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## State of Louisiana

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

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

Date: January 9, 2023

Subject: OLRP File No. 22-11-OR-0010  
Proposed LAC 46:XXXIII.306 – Requirements of Applicants for Dental  
Licensure by Credentials  
Proposed LAC 46:XXXIII.706 – Requirements of Applicants for Licensure  
by Credentials (Hygienists)  
Proposed LAC 46:XXXIII.710 – Administration of Local Anesthesia for  
Dental Purposes

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### I. Summary

The Louisiana State Board of Dentistry (the "Board") proposes amending the provisions of LAC 46:XXXIII §§ 306, 706, and 710 with respect to the licensure of dentists and dental hygienists. The Board published a Notice of Intent to promulgate the proposed amendments to licensure requirements on October 20, 2022, and invited public comments and requests for oral presentation, argument, or a public hearing for a 20-day period ending on November 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 amendments to §§ 306, 706, and 710 are therefore properly considered occupational regulations with reasonably foreseeable anti-competitive effects.<sup>1</sup> 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 November 14, 2022. The Attorney General invited public comments on the proposed amendments for a 30-day period ending on December 15, 2022, but received no comments. As set forth below, the Attorney General has determined the Board's proposed amendments to §§ 306, 706, and

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

710 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.*, declares it unlawful for a person not 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 issue the licenses, certificates, or authorities contemplated in the Dental Practice Act to all applicants who have been found to meet the necessary qualifications.<sup>3</sup> The Board is similarly charged with promulgating rules regulating the practice of dentistry by prescribing those acts, services, procedures, and practices which may be performed by dentists and dental hygienists, and by imposing requirements and restrictions upon such performance as are proper and necessary to protect and promote the public health and welfare of Louisiana citizens.<sup>4</sup>

### **A. Proposed LAC 46:XXXIII.306 and 706**

Act No. 312 of the 2022 Louisiana Legislative Regular Session eliminated statutory requirements previously imposed by La. R.S. 37:761 and 764 requiring applicants for dental and dental hygienist licensure by credentials to successfully complete a licensing examination that included the performance of procedures on live human subjects. The proposed amendments to §§ 306 and 706 implement changes made by the legislature in Act No. 312, requiring individuals seeking licensure by credentials to complete an examination that includes a “hand skills assessment” rather than “procedures on a live patient.”<sup>5</sup>

As stated above, La. R.S. 37:768 provides that no person meeting the requirements of the Dental Practice Act shall be denied a license based on credentials issued in another state. The proposed amendments to §§ 306 and 706 implement the policies reflected in Act No. 312 by removing barriers to the receipt of dental and dental hygienist licenses previously imposed by La. R.S. 37:761 and 764. As a result, the proposed amendments adhere to clearly articulated state policy by implementing the provisions of Act No. 312 of the 2022 Louisiana Legislative Regular Session and by reducing existing barriers to Louisiana licensure of dentists and dental hygienists.

### **B. Proposed LAC 46:XXXIII.710**

The existing version of LAC 46:XXXIII.710 sets forth the circumstances under which licensed dental hygienists may qualify to administer local anesthesia for dental procedures when acting under the direct, on-premises supervision of a licensed dentist.

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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)(6).

<sup>4</sup> La. R.S. 37:760(A)(8).

<sup>5</sup> Compare Existing and Proposed LAC 46:XXXIII.306 and 706.

The changes set forth in the proposed amendment to § 710 are limited to the provisions of § 710(E), which apply to properly trained dental hygienists that have been licensed to administer local anesthesia in another state. Currently, § 710(E) provides that such individuals may qualify for a permit to administer local anesthesia in Louisiana by presenting written documentation of their training, licensure in another state, and experience during the previous two years, and receiving Board approval through an interview process.<sup>6</sup> Once granted, the permit to administer local anesthesia expires with the expiration of the hygienist's license to practice dental hygiene.<sup>7</sup>


The proposed amendment to § 710(E) retains the requirement that dental hygienists seeking the Board's endorsement to administer local anesthesia after being licensed in another state must present written documentation of their training and out-of-state licensure, but removes the requirements for documentation of the applicant's experience during the two-year period preceding application and participation in an interview process.<sup>8</sup> Information provided by the Board indicates that certain jurisdictions preclude the administration of local anesthesia by dental hygienists, and that the existing provisions of § 710(E) have the effect of precluding properly trained and otherwise qualified dental hygienists from receiving the Board's endorsement if they practiced in such a jurisdiction for the two years preceding application for the endorsement.<sup>9</sup>

The Dental Practice Act does not establish any timeframe during which dental hygienists must establish experience in the administration of local anesthesia in order to receive the Board's endorsement and the associated permit. In addition, while the Dental Practice Act authorizes the Board to interview applicants for licenses and permits, it does not mandate that every applicant be interviewed.<sup>10</sup> Instead, these requirements arise solely from the existing provisions of § 710(E). As a result, the proposed amendment adheres to clearly articulated state policy and reduces existing barriers to the issuance of permits to qualified dental hygienists for the administration of local anesthesia.

### **III. Determination**

As the Attorney General has determined the proposed amendments to LAC 46:XXXIII §§ 306, 706, and 710 adhere to clearly articulated state policy, these amendments are approved and may be finally adopted by the Board.

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BY:   
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<sup>6</sup> LAC 46:XXXIII.710(E).

<sup>7</sup> LAC 46:XXXIII.710(F).

<sup>8</sup> See Proposed Amendment to LAC 46:XXXIII.710.

<sup>9</sup> See November 10, 2022 Rule Submission Form, retained in OLRP files.

<sup>10</sup> See La. R.S. 37:760(A)(1)-(3); La. R.S. 37:763; and La. R.S. 37:777(A)(19).