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To: M. Joseph Fontenot, Jr.
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From: Terrence "Joe" Donahue, Jr.
Louisiana Department of Justice, Civil Division
Occupational Licensing Review Program

Date: September 5, 2023

Subject: OLRP File No. 23-06-OR-0015
Proposed LAC 46:LIII.1135 – Pharmacy Change of Ownership

I. Summary

The Louisiana Board of Pharmacy (the "Board") proposes amending LAC 46:LIII.1135 to modify the circumstances under which a pharmacy owner must obtain a new permit due to a change in ownership. The Board published a Notice of Intent to promulgate the proposed amendment on April 20, 2023, invited comments on the proposed amendments, and conducted a public hearing on May 26, 2023. No comments or testimony addressing the proposed amendments to § 1135 were offered during the public hearing.

Licensing and permitting requirements create barriers to market entry for individuals desiring to engage in a profession or occupation and the proposed amendments to § 1135 are therefore properly considered occupational regulations with reasonably foreseeable anti-competitive effects.¹ Pursuant to La. R.S. 49:260, the Board submitted the proposed amendments to the Louisiana Attorney General and a review of the regulations was initiated on June 8, 2023. The Attorney General invited public comments on the proposed amendments for a 30-day period ending on July 8, 2023, and received no comments. As set forth below, the Attorney General has determined the Board's proposed amendments to § 1135 adhere to clearly articulated state policy and therefore approves the amendments for adoption as drafted.

II. Analysis

The Louisiana Pharmacy Practice Act, La. R.S. 37:1161 *et seq.*, subjects the practice of pharmacy in the state of Louisiana to regulation by the Board for the purpose of

¹ La. R.S. 49:260(G)(4).

promoting, preserving, and protecting the public health, safety and welfare.² In furtherance of these purposes, the legislature has authorized the Board to control and regulate all persons and sites that sell drugs or devices to consumers within the state.³ In particular, the Board is charged with issuing and renewing licenses, permits, certifications, registrations, and any other designations deemed necessary to engage in the practice of pharmacy and may require applicants to provide information verifying their identity.⁴

No person shall open, establish, operate, or maintain a pharmacy located within Louisiana without first receiving a permit issued by the Board.⁵ A person applying for a permit to open, establish, operate, or maintain a pharmacy must “complete an application in such form and containing such data as the Board may require, and complete such other requirements as deemed necessary by the Board.”⁶ Permits are subject to renewal.⁷ As with initial applications for pharmacy permits, renewal applications must include all information required by the Board and applicants must complete any other requirements the Board deems necessary.⁸ Permits to operate a pharmacy are non-transferable, and pharmacy permit holders must report to the Board any change in the pharmacy’s ownership, management, location, or its designated pharmacist-in-charge.⁹

The existing provisions of LAC 46:LIII.1135 require the holder of a pharmacy permit to provide written notice to the Board before transferring ownership of the permitted pharmacy.¹⁰ The regulation identifies five circumstances in which it is “evident” that a transfer of ownership has occurred: (1) sale of a pharmacy; (2) death of a sole proprietor, (3) addition or deletion of partner(s) in a partnership, and (5) a 50% or more change in ownership of a corporation, limited liability company, or other association since issuance of the original permit or most recent renewal.¹¹ The existing regulation requires the new owner to apply for a new permit, and also requires the prior owner to notify the Board that the transaction has been completed and to surrender the permits and licenses that were invalidated by the transfer.¹²

The proposed amended version of § 1135 eliminates the list of circumstances constituting an “evident” transfer of ownership, and requires instead that a new permit application be submitted whenever there is a change in the identity of a pharmacy permit holder, or the permit holder’s Federal Employer Identification Number (FEIN).¹³ Rather than requiring the existing permit holder to provide advance written notice of the transfer, the proposed

² La. R.S. 37:1163; La. R.S. 37:1171.

³ La. R.S. 37:1163.

⁴ La. R.S. 37:1182(A)(8) and (23).

⁵ La. R.S. 37:1221(A).

⁶ La. R.S. 37:1222(A).

⁷ La. R.S. 37:1230.

⁸ *Id.*

⁹ La. R.S. 37:1231(B)(2).

¹⁰ LAC 46:LIII.1135(A).

¹¹ LAC 46:LIII.1135(A)(1).

¹² LAC 46:LIII.1135(A)(2) and (3).

¹³ Notice of Intent, Louisiana Register, Vol. 49, No. 4 at p.732 (April 20, 2023) (§ 1135(B)).

amendment requires the new owner to submit a permit application at least 15 days before the transfer of ownership is accomplished.¹⁴ Though it does not trigger the need to file a new application or obtain a new permit, the proposed revisions to § 1135 also require changes in indirect ownership of 20% or more to be reported to the Board within thirty days.¹⁵ The proposed amendments also clarify that a new permit may be applied for even where there is no change in a permit holder's identity or FEIN, and that continuing to operate a pharmacy after a change in ownership without first obtaining a new permit from the Board may constitute a violation of La. R.S. 37:1182.¹⁶

The Board indicates that the proposed amendments to § 1135 will limit the circumstances requiring issuance of a new pharmacy permit while maintaining sufficient safeguards to protect the public health, safety, and welfare.¹⁷ The Board also notes the importance of knowing the identity of pharmacy permit holders when addressing conduct that endangers the public health, safety, and welfare, such as the imposition of discipline.¹⁸

As addressed above, the legislature has granted the Board broad authority to determine the information to be submitted in pharmacy permit applications, and has specifically empowered the Board to demand sufficient proof of an applicant's identity.¹⁹ While broad, the Board's authority to require information from pharmacy permit applicants is not unlimited, and the information the Board requires from applicants must comply with the provisions of the Louisiana Pharmacy Practice Act and be consistent with the purposes for which the legislature enacted the law, i.e., the promotion, preservation, and protection of the public health, safety and welfare.²⁰ The information required by proposed § 1135(D) easily passes this test as it would be difficult, if not impossible, for the Board to enforce particular provisions of La. R.S. 37:1241 in its absence.²¹ The Pharmacy Practice Act also makes clear that pharmacy permits are not transferrable and that changes in a permitted pharmacy's ownership must be reported to the Board.²² Thus, both the existing version of § 1135 and the proposed amendments adhere to purposes articulated in the Louisiana Pharmacy Practice Act. The amendments to § 1135 proposed by the Board also serve to lessen the burden placed upon regulated parties in accordance with the clearly articulated state policy of using the least restrictive means to protect the public from harm.²³

III. Determination

As the Attorney General has determined the proposed amendments to LAC 46:LIII.1135 adheres to clearly articulated state policy, the amendments are approved and may be

¹⁴ *Id.* (§ 1135(C)).

¹⁵ *Id.* (§ 1135(D)).

¹⁶ *Id.* (§ 1135(E)).

¹⁷ June 7, 2023 Rule Submission Form at ¶ 5.

¹⁸ *Id.* at ¶ 4.

¹⁹ La. R.S. 37:1222(A); La. R.S. 37:1182(A)(23).

²⁰ La. R.S. 37:1163.


²¹ *See e.g.* La. R.S. 37:1241(A)(24).

²² La. R.S. 37:1222(E); La. R.S. 37:1231(B)(2).

²³ La. R.S. 49:260(A).

finally adopted by the Board.

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