

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 amounts 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.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1261-1292, 37:1270, 37:1285.

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 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: 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 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#058

Alan M. Boxberger
Staff Director
Legislative Fiscal Office