May 4, 2021

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Hon. Clay Schexnayder
Speaker
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RE: 2ND Report regarding Proposed Rules governing: RULES OF PROCEDURE; COMPLAINTS AND INVESTIGATIONS; GUIDELINES FOR DETERMINING WHETHER TO ISSUE PUBLIC OR NON-PUBLIC ACTIONS AND COMPLAINT DISPOSITION GUIDELINES (LAC 46:XLV.9714 and 9716)

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 the rules of procedure in complaints and investigations and the guidelines for determining whether to issue a public or non-public action, along with complaint disposition guidelines.

As indicated in the First Report to your office, dated October 13, 2020, the Board proposes new rules which provide guidelines to licensees regarding complaint disposition and/or criteria the Board may consider in determining whether informal complaint disposition is non-disciplinary, or disciplinary.

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

[Signature]

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 Permits
  - 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**
  1. LAC 7:XXXIX.111 Horticulture; Minimum Examination Performance Levels Required

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

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

- **Louisiana Board of Medical Examiners**
  1. LAC 46:XLV.323, 361, 363 Physicians *(final review)*
  2. LAC 46:XLV.315, 415, 417 Physician Licensure and Certification *(final review)*
  3. LAC 46:XLV.402, 412 Licensure and Certification *(final review)*
  4. LAC 46:XLV.433, 435, 439, 441, 443 Continuing Medical Education *(final review)*
  5. 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

Rules of Procedure; Complaints and Investigations
(LAC 46:XLV.9714)

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 (§9714), dealing with guidelines for determining whether to issue public or non-public actions. The proposed amendments are set forth below.

Title 46
PROFESSIONAL AND OCCUPATIONAL STANDARDS
Part XLV. Medical Professions
Subpart 5. Rules of Procedure
Chapter 97. Complaints and Investigations
§9714. Guidelines for Determining Whether to Issue Public or Non-Public Actions

A. The board has the responsibility to consider and determine appropriate action as to all conduct alleged to violate the Louisiana Medical Practice Act, R.S. 37:1261-1292 et seq., other practice acts respecting allied health care practitioners governed by the board, and the rules and regulations promulgated by the board in carrying out the provisions of this Part.

B. This Section provides guidance as to the criteria the board may consider in determining whether informal complaint disposition is non-disciplinary (not public) or disciplinary (public).

C. This Section is intended to compliment, but not limit the board's authority to make such dispositions as it may deem appropriate under the particular facts and circumstances presented in any matter.

D. In determining whether informal complaint disposition is non-disciplinary or disciplinary, as well as the terms and conditions of disciplinary dispositions, the board may consider aggravating or mitigating circumstances. A list of aggravating and mitigating circumstances is set forth below but is neither intended to be nor shall it be construed as an exclusive listing of circumstances.

1. Aggravating circumstances may warrant a disciplinary disposition or, in the case of a disciplinary disposition, justify revocation, the duration of suspension and enhancement of the period and type of probationary terms, conditions and/or restrictions of a consent or other board order. Aggravating circumstances include, but are not limited to:
   a. a danger to public health, safety and welfare;
   b. patient(s) harm or one or more violations that involve more than one patient;
   c. severity of patient harm;
   d. prior similar violations or board disciplinary action;
   e. disciplinary action in another jurisdiction or by a government agency, peer review or professional organization or health care entity;
   f. conduct involving patient exploitation;
   g. failure to provide professional service to a person because of such person's race, creed, color or national origin;
   h. failure to cooperate with board investigation or failure to adhere/comply with previous board order;
   i. dishonesty or selfish motive;
   j. attempt to conceal, or refusal to acknowledge nature of conduct;
   k. financial benefit to licensee or applicant;
   l. other relevant circumstances increasing the seriousness of the misconduct.

2. Mitigating circumstances may result in a non-disciplinary disposition or, in the case of a disciplinary disposition, justify reduction of the duration of suspension or period and type of probationary terms, conditions and/or restrictions of a consent or other board order. Mitigating circumstances include, but are not limited to:
   a. those that do not constitute an aggravating circumstance as set forth in this Section;
   b. practice-related or other professional or competency concerns that do not rise to a level of a violation of the practice act or board rules;
   c. isolated, minor or technical violation with adequate explanation that is not likely to recur;
   d. steps taken to insure nonoccurrence of future similar violation;
   e. timely and good faith efforts to rectify or mitigate consequences of misconduct;
   f. remorse, recognition/acknowledgment of wrongdoing;
   g. cooperation with board and board staff;
   h. potential for rehabilitation;
   i. voluntary participation in board approved continuing medical or professional education;
   j. absence of adverse patient impact;
   k. remoteness of misconduct;
   l. other relevant circumstances reducing the seriousness of the misconduct.

E. By setting forth the above guidelines the board does not intend to restrict, and indeed reserves unto itself, its authority and discretion to take such action it may determine appropriate in any particular matter with respect to informal and formal complaint disposition.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1261-1292 and 37:1270(A)(5).

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 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 Jacinth 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

Board of Medical Examiners (board) by the Louisiana Medical Practice Act, R.S. 37:1270, the board proposes new rules which provide guidelines to licensees regarding complaint disposition and/or the criteria the Board may consider in determining whether complaint disposition is a public action or a non-public action.

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 licensees with more information in the form of guidelines regarding what the board may analyze when determining complaint disposition, and the criteria the Board may consider in determining whether to issue public or non-public actions. 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
2010-9064

Alan M. Boxberger
Staff Director
Legislative Fiscal Office

FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Rules of Procedure; Complaints and Investigations

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