

LOUISIANA STATE BOARD OF MEDICAL EXAMINERS

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



July 3, 2019

Telephone: (504) 568-6820

FAX: (504) 568-8893

Writer's Direct Dial:

(504) _____

Hon. Fred H. Mills, Jr.
Chairman
Committee on Health and Welfare
Senate of the State of Louisiana
P.O. Box 94183
Baton Rouge, LA 70804
apa.s-h&w@legis.la.gov

Hon. John A. Alario, Jr.
President
Senate of the State of Louisiana
P.O. Box 94183
Baton Rouge, LA 70804
apa.senatepresident@legis.la.gov

Hon. Frank A. Hoffmann
Chairman
Committee on Health and Welfare
House of Representatives of the
State of Louisiana
Post Office Box 4486
Capitol Station
Baton Rouge, Louisiana 70804
apa.h-hw@legis.la.gov

Hon. Taylor F. Barras
Speaker
House of Representatives of the
State of Louisiana
Post Office Box 4486
Capitol Station
Baton Rouge, Louisiana 70804
apa.housespeaker@legis.la.gov

RE: Final Report: Proposed Rule Amendment Governing
Physician Practice; Telemedicine—(LAC 46:XLV.7505C)

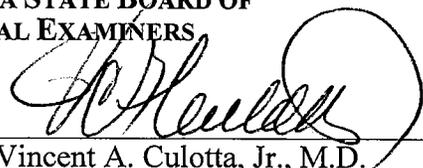
Dear Sirs:

Pursuant to La. Rev. Stat. §49:968(D), the Louisiana State Board of Medical Examiners respectfully submits the enclosed final report on the captioned rule amendment. Notice was previously published in the April 2019 edition of the *Register*, Vol. 45, No. 04, pp. 599-601. The Occupational Licensing Review Commission previously advised the Board that Commission approval was not required because the amendment merely conforms the rule to the wording of the law. Therefore, presuming the proposed amendment is acceptable, the Board plans to adopt the amendments 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
PRACTICE—TELEMEDICINE (LAC 46:XLV.7505C)**
(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

July 3, 2019

**FINAL REPORT RELATIVE TO PROPOSED AMENDMENT
OF ADMINISTRATIVE RULES GOVERNING PHYSICIAN
PRACTICE—TELEMEDICINE (LAC 46:XLV.7505C)**

(La. Rev. Stat. § 49:968)

July 3, 2019

(La. Rev. Stat. §49:968(D))

2

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. 599-601, the Board proposed to amend its administrative rules governing physician practice, LAC Title 46:XLV, Subpart 3 (Practice), Chapter 75 (Telemedicine), Subchapter A (General Provisions), Section 7505.

The proposed amendment changes one Subsection of its Rules governing telemedicine. Specifically, the proposed amendment deletes the words “in this state” from the second sentence of 7505C. for consistency with the law (R.S. 37:1271(4)(a)) so that, as applied, the rule would not inadvertently prevent physicians from prescribing medication or other health care services to their patients who may be vacationing or temporarily outside of Louisiana, to the extent that such activities or practices are lawful and permitted by the medical licensing authorities in other jurisdictions.

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 amendment 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, a photocopy of the Notice of Intent containing the full text of the proposed amendment 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

¹*Electronic Mail*, Vincent A. Culotta, Jr., M.D., Exec. Dir., La. State Bd. Med. Exam., Re: Report Relative to Proposed Rule Amendment Governing Physician Practice; Telemedicine—(LAC 46:XLV.7505, April 10, 2019).

**FINAL REPORT RELATIVE TO PROPOSED AMENDMENT
OF ADMINISTRATIVE RULES GOVERNING PHYSICIAN
PRACTICE—TELEMEDICINE (LAC 46:XLV.7505C)**

(La. Rev. Stat. § 49:968)

July 3, 2019

(La. Rev. Stat. §49:968(D))

3

previously published by and upon publication in the *Louisiana Register*.

* * *

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.

Vincent A. Culotta, Jr. MD
Executive Director
1904#061

Evan Brasseaux
Staff Director
Legislative Fiscal Office

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

physicians from prescribing medication or other health care services to their patients who may be vacationing or temporarily outside of Louisiana, to the extent that such activities or practices are lawful and permitted by the medical licensing authorities in other jurisdictions. The proposed amendment is set forth below.

Title 46

PROFESSIONAL AND OCCUPATIONAL STANDARDS

Part XLV. Medical Professions

Subpart 3. Practice

Chapter 75. Telemedicine

Subchapter A. General Provisions

§7505. Patient Relationship; Standard of Care;

Location of Participants

A. - B. ...

C. Location of Participants. A physician using telemedicine may be at any location at the time the services are provided. A patient receiving medical services by telemedicine may be in any location at the time that the services are received.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1262, 1270, 1271, 1275 and 1276.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 35:1533 (August 2009), amended 41:2145 (October 2015), amended by the Department of Health, Board of Medical Examiners, LR 43:317 (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 amendment on the family has been considered. It is not anticipated that the proposed amendment will have any impact on family, formation, stability or autonomy, as described in R.S. 49:972.

Poverty Statement

In compliance with Act 854 of the 2012 Regular Session of the Louisiana Legislature, the impact of the proposed amendment 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 amendment 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 Statement

In compliance with HCR 170 of the 2014 Regular Session of the Louisiana Legislature, the impact of the proposed amendment on organizations that provide services for individuals with developmental disabilities has been considered. It is not anticipated that the proposed amendment 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 amendment 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

amendment 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 11:30 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 Practice; Telemedicine

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

The proposed rule change will result in a one-time publication expense estimated at \$425 in FY 19-20 for the LA State Board of Medical Examiners (LSBME). Otherwise, the proposed change will not result in any additional costs for state or local governmental units.

The proposed change amends the rules governing the practice of physicians located in this state who utilize telemedicine in the care of their patients. Specifically, the proposed amendment deletes the words "in this state" regarding where a patient may receive telemedicine services for consistency with LA R.S. 37:1271(4)(a). Therefore, the administrative rules would not inadvertently prevent physicians from prescribing medication or other health care services to their patients who may be vacationing or temporarily outside of Louisiana, to the extent that such activities or practices are lawful and permitted by the medical licensing authorities in other jurisdictions.

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 change may benefit Louisiana citizens while vacationing or temporarily outside of Louisiana who may continue to receive care from their Louisiana licensed physicians. The change may also benefit Louisiana licensed physicians by allowing them to provide continuity of care to their Louisiana patients who may be temporarily out of state. Given that Louisiana medical licensure cannot authorize a physician to practice medicine beyond the borders of this state, Louisiana physicians seeking to accommodate their patients in this manner will need to verify their lawful authority to do so with the medical licensing authorities of the state in which their patient is located. The LSBME cannot estimate this cost or addition to a physician's workload.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT
(Summary)

The proposed rule change will not affect competition or employment.

Vincent A Culotta, Jr.
Executive Director
1904#059

Evan Brasseaux
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Health
Board of Nursing**

**Application Fee for Compact Licensure
(LAC 46:XLVII.3341)**

Notice is hereby given in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., and through the authority granted in R.S. 37:917-918, that the Louisiana State Board of Nursing (LSBN) is implementing a law that became final during the 2018 Regular Legislative Session. Act 577 was passed which allowed Louisiana to participate in the Nurse Licensure Compact (NLC) for registered nurses and licensed practical nurses. As a result, the Louisiana State Board of Nursing (LSBN) will incur a slight increase in administrative costs and a relative increase in salary expenditures based on the number of registered nurse applications submitted.

In order to be party to the Multi-State Nurse Licensure Compact, an annual administrative fee of \$6,000 will be paid to the compact's Interstate Commission for which LSBN will be responsible for \$3000 and the Louisiana State Board of Practical Nurse Examiners (LSBPNE) will be responsible for \$3000. The LSBN anticipates having to attend quarterly Commission meetings costing approximately \$4,000 annually. The LSBN anticipates funding the compact membership fee and travel expenses utilizing existing resources and budget authority.

As identified in Article III of La. R.S. 37:1018, staff must review applications to ensure that the applicant meets the criteria for compact licensure. By requiring a fee, the board will be able to offset administrative costs associated with reviewing applications and converting current licensees from a single-state license to a multi-state license.

Title 46

**PROFESSIONAL AND OCCUPATIONAL
STANDARDS**

**Part XLVII. Nurses: Practical Nurses and Registered
Nurses**

Subpart 2. Registered Nurses

Chapter 33. General

**Subchapter C. Registration and Registered Nurse
Licensure**

§3341 Application Fee for Compact Licensure

A. Notwithstanding any provisions of this Chapter, the board shall collect in advance fees for licensure and administrative services as follows;

1. Licensure Fees:
 - a. RN examination application—\$100;
 - b. RN endorsement application—\$100;
 - c. Enrollment application—\$50;
 - d. RN renewal application—\$100;

- e. RN late fee - \$50 (plus renewal fee);
 - f. Retired license application (one-time fee)—\$100;
 - g. RN reinstatement application—\$100;
 - h. Initial APRN licensure application—\$100;
 - i. RN/APRN endorsement temporary permit fee—\$100;
 - j. APRN endorsement application—\$100;
 - k. APRN renewal application—\$100;
 - l. APRN late fee - \$100 (plus renewal fee);
 - m. APRN reinstatement application—\$100;
 - n. APRN prescriptive authority application—\$100
 - o. APRN prescriptive authority site change fee—\$50;
 - p. Reinstatement of prescriptive authority privileges—\$100;
 - q. Verification of licensure—\$25;
 - r. LARN Compact Conversion application—\$50
2. Miscellaneous
- a. Consultation—\$100/hour;
 - b. Photo copies—\$0.50/page;
 - c. Certified Documents—\$1.00/page;
 - d. Listing of Registered Nurses/Advanced Practice
 - i. Registered Nurses—\$10 programming fee plus costs as follows \$0.02/per name on disk
 - e. Special Programming Request Actual Costs—minimum \$100 per program

B. - C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:918 and R.S. 37:927.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, LR 8:417 (August 1982), amended by the Department of Health and Hospitals, Board of Nursing, LR 14:533 (August 1988), LR 22:981 (October 1996), repromulgated LR 24:1293 (July 1998), amended LR 26:84 (January 2000), LR 30:2829 (December 2004), LR:31:2027 (August 2005), LR 36:1246 (June 2010), LR 37:3027 (October 2011). LR 40:1696 (September 2014), LR

Family Impact Statement

The proposed additions and/or changes to the rules of the board, Louisiana State Board of Nursing should not have any known or foreseeable impact on any family as defined by R.S. 49:972(D) or on family formation, stability and autonomy. Specifically, there should be no known or foreseeable effect on:

1. the stability of the family;
2. the authority and rights of parents regarding the education and supervision of their children;
3. the functioning of the family;
4. a family's earnings and budget;
5. the behavior and personal responsibility of the children; or
6. the family's ability or that of the local government to perform the function as contained in the proposed Rule.

Poverty Impact Statement

In compliance with Act 854 of the 2012 Regular Session of the Louisiana Legislature, the poverty impact of this proposed Rule has been considered. It is anticipated that this proposed Rule will not have an impact on child, individual, or family poverty in relation to individual or community asset development as described on R.S. 49:973.

Provider Impact Statement

In compliance with House Concurrent Resolution (HCR) 170 of the 2014 Regular Session of the Louisiana