

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-3-.05
Rule Title: Witnesses/How Subpoenaed and Sworn; Failure to Comply
 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-3-.05 Witnesses/How Supboenaed and sworn; Failure to Comply

INTENDED ACTION: To amend the rule to add a hearing officer to the list of those authorized to issue subpoenas for the Commission

SUBSTANCE OF PROPOSED ACTION: To allow a hearing officer to issue subpoenas for the Commission.

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

(1) To any such hearing, witnesses may be subpoenaed by the Commission on its own motion, or on the demand of either party by subpoena signed by the chairman of the Commission, by a hearing officer appointed by the Commission to preside over a contested case, or by the executive officer of the Commission, and such subpoenas may be served by any sheriff of Alabama, by a hearing officer appointed by the Commission to preside over a contested case, or by the executive officer of the Commission or by any person designated by the hearing officer or Executive Officer. ~~and, If~~ served by anyone other than a sheriff, the return of service shall be sworn to by said person before some officer authorized to administer oaths. Witnesses may be sworn by or at the direction of the chairman, the hearing officer, or by the person discharging the duties of such chairman. Similar subpoenas may be issued directing the production of books, papers, or documents at said hearing.

(2) The Commission, by order of its chairman, hearing officer, or executive director, may require any person to produce within this state, at such reasonable time and place as it may designate, any books, documents, records, or papers kept in any office or place without or within this state, or certified copies thereof, whenever the production thereof is reasonably required and pertinent to any matter under investigation before the Commission, in order that an examination thereof may be made by the Commission, or by any person employed by the Commission.

(3) In case of failure or refusal on the part of any person to comply with any subpoena, or on the refusal of any witness to testify or answer as to any matter regarding which he may lawfully be interrogated, any circuit court in that state, or any judge thereof, on application of the Commission or its executive director may issue an attachment for such person and compel him to comply with such order, or to attend before the Commission and produce such documents and give his testimony upon such matters as he may be lawfully required, and the court or judge shall have the power to punish for contempt as in cases of disobedience of a like order or subpoena issued by or from such court, or a refusal to testify therein.

(4) The expense of the subpoena including mileage and per diem as specified by law shall be borne by the party requesting the subpoena. The Commission may prescribe reasonable time

limitations for the filing of requests for the subpoena of witnesses and documents and may further require payment of the expenses for such subpoenas in advance.

(5) Upon the filing of a timely motion by any party, the Commission, through its Chairman, hearing officer, or Executive Officer may direct the issuance of a subpoena to require the attendance of a witness at a deposition upon oral examination or to produce documents for inspection provided that the witness resides within the jurisdiction of the Commission to issue such subpoena and further provided the party requesting the subpoena tender to the Commission the required mileage and per diem rate. The party at whose request the deposition is held shall be responsible for all administrative costs of the deposition.

(6) This section governing the issuance of subpoenas and production of documents shall not be interpreted to require that any members of the Medical Licensure Commission, or the Board of Medical Examiners, or any investigator, attorney or employee of the Medical Licensure Commission or of the Board of Medical Examiners submit to a deposition upon oral examination or produce documents for inspection unless the individual is designated by the complainant to testify as a witness in the contested case. In all circumstances the deliberations of the Medical Licensure Commission, the contents of any investigative files and records of the Board of Medical Examiners, including any investigative reports, statements, summaries or other materials compiled and accumulated by investigators, attorneys or staff of the Board of Medical Examiners pursuant to its ordinary and usual investigative function are confidential and privileged and are not subject to discovery proceedings under these rules.

Author:

Statutory Authority: Code of Ala. 1975, §§34-24-361, 34-24-363, 34-24-364.

History: Filed May 6, 1983. **Repealed and new rule adopted in lieu thereof:** Filed May 1, 1984. **Amended:** Filed May 5, 2010; effective June 9, 2010. Amended: Filed _____ effective _____