

# ARKANSAS REGISTER

## Transmittal Sheet

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



Secretary of State  
**Mark Martin**  
State Capitol, Suite 026  
Little Rock, Arkansas 72201-1094  
(501) 682-3527  
[www.sos.arkansas.gov](http://www.sos.arkansas.gov)



For Office  
Use Only:

Effective Date \_\_\_\_\_ Code Number \_\_\_\_\_

Name of Agency Arkansas State Medical Board

Department \_\_\_\_\_

Contact Kevin M. O'Dwyer E-mail kodwyer@htolaw.com Phone 501-372-4144

Statutory Authority for Promulgating Rules A.C.A. § 17-95-303 Act 754 of 2017

**Rule Title:** Regulation 33- Right to Know

**Intended Effective Date**  
(Check One)

- Emergency (ACA 25-15-204)
- 30 Days After Filing (ACA 25-15-204)
- Other \_\_\_\_\_  
(Must be more than 30 days after filing date.)

	Date
Legal Notice Published	<u>6/27/2017</u>
Final Date for Public Comment	<u>8/3/2017</u>
Reviewed by Legislative Council	<u>9/12/2017</u>
Adopted by State Agency	_____

Electronic Copy of Rule submitted under ACA 25-15-218 by:

Kevin M. O'Dwyer kodwyer@htolaw.com

Contact Person

E-mail Address

Date

### CERTIFICATION OF AUTHORIZED OFFICER

I Hereby Certify That The Attached Rules Were Adopted  
In Compliance with Act 434 of 1967 the Arkansas Administrative Procedures Act. (ACA 25-15-201 et. seq.)

Kevin D. Dhatley  
Signature

501-296-1802

Phone Number

E-mail Address

Executive Director, Arkansas State Medical Board

Title

9/20/17

Date

# Hope, Trice, O'Dwyer & Wilson, P.A.

ATTORNEYS AT LAW  
211 SPRING STREET  
LITTLE ROCK, ARKANSAS 72201  
(501) 372-4144  
Facsimile (501-372-7480)  
[www.htolaw.com](http://www.htolaw.com)

RONALD A. HOPE  
KEVIN M. O'DWYER  
RALPH "WIN" WILSON III  
CHRISTOPHER B. ARNOLD

Direct Dial: 501-313-4203  
Email: [kodwyer@htolaw.com](mailto:kodwyer@htolaw.com)

WILLIAM H. TRICE III (1946-2014)

September 18, 2017

Ms. Donna K. Davis, Committee Staff  
Bureau of Legislative Research  
State Capitol Building, Room 315  
Little Rock, AR 72201

**RE: My Client: Arkansas State Medical Board  
Proposed Regulation 33, Right to Know**

Dear Ms. Davis:

At its meeting on September 12, 2017, the Arkansas State Medical Board approved the proposed Regulation 33 as amended. No-one spoke against the proposal.

Enclosed are the following:

1. Two copies of a mark-up showing the changes to the proposed Regulation
2. Two copies of the approved Regulation 33, Right to Know.

I am also emailing all of this to you at [donna@arkleg.state.ar.us](mailto:donna@arkleg.state.ar.us), and the Secretary of State's office at [statedocs@library.arkansas.gov](mailto:statedocs@library.arkansas.gov).

Respectfully,



Kevin M. O'Dwyer  
Attorney for the Arkansas State Medical Board

KMO/jab

Enclosures

cc: Karen Whatley, Executive Secretary, Arkansas State Medical Board

## REGULATION PROPOSED

### REGULATION 33 NOTIFICATION OF CHANGE OF PRACTICE

#### 1. DEFINITIONS:

- a. "Entity" means any person, organization, or business entity of any type that engages a healthcare provider as an employee, independent contractor, member, or in any other capacity for the practice of medicine as defined in §17-95-202. "Entity" does not include insurance companies, health maintenance organizations, or hospital and medical service corporations;
- b. "Existing Patient" means a person who is seen for a medical diagnosis or treatment, or both, by a healthcare provider within the previous twelve (12) months as evidenced by an entry in the medical record of the patient. The twelve (12) month period described herein shall be calculated by counting back twelve (12) months from the later of the following dates:
  - i. The date that the healthcare provider's relationship with the entity terminates; or
  - ii. The date that the healthcare provider gave the entity notice of a new practice location.
- c. "Healthcare Provider" means a person who is licensed by the Arkansas State Medical Board and has ultimate responsibility and legal liability for the care of the patient.

#### 2. PROHIBITED CONDUCT:

- a. If the healthcare provider has made new practice location information or new contact information available to the entity, an entity or person on behalf of an entity shall not:
  - i. Mislead any patient about the new practice location of a healthcare provider or new contact information of a healthcare provider; or
  - ii. Fail to provide a patient with the new practice location of a healthcare provider or new contact information of a healthcare provider when requested.
- b. When requested by a healthcare provider who is relocating his or her practice, an entity with a relationship with healthcare provider shall within twenty-one (21) calendar days:
  - i. Provide the healthcare provider with a list of the healthcare provider's existing patient names and addresses;
  - ii. Send a notice with the new practice location information to all of the healthcare provider's existing patients after providing the healthcare provider a copy of the proposed notice for review and comment; or
  - iii. Post the new practice location information of the healthcare provider on the website of the entity after providing the healthcare provider a copy of the proposed posting for review and comment. The posting shall remain on the website of the entity for twelve (12) months after the healthcare provider's last day of employment with the entity posting the information.

## REGULATION PROPOSED

- c. Within (2) business days of the request described in this section, the entity shall provide the healthcare provider with a list or schedule of upcoming patient appointments with the healthcare provider and the contact information of the patients.
3. In order to avoid defrauding, misrepresenting or deceiving the public or the Board, a Licensee will inform the Arkansas State Medical Board within 30 days of his or her terminating, retiring from, or relocating his or her practice setting. The Licensee will inform the Board of his or her new location and address and of his or her practice setting if applicable. The Licensee will further inform the Board of where the patient records are stored, who is the custodian of those records and how the patient or other individuals may obtain the records.

## REGULATION PROPOSED

### REGULATION 33 NOTIFICATION OF CHANGE OF PRACTICE

#### 1. DEFINITIONS:

- a. "Entity" means any person, organization, or business entity of any type that engages a healthcare provider as an employee, independent contractor, member, or in any other capacity for the practice of medicine as defined in §17-95-202. "Entity" does not include insurance companies, health maintenance organizations, or hospital and medical service corporations;
- b. "Existing Patient" means a person who is seen for a medical diagnosis or treatment, or both, by a healthcare provider within the previous twelve (12) months as evidenced by an entry in the medical record of the patient. The twelve (12) month period described herein shall be calculated by counting back twelve (12) months from the later of the following dates:
  - i. The date that the healthcare provider's relationship with the entity terminates; or
  - ii. The date that the healthcare provider gave the entity notice of a new practice location.
- c. "Healthcare Provider" means a person who is licensed by the Arkansas State Medical Board and has ultimate responsibility and legal liability for the care of the patient.

#### 2. PROHIBITED CONDUCT:

- a. If the healthcare provider has made new practice location information or new contact information available to the entity, an entity or person on behalf of an entity shall not:
  - i. Mislead any patient about the new practice location of a healthcare provider or new contact information of a healthcare provider; or
  - ii. Fail to provide a patient with the new practice location of a healthcare provider or new contact information of a healthcare provider when requested.
- b. When requested by a healthcare provider who is relocating his or her practice, an entity with a relationship with healthcare provider shall within twenty-one (21) calendar days:
  - i. Provide the healthcare provider with a list of the healthcare provider's existing patient names and addresses;
  - ii. Send a notice with the new practice location information to all of the healthcare provider's existing patients after providing the healthcare provider a copy of the proposed notice for review and comment; or
  - iii. Post the new practice location information of the healthcare provider on the website of the entity after providing the healthcare provider a copy of the proposed posting for review and comment. The posting shall remain on the website of the entity for twelve (12) months after the healthcare provider's last day of employment with the entity posting the information.

## REGULATION PROPOSED

- c. Within (2) business days of the request described in this section, the entity shall provide the healthcare provider with a list or schedule of upcoming patient appointments with the healthcare provider and the contact information of the patients.
3. In order to avoid defrauding, misrepresenting or deceiving the public or the Board, a Licensee will inform the Arkansas State Medical Board within 30 days of his or her terminating, retiring from, or relocating his or her practice setting. The Licensee will inform the Board of his or her new location and address and of his or her practice setting if applicable. The Licensee will further inform the Board of where the patient records are stored, who is the custodian of those records and how the patient or other individuals may obtain the records.

REGULATION 33  
NOTIFICATION OF CHANGE OF PRACTICE

1. DEFINITIONS:

- a. “Entity” means any person, organization, or business entity of any type that engages a healthcare provider as an employee, independent contractor, member, or in any other capacity for the practice of medicine as defined in §17-95-202. “Entity” does not include insurance companies, health maintenance organizations, or hospital and medical service corporations;
- b. “Existing Patient” means a person who is seen for a medical diagnosis or treatment, or both, by a healthcare provider within the previous twelve (12) months as evidenced by an entry in the medical record of the patient. The twelve (12) month period described herein shall be calculated by counting back twelve (12) months from the later of the following dates:
  - i. The date that the healthcare provider’s relationship with the entity terminates; or
  - ii. The date that the healthcare provider gave the entity notice of a new practice location.
- c. “Healthcare Provider” means a person who is licensed by the Arkansas State Medical Board and has ultimate responsibility and legal liability for the care of the patient.

2. PROHIBITED CONDUCT:

- a. If the healthcare provider has made new practice location information or new contact information available to the entity, an entity or person on behalf of an entity shall not:
  - i. Mislead any patient about the new practice location of a healthcare provider or new contact information of a healthcare provider; or
  - ii. Fail to provide a patient with the new practice location of a healthcare provider or new contact information of a healthcare provider when requested.
- b. When requested by a healthcare provider who is relocating his or her practice, an entity with a relationship with healthcare provider shall within twenty-one (21) calendar days:
  - i. Provide the healthcare provider with a list of the healthcare provider’s existing patient names and addresses;
  - ii. Send a notice with the new practice location information to all of the health care provider’s existing patients after providing the healthcare provider a copy of the proposed notice for review and comment; or
  - iii. Post the new practice location information of the healthcare provider on the website of the entity after providing the healthcare provider a copy of the proposed posting for review and comment. The posting shall remain on the website of the entity for twelve (12) months after the healthcare provider’s last day of employment with the entity posting the information.



## REGULATION MARKUP

- c. Within (2) business days of the request described in this section, the entity shall provide the healthcare provider with a list or schedule of upcoming patient appointments with the healthcare provider and the contact information of the patients.
3. HEALTHCARE PROVIDER'S DUTY TO INFORM BOARD.

In order to avoid defrauding, misrepresenting or deceiving the public or the Board, a ~~Licensee~~ healthcare provider will inform the Arkansas State Medical Board within 30 days of his or her terminating, retiring from, or relocating his or her practice setting. The ~~Licensee~~healthcare provider will inform the Board of his or her new location and address and of his or her practice setting if applicable. The ~~Licensee~~ healthcare provider will further inform the Board of where the patient records are stored, who is the custodian of those records and how the patient or other individuals may obtain the records.



REGULATION 33  
NOTIFICATION OF CHANGE OF PRACTICE

1. DEFINITIONS:

- a. “Entity” means any person, organization, or business entity of any type that engages a healthcare provider as an employee, independent contractor, member, or in any other capacity for the practice of medicine as defined in §17-95-202. “Entity” does not include insurance companies, health maintenance organizations, or hospital and medical service corporations;
- b. “Existing Patient” means a person who is seen for a medical diagnosis or treatment, or both, by a healthcare provider within the previous twelve (12) months as evidenced by an entry in the medical record of the patient. The twelve (12) month period described herein shall be calculated by counting back twelve (12) months from the later of the following dates:
  - i. The date that the healthcare provider’s relationship with the entity terminates; or
  - ii. The date that the healthcare provider gave the entity notice of a new practice location.
- c. “Healthcare Provider” means a person who is licensed by the Arkansas State Medical Board and has ultimate responsibility and legal liability for the care of the patient.

2. PROHIBITED CONDUCT:

- a. If the healthcare provider has made new practice location information or new contact information available to the entity, an entity or person on behalf of an entity shall not:
  - i. Mislead any patient about the new practice location of a healthcare provider or new contact information of a healthcare provider; or
  - ii. Fail to provide a patient with the new practice location of a healthcare provider or new contact information of a healthcare provider when requested.
- b. When requested by a healthcare provider who is relocating his or her practice, an entity with a relationship with healthcare provider shall within twenty-one (21) calendar days:
  - i. Provide the healthcare provider with a list of the healthcare provider’s existing patient names and addresses;
  - ii. Send a notice with the new practice location information to all of the health care provider’s existing patients after providing the healthcare provider a copy of the proposed notice for review and comment; or
  - iii. Post the new practice location information of the healthcare provider on the website of the entity after providing the healthcare provider a copy of the proposed posting for review and comment. The posting shall remain on the website of the entity for twelve (12) months after the healthcare provider’s last day of employment with the entity posting the information.

## REGULATION MARKUP

- c. Within (2) business days of the request described in this section, the entity shall provide the healthcare provider with a list or schedule of upcoming patient appointments with the healthcare provider and the contact information of the patients.
3. HEALTHCARE PROVIDER'S DUTY TO INFORM BOARD.

In order to avoid defrauding, misrepresenting or deceiving the public or the Board, a ~~Licensee~~ healthcare provider will inform the Arkansas State Medical Board within 30 days of his or her terminating, retiring from, or relocating his or her practice setting. The ~~Licensee~~healthcare provider will inform the Board of his or her new location and address and of his or her practice setting if applicable. The ~~Licensee~~ healthcare provider will further inform the Board of where the patient records are stored, who is the custodian of those records and how the patient or other individuals may obtain the records.