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To: Mr. M. Joseph Fontenot, Jr.
Executive Director
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From: Jessica B. Weimer, Section Chief
Louisiana Department of Justice
Occupational Licensing Review Program

Date: October 31, 2024

Subject: Proposed Amendment to LAC 46:LIII.901, 903, and 905
Board of Pharmacy's Regulatory Project 2024-05 Pharmacy Technicians

I. Summary

The Louisiana State Board of Pharmacy (the “**Board**”) submitted to the Louisiana Department of Justice’s Occupational Licensing Review Program (the “**OLRP**”) proposed amendments to the provisions of LAC 46:LIII.901, 903, and 905 with respect to (i) the definition of a Pharmacy Technician Educator, (ii) Pharmacy Technician Candidates and (iii) Pharmacy Technician Certificates (the “**Proposed Rules**”).¹ The Board initially published a Notice of Intent to promulgate the Proposed Rules (with delivery-related requirements) in the Louisiana Register on July 20, 2024 (the “**Notice**”).² The Notice invited comments and set a public hearing for August 26, 2024.³ The Board received no comments⁴ and submitted the Proposed Rules to the OLRP on September 6, 2024. The OLRP began review shortly thereafter and invited comments for a period of September 9- September 18, 2024, pursuant to LA R.S. 49:260. The OLRP received no comments on the Proposed Rules.

Certification requirements create barriers to market entry for individuals desiring to engage in a profession or occupation, and the proposed amendments to §901 and §903 are therefore considered occupational regulations with reasonably foreseeable anti-competitive effects.⁵ The proposed amendment to §905 corrects a typographical error and clarifies that notifications of a change of employment require the inclusion of the pharmacy name. The proposed amendment to §905 does not have a “reasonably foreseeable anti-competitive effect” on the regulated profession, and the Board may proceed with promulgation of §905 in accordance with the Louisiana Administrative Procedure Act⁶ (the “**Louisiana APA**”) without further input from the OLRP.

¹ Louisiana Register, Vol. 50, No. 7 at pg. 1054-1057

² Id.

³ Id.

⁴ Id.

⁵ LSA-R.S. 49:260 G(4)

⁶ LSA-R.S. 49:950 *et seq.*

II. Analysis

A. The Board’s Statutory Authority

The Board was established pursuant to the Louisiana Pharmacy Practice Act (the “*LPPA*”) to “promote, preserve, and protect the public health, safety, and welfare by and through the effective control and regulation of the practice of pharmacy...and regulation of all persons or sites ...that sell drugs or devices to consumers and/or patients or assist in the practice of pharmacy within the state.”⁷ In furtherance of the purpose of the LPPA, the Board may certify pharmacy technicians as specified in Board rules and set minimum training and education requirements and examinations for certification as a pharmacy technician as deemed necessary.⁸

B. Proposed LAC 46:LII.901- Regarding Definitions

The Board proposes the removal of the definition of “Training Program” and adding the definition of the “Pharmacy Technician Educator.”⁹ The new definition includes the addition of programs by the Louisiana Department of Education offering Pharmacy Technician career paths or a Pharmacist licensed in Louisiana providing pharmacy technician training that is in good standing with the Board.¹⁰ Training requirements create a barrier to market entry; however, the proposed amendment expands the availability of pharmacy technician training to an increased number of potential candidates. The Board indicates the proposed rule change will potentially save the candidate money on enrollment fees, and will benefit pharmacies, pharmacists, and the consumers by increasing the number of pharmacy technicians in order to address the current workforce shortage.¹¹ While this rule may have reasonably foreseeable anti-competitive effects, the proposed rule creates increased availability for training and has the potential to create more opportunity for potential candidates to enter the market.

Pursuant to LA RS 37:1182 (A) (12), the Board is responsible for regulating, licensing, certifying, and registering the training, qualification, and employment of pharmacy technicians. This proposed rule aligns with clearly this articulated state policy and allows the Board to further promote the public health, safety and welfare of the citizens of the State of Louisiana through the control and regulation of the practice of pharmacy.

C. Proposed LAC 46:LII.903- Regarding Pharmacy Technician Candidates

The Board proposes amending §903 to (i) expand the eligibility criteria for obtaining a pharmacy technician candidate registration, (ii) modify language under §903 (A)(2)(c) entitled “Exceptions” to clarify the exceptions to the qualifications of the pharmacy technician candidate, (iii) modify the actions following the termination of training, and (iv) establish the requirements for Pharmacy Technician Educators.¹²

⁷ LSA-R.S. 37:1163

⁸ LSA-R.S. 37:1212

⁹ Notice of Intent. LA State Register Vol. 50, No 7 p1055

¹⁰ Id

¹¹ [2024-05_1stReport_Pkg_S_2024-0708.pdf \(la.gov\)](#)

¹² Id

While certification requirements are considered barriers to market entry, the proposed rule provides less burdensome requirements upon the pharmacy technician candidates and pharmacy technician educators. Therefore, this proposed rule is an expansion of current requirements and should result in an increase in pharmacy technician candidates.

The Board may set minimum training and education requirements and examinations for certification as a pharmacy technician as deemed necessary.¹³ This proposed rule adheres to this clearly articulated state policy and expands the current requirements for certification as a pharmacy technician and pharmacy technician educator, removing barriers as a result.

D. Proposed LAC 47:LII.905- Regarding Pharmacy Technician Certificate

The Board proposes amending §905 to correct a typographical error and clarify that the written notification of the change of employment of a pharmacy technician to the Board must include the name of the pharmacy. An Occupational Regulation is a “rule defined in the Administrative Procedure Act that has reasonably foreseeable anti-competitive effects. Any license, permit, or regulation established by a ... Board not composed of a controlling number of active market participants is excluded.”¹⁴ The Louisiana Administrative Procedure Act (“*APA*”) defines a rule as an agency (Board) requirement for conduct or action prescribing the procedure or practice requirements of the agency (Board).¹⁵ Anti-Competitive behavior is an act, or series of acts, that have the effect of harming the market or the process of competition among businesses, or a tendency to reduce or eliminate competition, with no legitimate business purpose.¹⁶ The proposed rule changes to §905 do not have reasonably foreseeable anti-competitive effects on the pharmaceutical practice, as they are merely typographical corrections and further clarification on employment change notifications.

III. Determination

The Board is a state regulatory body created by the LPPA to “promote, preserve, and protect the public health, safety, and welfare by and through the effective control and regulation of the practice of pharmacy; the licensure of pharmacists; and the licensure, permitting, certification, registration, control, and regulation of all persons or sites in or out of this state that sell drugs or devices to consumers and/or patients or assist in the practice of pharmacy within the state.”¹⁷ The Board holds the statutory authority to (i) issue and renew licenses, permits, certifications, registrations and any other designations deemed necessary to engage in the lawful practice of pharmacy and (ii) regulate, license, certify, and register the training, qualification, and employment of pharmacy technicians.¹⁸ Furthermore, the Board may set minimum training and education requirements and examinations for certification as a pharmacy technician as it deems necessary.¹⁹ Because the proposed amendments are within the Board’s statutory authority and the proposed amendments to LAC 46: LIII.901, 903, and 905 adhere to clearly articulated state policy, these amendments are

¹³ LSA-R.S. 37:1212

¹⁴ LSA-R.S. 49:260 (G) (4)

¹⁵ LSA-R.S. 49:951 (8)

¹⁶ Black’s Law Dictionary, 12th Edition p. 116

¹⁷ LSA-R.S. 37:1163, LSA-R.S. 37:1171

¹⁸ LSA-R.S. 37:1182 A(8) and A(12)

¹⁹ LSA-R.S. 37:1212

approved as submitted by the Attorney General and may be adopted by the Board and promulgated in accordance with the APA.

LOUISIANA DEPARTMENT OF JUSTICE
OCCUPATIONAL LICENSING REVIEW PROGRAM



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