

ALABAMA BOARD OF MEDICAL EXAMINERS
ADMINISTRATIVE CODE

CHAPTER 540-X-9
MISCELLANEOUS

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540-X-9-.01	<u>Professional Corporations Formed By Physicians Or Osteopaths.</u>

(1) This rule is promulgated pursuant to the revised Alabama Professional Corporation Act, Code of Ala. 1975, §§10-4-380, et seq. This rule is applicable to professional corporations formed after the effective date of this rule by physicians and osteopaths licensed to practice medicine in the State of Alabama and all professional corporations formed prior

to January 1, 1984, which are subject to the provisions of that act, and those professional associations formed prior to January 1, 1984, which amend their articles of association as provided in Code of Ala. 1975, §10-4-403(b) (hereinafter referred to as medical professional corporations or medical professional associations).

(2) Any physician or osteopath or groups thereof licensed to practice medicine in the State of Alabama who desires to render medical professional services as a professional corporation in this state shall comply with the provisions of the revised Alabama Professional Corporation Act and these rules and regulations.

(3) The names of professional corporations shall be governed by the provisions of Code of Ala. 1975, §10-4-387. If the corporate name of the professional corporation utilizes the name or names of the physicians or osteopaths who are employees of or shareholders in the professional corporation, then such corporate name shall include the designation "M.D." or "D.O." whichever is appropriate. In addition, such other generally recognized designations or descriptions of specialized branches of the practice of medicine or the practice of osteopathy may be included.

(4) Every medical professional corporation formed after the effective date of these rules shall file with the Alabama State Board of Medical Examiners a certified copy of the articles of incorporation, the certificate of authority, if applicable, a complete list of shareholders, and any and all subsequent amendments to the articles of incorporation. All medical professional corporations in existence on the effective date of these rules and all medical professional associations which are hereinafter governed by the provisions of the revised Alabama Professional Corporation Act shall file a certified copy of all amendments to the articles of incorporation or articles of association with the Alabama State Board of Medical Examiners.

(5) Every medical professional corporation or medical professional association governed by the provisions of the revised Alabama Professional Corporation Act shall file with the Alabama State Board of Medical Examiners a certified copy of any articles of dissolution, or articles of merger or consolidation with another corporation or professional corporation.

(6) All filings shall be within thirty (30) days of the effective date of the instrument or document filed, except that a failure to file within the thirty (30) day period shall not invalidate the incorporation but may serve as a basis to request that involuntary dissolution procedures be instituted under the provisions of Code of Ala. 1975, §10-4-396.

(7) A foreign medical professional corporation rendering medical professional services in the State of Alabama, shall in addition to the requirements of Code of Ala. 1975, §10-4-397, be subject to the following:

(a) All shareholders of a foreign medical professional corporation who render medical professional services in Alabama shall be physicians or osteopaths licensed to practice medicine in the State of Alabama. This rule does not prevent a physician who resides in an adjoining state near the border of this state or who is called in for consultation by a physician licensed in this state from exercising the practice privilege afforded by Code of Ala. 1975, §34-24-74.

(8) The Alabama State Board of Medical Examiners or the Medical Licensure Commission may propound interrogatories to any medical professional corporation under the provisions of Code of Ala. 1975, §10-4-400.

(9) The Alabama State Board of Medical Examiners or the Medical Licensure Commission of Alabama may request that the Attorney General institute involuntary dissolution procedures against a medical professional corporation under the provisions of Code of Ala. 1975, §10-4-396. In addition, the Board or the Commission may certify to the Secretary of State the names of any foreign medical professional corporation which has given cause for revocation of its certificate of authority under the provisions of Code of Ala. 1975, §10-4-398.

(10) Documents required to be filed by these rules with the Alabama State Board of Medical Examiners should be addressed to Alabama State Board of Medical Examiners, 848 Washington Avenue, P.O. Box 946, Montgomery, AL 36102-0946. Documents which are required to be filed with the Medical Licensure Commission of Alabama should be addressed to Medical Licensure Commission of Alabama, 848 Washington Avenue, P.O. Box 887, Montgomery, AL 36101-0887.

Author: Wendell R. Morgan

Statutory Authority: Code of Ala. 1975, §10-4-402.

History: Filed November 9, 1982 as Rule No. 540-X-4-.01.
Readopted: Filed February 8, 1983. **Repealed and new rule adopted in lieu thereof:** Filed March 23, 1984. Rules reorganized-- rule number changed to 540-X-9-.01 (see conversion table at end of code): Filed June 14, 1984 (without publication in AAM). **Amended:** Filed December 21, 1990. **Amended:** Filed October 18, 2001; effective November 22, 2001. **Amended:** Filed January 23, 2004; effective February 27, 2004.

540-X-9-.02 Therapeutic Research Program.

(1) The Board creates and establishes a Therapeutic Research Review Committee consisting of physicians practicing in the categories as specified by state law.

(2) The members of the Therapeutic Research Review Committee shall select a chairman among their number who shall serve at the pleasure of the committee. The committee shall meet at the discretion of the chairman or when called into session by the Board, and the chairman shall set the time, date, and place for the meetings.

(3) The commission shall review applicants for inclusion into the Therapeutic Research Program and make recommendations to the Board for final action on those applications.

Author:

Statutory Authority: Code of Ala. 1975, §§20-2-113, 20-2-115, 20-2-116.

History: Filed November 9, 1982 as Rule No. 540-X-4-.02.
Readopted: Filed February 8, 1983. Rules reorganized--rule number changed to 540-X-9-.02 (see conversion table at end of code): Filed June 14, 1984 (without publication in AAM).

540-X-9-.03 Repeal Of Existing Regulations. On the date that the foregoing rules and regulations shall become effective, all previous rules and regulations of the Board of Medical Examiners are hereby repealed.

Author:

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

History: Filed November 9, 1982 as Rule No. 540-X-4-.03.
Readopted: Filed February 8, 1983. Rules reorganized--rule

number changed to 540-X-9-.03 (see conversion table at end of code): Filed June 14, 1984 (without publication in AAM).

540-X-9-.04 Gender Reference. All references to the male gender in the Rules and Regulations of the Board of Medical Examiners are intended to apply equally to the female gender and all references to the female gender are intended to apply equally to the male gender.

Author:

Statutory Authority: Code of Ala. 1975, §34-24-53.

History: Filed November 9, 1982 as Rule No. 540-X-4-.04.

Readopted: Filed February 8, 1983. Rules reorganized--rule number changed to 540-X-9-.04 (see conversion table at end of code): Filed June 14, 1984 (without publication in AAM).

540-X-9-.05 Special Purpose Examination (SPEX).

(1) Persons applying to take the Special Purpose Examination (SPEX) shall submit to the Alabama State Board of Medical Examiners an application fee in the amount of \$175.00.

(2) In addition to the application fee stated above, persons applying to take the Special Purpose Examination (SPEX) shall pay that fee which, pursuant to an official notice from the Federation of State Medical Boards of the United States, is in effect at the time the application to take the SPEX is filed with the Alabama Board of Medical Examiners. All official notices regarding SPEX fees from the Federation of State Medical Boards of the United States shall be kept on file in the office of the executive director of the Alabama State Board of Medical Examiners.

Author: Patricia E. Shaner

Statutory Authority: Code of Ala. 1975, §10-4-402.

History: Filed December 21, 1990.

540-X-9-.06 Limited Liability Companies Formed By Physicians Or Osteopaths.

(1) This rule is promulgated pursuant to the Alabama Limited Liability Company Law of 2014, §10A-5A-1.01, et. seq., Code of Ala. 1975, as amended. This rule is applicable to

limited liability companies formed for the purposes of rendering medical professional services by physicians and osteopaths licensed to practice medicine in the State of Alabama.

(2) Physicians and osteopaths licensed to practice medicine in the State of Alabama who desire to render medical professional services as a limited liability company shall comply with the provisions of the Alabama Limited Liability Company Law and these rules and regulations.

(3) The names of limited liability companies formed by physicians and osteopaths shall be governed by the provisions of §10A-1-5.06, Code of Ala. 1975, as amended. In addition, if the name of the limited liability company utilizes the name or names of the physicians or osteopaths who are members or employees of the limited liability company, then such name shall also include the designation "M.D." or "D.O." whichever is appropriate. In addition, other generally recognized designations or descriptions of specialized branches of the practice of medicine or the practice of osteopathy may be included.

(4) Every limited liability company organized for the rendering of medical professional services shall file with the Alabama Board of Medical Examiners a copy of the certificate of formation required to be filed with the judge of probate pursuant to §10A-5A-2.01(e), Code of Ala. 1975, as amended. The report shall be filed with the Board within thirty (30) days after the report is filed with the judge of probate. In addition, the limited liability company shall file with the Alabama Board of Medical Examiners a copy of any certificate of amendment or restated certificate of formation required to be filed with the Office of the Secretary of State or judge of probate pursuant to §10A-5A-2.02(g), Code of Ala. 1975, as amended within thirty (30) days after the statement is filed with the Office of the Secretary of State or judge of probate. Failure to file with the Board of Medical Examiners the reports required by this section shall not invalidate the limited liability company.

(5) Physicians and osteopaths licensed to practice medicine who render medical professional services as a limited liability company shall comply with the conditions, requirements, and restrictions of §10A-5A-8.01, Code of Ala. 1975, as amended. A limited liability company organized to render medical professional services, foreign or domestic, may render medical professional services in Alabama only through

individuals licensed to practice medicine by the Medical Licensure Commission of Alabama. A physician or osteopath employed by a limited liability company must exercise independent judgment in matters related to the practice of medicine, and that physician's or osteopath's actions with respect to the practice of medicine shall not be subject to the control of an individual not licensed to practice medicine. This rule does not prevent a physician license to practice medicine in another state or the District of Columbia from exercising the temporary practice privilege afforded under §34-24-74, Code of Ala. 1975, as amended.

(6) Documents required by these rules to be filed with the Alabama Board of Medical Examiners should be addressed to Alabama Board of Medical Examiners, 848 Washington Avenue, Post Office Box 946, Montgomery, Alabama 36101-0946.

Author: Alabama Board of Medical Examiners

Statutory Authority: Code of Ala. 1975, §§34-24-53, 10-12-45.

History: Approved for Publication: October 20, 1993.

Approved/Adopted: December 15, 1993. Effective Date:

January 20, 1994. **Amended:** Published February 28, 2020; effective April 13, 2020.

540-X-9-.07 Position Statement Of The Alabama Board Of Medical Examiners Concerning The Physician-Patient Relationship.

(1) The Alabama Board of Medical Examiners recognizes the movement toward the restructure of the delivery of health care and the significant needs that motivate that movement. The resulting changes are providing a wider range and variety of health care delivery options to the public. Notwithstanding these developments in health care delivery, the duty of the physician remains the same: to provide competent, compassionate, and economically prudent care to all his or her patients. Whatever the health care setting, the Board holds that the physician's fundamental relationship is always with the patient, just the as Board's relationship is always with the individual physician. Having assumed care of a patient, the physician may not neglect that patient nor fail for any reason to prescribe the full care that patient requires in accord with the standards of acceptable medical practice. Further, it is the Board's position that it is unethical and unprofessional for a physician to allow financial incentives or contractual ties of any kind to adversely affect his or her medical judgment or practice care.

(2) Therefore, it is the position of the Alabama Board of Medical Examiners that any act by a physician that violates or may violate the trust a patient places in the physician places the relationship between physician and patient at risk. This is true whether such an act is entirely self-determined or the result of the physician's contractual association with a health care entity. The Board believes the interests and health of the people of Alabama are best served when the physician-patient relationship remains inviolate. The physician who puts the physician-patient relationship at risk also puts his or her relationship with the Board in jeopardy.

(3) The Alabama Board of Medical Examiners is involved in the process of licensing physicians as a part of regulating the practice of medicine in this state. A license to practice medicine grants the physician privileges and imposes great responsibilities. The people of Alabama expect a licensed physician to be competent and worthy of their trust. As patients, they come to the physician in a vulnerable condition, believing the physician has knowledge and skill that will be used for their benefit.

(4) Patient trust is fundamental to the relationship thus established. It requires the following:

(a) that there be adequate communication between the physician and the patient;

(b) that there be no conflict of interest between the patient and the physician or third parties;

(c) that intimate details of the patient's life shared with the physician be held in confidence;

(d) that the physician maintain professional knowledge and skills;

(e) that there be respect for the patient's autonomy;

(f) that the physician be compassionate;

(g) that the physician be an advocate for needed medical care, even at the expense of the physician's personal interests; and

(h) that the physician provides neither more nor less than the medical problem requires.

(5) The Board believes the interests and health of the people of Alabama are best served when the physician-patient relationship, founded on patient trust, is considered sacred, and when the elements crucial to that relationship and to that trust--communication, patient privacy, confidentially, competence, patient autonomy, compassion, selflessness, and appropriate care--are foremost in the hearts, minds, and actions of the physician licensed by the Board.

(6) This same fundamental physician-patient relationship also applies to physician assistants.

Author: Patricia E. Shaner, Attorney for the Alabama Board of Medical Examiners

Statutory Authority: Code of Ala. 1975, §§10-12-45, 34-24-53.

History: New Rule: Filed May 20, 1996; effective June 24, 1996.

540-X-9-.08 Sexual Misconduct In The Practice Of Medicine: A Joint Statement Of Policy And Guidelines By The State Board Of Medical Examiners And The Medical Licensure Commission.

(1) The prohibition against sexual contact between a physician and a patient is well established and is embodied in the oath taken by physicians, the Hippocratic Oath. The prohibition is also clearly stated in the Code of Medical Ethics of the American Medical Association. The reason for this proscription is the awareness of the adverse effects of such conduct on patients. The report of the Council on Ethical and Judicial Affairs of the American Medical Association indicates that most researchers now agree that the effects of physician-patient sexual contact are almost always negative or damaging to the patient. Patients are often left feeling humiliated, mistreated, or exploited.

(2) Further, a patient has a right to trust and believe that a physician is dedicated solely to the patient's best interests. Introduction of sexual behavior into the professional relationship violates this trust because the physician's own personal interests compete with the interests of the patient. This violation of trust produces not only serious negative psychological consequences for the individual patient but also destroys the trust of the public in the profession.

(3) Sexual conduct with a patient occurs in many circumstances ranging from situations where a physician is unable to effectively manage the emotional aspects of the physician-patient relationship to consciously exploitative situations. Underlying most situations is a disparity of power and authority over a physically or emotionally vulnerable patient.

(4) The prohibition against sexual contact between a physician and a patient is not intended to inhibit the compassionate and caring aspects of a physician's practice. Rather, the prohibition is aimed at behaviors which overstep the boundaries of the professional relationship. When boundaries are violated, the physician's patient may become the physician's victim. The physician is the one who must recognize and set the boundaries between the care and compassion appropriate to medical treatment and the emotional responses which may lead to sexual misconduct.

(5) The Board of Medical Examiners and the Medical Licensure Commission is each charged with responsibilities for protecting the public against unprofessional actions of physicians and osteopaths licensed to practice medicine in Alabama. Immoral, unprofessional or dishonorable conduct is a grounds for discipline the license of a physician or osteopath under the provisions of Code of Ala. 1975, §34-24-360(2). A physician's sexual contact with a patient is a violation of this statute.

(6) The Board of Medical Examiners investigates allegations of sexual misconduct against physicians. The Medical Licensure Commission makes decisions following a hearing concerning disposition of formal complaints filed with it by the Board of Medical Examiners. It is the goal of each organization to ensure that the public is protected from future misconduct. In some cases, revocation of license is the only means by which the public can be protected. In other cases, the Board or the Commission may restrict and monitor the practice of a physician who has actively engaged in a rehabilitation program. Rehabilitation of a physician is a secondary goal that will be pursued if the Board and the Commission can be reasonably assured that the public is not at risk for a recurrence of the misconduct.

(7) The Board and the Commission remind physicians of their statutory duty to report sexual misconduct or any conduct

which may constitute unprofessional conduct or which may indicate that a physician is unable to practice medicine with reasonable skill or safety to patients. It is the individual physician's responsibility to maintain the boundaries of the professional relationship by avoiding and refraining from sexual contact with patients.

(8) Physicians should be alert to feelings of sexual attraction to a patient and may wish to discuss such feelings with a colleague. To maintain the boundaries of the professional relationship, a physician should transfer the care of a patient to whom the physician is attracted to another physician and should seek help in understanding and resolving feelings of sexual attraction without acting on them.

(9) Physicians must be alert to signs indicating that a patient may be encouraging a sexual relationship and must take all steps necessary to maintain the boundaries of the professional relationship including transferring the patient.

(10) Physicians must respect a patient's dignity at all times and should provide appropriate gowns and private facilities for dressing, undressing and examination. In most situations, a physician should not be present in the room when a patient is dressing or undressing.

(11) A physician should have a chaperone present during the examination of any sensitive parts of the body for the protection of both the patient and the physician. A physician should refuse to examine sensitive parts of the patient's body without a chaperon present if the physician believes the patient is sexualizing the examination.

(12) To minimize the misunderstandings and misperceptions between a physician and patient, the physician should explain the need for each of the various components of an examination and for all procedures and tests.

(13) Physicians should choose their words carefully so that their communications with a patient are clear, appropriate and professional.

(14) Physicians should seek out information and formal education in the area of sexual attraction to patients and sexual misconduct and should in turn educate other health care providers and students.

(15) Physicians should not discuss their intimate personal problems/lives with patients.

(16) Sexual Misconduct. Sexual contact with a patient is sexual misconduct and is unprofessional conduct within the meaning of Code of Ala. 1975, §34-24-360(2).

(17) Sexual Contact Defined. For purposes of §34-24-360(2), sexual contact between a physician and a patient includes, but is not limited to:

(a) Sexual behavior or involvement with a patient including verbal or physical behavior which:

1. may reasonably be interpreted as romantic involvement with a patient regardless whether such involvement occurs in the professional setting or outside of it;

2. may reasonably be interpreted as intended for the sexual arousal or gratification of the physician, the patient or both; or

3. may reasonably be interpreted by the patient as being sexual.

(b) Sexual behavior or involvement with a patient not actively receiving treatment from the physician, including verbal or physical behavior or involvement which meets any one or more of the criteria in Section 1 above and which:

1. results from the use or exploitation of trust, knowledge, influence or emotions derived from the professional relationship;

2. misuses privileged information or access to privileged information to meet the physician's personal or sexual needs; or

3. is an abuse or reasonably appears to be an abuse of authority or power.

(18) Diagnosis and Treatment. Verbal or physical behavior that is required for medically recognized diagnostic or treatment purposes when such behavior is performed in a manner that meets the standard of care appropriate to the diagnostic or treatment situation shall not be considered as prohibited sexual contact.

(19) Patient. The determination of when a person is a patient for purposes of this policy is made on a case by case basis with consideration given to the nature, extent and context of the professional relationship between the physician and the person. The fact that a person is not actively receiving treatment or professional services from a physician is not determinative of this issue. A person is presumed to remain a patient until the patient-physician relationship is terminated.

(20) Termination of Physician-Patient Relationship. Once a physician patient relationship has been established, the physician has the burden of showing that the relationship no longer exists. The mere passage of time since the patient's last visit to the physician is not solely determinative of the issue. Some of the factors considered by the Board in determining whether the physician-patient relationship has terminated include, but are not limited to the following: formal termination procedures; transfer of the patient's care to another physician; the reasons for wanting to terminate the professional relationship; the length of time that has passed since the patient's last visit to the physician; the length of the "professional relationship; the extent to which the patient has confided personal or private information to the physician; the nature of the patient's medical problem; the degree of emotional dependence that the patient has on a physician...; the extent of the physician's general knowledge about the patient".

(a) Some physician-patient relationships may never terminate because of the nature and extent of the relationship. These relationships may always raise concerns of sexual misconduct whenever there is sexual contact.

(b) Sexual contact between a physician and a former patient after termination of the physician-patient relationship may still constitute unprofessional conduct if the sexual contact is a result of "the exploitation of trust, knowledge, influence or emotions" derived from the professional relationship.

(21) Consent. A patient consent to initiation of or participation in sexual behavior or involvement with a physician does not change the nature of the conduct nor lift the statutory prohibition.

(22) Impairment. In some situations, a physician's sexual contact with a patient may be the result of a mental

condition which may render the physician unable to practice medicine with reasonable skill and safety to patients pursuant to §34-24-360(19).

(23) Discipline. Upon a finding that a physician has committed unprofessional conduct by engaging in sexual misconduct, the Commission will impose such discipline as the Commission deems necessary to protect the public. The sanctions available to the Commission are set forth in §34-24-361 and §34-24-381, and include restriction or limitation of the physician's practice, revocation or suspension of the physician's license, and administrative fines.

Author: Wendell R. Morgan, Attorney for the Board of Medical Examiners

Statutory Authority: Code of Ala. 1975, §34-24-53.

History: New Rule: Filed December 20, 1996; effective January 24, 1997.

540-X-9-.09 Professional Registered Limited Liability Partnerships Formed By Physicians Or Osteopaths.

(1) This rule is promulgated pursuant to the Alabama Limited Liability Partnership Act, Sections 10-8A-1001 through 10-8A-1010. This rule is applicable to professional registered limited liability partnerships formed for the purposes of rendering medical professional services by physicians and osteopaths licensed to practice medicine or osteopathy in the State of Alabama.

(2) Physicians and osteopaths licensed to practice medicine or osteopathy in the State of Alabama who desire to render medical professional services as a professional registered limited liability partnership shall comply with the provisions of Article 10 of the Alabama Limited Liability Partnership Act, Sections 10-8A-1001, et. seq. and these rules and regulations.

(3) The names of professional registered limited liability partnerships formed by physicians and osteopaths shall be governed by the provisions of §10-8A-1002. In addition, if the name of the professional registered limited liability partnership utilizes the name or names of the physicians or osteopaths who are members or employees of the professional registered limited liability partnership, then such name shall also include the designation "M.D." or "D.O." whichever is

appropriate. In addition, other generally recognized designations or descriptions of specialized branches of the practice of medicine or the practice of osteopathy may be included.

(4) Every professional registered limited liability partnership organized for the purpose of the rendering of medical professional services shall file with the Alabama Board of Medical Examiners a certified copy of the registration required to be filed with the Office of Probate Judge or the Secretary of State pursuant to §10-8A-1001 and §10-8A-1006. The registration shall be filed with the Board within thirty (30) days after it is filed with the Probate Judge or Office of the Secretary of State. In addition, the professional registered limited liability partnership shall file with the Alabama Board of Medical Examiners a certified copy of any change to its registration required to be filed with the Office of Probate Judge or Office of the Secretary of State within thirty (30) days after the statement is filed. Failure to file with the Board of Medical Examiners the reports required by this section shall not invalidate the professional registered limited liability partnership.

(5) Physicians and osteopaths licensed to practice medicine who render medical professional services as professional registered limited liability partnership shall comply with the restrictions of Code of Ala. 1975, §10-4-38 through §10-4-404. A professional registered limited liability partnership organized to render medical or osteopathic professional services, foreign or domestic, may render medical or osteopathic professional services in Alabama only through individuals licensed to practice medicine or osteopathy by the Medical Licensure Commission of Alabama. A physician or osteopath may be employed by a professional registered limited liability partnership and shall exercise independent judgment in all matters related to the practice of medicine or osteopathy, and such physician's or osteopath's actions with respect to the practice of medicine or osteopathy shall not be subject to the control of an individual not licensed to practice medicine or osteopathy. This rule does not prevent a physician licensed to practice medicine or osteopathy in another state or the District of Columbia from exercising the temporary practice privilege afforded under Code of Ala. 1975, §34-24-74.

(6) Documents required by these rules to be filed with the Alabama Board of Medical Examiners should be addressed

to the Alabama Board of Medical Examiners, 848 Washington Avenue, Post Office Box 946, Montgomery, Alabama 36101-0946.

Author: Wendell R. Morgan, Attorney for the Alabama Board of Medical Examiners.

Statutory Authority: Code of Ala. 1975, §§34-24-53, 10-12-45, Act 96-528.

History: New Rule: Filed February 4, 1997; effective March 11, 1997.

540-X-9-.10 Joint Guidelines Of The State Board Of Medical Examiners And Medical Licensure Commission For Medical Records Management.

(1) Physicians should maintain legible well documented records reflecting the history, findings, diagnosis and course of treatment in the care of a patient. Medical records should be maintained by the treating physician for such period as may be necessary to treat the patient and for such additional time as may be required for medical-legal purposes.

(2) Access. On the request of a patient, and with the authorization of the patient, a physician should provide a copy or a summary of the medical record to the patient or to another physician, attorney or other person designated by the patient. By state law, a physician is allowed to condition the release of copies of medical records on the payment by the requesting party of the reasonable costs of reproducing the record. Reasonable cost as defined by law may not exceed one dollar (\$1.00) per page for the first twenty-five (25) pages, fifty cents (\$.50) per page for each page in excess of twenty-five (25) pages, plus the actual cost of mailing the record. In addition, the actual cost of reproducing x-rays or other special records may be included. For medical records provided in an electronic file, a flat fee that would not exceed the cost of providing the records in paper form may be charged. Records subpoenaed by the State Board of Medical Examiners are exempt from this law. Physicians charging for the cost of reproduction of medical records should give primary consideration to the ethical and professional duties owed to other physicians and to their patients, and waive copying charges when appropriate.

(3) Transfer or Disposal. When a physician retires, terminates employment or otherwise leaves a medical practice, he or she is responsible for ensuring that active patients receive

reasonable notification and are given the opportunity to arrange for the transfer of their medical records. A physician or physician group should not withhold information from a departing physician which is necessary for notification of patients. A physician or the estate of a deceased physician transferring medical records in connection with the sale of a medical practice should notify the physician's active patients that the records are being transferred and should provide the patient with information sufficient to secure the transfer of the medical record.

Author: Alabama Board of Medical Examiners

Statutory Authority: Code of Ala. 1975, §§12-21-6.1, 34-24-53, 34-24-53.1.

History: New Rule: Filed April 15, 1998; effective May 20, 1998. **Amended:** Filed December 12, 2013; effective January 16, 2014. **Amended:** Filed February 27, 2018; effective April 14, 2018.

540-X-9-.11 Contact With Patients Before Prescribing.

(1) It is the position of the Board that, when prescribing medications to an individual, the prescriber, when possible, should personally examine the patient. Before prescribing a medication, a physician should make an informed medical judgment based on appropriate medical history, the circumstances of the situation and on his or her training and experience. This process must be documented appropriately.

(2) Prescribing medications for a patient whom the physician has not personally examined may be suitable under certain circumstances. These circumstances may include but not be limited to electronic encounters such as those in telemedicine; admission orders for a patient newly admitted to a health care facility; prescribing for a patient of another physician for whom the prescribing physician is taking call; or continuing medication on a short-term basis for a new patient prior to the patient's first appointment.

(3) Licensees are expected to adhere to all federal and state statutes regarding the prescribing of controlled substances and all Alabama Board of Medical Examiners' Rules regarding the prescribing of controlled substances.

Author: Alabama Board of Medical Examiners

Statutory Authority: Code of Ala., 1975, §§34-24-53, 34-24-293.

History: **New Rule:** Filed March 17, 2000; effective April 21, 2000. **Amended:** Filed October 19, 2017; effective December 3, 2017.

540-X-9-.12 **Confidentiality Of Records.**

(1) All reports of investigations; documents subpoenaed by the Board; reports of any investigative committee appointed by the Board; memoranda of the Board's counsel relating to investigations; statements of persons interviewed by the Board or any committee of the Board; all information, interviews, reports, statements or memoranda of any kind furnished to the Board or any committee of the Board; and any findings, conclusions or recommendations resulting from proceedings of the Board or any committee of the Board, unless presented as evidence at a public hearing, shall be privileged and confidential, shall be used only in the exercise of the proper functions of the Board, and shall not be public records nor be available for court subpoena or for discovery proceedings.

(2) Nothing contained in paragraph (1) shall apply to records made in the regular course of business of an individual. Documents or records otherwise available from original sources are not to be construed as immune from discovery or use in any civil proceedings merely because they were presented or considered during the proceedings of the Board of Medical Examiners or the Medical Licensure Commission.

(3) The Board may authorize the release of investigative records and files to municipal, county, state, and Federal law enforcement or regulatory agencies or officials and to state and United States territorial medical licensing agencies or officials. The procedure for authorizing release of investigative records shall be the following:

(a) Requests for release of any investigative records shall be in writing to the Executive Director or Chairman of the Alabama Board of Medical Examiners from the requesting agency or official.

(b) The written request shall state, in detail sufficient for the Board to make an informed decision concerning the necessity for release, the reason(s) for requesting the records, the exact manner in which the records will be utilized,

whether release or disclosure of the records to any additional entity or third party is contemplated, and the identity of the entity or third party to whom the further disclosure of the records is contemplated.

(c) Authorizations by the Board for the release of investigative records to law enforcement or regulatory agencies or officials shall be separately recorded in the Minutes of the Board, and a cumulative record of all written requests and documents released by the Board pursuant to the requests shall be maintained, alphabetically, in a file entitled, "Release by Board of Investigative Records."

(d) When disclosure of any requested investigative record would violate a state or Federal statute, would interfere with any ongoing Board investigation or enforcement proceeding, or would disclose investigative techniques and procedures the effectiveness of which would thereby be impaired, then the Board shall not authorize the release of the requested records.

(4) Use of materials and records in contested cases before the Medical Licensure Commission or release of records to law enforcement, regulatory, or medical licensing agencies or officials shall not be deemed a waiver of confidentiality or privilege established by this rule and the governing statute.

Author: Patricia E. Shaner

Statutory Authority: Code of Ala. 1975, §34-24-60, as amended.

History: New Rule: Filed August 22, 2002; effective September 26, 2002.