



LIZ MURRILL
ATTORNEY GENERAL

STATE OF LOUISIANA
DEPARTMENT OF JUSTICE
OFFICE OF THE ATTORNEY GENERAL
P.O. BOX 94005
BATON ROUGE, LA
70804-9005

To: Mr. Jared B. Granier
Executive Director
Louisiana Board of Veterinary Medicine

From: Jessica Weimer, Section Chief
Louisiana Department of Justice
Occupational Licensing Review Program

Date: November 22, 2024

Subject: OLRP File No. 2024.10.22 LBVM Veterinary Practice Rules
Proposed Amendments to LAC 46:LXXXV §§700, 701, 702, 704, 705, 707, and 712

I. Summary

The Louisiana Board of Veterinary Medicine (the “**Board**”) has proposed to amend LAC 46: LXXXV §§700, 701, 702, 704, 705, 707, and 712 regarding the Rules of Professional Conduct (collectively the “**Proposed Amendments**”). The Board published a Notice of Intent to promulgate the Proposed Rules in the Louisiana Register on August 20, 2024.¹ The notice invited written public comments and requests for oral presentation, argument, or a public hearing through September 9, 2024.² The Board received one comment during the public comment period from Loren Breen, Director of Policy, Research, & Government Relations of the Animal Policy Group regarding Proposed Amendment to §700, in particular. The Board reviewed the comment and provided a response pursuant to the Louisiana Administrative Act (the “**APA**”) on October 21, 2024.

Pursuant to La. R.S. 49:260, the Board submitted the Proposed Rules to the Louisiana Department of Justice’s Occupational Licensing Review Program (the “**OLRP**”) on October 22, 2024. The OLRP reviews proposed occupational regulations of participating state occupational licensing boards.³ The OLRP invited public comments on the Proposed Amendments October 23, 2024 through November 6, 2024 and received no comments. As set forth below, the OLRP has determined the Board’s Proposed Amendments to LAC LXXXV §§700, 701, 702, 704, 705, 707, and 712 adhere to clearly articulated state policy but are not occupational regulations with reasonably foreseeable anti-competitive effects requiring input from OLRP.

II. Analysis

A. The Board’s Statutory Authority

¹ Louisiana Register, Vol 50, No 8 p. 1163-1165

² Id. P 11165

³ LA RS 49:260 (B)

The Board is a state regulatory body created “to promote the public health, safety, and welfare by safeguarding the people of this state against incompetent, dishonest, or unprincipled practitioners of veterinary medicine.”⁴

The Board has been granted the statutory authority to adopt, amend, or repeal all rules and regulations necessary to serve its purpose, including establishing standards of professional conduct for the practice of veterinary medicine, in accordance with the provisions of the APA.⁵ The statutory authority given to the Board through the Louisiana Veterinary Practice Law (LA R.S. 37:1511 et al.) for the purpose of enabling the Board to effectively supervise the practice of veterinary medicine are to be construed liberally to accomplish this objective.⁶

B. Proposed LAC 46:LXXXV §§701, 702, 704 and 712 Regarding Veterinary Practice

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.”⁷ 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).⁸ 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.⁹

The Board proposes wording and/or stylistic changes to LAC 46: LXXXV §§701, 702 and 704 that do not alter the intent or substantive meaning of the existing regulations. The Proposed Amendment to §701 changes the spelling of “*Anaesthesia*” to “*Anesthesia*.” The Proposed Amendment to §702 corrects a reference to §702.F.3 from a prior version of the rule to the correct §702E.1 and §702.E.3. It further rephrases “*nonboarding (hospitalized or ill) animals*” with a more concise phrase “*non-boarding animals (hospitalized or ill)*.” The Proposed Amendment to §704 replaces “Board of Veterinary Medicine” with “board.” Lastly, the Proposed Amendment to §712 corrects a typographical error of “lay person” to “layperson.” These rules are not Occupational Regulations with reasonably foreseeable anti-competitive effects, and thus do not require input from the OLRP. Therefore, the Board may proceed with promulgation of these amendments in accordance with the Louisiana APA.

C. Proposed LAC 46:LXXXV §700 Regarding Definitions

The proposed changes (i) reclassifies “Laypeople” and redefines same as a “layperson,” (ii) expands upon the definition of an unlicensed veterinarian, and (iii) redefines when a Veterinarian-Client-Patient Relationship (“*VCPR*”) exists. Under the current rule, a VCPR exists by virtue of an examination of the animal or a review of the animal’s records. The Proposed Amendment establishes the existence of a VCPR following an in-person, physical examination of the animal,

⁴ LSA-R.S. 37:1511

⁵ LSA-R.S. 37:1518 (9)

⁶ LSA-R.S. 37:1518 (C)

⁷ LSA-R.S. 49:260 (G) (4)

⁸ LSA-R.S. 49:951 (8)

⁹ Black’s Law Dictionary, 12th Edition p. 116

and eliminates the review of the records as creating the VCPR. While this rule may govern the veterinary practice, it does not have any reasonably foreseeable anti-competitive effects that would limit entrance into or the continued practice of veterinary medicine. Therefore, because this rule does not require input from the OLRP pursuant to LA RS 49:260, the Board may proceed with promulgation of the amendment in accordance with the Louisiana APA.

D. Proposed LAC 46:LXXXV §705 Regarding Prescribing and Dispensing Drugs

The Board recommends amending §705(D) by removing the phrase “of Chapter 7 of these rules.” This phrase is repetitive to the rule and does not alter the intent or substantive meaning of this rule. As such, this rule is not an Occupational Regulation with reasonably foreseeable anti-competitive effects, and thus do not require input from the OLRP. Therefore, the Board may proceed with promulgation of this amendment in accordance with the Louisiana APA.

The Board recommends further amending §705 (O) to eliminate the specific list of drugs a licensed veterinarian may lawfully prescribe and/or dispense to a deer farmer licensed by, and in good standing with the Department of Agriculture and Forestry. This occupational regulation expands the scope of the current rule by eliminating the list and allowing for the lawful prescription/dispensation of any legend or controlled drugs to licensed deer farmers. The Board also proposes amending §705 (O)(11) by eliminating the same established list of drugs and expanding the scope of the current rule by allowing for the lawful prescription/dispensation of any legend or controlled drug in consistency with the Proposed Amendment to §705 (O). The Board has the authority to adopt or amend all regulations necessary to promote the public health, safety, and welfare of the people of this state.¹⁰ Because this amendment extends the authority of the practitioner to prescribe and/or dispense legend and controlled drugs, and there are no foreseeable anti-competitive effects, the Board may promulgate this amendment in accordance with the APA.

The Board further recommends adopting §705 (O)(6) by establishing a licensed deer farmer who obtains the drugs from the veterinarian shall be the only person allowed to use or administer the drugs on his deer for capture purposes and subsequent reversal of the effects of those drugs only. The current rule does not allow the deer farmer to use or administer the drugs for the reversal of the effects of those drugs. Because the Board is authorized to create rules promoting the health, safety, and welfare of the people against incompetent, dishonest, or unprincipled practitioners of veterinarian medicine¹¹, the Board has the statutory authority to create rules establish rules regarding the administration of drugs prescribed by veterinarians. However, this proposed rule does not have any foreseeable anti-competitive effects, and as such, the Board may proceed with promulgation in accordance with the APA.

E. Proposed LAC 46:LXXXV §707 Regarding Accepted Livestock Management Practices

The current rule §707 only applies to Livestock Management Practices. The Proposed Amendment expands the accepted practices to allow for Equine Management as well. The Proposed

¹⁰ LSA- R.S. 37:1518(9), LSA-R.S. 37:1511

¹¹ LSA-R.S. 37:1511

Amendment further extends the teaching of artificial insemination techniques to both livestock and equine, rather than only cattle. This Proposed Amendment is an expansion of the current rule and does not have any reasonably foreseeable anti-competitive effects requiring input from the OLRP. Therefore, the board may proceed with promulgation of this rule in accordance with the APA.

III. Determination

The Board is a state regulatory body created to promote the public health, safety, and welfare by safeguarding the state against incompetent, dishonest, or unprincipled practitioners of veterinary medicine.¹² The Board holds the statutory authority to adopt, amend, or repeal all rules necessary to ensure the policy of the state is met and upheld.¹³ The Proposed Amendments are within the Board's statutory authority and adhere to clearly articulated state policy. However, upon review, the OLRP has determined the Proposed Amendments do not have any reasonably foreseeable anticompetitive effects on the practice of veterinary medicine. As such, the board may proceed with promulgation of the Proposed Amendments without further input from the OLRP and in accordance with the APA.

OFFICE OF THE ATTORNEY GENERAL
OCCUPATIONAL LICENSING REVIEW PROGRAM



Jessica B. Weimer, OLRP- Section Chief
Public Protection Division
Louisiana Department of Justice
olrp@ag.louisiana.gov

¹² LSA-R.S.37:1511

¹³ LSA-R.S. 37:1518 (9)