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DEPARTMENT OF JUSTICE
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To: Mr. Arthur Hickham.
Executive Director
Louisiana State Board of Dentistry

From: Farra Mughal
Louisiana Department of Justice
Occupational Licensing Review Program

Date: July 14, 2025

Subject: Louisiana State Board of Dentistry
Proposed Amendment to LAC 46:XXXIII.136-Regarding Dental Records

I. SUMMARY

The Louisiana State Board of Dentistry (the “**Board**”) proposes adding LAC 46:XXXIII.136 (the “**Proposed Amendment**”), to establish rules relative to dental records. The Proposed Amendment (i) affirms a patient’s right to receive copies of requested records, (ii) affirms a dentist’s right to charge for copies of records, (iii) requires that dental records be legible and x-rays be diagnostic, (iv) affirms that the Board is permitted to request records, and (v) authorizes the Board to issue sanctions for non-compliance with the Proposed Amendment.

The Board published a Notice of Intent to promulgate the Proposed Amendment on May 20, 2025.¹ The Notice invited public comments on these Proposed Amendments until June 10, 2025 and received none.

Pursuant to La. R.S. 49:260, the Board submitted the Proposed Amendment to the Louisiana Department of Justice’s Occupational Licensing Review Program (“**OLRP**”) on June 10, 2025. The OLRP invited public comments on the Proposed Amendment from June 11, 2025 through June 25, 2025 and received no comments.

The OLRP has the statutory authority to review the substance of each proposed occupational regulation submitted to ensure compliance with clearly articulated state policy and adherence to applicable state law. An Occupational Regulation is a “rule defined in the Administrative Procedure Act that has reasonably foreseeable anti-competitive effects. Any license, permit, or regulation established by a ... board not composed of a controlling number of active market participants is excluded.”² The Louisiana Administrative Procedure Act (“APA”) defines a rule as an agency (Board) requirement for conduct or action prescribing the procedure or

¹ Louisiana Register, Vol. 51, No. 5, at pgs. 711-712

² LSA-R.S. 49:260 (G) (4)

practice requirements of the agency (Board).³ Anti-Competitive behavior is an act, or series of acts, that have the effect of harming the market or the process of competition among businesses, or a tendency to reduce or eliminate competition, with no legitimate business purpose.⁴

As set forth below, the OLRP has determined that the Proposed Amendment is a rule that governs the practice of dentistry and is not an occupational regulation with any foreseeable anti-competitive effects. Therefore, the Board may proceed with promulgation of the Proposed Amendment as drafted without input from the OLRP.

II. ANALYSIS

The Dental Practice Act, La. R.S. 37:751 et seq. (the “*Act*”), created the Louisiana State Board of Dentistry within the Louisiana Department of Health. The Act grants the Board the discretion to impose such requirements and restrictions it considers proper and necessary to protect and promote the public health and welfare of the citizens of Louisiana. The Board requires dentists licensed to practice in the state to keep a written record of any dental services performed for a patient including the amount charged for the services, and by whom the bill for services was paid, whether by the patient or by the patient’s representative or insurer.⁵ Additionally, the Board is statutorily required to ensure dentists maintain, preserve, and provide copies of dental treatment records in conformity with La. R.S. 40:1165.1.⁶

The Board proposes adding LAC 46:XXXIII.136 to establish rules relative to dental records. The proposed adoption of §136 would affirm dental patients’ right to receive copies of their dental records and/or radiographs upon written request, while allowing dentists to withhold records pending payment in accordance with the rates established under La. R.S 40:1165.1. Additionally, the proposed rule would require dentists to make payment requests within fifteen days of receiving the records request and to make the records available within thirty days of the request, or within twenty days of payment. The proposed rule would also affirm the Louisiana State Board of Dentistry’s right to receive copies of dental records upon written request.

Moreover, the proposal would require that dental records to be legible and that dentists provide a typed transcript if the records contain illegible handwriting. Likewise, the proposed rule would require radiographs to be diagnostic and readable without the use of proprietary software.

The proposal would also authorize the Board to sanction dentists for non-compliance with the Proposed Amendment. The proposed amendment would hold the treating dentist whose treatment is reflected in the requested records responsible for compliance and adherence to the requirements, even if he or she has left the practice where the treatment was rendered. Additionally, if the treating dentist has left the practice, the owner of the practice in

³ LSA-R.S. 49:951 (8)

⁴ Black’s Law Dictionary, 12th Edition p. 116

⁵ LSA-R.S. 37:757

⁶ LSA-R.S. 37:757 (B)

possession of the requested records would also be responsible for complying with the records request.

The Board is authorized to adopt requirements and restrictions it considers proper and necessary to protect and promote the public health and welfare of the citizens of Louisiana.⁷ The Board is further authorized to take disciplinary actions against licensees for any violation of the Act.⁸ Currently, dentists are required to maintain, preserve, and provide copies of dental treatment records upon request for a fee⁹ and are permitted to disclose protected health information to a health oversight agency.¹⁰ The Board's Proposed Amendment would expand on these requirements by allowing dentists to withhold the requested records pending payment, establishing a deadline for which the requested dental records must be provided, and authorizing the board to issue sanctions on non-compliant dentists.

The Board indicates the Proposed Amendment would resolve an issue the board occasionally has with receiving illegible records while screening complaints. It is within the interest of public health, welfare and safety to ensure that the Board is provided with the necessary records needed to adequately investigate complaints. Because the Board is authorized to adopt rules and regulations prescribing the procedures and practices of Dentistry, the Proposed Amendment supports the Board's ability to uphold statutory standards of care and is therefore authorized to adopt the Proposed Amendment.

Furthermore, by establishing, a deadline for which dentist must make records available and requiring that requested records be legible, the Board is ensuring that it receives the necessary information in a timely manner to investigate complaints. Thus, the Proposed Amendment adheres to state policy.

Additionally, the authorization of the Board to issue sanctions for non-compliance with the Proposed Amendment would also adhere to state policy. Sanctions are disciplinary actions a board may impose on a licensee to uphold the integrity of the profession and protect the public from harm. Thus, the Board's proposal to issue sanctions for non-compliance would be in the interest of public health, welfare and safety, as it encourages dentists to provided legible records in a timely manner. While the imposition of sanctions may have professional consequences for individual dentists, it does not create a barrier to entry or function as a restraint on lawful competition. Accordingly, this proposal does not constitute an occupational regulation with a reasonably foreseeable effect.

While the Proposed Amendment is likely to aid the Board in resolving its issue of receiving illegible records, it does not limit entrance into or the continued practice of the profession. As such, this rule governs the practice of dentistry and is not an occupational regulation that would require the OLRP's input.

⁷ LSA-R.S. 37:1270 (B)(8)

⁸ LSA- R.S. 37:760(A)(4)

⁹ LSA-R.S. 40:1165.1 and LSA-R.S. 37:757 (B)

¹⁰45 C.F.R. § 164.512 (D) and LSA-R.S. 37:760 (A)(14)

Therefore, the Board may proceed with promulgation of the Proposed Amendment to LAC 46:XXXIII.136 without further input from the OLRP because it is within the Board's statutory authority and adheres to clearly articulated state policy.

III. DETERMINATION

As the Attorney General has determined the Proposed Amendment to LAC 46:XXXIII.126 is not an occupational regulation with any reasonably foreseeable anti-competitive effects, the Board may proceed with promulgation of this amendment.

OFFICE OF THE ATTORNEY GENERAL
OCCUPATIONAL LICENSING REVIEW PROGRAM

A handwritten signature in blue ink, appearing to read "Farra Mughal".

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