

APA-3
Revised 1/2018

**CERTIFICATION OF ADMINISTRATIVE RULES
FILED WITH THE LEGISLATIVE SERVICES AGENCY
OTHNI LATHRAM, DIRECTOR**

(Pursuant to Code of Alabama 1975, §41-22-6, as amended).

I certify that the attached is/are correct copy/copies of rule/s as promulgated and adopted on the 17th day of February, 2021, and filed with the agency secretary on the 17th day of February, 2020.

AGENCY NAME: Alabama State Board of Medical Examiners

X Amendment New Repeal (Mark appropriate space)

Rule No. 540-X-9-.08

(If amended rule, give specific paragraph, subparagraphs, etc., being amended)

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

ACTION TAKEN: State whether the rule was adopted with or without changes from the proposal due to written or oral comments:

Adopted without changes from the proposal. No comments received.

NOTICE OF INTENDED ACTION PUBLISHED IN VOLUME XXXIX, ISSUE NO. 3
AAM, DATED DECEMBER 31, 2020.


Statutory Rulemaking Authority: Ala. Code §§ 34-24-53 and 34-24-53.1

REC'D & FILED

(Date Filed)
(For LRS Use Only)

FEB 18 2021

LEGISLATIVE SVC AGENCY



Certifying Officer or his or her
Deputy

NOTE: In accordance with §41 22 6(b), as amended, a proposed rule is required to be certified within 90 days after completion of the notice.

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 are 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 ground for disciplining the license of a physician or osteopath under the provisions of Ala. Code § 34-24-360(2). A physician's sexual contact with a patient is a violation of this statute.

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

(7) The Board and the Commission remind physicians of their statutory duty to

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

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

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

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

(11) A physician shall have a chaperone present during 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 any 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 Defined. Sexual contact with a patient is sexual misconduct and is unprofessional conduct within the meaning of Ala. Code § 34-24-360(2).

(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 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 paragraph (17)(a)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 Defined.** 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, 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 terminating 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. **Certified Rule Filed:** February 18, 2021. **Effective Date:** April 12, 2021.