

APA-1
Revised 4/2018

TRANSMITTAL SHEET FOR
NOTICE OF INTENDED ACTION

Control 540 Department or Agency Alabama State Board of Medical Examiners
Rule No. 540-X-16
Rule Title: The Practice of Medicine or Osteopathy Across State Lines

 New Amend X 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

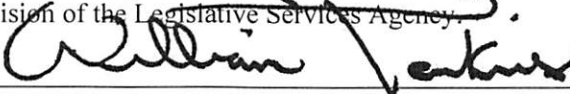
Does the proposed action relate to or affect in any manner any litigation which the agency is a party to concerning the subject matter of the proposed rule? NO

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 

Date: June 20, 2022

REC'D & FILED
JUN 22 2022
LEGISLATIVE SVC AGENCY

APA-2

**ALABAMA STATE BOARD OF MEDICAL EXAMINERS
NOTICE OF INTENDED ACTION**

AGENCY NAME: Alabama State Board of Medical Examiners

RULE NO. & TITLE: 540-X-16, The Practice Medicine or Osteopathy
Across State Lines

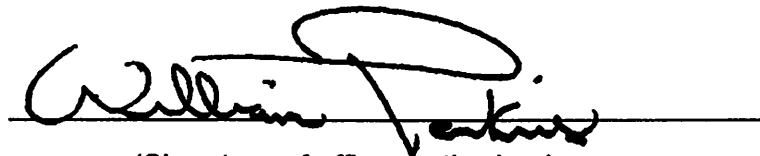
INTENDED ACTION: Repeal the chapter of rules

SUBSTANCE OF PROPOSED ACTION: Act 2022-302 of the Alabama Legislature repealed Ala. Code §§ 345-24-500 through 508 concerning the licensing of the practice of medicine across state lines, the statutory basis for this chapter of rules.

TIME, PLACE, MANNER OF PRESENTING VIEWS: All interested persons may submit data, views, or arguments concerning the proposed new rule(s) and regulation(s) in writing to Carla H. Kruger, Office of the General Counsel, Alabama State Board of Medical Examiners, Post Office Box 946, Montgomery, Alabama 36101-0946, by mail or in-person between the hours of 8:30 a.m. and 4:30 p.m., Monday through Friday, until and including February 4, 2020. Persons wishing to obtain copies of the text of this rule and submit data, views, comments or arguments orally should contact Carla H. Kruger by telephone (334-242-4116) during said period in order to set up an appointment for a hearing respecting such oral data, views, or arguments. Copies can also be obtained at the Board's website, www.albme.gov.

FINAL DATE FOR COMMENT AND COMPLETION OF NOTICE: August 4, 2022

CONTACT PERSON AT AGENCY: Carla H. Kruger

A handwritten signature in black ink, appearing to read "William Perkins", is written over a horizontal line.

(Signature of officer authorized

to promulgate and adopt
rules or his or her deputy)

REPEAL
RULES
OF THE
ALABAMA BOARD OF MEDICAL EXAMINERS

CHAPTER 540-X-16
THE PRACTICE OF MEDICINE OR OSTEOPATHY ACROSS STATE LINES

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Appendix A – Application for Certificate of Qualification for a Special Purpose License to Practice Medicine or Osteopathy

540-X-16-.01 Authority. The practice of medicine or osteopathy across state lines is regulated pursuant to 97-166 Ala. Acts.

Author: Wendell R. Morgan and Patricia E. Shaner, Attorneys for the Alabama Board of Medical Examiners.

Statutory Authority: Act 97-166

History: Was adopted as an emergency rule on July 16, 1997. Approved for Publication: July 16, 1997. Comment Period Ends: Friday, September 5, 1997. Approved/Adopted: September 17, 1997. Effective Date: October 22, 1997.

540-X-16-.02 Definitions. The following definitions shall apply to these rules:

(1) PRACTICE OF MEDICINE OR OSTEOPATHY ACROSS STATE LINES.

The practice of medicine or osteopathy across state lines means the practice of medicine or osteopathy as defined in Ala. Code §34-24-50(1)(1975), as it applies to:

(a) The rendering of a written or otherwise documented medical opinion concerning the diagnosis or treatment of a patient located within this state by a physician located outside this state as a result of transmission of individual patient data by electronic or other means from within this state to such physician or his or her agent; or

(b) The rendering of treatment to a patient located within this state by a physician located outside this state as a result of transmission of individual patient data by electronic or other means from this state to such physician or his or her agent.

(c) This definition is not intended to include an informal consultation between a licensed physician located in this state and a physician located outside this state provided that the consultation is conducted without compensation to or the expectation of compensation to either physician and does not result in the formal rendering of a written or otherwise documented medical opinion concerning the diagnosis or treatment of a patient by the physician located outside this state.

(2) EXEMPTIONS. Exemptions to the practice of medicine or osteopathy across state lines are defined as follows:

(a) A physician who engages in the practice of medicine across state lines in a medical emergency, as defined in these rules, is not subject to the provisions of 97-166 Ala. Acts;

(b) A physician who engages in the practice of medicine or osteopathy

across state lines on an irregular or infrequent basis, as defined in these rules, is not subject to the provisions of 97-166 Ala. Acts.

(3) **MEDICAL EMERGENCY.** A medical emergency is a condition or circumstance that, in the best clinical judgement of the attending physician on the facts before him or her, so compromises the health, safety or well-being of the patient as to require immediate treatment.

(4) **IRREGULAR OR INFREQUENT.** The irregular or infrequent practice of medicine across state lines is deemed to occur if such practice occurs less than ten (10) times in a calendar year or involves fewer than ten (10) patients in a calendar year or comprises less than one percent (1%) of the physician's diagnostic or therapeutic practice.

(5) **BOARD.** Board means the State Board of Medical Examiners created under Ala. Code §34-24-53(1975).

(6) **COMMISSION.** Commission means the Medical Licensure Commission created under Ala. Code §34-24-310(1975).

(7) **SPECIAL PURPOSE LICENSE.** A special purpose license is a license issued by the Commission to practice medicine or osteopathy across state lines which:

(a) Is only issued to an applicant whose principal practice location and license to practice is located in a state or territory of the United States whose laws permit or allow issuance of a special purpose license to practice medicine or osteopathy across state lines or a similar license to a physician whose principal practice location and license is located in the State of Alabama;

(b) Limits the licensee solely to the practice of medicine or osteopathy across state lines as defined in these rules.

Author: Wendell R. Morgan and Patricia E. Shaner, Attorneys for the Alabama Board of Medical Examiners.

Statutory Authority: Act 97-166

History: Was adopted as an emergency rule on July 16, 1997. Approved for Publication: July 16, 1997. Comment Period Ends: Friday, September 5, 1997. Approved/Adopted: September 17, 1997. Effective Date: October 22, 1997.

540-X-16-.03 License requirement. To engage in the practice of medicine or osteopathy across state lines in the State of Alabama, a person shall hold a current special purpose license to practice medicine or osteopathy across state lines issued in accordance with the provisions of 97-166 Ala. Acts, the rules of the Board, and the rules of the Commission, or a person shall hold a full, unrestricted and current license issued under Ala. Code §34-24-334(1975) and Chapter 3 of the rules of the Board.

Author: Wendell R. Morgan and Patricia E. Shaner, Attorneys for the Alabama Board of Medical Examiners.

Statutory Authority: Act 97-166

History: Was adopted as an emergency rule on July 16, 1997. Approved for Publication: July 16, 1997. Comment Period Ends: Friday, September 5, 1997. Approved/Adopted: September 17, 1997. Effective Date: October 22, 1997.

540-X-16-.04 Qualifications for a Certificate of Qualification for a Special

Purpose License. An applicant shall be eligible for issuance of a certificate of qualification to practice medicine or osteopathy across state lines if all of the following requirements are met:

(1) The applicant holds a full and unrestricted license to practice medicine or osteopathy in any and all states of the United States or territories in which such individual

is licensed.

(2) The applicant has not had any previous disciplinary action or other action taken against the applicant by any state or licensing jurisdiction, provided, however, that in the event of previous disciplinary or other action taken against the applicant, the Board may issue a certificate of qualification if it finds that the previous disciplinary action or other action does not indicate that the physician is a potential threat to the public.

(3) The applicant completes and submits an application form for a certificate of qualification for a special purpose license. The form of the application is set forth in Appendix A to Chapter 16.

(4) The applicant submits an application fee in the amount of \$175.00.

Author: Wendell R. Morgan and Patricia E. Shaner, Attorneys for the Alabama Board of Medical Examiners.

Statutory Authority: Act 97-166

History: Was adopted as an emergency rule on July 16, 1997. Approved for Publication: July 16, 1997. Comment Period Ends: Friday, September 5, 1997. Approved/Adopted: September 17, 1997. October 22, 1997.

540-X-16-.05 Issuance of Certificate of Qualification, Transmittal to

Medical Licensure Commission. A certificate of qualification for a special purpose license issued by the Board shall be numbered, signed by the Chairman of the Board or his designee, and transmitted to the Medical Licensure Commission.

Author: Wendell R. Morgan and Patricia E. Shaner, Attorneys for the Alabama Board of Medical Examiners.

Statutory Authority: Act 97-166

History: Was adopted as an emergency rule on July 16, 1997. Approved for Publication: July 16, 1997. Comment Period Ends: Friday, September 5, 1997. Approved/Adopted: September 17, 1997. Effective Date: October 22, 1997.

540-X-16-.06 Appeal from Denial of Application for Certificate of

Qualification for Special Purpose License. An applicant may appeal the decision of the Board denying an application for a certificate of qualification for special purpose license to the Medical Licensure Commission. Appeals will be governed by Rule 540-X-5-.05.

Author: Wendell R. Morgan and Patricia E. Shaner, Attorneys for the Alabama Board of Medical Examiners.

Statutory Authority: Act 97-166

History: Was adopted as an emergency rule on July 16, 1997. Approved for Publication: July 16, 1997. Comment Period Ends: Friday, September 5, 1997. Approved/Adopted: September 17, 1997. Effective Date: October 22, 1997.

540-X-16-.07 Effect of Special Purpose License.

(a) The issuance by the Commission of a special purpose license to practice or osteopathy across state lines subjects the licensee to the jurisdiction of the Board and the Commission in all matters set forth in Sections 34-24-50 to 34-24-83, inclusive, Code of Alabama 1975 and Sections 34-24-310 to 34-24-406, inclusive, Code of Alabama, 1975 and the rules and regulations of the Commission and the Board, including all matters related to discipline.

(b) It shall be the affirmative duty of every licensee to report to the Board of Medical Examiners in writing within fifteen days of the initiation of any disciplinary action against the license to practice medicine or osteopathy of the licensee by any state or territory in which the licensee is licensed.

(c) By accepting a special purpose license, the licensee agrees to produce patient medical records or other materials as requested by the Board and to appear before the Board or any of its committees following receipt of a written notice issued by the Board or its authorized representative.

(d) A special purpose license to practice medicine of osteopathy across state lines is subject to each of the grounds for disciplinary action as provided in Section 34-24-360, Code of Alabama, 1975, in accordance with the procedures set out in Section 34-24-361, Code of Alabama, 1975, and the Alabama Administrative Procedure Act.

(e) The holder of a special purpose license shall comply with all laws, rules, and regulations governing the maintenance of patient medical records, including patient confidentiality requirements, regardless of the state where the medical records of any patient within this state are maintained.

Author: Wendell R. Morgan and Patricia E. Shaner, Attorneys for the Alabama Board of Medical Examiners.

Statutory Authority: Act 97-166

History: Was adopted as an emergency rule on July 16, 1997. Approved for Publication: July 16, 1997. Comment Period Ends: Friday, September 5, 1997. Approved/Adopted: September 17, 1997. Effective Date: October 22, 1997.

Appendix A
Application for COQ for a
Special Purpose License to
Practice Medicine or Osteopathy

ALABAMA BOARD OF MEDICAL EXAMINERS
P.O. Box 946 - Montgomery, AL 36101 (334) 242-4116

APPLICATION FOR CERTIFICATE OF QUALIFICATION FOR A SPECIAL
PURPOSE LICENSE TO PRACTICE MEDICINE OR OSTEOPATHY

To the Board of Medical Examiners of the State of Alabama:

I hereby make application for a certificate of qualification to practice medicine or osteopathy across state lines in the State of Alabama, and submit the following statement concerning my qualifications for a special purpose license

1. Name in Full and any alternate name(s) used
2. Principal Practice Address Street/P.O. Box, City, State, Zip
3. Place of Birth Date of Birth

MD DO
Social Security#
Sex
Telephone (H) (W)

Pursuant to Ala. Code § 30-3-194, it is mandatory that we request and that you provide your social security number (SSN) on this application. The uses of your SSN are limited to the purpose of administering the state child support program and intra-agency for identification purposes. If your SSN is not provided, your application is not complete, and no license will be issued.

4. List all states where you are licensed to practice medicine or osteopathy. .
YES NO
5. Has your certificate of qualification or license to practice medicine in any state been denied or subject to any discipline, including but not limited to the following: revocation; suspension; probation; restriction(s); condition(s); reprimand or fine; or has your certificate of qualification or license to practice medicine in any state been voluntarily surrendered while under investigation or under threat of discipline r?
6. Have you ever been denied a certificate of qualification or a license to practice medicine in any state or has your application for a certificate of qualification or license to practice medicine or osteopathy been withdrawn under threat of denial?

7. Has a disciplinary action or investigation been initiated in any state in which you currently hold a license to practice medicine or osteopathy?

IF ANY OF THE ABOVE ANSWERS ARE IN THE AFFIRMATIVE, PLEASE EXPLAIN IN DETAIL ON AN ATTACHED SHEET

DECLARATION FOR CERTIFICATE OF QUALIFICATION FOR SPECIAL PURPOSE LICENSE

In connection with my application for a certificate of qualification for a special purpose license to practice medicine or osteopathy across state lines, I understand and acknowledge that:

a. A special purpose license only permits the holder to engage in the practice of medicine across state lines on patients located in the State of Alabama but does not authorize the holder to be physically present and engage in the general practice of medicine within the State of Alabama.

b. It is the affirmative duty of the holder of a special purpose license to report to the Alabama Board of Medical Examiners in writing within fifteen days of the initiation of any disciplinary action against the license to practice medicine or osteopathy of the licensee by any state or territory in which the license is licensed.

c. By accepting a special purpose license, the licensee agrees to produce patient records or materials as requested by the Board of Medical Examiners or the Medical Licensure Commission and to appear before the Board or the Commission or any of its committees following the receipt of a written notice by the Board or Commission.

d. The issuance of a special purpose license subjects the licensee to the jurisdiction of the Alabama Board of Medical Examiners and the Medical Licensure Commission of Alabama and the respective statutes and regulations under which they operate, including all matters related to discipline.

e. Failure to renew a special purpose license according to the renewal schedule shall result in the automatic revocation of the special purpose license e. In the event of the automatic revocation of a special purpose license for failure to renew, the licensee must reapply for a new special purpose license.

RELEASE

I, _____, certify, that all of the information supplied in the foregoing application is true and correct to the best of my knowledge. I acknowledge that any false or untrue statement or representation made in this application may result in the

revocation of the license granted to me and criminal prosecution to the fullest extent of the law.

I further consent to and authorize the release of this application and any information submitted with it or information collected by the Alabama Board of Medical Examiners in connection with this application, including derogatory information to any person or organization having a legitimate need for the information, I and release the Alabama Board of Medical Examiners from all liability for the release of this information.

I further authorize the release of information, including derogatory information, which may be in the possession of other individuals or organizations to the Alabama Board of Medical Examiners, and I release this individual or organization from any liability for the release of information.

I understand and agree that by typing my name, I am providing an electronic signature that has the same legal effect as a written signature pursuant to Ala. Code §§ 8-1A-2 and 8-1A-7. I attest that the foregoing information has been provided by me and is true and correct to the best of my knowledge, information and belief.

Date

Applicant's Typed Signature

**ALABAMA BOARD OF MEDICAL EXAMINERS DECLARATION OF
CITIZENSHIP AND LAWFUL PRESENCE OF AN
ALIEN FOR PUBLIC BENEFITS AND LICENSING/PERMITTING PROGRAMS**

Title IV of the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 8 U.S.C. § 1621, provides that, with certain exceptions, only United States citizens, United States non-citizen nationals, non-exempt "qualified aliens" (and sometimes only particular categories of qualified aliens), nonimmigrants, and certain aliens paroled into the United States are eligible to receive covered state or local public benefits.

With certain exceptions, Ala. Code §§ 31-13-1, et. seq., prohibits aliens unlawfully present in the U.S. from receiving state or local benefits. Every U.S. Citizen applying for a state or local public benefit must sign a declaration of Citizenship, and the lawful presence of an alien in the U.S. must be verified by the Federal Government.

Ala. Code §§ 31-13-1, et. seq., also requires every individual applying for a permit or license to demonstrate his/her U.S. citizenship or if the applicant is an alien,

he/she must demonstrate his/her lawful presence in the United States.

Directions: This form must be completed and submitted by individuals applying for licenses or permits.

NAME:

(Print or Type) (Last) (First) (M.I.)

DATE OF BIRTH:

Are you a citizen or national of the United States (check one) Yes No

If you answered YES: (1) Provide an original (only in person at agency office) or legible copy of document from attached List A or other document that demonstrates U.S. citizenship or nationality and (2) Complete Section IV.

If you answered No: Complete Sections III and IV.

Name of document provided:

Are you an alien lawfully present in the United States? Yes No

If you answered Yes: (1) Provide an original (only in person at agency office) or legible copy of the front and back (if any) of a document from attached List B or other document that demonstrates lawful presence in the United States. (2) Complete Section IV. Information from the documentation provided will be used to verify lawful presence through the United States Government.

If you answered No: Complete Section IV.

Name of document provided:

I declare under penalty of perjury under the laws of the State of Alabama that the answers and evidence I provided are true and correct to the best of my knowledge.

APPLICANT'S SIGNATURE DATE

LIST A

DOCUMENTS DEMONSTRATING U.S. CITIZENSHIP

(1) The applicant's driver's license or nondriver's identification card issued by the division of motor vehicles or the equivalent governmental agency of another state within the United States if the agency indicates on the applicant's driver's

license or nondriver's identification card that the person has provided satisfactory proof of United States citizenship.

(2) The applicant's birth certificate that satisfactorily verifies United States citizenship.

(3) Pertinent pages of the applicant's United States valid or expired passport identifying the applicant and the applicant's passport number.

(4) The applicant's United States naturalization documents or the number of the certificate of naturalization.

(5) Other documents or methods or proof of United States citizenship issued by the federal government pursuant to the Immigration and Nationality Act of 1952, and amendments thereto.

(6) The applicant's Bureau of Indian Affairs card number, tribal treaty card number, or tribal enrollment number.

(7) The applicant's consular report of birth abroad of a citizen of the United States of America.

(8) The applicant's certificate of citizenship issued by the United States Citizenship and Immigration Services.

(9) The applicant's certification of report of birth issued by the United States Department of State.

(10) The applicant's American Indian card, with KIC classification, issued by the United States Department of Homeland Security.

(11) The applicant's final adoption decree showing the applicant's name and United States birthplace.

(12) The applicant's official United States military record of service showing the applicant's place of birth in the United States.

(13) An extract from a United States hospital record of birth created at the time of the applicant's birth indicating the applicant's place of birth in the United States.

Ala. Act #2011-535, Section 30(c) and Section 29(k).

LIST B

**DOCUMENTS INDICATING STATUS OF QUALIFIED ALIENS,
NONIMMIGRANTS, AND ALIENS PAROLED INTO U.S. FOR LESS THAN ONE
YEAR**

The documents listed below that are registration documents are indicated with an asterisk (“*”).

a. “Qualified Aliens”

Evidence of “Qualified Alien” status includes the following: Alien Lawfully Admitted for Permanent Residence

- Form I-551 (Alien Registration Receipt Card, commonly known as a “green card”); or
- Unexpired Temporary I-551 stamp in foreign passport or on * I Form-94.

Asylee

- * Form I-94 annotated with stamp showing grant of asylum under section 208 of the INA;
- * Form I-688B (Employment Authorization Card) annotated “274.a12(a)(50”;
- * Form I-766 (Employment Authorization Document) annotated “A5”;
- Grant letter from the Asylum Office of the U.S. Citizenship and Immigration Service; or
- Order of an immigration judge granting asylum.

Refugee

- * Form I-94 annotated with stamp showing admission under § 207 of the INA;
- * Form I-688B (Employment Authorization Card) annotated “274a.12(a)(3)”;
- * Form I-766 (Employment Authorization Document) annotated “A3”

Alien Paroled Into the U.S. for at Least One Year

- * Form I-94 with stamp showing admission for at least one year under section 212(d)(5) of the INA. (Applicant cannot aggregate periods of admission for less than one year to meet the one year requirement.)

Alien Whose Deportation or Removal Was Withheld

- * Form I-688B (Employment Authorization Card) annotated “274a.12(a)(10);
- * Form I-766 (Employment Authorization Document) annotated “A10”; or
- Order from an immigration judge showing deportation withheld under §243(h) of the INA as in effect prior to April 1, 1997, or removal withheld under § 241(b)(3) of the INA.

Alien Granted Conditional Entry

- * Form I-94 with stamp showing admission under §203(a)(7) of the INA;
- * Form I-688B (Employment Authorization Document) annotated “274a.12(a)(3)”;

- * Form I-766 (Employment Authorization Document) annotated "A3."
Cuban / Haitian Entrant
- * Form I-551 (Alien Registration Receipt Card, commonly known as a "green card") with the code CU6, CU7, or CH6;
- Unexpired temporary I-551 stamp in foreign passport or on * Form I-94 with the code CU6 or CU7; or
- Form I-94 with stamp showing parole as "Cuba/Haitian Entrant" under Section 212(d)(5) of the INA.

Alien Who Has Been Declared a Battered Alien Subjected to Extreme Cruelty

- U.S. Citizenship and Immigration Service petition and supporting documentation

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- **Author:** Alabama Board of Medical Examiners
- **Statutory Authority:** Code of Alabama 1975 §§ 34-24-500 et seq
- **History:** Amended/Approved: December 11, 2019. Certified Rule Filed: February 19, 2020. Effective Date: April 13, 2020.