

**19th JUDICIAL DISTRICT COURT
FOR THE PARISH OF EAST BATON ROUGE
STATE OF LOUISIANA**

**LARA STOOKSBURY, and COURTNEY
BREEN,**

Plaintiffs,

v.

**LOUISIANA BOARD OF VETERINARY
MEDICINE; and TRISHA C. MARULLO;
ALFRED G. STEVENS; LARRY L.
FINDLEY, SR.; KERI A. CATALDO-
ROGERS; JOSEPH B. BONDURANT,
JR., in their official capacities as members
of the Board,**

Defendants.

SUIT NO.

SECTION “ ”

DIVISION “CIVIL”

PETITION FOR DECLARATORY AND INJUNCTIVE RELIEF

NOW INTO COURT, through undersigned counsel, come Plaintiffs, Lara Stooksbury and Courtney Breen, who file this Petition for Declaratory and Injunctive Relief against Defendants: the Louisiana Board of Veterinary Medicine (“the Board”); Trisha C. Marullo; Alfred G. Stevens; Larry L. Findlay, Sr.; Keri A Cataldo-Rogers; and Joseph B. Bondurant, Jr., solely in their official capacities as members of the Board.

INTRODUCTION

1.

Dr. Lara Stooksbury and Dr. Courtney Breen are highly qualified veterinarians who were illegitimately blocked from practicing their profession in Louisiana through the misguided imposition of administrative requirements by the Louisiana Board of Veterinary Medicine (“the Board”). Specifically, the Board inappropriately implemented and applied a 20-hour a week average practice time requirement in order to waive a retake of the North American Veterinary Licensing Examination (“NAVLE”) for veterinarians with scores over five years old (the “Practice Time Requirement”). The Board did this not through any expert testimony or evidentiary analysis that analyzed the necessities of public health, safety, and welfare but as a bare legal misreading of the undefined term “practicing veterinarian” that they inconsistently apply. This requirement

injured both doctors and those like by denying them the ability to practice their profession in Louisiana, and has harmed Louisiana pet owners by blocking qualified veterinarians from practice.

2.

On its face and as applied, this administrative rule creates unlawful barriers that violate the Louisiana Administrative Procedure Act as modified by the recently passed Act No. 583 – which required the Board to enact the “least restrictive regulation” that was “necessary and narrowly tailored to fulfill legitimate fiduciary, public health, safety, or welfare objectives.” La. Rev. Stat. Ann. § 49:963(F). The rule likewise violates the due process and equal protection clauses of the state and federal constitutions. In its insistence on interpreting a term undefined in statute in a restrictive manner inconsistent with the expressed policy of the Legislature, the Board has violated the structural protections of the Louisiana Constitution.

PARTIES

3.

Plaintiff Lara Stooksbury, Doctor of Veterinary Medicine, is a United States citizen domiciled in Covington, Louisiana. Dr. Stooksbury has been a highly qualified, experienced, and ethical veterinarian for over 15 years who has held veterinary licenses in Nevada, Georgia, and Mississippi. In 2021, Dr. Stooksbury sought to return to practice her profession in her home state but the Board blocked her from practicing veterinary medicine because of their Practice Time Requirement. She forfeited significant income during this period and was forced to retake the full NAVLE test at great cost and inconvenience to be able to practice her profession again.

4.

Plaintiff Courtney Breen, Doctor of Veterinary Medicine, is a United States citizen domiciled in Quantico, VA. A military spouse whose husband serves in the United States Marine Corps, Dr. Breen is licensed and is a highly qualified, experienced, and ethical veterinarian. Dr. Breen sought to practice her profession in Louisiana when her husband was assigned to the state from 2015 to 2018 but was blocked by the Board’s Practice Time Requirement. Although she would like to move back to Louisiana and such a move would be good for her husband as his military unit is headquartered in New Orleans (Marine Forces Reserve), she will not return while the Board maintains its current requirement that blocks other qualified veterinarians.

5.

Defendant the Louisiana Board of Veterinary Medicine is a state board created under the laws of Louisiana and domiciled in East Baton Rouge Parish, Louisiana. *See* La. R.S. Sections 37:1511-1534. The Board is authorized by law to regulate the practice of veterinary medicine and to administer the state’s veterinary licensing laws. *See id.* at §§ 1515-1518. The Board’s principal office is located at 5825 Florida Blvd, Baton Rouge, LA 70806.

6.

Plaintiffs sue the members of the Board solely in their official capacities, including Trisha C. Marullo (Incoming Board President), Alfred G. Stevens (Prior Board President), Larry L. Findley, Keri A. Cataldo-Rogers, and Joseph B. Bondurant, Jr.¹ These Defendants are responsible for “[e]xamin[ing] and determin[ing] the qualifications and fitness of applicants for a license to practice veterinary medicine in the state”, [e]mploy[ing] full time or part time professional, clerical, or special personnel necessary to effectuate the provisions of this Chapter,” and [a]dopt[ing], amend[ing], or repeal[ing] all rules necessary for its government and all regulations necessary to carry into effect the provisions of this [Practice Act], including the establishment and publication of standards of professional conduct for the practice of veterinary medicine.” *See id.* at § 1518A.

7.

The Attorney General will be served with a copy of this petition pursuant to Louisiana Code of Civil Procedure article 1880.

JURISDICTION AND VENUE

8.

This Court has subject-matter jurisdiction because Plaintiffs seek to enforce their statutory and procedural rights under the Louisiana Administrative Procedure Act, Louisiana Revised Statutes, Title 49, Chapter 13, Sections 950 *et seq.* as amended by Act 583 of 2022, seek to vindicate their individual rights under the United States Constitution and Article I, Sections 2 and

¹ The listed board members were the Board members when the Practice Time Requirement Petition was denied, although on information and belief, the Board transitioned roles and responsibilities in late July 2023. As the Defendants are sued solely in their official capacity, these changes do not affect the substance of this Petition.

3 of the Louisiana Constitution, and seek to enforce the separation of powers required by Article II, Sections 1 and 2 and Article III, Section 1 of the Louisiana Constitution.

9.

This Court has subject-matter jurisdiction because Plaintiffs seek declaratory and injunctive relief and damages pursuant to Louisiana Code of Civil Procedure articles 1871 and 3601 and pursuant to their implied remedies under the Louisiana Constitution.

10.

Venue is proper in this Court pursuant to La. R.S. § 13:5104(A).

11.

All conditions precedent for judicial review of agency action under the Louisiana Administrative Procedure Act (La. Rev. Stat. Ann. § 49:968(D)) have been satisfied as Plaintiffs petitioned the Board, which denied their petition in a final agency action. Specifically, Dr. Stooksbury requested a waiver of the NAVLE requirement in May 2022 that was rejected on April 7, 2022; advocated for a favorable rule change that was denied with a still restrictive rule that went into effect October 2022; submitted a request for another waiver under the new rule that was denied by the Board in December 2022; and submitted a petition for consideration of the rule under Act 583 that was rejected in May 2023. Any additional administrative action would be futile.

FACTS

12.

Dr. Stooksbury was born and raised in Mandeville, LA. She grew up taking home orphaned and stray animals and felt called to the field of veterinary medicine. She graduated from Louisiana State University's School of Veterinary Medicine in 2008.

13.

Dr. Stooksbury took her NAVLE test in November 2007 during her fourth and clinical year of veterinarian school at LSU School of Veterinary Medicine. She passed the test.

14.

Dr. Stooksbury first became licensed as a veterinarian in Nevada where she worked for six years for approximately 60 or more hours a week.

15.

In 2012, Dr. Stooksbury and her husband welcomed their first child into the world.

16.

In 2014, Dr. Stooksbury and her husband moved to Georgia to follow her husband's job. She applied for a Georgia veterinary license which required filling out an application, obtaining verification of her NAVLE scores, proof of graduation from an accredited school, letters of recommendation, paying an application fee, and taking a short state exam. Dr. Stooksbury easily received a license to practice in Georgia.

17.

Since her own mother passed away when she was 10, Dr. Stooksbury was keenly aware of the importance of spending quality time with her children in their formative years. She switched to part time relief positions to ensure she could prioritize her family. She ended up working approximately 20 hours a week to allow for greater schedule flexibility and time with her children.

18.

In 2021, Dr. Stooksbury moved back to Louisiana, excited to introduce her children to her home state. She wanted to continue her work as a relief veterinarian and to obtain a license in Louisiana but had heard that the state had a reputation for restrictive rules. Nonetheless, in 2022, she decided to apply for a waiver.

19.

Dr. Stooksbury has been a small animal exclusive veterinarian for 15 years. Although she has chosen to work part time, she never took more than the equivalent of a maternity leave away from that work (until blocked from practice in Louisiana). She has always had an active license, carried full liability insurance, maintained a Drug Enforcement Administration license, and been a full member of the American Veterinary Medical Association and her state veterinary medical association. She has always met or exceeded continuing education requirements set forth by her licensing boards. She has always remained in good standing and never had a board complaint filed against her by any customers. She has active licenses in Georgia and Mississippi² and was

² Dr. Stooksbury received her Mississippi license after a quick application that she submitted after her petitions for waiver were rejected by the Board in Louisiana.

previously licensed in Nevada. She received her license in Mississippi easily, after being rejected by the Board for her Louisiana license.

20.

Despite these qualifications, the Board refused to even consider waiving the requirement to retake the NAVLE. Dr. Stooksbury was told by the Board that she did not meet the Board's then Practice Time Requirement of 32 hours worked per week for the immediately preceding five years. She was told this despite members of the Board telling her they believed her to be qualified but felt bound by their internal interpretation of the undefined term "practicing veterinarian."

21.

The Board's Practice Time Requirement is an administrative creation, not a statutory requirement. The only statutory authority for this administrative rule *explicitly permits* "License without Examination" for those with valid licenses in other states:

§ 37:1522. License without examination.

A. The board may issue a license without a written examination to a qualified applicant who furnishes satisfactory proof that he is a graduate of a veterinary school and who:

(1) Has been for the five years immediately prior to filing his application a *practicing veterinarian licensed in a state, territory, or district of the United States having license requirements, at the time the applicant was first licensed, which were substantially equivalent to the requirements of this Chapter; or*

(2) Has successfully completed within the five years immediately prior to filing this application, all national examinations required of first-time applicants in rules prescribed by the board.

B. At its discretion, the board may orally or practically examine any person qualifying for licensing under this Section.

La. Rev. Stat. Ann. § 37:1522 (emphasis added) ("the Practice Act").

22.

The Practice Act also explicitly permits a "Licensure remedy":

In the event the board denies a license to an applicant due to reasons other than age, citizenship, failure to pass the state licensing examination, or absence of a Doctor of Veterinary Medicine degree from an accredited school of veterinary medicine, *the board may prescribe a method by which the applicant is given an opportunity to successfully remedy the deficiency unless otherwise prohibited by law or in conflict with any other statutes or regulations.*

La. Rev. Stat. Ann. § 37:1534 (emphasis added).

23.

The Practice Act requires the Board to follow the provisions of the Louisiana Administrative Procedure Act in adopting, amending, or repealing rules. La. Rev. Stat. Ann. § 37:1518A(9).

24.

Occupational license restrictions are explicitly disfavored by state policy.

It is the policy of the state that where the state finds it necessary to displace competition, occupational licensing boards shall use the least restrictive regulation to protect the public from present, significant, and substantiated harms that threaten public health, safety, or welfare. Active state supervision of occupational regulatory actions is a method of ensuring adherence to this clearly articulated state policy. By establishing this program, the state intends to ensure that participating boards and board members will avoid liability under federal antitrust laws.

La. Rev. Stat. Ann. § 49:260.

25.

Dr. Stooksbury sought a waiver from the Board for the Practice Time Requirement that required a NAVLE retake. On April 7, 2022, Dr. Stooksbury was informed that she was denied based on the Board’s internal decisions to place a Practice Time Requirement on the definition of “practicing veterinarian.”

26.

There is no Louisiana statute that defines the term “practicing veterinarian” or requires an interpretation of those words based on hours worked per week. On information and belief, many qualified veterinarians work in “relief veterinarian” positions and do not work normal hourly work weeks. Likewise, many licensed veterinarians in the state who previously worked over 20 hours a week no longer work that amount of time but maintain their Board approved licenses without issue. Thus, the Board continues to license veterinarians that they do not consider to be “practicing veterinarians” – with less experience than Dr. Stooksbury or Dr. Breen – without issue.

27.

The Board proposed amending some of their rules regarding their practice time requirement – but the arbitrary bar that they set of 20 hours per week or more continuously for the

immediately preceding five years still offered no pathway to Dr. Stooksbury, who now had an additional six-month employment gap incurred while trying to navigate the Board's rules.

28.

On May 9, 2022, Dr. Stooksbury articulated her continued concerns to the Board in a letter as they considered their rule change.

These rules have been paramount in preventing many very qualified veterinarians from obtaining licensure in Louisiana for several years now. Many qualified veterinarians have been denied licensure on this basis, myself most recently among them, and even more veterinarians have foregone applying altogether and chosen to reside elsewhere when they might have otherwise established residency and come to work within the state. These barriers have no sound justification in today's veterinary climate, and worsen the current veterinary shortage within Louisiana, having a negative impact on the entirety of Louisiana's veterinary community and the state's animals and owners who desperately need veterinary care.

Dr. Stooksbury Rule Change Letter, dated May 9, 2022, attached hereto as Exhibit 1.

29.

On May 22, 2022, Dr. Stooksbury attended the public hearing on the proposed rule change and spoke about the effect of the Practice Time requirement on her ability to practice her profession. She pointed out that the Practice Time Requirements was arbitrary and capricious and not based in any research data or testimony indicating that the standard protected public health and welfare:

It should be noted that the 32 hour/week requirement is an arbitrary number. It was arbitrarily chosen. There is zero data to support this particular cut-off being included within the rule, as there is zero data to suggest that someone who practices in a part time capacity has any decrease in clinical ability or knowledge or that they would be a greater liability to their patients. Furthermore, the profession has changed and the James Herriot-era of every vet being a mixed animal vet who sees every species is a thing of the past. The profession has diversified in the types of paths a veterinarian can take. A housecall vet who offers concierge-type care may see 6 cases a day. In a corporate GP setting, it's possible to have a business model that focuses solely on preventative care in which a veterinarian may see 40-50 cases daily but never have to think about other facets of medicine. ER veterinarians may also see high volume, but never have to think about preventative care or routine, non life-threatening issues. High volume spay/neuter vets can work on several animals daily and yet potentially never assess a conscious animal. There is wild variation as to clinical experience gained and sustained within a set 32 hours/week, and there is no standard by which that 32 hours/week alone can be an accurate measure of clinical ability and knowledge.

Dr. Stooksbury Public Comments, dated May 22, 2022, attached hereto as Exhibit 2.

30.

Dr. Stooksbury pointed out the disparate impact of the requirements on women. “Of the veterinarians who reported as working part time . . . in 2020, 83.7% of those veterinarians are women,” she said. *Id.* On information and belief, female veterinarians choose to take lengthy periods of time away from the profession of veterinary medicine to raise their families. On information and belief, statistics show that women have composed over 80% of part-time veterinarians from 2016 to 2020.

31.

The requirements caused harm to Dr. Stooksbury, and to the citizens of Louisiana and their pets, by discouraging veterinarians from working in or relocating to Louisiana:

I am now getting a Mississippi license. I will be commuting to help Mississippi vets and service Mississippi pets, and paying Mississippi income tax. I will be driving 40+ minutes to work when local veterinarians are in desperate need of relief help. There are 2 emergency clinics within 10 minutes of my home: one is a GP who is historically open 24 hours. They now close at 10 due to lack of veterinary help. Another is a specialty hospital that provides emergency care; it is now a flip of the coin as to whether they are open overnight or not. Several local GPs are in need of relief work. I will be driving right past many of these local clinics on my commute to practice in Mississippi.

Id.

32.

The Board’s decisions caused harm to Dr. Stooksbury, whose ability to bring in income for her family was impacted for well over a year. Dr. Stooksbury had to pay to retake the NAVLE test, and expended money on preparation material for the test and substantial time studying to retake a test that covered everything from cows to iguanas – areas that had no practical application to her work.

33.

During the course of her efforts with the Board, many other veterinarians with similar stories of maltreatment by the Board reached out to Dr. Stooksbury to express support. One of these supporters was Dr. Courtney Breen. Dr. Breen also graduated from Louisiana State University but, because of her husband’s military assignments, practiced full time in Maryland for five years. After that, she moved to Camp Lejeune, North Carolina, where she decided to stay home with her small children while her husband was deployed. When her husband was assigned

to duty in Louisiana from 2015 to 2018, she attempted to have her license transferred here. The Board blocked her and told her she would have to take the NAVLE test again, even though if she had maintained a Louisiana active license, paid her fees, but never worked a day she would have had no restrictions on her practice. Dr. Breen is a small animal exclusive veterinarian and did not want to take a difficult, expensive, and inapplicable test again. She was not able to practice as a veterinarian while in Louisiana, incurring the loss of substantial income – compensable damages that were caused by the Board. She was easily able to get a license in Texas during this time, and when her husband’s duty station changed to Virginia, Dr. Breen was also easily able to get a license to practice there.

34.

The Board partially amended their rules through a vote on June 2, 2022, that went into effect on October 20, 2022, but their rule changes continued to block Dr. Stooksbury and those like her from even being considered for a NAVLE waiver in the state. The Board’s Practice Time Requirement, found in the Louisiana Administrative Code, Title 46, Part LXXXV, now states:

§303. Examinations

B. National Examinations

4. The requirement for taking the national examinations may be waived when an applicant:

- a. holds a currently valid license in good standing in another state, district, or territory of the United States; and
- b. *has worked as a licensed veterinarian an average of 20 hours per week in a private practice or its equivalent continuously and without substantial interruption for a period of five years immediately preceding his application.*

...

6. An applicant whose scores are greater than five years old and who cannot demonstrate eligibility for a waiver of the national examination pursuant to §303.B.4, shall be required to successfully pass the national examination in order to be eligible for a license.

(Emphasis added).

The Passage of Act 583 of 2022

35.

In the legislative session of 2022, Act 583 was passed, signed by the Governor, and went into effect on August 1 of that year. This Act expanded the ability of “[a]ny interested person” to challenge “an occupational regulation” established by a board. The statute states:

Any interested person may request review of an occupational regulation by submitting a petition to the occupational licensing board that issued the regulation. An occupational licensing board shall review a regulation provided for in the petition for full compliance with the least restrictive regulation as set forth in R.S. 37:43 or R.S. 49:260, as applicable.

La. Rev. Stat. Ann. § 49:953(C)(3).

36.

The statute also shifted the burden to the board to prove by a “preponderance of the evidence” that an occupational regulation is “necessary and narrowly tailored” to fulfill legitimate objectives or the court “shall enjoin” enforcement of the regulation and award reasonable attorney fees and costs to plaintiff. The statute states:

F. With respect to the challenge of an occupational regulation, the plaintiff shall prevail if the court finds by a preponderance of evidence that the challenged occupational regulation on its face or in its effect burdens entry into a profession, trade, or occupation, and that an agency has failed to prove by a preponderance of evidence that the challenged occupational regulation is demonstrated to be *necessary and narrowly tailored to fulfill legitimate fiduciary, public health, safety, or welfare objectives*. Upon a finding for the plaintiff, the court shall enjoin further enforcement of the challenged occupational regulation and shall award reasonable attorney fees and costs to the plaintiff . . .

La. Rev. Stat. Ann. § 49:963(F).

The Petition to the Board

37.

In light of the new law, Dr. Stooksbury, joined by Dr. Breen and the Pelican Institute, petitioned the Board to change their Practice Time Requirement by written petition sent on March 13, 2023. *See* Practice Time Requirement Petition attached hereto as Exhibit 3. The Petition pointed out eight different justifications for eliminating the Practice Time Requirement, including the disparate gender impact of the rule in excluding women from obtaining licenses in Louisiana as over 80% of part time veterinarians are women, the lack of any evidence for how the Practice Time Requirement was necessary, the inconsistency of the Board’s application of practice time requirements for in-state and out-of-state veterinarians, the increasing need for veterinarians in the state, and the negative effect the Practice Time Requirement has on qualified veterinarians

choosing to move into the state. “On information and belief, Louisiana is known as one of the most difficult states to achieve licensing for qualified out of state license holders.”

38.

On May 23, 2023, the Board met in executive session and considered Dr. Stooksbury’s petition. Petitioners pointed out that the combination of the Practice Time Requirement with the NAVLE test expiration date (which very few states have) makes it highly difficult to obtain a license in Louisiana that could be obtained by someone in Texas or Mississippi. On information and belief, there is no indication that Texas or Mississippi veterinarians are any less qualified or capable than Louisiana veterinarians.

39.

On May 26, 2023, counsel to the Board emailed counsel to Petitioner and informed him that the petition had been denied. This denial constitutes final agency action. As the Board has made clear its position again and again after at least two requests for a waiver, comments on a proposed rule, and an Act 583 petition, any additional administrative efforts would be futile.

CAUSES OF ACTION

Violation of the Louisiana Administrative Procedure Act

40.

Plaintiffs incorporate the allegations set forth herein, all of which are fully re-alleged here.

41.

Agency action is “invalid” if “it violates constitutional provisions or exceeds the statutory authority of the agency or was adopted without substantial compliance with required rulemaking procedures.” La. Rev. Stat. Ann. § 49:968(C).

42.

The Board’s actions in denying the Practice Time Requirement Petition “exceed[ed] the statutory authority of the agency” in its determination that the rule satisfied “least restrictive regulation” review as required by the Legislature under Act 583. La. Rev. Stat. Ann. § 49:963(F).

43.

Specifically, “the challenged occupational regulation on its face or in its effect burdens entry into a profession, trade, or occupation” because it blocks otherwise qualified veterinarians

from practicing in the state and the Board “failed to prove by a preponderance of evidence that the challenged occupational regulation is demonstrated to be *necessary and narrowly tailored to fulfill legitimate fiduciary, public health, safety, or welfare objectives.*” *Id.*

44.

The Board consulted no research reports, heard no expert testimony, and analyzed no other facts regarding public health, safety, and welfare in rejecting the Practice Time Requirement Petition.

45.

The Board failed to ensure the requirement was “necessary and narrowly tailored to fulfill those objectives” of public health, safety, and welfare.

46.

The Board’s decision appears to be based on an arbitrary interpretation of the amount of hours required to be a “practicing veterinarian” that is a bare legal conclusion unrooted in the text of any statute and unrelated to the protection of public health, safety, or welfare objectives. Under the Board’s interpretation, currently licensed veterinarians in the state may work fewer hours than the Practice Time Requirement and remain licensed, may work not at all and remain licensed, or may tend to fewer animals and have less experience and remain licensed.

47.

The Board’s actions in denying the Practice Time Requirement Petition “violate[d] constitutional provisions” of both the United States and Louisiana Constitution, as outlined herein.

48.

The Board’s actions in denying the Practice Time Requirement Petition “exceed[ed] the statutory authority of the agency” in violating federal civil rights laws, applicable to a state occupational licensing agency.

49.

The Board’s actions in denying the Practice Time Requirement Petition did not “substantial[ly] compl[y] with required rulemaking procedures” by failing to properly apply the legally required “least restrictive regulation” review.

50.

Plaintiffs have no other legal, administrative, or other remedy by which to prevent or minimize the continuing irreparable harm to their statutory rights that is a direct and proximate result of Defendants' application of the Practice Time Requirement to Plaintiffs and others like them. Unless Defendants are enjoined from committing the above-described violations of the Louisiana Administrative Procedures Act, Plaintiffs will continue to suffer irreparable harm.

**Violation of Article I, Section 2 of the Louisiana Constitution –
Due Process**

51.

Plaintiffs incorporate the allegations set forth herein, all of which are fully re-alleged here.

52.

Article I, Section 2 of the Louisiana Constitution states, "No person shall be deprived of life, liberty, or property, except by due process of law."

53.

Under this state constitutional protection, a state occupational licensing agency's decisions must substantially further an appropriate governmental objective such as public health, safety, or welfare rationales. A state occupational licensing agency's decisions must be necessary and narrowly tailored to those legitimate governmental interests. A state occupational licensing agency's decisions must not be arbitrary and capricious.

54.

The Board's decision failed to substantially further an appropriate governmental objective such as public health, safety, or welfare rationales. The Board's decision was not necessary and narrowly tailored to fulfill legitimate governmental interests. The Board's decision was arbitrary and capricious.

55.

The Board consulted no research reports, heard no expert testimony, and analyzed no other facts regarding public health, safety, and welfare in rejecting the Practice Time Requirement Petition.

56.

The Board's decision appears to be based on an arbitrary interpretation of the amount of hours required to be a "practicing veterinarian" that is a bare legal conclusion unrooted in the text of any statute and unrelated to the protection of public health, safety, or welfare objectives. Under the Board's interpretation, currently licensed veterinarians in the state may work fewer hours than the Practice Time Requirement and remain licensed, may work not at all and remain licensed, or may tend to fewer animals and have less experience and remain licensed.

57.

The Board's actions in denying the Practice Time Requirement Petition "violate[d] constitutional provisions" of both the United States and Louisiana Constitution, as outlined herein.

58.

The Board's actions in denying the Practice Time Requirement Petition did not "substantial[ly] compl[y] with required rulemaking procedures" by failing to properly apply the legally required "least restrictive regulation" review.

59.

Plaintiffs have no other legal, administrative, or other remedy by which to prevent or minimize the continuing irreparable harm to their constitutional rights that is a direct and proximate result of Defendants' application of the Practice Time Requirement to Plaintiffs and others like them. Unless Defendants are enjoined from committing the above-described violations of Article I, Section 2 of the Louisiana Constitution, Plaintiffs will continue to suffer irreparable harm.

**Violation of Amendment 14, Section 1 of the United States Constitution –
Due Process**

60.

Plaintiffs incorporate the allegations set forth herein, all of which are fully re-alleged here.

61.

The 14th Amendment to the United States Constitution states: "No State shall... deprive any person of life, liberty, or property, without due process of law..." U.S. Const. amend XIV, § 1.

62.

Under this federal constitutional protection, a state occupational licensing agency's decisions regarding economic rights must have a rational relationship to the public health, safety, or welfare rationales. A state occupational licensing agency's decisions must not be arbitrary and capricious.

63.

The Board's decision failed to have a rational relationship to public health, safety, or welfare rationales. The Board's decision was arbitrary and capricious.

64.

The Board consulted no research reports, heard no expert testimony, and analyzed no other facts regarding public health, safety, and welfare in rejecting the Practice Time Requirement Petition.

65.

The Board's decision appears to be based on an arbitrary interpretation of the amount of hours required to be a "practicing veterinarian" that is a bare legal conclusion unrooted in the text of any statute and unrelated to the protection of public health, safety, or welfare objectives. Under the Board's interpretation, currently licensed veterinarians in the state may work fewer hours than the Practice Time Requirement and remain licensed, may work not at all and remain licensed, or may tend to fewer animals and have less experience and remain licensed.

66.

The Board's actions in denying the Practice Time Requirement Petition "violate[d] constitutional provisions" of both the United States and Louisiana Constitution, as outlined herein.

67.

The Board's actions in denying the Practice Time Requirement Petition "exceed[ed] the statutory authority of the agency" in violating federal civil rights laws, which are applicable to a state occupational licensing agency.

68.

The Board's actions in denying the Practice Time Requirement Petition did not "substantial[ly] compl[y] with required rulemaking procedures" by failing to properly apply the legally required "least restrictive regulation" review.

69.

Plaintiffs have no other legal, administrative, or other remedy by which to prevent or minimize the continuing irreparable harm to their constitutional rights that is a direct and proximate result of Defendants' application of the Practice Time Requirement to Plaintiffs and others like them. Unless Defendants are enjoined from committing the above-described violations of Amendment 14, Section 1 of the U.S. Constitution, Plaintiffs will continue to suffer irreparable harm.

**Violation of Article I, Section 3 of the Louisiana Constitution –
Right to Individual Dignity and Equal Protection**

70.

Plaintiffs incorporate the allegations set forth herein, all of which are fully re-alleged here.

71.

Article I, Section 3 of the Louisiana Constitution states:

No person shall be denied the equal protection of the laws. . . No law shall arbitrarily, capriciously, or unreasonably discriminate against a person because of birth, age, sex, culture, physical condition, or political ideas or affiliations.

72.

The Practice Time Requirement "arbitrarily, capriciously, or unreasonably discriminate[s]" against all qualified veterinarians seeking veterinary licenses in Louisiana because it was arbitrarily determined and it is capriciously applied in violation of the requirements of rationality.

73.

Furthermore, the Practice Time Requirement denies the equal protection of the laws to female veterinarians and has a disparate and discriminatory impact on women as over 80% of part-time veterinarians are women. The Practice Time Requirement denies the equal protection of the

laws to working mothers who choose to take time off of work for a period to help raise their children and then attempt to be licensed in Louisiana.

74.

The Practice Time Requirement “arbitrarily, capriciously, or unreasonably discriminate[s]” against female veterinarians and has a disparate and discriminatory impact on women as over 80% of part-time veterinarians are women. The Practice Time Requirement “arbitrarily, capriciously, or unreasonably discriminates” against working mothers who choose to take time off of work for a period to help raise their children and then attempt to be licensed in Louisiana.

75.

The weekly work time in the Practice Time Requirement was not determined by reliance on any facts, research reports, or testimony regarding public health, safety, and welfare in considering either the partial rule change or the rejection of the Practice Time Requirement Petition.

76.

The arbitrary and capricious nature of the Practice Time Requirement is revealed by the double standard for in-state veterinarians, who can take as much time off of their work as they desire or work well below the weekly work time requirement and continue to maintain their licenses to practice and be considered “practicing veterinarians.”

77.

The arbitrary and capricious nature of the Practice Time Requirement is underscored by the fact that some veterinarians who meet the hourly requirement may have concierge practices that only treat several animals a day and have less experience, while other veterinarians who work part time treat many more pets during that period.

78.

The arbitrariness of the Practice Time Requirement is demonstrated by the lack of similarly restrictive rules in other states including neighboring states such as Texas and Mississippi.

79.

Meanwhile, fully qualified, capable, ethical veterinarians who have taken time off of work in the five years immediately preceding seeking a license in Louisiana cannot even be considered for a NAVLE waiver.

80.

The Practice Time Requirement as applied to Plaintiffs, unconstitutionally deprives Plaintiffs of the equal protection of the laws.

81.

Plaintiffs have no other legal, administrative, or other remedy by which to prevent or minimize the continuing irreparable harm to their constitutional rights that is a direct and proximate result of Defendants' application of the Practice Time Requirement to Plaintiffs and others like them. Unless Defendants are enjoined from committing the above-described violations of Article I, Section 3 of the Louisiana Constitution, Plaintiffs will continue to suffer irreparable harm.

**Violation of Amendment 14, Section 1 of the United States Constitution –
Equal Protection**

82.

Plaintiffs incorporate the allegations set forth herein, all of which are fully re-alleged here.

83.

The 14th Amendment to the United States Constitution states: [N]or shall any state . . . deny to any person within its jurisdiction the equal protection of the laws. U.S. Const. amend XIV, § 1.

84.

The decisions of a state occupational licensing agency regarding economic classifications must be rationally related to a legitimate governmental interest.

85.

The decisions of a state occupational licensing agency based on gender – or with disparate discriminatory impact based on gender – must serve an important governmental objective and be substantially related to achieving that objective.

86.

The Practice Time Requirement denies the equal protection of the laws to all qualified veterinarians seeking veterinary licenses in Louisiana because it is not rationally related to a legitimate governmental interest.

87.

The Board's decision appears to be based on an arbitrary interpretation of the amount of hours required to be a "practicing veterinarian" that is a bare legal conclusion unrooted in the text of any statute and unrelated to the protection of public health, safety, or welfare objectives. Under the Board's interpretation, currently licensed veterinarians in the state may work fewer hours than the Practice Time Requirement and remain licensed, may work not at all and remain licensed, or may tend to fewer animals and have less experience and remain licensed.

88.

The Practice Time Requirement denies the equal protection of the laws to female veterinarians and has a disparate and discriminatory impact on women as over 80% of part-time veterinarians are women. The Practice Time Requirement denies the equal protection of the laws to working mothers who choose to take time off of work for a period to help raise their children and then attempt to be licensed in Louisiana.

89.

The Practice Time requirement does not serve an important governmental objective and is not substantially related to achieving that objective, as the Board failed to consider the relationship of the rule to any public health, safety, or welfare objectives.

90.

The arbitrariness of the Practice Time Requirement is revealed by the double standard for in-state veterinarians, who can take as much time off of their work as they desire or work well below the weekly work time requirement and continue to maintain their licenses to practice and be considered "practicing veterinarians."

91.

The arbitrariness of the Practice Time Requirement is underscored by the fact that some veterinarians who meet the hourly requirement may have concierge practices that only treat several

animals a day and have less experience, while other veterinarians who work part time treat many more pets during that period.

92.

The arbitrariness of the Practice Time Requirement is demonstrated by the lack of similarly restrictive rules in other states including neighboring states.

93.

Meanwhile, fully qualified, capable, ethical veterinarians who have taken time off of work in the five years immediately preceding seeking a license in Louisiana cannot even be considered for a NAVLE waiver.

94.

The Practice Time Requirement as applied to Plaintiffs, unconstitutionally deprives Plaintiffs of the equal protection of the laws.

95.

Plaintiffs have no other legal, administrative, or other remedy by which to prevent or minimize the continuing irreparable harm to their constitutional rights that is a direct and proximate result of Defendants' application of the Practice Time Requirement to Plaintiffs and others like them. Unless Defendants are enjoined from committing the above-described violations of Amendment 14, Section 1 of the U.S. Constitution, Plaintiffs will continue to suffer irreparable harm.

**Violation of Article II, Sections 1 and 2 and Article III, Section 1 of the
Louisiana Constitution – Separation of Powers**

96.

Plaintiffs incorporate the allegations set forth herein, all of which are fully re-alleged here.

97.

Article II, Section 1 of the Louisiana Constitution states that “[t]he powers of government of the state are divided into three separate branches: legislative, executive, and judicial.”

98.

Article II, Section 2 of the Louisiana Constitution states that “[e]xcept as otherwise provided by this constitution, no one of these branches, nor any person holding office in one of them, shall exercise power belonging to either of the others.”

99.

Article III, Section 1(A) of the Louisiana Constitution declares that “[t]he legislative power of the state is vested in a legislature, consisting of a Senate and a House of Representatives.”

100.

The Legislature may not delegate its legislative power to Defendants.

101.

At most, the Legislature may delegate to administrative boards the authority to determine the facts upon which legislative enactments are to be applied and enforced.

102.

Under Articles II and III, an administrative rule is facially unconstitutional when it violates the separation of powers.

103.

The Board’s Practice Time Requirement violates the separation of powers by administratively concocting an additional requirement at odds with the legislative act authorizing its existence and defying multiple legislative pronouncements underscoring the importance of minimizing unnecessary occupational regulations, namely the Board’s restrictive definition of “practicing veterinarian.”

104.

The Board’s decision appears to be based on an arbitrary interpretation of the amount of hours required to be a “practicing veterinarian” that is a bare legal conclusion unrooted in the text of any statute and unrelated to the protection of public health, safety, or welfare objectives. Under the Board’s interpretation, currently licensed veterinarians in the state may work fewer hours than the Practice Time Requirement and remain licensed, may work not at all and remain licensed, or may tend to fewer animals and remain licensed.

105.

The unelected members of the Board – an executive branch agency – thereby exercised the power reserved to the Legislature and engaged in an unconstitutional exercise of legislative authority. Defendants’ actions have deprived Plaintiffs of the structural protections of individual liberty that the Louisiana Constitution’s separation of powers guarantees.

106.

Plaintiffs have no other legal, administrative, or other remedy by which to prevent or minimize the continuing irreparable harm to their constitutionally protected separation of powers that is a direct and proximate result of Defendants’ application of the Practice Time Requirement to Plaintiffs and working mothers like them. Unless Defendants are enjoined from committing the above-described violations of the structural protections of the Louisiana Constitution, Plaintiffs will continue to suffer irreparable harm.

PRAYER FOR RELIEF REQUESTED

WHEREFORE, Plaintiffs pray for relief as follows:

- A. For an entry of judgment declaring that the Practice Time Requirement in Louisiana Administrative Code, Title 46, Part LXXXV, §303(B)(4)(b) is unconstitutional as applied to Plaintiffs;
- B. For an entry of judgment declaring that the Practice Time Requirement in Louisiana Administrative Code, Title 46, Part LXXXV, §303(B)(4)(b), is facially unconstitutional as a violation of the due process clause of the Louisiana and United States Constitutions;
- C. For an entry of judgment declaring that the Practice Time Requirement in Louisiana Administrative Code, Title 46, Part LXXXV, §303(B)(4)(b), is facially unconstitutional as a violation of the equal protection clause of the Louisiana and United States Constitutions;
- D. For an entry of judgment declaring that the Practice Time Requirement in Louisiana Administrative Code, Title 46, Part LXXXV, §303(B)(4)(b), is facially unconstitutional as a violation of the separation of powers of the Louisiana Constitution because, in adopting these provisions, the Board unconstitutionally exercised the power of the Legislature;

- E. For an order permanently enjoining Defendants from committing the ongoing constitutional violations described above;
- F. For an order permanently enjoining defendants from enforcing the requirements in Louisiana Administrative Code, Title 46, Part LXXXV, §303(B)(4)(b);
- G. For compensatory damages for loss of income while Plaintiffs were unable to work in the state, for travel costs, testing costs, and any other compensable damages proven at trial;
- H. For attorney's fees;
- I. For judicial interest from the date of demand;
- J. For all other relief to which Plaintiffs may show themselves entitled.

WHEREFORE, Plaintiffs pray that the Defendants herein be served with a copy of this Petition and duly cited to appear and answer this Petition and that, after all legal delays and due proceedings had, there be judgment herein in favor of Plaintiffs.

Respectfully submitted this 8th day of August, 2023.

/s/

James Baehr (LSBA 35431)
Sarah Harbison (LSBA 31948)
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May 9, 2022

To the Louisiana Board of Veterinary Medicine:

I am writing in regard to the proposed rule changes to the NAVLE waiver requirement for application for Louisiana veterinary licensure. While I commend any attempt at a change in both the NAVLE retake and preceptorship requirements for licensure, as both requirements create unnecessary barriers for licensure in Louisiana and change is grossly overdue, I do not feel that the proposed changes for the NAVLE waiver go far enough to break down the barriers to licensing that these rules create.

These rules have been paramount in preventing many very qualified veterinarians from obtaining licensure in Louisiana for several years now. Many qualified veterinarians have been denied licensure on this basis, myself most recently among them, and even more veterinarians have foregone applying altogether and chosen to reside elsewhere when they might have otherwise established residency and come to work within the state. These barriers have no sound justification in today's veterinary climate, and worsen the current veterinary shortage within Louisiana, having a negative impact on the entirety of Louisiana's veterinary community and the state's animals and owners who desperately need veterinary care.

I understand the resistance and reluctance to change long-standing rules, and I understand the desire to make small changes at a time. However, these rules are extremely antiquated and do not keep up with the current state of the profession. The current proposed changes as they stand do not remedy this. Changes are so long overdue that even small changes at once cannot possibly adequately bring the rules and regulations into the current millennia. Add to that the historical resistance on the Board's part to amend these rules and make necessary changes in order to keep up with an evolving profession, and the idea of small changes at a time does not support that adequate and meaningful change will be made.

These rules are 30 years behind the times. There are a handful of known "problematic" states that still have antiquated and unnecessarily restrictive rules in place that present a direct conflict with things that the AVMA promotes within the profession such as work/life balance, license portability, and being a female-friendly profession that are desperately needed to retain more veterinarians within the field and make it likely that veterinarians will move there to work. Louisiana is one of those states. While the AVMA cannot force local change, the Board should be aware that the country (and the world) is watching. Being 30 years behind and still being reluctant to make necessary changes that would benefit the whole of its membership with no sacrifice to patient wellbeing and care is not a good look. No one looks at these rules and sees a high standard being upheld. Instead, they look at them and see that the Louisiana Veterinary Medical Board is not doing what they need to be doing to remain relevant within the profession and to best serve their

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veterinary colleagues and the population of pet owners and animals within Louisiana.

The profession is (and has been for some time) moving to being a female-dominated profession, and these rules have a very blatant disparate impact on women. For any veterinarian to be punished for choosing to have a family or to take a medical leave (maternity, mental health, or otherwise) is abhorrent. For any veterinarian to be denied a NAVLE (or preceptorship) waiver to obtain licensure because they did not meet an arbitrary line set at a 32 hour work week when they otherwise work consistently is appalling, and lacks consideration for that veterinary colleague and their career as well as for the state's current veterinarians who desperately need more help. The negative effect of these rules will become even more substantial as we emerge from recent years' COVID lockdowns, where more veterinarians, those with family members to care for or medical concerns for themselves, were forced to work part-time or not at all for a period of time. Regulations and restrictions should be set based on data and science, creating regulatory lines only where there is a statistically proven decrease in clinical knowledge and capabilities and subsequent danger for the state's animal population. For the board to repeatedly choose to uphold barriers and arbitrarily-drawn requirements that consistently cause denial of licensure for qualified colleagues and overwhelmingly negatively affect women is disappointing to put it mildly.

There are many reasons why the current statutes regarding both the NAVLE retake and preceptorship requirements are unnecessary and misguided. It is understandably worrisome to open the practice act to change these things, as should be done. But the Board does have the power to change the rules for waiver requirements to alleviate the barriers to licensure that so many qualified veterinarians run into and which repeatedly restrict the number of qualified veterinarians who become licensed in Louisiana. It is for this reason that I write and respectfully request that the Board reassess the proposed changes to go even further to break down these barriers. Please make a substantial change, now within the NAVLE retake waiver requirements and subsequently within the preceptorship waiver requirements, that does not disqualify part time veterinarians or those who choose to take a reasonable time away for personal reasons from the ability to become licensed within the state.

Thank you for your time and consideration.

Sincerely,

Lara M. Stooksbury, DVM

My name is Lara Stooksbury. I was born and raised in Louisiana, and graduated vet school at the LSU School of Veterinary Medicine 14 years ago. I practiced in small animal GP full time at approximately 60 or more hours/week for 6 years, and then dropped to part time relief work to accommodate having a family. I have worked as a small animal relief veterinarian in this capacity for the past 8 years, working an average of 20 hours/week in Georgia where we have been living due to my husband's job. We moved back to Louisiana last year.

Until moving back to Louisiana, I have never taken more than the equivalent of a 3-month maternity leave completely away from work. I have always had (and still maintain) an active license, carry full liability insurance, always have had a DEA license and been a full member of the AVMA and my state Veterinary medical association. I have always met or exceeded continuing education requirements set forth by the Board in the state in which I am licensed. I am Fear Free Elite certified, and have never had a board complaint, always having remained in good standing. I have worked relief in many clinics as a solo practitioner and am comfortable doing so, and have been offered employment positions at every clinic I have relieved for, even prior to the current veterinary shortage. Despite this, I was denied Louisiana licensure due to working part time prior to applying for licensure. Sadly, I was told by the Board that they believe me to be a qualified veterinarian, but that rules prevent them from approving my waivers due to having consistently worked part time rather than full time. These are the same rules that are due for change and one in which we are commenting on proposed changes today, yet nothing is included in the proposed changes to address the

repeated denial of qualified veterinarians who have worked part time prior to application for licensure.

I am now getting a Mississippi license. I will be commuting to help Mississippi vets and service Mississippi pets, and paying Mississippi income tax. I will be driving 40+ minutes to work when local veterinarians are in desperate need of relief help. There are 2 emergency clinics within 10 minutes of my home: one is a GP who is historically open 24 hours. They now close at 10 due to lack of veterinary help. Another is a specialty hospital that provides emergency care; it is now a flip of the coin as to whether they are open overnight or not. Several local GPs are in need of relief work. I will be driving right past many of these local clinics on my commute to practice in Mississippi.

My case is not an isolated incident. There are several vets living in Louisiana who were either denied licensure due to these rules or don't qualify for waiver requirements and so are instead licensed in surrounding states and commuting out of state in order to practice. Many others refuse to apply at all, as these rules act as a deterrent for many to apply for Louisiana licensure. These rules create an unnecessary barrier that directly hurts the state's currently licensed veterinarians and the animals that need to be served due to turning away qualified veterinarians. In a time of a veterinary shortage and a profession in crisis, it is time for this rule to change. I have spoken to a veterinarian who owns a practice and desperately needs relief. She is good friends with a vet who lives locally to her but was denied licensure due to working part time prior to applying, and therefore commutes into Texas to practice, leaving her to continue to struggle to find relief for her own veterinary practice. Tragic.

It should be noted that the 32 hour/week requirement is an arbitrary number. It was arbitrarily chosen. There is zero data to support this particular cut-off being included within the rule, as there is zero data to suggest that someone who practices in a part time capacity has any decrease in clinical ability or knowledge or that they would be a greater liability to their patients. Furthermore, the profession has changed and the James Herriot-era of every vet being a mixed animal vet who sees every species is a thing of the past. The profession has diversified in the types of paths a veterinarian can take. A housecall vet who offers concierge-type care may see 6 cases a day. In a corporate GP setting, it's possible to have a business model that focuses solely on preventative care in which a veterinarian may see 40-50 cases daily but never have to think about other facets of medicine. ER veterinarians may also see high volume, but never have to think about preventative care or routine, non life-threatening issues. High volume spay/neuter vets can work on several animals daily and yet potentially never assess a conscious animal. There is wild variation as to clinical experience gained and sustained within a set 32 hours/week, and there is no standard by which that 32 hours/week alone can be an accurate measure of clinical ability and knowledge.

It should also be noted that veterinarians who are currently licensed within Louisiana can work part time, or not at all indefinitely, and remain actively licensed to practice by obtaining minimum CE requirements and paying their renewal fees. It is also acceptable for a veterinarian to maintain an inactive status on their license for up to 5 years and return with no limitations placed upon them as long as CE requirements are met and the appropriate fees are paid. Veterinary licensure in general allows for a change in practice type and scope at any point within a licensee's career, allowing

a veterinarian to make a complete change in the species they treat after not having worked in that sector for potentially decades or ever at all. There is no oversight for these changes in practice type, no requirement to prove they aren't a liability to the very species they haven't seen medically prior to their switch.

These double-standard needs to stop. What's good for the goose is good for the gander, as they say. There is no basis for continuing to uphold outdated rules that have a direct negative impact on the state's veterinarians and veterinary clients, as well as many qualified colleagues who are denied licensure, when the standards for Louisiana's own currently licensed veterinarians are not to the same level.

Lastly, the 32 hour/week requirement is discriminatory, even if unintentionally so. Disparate impact is a very real type of discrimination that violates Title VII of the Civil Rights Act of 1964, and refers to practices that adversely affect one group of people of a protected characteristic more than another, even though the rules are formally neutral. In other words, disparate impact occurs when "policies, practices, rules or other systems that appear to be neutral result in a disproportionate impact on a protected group." Of the veterinarians who reported as working part time to the AVMA in 2020, 83.7% of those veterinarians are women. There is a disparate impact that this rule creates on women. It is also very ablest, excluding those who have limitations that prevent them from working full time. "Bona fide occupational qualification" exceptions exist, but this would require that no reasonable, less-stringent alternative is available. Due to the fact that there is no data to support that a practitioner who works part time has any decrease in clinical ability or presents any increase in liability, this would not qualify. The Board could move the practice requirement set within the rules in

order to eliminate this impact that disproportionately affects women with no negative effect on patient safety or wellbeing.

I do commend the current Board for moving to make changes to rules that have become antiquated and have long been problematic, as these rules have not been adequately modified to keep up with the evolution of the veterinary profession and changes are woefully overdue. However, I do believe that the Board should revisit their proposed changes to NAVLE retake waiver requirements and eliminate the 32 hour/week requirement in order to include veterinarians who have worked part time prior to application for Louisiana licensure as those who would qualify for a NAVLE retake waiver. I respectfully ask the Board to take this extra step in their proposed changes to the NAVLE retake requirement rules in order to eliminate inadvertent discrimination and maximize the number of qualified veterinarians who can obtain licensure within the state to help the state's current veterinarians and veterinary patients. I humbly ask that they reassess and add to the proposed changes in order to eliminate barriers for licensure that repeatedly restrict the number of qualified veterinarians who become licensed in Louisiana.

Thank you for your time and consideration.



March 13, 2023

**PETITION FOR REVIEW OF OCCUPATIONAL
REGULATION FOR FULL COMPLIANCE WITH
LEAST RESTRICTIVE REGULATION**

In accordance with Act 583 of 2022:

Any interested person may request review of an occupational regulation by submitting a petition to the occupational licensing board that issued the regulation. An occupational licensing board shall review a regulation provided for in the petition for full compliance with the least restrictive regulation as set forth in R.S. 37:43 or R.S. 49:260, as applicable.

La. Rev. Stat. Ann. § 49:953(C)(3).

Specifically, the Legislature has identified an “occupational license” as the “most restrictive” form of regulation:

(5) “Least restrictive regulation” means, from least to most restrictive, all of the following:

- (a) Market competition.
- (b) Third-party or consumer-created ratings and reviews.
- (c) Specific private civil cause of action to remedy consumer harm as provided in the Unfair Trade Practices and Consumer Protection Law, R.S. 51:1401 et seq.
- (d) Regulation of the process of providing the specific goods or services to consumers.
- (e) Inspection.
- (f) Bonding or insurance.
- (g) Registration.
- (h) *Occupational license*.

La. Rev. Stat. Ann. § 37:43 (emphasis added).

Act 583 mandates that a board must demonstrate any occupational regulation “to be *necessary and narrowly tailored* to fulfill legitimate fiduciary, public health, safety, or welfare objectives.”

The below interested persons request review of an occupational regulation by submitting this petition to the occupational licensing board that issued the regulation.

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Petitioners' Names and Addresses:

The Pelican Institute for Public Policy, 400 Poydras Street, #900, New Orleans, LA 70130
Dr. Lara Stooksbury, DVM, 1407 Carissa Court, Covington, LA 70433
Dr. Courtney Breen, DVM, 14012 Neville Road, Quantico, VA 22134

Statements of Interest

The Pelican Institute for Public Policy is Louisiana's free market think tank. The Pelican Institute for Public Policy believes every person should have the opportunity to flourish. The Institute's mission is to research and develop policy solutions to address the most significant barriers to opportunity in Louisiana. We educate the public about the benefits of individual liberty and free enterprise, turning great ideas into powerful policy solutions that make a meaningful difference in people's lives.

Dr. Lara Stooksbury, DVM, is highly qualified, experienced, and ethical veterinarian who seeks to practice her profession in her home state of Louisiana. Dr. Stooksbury was born and raised in Mandeville, LA, and graduated from Louisiana State University in 2008. She worked for six years in Nevada for approximately 60 or more hours a week. She and her husband welcomed a child into the world in 2012 and she moved to Georgia in 2014 to follow her husband's job. As many mothers choose to do, she decided to focus on her growing family and switched to relief positions, working around 20 hours a week to allow for greater schedule flexibility. In 2021, she moved back to Louisiana, excited to introduce her children to her home.

Dr. Stooksbury has been a small animal exclusive veterinarian for 15 years. Until she moved back to Louisiana, she never took more than the equivalent of a maternity leave away from work. She has always had an active license, carried full liability insurance, maintained a Drug Enforcement Administration license, and been a full member of the American Veterinary Medical Association and her state veterinary medical association. She has always met or exceeded continuing education requirements set forth by the board. She has always remained in good standing and never had a board complaint. She has active licenses in Georgia and Mississippi.

Dr. Courtney Breen, DVM, is a military spouse whose husband serves in the United States Marine Corps. Dr. Breen also graduated from Louisiana State University but, because of the mobility of her husband's job, got a license in Texas after veterinary school. Like other mothers, she chose to work part time to focus on her children. When her husband was previously assigned to duty in Louisiana, she attempted to have her license transferred here around 2018. The Board blocked her and told her she would have to take the NAVLE test again. Dr. Breen is a small animal exclusive veterinarian and did not want to take the test again. She was not able to practice as a veterinarian while in Louisiana, incurring the loss of substantial income.

When her husband's duty station changed to Virginia, Dr. Breen was easily able to get a license to practice there. Although she would like to move back to Louisiana and such a move would be good for her husband as his headquarters (Marine Forces Reserve) is located here, she will not return while the Board maintains its current requirements.

Unfortunately, neither doctors' dream turned out as planned, as they have been unable to practice their profession here due to outdated, unreasonable, and discriminatory requirements. They represent countless others. The Louisiana Board of Veterinary Medicine insists on an administratively created requirement that veterinarians with scores over five years old must retake the NAVLE to practice in the state (the "Time Requirement") if they practiced an average of less than 20 hours a week. By this Petition, we seek the repeal of these unnecessary occupational regulations.

Specific Text or Description of Proposed Language for Repeal:

Petitioners seek repeal of the Board's administrative "Time Requirement" found in the Louisiana Administrative Code, Title 46, Part LXXXV.

§303. Examinations

B. National Examinations

4. The requirement for taking the national examinations may be waived when an applicant:

a. holds a currently valid license in good standing in another state, district, or territory of the United States; and

b. *has worked as a licensed veterinarian an average of 20 hours per week in a private practice or its equivalent continuously and without substantial interruption for a period of five years immediately preceding his application.*

...

6. An applicant whose scores are greater than five years old and who cannot demonstrate eligibility for a waiver of the national examination pursuant to §303.B.4, shall be required to successfully pass the national examination in order to be eligible for a license.

(Emphasis added).

Justification for the Proposed Action:

1. The Legislature Specifically Permitted Out of State Veterinarian Licensees to be Recognized in Louisiana and Has Explicitly and Repeatedly Emphasized a Policy Disfavoring Unnecessary Occupational Regulations.

The Board's Time Requirement is an administrative creation, not a creature of statute. The only statutory authority for this administrative rule *explicitly permits* "License without Examination" for those with valid licenses in other states:

§ 37:1522. License without examination.

A. The board may issue a license without a written examination to a qualified applicant who furnishes satisfactory proof that he is a graduate of a veterinary school and who:

- (1) Has been for the five years immediately prior to filing his application a *practicing veterinarian licensed in a state, territory, or district of the United States having license requirements, at the time the applicant was first licensed, which were substantially equivalent to the requirements of this Chapter*; or
- (2) Has successfully completed within the five years immediately prior to filing this application, all national examinations required of first-time applicants in rules prescribed by the board.

B. At its discretion, the board may orally or practically examine any person qualifying for licensing under this Section.

La. Rev. Stat. Ann. § 37:1522 (emphasis added).

The Louisiana legislature has repeatedly articulated that occupational license restrictions are disfavored.

A. It is the policy of the state that where the state finds it necessary to displace competition, occupational licensing boards shall use the least restrictive regulation to protect the public from present, significant, and substantiated harms that threaten public health, safety, or welfare. Active state supervision of occupational regulatory actions is a method of ensuring adherence to this clearly articulated state policy. By establishing this program, the state intends to ensure that participating boards and board members will avoid liability under federal antitrust laws.

La. Rev. Stat. Ann. § 49:260.

2. *Louisianans and Their Pets Need More, Not Fewer, Veterinarians.*

The United States Bureau of Labor Statistics projects the need for veterinarians to grow “19 percent from 2021 to 2031.”¹ Louisianans have the same needs. Job search websites are full of postings seeking veterinarians: today, Indeed lists 72 job postings², while ZipRecruiter lists over 83.³ Yet, the Board creates unnecessary requirements that block qualified entrants from providing services here.

These rules also stymie economic growth in Louisiana, as veterinarians like Dr. Breen take their skills and abilities elsewhere rather than choose to become productive, taxpaying citizens in our state. The state saw the fifth largest population decline in the nation in 2021.⁴

¹ U.S. Bureau of Labor Statistics, *Occupational Outlook Handbook, Veterinarians*, <https://www.bls.gov/ooh/healthcare/veterinarians.htm>.

² Indeed.com (search terms: Veterinarians; location: Louisiana) (accessed on March 7, 2023).

³ Ziprecruiter.com (search terms: Veterinarians; location: Louisiana) (accessed on March 7, 2023).

⁴ Jeff Adelson, *Louisiana saw fifth highest population loss in U.S. in 2021, according to new estimates*, THE TIMES-PICAYUNE/THE NEW ORLEANS ADVOCATE, (Dec. 22, 2021) https://www.nola.com/news/politics/louisiana-saw-fifth-highest-population-loss-in-u-s-in-2021-according-to-new-estimates/article_c9a00050-637b-11ec-a1a3-773fc5fa7af3.html.

Louisiana also lags its peers in economic growth: the Bureau of Economic Analysis showed that the state came in worst in the South and 46th in the nation due to a 6.6 percent decline in gross domestic product from the prior quarter during COVID-19.⁵ But even after COVID-19, the Louisiana economy only grew at 2.4 percent in 2021 compared to 5.7 percent for the nation as a whole.⁶

3. *There is No Evidence that Qualified Veterinarians Fully Licensed in Other States That Do Not Meet the Board's Administrative Time Requirement Are Any Less Capable than Those That Have.*

There is no data on statistical increases in incidences of malpractice claims or board complaints to support the idea that someone working less than 20 hours per week presents a higher risk to public health. Dr. Stooksbury previously inquired of veterinary and human medical liability insurance carriers and was told that they were unaware of any such increased risk. In light of burnout rates from overwork because of the demand for veterinarians, it is just as likely that there are fewer issues with those who work fewer hours.

4. *The Board Treats Out-of-State License Holders Inconsistently from In-State License Holders.*

The Board permits those with Louisiana licenses who choose to work less than 20 hours per week or who choose not to work at all to continue to hold active licenses as long as they meet minimum continuing education requirements and pay their renewal fee. These individuals have the ability to continue working within the profession with no questions asked. In addition, current licensees can request inactive status for up to five (5) years and still return without having NAVLE restrictions placed upon their return to prove competency.

5. *The Board's Time Requirement Has a Disparate, Discriminatory Impact on Women Veterinarians.*

These administrative rules also have a disparate, discriminatory impact on women in violation of the Equal Protection Clause because women are more likely than men to work part time or take time out of the workforce. Women in particular take maternity leave and/or work fewer hours to accommodate family demand. In 2020, 83.7% of veterinarians who work part time are women according to statistics obtained from the AVMA. Women who make these choices are often automatically excluded from the ability to meet waiver requirements.

⁵ Pelican Institute for Public Policy, Center for Opportunity Policy, *Louisiana Economy Suffers One of Worst Declines in the Nation*, <https://pelicanpolicy.org/louisiana-economy-suffers-one-of-worst-declines-in-the-nation/>.

⁶ Jerry DiColo, *Is Louisiana's economy keeping up with other states? Here's the data*, THE TIMES-PICAYUNE/THE NEW ORLEANS ADVOCATE, https://www.nola.com/news/business/is-louisianas-economy-keeping-up-with-other-states-heres-the-data/article_f3c69f44-b10d-11ec-b85e-ef1c3c5d173a.html.

6. *Unnecessary Occupational Licensing Regulations Hurt Louisianans by Robbing them of Opportunities to Practice the Lawful Profession of Their Choice.*

At a time of economic challenge for many in Louisiana, the state remains one of the worst in the nation as far as occupational regulations are concerned. A recently updated study by the Institute for Justice shows that Louisiana has more licensed low-income occupations than any other state in the nation.⁷ Louisiana has over 500 boards and commissions that enact arcane rules to govern occupations in the state.⁸ For example, Louisiana is the only state in the union that requires someone to have a license to arrange and sell flowers.⁹

Certainly, veterinarians are not florists, and there is a need for reasonable regulations for those who medically treat animals. Nonetheless, arbitrary rules that block fully qualified, capable, and ethical veterinarians licensed in multiple states advance no public purpose. On information and belief, Louisiana is known as one of the most difficult states to achieve licensing for qualified out of state license holders.

7. *Unnecessary Occupational Licensing Regulations Hurt All Louisianans by Increasing the Cost of Services in the State.*

A significant body of academic and government research demonstrates that unnecessary occupational licensing regulations raise the cost of services by suppressing market competition.

Kleiner (2015), for example, estimated that “the restrictions from occupational licensing can result in up to 2.85 million fewer jobs nationwide, *with an annual cost to consumers of \$203 billion.*” Similarly, a 2018 Federal Trade Commission report found that while occupational licensing supports health and safety in some cases, it also reduces labor supply, restrains competition, and *raises prices.* Kleiner and Soltas (2019) examined license variation among the states and found that shifting an occupation from unlicensed to licensed reduces employment in the licensed occupation by 29 percent.¹⁰

8. *Unnecessary Occupational Licensing Regulations Enrich Current Market Participants by Suppressing Healthy Competition by New Entrants.*

Protectionist licensing schemes perpetuated by unsupervised, self-interested boards run afoul of fundamental principles of freedom. The Supreme Court in *North Carolina State Board of Dental Examiners v. FTC* ruled that a state board on which a controlling number

⁷ Institute for Justice, *License to Work, A National Study of Burdens from Occupational Licensing*, 3rd Edition, <https://ij.org/report/license-to-work-3/>.

⁸ Office of the Governor, Boards & Commissions, <https://gov.louisiana.gov/page/boards-commissions>.

⁹ Kaley Willis, *Requirements for Louisiana floristry license*, KPLC (Mar. 30, 2018) <https://www.kplctv.com/story/37848470/requirements-for-louisiana-floristry-license/>.

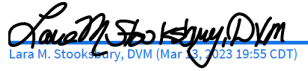
¹⁰ The Cato Institute, *Occupational Licensing*, <https://www.cato.org/publications/facilitating-personal-improvement-occupational-licensing> (internal citations omitted) (emphasis added).

of decisionmakers were active market participants in the occupation the board regulated had to satisfy active supervision requirements in order to invoke state-action antitrust immunity. 574 U.S. 494, 135 S. Ct. 1101 (2015). Currently, every member of the Louisiana Board of Veterinary Medicine is a “Doctor of Veterinary Medicine” – an active market participant who benefits financially from suppressing new entrants into the trade. This cannot be a valid justification for blocking qualified, good people like Dr. Stooksbury or Dr. Breen from this profession.

Petitioners’ Signatures:



Daniel Erspamer
Pelican Institute for
Public Policy


Lara M. Stooksbury, DVM (Mar 13, 2023 19:55 CDT)

Lara Stooksbury
Doctor of
Veterinary Medicine


Courtney Breen (Mar 14, 2023 11:04 EDT)

Courtney Breen
Doctor of
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