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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.9920  
Regarding Recusals

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**I. SUMMARY**

The Louisiana State Board of Medical Examiners (the “**Board**”) proposes amending LAC 46:XLV.9920 (the “**Proposed Amendments**”), regarding recusals during adjudication.

The Board published a Notice of Intent to promulgate the Proposed Amendments on March 20, 2025.<sup>1</sup> The Notice invited written comments on these Proposed Amendments until April 24, 2025 and received none.<sup>2</sup>

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 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.<sup>3</sup> 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.”<sup>4</sup> 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).<sup>5</sup> Anti-Competitive behavior is an act, or series of

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<sup>1</sup> Louisiana Register Vol. 52 No. 3 March 20, 2025 p 427-428

<sup>2</sup> Id. at p 427

<sup>3</sup> LSA-R.S. 49:260 (D) (2)

<sup>4</sup> LSA-R.S. 49:260 (G) (4)

<sup>5</sup> LSA-R.S. 49:951 (8)

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.<sup>6</sup>

Investigations, disciplinary actions and disciplinary proceedings may serve as barriers to market entry for individuals desiring to engage in a profession or occupation. However, the Proposed Amendments govern the procedures for adjudication and recusals of parties in board proceedings. As set forth the below, the OLRP has determined the Board's Proposed Amendment to LAC 46:XLV.9920 is within the Board's statutory authority and adheres to clearly articulated state policy, but is not an occupational regulation with reasonably foreseeable anticompetitive effects requiring input from the OLRP

## **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.<sup>7</sup> The Board of Medical Examiners was created to control and regulate the practice of medicine in this state.<sup>8</sup> 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.<sup>9</sup> 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.*<sup>10</sup>

The proposed amendment to LAC 46:XLV.9920 expands the scope of recusal provisions beyond board members to include the Director of Investigations (DOI) and Independent Counsel, thereby reinforcing due process protections in board proceedings. While the current rule requires recusal only of board members who are unable to ensure a fair hearing due to bias or interest, the amended rule recognizes that fairness and impartiality may also be compromised by the involvement of other key individuals in the adjudicative process.

The amendment also explicitly broadens the types of proceedings to which the recusal provision applies to include both hearings and/or administrative hearings, ensuring that impartiality is preserved throughout all stages of the disciplinary process.

Additionally, the proposed rule provides a new mechanism for replacing the DOI in the event of recusal. It authorizes the board to contract for or appoint a pro tem Director of Investigations who meets the qualifications outlined in La. R.S. 37:1270(A)(9), thereby ensuring procedural continuity while maintaining impartiality.

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<sup>6</sup> Black's Law Dictionary, 12<sup>th</sup> Edition p. 116

<sup>7</sup> LSA-R.S. 37:1261

<sup>8</sup> LSA-R.S. 37:1263

<sup>9</sup> LSA-R.S. 37:1270 (A)(1)

<sup>10</sup>LSA-R.S. 37:1270 (B)(6)

These changes promote transparency, strengthen procedural safeguards, and ensure consistency with broader principles of administrative due process. The amendment is within the Board's statutory authority and aligns with the state's policy interest in maintaining the integrity and fairness of its disciplinary and adjudication procedures. However, this rule governs the procedural aspects of the adjudication process, ensures due process is upheld by through a fair and impartial hearing and/or administrative proceeding, and does not have any foreseeable anticompetitive effects requiring input from the OLRP.

### **III. Determination**

The Board is a state regulatory body established as a matter of public policy in the interest of protecting public health, safety, and welfare.<sup>11</sup> It is charged with providing 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.<sup>12</sup> The Board may adopt rules, regulations, and standards necessary to carry out its duties, powers, and functions as mandated by the legislature.<sup>13</sup>

The proposed rules are within the Board's statutory authority and adhere to clearly articulated state policy. Upon review, however, the OLRP has determined the proposed rules do not have any reasonably foreseeable anticompetitive effects on the medical profession. Accordingly, the Board may proceed with promulgation of the Proposed Amendment without further input from the OLRP and in accordance with the APA.

OFFICE OF THE ATTORNEY GENERAL  
OCCUPATIONAL LICENSING REVIEW PROGRAM



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<sup>11</sup> LSA R.S. 37:1261

<sup>12</sup> Id.

<sup>13</sup> LSA R.S. 37:1270(B)(6)