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To: Dr. Vincent A. Culotta, Jr.
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From: Jessica Weimer
Louisiana Department of Justice
Occupational Licensing Review Program

Date: January 17, 2025

Subject: Louisiana State Board of Medical Examiners
Proposed Amendments to LAC 46:XLV.3303, 3339, 3343, 6305, 6311
Regarding Polysomnography Rule Changes

I. SUMMARY

The Louisiana State Board of Medical Examiners (the “**Board**”) proposes amending LAC 46: XLV. §§3303, 3339, 3343, 6305, and 6311 (the “**Proposed Amendments**”), regarding Polysomnographic Technologists and Technicians regulations.¹ The Proposed Amendments (i) redefine “Direct Supervision”, (ii) add “Collaborative practice physician” to the section regarding mutual obligations and responsibilities, (iii) adds a requirement for licensed physicians providing and/or billing for the interpretation of home sleep testing be licensed in Louisiana and provide results and proper follow-up with the patient, and (iv) corrects typographical errors.²

The Board published a Notice of Intent to promulgate the Proposed Amendments on September 20, 2024.³ The Notice invited written comments on these Proposed Amendments until October 28, 2024 and received none.⁴

Pursuant to La. R.S. 49:260, the Board submitted the Proposed Amendments to the Louisiana Department of Justice’s Occupational Licensing Review Program (“**OLRP**”) on November 22, 2024. The OLRP invited public comments on the Proposed Amendments December 2, 2024 through December 10, 2024 and received no comments. OLRP submitted questions for clarification to the Board of Medical Examiners, which were answered on January 17, 2025.

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

¹ Louisiana Register, Vol. 50, No. 9, at pgs. 1330-1332

² Id.

³ Id.

⁴ Id. at 1331-1332

to applicable state law.⁵ 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.”⁶ The Louisiana Administrative Procedure Act (“APA”) defines a rule as an agency (Board) requirement for conduct or action prescribing the procedure or practice requirements of the agency (Board).⁷ 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.⁸

As set forth below, the OLRP has determined the Board’s Proposed Amendments to LAC 46: XLV. §§3303, 3339, 3343, 6305, and 6311 adhere to clearly articulated state policy and are within the Board’s statutory authority. Therefore, these amendments are approved for promulgation as drafted.

II. ANALYSIS

The Louisiana Legislature has deemed it the policy of the State of Louisiana in the interest of public health, safety and welfare to provide laws and provisions covering the practice of medicine and its subsequent use, control, and regulation to protect the public against unprofessional, improper, unauthorized, and unqualified practice of medicine and from unprofessional conduct of persons licensed to practice medicine.⁹ The Board of Medical Examiners was created to control and regulate the practice of medicine in this state.¹⁰ The Board is authorized to take appropriate administrative actions to regulate the practice of medicine in Louisiana in order to promote the established policy of the State.¹¹ The Board may also adopt rules, regulations and standards necessary to carry out the board’s duties, powers and functions as provided for in LSA R.S. 37:1261 *et. seq.*¹² In addition, the Board has the statutory authority to publish minimum standards for polysomnography, approve the licensure examination and licensure of the applicant, conduct administrative hearings regarding licensure, and adopt rules and regulations in accordance with the APA for the purposes of administering the provisions of the Polysomnographic Practice Act (the “PPA”).¹³ Polysomnography is defined as the performance of sleep diagnostics under the direction and supervision of a physician to provide comprehensive clinical evaluation.¹⁴

⁵ LSA-R.S. 49:260 (D) (2)

⁶ LSA-R.S. 49:260 (G) (4)

⁷ LSA-R.S. 49:951 (8)

⁸ Black’s Law Dictionary, 12th Edition p. 116

⁹ LSA-R.S. 37:1261

¹⁰ LSA-R.S. 37:1263

¹¹ LSA-R.S. 37:1270 (A)(1)

¹² LSA-R.S. 37:1270 (B)(6)

¹³ LSA-R.S. 37:2863

¹⁴ LSA-R.S. 37:2862 (10)

A. Proposed LAC 46:XLV.3339, 3343, and 6305

The Board proposes amending LAC 46:XLV.3339, 3343, 6305 by correcting typographical errors regarding the spelling of polysomnographic. These amendments are merely corrections that do not alter the intent or substantive meaning of the existing regulations and have no reasonably foreseeable anti-competitive effects, and thus do not require input from the OLRP. Therefore, the Board may proceed with promulgation of these amendments in accordance with the Louisiana APA.

B. Proposed LAC 46:XLV.3303 regarding Definitions

The Board proposes revising the definition of “Direct Supervision” in §3303. Currently, direct supervision is defined as “supervision by a physician or a qualified health care provider, who is currently licensed by the board, whose scope of practice includes polysomnography, is present in the area where the procedure and service is being performed, and is available to furnish assistance and direction throughout the procedure or service.” The Board proposes amending the definition to expand the types of physicians who can engage in the direct supervision of polysomnographic technicians to include a “physician, polysomnographic technologist, or registered respiratory therapist with SDS who is currently licensed by the board”, and believes this amendment may lead to increased competition among providers of polysomnographic technicians, thus increasing access to polysomnography.¹⁵

The Board may adopt rules, regulations and standards necessary to properly regulate the practice of medicine in the State of Louisiana in order to protect the public from unqualified practice of medicine.¹⁶ Further, the Board shall publish minimum standards for polysomnography.¹⁷ While this rule governs the practice requirements for direct supervision of a polysomnographic technician, it does not have any reasonably foreseeable anti-competitive effects that would limit entrance into or the continued practice of polysomnography. In fact, it expands the requirements and allows for a greater number of physicians who may engage in the direct supervision of polysomnographic technicians. Therefore, this rule does not require input from the OLRP pursuant to LA R.S. 49:260 and the Board may proceed with promulgation of this amendment in accordance with the Louisiana APA.

C. Proposed LAC 46:XLV.6311 regarding Mutual Obligations

The Board proposes amending §6311 by (i) adding “collaborative practice physician” to the list of providers with equal and reciprocal obligations, and (ii) adding a section requiring that licensed physicians providing and/or billing for the interpretation of home sleep testing should be licensed in the State of Louisiana and provide the patient with the testing results and proper follow-up in order to ensure the best patient care. Currently, the rule does not require the physician providing or billing for the interpretation of home sleep testing to provide results and proper follow-up to the patient. The Board has expressed concerns regarding online

¹⁵ Louisiana Register, Vol. 50, No. 9, at pg. 1332

¹⁶ LSA R.S. 37:1261, LSA R.S. 37:1270 (B)(6)

¹⁷ LSA R.S. 37:2863 (1)

ordering of devices through national companies resulting in inaccurate readings, errors, and no follow-up care or analysis of the results to the patient. By adding rule §6311 (C), the Board hopes to reduce these errors and ensure the appropriate counseling regarding treatment options and follow-up within a reasonable timeframe are completed by the licensed physician in accordance with the standards set by the Board.

The Board is required by statute to publish the minimum standards for polysomnography.¹⁸ Because the Board is authorized to adopt rules and regulations to protect the public against unprofessional, improper, unauthorized, and unqualified practice of medicine (and polysomnography), the Board has the statutory authority to expand the requirements for the mutual obligations and responsibilities of physicians, polysomnographic technologists and technicians.¹⁹

Licensing requirements create barriers to market entry and reduce competition, thus the proposed amendment to §6311 is properly considered an occupational regulation with reasonably foreseeable anti-competitive effects. The practice of polysomnography by unlicensed physicians, technologists, and technicians may endanger the public health, safety, and welfare of the citizens of this state. Further, by ensuring minimum standards for licensed physicians providing and/or billing for sleep diagnostics and the standard of care to follow the procedures are followed protects patients receiving home sleep testing in this state. As such, this proposed amendment furthers a legitimate public policy interest, is within the Board's statutory authority, and adheres to clearly articulated state policy.

Therefore, the Board may proceed with promulgation in accordance with the APA.

III. Determination

The Board is a state regulatory body created “as a matter of policy in the interests of public health, safety, and welfare to provide laws and provisions covering the granting of [the privilege of the practice of medicine] and its subsequent use, control, and regulation to the end that the public shall be properly protected against unprofessional, improper, unauthorized, and unqualified practice of medicine from unprofessional conduct of persons licensed to practice medicine.”²⁰ The Board is further authorized under the Polysomnographic Practice Act to publish the minimum standards for polysomnography.²¹ Because the proposed amendments are within the Board's statutory authority and adhere to clearly articulated state policy of protecting the public health, safety, and welfare of the citizens of this state, the proposed amendments are approved as submitted by the Attorney General and may be adopted by the Board.

¹⁸ Id. and LSA R.S. 37:1261

¹⁹ LSA. R.S. 37:1163

²⁰ LSA R.S. 37:1261

²¹ LSA R.S. 37:2863

OFFICE OF THE ATTORNEY GENERAL
OCCUPATIONAL LICENSING REVIEW PROGRAM

A handwritten signature in blue ink, appearing to read 'J. Weimer', is centered below the header text.

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