

LOUISIANA STATE BOARD OF MEDICAL EXAMINERS

630 Camp Street, New Orleans, LA 70130

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August 28, 2019

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RE: Final Report: Proposed Rule Amendments Governing
Physician Licensure and Certification; Fellowship Training
Permit—(LAC 46:XLV.405E and 411L)

Dear Sirs:

Pursuant to La. Rev. Stat. §49:968(D), the Louisiana State Board of Medical Examiners respectfully submits the enclosed report on the final adoption of the captioned rule amendments. Notice was previously published in the April 2019 edition of the *Louisiana Register*, Vol. 45, No. 04, pp. 594-596. The Board plans to adopt the amendments by and upon publication in the *Louisiana Register*.

Very truly yours,

LOUISIANA STATE BOARD OF
MEDICAL EXAMINERS

By: 
Vincent A. Culotta, Jr., M.D.
Executive Director

Enclosure

In compliance with Act 2018-655, the Board gives notice to its licensees and applicants of their opportunity to file a complaint about board actions and board procedures. You may submit such complaints to one or more of the following organizations:

1. Louisiana State Board of Medical Examiners; 630 Camp Street, New Orleans, LA 70130; (504) 568-6820; lsbme@lsbme.la.gov.
2. Committee on House & Governmental Affairs; La. House of Representatives; PO Box 44486, Baton Rouge, LA 70804; (225) 342-2403; h&ga@legis.la.gov
3. Committee on Senate & Governmental Affairs; La Senate; PO Box 94183, Baton Rouge, LA 70804; (225) 342-9845; s&g@legis.la.gov

**FINAL REPORT RELATIVE TO PROPOSED AMENDMENT
OF ADMINISTRATIVE RULES GOVERNING PHYSICIAN
LICENSURE AND CERTIFICATION; FELLOWSHIP TRAINING
PERMIT—(LAC 46:XLV.405E and 411L)
(La. Rev. Stat. §49:968(D))**

By The

LOUISIANA STATE
BOARD OF MEDICAL EXAMINERS

Submitted To The

COMMITTEE ON HEALTH AND WELFARE,
LOUISIANA SENATE,

COMMITTEE ON HEALTH AND WELFARE,
LOUISIANA HOUSE OF REPRESENTATIVES,

PRESIDENT OF THE SENATE

And

SPEAKER OF THE HOUSE OF REPRESENTATIVES

August 28, 2019

**FINAL REPORT RELATIVE TO PROPOSED AMENDMENT
OF ADMINISTRATIVE RULES GOVERNING PHYSICIAN
LICENSURE AND CERTIFICATION; FELLOWSHIP TRAINING
PERMIT—(LAC 46:XLV.405E and 411L)**

(La. Rev. Stat. § 49:968)

August 28, 2019

(La. Rev. Stat. §49:968(D))

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This Report is respectfully submitted by the Louisiana State Board of Medical Examiners (the “Board”), within the Department of Health and Hospitals, pursuant to La. Rev. Stat. §49:968(D).

By Notice of Intent published in the April 20, 2019 edition of the *Louisiana Register*, Vol. 45, No. 04, pp. 594-596, the Board proposed to amend its administrative rules governing physician licensure and certification, LAC Title 46:XLV, Subpart 2 (Licensure and Certification), Chapter 3 (Physicians), Subchapter H (Restricted Licensure, Permits), Sections 405 (Short-Term Residency Permit) and 411 (Graduate Education Temporary Permit).

The proposed amendments provide for a permit that would accommodate fellowship (e.g., post-residency) training which is not accredited by the American Council on Graduate Medical Education (ACGME) of the American Medical Association, the American Osteopathic Association (AOA) or the Commission on Dental Accreditation (CODA) of the American Dental Association. Permit eligibility requires completion of an accredited residency training program in the same specialty as the fellowship (405E.1.a; 411L.1.a), possession of all qualifications for licensure (405E.1.b; 411L.1.b), completion of the application process, payment of the applicable fee and submission of the required documentation from the program (405E.2; 411L.2). The permit holder may only practice medicine within the training program (405E.3; 411L.3). The duration of the permit is for 12 months (405E.4; 411L.4), may be renewed once (405E.5; 411L.5) and is subject to revocation for violation of the Louisiana Medical Practice Act or upon a finding that the permittee did not maintain/possess the prerequisite qualifications or exceeded the scope of authority of the permit (405E.6, 411L.6).

The Board anticipates that the permit will be beneficial to physicians who may receive such training, and the medical institutions that offer such programs, by facilitating medical education, training and/or retraining of fellows in emerging medical fields for which there is no current

**FINAL REPORT RELATIVE TO PROPOSED AMENDMENT
OF ADMINISTRATIVE RULES GOVERNING PHYSICIAN
LICENSURE AND CERTIFICATION; FELLOWSHIP TRAINING
PERMIT—(LAC 46:XLV.405E and 411L)**

(La. Rev. Stat. § 49:968)

August 28, 2019

(La. Rev. Stat. §49:968(D))

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pathway to ACGME, AOA or CODA accreditation. It is also anticipated that the additional training received by such physicians will improve the quality of healthcare delivered to the citizens of this state.

Concurrently with submission of the Notice of Intent to the *Register*, in accordance with La. Rev. Stat. §40:968, the Board submitted a Report on the proposed rule amendments to the Senate and House Committees on Health and Welfare, the President of the Senate and the Speaker of the House of Representatives.¹ Following publication of Notice of Intent, the Board did not receive any written comments or a request for public hearing during the comment period provided by La. Rev. Stat. §49:953.

This Report, submitted by the Board pursuant to and as prescribed by La. Rev. Stat. §49:968(D), includes as Appendix A copies of: (i) an email from the Occupational Licensing Review Commission concerning the proposed rule amendments; and (ii) the Notice of Intent containing the full text of the proposed amendments previously published in the April 20, 2019 edition of the *Louisiana Register*, which the Board intends to adopt and formally promulgate in the identical form as was previously published by and upon publication in the *Louisiana Register*.

* * *

¹*Electronic Mail*, Vincent A. Culotta, Jr., M.D., Exec. Dir., La. State Bd. Med. Exam., Re: Report Relative to Proposed Amendment of Rules Governing Licensure and Certification; April 10, 2019).

----- Original message -----

From: Erin Monroe Wesley <Erin.MonroeWesley@la.gov>

Date: 8/27/19 3:45 PM (GMT-06:00)

To: "Vincent A. Culotta Jr., MD" <vculotta@lsbme.la.gov>, Rita Arceneaux
<Rarceneaux@lsbme.la.gov>

Cc: Roz Moore <Roz.Moore@la.gov>, Grace Richardson <Grace.Richardson@la.gov>

Subject: [EXTERNAL] Occupational Licensing Review Commission Meeting - LSBME
Agenda Items

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Dr. Culotta & Ms. Arceneaux -

We are in receipt of your transmittal letter regarding second reports to the Commission for proposed adoption of rules amendments governing physician licensure and therapeutic marijuana. Given that no changes were made after publication of notice of intent with respect to both rule changes, these rule changes do not require a second review by the Occupational Licensing Review Commission. There is no need to place these items on Thursday's meeting agenda. Please let me know if you have any additional questions or concerns.

Erin

Erin Monroe Wesley | Special Counsel
(Policy Director | Legislative Affairs | Federal Relations)
Office of Governor John Bel Edwards
(225) 937-3538 Cell



Appendix A(i)

approval, university providers must maintain effective ratings on the state teacher preparation quality rating system (Level 1, 2, 3, or 4). Renewal decisions are made every two years with providers at a level 3 or above moving to a four-year accountability cycle. Teacher preparation programs that do not maintain a quality rating of 3 or above shall undergo a corrective action period during which the provider must develop an improvement plan including specific goals, timelines, and measures of success. The Board of Elementary and Secondary Education (BESE) shall review data in the plan to inform required interventions which include, but are not limited to one or more of the following: require enactment of improvement recommendations; designate programs as low performing; limit or discontinue enrollment for one or more pathways or programs; discontinue the provider's ability to recommend teacher candidates for certification in one or more pathways or programs. The Louisiana Department of Education (LDE) shall make publicly available a performance profile for each approved preparation provider annually, beginning winter 2019-2020. The performance profile shall include a quality rating, including the scores and measures contributing to the rating as well as other informational metrics required by BESE Bulletin 996.

Per simulations based on the value-added results for the prior year, seven (58%) providers of undergraduate pathways scored a quality rating of Level 1: Ineffective, or Level 2: Needs Improvement and five (36%) scored a Level 1 or 2 in the post-baccalaureate pathway. There will be no consequences for providers as a result of the performance profiles for the 2019-2020 years. The 2020-2021 academic year shall be the first year of the initial two-year cycle.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There may be a reduction in enrollment and associated tuition revenues for providers to the extent programs are designated as low performing and at risk of low performance per the federal Higher Education Act; enrollment is limited or discontinued for one or more pathways or programs; or the provider's ability to recommend teacher candidates for certification in one or more pathways or programs is discontinued.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

Non-university providers who participate in teacher preparation programs are subject to the same accountability and interventions as public universities and may experience similar impacts.

Individuals seeking to enroll in teacher preparation programs may be impacted to the extent providers are limited in their ability to accept new students, thereby reducing educational options. Alternatively, poor performance profiles could impact enrollment decisions of those individuals.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is an indeterminable impact on competition and employment of faculty at impacted institutions which fail to maintain ratings of effective or above and are subject to corrective actions outlined in rule.

Beth Scioneaux
Deputy Superintendent
1904#052

Evan Brasseaux
Staff Director
Legislative Fiscal Officer

NOTICE OF INTENT

**Department of Health
Board of Medical Examiners**

**Physician Licensure and Certification;
Fellowship Training Permit
(LAC 46:XLV.405 and 411)**

Notice is hereby given that in accordance with the Louisiana Administrative Procedure Act, R.S. 49:950 *et. seq.*, and pursuant to the authority vested in the Louisiana State Board of Medical Examiners (Board) by the Louisiana Medical Practice Act, R.S. 37:1270, R.S. 37:1275, R.S. 37:1277, R.S. 37:1281 and R.S. 37:1285, the Board intends to amend its Rules governing short-term permits to provide for a permit that would accommodate fellowship training that is not accredited by the American Council on Graduate Medical Education (ACGME) of the American Medical Association, the American Osteopathic Association (AOA) or the Commission on Dental Accreditation (CODA) of the American Dental Association. The proposed amendments are set forth below.

**Title 46
PROFESSIONAL AND OCCUPATIONAL
STANDARDS**

Part XLV. Medical Professions

Subpart 2. Licensure and Certification

Chapter 3. Physicians

Subchapter H. Restricted Licensure, Permits

§405. Short-Term Residency Permit; Fellowship Training Permit

A. - D. ...

E. Fellowship Training Permit; Qualifications. The board may, in its discretion, issue a temporary permit for the purpose of participating in unaccredited postgraduate fellowship training, at a minimum level of postgraduate year four (PGY-4), that is conducted by a Louisiana medical school or major teaching hospital, as defined herein, provided such school or major teaching hospital sponsors a fully accredited ACGME residency training program in the same specialty in which the fellowship training is offered. To qualify for such a permit an applicant:

1. shall:

a. have completed a residency training program accredited by the ACGME, AOA or the Commission on Dental Accreditation (CODA) of the American Dental Association in the same specialty as the fellowship; and
b. possess all of the qualifications for licensing prescribed by §311A.1-6 of these rules;

2. present, or cause to be presented, to the board:

a. a completed application in a manner specified by the board, together with the fees prescribed by Chapter 1 of these rules;

b. satisfactory documentation that the applicant possesses the qualifications required by this Section; and

c. a letter from the program director under whom he or she will be serving in the fellowship, describing the

Appendix A(ii)

capacity in which the applicant will be serving and the inclusive dates of such service.

3. Restrictions, Limitations. The holder of a permit issued under this Section shall not engage in the practice of medicine in any respect in the state of Louisiana, or receive medical educational or training, other than within the fellowship training program for which he or she is approved by the board.

4. Term. A permit issued under this Section shall expire, and thereby become null and void and to no effect on the date specified by the permit or twelve months from the date of issuance, whichever is the shorter period. Such permit shall also expire on any date that the permittee's appointment to the designated fellowship training is terminated.

5. Renewal. A fellowship training permit which has expired may, at the board's discretion, be renewed or reissued for not more than one successive twelve month period commencing without interruption immediately following the initial expiring permit, provided all requirements prerequisite to initial permit issuance have been met to the board's satisfaction.

6. Revocation. A fellowship training permit may be revoked by the board:

- a. for any of the causes specified by R.S. 37:1285A;
- b. upon a finding by the board that the permittee has failed to maintain, or did not possess at the time of application, any of the qualifications prerequisite to eligibility for a permit as prescribed by this Subsection; or
- c. upon a finding by the board that the permittee has exceeded the scope of authority accorded by the permit or otherwise violated any of the terms, conditions, restrictions, or limitations prescribed by this Section.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270, R.S. 37:1275, R.S. 37:1277, R.S. 37:1281 and R.S. 37:1285.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 10:913 (November 1984), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 16:521 (June 1990), LR 27:845 (June 2001), LR 33:1344 (July 2007), amended by the Department of Health, Board of Medical Examiners, LR

§411. Graduate Education Temporary Permit/Short-Term IMG Training Permit; Fellowship Training Permit

A. - K.2....

L. Fellowship Training Permit; Qualifications. The board may, in its discretion, issue a temporary permit for the purpose of participating in unaccredited postgraduate fellowship training at a minimum level of postgraduate year four (PGY-4), that is conducted by a Louisiana medical school or major teaching hospital, as defined herein, provided such school or major teaching hospital sponsors a fully accredited ACGME residency training program in the same specialty in which the fellowship is offered. To qualify for such a permit an applicant:

1. shall:
 - a. have completed a residency training program accredited by the ACGME, AOA or the Commission on Dental Accreditation (CODA) of the American Dental Association in the same specialty as the fellowship; and
 - b. possess all of the qualifications for licensing prescribed by §323 of these rules;

2. present, or cause to be presented, to the board:

a. a completed application in a manner specified by the board, together with the fees prescribed by Chapter 1 of these rules;

b. satisfactory documentation that the applicant possesses the qualifications required by this Section; and

c. a letter from the program director under whom he or she will be serving in the fellowship, describing the capacity in which the applicant will be serving and the inclusive dates of such service.

3. Restrictions, Limitations. The holder of a permit issued under this Section shall not engage in the practice of medicine in any respect in the state of Louisiana, or receive medical education or training, other than within the fellowship training program for which he or she is approved by the board.

4. Term. A permit issued under this Section shall expire, and thereby become null and void and to no effect on the date specified by the permit or twelve months from the date of issuance, whichever is the shorter period. Such permit shall also expire on any date that the permittee's appointment to the designated fellowship training program is terminated.

5. Renewal. A fellowship training permit which has expired may, at the board's discretion, be renewed or reissued for not more than one successive twelve month period commencing without interruption immediately following the initial expiring permit, provided all requirements prerequisite to initial permit issuance have been met to the board's satisfaction.

6. Revocation. A fellowship training permit may be revoked by the board:

a. for any of the causes specified by R.S. 37:1285A;

b. upon a finding by the board that the permittee has failed to maintain, or did not possess at the time of application, any of the qualifications prerequisite to eligibility for a permit as prescribed by this Subsection; or

c. upon a finding by the board that the permittee has exceeded the scope of authority accorded by the permit or otherwise violated any of the terms, conditions, restrictions, or limitations prescribed by this Section.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(A), 37:1270(B)(6), 37:1275, 37:1277 and 37:1281.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 21:467 (May 1995), amended LR 27:846 (June 2001), LR 35:465 (March 2009), amended by the Department of Health, Board of Medical Examiners, LR 45:

Family Impact Statement

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of the proposed amendments on the family has been considered. It is not anticipated that the proposed amendments will have any impact on family, formation, stability or autonomy, as described in R.S. 49:972.

Poverty Impact Statement

In compliance with Act 854 of the 2012 Regular Session of the Louisiana Legislature, the impact of the proposed amendments on those that may be living at or below one hundred percent of the federal poverty line has been considered. It is not anticipated that the proposed amendments will have any impact on child, individual or

family poverty in relation to individual or community asset development, as described in R.S. 49:973.

Provider Impact Statement

In compliance with HCR 170 of the 2014 Regular Session of the Louisiana Legislature, the impact of the proposed amendments on organizations that provide services for individuals with developmental disabilities has been considered. It is not anticipated that the proposed amendments will have any impact on the staffing, costs or overall ability of such organizations to provide the same level of services, as described in HCR 170.

Small Business Analysis

It is not anticipated that the proposed amendments will have any adverse impact on small businesses as defined in the Regulatory Flexibility Act, R.S. 49:965.2 et. seq.

Public Comments

Interested persons may submit written data, views, arguments, information or comments on the proposed amendments to Rita Arceneaux, Confidential Executive Assistant, Louisiana State Board of Medical Examiners, 630 Camp Street, New Orleans, Louisiana, 70130, (504) 568-6820, Ex. 242. She is responsible for responding to inquiries. Written comments will be accepted until 4 p.m., May 21, 2019.

Public Hearing

A request pursuant to R.S. 49:953(A)(2) for a public hearing must be made in writing and received by the Board within 20 days of the date of this notice. If a public hearing is requested to provide data, views, arguments, information or comments orally in accordance with the Louisiana Administrative Procedure Act, the hearing will be held on Thursday, May 30, 2019 at 11 a.m., at the office of the Louisiana State Board of Medical Examiners, 630 Camp Street, New Orleans, Louisiana 70130. Any person wishing to attend should call to confirm that a hearing is being held.

Vincent A. Culotta, Jr., M.D.
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Physician Licensure and Certification; Fellowship Training Permit

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

The proposed rule changes will result in a one-time publication expense totaling \$865 in FY 19-20 for the LA State Board of Medical Examiners (LSBME) to publish the rule changes in the Louisiana Register. Otherwise, the proposed rule changes are not anticipated to result in any additional costs for state or local governmental units.

The proposed rule changes amend the LSBME's administrative rules to provide a fellowship (e.g., post-residency) training permit for training that is not accredited by the American Council on Graduate Medical Education (ACGME) of the American Medical Association, the American Osteopathic Association (AOA) or the Commission on Dental Accreditation (CODA) of the American Dental Association.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The proposed rule changes will increase SGR collections for the LSBME by an indeterminable amount beginning in FY 19 and in subsequent fiscal years. The fee for a temporary

permit under the board's current rules is \$100 for initial issuance and \$100 for a one-time, 12-month renewal. The board does not anticipate more than 15-20 total applicants per year for the proposed permit, which will generate an estimated \$1,500 - \$2,000 (15-20 permits * \$100 per permit) annually. However, revenues associated with these permits are indeterminable and dependent upon the number of applicants annually. Furthermore, to the extent permits are renewed, the LSBME may realize an additional \$100 per permit renewal.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

The proposed rule changes benefit physicians by outlining requirements and allowing for training that is not accredited by the American Council on Graduate Medical Education (ACGME) of the American Medical Association, the American Osteopathic Association (AOA) or the Commission on Dental Accreditation (CODA) of the American Dental Association. The proposed permit is anticipated to be beneficial to physicians who may receive such training, and the medical institutions that offer such programs, by facilitating medical education, training, and retraining of fellows in emerging medical fields for which there is no current pathway to ACGME, AOA or CODA accreditation. It is also anticipated that the additional training received by such physicians will improve the quality of healthcare delivery in Louisiana.

In order to be eligible for a permit the applicant must have completed an accredited residency training program in the same specialty as the fellowship, possess all qualifications for licensure, submit an application to the board and pay the applicable \$100 permit fee. The permit holder may only practice medicine or receive medical education or training within the training program. The duration of the permit is for 12 months, may be renewed one time with an accompanying fee of \$100, and is subject to revocation for violation of the Medical Practice Act or the LSBME's rules.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no anticipated effect on competition or employment associated with the proposed rule changes.

Vincent A. Culotta, Jr., M.D.
Executive Director
1904#060

Evan Brasseaux
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Department of Health Board of Medical Examiners

Physician Practice; Marijuana for Therapeutic Use by Patients Suffering From a Debilitating Medical Condition (LAC 46:XLV Chapter 77)

Notice is hereby given that in accordance with the Louisiana Administrative Procedure Act, R.S. 49:950 et seq., and pursuant to the authority vested in the Louisiana State Board of Medical Examiners (Board) by the Louisiana Medical Practice Act, R.S. 37:1270, and Louisiana law governing therapeutic marijuana, R.S. 40:1046, the Board intends to amend its rules governing physicians who diagnose their patients with a debilitating medical condition for which therapeutic marijuana may be recommended, LAC 46:XLV Chapter 77. The proposed amendments are needed to conform the Board's rules to Acts 496 and 708 of the 2018 Regular Session of the Louisiana Legislature. Among other items, the proposed changes: (i) add various conditions