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

From: Nicol Hebert
Louisiana Department of Justice, Civil Division
Occupational Licensing Review Program

Date: January 24, 2024

Subject: OLRP File No. 23-12-OR-0021
Proposed Amendment of LAC 46:XXXIII.1611(H) and (I)
Continuing Education Requirements for Relicensure of Dentists

I. Summary

LAC 46:XXXIII.1611(H) requires dentists who provide in-office sedation to take continuing education ("CE") for competency and patient safety purposes. The Louisiana State Board of Dentistry (the "Board") proposes amending this rule to change CE requirements for sedation permits ("Sedation CE") from 12 hours every 4 years to 6 hours every 2 years. No Sedation CE will be required during the initial 2 year period after first receiving a sedation permit. Additionally, the Board proposes amending this rule to clarify that two types of sedation permits are issued and subject to CE requirements: (i) a general anesthesia permit, and (ii) a moderate sedation permit.

LAC 46:XXXIII.1611(I) currently provides that dentists who complete training to administer dental licensing exams for the Council of Interstate Testing Agencies ("CITA") may be awarded up to 20 hours of CE. The Board proposes changing the "CITA" testing agency reference to read "*a testing agency approved by the board*," in recognition of a recent merger between CITA and another authorized testing agency.

Licensing and CE requirements create barriers to market entry for individuals desiring to engage in a profession or occupation, and the proposed amendments to §1611 (H) and (I) are therefore properly considered occupational regulations with reasonably foreseeable anti-competitive effects.¹ 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 December 12, 2023. The Attorney General invited public comments on the proposed amendments for a 17-day period ending on December 29, 2023, and received no comments. As set forth below, the

¹ La. R.S. 49:260(G)(4)

Attorney General has determined the Board's proposed amendments to §1611(H) and (I) adhere to clearly articulated state policy and therefore approves the amendments for adoption as submitted.

II. Analysis

The Dental Practice Act, La. R.S. 37:751 *et seq.*, declares it unlawful for a person not licensed by the Board to practice dentistry in the state of Louisiana.² The legislature has therefore directed the Board to conduct examinations to ascertain the qualifications and fitness of applicants for licensure, and to issue licenses, certificates, or authorities to all applicants who have been found to meet the necessary qualifications.³ The Board is similarly charged with promulgating rules and regulations relative to continuing education for relicensure and recertification of dentists.⁴ To these ends, the Board has discretion to impose such requirements and restrictions it considers proper and necessary to protect and promote the public health and welfare of Louisiana citizens.⁵

A. Proposed LAC 46:XXXIII.1611(H)

Sedation CE Requirements

The Board proposes amending LAC 46:XXXIII.1611(H) to change the Sedation CE requirements from 12 hours every 4 years to 6 hours every 2 years. No Sedation CE will be required during the initial 2 year period after first receiving a sedation permit. The stated purpose of these changes is to align all continuing education deadlines with general dental licensure renewal periods (every 2 years). The Board indicates these changes are desirable because they (i) increase the frequency of Sedation CE to ensure dental competency and patient safety, (ii) increase the ease of CE administration, and (iii) permit larger CE classes thereby achieving economies of scale that could lower CE enrollment fees.

The Dental Practice Act grants the Board the power to (i) determine by rule, minimum requirements relative to continuing education for relicensure of dentists,⁶ and (ii) impose such requirements and restrictions it considers proper and necessary to protect and promote the public health and welfare of Louisiana citizens.⁷ The proposed changes are within the Board's aforementioned discretionary powers.

Types of Sedation Permits

The Board also proposes amending LAC 46:XXXIII.1611(H) to clarify that two types of sedation permits are issued and subject to CE requirements: (i) a general anesthesia

² La. R.S. 37:751(11); La. R.S. 37:751(B)

³ La. R.S. 37:760(A)(1) and (6)

⁴ La. R.S. 37:760 (A)(13)

⁵ La. R.S. 37:760(A)(8)

⁶ La. R.S. 37:760(A)(13)

⁷ La. R.S. 37:760(A)(8)

permit, and (ii) a moderate sedation permit. To accomplish this, the Board proposes changing the “deep sedation” reference in the first sentence of §1611(H) to read “*general anesthesia*.” The Board indicates the reason for this change is that there is no “deep sedation” permit and the proper reference to this type of permit is “general anesthesia,” which includes deep sedation. The proposed clarification is within the broad grant of discretion to the Board under La. R.S. 37:760(A)(13), wherein the Board is authorized to “determine by rule, minimum requirements relative to continuing education for relicensure.”

Based on the foregoing, the Attorney General has determined the proposed amendments to §1611(H) as described herein adhere to clearly articulated state policy and approves the amendments for adoption as submitted.

B. Proposed LAC 46:XXXIII.1611(I)

Board Approved Testing Agencies

LAC 46:XXXIII.1611(I) currently provides that dentists who complete training to administer licensing exams for CITA may be awarded up to 20 hours of CE. The Board proposes changing the “CITA” testing agency reference to read “*a testing agency approved by the board*.” The Board indicates the reason for this change is that CITA recently merged with another authorized testing agency and licensing exams may now be administered by either testing agency as Board approved. This amendment clarifies that Board approved testing agencies will be treated the same for CE purposes under §1611(I). The change is intended to enhance dental CE offerings in that there will be multiple testing agencies authorized to administer dental exams and increased CE opportunities to ensure dental competency and promote the public health and welfare.

The Board’s ability to award CE hours to dentists who complete training for the administration of approved licensing exams already exists pursuant to LAC 46:XXXIII.1611(I). The proposed clarification is within the broad grant of discretion to the Board under La. R.S. 37:760(A)(3) and (13), wherein the Board is authorized to “prescribe rules and regulations for examination of candidates”⁸ and to “determine by rule, minimum requirements relative to continuing education for relicensure”⁹ that promote the public health and welfare.¹⁰ Based on the foregoing, the Attorney General has determined the proposed amendments to §1611(I) adhere to clearly articulated state policy and approves the amendments for adoption as submitted.

III. Determination

As the Attorney General has determined the proposed amendments to LAC 46:XXXIII.1611(H) and (I) adhere to clearly articulated state policy, these amendments


⁸ La. R.S. 37:760(A)(3)

⁹ La. R.S. 37:760(A)(13)

¹⁰ La. R.S. 37:760(A)(8)

are approved as submitted and may be finally adopted by the Board.

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