

**DECLARATORY RULING OF  
THE ALABAMA STATE BOARD OF MEDICAL EXAMINERS**

On December 15, 2021, the Alabama State Board of Medical Examiners (“the Board”) considered the request of Lauren DeMoss, Esq. (“Petitioner”) for a declaratory ruling pursuant to Ala. Code § 41-22-11 and Ala. Admin. Code R. 540-X-1-.10, and concerning the application of Alabama’s statutory licensure requirements to unlicensed physicians practicing medicine in states contiguous to Alabama who desire to certify home health orders for patients who are Alabama residents.

**FACTS PRESENTED**

Petitioner presented the following factual background:

We are writing on behalf of a national home health and hospice provider to request an opinion from the Alabama Board of Medical Examiners (the “Board”) regarding the certification of home health orders for an Alabama resident that are written by a physician practicing in a contiguous state. We realize that this issue was addressed by the Board more than ten years ago; however, we ask the Board to reconsider this question in light of the dynamic care delivery changes and efficiencies in utilizing home health for disease management and recovery from an inpatient stay. Of course, the Board does not maintain oversight of home health agencies, but the home health provider is committed to quality patient care in its markets, especially those in rural areas that are located near state lines, and this is an important issue for patients residing in Alabama, in addition to the providers certifying patients for home health services, as well as their continuing desire both to maintain continuity of patient care and to follow their patients’ home health journey and desired outcomes.

Alabama provides a licensure exemption for the infrequent, i.e., less than (10) ten times per calendar year, practice of medicine in the state. However, we acknowledge that this exception is narrow in application and would be difficult to monitor with respect to Alabama residents who live close to the state line and have better access to care in the contiguous state. Further, a physician regularly certifying home health orders across state lines would likely exceed the ten-time threshold and Alabama law does not contain an explicit exclusion or special provision allowing for home health orders from out-of-state physicians for individuals whose residence is near the state line.

As you are aware, during the pandemic, many states waived health care provider licensing requirements or delegated such authority to the applicable regulatory agencies, and some states relied on the state of emergency as the basis for such waivers. However, eighteen states still have active waivers in place and fourteen have chosen to make those waivers permanent. Advocates of making waivers permanent note that “allowing providers to permanently deliver virtual care across state lines say it would help ease staffing shortages, help patients and doctors maintain existing relationships and benefit patients in isolated communities by making faraway specialists more accessible.” The rationale behind allowing these waivers is the assumption that the physicians are duly licensed and in good standing in the physician’s state of residency.

Alabama’s licensure requirement is designed to protect Alabama residents by ensuring they receive care from only those physicians that the state can confirm are qualified to provide such care. The care provided to the patient in this instance is in the form of home health services. The out-of-state physician certifies the need for such services; the physician is not providing the home health services in the state. Further, the recent COVID-19 licensing waivers have demonstrated that this concern is outweighed by the benefits of allowing out-of-state physicians to provide services to residents of other states, especially when they are established patients, in order to improve access to medical care.

In the case of a co-signature by the Alabama-licensed physician, the Alabama-licensed physician is reviewing and agreeing with the order. Allowing a co-signature on the order would not negate the purpose of the Board’s oversight of physicians providing care to Alabama residents. In fact, in rural areas near the state line, the Alabama resident naturally and likely often receives care from providers located outside the state. By allowing the order to be co-signed by the Alabama physician, it is more convenient for the Alabama resident, and it promotes Alabama residents’ access to care.

### **QUESTIONS PRESENTED**

- (1) In light of recent waivers related to the delivery of care across state lines, can an out-of-state physician, who does not maintain any type of Alabama license but resides in a contiguous state, be permitted to certify home health orders for Alabama residents, assuming the out-of-state physician has an established physician/patient relationship with the Alabama resident and is duly licensed in his or her state of residence?

- (2) If the Board does not permit the sole signature on a home health order to be the out-of-state physician's certification, will the Board consider explicitly allowing an Alabama-licensed physician to co-sign the initial certification and recertification for home health after the Alabama-licensed physician has reviewed and agrees with the order placed by the patient's established out-of-state physician?

### **ANSWER**

A physician practicing medicine with an unrestricted license in a state contiguous to Alabama, specifically, Florida, Georgia, Tennessee, and Mississippi, and who is not licensed to practice medicine in Alabama, may certify or recertify an order for home health for an Alabama resident who is an established patient of the physician when the order is co-signed by a physician licensed to practice medicine or osteopathy in Alabama who has reviewed the medical documentation and records and agrees with the order. A physician who is not licensed to practice medicine or osteopathy in Alabama may not practice medicine without a license; accordingly, he or she may not certify or recertify a home health order for an Alabama resident on his or her own authority without violating Alabama's licensure requirements.

### **DISCUSSION**

Under Ala. Code § 34-24-51, "any person who practices medicine or osteopathy or offers to do so in this state without a certificate of qualification having been issued in his or her behalf by the State Board of Medical Examiners and without a license and certificate of registration from the Medical Licensure Commission of Alabama shall be guilty of a Class C felony." The practice of medicine or osteopathy means "to diagnose, treat, correct, advise, or prescribe for any human disease, ailment, injury, infirmity, deformity, pain, or other condition, physical or mental, real or imaginary, by any means or instrumentality." Ala. Code § 34-24-50(1). Under the facts presented,

Petitioner proposes for out-of-state physicians who are not licensed to practice medicine or osteopathy in Alabama to initially certify or recertify home health orders for established patients of the physician who reside in Alabama. Because the certification or recertification of a home health order is the practice of medicine or osteopathy, Alabama law requires the person issuing the certification to possess a license to practice medicine or osteopathy in Alabama.

The Board does not have the authority to waive licensure requirements, nor would it want to. And, as Petitioner points out, the exemption from the special purpose licensure requirement for out-of-state physicians who practice across state lines on an “irregular or infrequent basis” is insufficient to cover what is contemplated to be a regular or frequent practice. Ala. Code § 34-24-505.

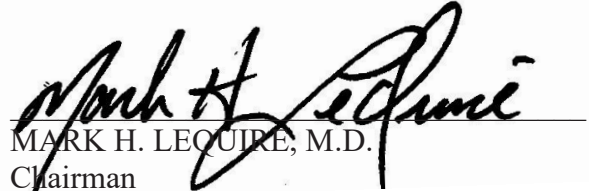
Petitioner proposes that some concession be made for physicians who practice in states contiguous to Alabama and who have a substantial number of established Alabama patients. Four states border Alabama: Florida, Georgia, Tennessee, and Mississippi. Alabama is a predominantly rural state, which means that its residents often travel and sometimes cross state lines to obtain medical care. The Board agrees with Petitioner that Alabama residents who live along its borders and who have an established relationship with a physician licensed in a bordering state are well-served if this physician is able to assist with certifying the patient’s home health orders when home health is medically justified.

The Board finds that permitting an Alabama-licensed physician to verify and co-sign home health orders protects the public by ensuring that a physician who is qualified to practice in Alabama has evaluated the order, and that at least one signatory to the order can be held accountable to Alabama residents. The Board also finds that this accountability is necessary to mitigate and deter fraud, waste, and abuse, which impose costs on all Alabama residents. The

Board cautions Alabama physicians who co-sign a home health order originating from an out-of-state physician to exercise reasonable diligence and care when evaluating the medical necessity and legitimacy of the order.

This ruling is based upon the precise facts presented and upon statutes and rules currently in existence. Should any relevant statutes or rules be amended or repealed, this ruling may no longer be valid.

DONE this 15th day of December, 2021.



MARK H. LEQUIRE, M.D.  
Chairman  
Alabama State Board of Medical Examiners