

MEDICAL LICENSURE COMMISSION OF ALABAMA
ADMINISTRATIVE CODECHAPTER 545-X-4
MISCELLANEOUS

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545-X-4-.01	<u>Rules For Processing Of Appeals To The Medical Licensure Commission.</u>

(1) Time for Appeal. Notice of appeal must be initiated in writing and directed to the Commission and filed within thirty (30) days from the date of the letter of notice of the Board of Medical Examiners denying an application for an initial certificate of qualification, an application for reinstatement of a certificate of qualification, or an application for removal of voluntary restrictions to a certificate of qualification.

(2) Scope of Appeal. The appeal to the Commission shall not be a hearing de novo, but shall be limited to consideration of the record of the proceedings before the Board. In the event the Commission, based upon its examination of the record as a whole, finds the applicant is qualified for licensure, then the Commission may order the Board to issue a certificate of qualification to the applicant. In the event the appeal grows out of a denial by the Board for removal of a

voluntary restriction to his certificate of qualification (as provided in Code of Ala. 1975, §34-24-360(g)), the Commission shall have the right to affirm the Board's action, or order the Board to modify its action as the Commission deems appropriate. For good cause, and within the discretion of the Commission, the appellant may, upon application, be permitted to supplement the record on appeal, upon a showing that the evidence was newly discovered or was not reasonably available to the appellant at the time of the hearing before the Board. In the event that such application is granted, the Board shall be afforded an opportunity to respond or to refute such evidence.

(3) Record on Appeal. The record on appeal shall consist of:

(a) A verbatim transcript of the proceedings before the Board, including the testimony of witnesses, statements of the appellant and/or counsel, and statements of the Board;

(b) Copies of all documents introduced into evidence at the hearing and considered by the Board in reaching its determination; and

(c) Copies of all pleadings, motions, briefs and arguments, or other documents filed before the Board in connection with the hearing.

(d) It shall be the responsibility of the appellant, at his expense, to ensure the complete and accurate preparation of the record on appeal, and to assure that one copy is filed with the Commission in a timely manner. The Board shall be required to furnish, at a reasonable rate based on the actual cost, copies of all documents in the possession of the Board which constitute a portion of the record.

(4) Briefs. Neither the appellant nor the Board shall be required to submit a brief or argument, but shall be permitted to do so either by counsel or pro se. The brief and argument, if submitted, in no event shall exceed twenty pages in length. It is suggested, but not required, that the appellant submit proposed findings of fact germane to the record on appeal which support the contentions raised in the brief and argument.

(5) Oral Argument. Upon request to the Commission, the appellant or a representative of the Board shall be permitted to appear personally or be represented by counsel before the Commission at a regular scheduled monthly meeting to present such oral argument as he may deem appropriate; provided, however, that the matters to be argued are limited to the record and that the

Commission shall be entitled to set reasonable time limits upon such presentation.

(6) Decision of Commission. It shall be the duty of the Commission to render a decision within sixty days from the date of the submission of the record on appeal or the brief and argument of the appellant, whichever comes later.

(7) Rehearings. The Commission shall not consider applications for rehearing. The decision of the Commission on an appeal shall be considered to be a final administrative determination.

(8) Extensions and Other Orders. The Commission may, upon application of the appellant or the Board, and for good cause, grant extensions of time and make other appropriate orders as shall be required to accommodate special situations not foreseen in these rules.

Author: Medical Licensure Commission

Statutory Authority: Code of Ala. 1975, §34-24-330.

History: Filed May 6, 1983. **Amended:** Filed November 30, 2007; effective January 4, 2008.

545-X-4-.02 **Administrative Handling Of Complaints.** It is the policy of the Commission to allow and encourage the Board of Medical Examiners to investigate all cases of possible physician misconduct and to refer charges regarding said misconduct to the Commission whenever it is determined by a majority of the Board that sufficient grounds exist for the referring of said charges.

Author:

Statutory Authority: Code of Ala. 1975, §§34-24-313, 34-24-361.

History: Filed May 6, 1983.

545-X-4-.03 **Attendance Guidelines.** It is resolved by the Commission that the Commission encourages the consistent and regular attendance of its members.

Author:

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

History: Filed May 6, 1983.

545-X-4-.04 **Commission Directory.** (Repealed)

Author:

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

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

545-X-4-.05 Acupuncture Rules And Regulations.

(1) Acupuncture is deemed by the Medical Licensure Commission to be an experimental procedure of which the safety and medical effectiveness has not been established. The Commission therefore determines that while acupuncture practice by licensed physicians should not be absolutely prohibited, some safeguards are necessary to ensure that the public is not harmed or victimized by unprofessional practices, such as the unskilled or uninformed application of acupuncture treatment, or unfounded claims of effectiveness.

(2) The Commission therefore determines that it shall be deemed unprofessional conduct, and grounds for action against the license of any physician pursuant to Code of Ala. 1975, §34-24-360(a), for a physician to offer or administer acupuncture treatment except in compliance with the requirements set forth by the Federal Food and Drug Administration in Federal Register Vol. 88, No. 46, p 6419 (March 9, 1973). In administering this requirement, the Commission establishes the following criteria, which must be adhered to by physicians licensed by the Commission:

(a) All acupuncture devices in this state must be labeled properly according to applicable Federal Food and Drug requirements.

(b) A physician must secure a patient's informed consent according to the guidelines established at 21 Code of Federal Regulations, §130.37, and no claims of therapeutic or diagnostic effectiveness may be made by a physician.

(3) The Commission hereby announces its intention to require that physicians wishing to investigate and experiment with the use of acupuncture treatment must comply fully with the above stated requirements of this Commission and with the requirement of the Federal Food and Drug Administration cited herein.

Author: Alabama Medical Licensure Commission

Statutory Authority: Code of Ala. 1975, §§34-24-311, 34-24-337.

History: Filed May 6, 1983. **Amended:** Filed November 25, 2003; effective December 30, 2003.

545-X-4-.06 Unprofessional Conduct. Unprofessional conduct shall mean the commission or omission of any act that is detrimental or harmful to the patient of the physician or detrimental or harmful to the health, safety, and welfare of the public, and which violates the high standards of honesty, diligence, prudence and ethical integrity demanded from physicians and osteopaths licensed to practice in the State of Alabama. Furthermore, without limiting the definition of unprofessional conduct in any manner, the Commission sets out the below as examples of unprofessional conduct:

(1) The refusal by a physician to comply, within a reasonable time, with a request from another physician for medical records or medical information when such request is accompanied by a properly executed authorization of the patient.

(2) Intentionally, knowingly or willfully causing or permitting a false or misleading representation of a material fact to be entered on any medical record of a patient.

(3) Intentionally, knowingly or willfully preparing, executing or permitting the preparation by another of a false or misleading report or statement concerning the medical condition or extent of disability of a patient.

(4) The prescribing, dispensing, administering, supplying or otherwise distributing of any Schedule II amphetamine and/or Schedule II amphetamine-like anorectic drug in violation of Code of Ala. 1975, §20-2-54, as amended in Action No. 83-890, Special Session, 1983.

(5) The failure to report to the Alabama State Board of Medical Examiners any final judgment rendered against such physician or surgeon during the preceding year or any settlement in or out of court during the preceding year, resulting from a claim or action for damages for personal injuries caused by an error, omission or negligence in the performance of his professional services without consent as required by Code of Ala. 1975, §34-24-56.

(6) The refusal or failure by a physician or osteopath to comply with an order entered by the Medical Licensure Commission or by the Board of Medical Examiners issued pursuant to Code of Ala. 1975, Section 34-24-360(19) or (20) or pursuant to Code of Ala 1975, Section 34-24-361(h).

(7) Intentionally or knowingly making a false, deceptive or misleading statement in any advertisement or commercial solicitation for professional services and/or intentionally or knowingly making a false, deceptive or

misleading statement about another physician or group of physicians in any advertisement or commercial solicitation for professional services.

(8) Failure or refusal of a J-1 physician to comply with waiver service requirements stated in the J-1 Visa Waiver Affidavit and Agreement signed by a J-1 physician.

(9) Conduct which is immoral and which is willful, shameful, and which shows a moral indifference to the standards and opinions of the community.

(10) Conduct which is dishonorable and which shows a disposition to lie, cheat, or defraud.

(11) Failing or refusing to maintain adequate records on a patient or patients.

(12) Prescribing or dispensing a controlled substance to oneself or to one's spouse, child, or parent, unless such prescribing or dispensing is necessitated by emergency or other exceptional circumstances.

(13) Signing a blank, undated or predated prescription form.

(14) Representing that a manifestly incurable disease or infirmity can be permanently cured, or that any disease, ailment or infirmity can be cured by a secret method, procedure, treatment, medicine or device, if such is not the fact.

(15) Refusing to divulge to the board or commission upon demand the means, method, procedure, modality of treatment, or medicine used in the treatment of a disease, injury, ailment or infirmity.

(16) Knowingly making any false or fraudulent statement, written or oral, in connection with the practice of medicine or osteopathy or in applying for privileges or renewing an application for privileges at a health care institution.

(17) Sexual misconduct in the practice of medicine as defined in Rule 545-X-4-.07.

(18) Representing or holding oneself out as a medical specialist when such is not the case.

(19) Failing to furnish information in a timely manner to the board or commission if requested by the board or commission.

(20) Failing to report to the board in a timely manner information required to be reported by Code of Ala. 1975, Section 34-24-361(b).

(21) Giving false testimony in any judicial or administrative proceeding.

(22) The violation of any rule promulgated by the Alabama Board of Medical Examiners or the Medical Licensure Commission pursuant to their rule making authority as set forth in the Alabama Administrative Procedures Act.

Author: Wayne P. Turner

Statutory Authority: Code of Ala. 1975, §34-24-360(2).

History: Filed February 3, 1984. **Amended:** Filed June 4, 1985.

Amended: Filed July 11, 2000; effective August 15, 2000.

Amended: Filed March 4, 2003; effective April 8, 2003. **Amended:** Filed June 24, 2005; effective July 27, 2005.

540-X-4-.07 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 interest 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 grounds for disciplining 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 chaperone present. If the physician believes the patient is sexualizing the examination.

(12) To minimize the understandings 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) Physician 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's 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 situation, 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, §34-24-311.

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

545-X-4-.08 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, a search fee of five dollars (\$5.00) plus the actual cost of mailing the record. In addition, the actual costs of reproducing x-rays or other special records may be included. 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 the 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: Wendell R. Morgan, Attorney For The Alabama Board Of Medical Examiners

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

History: New Rule: Filed April 24, 1998; effective May 29, 1998.

545-X-4-.09 Minimum Standards For Medical Records. The maintenance of adequate medical records is an integral part of good medical care. Adequate records are necessary to ensure continuity of care, not only by the physician who maintains a particular record, but by other medical professionals. Therefore, every physician licensed to practice medicine in Alabama shall maintain for each of his or her patients, a record which, in order to meet the minimum standard for medical records, shall:

- (1) be legible, and written in the English language;
- (2) contain only those terms and abbreviations that are or should be comprehensive to other medical professionals;
- (3) contain adequate identification of the patient;
- (4) indicate the date any professional service was provided;
- (5) contain pertinent information concerning the patient's condition;
- (6) reflect examinations, vital signs, and tests obtained, performed, or ordered and the findings or results of each;
- (7) indicate the initial diagnosis and the patient's initial reason for seeking the physician's services;
- (8) indicate the medications prescribed, dispensed, or administered and the quantity and strength of each;
- (9) reflect the treatment performed or recommended;
- (10) document the patient's progress during the course of treatment; and
- (11) include all patient records received from other health care providers, if those records formed the basis for a treatment decision by the physician.

Author: Wayne P. Turner, Attorney for the Medical Licensure Commission

Statutory Authority: Code of Ala. 1975, §§34-24-360-(22)

History: New Rule: Filed February 25, 2005; effective April 1, 2005.