

APA-1
Revised 4/2018

TRANSMITTAL SHEET FOR
NOTICE OF INTENDED ACTION

Control 545 Department or Agency: Medical Licensure Commission of Alabama
Rule No. 545-X-1-1-.11
Rule Title: Definitions
 New X Amend Repeal Adopt by Reference

Would the absence of the proposed rule significantly harm or endanger the public health, welfare, or safety? No

Is there a reasonable relationship between the state's police power and the protection of the public health, safety, or welfare? Yes

Is there another, less restrictive method of regulation available that could adequately protect the public? No

Does the proposed rule have the effect of directly or indirectly increasing the costs of any goods or services involved and, if so, to what degree? No

Is the increase in cost, if any, more harmful to the public than the harm that might result from the absence of the proposed rule? No

Are all facets of the rulemaking process designed solely for the purpose of, and so they have, as their primary effect, the protection of the public? Yes

Does the proposed action relate to or affect in any manner any litigation which the agency is a party to concerning the subject matter of the proposed rule? No

Does the proposed rule have an economic impact? No

If the proposed rule has an economic impact, the proposed rule is required to be accompanied by a fiscal note prepared in accordance with subsection (f) of Section 41-22-23, Code of Alabama 1975.

Certification of Authorized Official

I certify that the attached proposed rule has been proposed in full compliance with the requirements of Chapter 22, Title 41, Code of Alabama 1975, and that it conforms to all applicable filing requirements of the Administrative Procedure Division of the Legislative Services Agency.

Signature of certifying officer: George C. Smith, MD

Date: July 13, 2021

REC'D & FILED
JUL 13 2021
LEGISLATIVE SVC AGENCY

APA-2

MEDICAL LICENSURE COMMISSION OF ALABAMA

NOTICE OF INTENDED ACTION

AGENCY NAME: Medical Licensure Commission of Alabama

RULE NO. & TITLE: 545-X-1-.11 Definitions

INTENDED ACTION: To amend the definitions to include a definition for hearing officer

SUBSTANCE OF PROPOSED ACTION: To allow the appointment of a hearing officer to preside over contested case hearings.

TIME, PLACE, MANNER OF PRESENTING VIEWS: All interested persons may submit views, comments, or arguments concerning the proposed rule in writing to: Karen Silas, Operations Director, 848 Washington Avenue Montgomery, AL 36104 by mail, or by email to ksilas@almlc.org until and including Friday, September 3, 2021. Persons wishing to obtain copies of the text of this rule should contact Ms. Karen Silas by email or telephone atksilas@almlc.org or (334)833-0174.

FINAL DATE FOR COMMENT AND COMPLETION OF NOTICE: September 3, 2021

CONTACT PERSON AT AGENCY: Karen Silas



George C. Smith, Sr., M.D., Chairman
Medical Licensure Commission of Alabama

545-X-1-.11 Definitions.

(1) These rules incorporate by reference those definitions contained in Code of Ala. 1975, §§20-2-2, 41-22-3, unless the context clearly indicates otherwise. For the purposes of these rules, the following words and phrases shall have the respective meanings ascribed by this section:

(a) Licensee shall mean a physician licensed to practice medicine in the State of Alabama.

(b) Commission shall mean the Medical Licensure Commission of the State of Alabama.

(c) Certificate shall mean a certificate of qualification duly issued by the Alabama State Board of Medical Examiners.

(d) Board shall mean the Alabama State Board of Medical Examiners.

(e) Complainant shall mean the party that is responsible for preparing and prosecuting complaints in contested cases before the Medical Licensure Commission.

(f) Respondent shall mean the licensee whose license to practice medicine is the subject of the complaint filed before the Commission.

(g) Legal Counsel shall mean an individual designated as a legal counsel by the Medical Licensure Commission of Alabama and appointed pursuant to these rules.

(h) Parties shall mean the complainant, the respondent, and any person permitted to intervene in a contested case.

(i) Legitimate medical purpose shall mean a therapeutic treatment regimen or program generally recognized and accepted in the field of medical science as being safe and effective in the diagnosis, treatment, correction or alleviation of a specific medical condition of the patient, under all relevant circumstances.

(j) Practicing medicine in such a manner as to endanger the health of the patient of the practitioner shall mean to expose the health of the patient to unreasonable risks of harm which are not medically justified by the expected benefits to the patient, under all the circumstances evident in the diagnosis

and treatment of the medical condition of the patient.

(k) Performance of unnecessary diagnostic tests or medical or surgical services shall mean to administer medical tests or medical or surgical services which are not reasonably indicated or which are not reasonably required in order to ensure the well being of the patient of the practitioner, after considering all of the circumstances.

(l) Malpractice as used in these rules shall mean negligence. Gross malpractice shall mean gross negligence. Negligence shall mean the failure to do that which a reasonably prudent physician would have done under the same or similar circumstances, or the doing of that which a reasonably prudent physician would not have done under the same or similar circumstances. Gross negligence is the conscious doing of an act or the omission of some duty to act with a conscious disregard of known conditions of danger or with careless and reckless indifference to the consequences of such act or omission. For the purposes of this rule the existence of negligence or gross negligence may be established without proof of actual injury or harm to the patient, provided that the act or omission complained of created a substantial risk of harm to the health and wellbeing of the patient which risk was known or should have been known to a reasonably prudent practitioner and which was not medically justified by the expected benefits to the patient from the act or omission.

(m) In considering whether a fee for medical services is grossly excessive, as this term is used in these rules, the Commission may consider the following factors:

(i) The difficulty and/or uniqueness of the service performed as well as the time, skill and/or experience required;

(ii) The fee customarily charged in the locality for similar physician services;

(iii) The amount of the charges involved;

(iv) The nature and length of the professional relationship with the patient;

(v) The experience, reputation and ability of the physician in performing the kind of services involved;

(vi) The costs to the physician of devices or appliances or other special items (excessive of reasonable overhead expenses) furnished in connection with the service; and

(vii) The facts relating to the opportunity of the patient and physician to discuss the amount of fees in question prior to the initiation of the medical services.

(n) Licensed practitioners specializing in the treatment of depression shall mean a psychiatrist licensed to practice medicine in the State of Alabama or a physician licensed to practice medicine in the State of Alabama who devotes a substantial portion of his practice to the specialized treatment of mental or emotional illness.

(o) Physician shall mean either a doctor of medicine or a doctor of osteopathy.

(p) The practice of medicine shall mean and include both the practice of medicine and the practice of osteopathy.

(q) Licensed to practice medicine shall mean either the practice of medicine by a doctor of medicine or the practice of osteopathy by a doctor of osteopathy.

(r) Doctor shall mean either a doctor of medicine or a doctor of osteopathy.

(s) False or fraudulent claims for medical services shall mean any claim or claims requesting payment for any medical services which contain any misrepresentation of any material fact, or any suppression of any material fact, regarding any services for which the claim or claims is made if such misrepresentation or suppression is made with knowledge that such fact is being misrepresented or suppressed or if such misrepresentation or suppression is made recklessly without knowledge.

(t) Minimum standards for medical records shall mean medical records maintained as to each patient in each physician's office which shall be documented legibly in the English language and which shall include, at a minimum, a record of:

- (i) the patient's complaint or complaints;
- (ii) the history and physical examination;
- (iii) the treatment given or recommended; and,
- (iv) all follow up recommendations.

(u) Hearing officer shall mean an individual designated as a hearing officer by the Medical Licensure Commission of Alabama and appointed pursuant to these rules.

Author: Wayne P. Turner, Wallace D. Mills

Statutory Authority: Code of Ala. 1975, §§34-24-50.1, 34-24-311, 34-24-360; 41-22-1, et seq.

History: Filed May 6, 1983. **Repealed and new rule adopted in lieu thereof:** Filed May 1, 1984. **Amended:** Filed June 27, 1986.

Amended: Filed March 4, 2003; effective April 8, 2003. **Amended:** Filed May 5, 2010; effective June 9, 2010.

Amended: Filed December 10, 2018; effective January 24, 2019.

Ed. Note: Amendment of 2019 moved definitions section from 545-X-3-.01 to 545-X-1.11. **Amended:** Filed Effective.