

ARKANSAS REGISTER

Transmittal Sheet

Use only for **FINAL** and **EMERGENCY RULES**



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For Office

Use Only:

Effective Date _____ Code Number _____

Name of Agency Arkansas Department of Health

Department State Medical Board

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Statutory Authority for Promulgating Rules 17-95-303

Rule Title: Act 990 of 2021 - Amend the Medical Practices Act by changing "regulation" to "rule" and remove "immoral" and "moral turpitude"

Intended Effective Date
(Check One)

Date

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Electronic Copy of Rule e-mailed from: (Required under ACA 25-15-218)

Amy Embry amy.embry@armedicalboard.org

Contact Person

E-mail Address

Date

CERTIFICATION OF AUTHORIZED OFFICER

I Hereby Certify That The Attached Rules Were Adopted
In Compliance with the Arkansas Administrative Act. (ACA 25-15-201 et. seq.)

Signature

501-296-1802

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Phone Number

E-mail Address

Executive Director

Title

6/23/2022

Date

RULE NO. 1

1. B. The Board meets at least quarterly to examine applicants for licensure, hear complaints, and transact other business that comes before it. The dates for quarterly or special meetings shall be determined by the Board. The day to day business of the Board is conducted by the Executive Director. All subsequent Rules referring or using the word(s) executive secretary and/or secretary are hereby changed to Executive Director.

2. A. The Board holds hearings on licensees pursuant to the Administrative Procedure Act. Upon receipt of information indicating a possible violation of a licensing statute, the Board or its designee may investigate the information and report to the full board. If warranted, a complaint and notice of hearing will be issued informing the licensee of the alleged statutory or regulatory violation, the factual basis of the allegation, and the date, time, and place of the hearing. This complaint and notice of hearing shall be sent at least thirty (30) days in advance of the scheduled hearing date and shall contain a copy of this and any other pertinent rule.

B. If the Board receives information indicating that the public health, safety, or welfare requires emergency action, the Board may suspend a person's license pending proceedings for revocation or other action. An emergency order of suspension will be issued informing the licensee of the facts or conduct warranting the suspension, and the date, time, and place of the hearing. This emergency order shall contain a copy of this and any other pertinent rule.

RULE NO. 2

“Malpractice” includes any professional misconduct, unreasonable lack of skill or fidelity in professional duties, evil practice, or illegal conduct in the practice of medicine and surgery.

1. Violation of laws, rules, and procedures governing payment to physicians for medical services for eligible public assistance recipients and/or other third party payment programs.

h. The definition of “excessive” as contained in this Rule shall not apply to prescriptions written for a patient in hospice care, in active cancer treatment, palliative care, end-of-life care, nursing home, assisted living or a patient while in an inpatient setting or in an emergency situation.

6. A. d. The physician/physician assistant will be licensed appropriately in Arkansas and have a valid controlled substance registration and comply with the Federal and State rules for the issuing of controlled substances and prescriptions, more especially the regulations as set forth in 21 Code of Federal Regulations Section 1300, et sequence.

6. B. c. i. For a patient with chronic nonmalignant pain, a prescriber, at a minimum and in addition to any additional requirements of the Arkansas State Medical Board, shall:

1. Check the prescriptive history of the patient on the Prescription Drug Monitoring Program pursuant to Rule 41;

2. Follow the specific requirements of Rule 19 and any and all other regulations of the Arkansas State Medical Board pertaining to prescribing.

ii. For prescribers licensed after December 31, 2015, within the first two (2) years of being granted a license in the state, a prescriber shall obtain a minimum of three (3) hours of prescribing education approved by the Arkansas State Medical Board. The education approved by the board under this section shall include:

1. Options for online and in-person programs; and

2. Information on prescribing rules, τ and laws that apply to individuals who are licensed in the state.

3. Information and instructions on prescribing controlled substances, record keeping and maintaining safe and professional boundaries.

7. A licensed physician/physician assistant engaging in sexual contact, sexual relations or romantic relationship with a patient concurrent with the physician/physician assistant-patient relationship; or a licensed physician/physician assistant engaging in the same conduct with a former patient, if the physician/physician assistant uses or exploits trust, knowledge, emotions or influence derived from the previous professional relationship, shows a lack of fidelity of professional duties, thus exhibiting gross negligence and

ignorant malpractice. A patient's consent to, initiation of, or participation in sexual relationship or conduct with a physician/physician assistant does not change the nature of the conduct nor the prohibition.

8. A. For purposes of this rule, a proper Patient/Provider relationship, at a minimum requires that:

B. For the purposes of this rule, a proper Patient/Provider relationship is deemed to exist in the following situations:

C. Exceptions -- Recognizing a Provider's duty to adhere to the applicable standard of care, the following situations are hereby excluded from the requirement of this rule:

1. Emergency situations where the life or health of the patient is in danger or imminent danger.

2. Simply providing information of a generic nature not meant to be specific to an individual patient.

3. This Rule does not apply to prescriptions written or medications issued for use in expedited heterosexual partner therapy for the sexually transmitted diseases of gonorrhea and/or chlamydia.

4. This Rule does not apply to the administration of vaccines containing tetanus toxoid (e.g., DTaP, DTP, DT, Tdap, Td, or TT) or inactive influenza vaccines.

RULE NO. 3: UNRESTRICTED LICENSURE FOR GRADUATES OF FOREIGN MEDICAL SCHOOLS

Unrestricted license may now be applied for by graduates of foreign medical schools provided they can comply with the following requirements and meet the approval of the Board of Medical Examiners;

1. Be twenty-one years of age.

2. Demonstrated in personal interview the ability to read, write, and speak English fluently; and also demonstrate adequate training and ability sufficient to permit the practice of medicine in accordance with accepted medical practice in the State of Arkansas.

3. Present documented evidence that he or she served three years as an intern or resident in an accredited postgraduate medical education program in the United States; or, completed one year as an intern or resident in an accredited post-graduate medical program in the United States and be currently enrolled in an accredited post-graduate medical program in Arkansas. The Applicant should further provide a Letter of Recommendation from the Intern or Residency Director, outlining the Applicant Physician's competence in the practice of medicine and his ability to appropriately interact with patients and other medical staff

4. Provide indisputable identification.

5. Present a Standard ECFMG (Educational Commission for Foreign Medical Graduates Exam) Certificate.

6. A. Present proof of successful completion of Steps 1, 2 and 3 of the USMLE (United States Medical Licensing Exam).

RULE NO. 4: RULES GOVERNING PHYSICIAN'S ASSISTANTS
REPEALED: October 7, 1999; REPLACED BY RULE 24; ADOPTED FEBRUARY 4,
2000.

RULE NO. 5: RULES FOR PHYSICAL THERAPIST ASSISTANTS AND PHYSICAL
THERAPIST ASSISTANTS TRAINEE

RULE NO. 6: RULES GOVERNING THE LICENSING AND PRACTICE OF OCCUPATIONAL THERAPISTS

3.1 BY EXAMINATION. The Board shall register as an occupational therapist or occupational therapy assistant and shall issue a license to any person who satisfactorily passes the said examination provided for in these Rules, and who otherwise meets the requirements for qualification contained herein and pays a fee as determined by the Board.

3.3 (c)(8) Therapists receiving a new license will not be required to submit for continuing education credit during the first partial year of licensure. Failure to submit verification of continuing education for renewal will result in issuance of a "failure to comply" notification. If the continuing education submitted for credit is deemed by the Committee to be unrelated to the profession of occupational therapy, the applicant will be given three (3) months to earn and submit replacement hours. These hours will be considered as replacement hours and cannot be counted during the next licensure period. If the applicant feels the continuing education credit has been denied inappropriately, the applicant may appeal the issue to the Board for determination within thirty (30) days of the date of receiving notice from the Committee. The Board will be responsible for maintaining all of the records involved in the continuing education requirements set forth in this rule. The re-registration fee and proof of continuing education completed, as set forth above, shall be presented to the Board and the Committee before or during the birth month of the license holder each year. Failure to re-register and comply with the continuing education requirements by the last day of the birth month of the license holder of that year shall cause the license of the occupational therapist or occupational therapy assistant in question to automatically expire. This requirement becomes effective 1993 with the first submission of continuing education credits being required in January of 1994.

RULE NO. 7: RULES GOVERNING THE PRESCRIBING OF AMPHETAMINES

The ASMB believes it is prudent to provide prescribing guidelines to help ensure the safety of patients in the state of Arkansas. Therefore, in addition to the requirement that all prescriptions for stimulants comply with both state and federal laws, this rule will also require the following:

Violations of this rule may be interpreted by the Board as the physician exhibiting gross negligence or ignorant malpractice and shall subject the physician to all penalties provided by Arkansas Code Ann. § 17-95-410.

RULE NO. 8

RULE NO. 9

RULE NO. 10: RULES GOVERNING THE LICENSING AND PRACTICE OF
RESPIRATORY CARE PRACTITIONERS

3.7 REFUSAL, REVOCATION, AND/OR SUSPENSION OF LICENSE.

(c) Who is, in the judgment of the Board, guilty of unprofessional conduct;

(d) Who has been convicted of any crime listed in A.C.A. §17-3-102;

RULE NO. 11

RULE NO. 12

4. Violation of the provision of Act 515 of 1983 or violations of these shall constitute "unprofessional conduct" and shall subject the violator to disciplinary action as provided by Ark. Code Ann. 17-95-409.

RULE NO. 13

WHEREAS, the Arkansas State Medical Board is vested with discretion (pursuant to Arkansas Code Annotated § 17-95-405) to issue a license to practice medicine to a physician who has been issued a license to practice medicine in another state, "whose requirements for licensure are equal to those established by the State of Arkansas" without requiring further examination; and in order to establish objective criteria of equivalency in licensure requirements, the Board hereby finds that all applicants for licensure who were graduated from an American or Canadian medical school prior to 1975 and who otherwise meet all other requirements for licensure in this State shall be determined to meet the requirements for licensure in this State upon presentation of satisfactory evidence that they have successfully completed the examination required by the licensing authority in the State in which they were originally licensed. All applicants for licensure who were graduated from an American or Canadian Medical School subsequent to 1975 shall be required to present evidence of satisfactory completion of one of the examinations listed in Rule 14. Graduates of Canadian medical schools shall be deemed to have satisfied the equivalency requirements by providing proof of completion of the LMCC (Licentiate of the Medical Council of Canada) examination. Graduates of foreign medical schools must comply with the requirements of Rule 3 and Rule 14, regardless of the State in which they are licensed. All applicants must complete and submit such information as the Board requests on its application form for licensure by credentials.

RULE NO. 14

The above combinations of examinations in no way is to imply that one cannot take the entire examination, that being those exams listed in Rule 14-1, and passing the same.

RULE NO. 15: NURSE PRACTITIONER REGISTRATION AND SUPERVISION

RULE NO. 16: PHYSICIANS, HIV, HBV AND HCV

15. A practitioner who is HbeAg seropositive or HIV seropositive, or who otherwise knows or should know that he or she carries and is capable of transmitting HBV, HCV or HIV, shall not thereafter perform or participate directly in an exposure-prone procedure except as provided in this Rule:

18. Reports and information furnished to the Arkansas State Medical Board relative to the HbeAg, HCV or HIV status of a practitioner shall not be deemed to constitute a public record but shall be deemed and maintained by the Board as confidential and privileged as a medical record and shall not be subject to disclosure by means of subpoena in any judicial, administrative or investigative proceeding; provided that the practitioner adheres to the Rules of the Board and is willing to subject himself to counseling, review and monitoring by the Board or its designated agent.

19. Upon the Board learning that a practitioner is HbeAg or HIV seropositive the Board, or the Board's agents, will make contact with said practitioner, review the Rules of the Board and set up a process of monitoring that individual's practice.

20. The monitoring of practitioners and disciplining of practitioners as set forth in this Rule will be reported to the Arkansas Department of Health but will remain confidential.

21. If the practitioner does not comply with this Rule of the board that practitioner will be deemed to have been grossly negligent and committed ignorant malpractice and further that practitioner would be physically incompetent to practice medicine to such an extent as to endanger the public; thus subjecting the practitioner to a disciplinary hearing and possibly sanctioning of his license.

RULE NO. 17: CONTINUING MEDICAL EDUCATION

C. Each year, each physician and physician assistant shall obtain at least one (1) hour of CME credit specifically regarding the prescribing of opioids and benzodiazepines. The one hour may be included in the twenty (20) credit hours per year of continuing medical education required in Paragraph A of this rule and shall not constitute an additional hour of CME per year.

RULE NO. 18: FEE SCHEDULE FOR CENTRALIZED VERIFICATION SERVICE

Pursuant to Ark Code Ann. § 17-95-107(d)(7) provides that the Board may charge credentialing organizations a reasonable fee for the use of credentialing services as established by rule.

RULE NO. 19: PAIN MANAGEMENT PROGRAMS

RULE NO. 20: PRACTICE OF MEDICINE BY A NON-RESIDENT

Pursuant to Ark. Code Ann. 17-95-401 and 17-95-202, the Arkansas State Medical Board sets forth the following Rule concerning the practice of medicine by a non-resident physicians or osteopaths:

RULE NO. 21: ANOREXIANT DRUG GUIDELINES

1. Anorexiant drugs listed on Schedule III and IV under the Uniform Controlled Substances Act shall not be dispensed or prescribed for the treatment of obesity, except in conformity with the following minimal requirements. Schedule II drugs may not be used in the treatment of obesity (see Rule 7 of the Arkansas State Medical Board.)

6. At the time of each return patient visit, the treating physician shall monitor progress of the patient. The patient's weight, blood pressure, pulse, heart and lungs shall be checked. The findings shall be entered in the patient's record. In addition to any side effects of the medications, the physician should perform appropriate exams and tests to monitor the safety of any weight loss. This may include a more detailed dietary questionnaire, serum electrolytes, blood glucose, and other tests deemed appropriate. The Rule for patients who are no longer obese for such period of time as to allow the patient to adapt to a lifestyle change for no more than an additional sixty (60) days.

7. Except as otherwise provided by this rule, Schedule III or IV anorexiant drugs are only recommended for short-term use (e.g. 90 days). However, the treating physician may extend therapy beyond 90 days under the following conditions:

9. The board encourages any physician who prescribes medications pursuant to Rule 21 to make themselves fully aware of the guidelines set forth by the American Heart Association for the management of obesity.

RULE NO. 22: LASER SURGERY GUIDELINES

A physician who does not comply with the above-stated protocol when performing minor 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.

RULE NO. 23: MALPRACTICE REPORTING

Should a physician fail to comply with the terms of Ark. Code Ann. § 17-95-103 and this Rule, then the same, shall be cause for revocation, suspension, or probation or monetary fine as may be determined by the Board; after the bringing of formal charges and notifying the physician as required by the Medical Practices Act and the Administrative Procedure Act.

RULE NO. 25: CENTRALIZED CREDENTIALS VERIFICATION SERVICE ADVISORY
COMMITTEE GUIDELINES

RULE NO. 27: INFORMED CONSENT FOR GASTRIC BYPASS SURGERY

Some or all of the complications listed in this regulation may exist in a patient whether the surgical procedure of gastric bypass is performed on the patient or not. This rule is not meant to imply that in all cases gastric bypass surgery is the only cause of these complications.

RULE NO. 28: EDUCATIONAL LICENSE TO PRACTICE MEDICINE IN THE STATE OF ARKANSAS

Pursuant to Act 497 of the 85th General Assembly of the Regular Session of 2005 and amended by Act 1061 of 2017, the Arkansas State Medical Board is empowered to issue an educational license to applicants who meet the following requirements:

1. Be 21 years of age.
2. Submit a completed application to the Board.
3. Submit a \$400.00 application fee and a \$100.00 licensure-processing fee.
4. Be serving as a faculty member in the State of Arkansas or be affiliated with and under the supervision of a faculty member licensed by the Board at an academic medical program accredited by the Accreditation Council for Graduate Medical Education or the American Osteopathic Association operated in the State of Arkansas and established by and under the control of a medical school accredited by an accrediting agency recognized by the United States Department of Education or approved by the Arkansas Higher Education Coordinating Board to seek accreditation by an accrediting agency recognized by the United States Department of Education.
5. The educational license to practice medicine in the State of Arkansas shall authorize the practice of medicine only within the clinical and educational programs in the State of Arkansas that are established and administered by a medical school accredited by an accrediting agency recognized by the United States Department of Education or approved by the Arkansas Higher Education Coordinating Board to seek accreditation by an accrediting agency recognized by the United States Department of Education.
6. Appear personally before the Arkansas State Medical Board, together with the sponsoring supervising faculty member physician.
7. Present to the Board such information as to what department he or she will be practicing medicine and who will be his/her supervisor.
8. Said educational license will authorize the licensee to practice medicine only within the clinical and educational programs established and administered by the accredited medical school.
9. Said educational license will be valid for a period of one (1) year from the date of issuance.

RULE NO. 29: GOVERNING RADIOLOGY ASSISTANTS/RADIOLOGY PRACTITIONER ASSISTANTS

I. DEFINITIONS

D. Supervising Radiation Practitioner means a radiation practitioner using the services of RA or RPA and is responsible for the professional activities and services of the RA or RPA under these Rules;

E. Alternate Supervising Radiologist means a radiation practitioner other than the supervising radiologist who is responsible for the supervision of RA or RPA for specific procedures in accordance with all Rules applicable to the supervising radiation practitioner;

II. REQUIREMENTS

D. Provide the names and signatures of the supervising and alternate supervising radiation practitioners licensed to practice in the State of Arkansas who agree to supervision of the RA or RPA under the terms of these Rules.

E. Provide a practice-specific document delineating the specific procedures and tasks to be performed by the RA or RPA in each facility utilized, including the level of supervision to be provided by the supervising licensed radiation practitioners.

F. Pay a licensure fee of \$75.00 to the Board with the application for the initial permit. The supervising and alternate supervising radiation practitioners must sign the application form that they have read the Rules and will abide by same, including disciplinary actions pertaining to the RA or RPA and themselves.

G. Pay a renewal fee of \$60.00 with the annual renewal form for a permit and a copy of the practice privileges for each facility where the procedures are performed. The supervising and alternate supervising radiation practitioners must sign the renewal form that they have read the Rules and will abide by same, including disciplinary actions pertaining to the RA or RPA and themselves.

VI. DISCIPLINARY ACTION

An RA and RPA must comply with the Medical Practices Act and the Rules of the Board. Should the Board find that there is probable cause that an RA or RPA has not complied with the Medical Practices Act and the Rules of the Board, the Board will bring charges alleging the wrongful conduct and said disciplinary proceeding will comply with the Administrative Procedure Act of the State of Arkansas. At the conclusion of the disciplinary hearing, if the Board finds that the RA or RPA has violated the medical

Practices Act or the Rules of the Board, the Board may impose one or more of the following sanctions:

D. Supervising radiation practitioners may be subject to disciplinary action by the Board if the RA or RPA violates the Medical Practices Act or the Rules.

RULE NO. 30: COLLABORATIVE PRACTICE REGULATION

The failure of a physician to comply with this Regulation will be considered a violation of the Medical Practices Act and § 17-95-409(a)(2)(P), and subject the physician to the possibility of a disciplinary hearing and the imposition of sanctions against his or her license pursuant to Arkansas law and the Administrative Procedure Act.

RULE NO. 31: PHYSICIAN DELEGATION REGULATION

PHYSICIAN DELEGATION RULE

Act 472 of the 87th General Assembly of the State of Arkansas, as of the year 2009, authorized Physicians to delegate the performance of certain medical practices or tasks to qualified and properly trained employees (commonly referred to as medical assistants), who are not licensed or otherwise specifically authorized by Arkansas law to perform the practice or task. This Regulation will set forth standards to be met and the procedures to be followed by the Physician when delegating to employees.

Definitions for Purposes of this Rule:

1. "Physician" means an individual licensed by the Arkansas State Medical Board to practice medicine in the State of Arkansas.
2. "Medical Practice" means those tasks or functions that are delegated to a qualified and properly trained employee, including the administration of drugs, pursuant to Act 472 of 2009 and this Rule.

Section 1. General Provisions

C. Medical practices delegated pursuant to this statute and rule shall be performed under the physician's supervision.

Section 3. Additional Requirements for Delegating the Administration of Drugs

B. Administration of drugs, delegated pursuant to this Rule, shall only be permissible within the physical boundaries of the delegating physician's offices;

RULE NO. 32: EHTICIAL VIOLATIONS FOR PHYSICANS

RULE NO. 33: NOTIFICATION OF CHANGE OF PRACTICE

RULE 34: REQUIREMENTS OF LICENSED PHYSICIANS IN COMPLETING DEATH CERTIFICATES

RULE NO. 35: OFFICE-BASED SURGERY

A physician shall not perform any office-based surgery, as defined by Act 587 of 2013, unless the office meets the requirements of this rule. Except in an emergency, a physician shall not perform any office-based surgery on and after July 1, 2014, unless they are in compliance with the provisions of this rule.

RULE NO. 37: ARKANSAS GRADUATE REGISTERED PHYSICIAN ACT

II. Qualifications for licensure.

B.2. Has successfully completed Step 1 and Step 2 of the United States Medical Licensing Examination, Comprehensive Osteopathic Medical Licensing Examination, or the equivalent of both steps of an Arkansas State Medical Board-approved medically licensing examination within the two-year period immediately preceding application for licensure as a graduate registered physician, but not more than two (2) years after graduation from a medical school, an allopathic medical college, or an osteopathic medical college; All graduates must have already passed Step 1 and Step 2 of the United States Medical Licensing Examination, Comprehensive Osteopathic Medical Licensing Examination, as well as the COMLEX Cognitive Evaluation and Performance Evaluation prior to graduating from Medical School. Any individual applying for graduate registered physician will be held to the same standards as outlined in Board Rules 3 and 14 with regard to the number of pass attempts for each step.

IX. Violation.

RULE NO. 38: TELEMEDICINE

Requirement for all services provided by Providers using telemedicine:

1. A Patient/Provider relationship must be established in accordance with Rule 2.8 before the delivery of services via telemedicine. Provider is defined as a person licensed by the Arkansas State Medical Board. A patient completing a medical history online and forwarding it to a Provider is not sufficient to establish the relationship, nor does it qualify as store-and-forward technology.

RULE NO. 39: REINSTATEMENT OF ARKANSAS LICENSE

RULE NO. 40: ARKANSAS SURGICAL TECHNOLOGISTS

RULE NO. 41: PRESCRIPTION DRUG MONITORING PROGRAM

A. Pursuant to Arkansas Code Annotated § 20-7-604(d), healthcare providers are encouraged to access or check the information in the controlled substance database before prescribing, dispensing, or administering medications. For purposes of this Rule a healthcare provider is defined as a “physician” or “physician assistant”.

C. This Rule does not apply to the following:

RULE NO. 43: GENETIC COUNSELOR LICENSURE

RULE NO. 44: PRE-LICENSURE CRIMINAL BACKGROUND CHECK

RULE 45: RECIPROCITY
