

# LOUISIANA STATE BOARD OF MEDICAL EXAMINERS

July 27, 2020

## AGENDA

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### CALL TO ORDER

Business Meeting, Monday, July 27, 2020, 8:30 a.m., via Live Streaming Video and Teleconference during the public session.

1. **PUBLIC/VISITORS INTRODUCTION/COMMENTS**

Mission Statement.

2. **MINUTES/PRIOR MEETINGS/CONFERENCES**

Approval of minutes.

Status report on action items of prior Board meetings.

3. **RULINGS AND ADVISORY OPINIONS**

Compounding; Request for Clarification on Regulations.

Parental Ketamine - Non-Physicians pre-hospital.

Occupational Therapist; Oxygen Management.

Retention of Medical Records.

Medical Assistants; Scope of Practice.

Telemedicine; In-Person Assessment re CDS.

4. **ADMINISTRATIVE MATTERS**

President's Report.

Executive Director's Report.

Director of Investigations' Report.

Couhig Partners, LLC Professional Legal Services Contract.

Financial Report.

5. **RULES AND REGULATIONS**

**a. Rules/Amendments Combine Report: Physician Licensure (Waiver of Qualifications):** The Board was asked to extend the waiver of licensure qualifications (currently limited by §§315 and 327) to applicants appointed by a medical school to a full-time position at a rank of assistant professor or above) to applicants who will be full-time employees of a major teaching hospital as defined by the rules. Among proposed amendments to various other sections of the rules (e.g., §§311, 323, 361 and 363), the request also includes a suggested definition for major teaching hospital as one which is a sponsor of at least four approved residency programs two of which are in certain specialties. A working draft of the proposed amendments was presented for initial review and discussion. At its February 17, 2020 meeting, the Board voted to provide Notice of Intent to amend its rules to extend a waiver of licensure qualifications. As the Notice of Intent did not appear in the Louisiana Register, Ms. Peyton and Ms. Brindley are working together to publish it in the August 2020 Louisiana Register. **Physicians Compounding Medication:** The Board reviewed Emergency Rules adopted by the Louisiana Board of Pharmacy, to reflect certain changes in federal law concerning compounded medication. Following review and discussion, the Board elected to undertake a rulemaking effort as to physicians who compound medication, in order to insure consistency with federal and state law and regulations. A draft will be presented for initial Board member review and consideration in due course. As discussed at the February 2020 Board meeting, attached is a copy of a Board Advisory Opinion on Physician Compounding, which is posted on the Board's webpage. **The Board at its June 29, 2020 meeting, reviewed the advisory opinion and determined it only needed to be updated with regard to Federal laws and rules. The Board decided to not move forward with a rule-making effort at this time. The Board asked for the Advisory Opinion draft to be updated and it has been placed in the agenda under advisory opinions for the Board's consideration.** **Physician Advertising; Board Certification:** At its March 2015 meeting, the Board determined to undertake a rulemaking effort to establish a process for its approval of

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certifying boards, alternative to the ABMS and AOA, for purposes of physician advertising of Board Certification. The Board directed that a draft be prepared and presented for review and approval. In conformity with the Board's direction, a draft was provided for initial review and discussion at its April 2015 meeting. Following further discussion at its May 2015 meeting, the Board elected to provide notice of intent to adopt the amendments. An additional wording change was discussed at the September 2015 meeting and pre-notice input was received from interested parties at that time. Following discussion, the Board elected to defer this effort to allow further consideration and input by other stakeholders. The additional information requested from interested stakeholders by the Board on certification training and accreditation has not been received. In line with the Board's direction at its March 2016 meeting, a letter was sent to interested stakeholders requesting that they submit any additional information they may want to be considered in time for the Board's May 2016 agenda. Depending on the bulk of materials received, they will be included under another section of the agenda or in a separate handout to be distributed at the meeting. During its May 2016 meeting, the Board received the input of the interested parties present who wished to speak on the agenda item. It also gave initial consideration to the voluminous materials submitted by various organizations and individuals. Following discussion, the Board elected to defer action on the rule-making effort pending further review of the information submitted and the receipt of additional information. To that end, it elected to designate a special committee, comprised of individuals recommended by the Deans of the state's medical schools and a former Board member, to provide information on the processes involved in the accreditation of physician post-graduate training. During its January 2017 meeting the Board received the committee's input. Following discussion, the Board requested certain changes to the draft previously appearing on its agenda, along with additional information for its consideration. Per the Board's directions, attached are two (2) drafts amending the draft that was previously on the 2015 agenda: draft one, (Exh. 2A), limits board approval to certifying organizations that require passage of a psychometric exam and complete ACGME training in the specialty/subspecialty; draft two, (Exh. 2B), limits board approval to certifying organizations that require passage of a psychometric exam plus completion of ACGME/AOA training of comprehensive scope that is substantially equivalent to training required for ABMS/AOA certification in the specialty or subspecialty or, for training other than ACGME, training of comprehensive scope that is substantially equivalent to that of an ACGME accredited program in the specialty or subspecialty. During its March 2017 meeting, the Board considered and discussed two drafts of a proposed rule and received the input of the interested parties present who wished to speak on the agenda item. Following further discussion and consideration at its April 2017 meeting, the Board approved Exh. 2A and elected to provide Notice of Intent to adopt the amendments in the Register. During its March 2018 meeting, the Board determined to defer moving forward to the next step of the rulemaking process until it has had an opportunity to further explore and consider all other available options, as well as the outcome of a bill introduced in this session of the Louisiana Legislature that would remove its jurisdiction to act in this matter (See SB 186). See June 2018 Legislative Report. This project has been deferred pending further instructions from the Board. Unless there is continuing interest in proceeding with this rule making effort, the Board may wish to consider removing it from the Regulatory Report. Upon direction of the Board, this rulemaking effort is being returned to this report for further discussion and consideration by the Board. **The Board again discussed this rule-making effort at the June 29, 2020 meeting and awaits further research into this matter and any anti-trust arguments.**

**Physicians; Assessment of Costs:** During its June 2019 meeting, the Board elected to

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provide Notice of Intent to adopt amendments on complaints and investigations and to give further consideration to a rule on assessment of costs. A proposed rule was drafted and at the June 29, 2020 meeting, the Board reviewed the draft rules regarding assessment of costs and fees. The Board voted to proceed with filing the First Report to the OLRC for its approval, with the goal to thereafter provide Notice of Intent in the Louisiana Register. The OLRC meeting set for July 23, 2020 has this matter on its agenda. **Petitions for Rulemaking**: A rule for the form for petitions for adoption, amendment, or repeal of a rule, and the procedure for their submission, consideration, and disposition forms part of this Report. A draft rule to address such petitions was provided for initial Board member review and discussion during its June 2019 meeting. The draft remains under consideration. Following further consideration and discussion during its February 2020 meeting, the Board determined to provide Notice of Intent to adopt the proposed rules in the Louisiana Register. The proposed rules were transmitted to the Louisiana Occupational Review Commission (LORC) and are anticipated to be considered at the Commission's next meeting **on July 23, 2020 or thereafter.** **Physician Licensure (IMGs)**: The Board has been asked to conform the requirements for postgraduate training (PGY) for international medical graduates (IMGs) with those applicable to US graduates, provided the applicant graduated from an approved medical school. Currently, IMGs are required to complete three years of PGY training in an accredited medical residency training program prior to licensure eligibility. U.S. medical school graduates are required to complete 2 years of PGY accredited training or one (1) year with a commitment from the program for PGY-2 training with demonstration of completion of PGY-2 training as a condition to licensure renewal. Among other items, the request includes revising the criteria for approving foreign medical schools (e.g., treating them on par with U.S. schools), which are accredited by some combination of the World Health Organization, the Accreditation Commission on Colleges of Medicine (ACCM), the National Committee on Foreign Medical Education and Accreditation (NCFMEA), and the Education Commission on Foreign Medical Graduates (ECFMG). The request is included on the agenda for Board member review. If the Board approves commencing this rulemaking effort a draft will be prepared in due course for Board member consideration and discussion. Given the Board's direction to proceed with a rulemaking effort at its January 2020 meeting, a working draft of the proposed amendments is attached for initial Board member review and discussion. The draft utilizes a combination of accreditation entities recognized by the World Health Organization, the Education Commission on Foreign Medical Graduates (ECFMG) which, commencing in 2023, will require medical school accreditation as a requirement for ECFMG certification (e.g., for an IMG to enter and participate in post-graduate training in the U.S.), the World Federation of Medical Accreditation (WFMA), which is currently identified by the ECFMG to recognize organizations that accredit medical schools in different countries and the National Committee on Foreign Medical Education and Accreditation, of the U.S. Department of Education (NCFMEA), which evaluates international medical school accreditation standards and practices to determine their comparability to U.S. standards and practices for purposes of determining the ability of international medical schools to participate in U.S. federal education loan programs (Exh. 4). Following initial consideration and discussion of the draft amendments at its February 2020 meeting, the Board elected to solicit input from the medical schools and other interested stakeholders prior to proceeding. At its April 2020 meeting, the Board considered correspondence received from the Dean of LSUMC-NO and deferred further action pending consideration of further comments. **At the June 29, 2020 meeting, the Board voted to proceed with filing the First Report to the OLRC for its approval, with the goal to thereafter provide Notice of Intent in the**

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**Louisiana Register. Physician Licensure (CME):** The Board has determined to amend its continuing medical education (CME) rules for all categories of licensees (starting first with physicians) to utilize an electronic reporting service for tracking and reporting CME hours. Rather than capturing CME by a sampling of licensees (3%) by subsequent audit, all physicians (100%) will have their CME tracked and reported to the Board electronically by way of an electronic reporting service (e.g. CE broker). Notices will be sent at periodic intervals of the number of CME hours completed/required. A physician who does not satisfy the annual CME requirement will be ineligible for licensure renewal. Given the Board's direction to proceed with a rulemaking effort at its January 2020 meeting, a working draft is anticipated on the next report. As reported during the February 2020 meeting, a working draft of amendments to the Board's CME rules to align them with the Board's stated goals was being prepared. To that end, attached for initial Board member review and consideration are draft amendments to the existing rules that would be applicable to all physicians and allied health care providers regulated by the Board. Following consideration and discussion during its April 2020 meeting, the Board determined to provide Notice of Intent to adopt the proposed amendments in the Louisiana Register. **It was anticipated that the amendments will be transmitted to/considered by the Louisiana Occupational Review Commission (LORC) and, in due course, the Register, however that did not occur due to COVID and the search for new outside general counsel. During its June 29, 2020 meeting, the Board reaffirmed its approval to proceed with filing the First Report to the OLR for its approval, with the goal to thereafter provide Notice of Intent in the Louisiana Register.**

**Podiatry (History & Physicals):** Noting that a uniform podiatry 3 year postgraduate training program was implemented throughout all podiatry schools in 2013, the Board's Podiatry Advisory Committee has suggested a change in the current rules (1307G) to provide that licensed advanced practice podiatrists with 2 or more years of postgraduate training, may independently perform a complete history and physical (H&P) on patients for the purpose of preoperative evaluation before a podiatric procedure. The Committee also suggests that all licensed advanced practice podiatrists may independently perform a complete H&P for IRB approved podiatry research. The Committee appends its suggestions with the notes that (i) the H&P is done for evaluation and diagnosis only and (ii) there is no financial gain by the performance of H&P. The request is included on the agenda for Board member review. If the Board approves commencing this rulemaking effort a draft will be prepared in due course for Board member consideration and discussion. Given the Board's direction to proceed with a rulemaking effort at its January 2020 meeting, working draft has been compiled to address the Committee's request and is attached for Board member review and discussion. Following consideration and discussion during its February 2020 meeting, the Board determined to provide Notice of Intent to adopt the proposed rule amendments in the Louisiana Register. **It was anticipated that the amendments will be transmitted to/considered by the Louisiana Occupational Review Commission (LORC) and, in due course, the Register, however that did not occur due to COVID and the search for new outside general counsel. During its June 29, 2020 meeting, the Board reaffirmed its approval to proceed with filing the First Report to the OLR for its approval, with the goal to thereafter provide Notice of Intent in the Louisiana Register.**

**Complaints and Investigation (C&I):** In conformity with recommendations of the LLA, the Board directed the development of: (i) criteria for determining whether to issue public or nonpublic actions; and (ii) guidance to provide a frame work to guide future disciplinary dispositions. Draft rules have been compiled to address such criteria and guidance and is attached for Board member review and discussion. Following initial review

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and discussion at its February 2020 meeting, the Board elected to give further consideration to the proposed rules prior to proceeding. **During its June 29, 2020 meeting, the Board gave its approval to proceed with filing the First Report to the OLRC for its approval, with the goal to thereafter provide Notice of Intent in the Louisiana Register. Emergency Temporary Permit:** Pursuant to Emergency Declaration, adopted at an emergency meeting held on March 30, 2020, the Board exercised the emergency provision of the APA and amended its existing rules (.402D and 412H) and adopted a new subsection (412L) to provide for emergency temporary permits for formerly licensed Louisiana physicians and allied health care practitioners during the declared public health emergency. While the temporary emergency rule lapses in October, the Board, at its June 29, 2020 meeting, voted to proceed with filing the First Report to the OLRC, with the goal to provide Notice of Intent in the Louisiana Register so as to make these rules permanent.

### 7. **NEXT MEETING**

Next meeting of the Board – August 24, 25, 2020.

### 8. **PUBLIC COMMENTS**

Under La. R.S. 42:17A, “a public body may hold an executive session pursuant to [R.S. 42:16](#) for one or more of the following reasons: (1) Discussion of the character, professional competence, or physical or mental health of a person, provided that such person is notified in writing at least twenty-four hours, exclusive of Saturdays, Sundays, and legal holidays, before the scheduled time contained in the notice of the meeting at which such executive session is to take place and that such person may require that such discussion be held at an open meeting.....In cases of extraordinary emergency, written notice to such person shall not be required; however, the public body shall give such notice as it deems appropriate and circumstances permit; (2) Strategy sessions or negotiations with respect to collective bargaining, prospective litigation after formal written demand, or litigation when an open meeting would have a detrimental effect on the bargaining or litigating position of the public body;...(4) Investigative proceedings regarding allegations of misconduct; (5) Cases of extraordinary emergency, which shall be limited to natural disaster, threat of epidemic, civil disturbances, suppression of insurrections, the repelling of invasions, or other matters of similar magnitude; and,....(10) Or any other matters now provided for or as may be provided for by the legislature.”

## **EXECUTIVE SESSION**

### 1. **MINUTES/PRIOR MEETINGS**

Executive Session Minutes Approval.

### 2. **ADMINISTRATIVE MATTERS**

Executive Director’s Report continued – Pro Tem/Ad Hoc DOI

Director of Investigations’ Report continued – Pro Tem/Ad Hoc DOI

### 3. **LITIGATION**

Vincent Joseph Bruno v. Cecilia Mouton and LSBME, No. 12-5503

(Civ.Dist.Ct.Orl.Par.Div.“L”).

Guardian Medical Group, LLC and Cellution Wellness Center, Inc., v. Cecilia Mouton, M.D., and the LSBME, No. 12-7202 (Civ.Dist.Ct.Orl.Par.Div.“L”).

Richard Arjun Kaul, M.D., and Arnold Erwin Feldman, M.D. v. Louisiana State Board of Medical Examiners, et.al., No.19-3050(U.S.Dist.Ct.Dist. of Columbia)

David Dawes, M.D. v. Lawrence H. Cresswell, III, D.O., J.D. and the Louisiana State Board of Medical Examiners, No. 20-1253 (Civ.Dist.Ct.Orl.Par.)

Yori Fairley v. Dr. Vincent Culotta, No. 20-01097 (U.S.Dist.Ct.E.D.La.)

Gregory Duhon, M.D. v. Louisiana State Board of Medical Examiners, et al. No.

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2:20cv2022 (U.S. Dist. Ct. E.D. La.)

Louisiana State Board of Medical Examiners and Cecilia A. Mouton, M.D. v. Monica A. Borg, No. 09-1844 (Civ. Dist. Ct. Orl. Par. Div. "J-13").

Arnold E. Feldman, M.D. v. Cecilia Mouton, M.D. and the Louisiana State Board of Medical Examiners., No. 16-3627 (Civ. Dist. Ct. Orl. Par. Div. "G")

Aggrieved Practitioner v. Breaches of Obligations Agency and PACE, (Civ. Dist. Ct. Orl. Par., Div. E07).

**4. REPORTS INVESTIGATIONS/ADJUDICATIONS/LITIGATION**

Docket Calendar

Administrative Complaints.

Recommendations to Initiate Formal Investigations.

Consent Orders.

Other Investigative Matters.

**5. CLOSED CASE REPORTS**

June 2020 Closed case report

**6. GENERAL DISCIPLINARY MATTERS**

Intent to deny

Requests for reinstatement of license to unrestricted status, off probation.

Office Based Surgery End of 2019 Report

**7. 655 COMPLAINTS**

Review of 655 Complaint and response.

**11. LICENSURE AND CERTIFICATION**

**Miscellaneous**

Request for re-consideration of license application.