

# ARKANSAS REGISTER



## Proposed Rule Cover Sheet

Secretary of State  
John Thurston  
500 Woodlane Street, Suite 026  
Little Rock, Arkansas 72201-1094  
(501) 682-5070  
[www.sos.arkansas.gov](http://www.sos.arkansas.gov)



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Name of Department Department of Health

Agency or Division Name Division of Health Related Boards and Commissions/Arkansas State Medical Board

Other Subdivision or Department, If Applicable \_\_\_\_\_

Previous Agency Name, If Applicable \_\_\_\_\_

Contact Person Amy Embry, Executive Director

Contact E-mail Amy.Embry@armedicalboard.org

Contact Phone 501-296-1802

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Name of Rule Proposed New Rule 46 - Minor Aesthetic/Cosmetic Surgical Procedures Guideline

Newspaper Name Daily Record

Date of Publishing Unknown at this time

Final Date for Public Comment Unknown at this time

Location and Time of Public Meeting 1401 West Capitol Avenue, Suite 340, Little Rock, AR 72201

**QUESTIONNAIRE FOR FILING PROPOSED RULES AND REGULATIONS  
WITH THE ARKANSAS LEGISLATIVE COUNCIL**

DEPARTMENT/AGENCY Department of Health  
DIVISION Division of Health Related Boards and Commissions/Arkansas State Medical Board  
DIVISION DIRECTOR Matt Gilmore, ADH Boards and Commissions  
CONTACT PERSON Amy Embry, Director, Arkansas State Medical Board  
ADDRESS 1401 West Capitol Avenue, Suite 340, Little Rock, AR 72201  
PHONE NO. 501-296-1802 FAX NO. 501-296-1805 E-MAIL Amy.embry@armedicalboard.or  
NAME OF PRESENTER AT COMMITTEE MEETING Kevin M. O'Dwyer, Attorney  
PRESENTER E-MAIL kodwyer@htolaw.com

**INSTRUCTIONS**

- A. Please make copies of this form for future use.  
B. Please answer each question **completely** using layman terms. You may use additional sheets, if necessary.  
C. If you have a method of indexing your rules, please give the proposed citation after "Short Title of this Rule" below.  
D. Submit two (2) copies of this questionnaire and financial impact statement attached to the front of two (2) copies of the proposed rule and required documents. Mail or deliver to:

Jessica Sutton  
Administrative Rules Review Section  
Arkansas Legislative Council  
Bureau of Legislative Research  
One Capitol Mall, 5<sup>th</sup> Floor  
Little Rock, AR 72201

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1. What is the short title of this rule? Rule 46 – Minor Aesthetic/Cosmetic Surgical Procedures
2. What is the subject of the proposed rule? Minor Aesthetic/Cosmetic Surgical Procedures
3. Is this rule required to comply with a federal statute, rule, or regulation? Yes ☐ No ☒  
If yes, please provide the federal rule, regulation, and/or statute citation. \_\_\_\_\_
4. Was this rule filed under the emergency provisions of the Administrative Procedure Act?  
Yes ☐ No ☒  
If yes, what is the effective date of the emergency rule? N/A
- When does the emergency rule expire? N/A

Will this emergency rule be promulgated under the permanent provisions of the Administrative Procedure Act? -

Yes ☐ No ☒



5. Is this a new rule? Yes ☒ No

If yes, please provide a brief summary explaining the regulation. To add new regulation regarding physician assistants.

Does this repeal an existing rule? Yes ☐ No ☒

If yes, a copy of the repealed rule is to be included with your completed questionnaire. If it is being replaced with a new rule, please provide a summary of the rule giving an explanation of what the rule does. \_\_\_\_\_

Is this an amendment to an existing rule? Yes ☐ No ☒

If yes, please attach a mark-up showing the changes in the existing rule and a summary of the substantive changes. **Note: The summary should explain what the amendment does, and the mark-up copy should be clearly labeled "mark-up."**

6. Cite the state law that grants the authority for this proposed rule? If codified, please give the Arkansas Code citation. ACA §17-95-202

7. What is the purpose of this proposed rule? Why is it necessary? To add new regulation regarding physician assistants.

8. Please provide the address where this rule is publicly accessible in electronic form via the Internet as required by Arkansas Code § 25-19-108(b). www.armedicalboard.org

9. Will a public hearing be held on this proposed rule? Yes ☒ No ☐

If yes, please complete the following:

Date: June 4, 2020

Time: 8:50 a.m.

Place: 1401 W. Capitol Ave. Suite 340,  
Little Rock AR 72201

10. When does the public comment period expire for permanent promulgation? (Must provide a date.)

June 4, 2020

11. What is the proposed effective date of this proposed rule? (Must provide a date.)

Unknown

12. Please provide a copy of the notice required under Ark. Code Ann. § 25-15-204(a), and proof of the publication of said notice. Proof of publication will be provided as soon as it is received.

13. Please provide proof of filing the rule with the Secretary of State and the Arkansas State Library as required pursuant to Ark. Code Ann. § 25-15-204(e). Will provide after approval by Governor.

14. Please give the names of persons, groups, or organizations that you expect to comment on these rules? Please provide their position (for or against) if known. Arkansas Medical Society.

## FINANCIAL IMPACT STATEMENT

### PLEASE ANSWER ALL QUESTIONS COMPLETELY

**DEPARTMENT** Department of Health  
**DIVISION** Division of Health Related Boards and Commissions/Arkansas State Medical Board  
**PERSON COMPLETING THIS STATEMENT** Kevin M. O'Dwyer, Attorney  
**TELEPHONE** 501-372-4144 **FAX** 501-372-7480 **EMAIL:** kodwyer@htolaw.com

To comply with Ark. Code Ann. § 25-15-204(e), please complete the following Financial Impact Statement and file two copies with the questionnaire and proposed rules.

**SHORT TITLE OF THIS RULE** Rue 46 – Minor Aesthetic/Cosmetic Surgical Procedures Guideline

1. Does this proposed, amended, or repealed rule have a financial impact? Yes ☐ No ☒
2. Is the rule based on the best reasonably obtainable scientific, technical, economic, or other evidence and information available concerning the need for, consequences of, and alternatives to the rule? Yes ☒ No ☐
3. In consideration of the alternatives to this rule, was this rule determined by the agency to be the least costly rule considered? Yes ☒ No ☐

If an agency is proposing a more costly rule, please state the following:

(a) How the additional benefits of the more costly rule justify its additional cost;  
N/A

(b) The reason for adoption of the more costly rule;  
N/A

(c) Whether the more costly rule is based on the interests of public health, safety, or welfare, and if so, please explain; and;  
N/A

(d) Whether the reason is within the scope of the agency's statutory authority; and if so, please explain.  
N/A

4. If the purpose of this rule is to implement a federal rule or regulation, please state the following:

(a) What is the cost to implement the federal rule or regulation?

#### Current Fiscal Year

General Revenue	<u>N/A</u>
Federal Funds	<u></u>
Cash Funds	<u></u>
Special Revenue	<u></u>
Other (Identify)	<u></u>
Total	<u></u>

#### Next Fiscal Year

General Revenue	<u>N/A</u>
Federal Funds	<u></u>
Cash Funds	<u></u>
Special Revenue	<u></u>
Other (Identify)	<u></u>
Total	<u></u>



(b) What is the additional cost of the state rule?

**Current Fiscal Year**

General Revenue N/A  
Federal Funds \_\_\_\_\_  
Cash Funds \_\_\_\_\_  
Special Revenue \_\_\_\_\_  
Other (Identify) \_\_\_\_\_  
  
Total \_\_\_\_\_

**Next Fiscal Year**

General Revenue N/A  
Federal Funds \_\_\_\_\_  
Cash Funds \_\_\_\_\_  
Special Revenue \_\_\_\_\_  
Other (Identify) \_\_\_\_\_  
  
Total \_\_\_\_\_

5. What is the total estimated cost by fiscal year to any private individual, entity and business subject to the proposed, amended, or repealed rule? Identify the entity(ies) subject to the proposed rule and explain how they are affected.

**Current Fiscal Year**

\$ N/A

**Next Fiscal Year**

\$ N/A

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6. What is the total estimated cost by fiscal year to state, county, and municipal government to implement this rule? Is this the cost of the program or grant? Please explain how the government is affected.

**Current Fiscal Year**

\$ N/A

**Next Fiscal Year**

\$ N/A

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7. With respect to the agency's answers to Questions #5 and #6 above, is there a new or increased cost or obligation of at least one hundred thousand dollars (\$100,000) per year to a private individual, private entity, private business, state government, county government, municipal government, or to two (2) or more of those entities combined?

Yes ☐ No ☒

If YES, the agency is required by Ark. Code Ann. § 25-15-204(e)(4) to file written findings at the time of filing the financial impact statement. The written findings shall be filed simultaneously with the financial impact statement and shall include, without limitation, the following:

- (1) a statement of the rule's basis and purpose;
- (2) the problem the agency seeks to address with the proposed rule, including a statement of whether a rule is required by statute;
- (3) a description of the factual evidence that:
  - (a) justifies the agency's need for the proposed rule; and
  - (b) describes how the benefits of the rule meet the relevant statutory objectives and justify the rule's costs;

- (4) a list of less costly alternatives to the proposed rule and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;
- (5) a list of alternatives to the proposed rule that were suggested as a result of public comment and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;
- (6) a statement of whether existing rules have created or contributed to the problem the agency seeks to address with the proposed rule and, if existing rules have created or contributed to the problem, an explanation of why amendment or repeal of the rule creating or contributing to the problem is not a sufficient response; and
- (7) an agency plan for review of the rule no less than every ten (10) years to determine whether, based upon the evidence, there remains a need for the rule including, without limitation, whether:
  - (a) the rule is achieving the statutory objectives;
  - (b) the benefits of the rule continue to justify its costs; and
  - (c) the rule can be amended or repealed to reduce costs while continuing to achieve the statutory objectives.

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N/A

(b) The reason for adoption of the more costly rule;  
N/A

(c) Whether the more costly rule is based on the interests of public health, safety, or welfare, and if so, please explain; and;  
N/A

(d) Whether the reason is within the scope of the agency's statutory authority; and if so, please explain.  
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Other (Identify)	<u></u>
Total	<u></u>

**Next Fiscal Year**

General Revenue	<u>N/A</u>
Federal Funds	<u></u>
Cash Funds	<u></u>
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Other (Identify)	<u></u>
Total	<u></u>

- (b) What is the additional cost of the state rule?

**Current Fiscal Year**

General Revenue N/A  
Federal Funds \_\_\_\_\_  
Cash Funds \_\_\_\_\_  
Special Revenue \_\_\_\_\_  
Other (Identify) \_\_\_\_\_  
Total \_\_\_\_\_

**Next Fiscal Year**

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\$ N/A

**Next Fiscal Year**

\$ N/A

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**Next Fiscal Year**

\$ N/A

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Yes ☐ No ☒

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  - (c) the rule can be amended or repealed to reduce costs while continuing to achieve the statutory objectives.



## PROPOSED

### RULE 46 - MINOR AESTHETIC/COSMETIC SURGICAL PROCEDURES GUIDELINE

Pursuant to Ark. Code Ann. §17-95-202 the practice of medicine involves the use of surgery for the diagnosing and treatment of human disease, ailment, injury, deformity, or other physical conditions. Surgery is further defined by this board as any procedure in which human tissue is cut, altered, or otherwise infiltrated by mechanical means.

Minor aesthetic/cosmetic surgical procedures are defined by this board as those surgical procedures, which cut, alter or infiltrate into and or below the dermis to include soft tissue fillers, which are permanent or temporary in nature, chemical peels, as well as the infiltration of deeper subcutaneous tissues with neuromodulators for aesthetic or cosmetic purposes. The use of Lasers, light based systems, and devices which affect the deep subcutaneous tissues and subcutaneous fat layers are addressed in Rule number 22.

The delegation of minor aesthetic/cosmetic surgical procedures must comply with the following protocol:

1. The physician must show sufficient training and experience in the procedures being delegated. This may include but is not limited to Board certification in core specialties of Cosmetic, Plastic, Facial Plastic, Dermatology and Oculoplastics. Further, documentation of training and experience shall include but is not limited to:
  - a. Anatomy, physiology, and pathophysiology regarding the integumentary system as well as systems specific to the procedures being performed.
  - b. Proper technique for each procedure delegated.
  - c. Proper knowledge of client selection, history taking, physical assessment, indications and contraindications for treatment.
  - d. Pharmacology including drug actions and interactions, side effects, contraindications, and untoward effects.
  - e. Proper selection, maintenance and utilization of equipment.
  - f. Realistic and expected outcomes of the procedure(s).
  - g. Potential complications and side effects of the procedure(s).
  - h. Management of complications or adverse reactions.
  - i. Infection control and safety precautions.
  - j. Documentation of supervised clinical experience
  - k. Validation of competency
2. The physician must personally diagnose and document the condition of the patient, prescribe the treatment and procedure to be performed and is responsible for the acts of the employee performing the delegated minor aesthetic/cosmetic surgical procedure.
3. The physician may delegate the minor aesthetic/cosmetic surgical procedures to properly trained non-physician personnel who hold an Arkansas State license or privilege to practice as a Registered Nurse (RN),

Advanced Practice Nurse (APRN) Physician Assistant (PA) and/or other personnel whose practice act allows the performance of these procedures and can document experience and training in aesthetic/cosmetic surgery practice. Physicians may delegate to unlicensed personnel only those procedures that comply with the provisions of rule 31 act 472 of 2009. Delegation of these procedures to a Licensed practical nurse (LPN) or licensed aesthetician is prohibited.

4. The physician must be available at the time the minor surgical procedure is performed and must be available to respond to the patient should there be any complications from the minor aesthetic/cosmetic surgical procedure.
5. All non-Physician personnel to whom minor aesthetic/cosmetic surgical procedures are delegated must have a legal written agreement or be contracted with a physician; or be an employee of the physician and /or a physician owned business as described in regulation 4-29-301 "Medical Corporation Act."
6. Collaboration with Advanced Practice Registered Nurse (APRN)
  - a. All Physicians collaborating with an (APRN) to provide minor aesthetic/cosmetic procedures must be board certified in one of the core specialties to include Cosmetic, Plastic, Facial Plastics, Dermatology and Oculoplastics or must show sufficient training and clinical experience in performing the procedures to be performed by the APRN.
  - b. Physicians may only collaborate to provide minor aesthetic/cosmetic surgical procedures with an (APRN) who has Completed Board Certification by the International Society of Aesthetic Nurses or meets the equivalent requirements for board certification or has completed core specialty training in aesthetic medicine as defined by the Arkansas State Board of Nursing, unless specifically authorized by their respective practice acts or rules.

The physician who does not comply with the above-stated protocol when performing minor surgical procedures will be considered as exhibiting gross negligence, subjecting the physician to a disciplinary hearing before the Board pursuant to the Medical Practices act and the Rules of the Board.

Ark. Code. Ann. §17-95-409(a)(2)(G) states that the Board may revoke an existing license, or suspend the same, if a physician has committed unprofessional conduct, further defined as committing gross negligence or ignorant malpractice. The board finds that a physician has; in fact, committed gross negligence if the physician or physicians delegated personnel performs minor surgical procedures on patients without the benefit of appropriate clinical training and experience.



## RULE 46 - MINOR AESTHETIC/COSMETIC SURGICAL PROCEDURES GUIDELINE

Pursuant to Ark. Code Ann. §17-95-202 the practice of medicine involves the use of surgery for the diagnosing and treatment of human disease, ailment, injury, deformity, or other physical conditions. Surgery is further defined by this board as any procedure in which human tissue is cut, altered, or otherwise infiltrated by mechanical means.

Minor aesthetic/cosmetic surgical procedures are defined by this board as those surgical procedures, which cut, alter or infiltrate into and or below the dermis to include soft tissue fillers, which are permanent or temporary in nature, chemical peels, as well as the infiltration of deeper subcutaneous tissues with neuromodulators for aesthetic or cosmetic purposes. The use of Lasers, light based systems, and devices which affect the deep subcutaneous tissues and subcutaneous fat layers are addressed in Rule number 22.

The delegation of minor aesthetic/cosmetic surgical procedures must comply with the following protocol:

1. The physician must show sufficient training and experience in the procedures being delegated. This may include but is not limited to Board certification in core specialties of Cosmetic, Plastic, Facial Plastic, Dermatology and Oculoplastics. Further, documentation of training and experience shall include but is not limited to:
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  - h. Management of complications or adverse reactions.
  - i. Infection control and safety precautions.
  - j. Documentation of supervised clinical experience
  - k. Validation of competency
2. The physician must personally diagnose and document the condition of the patient, prescribe the treatment and procedure to be performed and is responsible for the acts of the employee performing the delegated minor aesthetic/cosmetic surgical procedure.
3. The physician may delegate the minor aesthetic/cosmetic surgical procedures to properly trained non-physician personnel who hold an Arkansas State license or privilege to practice as a Registered Nurse (RN),



Advanced Practice Nurse (APRN) Physician Assistant (PA) and/or other personnel whose practice act allows the performance of these procedures and can document experience and training in aesthetic/cosmetic surgery practice. Physicians may delegate to unlicensed personnel only those procedures that comply with the provisions of rule 31 act 472 of 2009. Delegation of these procedures to a Licensed practical nurse (LPN) or licensed aesthetician is prohibited.

4. The physician must be available at the time the minor surgical procedure is performed and must be available to respond to the patient should there be any complications from the minor aesthetic/cosmetic surgical procedure.
5. All non-Physician personnel to whom minor aesthetic/cosmetic surgical procedures are delegated must have a legal written agreement or be contracted with a physician; or be an employee of the physician and /or a physician owned business as described in regulation 4-29-301 "Medical Corporation Act."
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## **RULE 46**

### **Summary**

Proposed Rule 46 sets out guidelines for minor aesthetic/cosmetic surgical procedures.

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