

APA-1
Revised 4/2018

TRANSMITTAL SHEET FOR
NOTICE OF INTENDED ACTION

Control 540 Department or Agency Alabama State Board of Medical Examiners

Rule No. 540-X-9-.08

Rule Title: 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

 New X Amend Repeal Adopt by Reference

Would the absence of the proposed rule significantly harm or endanger the public health, welfare, or safety? NO

Is there a reasonable relationship between the state's police power and the protection of the public health, safety, or welfare? YES

Is there another, less restrictive method of regulation available that could adequately protect the public? NO

Does the proposed rule have the effect of directly or indirectly increasing the costs of any goods or services involved and, if so, to what degree? NO

Is the increase in cost, if any, more harmful to the public than the harm that might result from the absence of the proposed rule? NO

Are all facets of the rulemaking process designed solely for the purpose of, and so they have, as their primary effect, the protection of the public? YES

Does the proposed action relate to or affect in any manner any litigation which the agency is a party to concerning the subject matter of the proposed rule? NO

Does the proposed rule have an economic impact? NO

If the proposed rule has an economic impact, the proposed rule is required to be accompanied by a fiscal note prepared in accordance with subsection (f) of Section 41-22-23, Code of Alabama 1975.

Certification of Authorized Official

I certify that the attached proposed rule has been proposed in full compliance with the requirements of Chapter 22, Title 41, Code of Alabama 1975, and that it conforms to all applicable filing requirements of the Administrative Procedure Division of the Legislative Services Agency.

Signature of certifying officer William Justice

Date: December 10, 2020

REC'D & FILED
DEC 14 2020

LEGISLATIVE SVC AGENCY

APA-2

ALABAMA STATE BOARD OF MEDICAL EXAMINERS

NOTICE OF INTENDED ACTION

AGENCY NAME: Alabama Board of Medical Examiners

RULE NO. & TITLE: 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


INTENDED ACTION: To amend the rule

SUBSTANCE OF PROPOSED ACTION: Amend rule regarding chaperone requirement and adding clarifying language.

TIME, PLACE, MANNER OF PRESENTING VIEWS: All interested persons may submit data, views, or arguments concerning the proposed new rule(s) and regulation(s) in writing to: Carla H. Kruger, Office of the General Counsel, Alabama State Board of Medical Examiners, Post Office Box 946, Montgomery, Alabama 36101-0946, by mail or in person between the hours of 8:30 a.m. and 4:30 p.m., Monday through Friday, until and including February 4, 2021. Persons wishing to obtain copies of the text of this rule and submit data, views, or comments or arguments orally should contact Carla H. Kruger by telephone (334-242-4116) during said period in order to set up an appointment for a hearing respecting such oral data, views, or arguments. Copies can also be obtained at the Board's web site, www.albme.org.

FINAL DATE FOR COMMENT AND COMPLETION OF NOTICE: February 4, 2021

CONTACT PERSON AT AGENCY: Carla H. Kruger



(Signature of officer authorized
to promulgate and adopt
rules or his or her deputy)

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 often 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~~ are ~~each~~ both charged with responsibilities for protecting the public against unprofessional actions of physicians and osteopaths licensed to practice medicine in Alabama. Immoral, unprofessional or dishonorable conduct is a grounds for disciplining the license of a physician or osteopath under the provisions of Ala. Code § 34-24-360(2), ~~Code of Alabama 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~~ shall have a chaperone present during ~~the examination of any sensitive parts of the body~~ all physical exams or procedures involving the breasts or genitals, irrespective of the genders of the physician and patient, for the protection of both the patient and the physician. For all other physical examinations and procedures, a physician should, but is not required to have a chaperone present. A physician should refuse to examine ~~sensitive~~ any parts 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 Defined. Sexual contact with a patient is sexual misconduct and is unprofessional conduct within the meaning of Ala. Code § 34-24-360(2), ~~Code of Alabama 1975, as amended~~.

(17) Sexual Contact Defined. For purposes of Ala. Code § 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~~ 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 paragraph (17)(a)1~~ above and which:

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

2. ~~Misuses~~ 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 Defined. Verbal or physical behavior that is required for medically recognized diagnostic or treatment purposes. ~~When~~ When such behavior is performed in a manner that meets the standard of care appropriate to the diagnostic or treatment situation, it shall not be considered as prohibited sexual contact.

(19) Patient Defined. 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 Defined. 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~~ing the professional relationship; the length of time that has passed since the patient's last visit to the physician; the length of the professional relationship; the extent to which the patient has confided personal or private information to the physician; the nature of the patient's medical problem; the degree of emotional dependence that the patient has on a physician; the extent of the physician's general knowledge about the patient.

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

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

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

(22) Impairment. In some 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 Ala. Code § 34-24-360(19)a.

(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 Ala. Code § 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: Alabama Board of Medical Examiners.

Statutory Authority: § 34-24-53

History: New Rule 540-X-9-.08 has been approved for publication by the Board of Medical Examiners which provides guidelines and makes suggestions to avoid claims of sexual misconduct. This rule is also being published by the Medical Licensure Commission in conjunction with the Board of Medical Examiners.

Filed for Publication: October 18, 1996. Comment Period Ends: Friday, December 6, 1996. Amended/Approved: November 19, 2020.