REGULATION NO. 2

The Arkansas Medical Practices Act authorizes the Arkansas State Medical Board to revoke or suspend the license issued by the Board to practice medicine if the holder thereof has been found guilty of grossly negligent or ignorant malpractice.
"Malpractice" includes any professional misconduct, unreasonable lack of skill or fidelity in professional duties, evil practice, or illegal or immoral conduct in the practice of medicine and surgery.
It shall include, among other things, but not limited to:

1. Violation of laws, regulations, and procedures governing payment to physicians for medical services for eligible public assistance recipients and/or other third party payment programs.
2. Participation in any plan, agreement, or arrangement which compromises the quality or extent of professional medical services or facilities at the expense of the public health, safety, and welfare.
3. Practicing fraud, deceit, or misrepresentation in the practice of medicine.
4. The prescribing of excessive amounts of controlled substances to a patient including the writing of an excessive number of prescriptions for an addicting or potentially harmful drug to a patient.
5. The prescribing of Schedule II controlled substances by a physician for his own use or for the use of his immediate family.
6. *The treatment of pain with dangerous drugs and controlled substances is a legitimate medical purpose when done in the usual course of medical practice. If the provisions as set out below in this Resolution are met, and if all drug treatment is properly documented, the Board will consider such practices as prescribing in a therapeutic manner, and prescribing and practicing medicine in a manner consistent with public health and welfare.

   However, a physician who prescribes **narcotic agents Schedule 2, 3, 4, and 5, excluding Schedule 4 Propoxyphene products and Ultram or Tramadol and to include the schedule drugs Talwin, Stadol, and Nubain, on a long term basis (more than six (6) months) for a patient with pain not associated with malignant or terminal illness will be considered exhibiting gross negligence or ignorant malpractice unless he or she has complied with the following:
   a. The physician will keep accurate records to include the medical history, physical examination, other evaluations and consultations, treatment plan objective, informed consent noted in the patient record, treatment, medications given, agreements with the patient and periodic reviews.
   b. The physician will periodically review the course of schedule drug treatment of the patient and any new information about etiology of the pain. If the patient has not improved, the physician should assess the appropriateness of continued prescribing of scheduled medications or dangerous drugs, or trial of other modalities.
   c. The physician will obtain written informed consent from those patients he or she is concerned may abuse controlled substances and discuss the risks and benefits of the use of controlled substances with the patient, his or her guardian, or authorized representatives.
   d. The physician will be licensed appropriately in Arkansas and have a valid controlled substance registration and comply with the Federal and State regulations 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.
7. A licensed physician engaging in sexual contact, sexual relations or romantic relationship with a patient concurrent with the physician-patient relationship; or a licensed physician engaging in the same conduct with a former patient, if the physician uses or exploits trust, knowledge, emotions or influence derived from the previous professional relationship, shows a lack of fidelity of professional duties and immoral conduct, thus exhibiting gross negligence and ignorant

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

8. **Requiring minimum standards for establishing physician/patient relationships. A physician exhibits gross negligence if he provides and/or recommends any form of treatment, including prescribing legend drugs, without first establishing a proper physician/patient relationship.
   A. For purposes of this regulation, a proper physician/patient relationship, at a minimum requires that:
      1. The physician performs a history and an "in person" physical examination of the patient adequate to establish a diagnosis and identify underlying conditions and/or contraindications to the treatment recommended/provided, OR personally knows the patient and the patient's general health status through an "ongoing" personal or professional relationship, AND THAT
      2. Appropriate follow-up be provided, when necessary, at medically necessary intervals.
   B. For the purposes of this regulation, a proper physician/patient relationship is deemed to exist in the following situations:
      1. When treatment is provided in consultation with, or upon referral by, another physician who has an ongoing relationship with the patient, and who has agreed to supervise the patient's treatment, including follow up care and the use of any prescribed medications.
      2. On-call or cross-coverage situations.
   C. Exceptions – Recognizing a physician's duty to adhere to the applicable standard of care, the following situations are herby excluded from the requirement of this regulation:
      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 Regulation 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 Regulation does not apply to the administration of vaccines containing tetanus toxoid (e.g., DTaP, DTP, DT, Tdap, Td, or TT) or inactive influenza vaccines.

History: Adopted June 17, 1976; Amended March 13, 1997; December 5, 1997; ADOPTED BY EMERGENCY ORDER ON SEPTEMBER 18, 1998 As defined in 21 Code of Federal Regulation; *Approved by the Board following Public Hearing on December 3, 1998; **Adopted April 6, 2001; Amended February 7, 2002; Amended: April 3, 2008; Amended April 12, 2012.

QUESTIONNAIRE FOR FILING PROPOSED RULES AND REGULATIONS WITH THE ARKANSAS LEGISLATIVE COUNCIL AND JOINT INTERIM COMMITTEE

DEPARTMENT/AGENCY Arkansas State Medical Board

DIVISION

DIVISION DIRECTOR Peggy Pryor Cryer, Executive Secretary

CONTACT PERSON Kevin M. O'Dwyer, Attorney

ADDRESS 211 S. Spring Street, Little Rock, AR 72201

PHONE NO. 501-372-4144 **FAX NO.** 501-372-7480 **E-MAIL** kodwyer@htolaw.com

NAME OF PRESENTER AT COMMITTEE MEETING Kevin M. O'Dwyer

PRESENTER E-MAIL

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:

Donna K. Davis
Administrative Rules Review Section
Arkansas Legislative Council
Bureau of Legislative Research
One Capitol Mall, 5th Floor
Little Rock, AR 72201

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1. What is the short title of this rule? Amendment to Regulation 2.8, Governing Physician/Patient Relationships

2. What is the subject of the proposed rule? An amendment to update Regulation due to changes in the definition of physician/patient relationships

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. _____

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. §17-95-303 (2)

7. What is the purpose of this proposed rule? Why is it necessary? There have been changes in the definition of physician/patient relationships

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: 6 August 2015
Time: 8:30 a.m.
Place: Offices of the Arkansas State Medical Board, 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.)
5 August 2015

11. What is the proposed effective date of this proposed rule? (Must provide a date.)
1 September 2015

12. Do you expect this rule to be controversial? Yes ☐ No ☒
If yes, please explain. _____

13. 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; Arkansas Osteopathic Association

FINANCIAL IMPACT STATEMENT

PLEASE ANSWER ALL QUESTIONS COMPLETELY

DEPARTMENT Arkansas State Medical Board
DIVISION
PERSON COMPLETING THIS STATEMENT Kevin M. O'Dwyer, Attorney
TELEPHONE NO. 501-372-4144 **FAX NO.** 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 Amendment to Regulation 2.8, Governing Physician/Patient Relationships

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		**Next Fiscal Year**	
General Revenue	N/A	General Revenue	N/A
Federal Funds		Federal Funds	
Cash Funds		Cash Funds	
Special Revenue		Special Revenue	
Other (Identify)		Other (Identify)	

Total _____ Total _____

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

Current Fiscal Year		**Next Fiscal Year**	
General Revenue	N/A	General Revenue	N/A
Federal Funds		Federal Funds	
Cash Funds		Cash Funds	
Special Revenue		Special Revenue	
Other (Identify)		Other (Identify)	
Total		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	**Next Fiscal Year**
$ _____	$ _____

N/A

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	**Next Fiscal Year**
$ _____	$ _____

N/A

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.