

TRANSMITTAL SHEET FOR
NOTICE OF INTENDED ACTION

Control 545 Department or Agency: Alabama Medical Licensure Commission
Rule No. 545-X-1
Rule Title: Organization and Administration
 New X 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 action relate to or affect in any manner any litigation which the agency is a party to concerning the subject matter of the proposed rule? No

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 Services Agency.

James A. Wallerstein, MD

Signature of certifying officer _____
Date August 29, 2018

APA-2

ALABAMA MEDICAL LICENSURE COMMISSION

NOTICE OF INTENDED ACTION

AGENCY NAME: Alabama Medical Licensure Commission

RULE NO. & TITLE: 545-X-1 Organization and Administration

INTENDED ACTION: To amend multiple rules in Chapter one as part of a five year review required by Section 41-22-5.2

SUBSTANCE OF PROPOSED ACTION: Clean up rule language to include: updating procedures, expanding the duties of the Chairman; amending the parliamentary procedure guide and moving definitions from chapter three.

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, email or in person between the hours of 8:30 a.m. and 4:30 p.m., Monday through Friday, until and including **Friday, November 2, 2018**. 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) or email at ksilas@almlc.org 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: **November 2, 2018**

CONTACT PERSON AT AGENCY: Karen H. Silas

James H. Walburn, M.D.

James H. Walburn, M.D., Chairman

Alabama Medical Licensure Commission

MEDICAL LICENSURE COMMISSION OF ALABAMA
ADMINISTRATIVE CODE
CHAPTER 545-X-1
ORGANIZATION AND ADMINISTRATION
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_____ 545-X-1-.01 Composition Of The Commission.

(1) The Commission shall be composed of seven physicians, each of whom must be either a doctor of medicine or a doctor of osteopathy and be licensed to practice medicine ~~or osteopathy~~ in Alabama. There shall be and one public member, who shall not be a licensee of the Commission or hold a professional degree in any health care field or practice as a licensed health care professional.

(2) The members shall be appointed as follows:

(a) Two physicians shall be appointed by the lieutenant governor;

~~(a)~~

(b) Two physicians shall be appointed by the speaker of the house of representatives; and

~~(b)~~

(c) The three remaining physicians and the public member shall be appointed by the Governor.

~~(c)~~

(3) The members shall serve a five-year term with no limit as to the number of terms a member can serve. In order to stagger the terms, the initial appointment shall be as follows:

(a) The two members appointed by the lieutenant governor shall serve a five-year term;

~~(a)~~

(b) The two members appointed by the speaker of the house of representatives shall serve a four-year term;

~~(b)~~

(c) One member appointed by the Governor shall serve a three-year term, one member appointed by the Governor shall serve a two-year term, and the other member appointed by the Governor shall serve a one-year term.

Author: Wayne P. Turner, Wallace D. Mills

Statutory Authority: Code of Ala. 1975, §34-24-310.

History: Filed May 6, 1983. **Amended:** Filed March 4, 2003; effective April 8, 2003.

545-X-1-.02 Officers of the Commission.

(1) The Commission shall elect from its members a chairman and a vice chairman. The election of officers shall be held annually.

~~(1)~~

(2) The duties of the officers shall be as follows:

~~(2)~~

(a) The chairman shall preside at meetings of the Commission and appoint members to serve on such committees as may be created.

~~(a)~~

(b) The vice chairman shall preside in the absence of the chairman and shall assume the duties of the chairman when necessary.

(c) The chairman shall have the authority to take such action in the absence of the Commission that is necessary for the continuance of the day-to-day operation of the Commission and its staff. Such acts shall include scheduling of hearings, ruling on motions, requests and objections as they may relate to the admission or non-admission of evidence or testimony at hearings, and making determinations as to the order of evidence to be taken at hearings.

~~(b)~~(d) The chairman shall preside over the meetings and hearings of the Commission and, with the aid of counsel, shall rule on procedural and evidentiary issues which may arise during the course of hearings. The chairman may delegate such portions of said responsibility as he may deem fit.

Author: Wayne P. Turner, Wallace D. Mills

Statutory Authority: Code of Ala. 1975, §34-24-311.

History: Filed May 6, 1983. Amended:

545-X-1-.03 Meetings of The Commission.

(1) The Commission shall meet each month, usually the fourth Wednesday of each month.

~~(1)~~

(2) Special meetings may be called at the request of the chairman.

~~(2)~~

(3) At least four members of the Commission shall constitute a quorum for a regular meeting and as such shall be competent to act, except that the Commission shall not order the

suspension or the revocation of a license unless at least five members of the Commission are present and a majority of those present vote for such suspension or revocation.

(4) The executive officer or his designee shall keep a record of all meetings. The place of each meeting of the Commission, names of the members present, all official acts of the Commission, and tally of votes cast shall be recorded in the minutes. The minutes shall be presented for approval or amendment at the next regular meeting, which upon approval will be signed and each page initialed by the chairman. The minutes, not including any section relating to ~~the good name or character of an individual~~ proceedings conducted during a properly called executive session of the Commission, shall be open to public inspection.

~~(4)~~

(5) All meetings of the Commission, ~~not including any part relating to the good name or character of an individual~~, shall be open and public, except those portions of meetings and/or hearings conducted during a properly called executive session. Reports of investigation; documents subpoenaed by the Commission; reports of any investigative committee appointed by the chairman and/or Commission; memoranda of the Commission's counsel relating to investigations, statements of persons interviewed by the Commission or any committee of the Commission unless made at a public hearing shall be considered privileged and confidential and shall not be disclosed except to an agent, attorney or employee of the Commission. The foregoing nonpublic records of the Commission shall not be subject to subpoena except upon the express order of a court of competent jurisdiction.

~~(5)~~

(6) Meetings of the Commission ~~are~~ shall be governed by Sturgis Standard Code of Parliamentary Procedure Roberts Rules of Order, as revised from time to time, except where those rules conflict with the requirements of the Alabama Administrative Procedures Act, the Alabama Open Meetings Act, the Commission's enabling legislation, these rules, or any other law. ~~and/or any amendments adopted by the Commission.~~

Author: Wayne P. Turner, Wallace D. Mills

Statutory Authority: Code of Ala. 1975, §§34-24-311, 34-24-366. **History:** Filed May 6, 1983. **Amended:** Filed January 28, 1988. **Amended:**

—545-X-1-.04 Executive Officer. The Commission may designate

an executive officer to act on behalf of the Commission between regular meetings and may designate his duties and responsibilities.

Author:

Statutory Authority: Code of Ala. 1975, §34-24-311.

History: Filed May 6, 1983.

—————**545-X-1-.05**Information. Members of the general public may obtain information or make submissions or requests to the

Executive Officer, Medical Licensure Commission, 848 Washington Avenue, Montgomery, Alabama 36104.

Author:

Statutory Authority: Code of Ala. 1975, §34-24-311.

History: Filed May 6, 1983.

545-X-1-.06 Powers Aand Duties Oof Tthe Commission. The Commission is authorized to:

(1) issue, revoke, suspend, or otherwise discipline and reinstate all licenses authorizing doctors of medicine and doctors of osteopathy to practice in the State of Alabama.

~~(1)~~

(2) promulgate rules and regulations as it deems proper for implementing and carrying out the provisions of Article 8, Title 34, Code of Ala. 1975.

~~(2)~~

(3) receive and consider, but not be bound by, the recommendation of the Board of Medical Examiners.

~~(3)~~

(4) request the Board of Medical Examiners to furnish all personnel and facilities necessary to administer and enforce Article 8, Title 34, Code of Ala. 1975.

~~(4)~~

(5) call upon the attorney general, district attorney or other prosecuting attorneys of this state to assist in any request.

~~(5)~~

(6) in appeals brought under § 34-24-330 of the Alabama Code, either affirm the action of the Board of Medical Examiners in denying a certificate of qualification to an applicant or order the Board of Medical Examiners to issue a certificate of qualification to an applicant who has been denied certification by the Board.

~~(6)~~

~~(7) approve the action by the Board of Medical Examiners in certifying applications of Alabama license for reciprocity in other states.~~

(7) issue a new license to applicant, whose license has been lost or destroyed or whose name is changed by marriage or court order, ~~upon receipt of an amended/corrected certificate of qualification issued by the Board.~~

~~(8)~~

(8) determine the size and artistic design of ~~both full and~~

~~limited licenses~~ the licenses, cards, and certificates issued by
the Commission.

~~(1)~~ (9)

renew the certificate of registration each calendar year for all physicians applying for renewal of their certificate of registration.

~~(2)~~

(10) issue certificates of registration to applicants who have renewed their license for the calendar year.

~~(3)~~

(11) file an action in the nature of quo warranto pursuant to Code of Ala. 1975, §6-6-590, in any circuit court, having jurisdiction, against any person, within this state, who is practicing without a license or to whom a license or certificate of qualification has been denied, or ~~to~~ for whom a license has been suspended, restricted, or revoked, and to order such person to cease and desist from continuing to practice medicine ~~or~~ osteopathy within Alabama.

~~(4)~~

(12) Suspend, revoke, restrict, or place on probation ~~for a specified time, or revoke,~~ any license to practice medicine ~~or~~ osteopathy whenever the licensee shall be found guilty by the Commission of any of the acts or offenses specified by law, including those acts set out in § 34-24-360 of the Alabama Code and the administrative rules of the Commission and Alabama Board of Medical Examiners.

~~(5)~~

(13) order or direct a physician, when there is a question of physical or mental inability to practice medicine ~~or~~ osteopathy with reasonable skill and safety, to submit to either a physical, mental or laboratory examination or any combination of such examinations to be performed by a physician health care professional designated by the Commission.

~~(6)~~

(14) promulgate rules and regulations defining immoral, unprofessional or dishonorable conduct.

~~(7)~~

(15) suspend or revoke the ~~certificate of~~ qualification license of a physician ~~or osteopath~~ if the individual refuses to appear before the Board of Medical Examiners for a formal interview, after having been formally requested to do so in writing by the executive director of the Board.

~~(8)~~

(16) temporarily suspend the license of a ~~doctor of medicine or doctor of osteopathy~~ physician without a hearing simultaneously with the institution of proceedings for a hearing on the request of the Board of Medical Examiners, if the Board finds evidence in

its possession which indicates that the physician's ~~or~~
~~osteopath's~~ continuation in practice may constitute an immediate
danger to his patients or to the public.

_____(17)

~~(9)~~—withdraw the license of a physician ~~or osteopath~~ if the
certificate of qualification of that physician ~~or osteopath~~ is
surrendered to the Board of Medical Examiners or place
restrictions on the license of a physician ~~or osteopath~~ if

the certificate of qualification has restrictions placed on it by the Board.

(18) subpoena witnesses and cause depositions of witnesses to be taken in the manner prescribed by law.
~~(18)~~

(19) adopt and promulgate rules and regulations regarding the practice of acupuncture as a branch of the practice of medicine.

Author: Wayne P. Turner, Wallace D. Mills

Statutory Authority: Code of Ala. 1975, §§34-24-311, et seq.

History: Filed May 6, 1983. **Amended:** Filed ; effective.

Ed. Note: Amendment repealed item (g) and re-numbered (a) through (t) as (1) through (19).

545-X-1-.07 Rules and Regulations.

(1) All rules and regulations of the Commission shall be adopted, amended or repealed in accordance with the Alabama Administrative Procedure Act, Code of Ala. 1975, §§41-22-1 through 41-22-27.

(2) Prior to adoption, amendment or repeal of any rule the Commission shall:

(a) give at least thirty-five days notice of its intended action -- the notice shall include a statement of either the terms of substance of the intended action or a description of the subject of the intended action or a description of the subjects and issues involved, and the time when, the place where, and the manner in which interested persons may present their views thereon; and the notice shall be published in the **Alabama Administrative Monthly**; and

~~(a)~~

(b) afford all interested persons reasonable opportunity to submit data, views, or arguments, orally or in writing. The ~~Board~~ Commission shall consider fully all written and oral submissions respecting the proposed rule.

~~(b)~~

(3) Subject to the limitations of Code of Ala. 1975, §41-22-5(b), if the Commission finds that an imminent peril to the public health, safety, or welfare requires adoption of rule upon fewer than thirty-five days notice and states in writing its

reasons for that finding, it may proceed without prior notice or hearing or upon any abbreviated notice and hearing it finds practical to adopt an emergency rule. The rules may be effective for a period of not longer than one hundred twenty days.

(4) After adoption by the Commission, each rule shall be filed with the Legislative Reference Service, becoming effective thirty-five days thereafter.

Author: Unknown, Wallace D. Mills

Statutory Authority: Code of Ala. 1975, §41-22-5.

History: Filed May 6, 1983. **Amended:** Filed ;effective

545-X-1-.08 Petition For Adoption, Amendment Or Repeal of A Rule.

~~(1)~~ Any interested person may petition the Commission requesting the adoption, amendment, or repeal of a rule. The petition shall: _____

(a) be submitted in writing;

~~(a)~~

(b) include an exact statement of the proposed rule, amendment or identification of a rule to be repealed;

~~(b)~~

(c) include the pertinent facts, data, opinions or arguments in support of the petitioner's position.

~~(1)~~

(2) Within sixty days after submission of a petition, the Commission shall initiate rule-making proceedings or shall deny the petition in writing on the merits, stating its reasons for the denial.

(3) A petition requesting adoption, amendment, or repeal of a rule shall not be considered by the Commission if the subject of the petition is the same or similar to the subject presented in another petition considered by the Commission within the previous twelve months.

Author: Unknown , Wallace D. Mills

Statutory Authority: Code of Ala. 1975, §41-22-8.

History: Filed May 6, 1983.

545-X-1-.09 Declaratory Rulings.

(1) Any persons substantially affected by a rule may petition the Commission for a declaratory ruling with respect to the validity of a rule or the applicability to any person, property or state of facts of any rule or statute enforceable by it or with respect to the meaning and scope of any order of the

Medical Licensure Commission

Chapter 545-X-1

Commission.

(2) ~~_____~~—The petition shall be in writing and shall include:

(a) the name and address of the petitioner;

~~(a)~~

(b) a statement of facts sufficient to show that the person seeking relief is substantially affected by the rule;

~~(b)~~

(c) the rule, statute or order and the reasons for the questions.

~~(c)~~

(3) The petition will be considered and answered in writing by the Commission within forty-five days unless the Commission is unable to reach a decision on the facts presented.

(4) Circumstances in which rulings shall not be issued include but are not necessarily limited to:

(a) lack of jurisdiction;

~~(a)~~

(b) lack of clarity of the issues presented;

~~(b)~~

(c) no clear answer determinable.

~~(c)~~

(5) In the event the Commission declines to issue a ruling, the petitioner shall be notified in writing that the request for a declaratory ruling was denied and the reasons therefor shall be specified.

Author: Unknown, Wallace D. Mills

Statutory Authority: Code of Ala. 1975, §41-22-1.

History: Filed May 6, 1983.

545-X-1-.10 Public Inspection Of Rules.

(1) All rules and other written statements of policy or interpretations formulated, adopted or used by the Commission in the discharge of its functions shall be made available for public inspection and copying, at cost.

~~(1)~~

(2) All final orders, decisions and opinions of the Commission shall be available for public inspection and copying, at cost, except those expressly made confidential or privileged by statute or order of ~~the~~ a court of competent jurisdiction.

Author: Unknown, Wallace D. Mills

Statutory Authority: Code of Ala. 1975, §41-22-4.

History: Filed May 6, 1983. Amended: Filed ;effective

545-X-1-.11 Definitions.

(1) These rules incorporate by reference those definitions contained in Code of Ala. 1975, §§20-2-2, 41-22-3, unless the context clearly indicates otherwise. For the purposes of these rules, the following words and phrases shall have the respective meanings ascribed by this section:

(a) Licensee shall mean a physician licensed to practice medicine in the State of Alabama.

(b) Commission shall mean the Medical Licensure Commission of the State of Alabama.

(c) Certificate shall mean a certificate of qualification duly issued by the Alabama State Board of Medical Examiners.

(d) Board shall mean the Alabama State Board of Medical Examiners.

(e) Complainant shall mean the party that is responsible for preparing and prosecuting complaints in contested cases before the Medical Licensure Commission.

(f) Respondent shall mean the licensee whose license to practice medicine is the subject of the complaint filed before the Commission.

(g) Legal Counsel shall mean an individual designated as a legal counsel by the Medical Licensure Commission of Alabama and appointed pursuant to these rules.

(h) Parties shall mean the complainant, the respondent, and any person permitted to intervene in a contested case.

(i) Legitimate medical purpose shall mean a therapeutic treatment regimen or program generally

recognized and accepted in the field of medical science as being safe and effective in the diagnosis, treatment, correction or alleviation of a specific medical condition of the patient, under all relevant circumstances.

(j) Practicing medicine in such a manner as to endanger the health of the patient of the practitioner shall mean to expose the health of the patient to unreasonable risks of harm which are not medically justified by the expected benefits to the patient, under all the circumstances evident in the diagnosis and treatment of the medical condition of the patient.

(k) Performance of unnecessary diagnostic tests or medical or surgical services shall mean to administer medical tests or medical or surgical services which are not reasonably indicated or which are not reasonably required in order to ensure the well being of the patient of the practitioner, after considering all of the circumstances.

(l) Malpractice as used in these rules shall mean negligence. Gross malpractice shall mean gross negligence. Negligence shall mean the failure to do that which a reasonably prudent physician would have done under the same or similar circumstances, or the doing of that which a reasonably prudent physician would not have done under the same or similar circumstances. Gross negligence is the conscious doing of an act or the omission of some duty to act with a conscious disregard of known conditions of danger or with careless and reckless indifference to the consequences of such act or omission. For the purposes of this rule the existence of negligence or gross negligence may be established without proof of actual injury or harm to the patient, provided that the act or omission complained of created a substantial risk of harm to the health and wellbeing of the patient which risk was known or should have been known to a reasonably prudent practitioner and which was not medically justified by the expected benefits to the patient from the act or omission.

(m) In considering whether a fee for medical services is grossly excessive, as this term is used in these rules, the Commission may consider the following factors:

(i) The difficulty and/or uniqueness of the service performed as well as the time, skill and/or experience required;

(ii) The fee customarily charged in the locality for similar physician services;

(iii) The amount of the charges involved;

(iv) The nature and length of the professional relationship with the patient;

(v) The experience, reputation and ability of the physician in performing the kind of services involved;

(vi) The costs to the physician of devices or appliances or other special items (excessive of reasonable overhead expenses) furnished in connection with the service; and

(vii) The facts relating to the opportunity of the patient and physician to discuss the amount of fees in question prior to the initiation of the medical services.

(n) Licensed practitioners specializing in the treatment of depression shall mean a psychiatrist licensed to practice medicine in the State of Alabama or a physician licensed to practice medicine in the State of Alabama who devotes a substantial portion of his practice to the specialized treatment of mental or emotional illness.

(o) Physician shall mean either a doctor of medicine or a doctor of osteopathy.

(p) The practice of medicine shall mean and include both the practice of medicine and the practice of osteopathy.

(q) Licensed to practice medicine shall mean either the practice of medicine by a doctor of medicine or the practice of osteopathy by a doctor of osteopathy.

(r) Doctor shall mean either a doctor of medicine or a doctor of osteopathy.

(s) False or fraudulent claims for medical services shall mean any claim or claims requesting payment for any medical services which contain any misrepresentation of any material fact, or any suppression of any material fact, regarding any services for which the claim or claims is made if such misrepresentation or suppression is made with knowledge that such fact is being misrepresented or suppressed or if such misrepresentation or suppression is made recklessly without knowledge.

(t) Minimum standards for medical records shall mean medical records maintained as to each patient in each physician's office which shall be documented legibly in the English language and which shall include, at a minimum, a record of:

- (i) the patient's complaint or complaints;
- (ii) the history and physical examination;
- (iii) the treatment given or recommended; and,
- (iv) all follow up recommendations.

Author: Wayne P. Turner, Wallace D. Mills

Statutory Authority: Code of Ala. 1975, §§34-24-50.1, 34-24-311, 34-24-360; 41-22-1, et seq.

History: Filed May 6, 1983. Repealed and new rule adopted in lieu thereof: Filed May 1, 1984. Amended: Filed June 27,

1986. Amended: Filed March 4, 2003; effective April 8, 2003.

Amended: Filed May 5, 2010; effective June 9, 2010.

Amended: Filed:

Ed. Note: Amendment of 8/21/2018 moved definitions sec. from 545-X-3-.01 to 545-X-1.11.