NOTICE OF INTENT
Department of Health
Board of Medical Examiners

Rules of Procedure; Petitions for Rulemaking
(LAC 46:XLV.Chapter 93)

Notice is hereby given that in accordance with the
Louisiana Administrative Procedure Act, R.S. 49:950 et seq.,
specifically, R.S. 49:952(2) and R.S. 49:953C(1), 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 intends to adopt the
following rules to provide the procedures for requesting and
consideration of the adoption, amendment, or repeal of a
board rule.

Title 46
PROFESSIONAL AND OCCUPATIONAL STANDARDS
Part XLV. Medical Professions
Subpart 5. Rules of Procedure
Chapter 93. Miscellaneous Provisions
Subchapter A. Petitions for Rulemaking
§9301. Scope of Subchapter
A. This Subchapter prescribes the procedures by which
interested persons may petition the Louisiana State Board of
Medical Examiners to exercise its rulemaking authority to
adopt, amend or repeal administrative rules.

AUTHORITY NOTE: Promulgated in accordance with R.S.
HISTORICAL NOTE: Promulgated by the Department of
Health, Board of Medical Examiners, LR 46:

§9303. Definitions as Used in This Subchapter
A. As used in this Subchapter, the following terms shall
have the meanings specified.

Interested Person—a person who or which:

a. holds or has applied for any license, certificate,
   permit or registration issued by the board; or
b. is subject to the regulatory jurisdiction of the
   board; or
  c. is or may be affected by the practice of individuals
   regulated by the board.

Person—an individual natural person, partnership,
corporation, company, association, governmental subdivision
or other public or private organization or entity.

Rulemaking—the process by which the board exercises
its authority under the laws of the state of Louisiana, including
the Administrative Procedure Act, R.S. 49:950 et seq., the
Louisiana Medical Practice Act, R.S. 37:1261 et seq., and the
other acts administered by the board, to formulate, propose
and adopt, amend or repeal and promulgate administrative
rules and regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S.
HISTORICAL NOTE: Promulgated by the Department of
Health, Board of Medical Examiners, LR 46:

§9305. Petitions for Rulemaking
A. General Form. A petition for rulemaking must be
submitted to the board in writing, legibly printed or typed.
B. Title and Signature. The petition shall be plainly and
prominently titled as such and manually signed by an
individual petitioner, authorized officer or representative of
the petitioner, or attorney representing the petitioner. The full
name, title or office, if any, address and telephone number of
a person signing a petition shall be printed or typed under the
person's signature. Signees signing in a representative
capacity must be clearly identified.
C. Required Contents. A petition for rulemaking shall:

1. clearly identify each petitioner by name and address
   of residence or principal place of business;
2. describe the legal status or nature of the petitioner to
   establish that the petitioner is an interested person,
within the
   meaning of Section 9303 of this Subchapter;
3. if a petition for adoption of a new rule, set forth a
   concise statement of the substance, nature, purpose and
   intended effect of the proposed rule and citation to the
   statutory authority for the board's rulemaking authority in
the manner and on the subject requested;
4. if a petition for amendment of an existing rule,
specify, by citation to the Louisiana Administrative Code,
the
   rule or rules which the petitioner requests that the board
   amend, together with a concise statement of the manner
   in which it is proposed that the rule or rules be amended,
the
   purpose and intended effect of the requested amendment,
and
   citation to the statutory authority for the board's exercise
of
   rulemaking authority in the manner and on the subject
requested;
5. if a petition for repeal of an existing rule, specify,
   by citation to the Louisiana Administrative Code, the
   rule or rules
   which the petitioner requests that the board repeal, or
   repeal
   together with a concise statement of the purpose and intended effect
   of
   such repeal;
6. set forth a concise statement of the facts,
circumstances, and reasons which warrant exercise of the
board's rulemaking authority in the manner requested.
7. set forth a statement or prayer expressing the action
   sought by the petition; and
8. contain any other information deemed necessary by
   the board, in its discretion, in order that it may properly
   consider the petition.
D. Submission and Filing. A petition for rulemaking shall
be filed with the board by delivery, U.S. mail to the attention
of the board's executive director at the offices of the board.
E. Nonconforming Petitions. The board may refuse to
accept for filing, or may defer consideration of, any petition
for rulemaking that does not conform to the requirements
of this Section.
F. Public Record. A petition for rulemaking shall be
deemed a public record.

AUTHORITY NOTE: Promulgated in accordance with R.S.
HISTORICAL NOTE: Promulgated by the Department of
Health, Board of Medical Examiners, LR 46:

§9307. Consideration
A. Consideration by the Board. A petition for rulemaking
may be considered and acted on at any regular or special
meeting of the board. Within the time prescribed by Section
9309 of this Subchapter, the board may request additional
information from the petitioner or interested persons other
than the petitioner as it may deem relevant to its
consideration.
B. Presentations. Within the time prescribed by Section
9309 of this Subchapter, the board may, on its own initiative
or at the request of the petitioner or any other interested
person, permit petitioner and other interested persons to
appear before the board to make an oral presentation of
information, data, views, comments and arguments in support of or opposition to the requested rulemaking.


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

§9309. Disposition

A. Form of Determination. The board may grant or deny a petition for rulemaking, in whole or in part. The board's determination shall be stated in writing and transmitted by U.S. mail to the person signing the petition. If the board denies a petition for rulemaking, in whole or in part, its determination shall state the reasons. If the board grants a petition for rulemaking, in whole or in part, it shall initiate rulemaking proceedings in accordance with the Louisiana Administrative Procedure Act. However, nothing in this Subchapter shall be construed to require that the board, in granting a petition for the adoption or amendment of a rule, employ or use the specific form or language requested by the petitioner, provided that the rule or amendment proposed by the board gives effect to the substance and intent of the petition.

B. Time for Determination. The board will render its determination with respect to a petition for rulemaking:

1. within 90 days of the date on which a complete petition conforming to the requirements of §9305 of this Subchapter is filed with the board; or

2. within 60 days of the date on which, at the request of the petitioner, the board entertains an oral presentation by the petitioner, whichever is later.


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

§9311. Construction and Effect

A. Board Discretion in Rulemaking. The provisions of this Subchapter are intended to provide an orderly and reasonable means for interested persons to petition the board to exercise its rulemaking authority under law and to provide for board consideration of such petitions. Petitions for rulemaking are addressed to the board's discretion as to the necessity or appropriateness of the adoption, amendment or repeal of a rule in the discharge of its licensing and regulatory responsibilities under the law. Nothing in this Subchapter shall be deemed to create any right or entitlement in any person to require the board to exercise its rulemaking authority.

B. Nature and Effect of Determination. The board's disposition of a petition for rulemaking by a determination made under §9309 of this Subchapter does not constitute, and shall not be deemed to constitute, a decision or order within the meaning of Louisiana Administrative Procedure Act, R.S. 49:951(3) or a declaratory order or ruling within the meaning of R.S. 49:962 and the procedures prescribed by this Subchapter do not constitute an adjudication within the meaning of R.S. 49:951(1). A determination by the board with respect to a petition for rulemaking is final and not subject to judicial review or other appeal.


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

Family Impact Statement

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of the proposed rules on the family has been considered. It is not anticipated that the proposed rules 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 rules 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 rules 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 rules on organizations that provide services for individuals with developmental disabilities has been considered. It is not anticipated that the proposed rules 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 Statement

It is not anticipated that the proposed rules 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 Duthu, 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: Rules of Procedure; Petitions for Rulemaking

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 intends to adopt rules which will provide the procedures for the public and/or licensees to request
consideration of the adoption, amendment, or repeal of a Board rule.

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 prescribes the method by which interested persons may petition the Louisiana State Board of Medical Examiners to exercise its rulemaking authority to adopt, amend or repeal administrative rules. 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, and/or the receipts and/or income of, affected persons, small businesses, or non-governmental groups, including physicians or other health care providers licensed by the LSBME.

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

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Legislative Fiscal Office