

## NOTICE OF INTENT

### Department of Health Board of Medical Examiners

Acupuncturists, Licensure and Certification; Practice  
(LAC 46:XLV.Chapters 21 and 51)

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 and Louisiana law governing licensed acupuncturists, R.S. 37:1356 et seq., the board proposes to amend its rules governing the licensing, certification and practice of licensed acupuncturists (LAC 46:XLV Chapters 21 and 51) to conform them to Act 93 of the 2018 Regular Session of the Louisiana Legislature. Among other items, the proposed changes: (i) update the licensure qualifications for licensed acupuncturists (2113); (ii) remove the requirement and associated references that licensed acupuncturists have a relationship with a referral physician who practices at a physical practice location in this state, for referrals and any follow-up care which may be necessary (2111-2115, 2127, 2141, 5105-5107, 5111); and (iii) make associated or necessary changes (e.g., removal of definitions no longer required (2103)). The proposed changes also contain an annual continuing professional education requirement of 15 hours for license renewal (2129, 2149-2161) and a new section on reinstatement of licensure (2130) for consistency with current practices. The proposed amendments are set forth below.

#### Title 46

### PROFESSIONAL AND OCCUPATIONAL STANDARDS

#### Part XLV. Medical Professions

#### Subpart 2. Licensure and Certification

### Chapter 21. Acupuncturists and Acupuncture Detoxification Specialists

#### Subchapter A. General Provisions

#### §2103. Definitions

A. As used in this Chapter and Chapter 51, the following terms shall have the meanings specified.

\* \* \*

*Clinical Practice Guidelines or Protocols*  
(*guidelines or protocols*)—Repealed.

\* \* \*

*Physical Practice Location*—Repealed.

\* \* \*

*Referral Physician*—Repealed.

\* \* \*

B. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1360 and 37:1270(B)(6).

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

19:334 (March 1993), amended LR 34:1615 (August 2008), amended by the Department of Health, Board of Medical Examiners, LR 43:1362 (July 2017), LR 45:

### Subchapter C. Licensed Acupuncturist and Acupuncture Detoxification Specialist Certification; Qualifications for Supervising Physicians and Licensed Acupuncturists

#### §2111. Scope of Subchapter

A. The rules of this Subchapter prescribe the qualifications and procedures requisite to licensure as a licensed acupuncturist, certification as an acupuncture detoxification specialist, and those of a supervising physician and supervising licensed acupuncturist in the state of Louisiana.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1360 and 37:1270(B)(6).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 19:335 (March 1993), amended LR 34:1617 (August 2008), amended by the Department of Health, Board of Medical Examiners, LR 43:1363 (July 2017) LR 45:

#### §2113. Qualifications for Licensure as a Licensed Acupuncturist

A. To be eligible for a license as a licensed acupuncturist, an applicant:

1 - 4. ...

5. shall meet both of the following:

a. hold active status with the National Certification Commission for Acupuncture and Oriental Medicine; and

b. have successfully passed the certification examination, including the biomedicine portion of the examination, given by the National Certification Commission for Acupuncture and Oriental Medicine or its successor.

B. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1360 and 37:1270(B)(6).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 19:335 (March 1993), amended LR 34 1617 (August 2008), amended by the Department of Health, Board of Medical Examiners, LR 43:1364 (July 2017), LR 45:

#### §2115. Application Procedure for Licensed Acupuncturist

A. Application for certification as a licensed acupuncturist shall be made in a format approved by the board.

B. An application under this Subchapter shall include:

1. ...

2. attestation by the applicant certifying the truthfulness and authenticity of all information, representations, and documents contained in or submitted with the completed application; and

3. such other information and documentation as the board may require.

C. - F. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1360 and 37:1270(B)(6).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 19:336 (March 1993), amended LR 34:1618 (August 2008), amended by the Department of Health, Board of Medical Examiners, LR 43:1364 (July 2017), LR 45:

**Subchapter E. Certification, License Issuance,  
Approval of Registration of  
Supervising Physician or  
Supervising Licensed  
Acupuncturist, Termination,  
Renewal, Reinstatement**

**§2127. Expiration and Termination of  
Certification and Licensure; Modification**

A. - B. ...

C. Licensure as a licensed acupuncturist whether an initial license or renewal thereof, shall terminate and become void, null and to no effect on and as of any day that the licensed acupuncturist's license expires for failure to timely renew.

D. Reserved.

E. - F.2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1360 and 37:1270(B)(6).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 19:337 (March 1993), amended LR 34:1621 (August 2008), amended by the Department of Health, Board of Medical Examiners, LR 43:1366 (July 2017); LR 45:

**§2129. Renewal of Certification and Licensure;  
Verification of Registration**

A. Every certificate or license issued by the board under this Chapter shall be renewed annually on or before the last day of the year in which it was issued by submitting to the board a properly completed application for renewal, in a format specified by the board, together with evidence of the completion of 15 hours of accredited continuing professional education and the renewal fee prescribed in Chapter 1 of these rules.

B. - C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1360 and 37:1270(B)(6).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 19:337 (March 1993), amended LR 34:1621 (August 2008), amended by the Department of Health, Board of Medical Examiners, LR 43:1366 (July 2017), LR 45:

**§2130. Reinstatement of Expired License**

A. A license that has expired as a result of non-renewal for less than two years from the date of expiration, may be reinstated by the board subject to the conditions and procedures hereinafter provided.

B. An application for reinstatement shall be submitted in a format approved by the board and be accompanied by:

1. a statistical affidavit in a form provided by the board;
2. a recent photograph of the applicant;

3. such other information and documentation as is referred to or specified in this Chapter or as the board may require to evidence qualification for licensure; and

4. the renewal fee and delinquent fee, set forth in Chapter 1 of these rules, for each year during which the license was expired.

a. if the application is made less than one year from the date of expiration, the penalty shall be equal to the renewal fee of the license;

b. if the application is made more than one but less than two years from the date of expiration, the penalty shall be equal to twice the renewal fee of the license.

C. An individual whose license has lapsed and expired for a period in excess of two years shall not be eligible for reinstatement consideration but may apply to the board for an initial license pursuant to the applicable rules of this Chapter.

D. A request for reinstatement may be denied by virtue of the existence of any grounds for denial of licensure as provided by the Act or these rules.

E. The burden of satisfying the board as to the qualifications and eligibility of the applicant for reinstatement of the license as a licensed acupuncturist shall be on the applicant. An applicant shall not be deemed to possess such qualifications unless the applicant demonstrates and evidences such qualifications in a manner prescribed by and to the satisfaction of the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1360 and 37:1270(B)(6).

HISTORICAL NOTE: Promulgated by the Department of Health, Board of Medical Examiners, LR 45:

**Subchapter G. Acupuncture Advisory Committee  
§2141. Constitution, Function and  
Responsibilities of Advisory Committee**

A. ...

B. Composition. The committee shall be comprised of five members selected by the board, four of whom shall be licensed acupuncturists and one of whom shall be a physician acupuncturist. All members of the advisory committee will be licensed by the board and practice and reside in this state.

C. - D. ...

E. Functions of the Committee. The committee will provide the board with recommendations relating to:

1. - 3. ...

4. perform such other functions and provide such additional advice and recommendations as may be requested by the board.

F. - G. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1360 and 37:1270.

HISTORICAL NOTE: Promulgated by the Department of Health, Board of Medical Examiners, LR 43:1367 (July 2017), LR 45:

## **Subchapter H. Continuing Education**

### **§2149. Scope of Subchapter**

A. The rules of this Subchapter provide standards for the continuing professional education required for annual renewal of a license to practice as a licensed acupuncturist, and prescribe procedures applicable to satisfaction and documentation thereof.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1360 and 37:1270(B)(6).

HISTORICAL NOTE: Promulgated by the Department of Health, Board of Medical Examiners, LR 45:

### **§2151. Continuing Education Requirement**

A. To be eligible for annual license renewal a licensed acupuncturist shall evidence and document in a format specified by the board the successful completion of 15 hours of approved continuing professional education.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1360 and 37:1270(B)(6).

HISTORICAL NOTE: Promulgated by the Department of Health, Board of Medical Examiners, LR 45:

### **§2153. Qualifying Programs and Activities**

A. To be acceptable as qualified continuing professional education under these rules, an activity or program must have significant intellectual or practical content, dealing primarily with matters related to acupuncture, and its primary objective must be to maintain or increase the participant's competence as an acupuncturist.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1360 and 37:1270(B)(6).

HISTORICAL NOTE: Promulgated by the Department of Health, Board of Medical Examiners, LR 45:

### **§2155. Approval of Program Sponsors**

A. Any education program, course, seminar or activity accredited by the National Certification Commission for Acupuncture and Oriental Medicine or its successor or recognized by the United States Department of Education shall be deemed approved by the board for purposes of qualifying as an approved continuing professional education.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1360 and 37:1270(B)(6).

HISTORICAL NOTE: Promulgated by the Department of Health, Board of Medical Examiners, LR 45:

### **§2157. Documentation Procedure**

A. A format or method specified by the board for documenting and certifying completion of continuing professional education shall be completed by licensees and returned with or as part of an annual renewal application.

B. Any continuing professional education activities not approved by the board pursuant to these rules shall be referred to the advisory committee for its evaluation and recommendations. If the committee determines that a continuing education activity does not qualify for recognition by the board or does not qualify for the number of continuing education units claimed by the applicant, the board shall give notice of such determination to the applicant for renewal. The

board's decision with respect to approval and recognition of any such activity shall be final.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1360 and 37:1270(B)(6).

HISTORICAL NOTE: Promulgated by the Department of Health, Board of Medical Examiners, LR 45:

### **§2159. Failure to Satisfy Continuing Education Requirements**

A. An applicant for license renewal who fails to evidence satisfaction of the continuing professional education requirements shall be given written notice of such failure by the board. The license of the applicant shall remain in full force and effect for a period of 60 days following the mailing of such notice, following which it shall be deemed expired, unrenewed, and subject to revocation without further notice, unless the applicant shall have, within such 60 days, furnished the board satisfactory evidence, by affidavit, that:

1. applicant has satisfied the applicable continuing professional education requirements; or

2. applicant's failure to satisfy the continuing professional education requirements was occasioned by disability, illness, or other good cause as may be determined by the board.

B. The license of a licensed acupuncturist whose license has expired by nonrenewal or been revoked for failure to satisfy the continuing education requirements of these rules may be reinstated by the board within the time and in accordance with the procedures for reinstatement provided by these rules.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1360 and 37:1270(B)(6).

HISTORICAL NOTE: Promulgated by the Department of Health, Board of Medical Examiners, LR 45:

### **§2161. Waiver of Requirements**

A. The board may, in its discretion, waive all or part of the continuing professional education required by these rules in favor of a licensed acupuncturist who makes written request for such waiver and evidences to the satisfaction of the board a permanent physical disability, illness, financial hardship, or other similar extenuating circumstances precluding the satisfaction of the continuing professional education requirements.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1360 and 37:1270(B)(6).

HISTORICAL NOTE: Promulgated by the Department of Health, Board of Medical Examiners, LR 45:

## **Subpart 3. Practice**

### **Chapter 51. Physician Acupuncturists, Licensed Acupuncturists and Acupuncture Detoxification Specialist**

#### **§5105. Necessity of Certification or Licensure; Exemptions**

A. No person may act as or undertake to perform or practice acupuncture or acupuncture detoxification unless he or she holds a current license, certificate or permit issued by the board. While any physician may

practice acupuncture, and may apply to the board for registration to supervise an ADS, only a physician certified by the board under this Part may hold himself or herself out as a physician acupuncturist.

B. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1360 and 37:1270(B)(6).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 19:338 (March 1993), amended LR 34:1622 (August 2008), amended by the Department of Health, Board of Medical Examiners, LR 43:1367 (July 2017), LR 45:

**§5106. Supervision of Acupuncture  
Detoxification Specialist**

A. Reserved.

B. - B.3.b. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1356-37:1360 and 37:1270(B)(6).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 34:1622 (August 2008), amended by the Department of Health, Board of Medical Examiners, LR 43:1368 (July 2017), LR 45:

**§5107. Authority and Limitations of Licensed  
Acupuncturist and Acupuncture  
Detoxification Specialist**

A. A licensed acupuncturist shall not:

1. perform, provide, attempt to perform or provide, or hold himself or herself out to the public as being capable of performing or providing any procedure, service or function required by law to be performed or provided by one possessing a certificate, registration or license other than as a LAc, in the absence of such certificate, registration or license; or

2. identify himself, or permit any other person to identify him, as "doctor" unless he designates the degree entitling such use or render any service to a patient unless the LAc has clearly identified himself as a LAc by any method reasonably calculated to advise the patient that the licensed acupuncturist is not a licensed physician.

B. - B.4. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1360 and 37:1270(B)(6).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 19:338 (March 1993), amended LR 34:1623 (August 2008), amended by the Department of Health, Board of Medical Examiners, LR 43:1368 (July 2017), LR 45:

**§5111. Obligations and Responsibilities**

A. An LAc shall:

1. report directly to the board, in writing, of the retirement or withdrawal from active practice by the LAc;

2. comply with reasonable requests by the board for personal appearances, information and documentation required by this Part relative to the functions, activities, and performance of the licensed acupuncturist;

3. - 4. ...

B. The licensed acupuncturist shall insure strict compliance with his or her obligations and responsibilities set forth in the rules of this Part.

C. - D. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1360 and 37:1270(B)(6).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 19:338 (March 1993), amended LR 34:1624 (August 2008), amended by the Department of Health, Board of Medical Examiners, LR 43:1369 (July 2017), LR 45:

**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 Impact 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 Impact 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 rule 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 Rita Arceneaux, Confidential Executive Assistant, Louisiana State Board of Medical Examiners, 630 Camp Street, New Orleans, Louisiana, 70130, (504) 568-6820, Ex. 242. She is responsible for responding to inquiries. Written comments will be accepted until 4 p.m., January 21, 2019.

**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 January 28, 2019 at 9 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.

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M.D.,  
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physician may enhance practice and employment opportunities for AcAs in Louisiana in the aggregate, as it may allow for more AcAs to practice. Otherwise, it is not anticipated that the proposed changes will have any impact on competition or employment.

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Evan Brasseaux  
Staff Director  
Legislative Fiscal Office

**FISCAL AND ECONOMIC IMPACT  
STATEMENT FOR ADMINISTRATIVE RULES  
RULE TITLE: Acupuncturists, Licensure and  
Certification; Practice**

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

The proposed rule changes will result in a one-time publication expense of \$2,888 in FY 19 for the LA State Board of Medical Examiners (LSBME). Otherwise, the proposed rule changes will not result in any additional costs for state or local governmental units.

The proposed rule changes amend rules governing the licensing, certification and practice of licensed acupuncturists (AcAs) to conform with Act 93 of the 2018 Regular Session. The proposed rule changes do the following: update the licensure qualifications for licensed acupuncturists; remove the requirement and associated references that licensed acupuncturists have a relationship with a referral physician who practices at a physical practice location in this state, for referrals and any follow-up care which may be necessary; and make associated technical changes consistent with Act 93. The proposed changes also contain a continuing professional education requirement of 15 hours annually for license renewal and add a section on reinstatement of licensure for consistency with current practices.

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

There is no anticipated effect on the revenue collections for state or local governmental units.

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

Consistent with Act 93, the proposed rule changes remove the requirement for licensed acupuncturists to have a relationship with a referral physician, identifying such a physician in licensure applications to the Board or providing associated paperwork e.g., attestations, clinical practice guidelines, protocols or notices, etc. These changes will result in a reduction in workload and paperwork for applicants for AcA licensure.

The changes also include a continuing professional education requirement for annual license renewal. Due to the varying costs for obtaining continuing professional education, the LSBME cannot estimate the cost attributable to the proposed changes.

**IV. ESTIMATED EFFECT ON COMPETITION AND  
EMPLOYMENT (Summary)**

Removal of the requirement that a licensed acupuncturist have a relationship with a referral