

TRANSMITTAL SHEET FOR
NOTICE OF INTENDED ACTION

Control 545 Department or Agency Alabama Medical Licensure Commission

Rule No. 545-X-3-.16

Rule Title: Probation Compliance Hearings

New Amend Repeal Adopt by Reference

Would the absence of the proposed rule significantly harm or endanger the public health, welfare, or safety? YES

Is there a reasonable relationship between the state's police power and the protection of the public health, safety, or welfare? YES

Is there another, less restrictive method of regulation available that could adequately protect the public? NO

Does the proposed rule have the effect of directly or indirectly increasing the costs of any goods or services involved and, if so, to what degree? NO

Is the increase in cost, if any, more harmful to the public than the harm that might result from the absence of the proposed rule? NO

Are all facets of the rulemaking process designed solely for the purpose of, and so they have, as their primary effect, the protection of the public? YES

Does the proposed rule have an economic impact? NO

If the proposed rule has an economic impact, the proposed rule is required to be accompanied by a fiscal note prepared in accordance with subsection (f) of Section 41-22-23, Code of Alabama 1975.

Certification of Authorized Official
I certify that the attached proposed rule has been proposed in full compliance with the requirements of Chapter 22, Title 41, Code of Alabama 1975, and that it conforms to all applicable filing requirements of the Administrative Procedure Division of the Legislative Reference Service.

Signature of certifying officer James E. West, MD

Date: June 19, 2017

APA-2
6/93

ALABAMA MEDICAL LICENSURE COMMISSION

NOTICE OF INTENDED ACTION

AGENCY NAME: Alabama Medical Licensure Commission

RULE NO. & TITLE: 545-X-3-.16 Probation Compliance Hearings

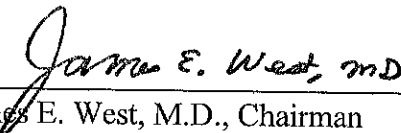
INTENDED ACTION: To add a new rule

SUBSTANCE OF PROPOSED ACTION: To add a new rule stating the protocol for probation compliance hearings

TIME, PLACE, MANNER OF PRESENTING VIEWS: All interested persons may submit data, views or arguments concerning the proposed new rule(s) and regulation(s) in writing to: Karen H. Silas, Executive Assistant, Alabama Medical Licensure Commission, Post Office Box 887, Montgomery, Alabama 36101-0887, by mail or in person between the hours of 8:30 a.m. and 4:30 p.m., Monday through Friday, until and including Thursday, August 3, 2017. Persons wishing to obtain copies of the text of this rule and submit data, views or comments or arguments orally should contact Karen H. Silas, by telephone (334/242-4153) during said period in order to set up an appointment for a hearing respecting such oral data, views, or arguments.

FINAL DATE FOR COMMENT AND COMPLETION OF NOTICE: August 3, 2017

CONTACT PERSON AT AGENCY: Karen H. Silas


James E. West, M.D., Chairman

NEW RULE

545-X-3-.16 Probation Compliance Hearings.

(1) If a final order of the Commission in a contested case suspends the implementation of the penalty, or any portion thereof, and the physician's license is placed on probationary status, the Commission may, from time to time, hold a probation compliance hearing for the limited purpose of determining whether any restrictions or terms of the probation have been violated.

(2) In a probation compliance hearing, the probationer shall be afforded an opportunity to be heard after reasonable notice in writing. Notice shall be served on the probationer in the same manner as provided for in § 34-24-361(e) of the Alabama Code (1975) at least 20 days prior to the date set for the hearing and shall include:

(a) A statement of the time, place and nature of the hearing;

(b) citation to the restriction or term of probation in the final order which the probationer is accused of violating;

(c) a statement of the legal authority under which the hearing is to be held.

(3) The notice may contain any and all of the items listed in § 545-X-3.03(5) above as well as copies of any and all reports, data, test results, or communications which tend to show that the probationer may have violated the restrictions or terms of probation.

(4) A copy of the notice shall be served on the Alabama Board of Medical Examiners concurrently with service on the probationer. The Board shall have the right to intervene as a complainant at any time prior to the hearing date. If the Board elects to intervene, the Board shall notify the probationer and the Commission by filing a petition to intervene as complainant with the Commission, which shall serve a copy of the petition on the probationer. Upon filing such a petition, the Board shall have the right to appear through counsel, call witnesses, present evidence and argument, cross examine any witnesses giving testimony before the Commission, and make recommendations to the Commission. The Board shall be limited to the subject matter identified in the notice unless it alleges additional violations of the Commission's probation order in the petition to intervene. In no instance shall

the Board be permitted to prosecute additional violations of the probation order unless notice has been provided to the probationer at least ten (10) days prior to the date set for the hearing. Nothing in this rule shall be construed to prohibit, preclude, or limit the Board's authority to file an administrative complaint with the Commission under applicable law and regulations.

(5) In a probation compliance hearing, a probationer shall be afforded the opportunity to be heard by the Commission, to call witnesses, present evidence and argument, and to cross examine any witness giving testimony before the Commission, all as allowed for the Alabama Administrative Procedures Act, § 41-22-1, et. seq. of the Alabama Code (1975). A probationer may be represented by counsel at said probation compliance hearing.

(6) Witnesses may be subpoenaed to testify at or supply evidence for a probation compliance hearing by either the Commission or the probationer in the same manner prescribed in § 545-X-3.05 above.

(7) The rules of evidence in a probation compliance hearing shall be as set out in § 41-22-13 of the Alabama Code (1975) and Section 545-X-3.09 above.

(8) If the Commission finds that the probationer has violated a restriction or term of probation, the Commission may enter an order, which shall be public record, either:

(a) Revoking Probationer's probation and implementing the penalties provided for in the final order; or

(b) Amending the final order to change the restrictions or terms of the probation, which terms may include suspending the probationers' license during the pendency of the probationary period, or any other discipline provided for in Section 34-24-360 of the Alabama Code (1975); or

(c) Tabling action until the occurrence of a future event, which event shall be reflected in the record and communicated to the probationer; or

(d) Taking no action.

(9) An order of the Commission entered pursuant to § 545-X-3.16 (8)(a) or (b) immediately above shall be in writing and made part of the record. The order shall state:

(a) The term or restriction of probation which the Commission has found the probationer to have violated; and

(b) The facts upon which the Commission bases its finding.

(10) Record. All data, staff memoranda, evidence, argument, and testimony accepted or relied upon by the Commission relative to a probation compliance hearing shall be made a part of the record and shall be maintained by the Commission for at least five (5) years. Nothing in this section shall be construed to limit or alter the confidentiality requirements of § 34-24-361.1.

(11) Appeal. 3. A physician or osteopath whose probation has been revoked under the authority of this section may obtain judicial review of such revocation in accordance with the provisions of Sections 41-22-20 and 34-24-367 of the Alabama Code (1975).

Author: Wallace D. Mills, E. Wilson Hunter
Statutory Authority: §§ 34-24-360, 34-24-360.1, 34-24-361 Ala. Code (1975).

History: Approved for Publication: May 24, 2017, Filed June 19, 2017