

LOUISIANA STATE BOARD OF MEDICAL EXAMINERS

630 Camp Street, New Orleans, LA 70130
www.lsbme.la.gov



August 28, 2019

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RE: Final Report Relative to Proposed Rule Amendments
Governing Marijuana for Therapeutic Use by Patients
Suffering From a Debilitating Medical Condition —
Physician Practice; LAC 46:XLV, Chapter 77

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. 596-599. 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:

A handwritten signature in blue ink that reads "Vincent Culotta M.D./RSH".

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: PROPOSED AMENDMENT OF
ADMINISTRATIVE RULES GOVERNING PHYSICIAN PRACTICE;
THERAPEUTIC USE OF MARIJUANA BY PATIENTS SUFFERING
FROM A DEBILITATING MEDICAL CONDITION**

(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: PROPOSED AMENDMENT OF
ADMINISTRATIVE RULES GOVERNING PHYSICIAN PRACTICE;
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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, 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. 596-599, the Board proposed to amend its administrative rules governing physicians, LAC Title 46:XLV, Subpart 3 (Practice), Chapter 77 (Marijuana for Therapeutic Use by Patients Suffering from a Debilitating Medical Condition), Subchapter A (General Provisions) 7705 (Definitions), Subchapter B (Prohibitions and Exceptions) 7707 and 7709, Subchapter D (Marijuana for Therapeutic Purposes, Limitations, Access to Records) 7717 and 7721, and (Appendix) 7729. Concurrently with submission of the Notice of Intent to the *Register*, in accordance with La. Rev. Stat. §40:968, the Board submitted a Report 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 such Notice the Board did not receive a timely request for public hearing; however, it did receive one written comment concerning the proposed definition of “Pediatric Subspecialist.”

This Report, submitted by the Board pursuant to and as prescribed by La. Rev. Stat. §49:968(D), sets forth a summary of the comments received by the Board on the subject administrative rule amendments and a statement of the Board's response to each comment. Copies of: (i) an email from the Occupational Licensing Review Commission concerning the proposed rule amendments; and (ii) Notice of Intent, published in the April 2019 edition of the *Register*, accompany this Report as Appendix A, which the Board intends to adopt as final amendments and formally promulgate by and upon publication in the *Louisiana Register*.

I. **Background**—By Notice of Intent published in the April 20, 2019, Edition of the *Louisiana Register*, Board proposed to amend its administrative rules governing physicians who

¹*Electronic Mail*, La. State Bd. Med. Exam., RE: Report Relative to Proposed Amendment of Administrative Rules Governing Physician Practice; Therapeutic Use of Marijuana by Patients Suffering From a Debilitating Medical Condition (April 10, 2019).

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(La. Rev. Stat. §49:968(D))

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utilize therapeutic marijuana in the treatment of their patients who are suffering from a debilitating medical condition, LAC 46:XLV Chapter 77. The amendments conform the Board's rules to Acts 496 and 708 of the 2018 Regular Session of the Louisiana Legislature.

II. Summary of Proposed Rules—The proposed amendments appear in LAC 46:XLV Chapter 77. Among other items, the proposed changes: (i) add various conditions to the definition of a *debilitating medical condition(s)* (DMC or DMCs) for which therapeutic marijuana (TM) may be recommended by a physician (*See 7705A: glaucoma, Parkinson's disease, severe muscle spasm, intractable pain, post-traumatic stress disorder, autism spectrum disorder*); (ii) incorporate definitions for “consult or consultant,” “intractable pain,” and “pediatric subspecialists,” to accommodate the revised listing of DMCs (7705A). In addition, in response to a request for rulemaking, the proposed amendments: (iii) eliminate the 100 patient limit (impose no limit) on the number of patients for whom a physician registered with the Board may recommend TM (7707A.2, 7709B.); (iv) remove the requirement that the physician re-examine the patient at intervals not to exceed 90 days and instead leave the frequency of follow up examinations to the judgment of the treating physician (7717A.6). The proposed changes would also clarify two provisions in the existing rules to confirm them with the Board's interpretation/prior advice *e.g.*: (v) that the prohibition against ownership or investment interest in a TM pharmacy or producer applies only to physicians who are registered to recommend TM (7705A.5); and (vi) that physicians recommending TM must also comply with the Board's rules on the treatment of chronic or intractable pain if utilized for the treatment of non-cancer related intractable pain (7717A.4.d.). In response to a request for clarification by the Louisiana Hospital Association, the changes would also: (vii) amend the definition of “Bona-Fide Physician-Patient Relationship,” to eliminate unintended consequences of in-person examinations conducted at locations other than a physician's physical practice location, which are contained in the physician's registration with the Board (7705A Definition of *Bona-Fide Physician-Patient Relationship*). Finally, the amendments would, (viii) clarify the mode of transmission of a recommendation to a TM pharmacy (7721C) and amend the form of recommendation for TM to add the DCMs included in the law (7729C).

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III. Summary of the Comments and Board Response—During the comment period set forth in the NOI, a timely request for a public hearing was not received; however, the Board did receive a written comment.

Comment: A professional organization, the Louisiana Chapter of the American Academy of Pediatrics, submitted a written comment expressing concern as to the proposed definition of *Pediatric Subspecialist*. Specifically, the commenter claimed that “The proposed definition is too broad and is in contradiction to the intent of Act 496 from the 2018 Regular Session of the Louisiana Legislature.”²

Response. For the reasons set forth below, the Board declines the commenter’s request to alter the definition of *pediatric subspecialists* contained in §7705A (Definitions) of the proposed amendments.

Consistent with the law,³ the proposed amendments provide that prior to recommending therapeutic marijuana for any of the conditions associated with autism spectrum disorder (“ASD”) for a patient under eighteen, the physician shall consult with a pediatric subspecialist.⁴ Prior to publication of the NOI, the term *pediatric subspecialist* was not defined in the law or the Board’s rules. Considering it appropriate to do so, the Board discussed various versions of an appropriate definition, which would provide for both patient safety and patient access to care. During the development of the proposed amendments, the Board received and considered input from various members of the public and medical professionals and subspecialists over the course of a number of its regularly scheduled monthly meetings. Ultimately, in its NOI it elected to define the term as “an individual licensed to practice medicine in any state in the United States who provides care to patients with ASD.”⁵

²Corr., John A. Vanchiere, MD, PhD, Pres., La. Chapter, American Academy of Pediatrics to the LSBME (May 14, 2019).

³La. Rev. Stat. §40:1046A(2)(b).

⁴LAC 46:XLV:7705A., *See: Def. Debilitating Medical Condition* ‘p.’ autism spectrum disorder.

⁵LAC 46:XLV:7705A., *See: Def. Pediatric Subspecialist*.

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During its Board meeting following publication of the NOI (May 2019 meeting), the Board debated whether to modify this definition but deferred a decision until the next meeting. The Board subsequently received and advised the commenter that its written comment would be considered at its June 2019 meeting. Prior to such meeting, Act 284 was adopted in the 2019 Regular Session of the Louisiana Legislature, which incorporated the same definition in the law as that contained in the NOI.⁶ Given such legislative action, the commenter was advised at the June 2019 meeting that the Board's authority to address the organization's concerns are constrained by the law.

* * *

⁶ See: HB 358 (Act 284 of the 2019 Regular Session of the La. Legislature), amending La. Rev. Stat. §40:1046A(2)(b).

----- 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



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

to the definition of a *debilitating medical condition(s)* (DMC or DMCs) for which therapeutic marijuana (TM) may be recommended (*glaucoma, Parkinson's disease, severe muscle spasm, intractable pain, post-traumatic stress disorder, autism spectrum disorder*); (ii) add definitions for "intractable pain," "consult or consultant" and "pediatric subspecialists," to accommodate the revised list of DMCs; (iii) eliminate the 100 patient limit on the number of patients for whom a physician registered with the Board may recommend TM; (iv) remove the requirement that the physician re-examine the patient at intervals not to exceed 90 days, leaving the frequency of follow up exams to the physician's judgment. The proposed changes also: (v) clarify that the existing prohibition against ownership or investment interest in a TM pharmacy or producer applies only to physicians registered to recommend TM; (vi) clarify that physicians recommending TM must also comply with the rules on treatment of non-cancer related chronic or intractable pain if TM is utilized for this condition; (vii) amend the definition of "Bona-Fide Physician-Patient Relationship," to eliminate unintended consequences (*Definition of Bona-Fide Physician-Patient Relationship*); and (viii) clarify the mode of transmission of a recommendation to a TM pharmacy. The proposed amendments which amend §§7705A (definitions), 7707A.5, 7717A.4.d, 7717A.6, 7721C and 7729C and delete 7707A.2 and 7709B, are set forth below.

Title 46

PROFESSIONAL AND OCCUPATIONAL STANDARDS

**Part XLV. Medical Professions
Subpart 3. Practice**

Chapter 77. Marijuana for Therapeutic Use by Patients Suffering from a Debilitating Condition

Subchapter A. General Provisions

§7705. Definitions

A. As used in this Chapter, the following terms and phrases shall have the meanings specified.

Bona-Fide Physician-Patient Relationship—a relationship in which a physician:

a. has conducted at least one in-person examination at a physical practice location, or another location identified in his or her registration under this Chapter, in this state;

b. - c. ...

Consult or Consultation—as used in this Chapter, means advice or opinions provided to a physician registered with the board to recommend therapeutic marijuana, by a pediatric subspecialist regarding a patient's diagnosis of ASD and treatment with therapeutic marijuana. The consultation may be obtained in person or by telephone, telemedicine or electronic mail, provided it affords for medical/health information privacy and security. The request for and report of the consultant must be documented in the patient record of the requesting physician, who shall remain personally responsible to the patient for the primary diagnosis and any treatment provided. If the consultant's advice or opinions are not accepted by the requesting physician, the medical record should document the consultation and the reason(s) why it was not accepted.

Debilitating Medical Condition (also referred to in this Chapter as a *Qualifying Medical Condition*)—means any of the following:

- a. cancer;
- b. glaucoma;
- c. Parkinson's disease;
- d. positive status for human immunodeficiency virus;
- e. acquired immune deficiency syndrome;
- f. cachexia or wasting syndrome;
- g. seizure disorders;
- h. epilepsy;
- i. spasticity;
- j. severe muscle spasms;
- k. intractable pain;
- l. Crohn's disease;
- m. muscular dystrophy;
- n. multiple sclerosis;
- o. post-traumatic stress disorder;
- p. any of the following conditions associated with autism spectrum disorder (ASD); provided, however, that prior to recommending therapeutic marijuana for any condition associated with ASD to a patient under eighteen years of age, the physician shall consult with a pediatric subspecialist:

i. repetitive or self-stimulatory behavior of such severity that the physical health of the person with autism is jeopardized;

ii. avoidance of others or inability to communicate of such severity that the physical health of the person with autism is jeopardized;

iii. self-injuring behavior;

iv. physically aggressive or destructive behavior;

q. and such other diseases or conditions that may subsequently be identified as a debilitating medical condition by amendment of R.S. 40:1046 or other state law.

Intractable Pain—for purposes of this Chapter, means a pain state in which the course of the pain cannot be removed or otherwise treated with the consent of the patient and which, in the generally accepted course of medical practice, no relief or cure of the cause of the pain is possible, or none has been found after reasonable efforts. It is pain so chronic and severe as to otherwise warrant an opiate prescription.

Pediatric Subspecialist—an individual licensed to practice medicine in any state in the United States who provides care to patients with ASD.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1261-1292, 1270, and 40:1046.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 41:2632 (December 2015), amended by the Department of Health, Board of Medical Examiners, LR 43:319 (February 2017), LR 45:

Subchapter B. Prohibitions and Exceptions

§7707. Prohibitions

A. No physician shall:

1. ...

2. Repealed.

3. - 4. ...

5. if registered with the board under this Chapter, have an ownership or investment interest established through

debt, equity, or other means, whether held directly or indirectly by a physician or a member of a physician's immediate family, nor any contract or other arrangement to provide goods or services, in or with a licensed therapeutic marijuana pharmacy or a producer licensed by the Louisiana Department of Agriculture and Forestry to produce marijuana.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1261-1292, 1270, and 40:1046.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 41:2632 (December 2015), amended by the Department of Health, Board of Medical Examiners, LR 45:

§7709. Exceptions

A. This Chapter is subject to the following exceptions.

1. - 2.b....

B. Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1261-1292, 1270, and 40:1046.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 41:2632 (December 2015), amended by the Department of Health, Board of Medical Examiners, LR 43:319 (February 2017), LR 45:

Subchapter D. Marijuana for Therapeutic Purposes, Limitations, Access to Records

§7717. Use of Marijuana for Therapeutic Purposes, Limitations

A. Required Prior Conditions. Nothing in this Chapter requires that a physician issue a written request or recommendation for marijuana. However, if a physician determines it medically appropriate to do so to treat or alleviate symptoms of a patient's qualifying medical condition the physician shall comply with the following rules.

1. - 3. ...

4. Treatment Plan. An individualized treatment plan shall be formulated and documented in the patient's medical record which includes medical justification for the use of marijuana. In addition, the plan shall include documentation:

a. - c. ...

d. of compliance with the board's rules on chronic or intractable pain, set forth in 6915-6923 of this Part, if therapeutic marijuana is utilized for the treatment of non-cancer-related chronic or intractable pain.

5. ...

6. Continued Use of Marijuana. The physician shall monitor the patient's progress at such intervals as the physician determines appropriate to assess the benefits of treatment, assure the therapeutic use of marijuana remains indicated, and evaluate the patient's progress toward treatment objectives. During each visit, attention shall be given to the possibility that marijuana use is not masking an acute or treatable progressive condition or that such use will lead to a worsening of the patient's condition. Indications of substance abuse or diversion should also be evaluated.

A.7. - B.3. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1261-1292, 1270, and 40:1046.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 41:2633 (December 2015), amended by the Department of Health, Board of Medical Examiners, LR 43:319 (February 2017), LR 45:

§7721. Form of Written Request or Recommendation

A. - B. ...

C. Manner of Transmission. A written request or recommendation for therapeutic marijuana shall be transmitted by the physician or physician's designee to a licensed therapeutic marijuana pharmacy by facsimile or in another electronic manner that provides for medical/health information privacy and security and is in compliance with rules promulgated by the Louisiana Board of Pharmacy. The pharmacy shall be selected by the patient from a list of licensed therapeutic marijuana pharmacies.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1261-1292, 1270, and 40:1046.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 41:2634 (December 2015), amended by the Department of Health, Board of Medical Examiners LR 43:320 (February 2017), LR 45:

§7729. Appendix—Form for Recommendation for Therapeutic Marijuana

—THIS IS NOT A PRESCRIPTION—

PHYSICIAN RECOMMENDATION FORM

Section A. - B. ...

Section C. Patient's Debilitating Medical Condition(s) (Required)

This patient has been diagnosed with the following debilitating medical condition: (A minimum of one condition must be checked)	
<input type="checkbox"/> Acquired Immune Deficiency Syndrome <input type="checkbox"/> Cachexia or Wasting Syndrome <input type="checkbox"/> Cancer <input type="checkbox"/> Crohn's Disease <input type="checkbox"/> Epilepsy <input type="checkbox"/> Multiple Sclerosis <input type="checkbox"/> Muscular Dystrophy <input type="checkbox"/> Positive Status for Human Immunodeficiency Virus <input type="checkbox"/> Spasticity <input type="checkbox"/> Seizure Disorders <input type="checkbox"/> Glaucoma <input type="checkbox"/> Parkinson's Disease	<input type="checkbox"/> Severe Muscle Spasms <input type="checkbox"/> Intractable Pain <input type="checkbox"/> Post-Traumatic Stress Disorder <input type="checkbox"/> Any of the following conditions associated with autism spectrum disorder: <input type="checkbox"/> (i) repetitive or self-stimulatory behavior of such severity that the health of the person with autism is jeopardized; <input type="checkbox"/> (ii) avoidance of others or inability to communicate of such severity that the physical health of the person with autism is jeopardized; <input type="checkbox"/> (iii) self-injuring behavior; <input type="checkbox"/> (iv) physically aggressive or destructive behavior.

Section D.-E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1261-1292, and R.S. 40:1046.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 41:2635 (December 2015), amended by the Department of Health, Board of Medical Examiners, LR 43:320 (February 2017), 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 Statement

It is not anticipated that the proposed rule 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 10 a.m., at the office of the Louisiana State Board of Medical Examiners, 630 Camp Street, New Orleans, LA 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 Practice; Marijuana for Therapeutic Use by Patients Suffering From a Debilitating Medical Condition

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 \$1,502 in FY 20 for the LA State Board of Medical Examiners (LSBME).

The proposed rule changes amend rules governing the practice of physicians registered to recommend therapeutic marijuana to patients. The proposed rule changes conform with Acts 496 and 708 of the 2018 Regular Session, which added various conditions to the definition of a debilitating medical condition(s) (DMC or DMCs) for which therapeutic marijuana (TM) may be recommended (glaucoma, Parkinson's disease, severe muscle spasm, intractable pain, post-traumatic stress disorder, autism spectrum disorder). The proposed rule changes also add definitions for "intractable pain," "consult or consultant" and "pediatric subspecialists," to accommodate the revised list of DMCs. Furthermore, the proposed rule changes

eliminate the 100-patient limitation on the number of patients for whom a physician registered with the board may recommend TM, as well as remove the requirement that the physician re-examine the patient at intervals not to exceed 90 days, leaving the frequency of follow up exams to the physician's judgment. The proposed changes also clarify that the existing prohibition against ownership or investment interest in a TM pharmacy or producer applies only to physicians registered to recommend TM; clarify that physicians recommending TM must also comply with the rules on treatment of non-cancer related chronic or intractable pain if TM is utilized for this condition; amend the definition of "Bona-Fide Physician-Patient Relationship;" and clarify the transmission mode for a recommendation to a TM pharmacy.

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

The proposed rule changes will not affect revenue collections for state or local governmental units.

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

The proposed rule changes expand the list of DMCs and provide associated definitions consistent with Acts 496 and 708 of the 2018 Regular Session. These changes will expand this form of therapy to patients diagnosed with additional qualifying medical conditions.

The proposed changes (expansion of the list of DMCs, elimination of patient limit and timing of return visits, clarification of the rule on ownership or investment interest, application of the chronic pain rules to the treatment of chronic pain with this form of therapy, expansion of the definition of "bona-fide physician-patient relationship to permit exams at locations other than a physician's physical practice location and clarifying the mode of transmission of TM recommendations) are also anticipated to provide greater patient access and physician capacity for patients with a TM qualifying DMC and better insure regulatory compliance. It is unknown whether or to what extent the proposed changes will affect the workload and/or income of physicians who may diagnose their patients with a DMC for which TM may be recommended.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The increased list of DMCs, removal of the patient limit and timing of return visits may provide greater patient access and physician capacity for patients with a TM qualifying DMC. Clarification of various rules may better insure regulatory compliance. Otherwise, it is not anticipated that the proposed changes will have any impact on competition or employment.

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Staff Director
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NOTICE OF INTENT

Department of Health and Hospitals Board of Medical Examiners

Physician Practice; Telemedicine (LAC 46:XLV.7505)

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, the board intends to amend its rules governing telemedicine to delete the words "in this state" from 7505C. for consistency with the law and so that, as applied, the Rule would not inadvertently prevent