

Alabama State Board of Medical Examiners and Medical Licensure Commission



MEDICALDIGEST

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Newly Expanded Rules for Medical Records Management

The Board and Commission adopted amended joint administrative rules for medical records management effective Jan. 14, 2022. The new rules provide greater detail about patient access, patient notification, and medical record retention, destruction, and disposition under several common scenarios. Terms that were not previously defined, such as “notification” and “active patient,” are now described.

NEW DEFINITION: ACTIVE PATIENT

Active patients are any patients treated by the physician one or more times during the immediately preceding 36 months.

NEW MANDATORY RECORD RETENTION PERIOD

Medical records must be retained for at least seven years from the physician’s (or other providers within the practice) last professional contact with the patient. Exceptions from this requirement include certain immunization records, x-rays and other imaging, and medical records of minors.

DESTRUCTION OF MEDICAL RECORDS

The new rules describe methods and procedures for destroying records. Any destruction must be recorded and maintained for at least four years.

RETENTION AND ACCESS – TELEMEDICINE

Physicians who practice medicine via telemedicine have the same duty as all other physicians to adhere

to the medical records rules. They must retain access to the records that document their telemedicine services. A physician who is unable to access and produce medical records of telemedicine visits is in violation of the rules and subject to disciplinary action.

MINIMUM REQUIREMENTS – PATIENT NOTIFICATION

Patients must be notified upon a physician’s retirement, death, license suspension or revocation, or departure from a practice group. At a minimum, the notification must identify the physician who treated the patient, the general reason for the notification, an explanation of how to obtain medical records, a HIPAA authorization for the patient to complete, and the intended disposition of the medical records if no instructions are received within the time period provided.

Patients must be notified either by US Mail in a form letter to the active patients at their last known address, or by an electronic message sent via a HIPAA-compliant electronic record system or a HIPAA-compliant electronic health record system that provides a means of electronic communication to the patient and is capable of sending the patient a notification that a message is in the patient’s portal.

DISPOSITION UPON PHYSICIAN’S DEATH

Notification must be sent by the physician’s group if in a group practice within 30 days of the death



of the physician. If the physician is not in a group practice, the notice must be sent to all active patients by the personal representative of the physician’s estate within 30 days of appointment of an executor/administrator. Physicians in solo practice should include compliance with the rules as part of their estate planning.

In addition to the notification, the personal representative should take steps for all medical records to be transferred to another physician or a HIPAA-compliant entity to act as custodian. They must be maintained in their original or legally reproduced form for the specified retention periods and make them available for transfer.

DISPOSITION UPON PHYSICIAN’S RETIREMENT

It is the responsibility of the physician or the physician’s group practice to notify active patients of the impending retirement at least 30 days before retirement. Records must be transferred to the patient, another physician, or a HIPAA-compliant entity to act as custodian.

DISPOSITION UPON LICENSE SUSPENSION OR REVOCATION

The physician or the physician's practice must send notification of the suspension or revocation to all active patients within 30 days of the suspension or revocation. The cost is borne by the physician whose license is suspended or revoked. The notification must contain a copy of the order of suspension or revocation. The physician must ensure records are transferred to the patient, another physician, or a HIPAA-compliant entity to act as custodian.

DISPOSITION UPON DEPARTURE FROM A GROUP

The notification and paying for its cost is governed by the physician's employment contract with the group practice. If there is no contractual provision pertaining to medical records upon departure, and the group does not elect to notify patients, then the departing physician is responsible for the notification and its cost. Without a pertinent contract provision, the party who notifies the patients of the departure bears the cost of the notification and reproducing or transferring medical records.

The notification should include the departing physician's new address and provide the opportunity for the patient's medical records to be forwarded to the physician's new practice. A group may not withhold

medical records from a patient who has properly authorized the transfer. The patient's freedom of choice in choosing a physician may not be interfered with, and the choice of physician in every case must be left to the patient.

DISPOSITION UPON SALE OF A MEDICAL PRACTICE

The selling physician, physician's estate, or group must ensure the transfer of all medical records to another physician or covered entity or business associate operating on its behalf. All active patients must be notified within 30 days of the transfer that the practice is being transferred and that at their written request copies of their records will be sent to another physician, the patient, or the patient's representative.

DISPOSITION WHEN PHYSICIAN IS UNAVAILABLE

When a physician goes on vacation, goes on sabbatical, takes a leave of absence, leaves the United States, or is otherwise voluntarily unavailable to his or her patients, the physician must arrange to provide patients access to their medical records.

ABANDONMENT OF RECORDS

It is a violation of the rules for a physician to abandon a practice without making provisions for the maintenance, security, transfer, or other secure method for patients to access their medical records.

Upload your CME documentation at the Licensee Portal

The Board and Commission continue to add new features to the Licensee Portal at www.albme.gov. In addition to updating your demographic information, specialty, board certification status, and other state licensure, printing license and registration certificates, and viewing your renewal history, you can upload your continuing medical education certificates.

Licensees are not required to provide their CME certificates unless requested by the Board or Commission. However, licensees can use the repository at the Licensee Portal as a secure, easily accessible place to save their CME documentation. Licensees who are selected for a CME audit can simply upload their documentation to the repository and it will be available to the auditor.

We look forward to continuing to add and improve our online services in an effort to streamline operations and improve processes.

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THE BOARD WELCOMES IRMA MAY A. FERNANDEZ DE LEON, MD



Dr. Fernandez de Leon, an Internal Medicine physician who practices in Huntsville, Alabama, was elected to the Board to fill the position of Patrick J. O'Neill, MD, who passed away in September 2021.

A graduate of the University of the Philippines, Dr. Fernandez de Leon completed her postgraduate training at St. Louis University. She is certified by the American Board of Internal Medicine and has held medical licenses in Missouri as well as Alabama.

The Board and staff welcomed Dr. Fernandez de Leon to her first meeting in November 2021. We look forward to sharing her experience and knowledge as we seek to ensure proper medical care for all Alabama residents.

BOARD ADOPTS POLICY ON CYBER HARASSMENT

It is the position of the Alabama State Board of Medical Examiners ("the Board") that cyber harassment by a licensee constitutes unprofessional conduct.

The Board condemns all forms of harassment. The rising number of incidents of licensees using electronic means, including social media, texting, and email, to harass or intimidate another person requires acknowledgment by the Board.

The Board does not intend to review or regulate all online conduct by its licensees. However, any person who uses his or her status as a physician, physician assistant, or anesthesiologist assistant, either express or implied, their professional network, or any information, knowledge, or instrumentality gained from his or her professional practice to harass or intimidate another person is guilty of professional misconduct.

Harassing or intimidating conduct includes, but is not limited to: doxing, mobbing, swatting, flaming, review bombing, cyberstalking, bullying, shaming, and dogpiling.

Such behavior violates the high standards of honesty, diligence, prudence, and ethical integrity demanded from physicians, physician assistants, and anesthesiologist assistants licensed in the state of Alabama.

PHARMACIST REFUSAL TO FILL

Pharmacists may refuse to fill or refill prescriptions for many reasons, including if they believe it would be harmful to the patient, if there is a question as to its validity, or if they believe it is not in the patient's best interest.

The pharmacist retains this authority whether the prescription is for scheduled or non-scheduled medications; however, the potential for abuse and diversion associated with controlled substances merits additional caution on the parts of both prescriber and pharmacist. Federal law affirms that the responsibility for the proper prescribing of controlled substances lies with both the prescribing physician and the pharmacist who fills the prescription. (CFR § 1306.04)

A pharmacist may refuse to fill a prescription written by a physician for him or herself, the physician's spouse, or a member of the physician's family. When the prescription is for a controlled drug, the pharmacist is encouraged to contact the Board of Medical Examiners.

Prescribing a controlled substance to oneself or to one's spouse, child, or parent, unless necessitated by emergency or other exceptional circumstances, is unprofessional conduct that could result in disciplinary action against the physician's license.

A pharmacist's report to the Board in this situation can avert future problems for a physician who may simply have a misunderstanding of the rules, or this could be the catalyst for help for an impairment issue.

Pharmacists also may use their professional judgment when presented with a prescription for a non-controlled medication for a physician or physician's family member and refuse to fill the prescription. The Board does not have rules specific to prescribing non-controlled medications to one's self or family members; however, the American Medical Association Code of Medical Ethics Opinion 1.2.1 describes the challenges this type of prescribing poses, including concerns about professional objectivity, patient autonomy, and informed consent.

If a pharmacist chooses not to fill a physician's prescription, whether controlled or non-controlled and whether for self, family, or an unrelated patient, the physician must accept the choice made in the pharmacist's professional judgment and direct the patient to a different pharmacy.

NEW BOARD REQUIREMENT – PROVISION OF DEA NUMBER, CERTIFICATE

Effective Feb. 14, 2022, all Alabama Controlled Substances Certificate (ACSC) holders will be required to provide documentation of maintenance of an active Alabama registration issued by the U.S. Drug Enforcement Administration (DEA). Physicians must have both a DEA registration and an ACSC to prescribe controlled substances in Alabama. ACSCs are renewed annually, while DEA registrations are renewed every three years.

An initial Alabama DEA registration is applied for after obtaining an initial ACSC. Once the DEA registration has been issued, the registrant will be required to provide a copy of the certificate to the Board. Likewise, upon renewal of the DEA registration, a copy of the registration certificate must be provided to the Board. Physicians who have multiple registrations must provide copies of all initial and renewed DEA certificates.

DEA registration certificates can be securely uploaded at the Licensee Portal.

The new rule states:

To maintain an active Alabama Controlled Substances Certificate, a physician must maintain an active registration issued by the United States Drug Enforcement Administration (“DEA”) and which complies with DEA’s rules and regulations. A physician who applies for an Alabama Controlled Substances Certificate shall provide the Board with the DEA registration number authorizing his or her prescribing of controlled substances in Alabama at the time of application, or, if no such registration has been issued, shall provide the Board with the DEA registration number as soon as it is issued.

Each physician who is issued an Alabama Controlled Substances Certificate shall provide a copy of the DEA registration certificate to the Board immediately upon renewal of the registration. Each physician who obtains additional DEA registrations for multiple dispensing sites shall provide the Board with the additional DEA registration number(s) and a copy of the DEA registration certificate as soon as it is issued and immediately upon renewal.

Failure to maintain a DEA registration is a ground for discipline of an ACSC, as is a voluntary surrender or revocation of a DEA registration.

In June 2021, Board rules regarding collaborative and supervised practices were amended to expand the number of full-time equivalents (FTEs) a physician may collaborate with/supervise in all states from four to nine FTEs.

We want to remind physicians in collaborative practices with Certified Registered Nurse Practitioners (CRNP) and Certified Nurse Midwives (CNM) and registration agreements with Physician Assistants (PA) that documented quality assurance review is required for physicians collaborating with and/or supervising more than four FTEs per week, every month for six months following the commencement of a collaborative practice or registration agreement.

Quality assurance (QA) is defined as the documented evaluation of the clinical practice of the CRNP, CNM, or PA against defined quality outcome measures, using a selected, meaningful sample of patient records which will identify areas needing improvement, set performance goals, and assess progress towards meeting established goals, with a summary of findings, conclusions, and, if indicated, recommendations for change. The physician’s signature on the patient record does not constitute quality improvement monitoring.

Documentation of QA must be readily retrievable and available to the Board upon request.

REPORT OF PUBLIC ACTIONS OF THE MEDICAL LICENSURE COMMISSION AND BOARD OF MEDICAL EXAMINERS

BME - September 2021

- On Sept. 28, the Board suspended the Alabama Controlled Substances Certificate and Pain Management Registration of Stephen J. Babbino, MD, lic. no. MD.18530, Gadsden AL.

- On Sept. 28, the Board suspended the Alabama Controlled Substances Certificate and Pain Management Registration of Robert D. Shedden, DO, lic. no. DO.118, Dothan AL.

- On Sep. 15, the Board accepted the voluntary surrender of the medical license of Herbert W. Jones, MD, lic. no. SP.139, Minneapolis MN.

- On Sep. 15, the Board accepted the voluntary surrender of the medical license of Chykeetra S. Maltbia, MD, lic. no. MD.29376, Mobile AL.

MLC - September 2021

- None.

BME - October 2021

- None.

MLC - October 2021

- None.

BME - November 2021

- Effective Nov. 18, the medical license of Harold Mason, MD, lic. no. MD.42512, Clarksville TN, is voluntarily surrendered.

- Effective Nov. 18, the medical license of Mark S. Siegel, MD, lic. no. MD.13948,

Daphne AL, is voluntarily surrendered.

MLC - November 2021

- Effective Nov. 9, the medical license of Kathleen A. Cullen, MD, lic. no. 32763, Seminole FL, is revoked for probation violations.

- Effective Nov. 12, the medical license of Charles R. Thompson, MD, lic. no. MD.12917, Cantonment FL, is reprimanded.

- Effective Nov. 30, the medical license of Oscar D. Almeida, Jr. MD, lic. no. MD.12933, Mobile AL, is temporarily suspended until the Commission has heard the allegations and rendered a decision.

BME - December 2021

- None.

MLC - December 2021

- Effective Dec. 10, the restrictions on the medical license of Julio Delgado, MD, lic. no. MD.21523, Bessemer AL, are terminated.

- Effective Dec. 10, the restrictions on the medical license of Vanessa Thomas, MD, lic. no. MD.29849, LaGrange GA, are terminated.





Alabama State Board of Medical Examiners
Alabama Medical Licensure Commission

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Upcoming BME Meeting Dates

Jan 20 • Feb 17 • Mar 17

The public portion of each meeting is scheduled for 10 a.m. CT (unless otherwise indicated) in the Dixon-Parker Building at 848 Washington Avenue in Montgomery, AL.

Meeting agendas and a full list of meeting dates and times can be found online at

www.albme.gov.

Upcoming MLC Meeting Dates

Jan 26 • Feb 23 • Mar 22

Meetings are held in the Dixon-Parker Building at 848 Washington Avenue in Montgomery, AL unless otherwise indicated.

Have questions or need assistance?

Alabama Board of Medical Examiners (334) 242-4116

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Questions? Please contact the Board of Medical Examiners at (334) 242-4116.