



Jeff Landry
Attorney General

State of Louisiana

DEPARTMENT OF JUSTICE
CIVIL DIVISION
P.O. BOX 94005
BATON ROUGE
70804-9005

To: Mr. Arthur F. Hickham, Jr.
Executive Director
Louisiana Board of Pharmacy

From: Terrence "Joe" Donahue, Jr.
Louisiana Department of Justice, Civil Division
Occupational Licensing Review Program

Date: August 8, 2023

Subject: OLRP File No. 22-11-OR-0018A
Proposed LAC 46:XXXIII.122 – Scopes of Practice
Proposed LAC 46:XXXIII.301 – Advertising and Soliciting by Dentists

I. Summary

The Louisiana State Board of Dentistry (the "Board") proposes amending the provisions of LAC 46:XXXIII §§ 122 and 301 with respect to specialties approved by the Board. The Board published a Notice of Intent to promulgate the proposed amendments to these regulations in the Louisiana Register on May 20, 2023, and invited written public comments and requests for oral presentation, argument, or a public hearing for a 20-day period ending on June 9, 2022. No comments or requests were received during the public comment period.

Licensing requirements create barriers to market entry for individuals desiring to engage in a profession or occupation. Similarly, advertising restrictions may limit competition among those participating in a particular profession or occupation.¹ As a result, the proposed amendments to §§ 122 and 301 are properly considered occupational regulations with reasonably foreseeable anti-competitive effects and are appropriate for review.²

The Board submitted the proposed amendments to the Louisiana Department of Justice's Occupational Licensing Review Program and the Louisiana Attorney General initiated a review on June 13, 2023. The Attorney General invited public comments on the proposed amendments for a 30-day period ending on July 13, 2023, but received no comments. As set forth below, the Attorney General has determined the Board's proposed

¹ See e.g. *Bates v. State Bar of Arizona*, 433 U.S. 350 (1977); *California Dental Ass'n v. F.T.C.*, 526 U.S. 756, 759 (1999).

² La. R.S. 49:260(G)(4).

amendments to §§ 122 and 301 adhere to clearly articulated state policy and therefore approves these amendments for adoption as drafted.

II. Analysis

The Dental Practice Act, La. R.S. 37:751 *et seq.*, requires Board licensure for healthcare providers who practice, engage in, perform, or offer to engage in or perform any of the practices, acts or operations defined as a specialty of dentistry.³ The legislature has therefore directed the Board to issue the licenses, certificates, and other authorities contemplated in the Dental Practice Act to all applicants found to meet the necessary qualifications.⁴ The Board is charged with promulgating rules that prescribe those acts, services, procedures, and practices that dentists may perform and with imposing restrictions upon such performance as are proper and necessary to protect and promote the public health and welfare of Louisiana citizens.⁵ The authority conferred upon the Board in the Dental Practice Act includes the authority to place restrictions upon advertising by dentists.⁶

In its present form, § 122, titled “Scopes of Practice” identifies nine discrete dental specialties the Board has approved, and an additional residual category that recognizes:

[a]ny other area of dentistry for which a dentist has completed a post-doctoral program consisting of at least two full-time years and which program is accredited by an accreditation agency that is recognized by the United States Department of Education.⁷

The regulation indicates the Board’s determination that statements implying a dentist is a specialist in a particular field indicate the completion of an accredited post-doctoral education in that area of dentistry, and that a dentist seeking to be recognized as a specialist must therefore demonstrate completion of post-doctoral training in the claimed specialty that meets the requirements stated above.⁸ The regulation also provides an exemption to its provisions for any dentist who announced a specialty approved by the American Dental Association prior to the rule’s initial promulgation in June, 1998.

Section 301 is a corollary to § 122 and sets forth requirements governing all forms of advertising by dentists licensed and practicing within the state.⁹ The regulation identifies the same nine discrete areas of specialization included in § 122, and the residual provision recognizing specialization in any “other area of dentistry” in which a licensee has completed the required post-doctoral training.¹⁰ The regulation also prohibits licensees that have not received such training from making any advertisement that would

³ La. R.S. 37:751(11); La. R.S. 37:751(B).

⁴ La. R.S. 37:760(A)(6).

⁵ La. R.S. 37:760(A)(8).

⁶ See generally, La. R.S. 37:775; La. Atty. Gen. Op. No. 93-745 (Dec. 20, 1993).

⁷ LAC 46:XXXIII.122.A.

⁸ LAC 46:XXXIII.122.C.

⁹ LAC 46:XXXIII.301.A.

¹⁰ LAC 46:XXXIII.301.C.

mislead the public into believing these educational requirements have been met, and also imposes particular requirements regarding how claims of specialization must be presented when authorized.¹¹

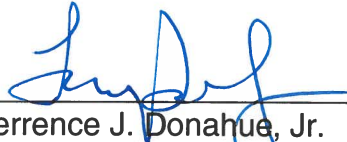
The proposed amendments to §§ 122 and 301 remove the discrete list of Board-approved specialties provided in §§ 122.A and 301.C, and leaves unchanged the authorization to claim specialization in any area of dentistry where a licensee has completed an accredited post-doctoral program consisting of at least two full-time years.¹² The proposed amendment to § 122 also clarifies that the post-doctoral programs must be accredited by a *dental* accreditation agency authorized by the United States Department of Education, and explicitly incorporates the year of the regulation’s effective date.

As described above, the proposed revisions to §§ 122 and 301 do not substantively alter any of the substantive provisions of the Board’s existing regulations, which have previously been determined to accord with the policies articulated in the Dental Practice Act. Licensees may still be recognized as specialists in the same areas of dentistry, and the amendments eliminate any suggestion that only those discrete areas specifically identified in the existing regulations may be claimed as specialties. Furthermore, existing regulations only provide for a licensee’s specialization in an “area of dentistry,” and the proposed amendment to § 122, providing that the post-doctoral training upon which a claim of specialization is based must be accredited by a “dental” accreditation agency, merely clarifies what the regulations already provide. Similarly, the inclusion of the year § 122 was originally adopted effects no substantive change to the requirements imposed upon licensees, but instead clarifies the existing criteria for claiming an exemption to the regulations’ applicability that had previously been incorporated only by reference.

III. Determination

As the Attorney General has determined the proposed amendments to LAC 46:XXXIII §§ 122 and 301 adhere to clearly articulated state policy, these amendments are approved and may be finally adopted by the Board.

JEFF LANDRY
ATTORNEY GENERAL

BY: 
Terrence J. Donahue, Jr.
Assistant Attorney General

¹¹ LAC 46:XXXIII.301.G.

¹² Notice of Intent, Louisiana Register Vol. 49, No. 5 at pp. 931-932 (May 20, 2023).