ARKANSAS REGISTER

Transmittal Sheet

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For Office Use Only:

Effective Date _____ Code Number _____

Name of Agency Arkansas State Medical Board

Department _____

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Statutory Authority for Promulgating Rules ACA §17-95-303(2)

Rule Title: An Amendment to Regulation 2.8 Governing Physician/Patient Relationships

Intended Effective Date (Check One)

- ☐ Emergency (ACA 25-15-204)
- ☑ 10 Days After Filing (ACA 25-15-204)
- ☐ Other _____ (Must be more than 10 days after filing date.)

	Date
Legal Notice Published	9/1/15
Final Date for Public Comment	10/01/15
Reviewed by Legislatice Council	11/17/15
Adopted by State Agency	10/01/15

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

Kevin M.O'Dwyer (Contact Person) kodwyer@htolaw.com (E-mail Address) 12/2/15 (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 (Phone Number) support@armedicalboard.org (E-mail Address)

Executive Secretary, Arkansas State Medical Board (Title)

12-2-15 (Date)

Revised 7/2015 to reflect new legislation passed in the 2015 Regular Session (Act 1258). This act changed the effective date from 30 days to 10 days after filing the rule.

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.

A. However, a physician who prescribes **narcotic agents Schedule 2 [except 2.6(e)], 3, 4, and 5, and to include the schedule drugs Talwin, Stadol, and Nubain, 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.

B. Treatment of Chronic Nonmalignant Pain:
   a. "Chronic nonmalignant pain" means pain requiring more than three (3) consecutive months of prescriptions for:
      i. An opioid that is written for more than the equivalent of ninety (90) tablets, each containing five milligrams (5mg) of hydrocodone;
      ii. A morphine equivalent dose of more than fifteen milligrams (15mg) per day; or

iii. In the specific case of tramadol, a dose of fifty milligrams (50mg) per tablet with a quantity of one hundred twenty (120) tablets;

"Opioid" means a drug or medication that relieves pain, including without limitation:

i. Hydrocodone;
ii. Oxycodone;
iii. Morphine;
iv. Codeine;
v. Heroin; and
vi. Fentanyl;

"Prescriber" means a practitioner or other authorized person who prescribes a Schedule II, III, IV, or V controlled substance.

b. Patient evaluation – a patient who is being treated with controlled substances for chronic nonmalignant pain shall be evaluated at least one (1) time every six (6) months by a physician who is licensed by the Arkansas State Medical Board.

c. Prescriber requirements:

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 at least every six (6) months;
2. Have a signed pain contract with the patient that states, at a minimum, the expectations of the prescriber for the behavior of the patient which may include:
   a. A requirement for random urine drug screenings to help ensure that the patient is abiding by the requirements of the contract; and
   b. A requirement for random pill counts to ensure compliance with the prescription.

ii. The requirements of this section shall not apply to a patient:

1. Whose pain medications are being prescribed for a malignant condition:
2. With a terminal condition;
3. Who is a resident of a licensed healthcare facility;
4. Who is enrolled in a hospice program; or
5. Who is in an inpatient or outpatient palliative care program.

iii. 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, regulations, 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.

This section shall apply to all prescribers licensed after December 31, 2015.

C. A prescriber who has been found by the Arkansas State Medical Board to be in violation of a rule or law involving prescription drugs shall be required by the appropriate licensing board to register with the Prescription Drug Monitoring Program and access patient information before writing a prescription for an opioid. The board, in its discretion, may remove this requirement after a period of time if the board deems removal of the requirement appropriate.

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.