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## State of Louisiana

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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-0018B  
Proposed LAC 46:XXXIII.1709 – Examination of Dentists

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### I. Summary

The Louisiana State Board of Dentistry (the "Board") proposes amending the provisions of LAC 46:XXXIII § 1709 with respect to examination requirements for initial licensure as a dentist. The Board published a Notice of Intent to promulgate the proposed amendment to § 1709 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, and the proposed amendment to § 1709 is therefore properly considered an occupational regulation with reasonably foreseeable anti-competitive effects.<sup>1</sup> The Board submitted the proposed amendment 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 amendment to § 1709 departs from clearly articulated state policy and therefore disapproves the amendment as drafted.

### II. Analysis

The Dental Practice Act, La. R.S. 37:751 *et seq.*, declares it unlawful for a person not

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<sup>1</sup> La. R.S. 49:260(G)(4).

licensed by the Board to practice dentistry or dental hygiene in the state of Louisiana.<sup>2</sup> 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.<sup>3</sup> The Board is also charged with promulgating rules and regulations for the examination of candidates for licensure.<sup>4</sup> To receive a dental license, an applicant is required to present satisfactory evidence of having taken and passed an examination given by the Joint Commission on National Dental Examinations.<sup>5</sup> Regarding the examinations required for licensure, La. R.S. 37:761(C) provides:

[a]n applicant who has successfully completed any national, regional, or independent third-party clinical dental licensing examination approved by the board and who otherwise satisfies all requirements for a dental license, including satisfactory completion of an examination in jurisprudence and a background check, may be granted a license by examination by applying for licensure within three years following the successful completion of such clinical licensing examination.

Chapter 17 of LAC 46:XXXIII contains the regulations addressing the examinations required for licensure by the Board. Consistent with the Dental Practice Act, the existing language of § 1709(C) provides that “[e]xamination scores are valid for initial licensure for three years following the candidate’s successful completion of an accepted licensing examination.” The proposed amendment to § 1709 would, however, extend the validity of examination scores for initial licensing from three years to five years.<sup>6</sup> The stated purpose of the amendment is to accommodate applicants who take the licensing examination immediately after graduating from dental school, and are then in residency for longer than three years.<sup>7</sup> Whereas the existing provisions of § 1709 would require such individuals to re-take the licensing examination if they did not submit an application prior to completing their residency, the proposed revision would avoid the need to re-take the examination by extending the validity of the results of the initial exam to five years.<sup>8</sup>

While the proposed amendment to § 1709 would reduce potential barriers to the licensure of dental school graduates whose initial examination scores expire during their residency, it deviates from the policy affirmatively expressed and clearly articulated by the Louisiana Legislature in La. R.S. 37:761(C). This provision clearly provides for the continuing validity of examination scores for only three years, and nothing in the Dental Practice Act authorizes the Board to alter this statutorily-prescribed validity period. As a result, the proposed amendment to § 1709 departs from the affirmatively expressed state policy embodied in La. R.S. 37:761(C).

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<sup>2</sup> La. R.S. 37:751(11); La. R.S. 37:751(B).

<sup>3</sup> La. R.S. 37:760(A)(1) and (6).

<sup>4</sup> La. R.S. 37:760(A)(3).

<sup>5</sup> La. R.S. 37:761(A)(4).

<sup>6</sup> Notice of Intent, Louisiana Register Vol. 49, No. 5 at p. 932 (May 20, 2023).

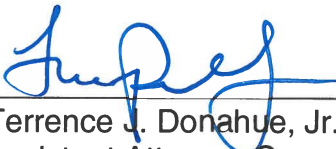
<sup>7</sup> Rule Submission Form dated May 3, 2023 at ¶ 4.

<sup>8</sup> *Id.*

### III. Determination

While the Attorney General commends the Board's continuing efforts to reduce existing barriers to competition in the practice of dentistry, as stated above, the proposed amendment to LAC 46:XXXIII § 1709 deviates from clearly articulated state policy, and the amendment is therefore disapproved and may not be finally adopted by the Board. The existing three-year validity period for licensing examination scores is mandated by La. R.S. 37:761(C), and legislative action is therefore necessary before the validity period can be extended as proposed by the Board.

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