



Louisiana Board of Pharmacy

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October 11, 2024

To: Attorney General Liz Murrill
Attn: Department of Justice, Occupational Licensing Review Program

From: Joe Fontenot, Executive Director
Louisiana Board of Pharmacy

Subject: **Regulatory Project 2024-06 ~ Durable Medical Equipment (DME)
Permit Change of Ownership**

The Board of Pharmacy seeks to amend Section 2403 of its rules relative to Durable Medical Equipment (DME) permit change of ownership procedures.

To facilitate the Department of Justice's review of the proposed rule, the Louisiana Board of Pharmacy provides answers to the following questions.

1. Describe any relevant factual background to the occupational regulation and the purpose of the occupational regulation?

The proposed rule change mandates a new application to be filed and a new permit obtained when a change in the identity of the natural person, partnership, or business entity which directly holds the DME permit has occurred or when there is a change in the person or entity's Federal Employer Identification Number (FEIN). The proposed rule changes indicate that a DME permit is not transferrable, and requires the application to be submitted at least 15 days prior to closing the transfer of ownership. The proposed rule changes clarify that nothing prohibits an entity from applying for a new permit in order to separate itself from actions which may have been committed by previous ownership.

*The board decided to proceed with this project after it successfully completed **Regulatory Project 2023-05 Pharmacy Change of Ownership** using the same language. The OLRP approved the previous project on September 5, 2023 and that letter is appended.*

2. Is the occupational regulation within the scope of the occupational licensing board's general authority to regulate in a given occupation or industry? If so, identify the law that provides the authority for the rule and describe how the occupational regulation is within the scope.

Yes.

***LA R.S. 37:1163. Statement of purpose.** It is the purpose of this Chapter 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.*

*Louisiana Pharmacy Practice Act, as stated in **LA R.S 37:1163**, is 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.*

3. Check all of the following that apply as reasons the occupational regulation is subject to review

- Creates a barrier to market competition
- Fixes prices, limits price competition, or results in high prices for a product or service provided by or to a license holder.
- Reduces competition or excludes present or potential competitors from the occupation regulated by the board
- Limits output or supply in this state of any good or service provided by the members of the regulated occupation.
- Reduces the number of providers that can serve a particular set of customers
- Other activity (please describe)

A person or entity not in possession of a DME Permit is prohibited from providing DME equipment, legend devices, or medical gas to consumers in this state.

4. Identify the clearly articulated state policy (e.g., health, safety, welfare, or consumer protection) in state statute, or any supporting evidence of the harm the action/proposed action is intended to protect against?

The purpose of the Louisiana Pharmacy Practice Act, as stated in LA R.S 37:1163, is 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.

5. Do any less restrictive alternatives to the occupational regulation exist for addressing the same harm? If so, include a comparison of the occupational regulation to the alternatives and a justification for not pursuing a less restrictive alternative. If no less restrictive alternatives exist, explain why.

In this case, the proposal is less restrictive than the current rule.

6. Describe the process that the occupational licensing board followed in developing the proposed rule, including any public hearings held, studies conducted, and data collected or analyzed.

- 01-24-2024 – Regulation Revision Committee meeting held to consider proposal.
- 04-25-2024 – Committee meeting held; voted to recommend to the Board their approval.
- 05-08-2024 – Board approved the proposal and it became Regulatory Project 2024-06.
- 06-13-2024 – FEIS submitted to the Legislative Fiscal Office (LFO) for approval.
- 07-08-2024 – LFO approved fiscal and economic impact statement.
- 07-08-2024 – 1st Report submitted to Oversight Committee on Health & Welfare and the Register
- 07-20-2024 – NOI published in the *2024 Louisiana Register, Volume 50*, July Edition.
- 07-22-2024 – Notice of Rulemaking Activity & Public Hearing Notice distributed.
- 08-26-2024 – Public Hearing at the Board office.

7. Does the occupational regulation relate to a matter on which there is pending litigation or a final court order? *No*

8. Please identify the board members voting in favor of this rule, and state whether the member is an active market participant.

On May 8, 2024, 16 members were present and one member (Robert C. LeBas) was absent. The vote in favor of the proposed rule was unanimous (15-0, with President McKay not voting as Chair). Members present: Robert Cloud, David Darce, Jennifer Dupree, Jacqueline Hall, Richard Indovina, Jr., Charles Jones, Kevin LaGrange, Richard Mannino, Marty McKay, Chris Melancon, Troy Menard, Anthony Mercante, Blake Pitre, Don Resweber, Raymond Strong, and Rhonny Valentine. All members voting are active market participants except for Mr. Resweber, the public member.

9. Is there anything else that the occupational licensing board would like the Department to know about the proposed rule? *No*