

LOUISIANA STATE BOARD OF MEDICAL EXAMINERS

February 27, 2023

AGENDA

CALL TO ORDER

Business Meeting, Monday, February 27, 2023, 8:30 a.m. 630 Camp Street, New Orleans,
5th Floor Board Room

1. **PUBLIC/VISITORS INTRODUCTION/COMMENTS**

2. **MINUTES/PRIOR MEETINGS/CONFERENCES**

Approval of public session minutes for Board meeting held on January 23, 2023.

3. **FOLLOW-UP ACTION ITEMS**

Control the Dose course for Private Radiological Technicians

4. **RULINGS AND ADVISORY OPINIONS**

Request for an Advisory Opinion re: What the License Allows vs Current Clinical Competency and Institution Privileges

5. **COMMUNICATION AND INFORMATION**

FSMB Conference May 4, 2023

FSMB Request for Comments on Draft Report re Strategies for Prescribing Opioids

Request for Medication Clarification

6. **ADMINISTRATIVE MATTERS**

President's Report.

Executive Director's Report.

7. **ADVISORY COMMITTEE REPORTS**

Podiatry Advisory Committee Nominee

8. **NEXT MEETING**

9. **REGULATORY REPORT**

02.00.00 REGULATORY REPORT – February 2023

02.01.00 RULES UNDER DEVELOPMENT

02.01.01 Licensure and Certification; Physicians (IMLC) — The Board approved an amended draft of proposed new rules to accommodate the passage of the Interstate Medical Licensure Compact Law, La. R.S. 37:1310.1. The IMLC law, to the extent it conflicts with other Louisiana laws and/or rules, supersedes those laws and rules. The IMLC law does not provide for our license application "Oath questions", determination of citizenship and/or an annual CME requirement. In order to conform the requirements of those holding IMLC licenses, with usual licensees, a working draft of proposed rules was submitted to the Board and approved in April 2021. The working draft provides for severability; provides that upon first failure to produce the information/documentation within 90 days of notice, the IMLCC licensee will receive a non-disciplinary communication from the Director of Investigations outlining that he/she must comply with the required CME, and must report completion to us prior to renewal, in addition to their next year's CME. If the IMLCC licensee repeats the failure, then this is grounds for the Board to proceed with investigation of the violation or potential violation, and possible discipline under La. R.S. 37:1285. Likewise, the failure to produce official proof of citizenship and/or authorization to live and work in the United States, along with responses to the Oath questions, may also provide grounds for the Board to proceed with investigation of the violation or potential violation, and possible discipline under La. R.S. 37:1285. The Oath topics reflect the Board may ask about lawsuits, and/or settlements of medical malpractice, fraud and/or intentional torts. OLRC took place July 15, 2021. The OLRC approved the proposed draft rule. While the OLRC was considering the IMLC draft, another rule effort involving the same CME provision underwent final promulgation. Thus, the IMLC draft will need to be revised to accommodate the new CME provision language. Since the board has also indicated it would like all licensee types to take the online CME "Laws and Rules Course," we plan to draft a rule to incorporate this into the requirements for use of CE Broker for documentation and for these to take place in order to renew.

02.01.02 Practice; Physicians (Marijuana) – In its April 2021 meeting, the Board approved the draft of the proposed repeal of LAC 46:XLV.Chapter -77, in its entirety. The Chapter currently contains rules governing who recommend therapeutic marijuana, legal warnings with regard to recommending marijuana, definitions and prohibitions with regard to the conditions for which it may be recommended, registration of physicians, form for recommendation, requirements for treatment and keeping of records, and discipline pertaining to such rules. The repeal is being done to conform to Act 286 of the 2020 Regular Session of the Louisiana Legislature. OLRC took place July 15, 2021. The OLRC approved the proposed draft rule. The Notice and Fiscal and Economic Impact Statements (FEIS) have been drafted and the Fiscal Office has approved the FEIS. The repeal was published in the September 2022 La. Register, and it was sent to the Legislative Committees. **We did not receive any public comments before, during or after the public comment time period and/or the public hearing, which was held on October 25th at the Board office. Next, we will report the results of the public comment and hearing in the Second OLRC report and Second Legislative report, both of which we are being drafted.**

02.01.03 Rules of Procedure; Complaints and Investigations – In its October 2021 meeting, the Board approved the draft of proposed additions and revisions to 46:XLV.Chapter 97. Specifically, to rules 9703, 9707, and 9709 so as to make the

rules align with the language of La. R.S. 37:1285.2 and to ensure clarity. The OLRC First Report was drafted, submitted and the rule was approved on March 10, 2022. The Notice and Fiscal and Economic Impact Statements (FEIS) have been approved by the Fiscal Office and the proposed rule was published in the Louisiana Register in October. **We are in the process of accepting public comments and a public hearing will be held November 29, 2022 at 9 a.m. at the Board office.**

02.01.04 Rules of Procedure; Adjudications; Recusal - In its October 2021 meeting, the Board approved the draft of proposed additions to 46:XLV.Chapter 99. Specifically, to rule 9920 adding language to ensure the proceedings are fair and impartial and clarifying that the recusal includes hearings as well as the proceedings leading up to a hearing and to provide, when appropriate, for the recusal of the Director of Investigations. The OLRC First Report was drafted, submitted and the rule was approved on March 13, 2022. The Notice and Fiscal and Economic Impact Statements (FEIS) have been approved by the Fiscal Office and the rule promulgation was published in the Louisiana Register in August. Simultaneously, the first report was submitted to the appropriate Legislative Committees. The public hearing was held on September 27th at 3 pm and we did not receive any public comments and/or appearances at the hearing. We drafted the second report to the OLRC and the OLRC approved it. **Next, we will send a second report to the Louisiana legislative committees.**

02.01.05 Licensure and Certification; Passing Scores - In its October 2021 meeting, the Board approved the draft of proposed prospective additions to 46:XLV.Chapter 3. Specifically, to rule 385 adding language to ensure that prospectively, for those applicants applying on or after January 1, 2022 the minimum passing score will align with the passing score of the respective testing/exam entities. Also, with respect to rule 387 adding language to ensure that prospectively, those applying on or after January 1, 2022 who have failed to pass Step 2 or 3 of the USMLE more than four times, or Part 2 or 3 of the NBME more than three times or Level 2 or Level 3 of the COMLEX-USA, or the NBOME, or any combination of those, more than three times, are deemed ineligible for licensing. Next, the Notice and Fiscal and Economic Impact Statements will be drafted and after the Fiscal office approves same, we will be publishing it in the Louisiana Register and submitting it to the appropriate Legislative committees.

02.01.06 Licensure and Certification; Restricted Licensure, Permits; Retired Physician License Renewal 417.1 has been revised to be a Reduced Physician Renewal under 418 - In its October 2021 meeting, the Board approved the draft of proposed additions to 46:XLV.Chapter 3 to add rule 417.1 applicable to retired physician license renewals. Specifically, to add rule 417.1 applicable to retired physician license renewals so as to provide a method for an unrestricted license holder who has reached the age of 65 to renew his license with certain practice restrictions on who he may treat, requiring limitation to volunteer services without payment, permitting services to family and personal acquaintances, requiring fewer continuing medical education credits for renewal, and requiring the physician to meet all state and federal laws and rules governing the practice of medicine in Louisiana. Further, adding language to rules 435 and 447(A)(5) to accomplish the above provisions as to “retired physician license renewals”; to rule 447(A)(1) to limit the continuing medical education exception of military service outside of Louisiana to those military engaged in active service in excess of one year outside of Louisiana; and to rule 447(A)(2) with regard to the exemption from continuing medical education to those holding an initial Louisiana license for less than one year so as to require full compliance with all continuing medical education beginning with such licensee’s first renewal. Next, the Notice and Fiscal and Economic Impact Statements will be drafted and after the Fiscal office approves same, we will be publishing it in the Louisiana Register and submitting it to the appropriate Legislative committees.

02.01.07 Licensure and Certification; Physicians; Rule 419 Reinstatement – In its December 2021 meeting, the Board approved the draft of proposed additions to 46:XLV.419. Specifically, so that licensees have notice of the Board’s requirements for reinstatement application. ~~the~~ The current rule states that the board “may” require applicants take a challenge exam. This rule change specifies that the board requires such an exam where the license applicant has not taken a challenge exam within the last ten years of his reinstatement application or in the alternative, the applicant is required to show proof of their maintenance of board certification by ABMS or AOA. Also, the rule amendments specify that an applicant whose license has lapsed too long for reinstatement may re-apply but such application is not an “initial” or “original” license and must meet all qualifications, requirements and procedures prescribed in the normal methods of licensure for IMLC, US/Canadian graduates and/or international medical graduates, and/or via reciprocity, as applicable and to the satisfaction of the Board. Finally, the rule amendments (a) require a photo taken within the last six months, and for the applicant to complete a reinstatement application on forms approved by the Board, and (b) eliminate the requirements of a statistical affidavit and/or letters of recommendation. Next, the Notice and Fiscal and Economic Impact Statements will be drafted and after the Fiscal office approves same, we will be publishing it in the Louisiana Register and submitting it to the appropriate Legislative committees.

02.01.08 02.04.01 Part XLV; Subpart 5. Rules of Procedure; Chapter 111 Clinical Laboratory Personnel - In its December 2021 meeting, the Board approved the repeal of administrative rules (46:XLV.Chapter 111) promulgated in 1996 which apply to investigations, discipline and adjudication of Clinical Lab Personnel. The rules are out of date, and do not comport with the current due process safeguards employed in the Medical Practice Act that protect the board’s licensees. The CLP committee deferred to the Board’s rules on complaints and adjudications of CLPs. Specifically, in June 2007, the CLP committee voted to recommend repealing these rules and having the Board handle, as it already had been, the

complaints, investigations and discipline of CLP licensees. The Board was informed in July 2007, but the rule repeal was never accomplished. The new amendment will repeal the rules, in conformance with the CLP Committee’s and the Board’s intention from 2007. Additionally, in the 2022 legislative session, the CLP Practice Act was changed to eliminate the Committee’s ability to handle its own investigations, discipline and adjudications. The first report to OLRC was approved on September 29, 2022. The Notice and Fiscal and Economic Impact Statements (FEIS) have been approved by the Fiscal Office and the proposed rule was published in the Louisiana Register in October. We are in the process of accepting public comments and a public hearing will be held November 29, 2022 at 9 a.m. at the Board office.

02.01.09 Licensure and Certification; Restricted Licensure, Permits; Non-matched Medical School Graduates - In its January 2022 meeting, the Board approved the draft of a new rule applicable to those medical graduates who do not match to a residency upon graduation. The new rule will permit qualifying Louisiana medical school graduates to apply for and, upon issuance, participate in a one-year permit program to practice in rural and/or other areas of the state where there is a critical need for physicians. The physician practicing under a critical need physician permit will be in training under a Teaching Physician, who will formally review and co-sign the work of the critical need physician. Board-certified family physicians or internists may qualify to become a Teaching Physician by completing training required by the Board. In conjunction with this proposed Rule, the Board may want to consider a rule draft for a registration fee for the critical need physician permit program and for the Teaching Physician, as well as the particular training required of the Teaching Physician. Following the initial efforts to draft this program by rule, Senator Peacock proposed legislation in 2022, and Act 757 was passed, and as a result, a new rule effort will be undertaken further outlining the program. Ms. Wilton presented two rules last month, which were approved. We expect that these two rules will not suffice to implement the entire program, but are just the first two to be done. We expect additional rules will be drafted addressing fees, how supervising physicians will apply to be registered for same, and the training program for supervising physicians. A FEIS was prepared and submitted to the fiscal office regarding the two rules. The FEIS was approved and we prepared the First Report to the Legislative Committees and published the proposed rules in the September La. Register. We did not receive any public comments before, during or after the public comment time period and/or the public hearing, which was held on October 25th at the Board office. Next, we will report the results of the public comment and hearing in the submission to the OLRP/AG’s office. **The Board approved the promulgation of an emergency rule to proceed with the implementation of the Bridge Year Program. This was accomplished on February 10, 2023, and was published in the February 2023 volume of the Louisiana Register.**

02.02.10 Licensure and Certification; Physicians; §303 Definitions - In its February 2022, the Board approved an amendment to LAC 46:XLV.303 so as to define “in good standing” to mean “a license, registration or permit that is active and not expired, suspended, revoked, surrendered, on probation, conditioned, or otherwise in a status that restricts or limits, in any manner, the activity of a licensee, registrant or permit holder under the authority of the license, registration or permit.” The First Report to OLRC has been made and OLRC approved the rule on June 29, 2022. The Fiscal and Economic Impact Statements were sent and approved by the Fiscal Office. The First Report to the Legislative Committees has been sent and the proposed rule was published in the September Louisiana Register. We did not receive any public comments before, during or after the public comment time period and/or the public hearing, which was held on October 25th at the Board office. Next, we will report the results of the public comment and hearing in the Second OLRC report and Second Legislative report, both of which we are being drafted.

02.03.00 PROPOSED RULE TOPICS IN PROGRESS ALREADY APPROVED BY THE BOARD

- Rules for CLP’s – CLP committee has made several suggested changes, which will be put on the agenda once reviewed and revised, if needed, for due process and equal protection.
- Rules for OT’s – OT Committee members have suggested changes to the rules regarding qualifying CME courses for renewal of licensure, which will be put on the agenda once reviewed and revised, if needed, for due process and equal protection.
- Amending Rules for anesthesia, including regulation of nitrous oxide, and office-based surgery.
- Rules for Acupuncture requiring a certain number of CME and a “jurisprudence” course
- Rules for RT’s – RT Committee has made requested some changes, which will be put on the agenda once reviewed and revised, if needed, for due process and equal protection.
- NTSB – As to those practitioners who prescribe controlled substances, draft rules to comply with the NTSB’s federal safety study recommendation that “all state guidelines regarding prescribing controlled substances for pain [include] a recommendation that health care providers discuss with patients the effect their medical condition and medication use may have on their ability to safely operate a vehicle in any mode of transportation.”
- Parchment Rules – the board approved making any rule changes needed to allow for notarized documents in the licensing process but also asked that we determine and assure that such documents would be admissible in court.
- For all licensees – provide a general rule re must do rules/jurisprudence course prior to first renewal.

EXECUTIVE SESSION

- 1. MINUTES/PRIOR MEETINGS**
Approval of executive session minutes for Board meeting held on January 23, 2023.
- 2. LITIGATION**

Vincent Joseph Bruno v. Cecilia Mouton and the LSBME, No. 12-5503 (Civ. Dist. Ct. Or. Par. Div. "L").

Gregory Duhon, M.D. v. Board Of Supervisors For Louisiana State University And Agricultural And Mechanical College; Thomas C. Galligan Jr.; Neeraj Jain, M. D.; Healthcare Professionals Foundation Of Louisiana; Professional Renewal Center; Louisiana State Board Of Medical Examiners, No. 2:20cv2022 (U.S. Dist. Ct. E.D. La.)

Ford v. LSBME and Dr. Valentine, in her official capacity only, USDC Eastern District of Louisiana, Case No. 18-4149 (Filed 8/31/2020)

Donovan v. LSBME, CDC Parish of Orleans, State of Louisiana, No. 2022-2964 Div. A-16

Fiaz Afzal, et al v. New Jersey BME, et al, No. 22-1609, US Court of Appeals, 3d Circuit

3. GENERAL ADMINISTRATIVE MATTERS

Pro Tem Report

Attorney Advice

4. LICENSURE, PERMITS AND CERTIFICATION

Licensee/Permit/Certification Applicant requests/waivers

Pre-Application Eligibility Determination requests per La. R.S. 37:33.

5. REPORTS INVESTIGATIONS/ADJUDICATIONS/LITIGATION

Docket Calendar

Request to Initiate/Extend Preliminary Review and/or Ratify Interim Approval to Extend Preliminary Review.

Request to Extend Formal Investigation and/or Ratify Interim Approval to Extend Formal Investigation.

Request for Board Approval of Consent Orders.

Malpractice Report

Other Investigative Matters Related to Recusal.

6. CLOSED CASE REPORTS

January 2023.

7. PROBATION MATTERS

Termination of Probation

Request from Probationers

8. COMPLIANCE REPORT(S)

Investigations 2022 Annual Report

9. ATTORNEY ADVICE

Investigation Report Resulting from Contract for Legal Services Approved by Board Per June 30, 2022, Special Call Meeting.