

ALABAMA BOARD OF MEDICAL EXAMINERS
ADMINISTRATIVE CODECHAPTER 540-X-5
HEARINGS AND APPEALS

TABLE OF CONTENTS

540-X-5-.01	Conduct Of Hearings And Appeals
540-X-5-.02	Denial, Suspension, Revocation Or Refusal Of Renewal Of Registration Of An Alabama Controlled Substances Certificate
540-X-5-.03	Revocation Or Suspension Of An Alabama Controlled Substances Certificate Registration - Grounds And Procedures Generally
540-X-5-.04	Review Of And Appeal From Order Of Board Following Hearing On Alabama Controlled Substances Certificate Revocation Or Denial
540-X-5-.05	Reinstatement Of Certificate Of Qualification - Procedure And Hearings
540-X-5-.06	Application For Removal Of A Voluntary Restriction On Certificate Of Qualification - Hearings
540-X-5-.07	Application For Reinstatement Of Certificate Of Qualification And Application For Removal Of Voluntary Restriction On Certificate Of Qualification: The Processing Of Appeals From Decisions Of The Board Of Medical Examiners To The Medical Licensure Commission
540-X-5-.08	Denial Of An Application For Initial Certificate Of Qualification: Appeal To The Medical Licensure Commission
540-X-5-.09	Conduct Of Investigations By The Board Of Medical Examiners

540-X-5-.01	<u>Conduct Of Hearings And Appeals.</u>
-------------	---

Any hearing conducted by the Board pursuant to the provisions of the Alabama Uniform Controlled Substances Act, Code of Ala. 1975, §§20-2-1, shall be considered a contested case under the Alabama Administrative Procedure Act Code of Ala. 1975, §§41-22-1 and shall be conducted in accordance with the requirements of that act, and the rules and regulations set out in Chapter 6, except that any appeal from the decision of the Board shall be governed

by the provisions of Code of Ala. 1975, §20-2-53 as amended by Act 2002-140.

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

Statutory Authority: Code of Ala. 1975, §§20-2-54, 41-22-20(b).

History: Filed November 9, 1982 as Rule No. 540-X-3-.01.

Readopted: Filed February 8, 1983. **Amended:** Filed March 23, 1984. **Rules reorganized--** rule number changed to 540-X-5-.01 (see conversion table at end of code): Filed June 14, 1984 (without publication in AAM). **Amended:** Filed August 22, 2002; effective September 26, 2002.

540-X-5-.02**Denial, Suspension, Revocation Or Refusal Of
Renewal Of Registration Of An Alabama Controlled
Substances Certificate.**

(1) Before denying, suspending, or revoking a registration or refusing a renewal of registration, the Board shall serve upon the applicant or registrant an order to show cause why registration should not be denied, revoked or suspended or why the renewal should not be refused.

(2) The order to show cause shall contain a statement of the basis therefor and shall call upon the applicant or registrant to appear before the Board at a time and place not less than thirty days after the date of service of the order, but in the case of a denial of renewal of registration the show cause order shall be served not later than thirty days before the expiration of the registration.

(3) The proceedings shall be conducted in accordance with the procedures established by the Board without regard to any criminal prosecution or other proceeding. Proceedings to refuse renewal of registration shall not abate the existing registration which shall remain in effect pending the outcome of the administrative hearing.

Author:

Statutory Authority: Code of Ala. 1975, §20-2-53.

History: Filed November 9, 1982 as Rule No. 540-X-3-.02.

Readopted: Filed February 8, 1983. **Rules reorganized--** rule number changed to 540-X-5-.02 (see conversion table at end of code): Filed June 14, 1984 (without publication in AAM).

540-X-5-.03 Revocation Or Suspension Of An Alabama Controlled Substances Certificate Registration - Grounds And Procedures Generally.

(1) A registration under specified laws to manufacture, distribute, or dispense a controlled substance may be suspended or revoked by the Board upon a finding that the registrant:

- (a) Has furnished false or fraudulent material information in any application filed under this article;
- (b) Has been convicted of a crime under any state or federal law relating to any controlled substance;
- (c) Has had his federal registration suspended or revoked to manufacture, distribute or dispense controlled substances;
- (d) Has violated the provisions of Chapter 23 of Title 34 of the Code of Alabama; or
- (e) Has, in the opinion of the Board, excessively dispensed controlled substances for any of his patients.

1. A registrant may be considered to have excessively dispensed controlled substances if the Board finds that either the controlled substances were dispensed for no legitimate medical purpose, or that the amount of controlled substances dispensed by the registrant is not reasonably related to the proper medical management of the patient's illness or conditions. Drug addiction shall not be considered an illness or condition which would justify continued dispensing of controlled substances, except in gradually decreasing dosages administered to the patient for the purpose of curing the addiction.

2. A registrant who is a physician licensed to practice medicine in the State of Alabama may be considered to have excessively dispensed controlled substances if he or she prescribes, orders, dispenses, administers, supplies or otherwise distributes any Schedule II amphetamine and/or Schedule II amphetamine-like anorectic drug, and/or Schedule II sympathomimetic amine drug or compound thereof, and/or any salt, compound, isomer, derivative or preparation of the foregoing which are chemically equivalent thereto, and/or other non-narcotic Schedule II stimulant drugs, which drugs or compounds are classified under Schedule II of the Alabama Uniform Controlled Substances Act, Code of Ala. 1975, §20-2-24, to any person except for the therapeutic treatment of:

- (i) Narcolepsy;
 - (ii) Hyperkinesis;
 - (iii) Brain dysfunction of sufficiently specific diagnosis (such as Attention Deficit Disorder or Attention Deficit and Hyperactivity Disorder), or etiology which clearly indicates the need for these substances in treatment or control;
 - (iv) Epilepsy;
 - (v) Differential psychiatric evaluation of clinically significant depression; provided, however, that such treatment shall not extend beyond a period of thirty (30) days unless the patient is referred to a licensed practitioner specializing in the treatment of depression;
 - (vi) Clinically significant depression shown to be refractory to other therapeutic modalities; provided, however, that such treatment shall not extend beyond a period of thirty (30) days unless the patient is referred to a licensed practitioner specializing in the treatment of depression; or for the clinical investigation of the effects of such drugs or compounds, in which case an investigative protocol must be submitted to and reviewed and approved by the State Board of Medical Examiners before the investigation has begun. A physician prescribing, ordering or otherwise distributing the controlled substances listed above in the manner permitted by this subsection shall maintain a complete record which must include documentation of the diagnosis and reason for prescribing; the name, dose, strength and quantity of the drug and the date prescribed or distributed. The records required under this subsection shall be made available for inspection by the certifying board or its authorized representative upon request. Those Schedule II stimulant drugs enumerated above shall not be dispensed or prescribed for the treatment or control of exogenous obesity;
- (f) Has violated any duly adopted rule or regulation of the Board of Medical Examiners pertaining to the possession, maintenance, dispensing, prescribing or distribution of any controlled substance;
- (g) Has dispensed, prescribed or distributed controlled substances not authorized by his registration certificate.

(h) Has failed to maintain a registration with the U.S. Drug Enforcement Administration, has voluntarily surrendered a DEA registration or had a registration revoked.

(2) The Board may limit revocation or suspension of a registration to the particular controlled substance with respect to which grounds for revocation or suspension exist.

(3) In addition to the penalty of suspension or revocation the Board may assess an administrative fine not to exceed ten thousand dollars (\$10,000.00) for each violation of any of the offenses stated in Rule 540-X-5-.03(1).

(4) All administrative fines assessed by the Board shall be due and payable to the Board within thirty (30) days from the date the fine is levied or assessed unless an appeal is instituted pursuant to Code of Ala. 1975, §20-2-53, pertaining to appeals from decisions of the Board of Medical Examiners as a certifying board under the Alabama Uniform Controlled Substances Act, in which event the fine is due and payable to the Board thirty (30) days after the final disposition of the appeal. When a fine has been assessed and is not subject to appeal, the name of the physician against whom the fine was assessed shall be forwarded to the Medical Licensure Commission with a request that the annual certificate of registration of that physician not be renewed until the fine has been paid and satisfied in full.

(5) All administrative fines received by the Board shall be deposited to the general revenues of the Board and may be expended for the general operation of the Board and for the development, administration and presentation of programs of continuing medical education for physicians licensed to practice medicine in Alabama.

(6) Administrative Costs:

(a) If the Board finds that a registrant is guilty of any offense stated in Rule 540-X-5-.03(1), the Board may order that administrative costs be assessed against and paid by the registrant.

(b) Administrative costs are the actual costs, fees and expenses incurred by the Board in connection with any Board proceeding resulting in a finding that the registrant has violated any provision of Rule 540-X-5-.03(1) and include the following:

1. Costs of independent medical review and expert testimony.
2. Reasonable and necessary attorney fees and expenses.
3. Travel expenses for Board staff.

4. Costs and expenses for documentary evidence.
5. Deposition costs, court reporter fees and costs, and transcript costs.
6. Witness fees and expenses.
7. Fees and costs for necessary interpreter services.
8. Fees and expenses for necessary consultants.

(c) Claims for administrative costs shall be submitted for review by the Board pursuant to a verified bill of costs on a form approved by the Board. The bill of costs shall be filed with the Board Secretary within fourteen (14) days from the date of any order assessing costs against the registrant. Any ruling on administrative costs shall be made by the Board at the scheduled monthly meeting following submission of the bill of costs.

(d) Payment of the administrative costs ordered by the Board shall be made and enforced in the same manner as an administrative fine as stated in Rule 540-X-5-.03(4).

(7) If the Board suspends or revokes a registration, all controlled substances owned or possessed by the registrant at the time of suspension or the effective date of the revocation order may be placed under seal. No disposition may be made of substances under seal until the time for taking an appeal has elapsed or until all appeals have been concluded unless a court, upon application therefor, orders the sale of perishable substances and the deposit of the proceeds of the sale with the court. Upon a revocation order becoming final, all controlled substances may be forfeited to the state.

(8) The Board shall promptly notify the Drug Enforcement Administration of all orders suspending or revoking registration and all forfeitures of controlled substances.

(9) For the purpose of the treatment of clinically significant depression as outlined in Rule 540-X-5-.03(1)(e)2.(v) and clinically significant depression shown to be refractory to other therapeutic modalities as outlined in Rule 540-X-5-.03(1)(e)2.(vi) above when a diagnosis of clinically significant depression has been confirmed by a licensed practitioner specializing in the treatment of depression (as that term is defined in these rules) and the practitioner has recommended the use of or continuation of a Schedule II amphetamine, amphetamine-like anorectic drug, sympathomimetic amine drug, or other Schedule II stimulant drug for the therapeutic treatment of the depression, then such drug or drugs may be prescribed by the patient's regular or attending physician for such period of time as is required to remediate the condition being treated.

Author: Alabama Board of Medical Examiners

Statutory Authority: Code of Ala. 1975, §§20-2-54, 20-2-71, Act No. 86-451 (Reg. Session 1986); Act No. 07-402.

History: Filed November 9, 1982 as Rule No. 540-X-3-.03.

Readopted: Filed February 8, 1983. **Amended:** Filed March 23, 1984. **Rules reorganized--** rule number changed to 540-X-5-.03 (see conversion table at end of code): Filed June 14, 1984 (without publication in AAM). **Amended:** Filed May 16, 1985; August 22, 1986. **Amended:** Filed August 22, 2002; effective September 26, 2002. **Amended:** Filed November 13, 2007; effective December 18, 2007. **Amended:** Filed March 22, 2018; effective May 6, 2018. **Amended:** Published December 30, 2021; effective February 13, 2022.

540-X-5-.04

Review Of And Appeal From Order Of Board Following Hearing On Alabama Controlled Substances Certificate Revocation Or Denial.

(1) An applicant or registrant adversely affected by an order of the Board denying, suspending, or revoking a registration or refusing the renewal of a registration, whether or not such suspension, revocation or registration is limited, may seek judicial review of the order by filing a written petition for review with the Alabama Court of Civil Appeals, and, otherwise proceeding in accordance with the provisions of the Code of Ala. 1975, §41-22-20.

(2) The following procedures shall take precedence over the provisions of the Code of Ala. 1975, §41-22-20(c) relating to the issuance of a stay of any order of the Board of Medical Examiners suspending, revoking or restricting a registration. The suspension or revocation or restriction of a registration shall be given immediate effect, and no stay or supersedeas shall be granted pending judicial review of a decision by the board to suspend, revoke or restrict a registration unless the reviewing court, upon proof by the party seeking judicial review, finds in writing that the action of the board was taken without statutory authority, was arbitrary or capricious, or constituted a gross abuse of discretion. Notwithstanding any other provision of law to the contrary, any action commenced for the purpose of seeking judicial review of an administrative decision of the board, including writ of mandamus, or judicial review pursuant to the Alabama Administrative Procedure Act, must be filed, commenced, and maintained in the Alabama Court of Civil Appeals.

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

Statutory Authority: Code of Ala. 1975, §20-2-53.

History: Filed November 9, 1982 as Rule No. 540-X-3-.04.

Readopted: Filed February 8, 1983. **Rules reorganized--** rule number changed to 540-X-5-.04 (see conversion table at end of code): Filed June 14, 1984 (without publication in AAM). **Amended:**

Filed August 22, 2002; effective September 26, 2002. **Amended:**
Filed October 15, 2008; effective November 19, 2008.

**540-X-5-.05 Reinstatement Of Certificate Of Qualification -
Procedure And Hearings.**

(1) A request for reinstatement of a certificate of qualification shall be made by filing with the Board a completed Application for Reinstatement of Certificate of Qualification on a form approved by the Board.

(2) An Application for Reinstatement of Certificate of Qualification filed with the Board within twenty-four (24) months of the effective date of the applicant's voluntary surrender of the certificate of qualification may be dismissed by the Board as prematurely filed.

(3) An Application for Reinstatement of Certificate of Qualification filed with the Board more than twenty-four (24) months following the effective date of the voluntary surrender may be granted or may be set for a hearing before the Board.

(4) A hearing on the request for reinstatement of a certificate of qualification shall be conducted as a contested case under the Alabama Administrative Procedure Act (Code of Ala. 1975, §§41-22-1 through 41-22-27).

(5) In a hearing on a request for reinstatement of a certificate of qualification, the applicant shall have the burden of establishing to the reasonable satisfaction of the Board that the applicant is entitled to the specific relief requested. The Board shall take into consideration in arriving at its decision the following:

(a) The seriousness and severity of circumstances which led to the voluntary surrender of the certificate of qualification.

(b) The occurrence of any adjudicated violations of criminal or civil statutes since the effective date of the voluntary surrender of the certificate of qualification.

(c) The hardships imposed upon the applicant since the effective date of the voluntary surrender of the certificate of qualification.

(d) The likelihood that the circumstances which gave rise to the voluntary surrender of the certificate of qualification would be repeated in the future.

- (e) The length of time that has lapsed since the effective date of the voluntary surrender of the certificate of qualification.
 - (f) The protection of the public and the patients of the applicant.
 - (g) The physical and mental health of the applicant as it may relate to the ability of the applicant to practice medicine in a safe and effective manner.
 - (h) The extent of medical knowledge, training and experience of the applicant as those factors may reflect upon the ability of the applicant to practice medicine in a safe and effective manner.
 - (i) Any other conditions, facts or circumstances which may be deemed relevant by the Board in considering an application for reinstatement.
- (6) If the disposition of a request for reinstatement of a certificate of qualification includes a Board order that the applicant take and pass the Special Purpose Examination (SPEX), the applicant must achieve a passing score in not more than three (3) administrations, and applicants who do not achieve a passing score within three (3) administrations shall no longer be eligible to take the SPEX.
- (7) The Board shall be without jurisdiction to reinstate the certificate of qualification of a physician whose certificate of qualification was voluntarily surrendered while under investigation or during the pendency of an administrative hearing if the application for reinstatement of the certificate of qualification is received by the Board more than five (5) years after the effective date of the voluntary surrender of the certificate of qualification.
- (8) In the event the Medical Licensure Commission is without jurisdiction to reinstate a license to practice medicine or osteopathy or the Board is without jurisdiction to reinstate the certificate of qualification, any existing, corresponding certificate of qualification of any licensee over whom the Commission or Board has lost jurisdiction shall become null and void.
- Author:** Alabama State Board of Medical Examiners
Statutory Authority: Code of Ala. 1975, §§34-24-330, 34-24-361(g).
History: Filed November 9, 1982 as Rule No. 540-X-3-.05.
Readopted: Filed February 8, 1983. **Rules reorganized--** rule number changed to 540-X-5-.05 (see conversion table at end of code): Filed June 14, 1984 (without publication in AAM). **Repealed and New Rule:** Filed November 13, 2007; effective December 18, 2007.

**540-X-5-.06 Application For Removal Of A Voluntary Restriction
On Certificate Of Qualification - Hearings.**

(1) A hearing before the Board on an application for removal of a voluntary restriction attached to a certificate of qualification shall be conducted as a contested case under the Alabama Administrative Procedure Act (Ala. Code §§41-22-1 through 41-22-27).

(2) The applicant shall have the burden of establishing to the reasonable satisfaction of the Board that the applicant is entitled to the specific relief requested.

Author: Alabama State Board of Medical Examiners

Statutory Authority: Code of Ala. 1975, §§34-24-330, 34-24-361(g).

History: New Rule: Filed November 13, 2007; effective December 18, 2007.

**540-X-5-.07 Application For Reinstatement Of Certificate Of
Qualification And Application For Removal Of
Voluntary Restriction On Certificate Of
Qualification: The Processing Of Appeals From
Decisions Of The Board Of Medical Examiners To The
Medical Licensure Commission.**

(1) Time for Appeal. An appeal must be initiated by a notice, in writing, directed to the Medical Licensure Commission and filed with the Commission within thirty (30) days from the date of the final order of the Board of Medical Examiners denying an application for reinstatement of a certification of qualification, or denying an application for removal of a voluntary restriction on a certificate of qualification.

(2) Scope of Appeal. The appeal to the Medical Licensure Commission shall not be a hearing de novo, but shall be limited to a 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 reinstate the certificate of qualification of the applicant. In the event the appeal grows out of a denial by the Board for removal of a voluntary restriction on a certificate of qualification, 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 shown, 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 to or refute such evidence.

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

(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. It shall be the responsibility of the appellant, at his expense, to insure 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 costs, copies of all documents in the possession of the Board which constitute a portion of the record.

(4) Briefs. It shall not be required that the appellant or the Board submit a brief and argument, but each shall be permitted to do so either personally or by counsel. The brief and arguments, if submitted, need not take any particular format, but in no event shall it exceed twenty pages in length. It is suggested, but not required, that the parties submit proposed findings of fact keyed 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 and a representative of the Board shall be permitted to appear personally or by counsel before the Commission at a regular scheduled monthly meeting to present such oral arguments as deemed 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) Re-hearings. There shall be no applications for rehearing. The decision of the Commission, upon the appeal, shall be considered to be a final administrative determination.

(8) Extensions and Other Orders. The Commissions may, upon application of the appellant or the Board, and for good cause shown, grant extensions of time and make such other appropriate

orders as shall be required to accommodate situations not covered in these rules.

Author: Alabama State Board of Medical Examiners

Statutory Authority: Code of Ala. 1975, §§34-24-330, 34-24-361(g).

History: New Rule: Filed November 13, 2007; effective December 18, 2007.

540-X-5-.08 Denial Of An Application For Initial Certificate Of Qualification: Appeal To The Medical Licensure Commission.

(1) An appeal from a denial by the Board of an applicant for an initial certificate of qualification must be initiated by a notice, in writing, directed to the Medical Licensure Commission and filed with the Commission within thirty (30) days from the date of the letter of notice to the applicant that the Board has denied the application for an initial certificate of qualification.

(2) The appeal to the Medical Licensure Commission shall be a hearing de novo, and shall include the following:

(a) Reasonable notice in writing of the time, place and nature of the hearing;

(b) The opportunity for all parties to respond and present evidence and argument on all material issues involved; and

(c) The opportunity for all parties to be represented by counsel at their own expense.

(3) The record of information considered by the Board in its decision to deny an application for an initial certificate of qualification shall be prepared by the Board and certified and shall be filed with the Commission as the record on appeal. The Commission shall consider the record on appeal in rendering a decision in the matter.

(4) In the event the Commission finds that the applicant is qualified for licensure, the Commission may order the Board to issue a certificate of qualification to the applicant.

Author: Alabama State Board of Medical Examiners

Statutory Authority: Code of Ala. 1975, §§34-24-330, 34-24-361(g).

History: New Rule: Filed November 13, 2007; effective December 18, 2007.

540-X-5-.09 Conduct Of Investigations By The Board Of Medical Examiners.

(1) The Board of Medical Examiners may on its own motion, or in response to any complaint submitted to the Board, investigate any evidence which appears to show that a physician or osteopath holding a certificate of qualification to practice medicine or osteopathy in the State of Alabama is or may be guilty of any of the acts, offenses or conditions set out in Code of Ala. 1975, §34-24-360. In carrying out its investigations, the Board is authorized to subpoena witnesses and to demand the production of documents, records and papers which it deems pertinent to any matters under investigation. The Board may within its discretion convene an investigative hearing which may be closed to the public and may receive testimony under oath and documentary evidence concerning any matter under investigation. At such hearings the Board may compel the attendance of witnesses by subpoena and the production of records, documents, and papers for its consideration. Any hearings convened by the Board of Medical Examiners pursuant to its investigative authority are not to be deemed contested cases under the Alabama Administrative Procedure Act.

(2) At such time as the Board may determine that there is probable cause to believe that a physician or osteopath is guilty of any of the acts, offenses, or conditions enumerated in Code of Ala. 1975, §34-24-360, then the Board may direct that a written administrative complaint be prepared and filed with the Medical Licensure Commission. The administrative complaint shall be executed by the chairman of the Board, or the executive director of the Board, or any member designated by the Board and shall request that the Medical Licensure Commission issue an order directing the respondent to appear and answer the allegations of the administrative complaint.

(3) In the event that the Board of Medical Examiners determines that there exists sufficient evidence to indicate that a physician's or osteopath's continuation in practice presents an immediate danger to his patients or to the public, then in such event the Board may certify such facts and request that the Medical Licensure Commission temporarily suspend the license of such a physician or osteopath without a hearing immediately upon the filing of a complaint by the Board of Medical Examiners.

(4) At any time in the course of an investigation the Board may, within its discretion, issue a letter of concern to the physician or osteopath who is the subject of the investigation. A letter of concern shall consist of a private, confidential, written communication from the Board of Medical Examiners to the physician or osteopath, the contents of which shall be specified by the

Board. A letter of concern shall not be considered a disciplinary action and is not intended to communicate a finding on the part of the Board that the physician or osteopath to whom the letter of concern is directed will be charged with or has been found guilty of any wrong doing. The purpose of the letter of concern is to provide notice to the physician or osteopath under investigation that the Board has concluded that the actions or conduct in question may not be in accord with generally accepted standards of medical practice and/or may be detrimental to patient care. The issuance of a letter of concern by the Board of Medical Examiners shall not preclude the Board from taking any other action authorized by law, including the filing of a written complaint with the Medical Licensure Commission in accordance with paragraph (2) of this Rule. A letter of concern shall be deemed a non-public record of the Board of Medical Examiners under the provisions of Rule 540-X-1-.03(5). The Board within its discretion, if applicable, may notify the person or persons whose complaint led to the Board's investigation that the physician or osteopath in question has been sent a letter of concern. The Board may make public statistical reports concerning the number and type of letters of concern issued by the Board.

(5)(a) Every physician licensed to practice medicine or osteopathy in the State of Alabama who accepts the privilege of practicing medicine or osteopathy in the State of Alabama by actually practicing or by the making and filing of an annual registration to practice medicine shall be deemed to have given his consent to submit to a mental, physical or laboratory examination or to any combination of such examinations and to waive all objections to the admissibility of the examining physician's testimony or examination reports on the ground that they constitute privileged doctor-patient communications. Upon receipt of credible information that a physician or osteopath in this state has been evaluated or has received inpatient or outpatient treatment for any physical, psychiatric or psychological illness or for chemical dependency, drug addiction, or alcohol abuse the board may order that the physician execute and deliver to the board an authorization and release form directed to each and every facility or treatment provider authorizing and directing the release to the board of any reports of evaluation, mental or physical or examination, including psychiatric, psychological and neuropsychiatric examinations, hospital and treatment provider medical records, reports of laboratory tests for the presence of alcohol or drugs, rehabilitation records or mental competency evaluations. Any and all expenses incurred in the furnishing of the reports, records or documents which are the subject of an order issued by the board shall be borne by the physician or osteopath who is the subject of the order.

(b) Failure or refusal by the physician or osteopath to comply with an order of the board directing the execution and delivery to the board of an authorization and release form as provided in paragraph (5)(a) above shall constitute grounds

for the summary suspension of the physician's or osteopath's license to practice medicine by the Medical Licensure Commission, which suspension shall continue in effect until such time as the physician or osteopath complies with the order of the board or the order is withdrawn by the board or the order is terminated by the Medical Licensure Commission after a hearing. The provisions of this subsection supersede any provisions of Section 41-22-19(d) of the Alabama Administrative Procedure Act that are in conflict.

(c) All reports, records, and documents released to the board under the provisions of paragraph (5)(a) above are hereby declared to be privileged and confidential and shall not be public records nor available for court subpoena or for discovery proceedings but may be used by the board in the course of its investigations and may be introduced as evidence in administrative hearings conducted by the board or the Medical Licensure Commission. Nothing contained herein 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.

(6)(a) When the issue is whether or not a physician or osteopath has demonstrated a lack of basic medical knowledge or clinical competency then, upon a showing of probable cause to the board that the physician or osteopath is not presently capable of practicing medicine or osteopathy with reasonable skill and safety to patients, the board may order and direct that the physician or osteopath in question submit to a test of medical knowledge as designated by the board or to an evaluation of clinical competency by such means as directed by the board or to any combination of such examinations or evaluations, to be performed by or under the direction of a testing, evaluation or examination facility or provider approved by the board. The expense of such examinations and evaluations shall be borne by the physician or osteopath who is examined or evaluated.

(b) Failure or refusal by a physician or osteopath to comply with an order of the board issued pursuant to this rule shall constitute grounds for the summary suspension of the physician's or osteopath's license to practice medicine by the Medical Licensure Commission, which suspension shall continue in effect until such time as the physician or osteopath complies with the order of the board or the order is withdrawn by the board or the order is terminated by the Medical Licensure Commission after a hearing. The provisions of this subsection supersede any provisions of Section 41-22-19(d) of the Alabama Administrative Procedure Act that are in conflict.

(c) A physician or osteopath whose license to practice medicine has been summarily suspended by the Medical Licensure Commission under the authority of paragraph (b) above may obtain judicial review in accordance with the provisions of Sections 41-22-20 and 34-24-367.

(d) In the event that an examination or evaluation ordered by the board under the authority of this rule demonstrates that the physician or osteopath lacks basic medical knowledge or clinical training sufficient to engage in the practice of medicine with reasonable skill and safety to patients, then the board may order that a restriction be placed upon the certificate of qualification and license to practice medicine of the physician or osteopath which restriction may require:

1. The medical practice of the physician or osteopath in question be limited or restricted in a manner consistent with the findings of the examination or evaluation.
2. That the physician or osteopath successfully complete a course or courses of remedial education or clinical training as directed by the board.
3. That the physician or osteopath successfully pass or complete an examination of basic medical knowledge or clinical competency as designated by the board.
4. Any combination of the foregoing.

(e) The expense of any of the examinations, evaluations, and educational or training courses which are the subject of a restriction imposed by the board on the certificate of qualification and license to practice medicine shall be borne by the physician or osteopath in question. A physician or osteopath whose certificate of qualification and license to practice medicine has been restricted by the board under the authority of this section may request a hearing before the Medical Licensure Commission of Alabama. At such hearing it shall be the burden of the board to demonstrate to the reasonable satisfaction of the commission that the restriction or restrictions are consistent with the findings of the examination or evaluation ordered by the board. All hearings before the Medical Licensure Commission shall be conducted on an expedited basis and any restriction or restrictions shall not be stayed by the commission during the pendency of the hearing. The Medical Licensure Commission may consider, in any hearing resulting from a decision of the board to impose a restriction or restrictions on the certificate of qualification and license to practice medicine of the physician or osteopath in question, the results of all examinations or evaluations of basic medical knowledge or clinical competency upon which the board relied and such other evidence as the commission deems relevant to the issues

presented. In rendering a decision, the Medical Licensure Commission is authorized to affirm the restriction or restrictions, modify the restriction or restrictions, or order the removal of the restriction or restrictions imposed by the board.

(f) A physician or osteopath adversely affected by a decision of the Medical Licensure Commission resulting from a hearing under the preceding subparagraph (e) may obtain judicial review in accordance with the provisions of Sections 41-22-20 and 34-24-367.

(g) The Medical Licensure Commission may, within its discretion, revoke or suspend the license to practice medicine of a physician or osteopath who fails to abide by or violates a restriction imposed by the board on the certificate of qualification and license to practice medicine of the physician or osteopath in question, or may impose administrative fines or other penalties as authorized by Section 34-24-361 and Section 34-24-381.

(7) The State Board of Medical Examiners, when acting in the capacity of a certifying board under the Alabama Uniform Controlled Substances Act, Section 20-2-1, et. seq., may, within its discretion and for cause, order, and direct that a physician or osteopath holding a registration certificate successfully complete a course or courses of continuing medical education on subjects related to the prescribing, dispensing, administering, or furnishing of controlled substances. The course or courses of continuing medical education ordered by the Board may not exceed 25 credit hours of instruction within the calendar year in which the order is entered. Failure or refusal to comply with an order or directive of the board entered pursuant to this section shall constitute grounds, after notice and hearing, for the suspension of the controlled substance registration certificate of the physician or osteopath in question which shall continue in effect until such time as the physician or osteopath has complied with the order of the board or the board has rescinded or withdrawn the order. The provisions of this section supersede any provisions of Sections 20-2-53 and 20-2-54 of this code that are in conflict. A physician or osteopath adversely affected by a decision of the board to suspend his or her controlled substance registration certificate may obtain judicial review in accordance with the provisions of Section 20-2-53, Code of Ala. 1975.

(8)(a) During the course of an investigation, the Board may require that a physician submit to a criminal history background check to include the following:

(i) The provision of fingerprints using forms provided by the Board;

(ii) The execution and provision of a criminal history information release using forms provided by the Board;

(iii) The payment of a fee in an amount established in Rule 540-X-3-.09(2).

(b) The fingerprints shall be submitted to the Alabama Bureau of Investigation (ABI), which is responsible for forwarding the fingerprints to the Federal Bureau of Investigation (FBI) for a national criminal history record check.

(c) Information received by the Board pursuant to a criminal history background check shall be confidential and shall not be a public record, except that such information received and relied upon in an investigation by the Board may be disclosed to the physician.

Author: Wendell R. Morgan, Patricia E. Shaner, Attorneys for the Alabama Board of Medical Examiners

Statutory Authority: Code of Ala. 1975, §§34-24-53, 34-24-360, 34-24-361, 34-24-363.

History: Filed November 9, 1982 as Rule No. 540-X-3-.06.

Readopted: Filed February 8, 1983. **Rules reorganized--** rule number changed to 540-X-5-.06 (see conversion table at end of code): Filed June 14, 1984 (without publication in AAM). **Amended:** Filed March 20, 1995; effective April 24, 1995. **Amended:** Filed August 22, 2002; effective September 26, 2002. **Amended (Rule No. Only):** Filed November 13, 2007; effective December 18, 2007. **Amended:** Filed October 15, 2008; effective November 19, 2008.

Ed. Note: Rule 540-X-5-.06 was renumbered to 540-X-5-.09 as per certification filed November 13, 2007.