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
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Hon. Lawrence A. “Larry” Bagley
Chairman
Committee on Health and Welfare
House of Representatives of the
State of Louisiana
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Hon. Clay Schexnayder
Speaker
House of Representatives of the
State of Louisiana
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Baton Rouge, Louisiana 70804
apa.housespeaker@legis.la.gov

RE: 2ND Report regarding Proposed Rules governing: MEDICAL PROFESSIONS; RULES OF
PROCEDURE; ADJUDICATION; ASSESSMENT OF COSTS AND FINES (LAC
46:XLV.9935)

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 amendments to its administrative rules governing physician licensure and certification.

As indicated in the First Report to your office, dated October 13, 2020, the Board is amending its rules governing adjudication to insert a new section (9935) addressing the assessment of costs and fees in board orders and/or proceedings where a licensee/respondent has been found in violation of the law and/or rules applicable to that licensee/respondent.

The Occupational Licensing Review Commission (OLRC) approved the proposed rules at its July 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 July 23, 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,

**LOUISIANA STATE BOARD OF MEDICAL EXAMINERS**

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 July 23, 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 Board of Examiners and Certified Shorthand Reporters**
  - i. LAC 46:XXI.611(B) Activities Not Acceptable for Continuing Education Credits
  - ii. LAC 46:XXI.901 Fees

- **Louisiana Licensed Professional Counselors Board of Examiners**
  - i. LAC 46:LX.505 Teletherapy Guidelines for Licensees
  - ii. LAC 46:LX.3701 Endorsement

- **Louisiana State Board of Dentistry**
  - i. LAC 46:XXXIII.322 Expungement of Disciplinary Actions
  - ii. LAC 46:XXXIII.1502 Types of Permits

- **Louisiana State Board of Nursing**
  - i. LAC 46:XLVII.4505 Definitions
  - ii. LAC 46: XLVII.4507 Licensure as Advanced Practice Registered Nurse
  - iii. LAC 46:XLVII.4513 Authorized Practice

- **Louisiana Department of Agriculture and Forestry**
  - i. LAC 7:XXIX.113(B-F) Examination Schedule and Administration
  - ii. LAC 7:XXIX.115(D) General Requirements for All Licensees or Permittee
  - iii. LAC 7:XXIX.117 Professional and Occupational Standards and Requirements
- **Louisiana Board of Pharmacy**
  i. LAC 46:LIII.505 Licensure
  ii. LAC 46:LIII.2441 Definitions
  iii. LAC 46:LIII.2443 Marijuana Products
  iv. LAC 46:LIII.2451 Operation of Marijuana Pharmacy

- **Louisiana State Board of Medical Examiners**
  i. LAC 46:XLV.323 Qualifications for License
  ii. LAC 46:XLV.361 Application Procedure
  iii. LAC 46:XLV.363 Additional Requirements for International Medical Graduates
  iv. LAC 46:XLV.435 Continuing Medical Educational Requirement
  v. LAC 46:XLV.439 Documentation Procedure
  vi. LAC 46:XLV.441 Failure to Satisfy Continuing Medical Education Requirements
  vii. LAC:46:XLV.443 Application of Requirements to All Licensees; Resolution of Conflict
  viii. LAC:46XLV.1307 Qualifications for Certification for Advanced Practice; Scope of Practice
  ix. LAC:46:XLV.9935 Assessment of Costs and Fees
  x. LAC 46:XLV.402 Provisional Temporary Permit Pending Results of Criminal History Record Information
  xi. LAC 46:XLV.412 Emergency Temporary Permits
  xii. LAC 46:XLV.9714 Guidelines for determining whether to issue public or non-public actions
  xiii. LAC 46:XLV.9716 Complaint Disposition Guidelines

This Resolution was ADOPTED by unanimous vote of the Commission on September 10, 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.

Leslie Ricard Chambers, Chair
NOTICE OF INTENT

Department of Health
Board of Medical Examiners

Adjudication; Practice (LAC 46:XL.9935)

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 adjudication, by inserting a new section (§9935), dealing with the assessment of costs and fines in board proceedings. The proposed amendments are set forth below.

Title 46
PROFESSIONAL AND OCCUPATIONAL STANDARDS
Part XLV. Medical Professions
Subpart 5. Rules of Procedure

Chapter 99. Adjudication
§9935. Assessment of Costs and Fine

A. Assessment. As part of a decision, consent order, or other agreed order, the Board may require a respondent to pay all costs of the board proceedings. If costs are assessed in a consent or other agreed order, the amount shall be stated in the order.

B. Special Definition. Costs of the Proceedings—for the purposes of this rule, shall mean a reasonable charge to meet all obligations incurred by the board in the performance of its duties, including but not limited to investigators', stenographers', and attorney fees, witness fees and expenses, and the per diem and expenses of the members of the board's hearing panel.

C. Notice. Notice of the application of this Section shall be provided to a respondent with the written notice of filing of an administrative complaint, pursuant to 9905.

D. Timing; Content; Service; Scope and Limitations; Exceptions and Requests for Modification; Disposition. Statements of Costs shall be processed as follows:

1. Timing. A statement of costs shall be compiled by the board within 20 days from the date on which the board's decision is served on the respondent.

2. Content. A statement of costs must state with particularity the nature and amount of the costs assessed. The statement must be signed and certify that all reasonable attempts have been made to ensure the statement's accuracy.

3. Service. A statement of costs shall be served on respondent by regular and certified mail at the last known address on file with the board not later than 20 days from the date on which the board’s decision is served on the respondent.

4. Scope and Limitations. A statement of costs shall be assessed in any decision following an administrative hearing, in which a respondent is found guilty of a violation of a law or rule administered by the board. The statement shall include those costs actually incurred by the board from the time of filing of an administrative complaint until the issuance of a final decision or order; provided, however, and except as provided below, that such costs shall not exceed for a respondent:

a. physician, the sum of $75,000;

b. allied health care practitioner, as to whom the board is authorized by law to assess the costs of the proceeding, the sum of $25,000.

5. Exceptions; Requests for Modification. Within 20 days of the date of service of the statement of costs:

a. the respondent may file an exception to, or submit a request for modification of, a statement of costs. Each such exception or request shall be accompanied by a concise statement of the grounds on which the exception or request is based and any supporting legal or other authority. Within 10 days of such filing or submission, a response may be filed by the complainant;

b. the complainant may request an assessment of costs above the amount specified above. Such a request shall be made only when the complainant contends a respondent unreasonably increased the costs of the proceedings by activities undertaken to harass or create undue burden, or by the repetitive, unduly burdensome, or unwarranted filing of meritless motions or discovery requests. Within 10 days of the filing of such a request, a response may be filed by the respondent.

6. Disposition of Exceptions and Requests for Modification. Upon timely filing:

a. an exception or request shall be referred to the presiding officer of the hearing panel with respect to the proceeding for a ruling. The presiding officer, in his or her discretion, may refer an exception or request to the entire hearing panel which considered the case for disposition, and any party aggrieved by the ruling of a presiding officer may request, within 10 days of receipt of the ruling, that the exception or request be reconsidered by the entire panel which heard the case;

b. the matter shall be ordinarily be decided on by the presiding officer or the hearing panel, as the case may be, on the papers filed, without hearing. On the written request of respondent or complainant, however, and on demonstration that there are good grounds therefor, the presiding officer may grant opportunity for hearing by oral argument;

c. the president of the board or presiding officer of the hearing panel, as the case may be, may delegate the task of ruling on such exceptions or request to the board’s independent legal counsel appointed pursuant to §9921D, who is independent of complaint counsel and who has not participated in the investigation or prosecution of the case.

E. Payment of Costs and Expenses; Periodic Payment Plan; Waiver

1. A statement of costs must be satisfied within 30 days of receipt unless the statement of costs provides otherwise or the respondent enters into a periodic payment plan with the board’s compliance officer assigned to the matter or with another individual designated by the board.

2. The board’s compliance officer or designee may enter into an agreement with a respondent for a reasonable periodic payment plan if the respondent demonstrates in writing the present inability to pay such costs or provides other satisfactory cause to support the request.

3. A respondent may ask the board to review an adverse determination by its compliance officer or designee regarding specific conditions for a periodic payment plan. Such review shall be conducted in accordance with §9935D.6.

F. Fine. As part of a decision, consent order, or other agreed order, the board may require the payment of a fine; provided, however, that such fine shall not exceed, as to a respondent:

a. physician, the sum of $5,000;
b. allied health care practitioner, the amount authorized by law, but in no event more than $5,000.

G. Waiver; Adjustment. A statement of costs or amount of a fine, or both, may be waived or reduced by the board, in its discretion, in whole or part, upon a request submitted in writing that evidences to the board’s satisfaction a significant medical, physical, financial or similar extenuating circumstance precluding the individual's payment of costs or fine or where it appears to the board in the interests of justice to do so.

H. Failure to Comply with Assessment of Costs or Fine. A respondent who fails to timely pay a statement of costs or fine, or who fails to comply with the terms of a periodic payment plan, shall be notified of non-compliance by first class and certified mail at his or her last known address on file with the board. A respondent’s failure to comply with such notice within thirty days of mailing may provide a basis for further action by the board.

I. Nothing in this Section shall delay, suspend, extend, or otherwise affect the time authorized by law within which a respondent may file a petition for judicial review of a final decision or order issued by the board.


HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, 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 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 the family has been considered. It is not anticipated that the proposed amendments will have any impact on 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 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: Adjudication; Practice

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 adjudication to insert a new rule regarding the assessment of costs and fines against its licensees pursuant to a decision, consent order, or other agreed order so as to provide for the preparation of a statement detailing the costs, service/notice of the costs, a timeline within which the costs must be paid, and a maximum sum due depending upon whether the licensee is a physician or allied practitioner, with the goal of the licensee-respondent paying all costs of the Board proceedings where the licensee-respondent was found to have violated a law or rule administered by the Board after an administrative hearing. (46:XLV.9935). There are provisions for requests for modification and/or exceptions as well as a periodic payment plan. Finally, there are also provisions for fines as part of a decision, consent order, or other agreed upon order, with failure to comply with either an assessment of costs and/or a fine, establishing a basis for further action at the Board’s discretion.

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 recoup monies the LSBME already expends on administrative hearings. Likewise, the provisions for fines also attempt to recoup monies the LSBME expended or will have to expend in connection with drafting or further administration of a consent order or other agreed upon order. Accordingly, the Board anticipates additional revenues of an indeterminable amount.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS, SMALL BUSINESSES, OR NON-GOVERNMENTAL 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. Culetta, Jr., MD
Executive Director
2010®058

Alan M. Bozberger
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
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 Ventré 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”).¹ 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