ALABAMA BOARD OF MEDICAL EXAMINERS ADMINISTRATIVE CODE

CHAPTER 540-X-9 MISCELLANEOUS

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540-X-9-.01 Professional Corporations Formed By Physicians Or Osteopaths.

(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 ground for discipline the license of a physician or osteopath under the provisions of §34-24-360(2), Code of Ala. 1975, as amended. 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 part of the patient's body without a chaperone 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 §34-24-360(2), Code of Ala. 1975, as amended.

(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 Rules Of The State Board Of Medical Examiners And Medical Licensure Commission For Medical Records Management.

(1) Definitions.

(a) ACTIVE PATIENTS. Active patients are any patients treated by the physician one or more times during the immediately preceding thirty-six (36) months.

(b) NOTIFICATION. Notification shall be conducted by US Mail in a form letter to the active patients at their last known address or an electronic message sent via a HIPAA compliant electronic record system or HIPAA-compliant electronic health record system that provides a means of electronic communication to the patient and is capable of sending the patient a notification that a message is in the patient's portal.

(c) PERSONAL REPRESENTATIVE. The executor, administrator, or such other person as may be authorized under Title 43 to act as a fiduciary and to settle and distribute the estate of a decedent. The trustee of a trust established as a substantial part of the estate plan of a deceased physician or any other person having legal control over the medical records of the patients of a deceased physician shall also be responsible for compliance with these rules in the same manner as a personal representative.

(2) General Guidelines.

(a) Medical records serve important patient interests for present health care and future needs, as well as for insurance, employment, and other purposes. Medical records management encompasses not only managing the records of current patients, but also retaining old records against possible future need, and providing copies or transferring records to a third party as requested by the patient or the patient's authorized representative when the physician leaves a practice, sells his or her practice, retires, or dies. Medical records should be maintained by the treating physician for such period as may be necessary to treat the patient, in compliance with these rules, and for such additional time as may be indicated for medical and legal purposes.

(b) Access. On a legally compliant request of a patient or a patient's legal representative, a physician or his or her practice shall provide a copy of the medical record to the patient or to another physician, attorney, or other person designated by the patient or the patient’s legal

representative. A patient or his or her legal representative may authorize a physician or his or her practice, at the physician's or practice's discretion, to provide a copy of a specific portion or a summary of the medical record when the medical record is in non-electronic form and the patient or his or her legal representative knowingly waives his or her right to a copy of the full record. The cost of reproduction shall not exceed what is authorized under state and federal law. Records subpoenaed by the State Board of Medical Examiners are exempt from this subsection. 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 their patients and waive copying charges when appropriate.

(c) Retention of Medical Records. Medical records shall be retained for a period of not less than seven (7) years from the physician's (and/or other providers within his or her practice) last professional contact with the patient except for the following:

1. Immunization records which have not been transmitted to the immunization registry maintained by the State Board of Health shall be retained for a period of not less than two (2) years after the minor reaches the age of majority or seven (7) years from the date of the physician's (and/or other providers within his or her practice) last professional contact with the patient, whichever is longer.

2. X-rays, radiographs, and other imaging products shall be retained for at least five (5) years after which if there exist separate interpretive records thereof, they may be destroyed. However, mammography imaging and reports shall be maintained for ten (10) years.

3. Medical records of minors shall be retained for a period of not less than two years after the minor reaches the age of majority or seven (7) years from the date of the physician's (and/or other providers within his or her practice) last professional contact with the patient, whichever is longer.

4. Notwithstanding the foregoing, no medical record involving services which are under dispute shall be destroyed until the dispute is resolved, so long as the physician has formal notice of the dispute prior to the expiration of the retention requirement.

(d) Destruction of Medical Records.

1. No medical record shall be singled out for destruction other than in accordance with the established office operating procedures.

2. Records shall be. destroyed only in the ordinary course of business according to established office operating procedures that are consistent with these rules and state and federal privacy requirements.

3. Records may be destroyed by burning, shredding, permanently deleting, or other effective methods in keeping with the confidential nature of the records.

4. When records are destroyed, the time, date and circumstances of the destruction shall be recorded and maintained for not less than four (4) years. The record of destruction need not list the individual patient medical records that were destroyed but shall be sufficient to identify which group of destroyed records contained a particular patient's medical records.

(e) Retention and Access by Physicians Practicing Telemedicine. Physicians who practice medicine via telemedicine have the same duty as all other physicians to adhere to these rules relating to medical records. Physicians who provide care via telemedicine must retain access to the medical records which document their delivery of health care services via telemedicine. A physician who is unable to access and produce the medical records documenting his or her practice of medicine via telemedicine upon demand for inspection or review by the Board of Medical Examiners or Medical Licensure Commission shall be in violation of Code of Ala. 1975, §§34-24-360(2) and (23).

(3) Minimum Requirements for Patient Notification. The retirement, death, license suspension or revocation, and the departure of a physician from a practice group all create conditions under which patients must be notified of the triggering event. At a minimum, the notification to patients shall identify the physician who treated the patient, the general reason for the patient to be notified, an explanation of how the patient may obtain his or her medical records, a HIPAA authorization for the patient to complete, how long the medical records will be made available to the patient, and the intended disposition of the medical records if no instructions are received within the time provided.

(4) Disposition of Patient Medical Records. All physicians shall plan for the disposition of patient medical records in accordance with this rule.

(a) Disposition of Patient Medical Records upon Physician's Death. When a physician dies while in active medical practice, notification shall be sent by the physician's practice if in a

group practice within thirty (30) days following the death of the physician. If the physician is not a member of a group practice, the notice shall be sent by the personal representative of the physician's estate within thirty (30) days of appointment of an executor or administrator by the probate court to all his or her active patients. The notification to active patients shall contain a HIPAA-compliant form for the patient to sign to authorize copies of the patient's records be sent to a new physician, the patient, or the patient's representative, and shall include clear directions to the patient for submission of the form to effectuate the timely transfer of records. The party sending the notice shall bear the costs of notifying the physician's patients.

1. For physicians who are in solo practice, the physician should include compliance with these rules as part of his or her estate planning.

2. In addition to the notice requirement stated above, the personal representative of a physician's estate should take reasonable steps for all medical records to be transferred either to the custody of another physician or to a HIPAA-compliant entity that agrees in writing to act as custodian of the records. Medical records shall be maintained in custody in their original or legally reproduced form for the retention periods specified above, during which time the personal representative shall make the medical records available for transfer to the deceased physician's active patients. After the expiration of the retention period, the personal representative may dispose of or destroy the medical records in compliance with state and federal law.

(b) Disposition of Medical Records upon Physician's Retirement. When a physician retires, it is his or her, if in solo practice, or his/her group practice's responsibility to send notification of retirement not less than thirty (30) days prior to retirement to all active patients. The physician must take reasonable steps for all medical records to be transferred to the custody of his or her active patients, to another physician, or to a HIPAA-compliant entity that agrees in writing to act as custodian of the records. Medical records shall be maintained in custody in their original or legally reproduced form in compliance with the retention periods set forth in (2)(c). The notification to active patients shall contain a HIPAA-compliant form for the patient to sign to authorize copies of the patient's records to be sent to a new physician, the patient, or the patient's representative, and shall include clear directions to the patient for submission of the form to effectuate the timely transfer of records.

(c) Disposition of Medical Records upon Physician's License Suspension or Revocation. When a physician's medical license is suspended or revoked, the physician or his or her practice shall send notification of the suspension or revocation within thirty (30) days of the suspension or revocation to all active patients. The cost of sending the patient notifications shall be borne by the physician whose license is suspended or revoked. The notification must contain a copy of the Medical Licensure Commission's Order of Suspension or Revocation. The physician must take reasonable steps for all medical records to be transferred either to the custody of the physician's active patients, to another physician, a physician practice group, or to a HIPAA-compliant entity that agrees in writing to act as custodian of the records. Medical records shall be maintained in custody in their original or legally reproduced form in compliance with the retention periods set forth in (2)(c). The notification to active patients shall contain a HIPAA- compliant form for the patient to sign in order to authorize copies of the patient's records to be sent to a new physician, the patient, or the patient's representative, and shall include clear directions to the patient for submission of the form to effectuate the timely transfer of records.

(d) Disposition of Medical Records upon Departure from the Group. The responsibility for notifying patients and paying for the cost of the notification of a physician who leaves a group practice but continues to practice medicine shall be governed by the physician's employment contract with the group practice. If no contractual provision exists pertaining to medical records upon departure, and the group does not elect to notify the patients, then the departing physician shall be responsible for notifying all active patients and be responsible for the cost of such notification. Absent a contractual provision to the contrary, the party who notifies the patients of the departure shall bear the costs of notification and reproducing or transferring medical records. Patient notification, records retention, and record dispersal shall be accomplished in accordance with this rule.

1. Any provision of the physician's employment contract notwithstanding, the departing physician's active patients shall be notified of the physician's new address and offered the opportunity to have copies of their medical records forwarded to the departing physician at his or her new practice.

2. A group shall not withhold the medical records of any patient who has authorized their transfer to the departing physician or any other physician. The patient's freedom of choice in choosing a physician shall not be interfered with, and the choice of physician in every case should be left to the patient. The patient shall be

informed that upon authorization, his or her records will be sent to the physician of the patient's choice.

3. Absent a contractual provision to the contrary, when the group or medical practice undertakes to notify patients of the physician's departure, the group shall bear the cost of notifying patients and reproducing or transferring medical records. When the departing physician is responsible for notifying patients of his or her departure, the practice shall cooperate with the physician by providing the physician a list of the active patients and their last known mailing address and contact information, and the physician shall bear the cost of notifying his or her patients and reproducing or transferring medical records.

(e) Sale of a Medical Practice. A physician, a physician group practice, or the estate of a deceased physician may sell the elements that comprise his or her practice, one of which is its goodwill, i.e., the opportunity to take over the patients of the seller by purchasing the physician's medical records. Notwithstanding the above, the sale of a physician owner's equity in a medical practice that continues to operate, and which does not constitute the sale of the entire practice, does not constitute a medical sale for the purposes of this rule. Therefore, the transfer of records of patients is subject to the following:

1. The selling physician, his or her estate, or group practice must take reasonable steps for all medical records to be transferred to another physician or covered entity or business associate operating on its behalf. Medical records shall be maintained in custody in their original or legally reproduced form in compliance with the retention periods set forth in (2)(c).

2. All active patients shall be notified within thirty (30) days of the transfer that the physician, his or her estate, or group practice is transferring the practice to another physician, group practice, or entity who will retain custody of their records, and that at their written request the copies of their records will be sent to another physician, the patient, or the patient's representative.

(f) Disposition of Medical Records when a Physician is Unavailable. When a physician goes on vacation, goes on sabbatical, takes a leave of absence, leaves the United States, or is otherwise voluntarily unavailable to his or her patients, the physician shall arrange to provide his or her patients access to their medical records.

(g) Abandonment of Records. It shall be a violation of Code of Ala. 1975, §§34-24-360(2) and (23) for a physician to abandon his or her practice without his or her practice making provision for the maintenance, security, transfer, or to otherwise establish a secure method of patient access to their records.

(5) Violations. Violation of any provision of these rules is grounds for disciplinary action pursuant to Code of Ala. 1975, §§34-24-360(2) and (23).
Author: Alabama State 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. **Amended:** Published November 30, 2021; effective January 14, 2022.

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, continuing medication on a short-term basis for a new patient prior to the patient's first appointment, or prescribing for the sexual partner(s) of a patient in accordance with an Expedited Partner Therapy (EPT) and/or Patient Delivered Partner Therapy (PDPT) protocol for the prevention of transmission and spread of sexually transmitted diseases.

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

2017. **Amended:** Published July 31, 2023; effective September 14, 2023.

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.

540-X-9-.13 Physician Issued Verbal Do Not Attempt Resuscitation (DNAR) Order.

(1) This rule is promulgated pursuant to the Natural Death Act, Code of Ala. 1975, §22-8A-4.1(b)(2). The intent of this rule is to provide for the issuance of a verbal DNAR Order by a patient's attending physician, if the patient's attending physician is unable to timely go to the facility where the patient is located, and the patient's decision regarding the provision of resuscitative measures is known but the DNAR Order has not been placed in the patient's medical record. It is further the intent of this rule to prevent the provision of resuscitative measures in violation of a patient's decision when the decision is known to the attending physician but not yet entered into the patient's medical record.

(2) The following definitions will apply to these rules:

(a) ATTENDING PHYSICIAN. The physician selected by, or assigned to, the patient who has primary responsibility for the treatment and care of the patient.

(b) ADVANCE DIRECTIVE FOR HEALTH CARE. A writing executed in accordance with Section 22-8A-4, Code of Ala. 1975, which may include a living will, the appointment of a health care proxy, or both such living will and appointment of a health care proxy.

(c) CARDIOPULMONARY CESSATION. A lack of pulse or respiration.

(d) DNAR (DO NOT ATTEMPT RESUSCITATION) ORDER. A physician's order that resuscitative measures not be provided to a person under a physician's care in the event the person is found with cardiopulmonary cessation. A do not attempt resuscitation order would include, without limitation, physician orders written as "do not resuscitate," "do not allow resuscitation," "do not allow resuscitative measures," "DNAR," "DNR," "allow natural death," or "AND." A DNAR order must be entered with the consent of the person, if the person is competent; or in accordance with instructions in an advance directive if the person is not competent or is no longer able to understand, appreciate, and direct his or her medical treatment and has no hope of regaining that ability; or with the consent of a health care proxy or surrogate functioning under the provisions of Title 22, Chapter 8A, Code of Alabama 1975; or instructions by an attorney in fact under a durable power of attorney that duly grants powers to the attorney in fact to make those decisions described in 22-8A-4(b)(1), Code of Ala. 1975.

(e) PORTABLE PHYSICIAN DNAR ORDER (PORTABLE DNAR). A DNAR order, entered in the medical record by a physician who has completed all sections of the required form designated by the State Board of Health, that travels withs the patient should they transfer to other healthcare facilities.

(f) FACILITY SPECIFIC DNAR ORDER. A DNAR order, entered into the medical record by an attending physician, that may only be acted upon at a specific facility designated in the order.

(g) HEALTH CARE PROVIDER. A person who is licensed, certified, registered, or otherwise authorized by the law of this state to administer or provide health care in the ordinary course of business or in the practice of a profession.

(h) HEALTH CARE PROXY. Any person designated to act on behalf of an individual pursuant to Section 22-8A-4, Code of Ala. 1975.

(i) LIVING WILL. A witnessed document in writing, voluntarily executed by the declarant, that gives directions and may appoint a health care proxy, in accordance with the requirements of Section 22-8A-4, Code of Ala. 1975.

(j) PATIENT. A terminally ill or injured adult 19 years of age or over who is found with cardiopulmonary cessation.

(k) RESUSCITATIVE MEASURES. Those measures used to restore or support cardiac or respiratory function in the event of cardiopulmonary cessation.

(l) SURROGATE. Any person appointed to act on behalf of an individual pursuant to Section 22-8A-4, Code of Ala. 1975.

(3) Communication of a Portable or Facility-Specific DNAR Order by Verbal Order.

(a) A healthcare provider who becomes aware that a patient wishes for resuscitation to be withheld in the event of cardiopulmonary cessation but has no DNAR filed in his or her medical record should contact the patient's attending physician to see if such an order exists. If no DNAR order has been issued, the attending physician may issue either a portable or facility-specific DNAR by verbal order in accordance with this rule.

(b) If the attending physician or the requesting healthcare provider is in possession of a partially completed State Board of Health portable physician DNAR form such that only the physician authorization section remains to be completed, then the physician may issue a verbal DNAR order to the requesting health care provider so long as the verbal order is pursuant to reasonable medical standards and in good faith, and the attending physician knows that the decision to withhold resuscitative measures has been made in accordance with Section 22-8A-4, Code of Ala. 1975.

(c) An attending physician may issue a facility-specific verbal DNAR order so long as the order is issued pursuant to reasonable medical standards and in good faith, and the attending physician knows that the decision to withhold resuscitative measures has been made in accordance with Section 22-8A-4, Code of Ala. 1975.

(d) An attending physician acts in good faith if the physician has no actual knowledge that a patient's decision to withhold resuscitative measures has been revoked and:

1. The attending physician is in possession of a State Board of Health Alabama Portable Physician Do Not Attempt Resuscitation Order completed and executed by the patient, if the patient is competent; or

2. The patient has previously executed a living will or advance directive for health care with instructions that no life sustaining treatment be provided, and the living will or advance directive for health care have previously been made part of the patient's medical record; or

3. The patient's health care proxy or attorney-in-fact directs the attending physician in writing that resuscitative measures be withheld, and a copy of the proxy or attorney-in-fact designation has previously been made part of the patient's medical record; or

4. The patient's surrogate directs the attending physician in writing that resuscitative measures be withheld, and a copy of the completed and executed State Board of Health Certification of Health Care Decision Surrogate form has been made part of the patient's medical record.

(e) Any verbal DNAR order must be directly issued by the attending physician to a health care provider who is physically located at the same healthcare facility as the patient.

(f) The attending physician shall enter a completed portable DNAR form as required by the State Board of Health or a facility specific DNAR order in the patient's medical record within 72 hours of issuing the verbal DNAR order for the verbal DNAR order to remain valid.

(g) When an attending physician issues a verbal DNAR order pursuant to the written direction of a patient's health care proxy, attorney-in-fact, or surrogate, the writing shall be made part of the patient's medical record within 72 hours of the issuance of the verbal DNAR order.

Author: Alabama Board of Medical Examiners
Statutory Authority: Code of Ala. 1975, §§22-8A-4.1(b)(2); 34-24-53; 34-24-53.1.
History: **New Rule:** Published June 28, 2024; effective August 12, 2024.