



Louisiana Board of Pharmacy

3388 Brentwood Drive
Baton Rouge, Louisiana 70809-1700
Telephone 225.925.6496 ~ Facsimile 225.925.6499
www.pharmacy.la.gov



October 3, 2013

Senator John A Alario Jr., President
Louisiana Senate
PO Box 94183
Baton Rouge, LA 70804

Via Email: APA.SenatePresident@legis.la.gov

Electronic Mail – Delivery Receipt Requested

Re: Report No. 2 of 3 for Regulatory Project 2013-6 ~ Penal Pharmacy Permit Revision

Dear Senator Alario:

As we indicated in our first report to you on July 10, 2013, the Board is currently amending its rules relative to penal pharmacy permits. Subsequent to our Notice of Intent published in the July 20, 2013 edition of the *Louisiana Register*, and in accordance with the Administrative Procedures Act, we conducted a public hearing at the Board office on August 27, 2013.

During the public hearing, we received one letter and one verbal comment concerning the proposed rule. Both the letter writer and the commentator requested the same amendment, i.e., removing the clause “, or to any offender in the custody of the department,” from the provisions of §1801.B. Following its review of those comments, the Board determined the requested amendment was consistent with the Board’s intent, and further, characterized the requested amendment as non-substantive in nature. Further, the Board determined it appropriate to move forward with the proposed rule as amended.

You should find the following documents appended to this letter:

- Notice of intent, as published in the *Louisiana Register*;
- Copy of letter received requesting amendment to proposed rule;
- Copy of Board response to commentator; and
- Full text of proposed rule, as amended.

Subject to review by the Joint Legislative Oversight Committee on Health and Welfare, the Board proposes to publish the original proposed rule as a Final Rule in the November 20, 2013 edition of the *Louisiana Register*. If you have any questions about the enclosed information or our procedures, please contact me directly at mbroussard@pharmacy.la.gov or 225.925.6481.

For the Board:

Malcolm J. Broussard
Executive Director

cc: Chair, Senate Committee on Health and Welfare – APA.S-H&W@legis.la.gov
Speaker, House of Representatives – APA.HouseSpeaker@legis.la.gov
Chair, House Committee on Health and Welfare – APA.H-H&W@legis.la.gov
Editor, *Louisiana Register* – Catherine.Brindley@la.gov
Reference File

NOTICE OF INTENT
Department of Health and Hospitals
Board of Pharmacy

Penal Pharmacy Permit
(LAC 46:LIII.1801, 1807, and 2303)

In accordance with the provisions of the Administrative Procedure Act (R.S. 49:950 et seq.) and the Pharmacy Practice Act (R.S. 37:1161 et seq.), the Louisiana Board of Pharmacy hereby gives notice of its intent to amend three sections of its rules, to clarify the necessity of a penal pharmacy permit only for those pharmacies serving offenders in the custody of the state department of corrections.

Title 46
PROFESSIONAL AND OCCUPATIONAL
STANDARDS

Part LIII. Pharmacists

Chapter 18. Penal Pharmacy

§1801. Penal Pharmacy Permit

A. A penal pharmacy permit shall be required to operate a pharmacy located within a penal institution owned and/or operated by the Louisiana Department of Public Safety and Corrections, or its successor, (hereinafter, "the department"), to provide medications and pharmacy care for offenders residing in that institution or another penal institution owned and operated by the department. The pharmacy in the penal institution may also provide medications and pharmacy care to offenders assigned to that institution and residing at home or another housing location.

B. In the event a pharmacy located within the state but outside a penal institution intends to provide medications and pharmacy care on a contractual basis to offenders residing in, or assigned to, a penal institution owned and/or operated by the department, or to any offender in the custody of the department, that pharmacy shall first obtain a penal pharmacy permit.

C. In the event a nonresident pharmacy intends to provide medications and pharmacy care on a contractual basis to offenders residing in, or assigned to, a penal institution owned and/or operated by the department, or to any offender in the custody of the department shall first obtain a nonresident penal pharmacy permit, and further, shall comply with these rules with the exception of acquiring a separate penal pharmacy permit.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1226.3.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 38:1236 (May 2012), amended LR 39:

§1807. Prescription Department Requirements

A. The prescription department of a penal pharmacy shall comply with the minimum specifications identified in

§1103, Prescription Department Requirements, of the board's rules, and further, the specifications provided for the penal pharmacy permit may not be held or used by any other pharmacy permit.

B. - D. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1226.3.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 38:1237 (May 2012), amended LR 39:

Chapter 23. Out-of-State Pharmacy

§2303. Out-of-State Pharmacy Requirements

A. - C. ...

D. Every nonresident pharmacy doing business in Louisiana by dispensing and delivering prescription drugs and devices to offenders in the custody of the Louisiana Department of Public Safety and Corrections shall apply for and maintain a nonresident penal pharmacy permit, and further, shall comply with the provisions of Chapter 18 of the board's rules, with the single exception of the necessity for acquiring a separate penal pharmacy permit.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1182.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 14:708 (October 1988), effective January 1, 1989, amended LR 18:1380 (December 1992), effective January 1, 1993, LR 29:2100 (October 2003), effective January 1, 2004, LR 39:

Family Impact Statement

In accordance with Section 953 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a family impact statement on the Rule proposed for adoption, repeal, or amendment. The following statements will be published in the Louisiana Register with the proposed agency Rule.

1. The Effect on the Stability of the Family. We can discern no effect on the stability of the family.

2. The Effect on the Authority and Rights of Parents Regarding the Education and Supervision of their Children. We can discern no effect on the authority and rights of parents regarding the education and supervision of their children.

3. The Effect on the Functioning of the Family. We can discern no effect on the functioning of the family.

4. The Effect on Family Earnings and Family Budget. To the extent that a military-trained applicant or military spouse may be able to begin employment sooner than is now possible, the proposed Rule may have a beneficial impact on family earnings and the family budget.

5. The Effect on the Behavior and Personal Responsibility of Children. We can discern no effect on the behavior and personal responsibility of children.

6. The Ability of the Family or a Local Government to Perform the Function as Contained in the Proposed Rule. We can discern no effect on the ability of the family or a local government to perform the activity as contained in the proposed Rule.

Poverty Impact Statement

In accordance with Section 973 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a poverty impact statement on the Rule proposed for adoption, repeal, or amendment.

1. The Effect on Household Income, Assets, and Financial Security. To the extent that a military-trained applicant or military spouse may be able to secure employment sooner than is now possible, the proposed rule may have a beneficial impact on household income, assets, and financial security.

2. The Effect on Early Childhood Development and Preschool through Postsecondary Education Development. We anticipate no impact from the proposed Rule on early childhood development or preschool through postsecondary education development.

3. The Effect on Employment and Workforce Development. It would be possible for a beneficiary of the proposed Rule to obtain employment sooner than is now possible; therefore, we anticipate a potentially positive impact from the proposed rule on employment and workforce development.

4. The Effect on Taxes and Tax Credits. We anticipate no impact from the proposed rule on taxes or tax credits.

5. The Effect on Child and Dependent Care, Housing, Health Care, Nutrition, Transportation, and Utilities Assistance. We anticipate no impact from the proposed rule on child and dependent care, housing, health care, nutrition, transportation, or utilities assistance.

Small Business Statement

In accordance with Section 965 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a regulatory flexibility analysis on the Rule proposed for adoption, repeal, or amendment. This will certify the agency has considered, without limitation, each of the following methods of reducing the impact of the proposed Rule on small businesses:

1. The Establishment of Less Stringent Compliance or Reporting Requirements for Small Businesses. The proposed Rule change would not change any recordkeeping or reporting requirements for small businesses.

2. The Establishment of Less Stringent Schedules or Deadlines for Compliance or Reporting Requirements for Small Businesses. There are no changes in the deadlines for compliance or reporting requirements for small businesses.

3. The Consolidation or Simplification of Compliance or Reporting Requirements for Small Businesses. There are no changes in the reporting requirements for small businesses.

4. The Establishment of Performance Standards for Small Businesses to Replace Design or Operational Standards Required in the Proposed Rule. There are no design or operational standards in the proposed Rule.

5. The Exemption of Small Businesses from All or Any Part of the Requirements Contained in the Proposed Rule. There are no exemptions for small businesses in the proposed Rule.

Public Comments

Interested persons may submit written comments to Malcolm J Broussard, Executive Director, Louisiana Board of Pharmacy, 3388 Brentwood Drive, Baton Rouge, LA 70809-1700. He is responsible for responding to inquiries regarding this proposed Rule. A public hearing on this

proposed Rule is scheduled for Tuesday, August 27, 2013 at 9 a.m. in the board office. At that time, all interested persons will be afforded an opportunity to submit data, views, or arguments, either orally or in writing. The deadline for the receipt of all comments is 12 noon that same day.

Malcolm J Broussard
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Penal Pharmacy Permit

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

It is estimated that implementation of the proposed Rule will cost the agency \$500 in FY 13-14 for printing costs of the Notice of Intent and final Rule.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

No impact on state or local governmental revenue collections is anticipated as a result of the proposed Rule change.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

The proposed Rule change will affect those pharmacies providing medications and pharmacy services to penal institutions owned and/or operated by parish governments or other organizations, but not offenders in the custody of the state department of corrections. The proposed Rule will clarify the pharmacies may continue to provide those services with their existing community pharmacy permit instead of acquiring a separate penal pharmacy permit.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed Rule will not have any effect on competition or employment.

Malcolm J. Broussard
Executive Director
1307#029

Evan Brasseaux
Staff Director
Legislative Fiscal Office

KOCH & MESSER
ATTORNEYS AT LAW

Karl J. Koch
Rusty M. Messer*
Jason B. Thrower†

rusty@kochandmesser.com

August 27, 2013

*Via Email info@pharmacy.la.gov
and Hand Delivery*

Louisiana Board of Pharmacy
3388 Brentwood Drive
Baton Rouge, Louisiana 70809-1700

*Re: Notice of Intent re Regulatory Project 2013-6
Penal Pharmacy Permit Revision*

Dear Sir or Ma'am:

My office represents the Louisiana Independent Pharmacies Association (LIPA), an independent member based organization that works to protect the interests of numerous Louisiana community pharmacies throughout the state. LIPA is concerned about possible unintended consequences as a result of the proposed revision to the language to paragraph B of section 1801, Chapter 18, Part LIII of Title 46 of the Louisiana Administrative Code. The proposed revision reads as follows:

In the event a pharmacy located within the state but outside a penal institution intends to provide medications and pharmacy care on a contractual basis to offenders residing in, or assigned to, a penal institution owned and/or operated by the department, or to any offender in the custody of the department, that pharmacy shall first obtain a penal pharmacy permit.

LIPA's concern is with the language that states "...or to any offender in the custody of the department...". It is common practice for persons committed to the Louisiana Department of Safety and Corrections to be housed at any number of parish jails. See Louisiana Revised Statute 15:824. Parish jails are regularly served by community pharmacies that would be unduly burdened by having to obtain a Penal Pharmacy Permit to provide services to persons who are in the custody of the department, but who are being housed at facilities not owned or operated by the department. LIPA suggests that a more appropriate revision would be to remove the phrase "or to any offender in the custody of the department" which would permit community pharmacies to continue to serve the needs of local parish jails without having to take on the prohibitive burden of obtaining a Penal Pharmacy Permit.

*Also licensed in Texas
†Of Counsel

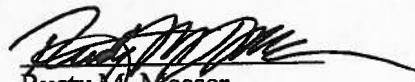
Louisiana Board of Pharmacy
August 27, 2013
Page 2

This change is consistent with the Board's prior statements about the purpose of this regulation, and will result in the new regulation's serving the need for which it was adopted. This is as a minor change to the regulation in the nature of a clarification, and does not require the Board to go through the entire rulemaking process.

I appreciate your attention to this matter. Please contact me should you have any questions or wish to discuss this matter further.

With kindest regards, I remain

Sincerely,
KOCH & MESSER


Rusty M. Messer

RMM/cbp



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October 3, 2013

Rusty M. Messer
Koch & Messer
637 St. Ferdinand Street
Baton Rouge, LA 70802

Re: Regulatory Project 2013-6 ~ Penal Pharmacy Permit Revision

Dear Mr. Messer:

This will confirm receipt of your letter in our office on August 27, wherein you requested the Board's consideration of an amendment to the proposed rule which is the subject of the Board's regulatory project cited above. In particular, you requested deletion of the clause "*or to any offender in the custody of the department,*" from the provisions of §1801.B.

Following its review of your request, the Board has agreed to the requested amendment, and further, has characterized the requested amendment as non-substantive in nature. A copy of the proposed rule as amended is enclosed with this letter.

For the Board:

A handwritten signature in blue ink that reads "Malcolm Broussard".

Malcolm J. Broussard
Executive Director

Louisiana Administrative Code

Title 46 – Professional and Occupational Standards

Part LIII: Pharmacists

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§1801. Penal Pharmacy Permit

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- B. In the event a pharmacy located within the state but outside a penal institution intends to provide medications and pharmacy care on a contractual basis to offenders residing in, or assigned to, a penal institution owned and/or operated by the department, that pharmacy shall first obtain a penal pharmacy permit.
- C. In the event a nonresident pharmacy intends to provide medications and pharmacy care on a contractual basis to offenders residing in, or assigned to, a penal institution owned and/or operated by the department, or to any offender in the custody of the department shall first obtain a nonresident penal pharmacy permit, and further, shall comply with these rules with the exception of acquiring a separate penal pharmacy permit.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1226.3.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 38:1236 (May 2012), amended LR

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- A. The prescription department of a penal pharmacy shall comply with the minimum specifications identified in §1103 – *Prescription Department Requirements* of the board’s rules, and further, the specifications provided for the penal pharmacy permit may not be held or used by any other pharmacy permit.
- B. ...
- C. ...
- D. ...

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Louisiana Administrative Code

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