



LIZ MURRILL
ATTORNEY GENERAL

STATE OF LOUISIANA
DEPARTMENT OF JUSTICE
OFFICE OF THE ATTORNEY GENERAL
P.O. BOX 94005
BATON ROUGE, LA
70804-9005

To: Dr. Vincent A. Culotta, Jr.
Executive Director
Louisiana State Board of Medical Examiners

From: Jessica Weimer
Louisiana Department of Justice
Occupational Licensing Review Program

Date: July 22, 2025

Subject: Louisiana State Board of Medical Examiners
Proposed Amendments to LAC 46: XLV. 9703, 9707(B), 9709(A), 9709(B) (3),
and 9709(D)
Regarding Governing Complaints and Investigations

I. SUMMARY

The Louisiana State Board of Medical Examiners (the “**Board**”) proposes amending LAC 46: XLV.9703, 9707(B), 9709(A), 9709(B) (3), and 9709(D) (the “**Proposed Amendments**”), regarding governing complaints and investigations.

The Board published a Notice of Intent to promulgate the Proposed Amendments on March 20, 2025.¹ The Notice invited written comments on these Proposed Amendments until April 24, 2025 and received none.²

Investigations and disciplinary actions may serve as barriers to market participation. Accordingly, the Proposed Amendments may be considered occupational regulations with reasonably foreseeable anti-competitive effects.³ 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 June 18, 2025. The OLRP invited public comments on the Proposed Amendments from June 20, 2025 through July 2, 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.⁴ An Occupational Regulation is a “rule defined in the Administrative Procedure Act that has reasonably foreseeable anti-competitive effects. Any license, permit, or

¹ Louisiana Register Volume 51, No. 3 March 20, 2025 pgs. 433-434

² Id. at p 435

³ La. R.S. 49:260 G(4)

⁴ LSA-R.S. 49:260 (D) (2)

regulation established by a ... board not composed of a controlling number of active market participants is excluded.”⁵ 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).⁶ 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.⁷

As set forth below, the OLRP has determined the Board’s Proposed Amendments to LAC 46:XLV §9703, 9707(B), 9709(A), 9709(B)(3), and 9709(D) adhere to clearly articulated state policy and are within the Board’s statutory authority. Therefore, these amendments are approved for promulgation as drafted in accordance with the Louisiana APA.

II. ANALYSIS

The Louisiana Legislature has deemed it the policy of the State, in the interest of public health, safety, and welfare, to enact 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, as well as from unprofessional conduct by licensed practitioners.⁸ The Board was established to oversee and regulate the practice of medicine within the state.⁹ The Board is authorized to take appropriate administrative actions to regulate the practice of medicine in Louisiana in furtherance of the State’s policy.¹⁰ Additionally, the Board may also adopt rules, regulations and standards necessary to carry out the board’s duties, powers and functions as set forth in LSA R.S. 37:1261 *et seq.*¹¹

A. Proposed LAC 46:XLV.9703 Regarding Definitions

The Board proposes adding “Executive Director” and “Sufficient Cause” to the list of definitions as used in complaints and investigations.

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 the unqualified practice of medicine and carry out the board’s duties, powers and functions.¹² While this rule may govern the rules of procedure for complaints and investigations of the Board, it does not have any reasonably foreseeable effects that would be a market barrier into or the continued practice of occupational therapy. 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.

⁵ LSA-R.S. 49:260 (G) (4)

⁶ LSA-R.S. 49:951 (8)

⁷ Black’s Law Dictionary, 12th Edition p. 116

⁸ LSA-R.S. 37:1261

⁹ LSA-R.S. 37:1263

¹⁰ LSA-R.S. 37:1270 (A)(1)

¹¹ LSA-R.S. 37:1270 (B)(6)

¹² LSA R.S. 37:1261, LSA R.S. 37:1270 (B)(6)

B. Proposed LAC 46:XLV.9707(B) Regarding Complaint Processing

The proposed amendment clarifies that a staff member may serve as the lead investigator only upon delegation by the Director of Investigations (DOI), rather than automatically. It also removes the specific reference to complaints “received by the board” or “initiated by the board on its own motion,” thereby clarifying that this provision applies to all complaints within the Board’s jurisdiction.

The Board indicates the purpose of this proposed amendment is to ensure that the language comports with the provisions of La. R.S. 37:1285.2, effective January 1, 2024, which governs investigations and adjudications, staff, complaints, board procedure, and rulemaking authority. The Board is authorized to adopt rules, in accordance with the APA, to provide for the investigation of complaints and the adjudication of the alleged violations by physicians, provided that such rules meet minimum due process and statutory requirements.¹³

By establishing an investigation and disciplinary process, the Board ensures that allegations of misconduct are properly reviewed and addressed, promotes accountability, and maintains the integrity of the medical profession. Through effective oversight, the Board fulfills its duty to protect the public from the unprofessional, unauthorized, or unethical conduct by licensed practitioners, in accordance with the State’s interest in safeguarding public health, safety, and welfare. Therefore, this proposal falls within the Board’s statutory authority and adheres with clearly articulated state policy. The Board may proceed with promulgation of this amendment in accordance with the APA.

C. Proposed LAC 46:XLV.9709 Regarding Preliminary Review

The proposed amendment to Rule §9705(A) updates the language to clarify that preliminary reviews are to be initiated based on information received pursuant to La. R.S. 37:1285.2 and Rule 9705. This change aligns the rule with the statutory framework effective January 1, 2024, which governs the receipt and handling of complaints. The amendment also makes a minor textual change from “may” to “shall,” removing ambiguity regarding whether a preliminary review is mandatory or discretionary under qualifying conditions.

Substantively, the amendment retains the original three grounds for initiating a preliminary review: (1) external complaints, (2) reports from official entities, and (3) a two-thirds board vote. By directly referencing the governing statute and rule, the amendment provides a clearer procedural basis and enhances consistency with the statutory mandate.

The proposed amendment to the §9709(B)(3) adds a new requirement that that, at the time of the Board’s first communication with a licensee regarding a complaint, the licensee must be notified that past complaints and investigations may be utilized in all phases of the disciplinary

¹³ LSA R.S. 37:1285.2(B)

process. The addition of subsection (c) increases transparency and ensures that licensees are fully informed of the potential relevance of their disciplinary history during the investigation and adjudication of current complaints. The remaining provisions of §9709(B) remain substantively unchanged.

The proposed amendment to §9709(D) removes the final clause “which do not provide a basis for preliminary review.” The Board has indicated that this revision eliminates unnecessary language. §9709(A) already outlines the specific circumstances under which a preliminary review may be initiated to determine jurisdiction and sufficient cause to warrant a formal investigation. The removal of this clause does not alter the substantive intent or application of §9709 regarding the preliminary review process.

As set forth above, establishing an investigation and disciplinary process ensures that allegations of misconduct are properly reviewed and addressed, promotes accountability, and maintains the integrity of the medical profession. Through effective oversight, the Board fulfills its duty to protect the public from the unprofessional, unauthorized, or unethical conduct by licensed practitioners, in accordance with the State’s interest in safeguarding public health, safety, and welfare. Therefore, the proposed amendments to LAC 46:XLV.9709 are within the Board’s statutory authority and adhere with clearly articulated state policy. The Board may proceed with promulgation of this amendment in accordance with the APA.

III. Determination

The Board is a state regulatory body established as a matter of policy in the interests of public health, safety, and welfare.¹⁴ It is tasked with providing laws and provisions governing the granting of the privilege to practice medicine and its subsequent use, control, and regulation to ensure that the public is protected from unprofessional, improper, unauthorized, and unqualified medical practice, as well as from unprofessional conduct by licensed practitioners.¹⁵ The Board is authorized to adopt rules, regulations, and standards necessary to carry out its duties, powers, and functions as mandated by the legislature.¹⁶ Because the proposed amendments are within the Board’s statutory authority and adhere to the 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.

¹⁴ LSA R.S. 37:1261

¹⁵ Id.

¹⁶ LSA R.S. 37:1270(B)(6)

OFFICE OF THE ATTORNEY GENERAL
OCCUPATIONAL LICENSING REVIEW PROGRAM



Jessica B. Weimer, OLRP- Section Chief
Public Protection Division
Louisiana Department of Justice
olrp@ag.louisiana.gov