

LOUISIANA STATE BOARD OF MEDICAL EXAMINERS
April 25, 2022
AGENDA

CALL TO ORDER

Business Meeting, Monday, April 25, 2022, 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 minutes.

3. **ADMINISTRATIVE MATTERS**

President's Report.

Executive Director's Report -
updates on Legislative
Session including but not
limited to SB 439

Draft April Newsletter

Financial Report.

4. **NEXT MEETING**

May 23, 24 2022

5. **RULES AND REGULATIONS**

02.00.00 REGULATORY REPORT – April 2022

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, supercedes 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. **The Notice and Fiscal and Economic Impact Statements (FEIS) has been drafted and will be submitted to the Fiscal office for approval. Thereafter, we will be publishing it in the Louisiana Register and submitting it to the appropriate Legislative committees.**

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 physicians 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. Next, the Notice and Fiscal and Economic Impact Statements (FEIS) will be drafted along with the Legislative Committee's first report and after the Fiscal office approves the FEIS, we will submit it to the Legislative Committee for approval.

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 13, 2022. Next, the Notice and Fiscal and Economic Impact Statements (FEIS) will be drafted. Upon approval from the fiscal office, the rules will be submitted to the La. Register and the appropriate Legislative Committees.

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. Next, the Notice and Fiscal and Economic Impact Statements (FEIS) will be drafted. Upon approval from the fiscal office, the rules will be submitted to the La. Register and the appropriate 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 - In its October 2021 meeting, the Board approved the draft of proposed additions to 46:XLV.Chapter 3. 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. Whereas 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. 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.

02.01.09 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. Thereafter, a 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. **If potential legislation is successful, this rule will not be necessary and others will be proposed to fill out the program.**

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." Next, the First Report to OLRC will be made and thereafter the Fiscal and Economic Impact Statements will be drafted for approval.

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."

6. PERSONAL APPEARANCES

James Hammond, M.D., Medical Director, HPFL – 2021 Annual Report

PUBLIC COMMENTS

Under La. R.S. 42:17A, "a public body may hold an executive session pursuant to [R.S. 42:16](#) for one or more of the following reasons: (1) Discussion of the character, professional competence, or physical

or mental health of a person, provided that such person is notified in writing at least twenty-four hours, exclusive of Saturdays, Sundays, and legal holidays, before the scheduled time contained in the notice of the meeting at which such executive session is to take place and that such person may require that such discussion be held at an open meeting.....In cases of extraordinary emergency, written notice to such person shall not be required; however, the public body shall give such notice as it deems appropriate and circumstances permit; (2) Strategy sessions or negotiations with respect to collective bargaining, prospective litigation after formal written demand, or litigation when an open meeting would have a detrimental effect on the bargaining or litigating position of the public body;....(4) Investigative proceedings regarding allegations of misconduct; (5) Cases of extraordinary emergency, which shall be limited to natural disaster, threat of epidemic, civil disturbances, suppression of insurrections, the repelling of invasions, or other matters of similar magnitude; and,....(10) Or any other matters now provided for or as may be provided for by the legislature.”

EXECUTIVE SESSION

1. MINUTES/PRIOR MEETINGS

Executive Session Minutes Approval.

3. LITIGATION

Vincent Joseph Bruno v. Cecilia Mouton and the LSBME, No. 12-5503
(Civ.Dist.Ct.Orl.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)

4. GENERAL ADMINISTRATIVE MATTERS

Personal Appearance – James Hammond, M.D., Medical Director, HPFL re: Licensees
Attorney Advice re: Legislation; Podiatry; Physician Assistants
Request for Approval of Office Based Surgery Site Visits
Presentation by Executive Counsel

5. LICENSURE, PERMITS AND CERTIFICATION

Licensee/Permit/Certification Applicant requests/waivers

6. COMPLIANCE COUNSEL REPORT

7. REPORTS INVESTIGATIONS/ADJUDICATIONS

Docket Calendar

Interim Action(s)

Request to Initiate or Extend Preliminary Review and/or Formal Investigation

Consent Orders.

Other Investigative Matters.

Malpractice Report

8. CLOSED CASE REPORTS

March 2022

9. PROBATION MATTERS

Termination of Probation

Request from Probationers