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

Date: August 28, 2023

Subject: OLRP File No. 23-06-OR-0017
Proposed LAC 46:LIII.709 and 907 – Staffing Ratios

I. Summary

The Louisiana Board of Pharmacy (the "Board") proposes amending LAC 46:LIII.709 and 907 to provide for a maximum number of pharmacy interns, certified pharmacy technicians, and pharmacy technician candidates that may be supervised by an on-duty pharmacist at any given time. The Board published a Notice of Intent to promulgate the proposed amendments on April 20, 2023, invited comments on the proposed amendments, and conducted a public hearing on May 26, 2023. No comments or testimony addressing the proposed amendments to §§ 709 and 907 were offered during the public hearing.

The imposition of mandatory staffing ratios may serve to restrain trade and limit competition, and the proposed amendments to §§ 709 and 907 are therefore properly considered occupational regulations with reasonably foreseeable anti-competitive effects.¹ Pursuant to La. R.S. 49:260, the Board submitted the proposed amendments to the Louisiana Attorney General and a review of the regulations was initiated on June 8, 2023. The Attorney General invited public comments on the proposed amendments for a 30-day period ending on July 8, 2023, and received no comments. As set forth below, the Attorney General has determined the Board's proposed amendments to §§ 709 and 907 adhere to clearly articulated state policy and therefore approves the amendments for adoption as drafted.

II. Analysis

¹ See e.g. *Prime Healthcare Servs., Inc. v. Serv. Emps. Int'l Union*, 2013 WL 3873074 (S.D. Cal. July 25, 2013), *aff'd*, 642 F.App'x 665 (9th Cir. 2016); La. R.S. 49:260(G)(4).

The Louisiana Pharmacy Practice Act, La. R.S. 37:1161 *et seq.*, subjects the practice of pharmacy in the state of Louisiana to regulation by the Board for the purpose of promoting, preserving, and protecting the public health, safety and welfare.² In furtherance of these purposes, the legislature has authorized the Board to control and regulate all persons and sites that sell drugs or devices to consumers or assist in the practice of pharmacy within the state.³ In particular, the Board possesses authority to regulate the employment of pharmacy interns and pharmacy technicians, and to establish minimum specifications with respect to pharmacy personnel.⁴

Pharmacy internship programs are intended to provide the practical experience necessary for licensure as a pharmacist.⁵ Generally speaking, to qualify as a pharmacy intern, an individual must be either a graduate of a Board-approved college of pharmacy, or be currently enrolled and making satisfactory progress toward graduation.⁶ Pharmacy interns may engage in the practice of pharmacy while acting under the direct and immediate supervision of a licensed pharmacist.⁷ Pharmacy technicians are individuals who assist in the practice of pharmacy.⁸ The Board certifies individuals meeting the necessary qualifications as pharmacy technicians and registers individuals seeking such certification as pharmacy technician candidates.⁹ Both registered pharmacy technician candidates and certified pharmacy technicians may assist in the practice of pharmacy under the direct and immediate supervision of a licensed pharmacist.¹⁰ Louisiana Revised Statute 37:1212 authorizes the Board to establish required ratios limiting the number of pharmacy technicians or pharmacy technician candidates overseen by a pharmacist, but states that such ratios shall not provide for less than two pharmacy technicians per pharmacist.

A licensed pharmacist must be on duty at all times.¹¹ Since pharmacy interns, pharmacy technicians, and pharmacy technician candidates may only participate in or assist with the practice of pharmacy while under the direct and immediate supervision of a pharmacist, a pharmacy's prescription department must close when no pharmacist is on-site.¹²

The existing provisions of LAC 46:LIII.709 set a ratio of one pharmacy intern per pharmacist, except where such pharmacy interns are on rotation with a Board-approved college of pharmacy, in which case the ratio increases to a maximum of three pharmacy interns per pharmacist.¹³ The current version of LAC 46:LIII.907 similarly provides a ratio of one registered pharmacy technician candidate per pharmacist and a maximum of two

² La. R.S. 37:1163; La. R.S. 37:1171.

³ La. R.S. 37:1163.

⁴ La. R.S. 37:1182(A)(12) and (13).

⁵ La. R.S. 37:1211.

⁶ See La. R.S. 37:1164(41).

⁷ *Id.*

⁸ La. R.S. 37:1164(43).

⁹ La. R.S. 37:1212.

¹⁰ *Id.*; La. R.S. 37:1164(43).

¹¹ La. R.S. 37:1224(A).

¹² La. R.S. 37:1224(A) and (B).

¹³ LAC LIII.709(B).

certified pharmacy technicians per pharmacist.¹⁴ If there is no pharmacy technician candidate on duty, the existing provisions of § 907 increase the allowable number of certified pharmacy technicians per pharmacist from two to three.¹⁵

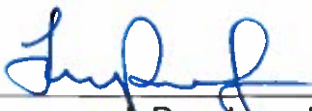
The proposed amendments to both § 709 and § 907 limit the aggregate number of pharmacy interns, registered pharmacy technician candidates, and certified pharmacy technicians on duty at any given time to no more than four per pharmacist, in any combination.¹⁶ The revised version of § 709 retains the limitation of no more than three pharmacy interns on rotation with a Board-approved college of pharmacy per pharmacist.¹⁷ The proposed revisions to §§ 709 and 907 also increase the maximum number of pharmacy technician candidates per pharmacist from one to two.¹⁸

As noted by the Board, staffing ratio requirements are used to ensure the safe and effective supervision of all pharmacy employees whose authorization to engage in or assist with the practice of pharmacy is dependent upon the direct and immediate supervision of a pharmacist.¹⁹ The Board also notes that it implemented flexible staffing ratio policies in response to the COVID-19 public health emergency and that the Board decided to permanently adopt the temporary emergency measures since they had served to benefit patient care without any negative consequences having been identified.²⁰ As demonstrated above, the proposed amendments to §§ 709 and 907 fall clearly within the scope of the authority delegated to the Board by the legislature. The proposed amendments relax existing staffing ratio requirements and provide increased flexibility to pharmacies in meeting the regulations' requirements, thus providing a less restrictive method of regulation that affords the same level of protection to the public health, safety and welfare and adhering to clearly articulated state policies.²¹

III. Determination

As the Attorney General has determined the proposed amendments to LAC LIII §§ 709 and 907 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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¹⁴ LAC LIII.907(A)(1) and (2).

¹⁵ LAC LIII.907(A)(2).

¹⁶ See Notice of Intent, Louisiana Register Vol. 49, No. 4 at p. 734 (April 20, 2023).

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ See June 7, 2023 Rule Submission Form at ¶ 4.

²⁰ *Id.*

²¹ La. R.S. 37:1163; La. R.S. 49:260(A).