuing education requirement shall not be eligible for licensure renewal consideration;
2. whose license has not been renewed for failure to satisfy the continuing education requirement may be reinstated upon application to the board, accompanied by payment of the renewal fee required by Subpart I of these rules, in addition to all other applicable fees and costs, together with confirmation of completion of the continuing education requirement.

B. The license of a physician which has expired for nonrenewal or been revoked for failure to satisfy the CME requirements of §435 of these rules, may be reinstated pursuant to §419 upon written application to the board, accompanied by payment of the reinstatement fee required by §419, in addition to all other applicable fees and costs, together with documentation and certification that the applicant has, for each year since the date on which the applicant’s license was last issued or renewed, completed an aggregate of 20 hours of board approved CME.

C. The license of a physician which has expired, has not been renewed or been revoked for failure to meet the requirements of §449, or one which has expired, has not been renewed or revoked on more than one occasion for failure to satisfy the CME requirements of §435 of these rules shall be deemed in violation of R.S. 37:1285.(A)(30), providing cause for the board to suspend or revoke, refuse to issue, or impose probationary or other restrictions on any license held or applied for by a physician to practice medicine in the state of Louisiana culpable of such violation.

HISTORICAL NOTE: Promulgated in accordance with R.S. 37:1270, 37:1270(A)(8) and 37:1280.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 26:696 (April 2000), amended LR 46:

§443. Application of Requirements to All Licensees; Resolution of Conflict

A. Sections 439 and 441 of this Chapter shall apply to physicians and all allied health care providers licensed by the board who are required to complete continuing education as a prerequisite to the renewal of a license or other authority to practice a profession regulated by the board. All references to CME or continuing education and credits or hours, shall apply equally to any word or term utilized in this Part to describe the requirement for or amount of continuing education required for the renewal of such license or other authority. In the event of a conflict between §439 and §441, and those of any other Section in this Part, §439 and §441 shall govern and control.

HISTORICAL NOTE: Promulgated in accordance with R.S. 37:1270 and 37:1270(A)(8).

HISTORICAL NOTE: Promulgated by the Department of Health, Board of Medical Examiners, LR 46:

§444. Falsification of Continuing Medical Education

A. Any licensee or applicant who falsely certifies attendance at and/or completion of the required continuing medical education requirements of §§433-449 shall be deemed in violation of R.S. 37:1285.(A)(3), (4), (13) and/or (30), providing cause for the board to suspend or revoke, refuse to issue, or impose probationary or other restrictions on any license held or applied for by a physician to practice medicine in the state of Louisiana culpable of such violation.

HISTORICAL NOTE: Promulgated in accordance with R.S. 37:1270 and 37:1270(A)(8).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 26:696 (April 2000), amended LR 46:

§445. Waiver of Requirements

A. The board may, in its discretion, waive all or part of the CME required by these rules in favor of a physician who makes written request to the board and evidences to its satisfaction a permanent physical disability, illness, financial hardship or other similar extenuating circumstances precluding the individual’s satisfaction of CME requirements.

HISTORICAL NOTE: Promulgated in accordance with R.S. 37:1270 and 37:1270(A)(8).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 26:696 (April 2000), amended LR 46:

§447. Exceptions to the Continuing Medical Education Requirements

A. Except as provided in §449, the CME requirements prescribed by this Subchapter prerequisite to renewal or reinstatement of licensure shall not be applicable to a physician:
1. engaged in military service longer than one year's duration outside of Louisiana;
2. who has held an initial Louisiana license on the basis of examination for less than one year;
3. who has within the past year been certified or recertified by a member board of the American Board of Medical Specialties or a specialty board recognized by the AOA;
4. who is in a residency training program approved by the board; or
5. who is a retired physician in accordance with §418 of these rules.

HISTORICAL NOTE: Promulgated in accordance with R.S. 37:1270 and 37:1270(A)(8).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 26:697 (April 2000), amended LR 31:1585 (July 2005), LR 46:

§449. CME Requirement for Initial Renewal of License

A. Effective on and after January 1, 2002, every physician seeking the initial renewal of medical licensure, whether such license was originally issued by the board on the basis of examination, reciprocity or reinstatement shall, as part of the continuing medical education required by this Subchapter as a condition prerequisite to licensure renewal, evidence and document upon forms supplied by the board attendance at an orientation program sponsored and/or approved by the board.

B. The program required pursuant to §449A shall be conducted at such locations, on such dates and at such times as may be designated by the board, shall consist of not less than two hours in duration and involve such content, topic and structure as the board may from time to time deem appropriate.
C. Notification of the dates, times and locations at which such programs will be offered, as well as the enrollment procedure, shall be mailed to the most recent address of each applicant subject to the requirements of §449.A as reflected in the official records of the board. A physician’s failure to notify the board of a change of mailing address will not absolve the applicant of the requirement to attend a board sponsored/approved orientation program as a condition of approval of an initial request for licensure renewal.

D. A physician required to attend an orientation program pursuant to §449.A shall, for each hour of attendance as may be required by the board, be granted an hour-for-hour credit towards the annual CME requirement specified by §435.

E. A physician who at the time of the initial renewal of medical licensure resides and practices medicine exclusively outside of Louisiana or who has held an unrestricted license to practice medicine in any state for at least 10 years may, in lieu of personal attendance, satisfy the mandatory requirements of Subsection A of this Section by successfully completing the board’s orientation program on-line in a manner specified by the board.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 26:697 (April 2000), amended LR 27:850 (June 2001), LR 36:1243 (June 2010), LR 46:

Family Impact Statement

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of the proposed amendments on the family has been considered. It is not anticipated that the proposed amendments will have any impact on family, formation, stability or autonomy, as described in R.S. 49:972.

Poverty Statement

In compliance with Act 854 of the 2012 Regular Session of the Louisiana Legislature, the impact of the proposed amendments on those that may be living at or below one hundred percent of the federal poverty line has been considered. It is not anticipated that the proposed amendments will have any impact on child, individual or family poverty in relation to individual or community asset development, as described in R.S. 49:973.

Provider Statement

In compliance with HCR 170 of the 2014 Regular Session of the Louisiana Legislature, the impact of the proposed amendments on organizations that provide services for individuals with developmental disabilities has been considered. It is not anticipated that the proposed amendments will have any impact on the staffing, costs or overall ability of such organizations to provide the same level of services, as described in HCR 170.

Small Business Analysis

It is not anticipated that the proposed amendments will have any adverse impact on small businesses as defined in the Regulatory Flexibility Act, R.S. 49:965.2 et seq.

Public Comments

Interested persons may submit written data, views, arguments, information or comments on the proposed amendments to Jacintha Dutu, Confidential Executive Assistant, Louisiana State Board of Medical Examiners, 630 Camp Street, New Orleans, LA 70130, (504) 568-6820, Ex. 2290. She is responsible for responding to inquiries. Written comments will be accepted until the 16th day of November, 2020 at 4 o’clock p.m.

Public Hearing

A request pursuant to R.S. 49:953(A)(2) for a public hearing must be made in writing and received by the Board within 20 days of the date of this notice. If a public hearing is requested to provide data, views, arguments, information or comments orally in accordance with the Louisiana Administrative Procedure Act, the hearing will be held on the 24th day of November, 2020, starting at 9 o’clock a.m., at the office of the Louisiana State Board of Medical Examiners, 630 Camp Street, New Orleans, LA 70130. Any person wishing to attend should call to confirm that a hearing is being held, especially during COVID, as the attendance may need to occur virtually via Zoom.

Vincent A. Culotta, Jr., MD
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES

RULE TITLE: Licensure and Certification; Physicians

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

Notice is hereby given that in accordance with the Louisiana Administrative Procedure Act, R.S. 49:950 et seq., and pursuant to the authority vested in the Louisiana State Board of Medical Examiners (board) by the Louisiana Medical Practice Act, R.S. 37:1270, the board proposes to amend its rules on its licensees’ continuing medical education requirements to (a) provide a method by which ALL Board licensees must provide the Board, through a Board designated electronic education tracker (EET), with documentation the licensee has timely fulfilled the continuing medical education (CME) requirements of the Board; (b) provide for renewal ineligibility where the licensee fails to satisfy the continuing medical education requirement; and (c) provide a method for and the parameters of licensure reinstatement.

The proposed changes will result in a one-time publication expense estimated at $789.00, in FY 20 for the Louisiana State Board of Medical Examiners (LSBME). Otherwise, there is no anticipated impact on the LSBME or any state or local governmental unit, inclusive of adjustments in workload and paperwork requirements.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

Overall, the Rule attempts to provide a more streamlined electronic method for receiving information about CME credits from licensees, to provide licensees with up to date CME credit transcripts, and to provide for ineligibility to renew if the CME has not been timely completed and electronically documented. Accordingly, there is no anticipated effect on the revenue collections of the LSBME or other state or local governmental units.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS, SMALL BUSINESSES, OR NONGOVERNMENTAL GROUPS (Summary)

It is not anticipated that the proposed amendments will have a material effect on costs, paperwork or workload of physicians or other health care providers licensed by the LSBME, nor on receipts and/or income of licensees, small businesses, or non-governmental groups.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)
It is not anticipated that the proposed changes will have any impact on competition or employment.

Vincent A. Culotta, Jr., MD
Executive Director

Alan M. Boxberger
Staff Director
Legislative Fiscal Office
LSBME PUBLIC HEARING
NOVEMBER 24, 2020

LSBME Public Hearing taken at the
Louisiana State Board of Medical Directors, 630
Camp Street, New Orleans 70130, on November 24,
2020, commencing at or about 9:00 a.m.

BY: Angela W. Allen
Certified Court Reporter

ANGELA W. ALLEN, CCR
ASAP COURT REPORTING SERVICES, INC.
EXECUTIVE STAFF PRESENT:

Vincent A. Culotta, Jr., MD
Executive Director

Mary K. Peyton, General Counsel

Jacintha Duthu, Executive Staff Officer
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PROCEEDINGS

DR. CULOTTA:

Good morning. This is the first ever open hearing separate from a board meeting with regard to rules, and the procedure will be each rule will have the individual opportunity to be introduced. We're using our in-house counsel, General Counsel Mary Peyton, to do that. I'm Vincent Culotta, the executive director of the Board, and each person who desires to comment will be allowed to make comments on each rule.

We have had an opportunity for public comments to come in by e-mail and when they are attached, will be attached to the record to be presented to the Board Members. That includes transcribed comments and any written comments that the Board can then review before it makes a final decision on any of the rules that will be reviewed by them at the next board meeting. I now turn this meeting over to Ms. Peyton.

ANGELA W. ALLEN, CCR
ASAP COURT REPORTING SERVICES, INC.
MS. PEYTON:

Good morning. So the first rule we have is in regards to Chapter 46:XLV.9714, 9716 in regards to complaints and investigations these are guidelines for determining whether to issue public or non-public actions and also complaint disposition guidelines.

Ms. Duthu, did we receive any public comments either by e-mail, fax, or US Mail with regard to this rule?

MS. DUTHU:

No, ma'am, not at this time.

MS. PEYTON:

Thank you. We will wait to see if anybody appears to discuss this rule and render their comment.

(Off the record.)

MS. PEYTON:

It is 9:05. Please let the record reflect that no one has appeared to give a public comment with regard to Chapter 46:XLV.9714 and 9716.

We are now going to move on to the next rule. It is Chapter 46:XLV.323,
361 and 363 regarding international medical graduate qualifications and applications for licensure.

Ms. Duthu, did we receive any public comments by either e-mail, fax, and/or US Mail with regard to this rule?

**MS. DUTHU:**

No, ma'am, not at this time.

**MS. PEYTON:**

Thank you. We'll wait five minutes to see if anybody appears for public comment.

(Off the record.)

**MS. PEYTON:**

Please let the record reflect that no one has appeared with comments with regard to Chapter 46:XLV.323, 361 and 363. 

Continuing on to the next rule, we have Chapter 46:XLV.1307. This is a rule in regards to podiatrists and the requirements and qualifications for licensure, scope of practice.

Ms. Duthu, has anyone commented by e-mail, fax, and/or US Mail with regard
to this new proposal?

We did have one individual that wrote in with regard to current rules applicable to podiatrists; and in response to that public records request, we wrote back and referred that individual, Ms. Guidry, to these proposed rules. That was November 9, 2020, and we will attach the response to Ms. Guidry's public records request. We have not heard anything further from Ms. Guidry; is that correct, Ms. Duthu?

**MS. DUTHU:**

That's correct.

**MS. PEYTON:**

So we have no public comment from her distinctly; is that right?

**MS. DUTHU:**

That's correct.

**MS. PEYTON:**

Okay. Thanks. And we will wait our five minutes with regard to this rule.

(Off the record.)

**MS. PEYTON:**

All right. Let the record reflect
five minutes have passed and we have not had anyone come to give public comment with regard to Chapter 46:XLV.1307 on podiatry.

We are now moving on to the next rule, Chapter 46:XLV.433 through 449 regarding physicians and continuing medical education. We will wait five minutes to see if anyone appears.

Ms. Duthu, did you receive any public comment with regard to this rule whether by e-mail, fax, or US Mail?

**MS. DUTHU:**

No, not at this time.

**MS. PEYTON:**

Okay. We will wait our five minutes.

(Off the record.)

**MS. PEYTON:**

All right. Please let the record reflect that five minutes have passed and no one has appeared to make any comments with regard to Chapter 46:XLV.433 through 449 on physicians and continuing medical education; so we're
moving on to the next rule which is Chapter 46:XLV.9935 regarding rules of adjudication, assessment of costs and fees.

Ms. Duthu, have we received any public comments with regard to this rule by e-mail, fax, or US Mail?

**MS. DUTHU:**

No, ma'am, not at this time.

**MS. PEYTON:**

Thank you. All right. We are going to wait five minutes.

(Off the record.)

**MS. PEYTON:**

All right. Five minutes have gone by. Please let the record reflect that no one has appeared for public comment for Chapter 46:XLV.9935 regarding rules of adjudication and assessment of costs and fees.

We're going to move on to the next rule which is Chapter 46:XLV.402, 412 regarding medical professions, restricted temporary permits, and emergency temporary permits.
Ms. Duthu, have we received any public comments whether by e-mail, fax, or US Mail with regard to this rule.

MS. DUTHU:

No, ma'am, not at this time.

MS. PEYTON:

Thank you. We're going to wait our five minutes, and let's see if anybody appears for public comment.

(Off the record.)

MS. PEYTON:

Let the record reflect that five minutes have passed and we have had nobody come to give public comment with regard to Chapter 46:XLV.402 and 412 on medical professions, restricted temporary permits, and emergency temporary permits.

We're going to move on to the next rule which is Chapter 46:XLV.9301 through 9311, rules of procedure and petitions for rulemaking.

Ms. Duthu, have we had anybody write to us with regard to public comment via US Mail, e-mail, or by fax on this
chapter?

MS. DUTHU:

No, ma'am, not at this time.

MS. PEYTON:

Okay. So since we've had no written public comment, we're going to wait five minutes to see if someone appears to make a public comment on this matter.

(Off the record.)

MS. PEYTON:

Please let the record reflect that we did not receive anybody in person for public comment on Chapter 46:XLV.9301 through 9311 on the rules of procedure and petitions for rulemaking.

We're moving on to the next and last rule which is Chapter 46:XLV.315, 415 and 417, the rules of physician licensure and certification.

Ms. Duthu, did we receive any public comment via e-mail, fax, or US Mail with regard to this rule?

MS. DUTHU:

No, ma'am, not at this time.

MS. PEYTON:
Okay. Thank you. We're going to wait five minutes to see if somebody shows up to give public comment with regard to this rule.

(Off the record.)

MS. PEYTON:

Please let the record reflect that no one appeared for public comment regarding Chapter 46:XLV.315, 415 and 417, the rules of physician licensure and certification.

We are going to end for the day, and thanks so much, Ms. Duthu, for your time.

* * * * * *

The proceedings concluded at 9:53 a.m.
I, ANGELA W. ALLEN, Certified Court Reporter in and for the State of Louisiana, the officer before whom this sworn testimony was taken, do hereby state:

That due to the spontaneous discourse of this proceeding, where necessary, dashes (--) have been used to indicate pauses, changes in thought, and/or talkovers; that same is the proper methods for Court Reporter's transcription of a proceeding, and that dashes (--) do not indicate that words or phrases have been left out of this transcript;

That any words and/or names which could not be verified through reference material have been denoted with the phrase "(phonetically spelled)."

CERTIFICATE

I, Angela W. Allen, Certified Court Reporter in and for the State of Louisiana, Certificate No. 2014010, which is current and in good standing, as the officer before whom proceedings were taken under the authority of R.S. 37:2554, do hereby certify that proceedings were reported by me in the Stenomask reporting method, were

ANGELA W. ALLEN, CCR
ASAP COURT REPORTING SERVICES, INC.
prepared and transcribed by me or under my personal direction and supervision, and are a true and correct transcript to the best of my ability and understanding;

That the transcript has been prepared in compliance with transcript format guidelines required by statute or rules of the Board; that I have acted in compliance with the prohibition on contractual relationships as defined by Louisiana Code of Civil Procedure Article 1434 and in rules and advisory opinions of the Board;

That I am not related to counsel or to the parties herein, nor am I otherwise interested in the outcome of this matter.

This certification is valid only for a transcript accompanied by my original signature and original seal on this page.

Angela W. Allen, CCR
Certificate No. 2014010

ANGELA W. ALLEN, CCR
ASAP COURT REPORTING SERVICES, INC.
November 9, 2020

Nichole Guidry RN
RN Administrator
Ambulatory Surgery Center of Opelousas
187 Ventre Blvd.
Opelousas, LA 70570

Re: Your November 5, 2020 Email

Dear Ms. Guidry:

I have the privilege of serving as the Executive Director to the Louisiana State Board of Medical Examiners (the “Board”). I am in receipt of your email of November 5, 2020 requesting information and/or records of the Board. You asked the following:

“With the governor allowing CRNAs to work independently for now, how does that affect them working with podiatrists? The anesthesiologist normally does the history and physical and signs the pre and post-op anesthesia orders.”

Please know, the current rules and laws regarding podiatry may be found on the Board’s website at www.lsbme.la.gov, click on “Laws” and then “Podiatry” for a copy of the Podiatry Practice Act, or, click on “Rules” and “Podiatrists,” under LAC 46XLV.1307. Likewise, the Physicians’ Practice Act may also be found on the Board’s website, www.lsbme.la.gov, by clicking on “Laws” and then “Physicians”, and/or you may find the rules applicable to physicians by clicking on “Rules” and “Physicians.”

These rules and laws are still in effect during the pandemic, and are applicable to the podiatrist, who based on your questions, would likely be the practitioner doing the procedure at issue as well as the anesthesiologist, who you detailed normally does the history and physicals along with pre and post-op anesthesia orders. The Board does not license or discipline certified nurse anesthetists (CRNAs), but podiatrists and anesthesiologists both fall within the scope of the Board and would be required to practice in accordance with their individual rules and practice acts.

Additionally, the Board is in the process of promulgating amendments to the rules applicable to advanced practice podiatrists doing histories and physicals prior to a procedure. You may find these proposed amendments by going to the Board’s website at www.lsbme.la.gov, click on “Rules” and then “Regulatory Process” and you will find the proposed rule amendments under

1 The Board is an agency of the State of Louisiana.
2020-3, “Notice of Intent”. Alternatively, you may also review them in the Louisiana Register, which may be found at https://www.doa.la.gov/Pages/osr/reg/register.aspx, in the October 2020 edition, page 1421.

The Board is currently accepting public comments with regard to these rules through November 16, 2020. Interested persons may submit written data, views, arguments, information or comments on the proposed rule amendments to Jacintha Duthu, Executive Staff Officer, Louisiana State Board of Medical Examiners, 630 Camp Street, New Orleans, LA 70130, (504) 568-6820, Ex. 2290.

Alternatively, or in addition to, you are also invited to appear at the Board’s public hearing to be held at the Board’s office on November 24, 2020 at 9:00 a.m., where I will be present and the public comments will be recorded for the Board’s later review. Please be sure to notify us by November 16, 2020, if you intend to appear, as we may be conducting the meeting via Zoom due to the public health emergency.

We appreciate your interest in this topic and look forward to seeing you at the public hearing and/or reviewing any comments you wish to send to the Board via Ms. Duthu, as detailed above.

Sincerely,

LOUISIANA STATE BOARD
OF MEDICAL EXAMINERS

[Signature]

Vincent A. Culotta, Jr., M.D.
Executive Director