# REGULATIONS OF THE ARKANSAS STATE MEDICAL BOARD

## REGULATION NO. 1

The provisions of the Arkansas Medical Practices Act as now written and future amendments and all other relevant Arkansas statutes shall govern all substantive and procedural acts of the Arkansas State Medical Board.

1. A. The Arkansas State Medical Board was established by the Medical Practices Act, Act 65 of 1955 and Act 298 of 1957. The Board is empowered to license and regulate the practice of medicine, occupational therapy, respiratory therapy, and physician assistants.

   B. The Board meets at least quarterly to examine applicants for licensure, hear complaints, and transact other business that comes before it. The dates for quarterly or special meetings shall be determined by the Board. The day to day business of the Board is conducted by the Executive Director. All subsequent Regulations referring or using the word(s) executive secretary and/or secretary are hereby changed to Executive Director.

   C. Persons seeking information from or submitting information to the Board may do so by written communication to the Director. Persons seeking copies of documents on file with the Board may be required to remit in advance reasonable payment for the expense of copying the requested documents. The Executive Director has license application forms available for interested persons.

2. A. The Board holds hearings on licensees pursuant to the Administrative Procedure Act. Upon receipt of information indicating a possible violation of a licensing statute, the Board or its designee may investigate the information and report to the full board. If warranted, a complaint and notice of hearing will be issued informing the licensee of the alleged statutory or regulatory violation, the factual basis of the allegation, and the date, time, and place of the hearing. This complaint and notice of hearing shall be sent at least thirty (30) days in advance of the scheduled hearing date and shall contain a copy of this and any other pertinent regulation.

   B. If the Board receives information indicating that the public health, safety, or welfare requires emergency action, the Board may suspend a person's license pending proceedings for revocation or other action. An emergency order of suspension will be issued informing the licensee of the facts or conduct warranting the suspension, and the date, time, and place of the hearing. This emergency order shall contain a copy of this and any other pertinent regulation.

   C. A licensee desiring to contest the allegations in a complaint and notice of hearing or an emergency order of suspension shall submit a written answer responding to the factual and legal assertions in the complaint and notice of hearing or emergency order of suspension. At least fifteen (15) days before the scheduled hearing, fifteen (15) copies of the answer shall be given to the Executive Director, who will distribute the additional copies to the board members, and two copies of the answer shall be given to the Board's attorney. If no answer is received fifteen (15) days before the scheduled hearing, the Board may accept as true the allegations in the complaint and notice of hearing or emergency order of suspension and take appropriate action.

   D. Any request for continuance, subpoenas, or recusal of a board member, or any proposed findings of fact and conclusions of law shall be in writing and must be received by the Executive Director and the Board's attorney no later than ten (10) days before the scheduled hearing date. Fifteen (15) copies shall be given to the Executive Director, who will distribute a copy to each board member, and two (2) copies shall be given to the Board's attorney. A request for subpoenas, however, shall be by letter to the Executive Director and the Board's attorney. Any untimely request or submission may be denied solely on the basis of being untimely.

   E. At the scheduled hearing the evidence will be presented to the Board and the licensee or his attorney may cross-examine all witnesses and present witnesses and evidence on his own behalf. The Board may question any witness at any time during the hearing. At the conclusion of all the evidence the Board shall vote on the appropriate action. If any disciplinary action is voted, a written decision and order will be prepared and sent to the licensee.

**HISTORY:** Adopted November 9, 1967; Amended April 21, 1988; Amended August 3, 2017, Effective October 4, 2017.

## REGULATION NO. 2

The Arkansas Medical Practices Act authorizes the Arkansas State Medical Board to revoke or suspend the license issued by the Board to practice medicine if the holder thereof has been found guilty of grossly negligent or ignorant malpractice.

"Malpractice" includes any professional misconduct, unreasonable lack of skill or fidelity in professional duties, evil practice, or illegal or immoral conduct in the practice of medicine and surgery.

It shall include, among other things, but not limited to:

1. Violation of laws, regulations, and procedures governing payment to physicians for medical services for eligible public assistance recipients and/or other third party payment programs.
2. Participation in any plan, agreement, or arrangement which compromises the quality or extent of professional medical services or facilities at the expense of the public health, safety, and welfare.
3. Practicing fraud, deceit, or misrepresentation in the practice of medicine.
4. The prescribing of excessive amounts of controlled substances to a patient including the writing of an excessive number of prescriptions for an addicting or potentially harmful drug to a patient. "Excessive" is defined as the writing of any prescription in any amount without a detailed medical justification for the prescription documented in the patient record.

    A. Chronic Pain: If there is documented medical justification, "excessive" is defined, pursuant to the Centers for Disease Control (CDC) guideline for prescribing opioids for chronic pain, as prescribing opioids at a level that exceeds ≥50 Morphine Milligram Equivalents (MME)per day, unless the physician/physician assistant documents each of the following:

        a. Objective findings, which include, but are not limited to, imaging studies, lab testing and results, nerve conduction testing, biopsy, and any other test that would establish pain generating pathology.
        b. Specific reasons for the need to prescribe ≥ 50 MME per day.
        c. Documented alternative treatment plans as well as alternative therapies trialed and failed prior to considering chronic opioid therapy.
        d. Documented risk factor assessment detailing that the patient was informed of the risk and the addictive nature of the prescribed drug.
        e. Documented assessment of the potential for abuse and/or diversion of the prescribed drug.
        f. That the Prescription Drug Monitoring Program had been checked prior to issuing the prescription.
        g. A detailed clinical rationale for the prescribing and the patient must be seen in an in-person examination every three (3) months or every 90 days.
        h. The definition of "excessive" as contained in this Regulation shall not apply to prescriptions written for a patient in hospice care, in active cancer treatment, palliative care, end-of-life care, nursing home, assisted living or a patient while in an inpatient setting or in an emergency situation.
        i. Regular urine drug screens should be performed on patients to insure the patient is taking prescribed medications and is not participating or suspected in participating in diversion or abuse of non-prescribed medications. The treatment of chronic pain shall be consistent with the CDC guidelines as they relate to baseline drug testing, and at least annual follow up testing as warranted for treatment.
        j. A pain treatment agreement must be signed and reviewed by the patient when initiating chronic opioid therapy. This agreement should discuss the following: informed risk and addictive nature of prescribed medications, outline the specific expectations between patient and physician, informed consent for periodic urine drug screenings and random pill counts with urine screening as well as the provisions for termination of opioid therapy.

    B. Acute Pain: For treatment of acute pain, "excessive" is further defined as an initial prescription written for more than seven (7) days, without detailed, documented medical justification in the medical record. If the patient requires further prescriptions, they must be evaluated in regular increments with documented medical justification for continued treatment in medical record.

    C. When opioids are started, clinicians should prescribe the lowest effective dosage. Clinicians should use caution when prescribing opioids at any dosage, should carefully reassess evidence of individual

benefits and risks when considering increasing dosage to > 50 morphine milligram equivalents (MME)/day, and should avoid increasing dosage to > 90 MME/day or carefully justify a decision to tritrate dosage to > 90 MME/day.

5. The prescribing of Schedule II controlled substances by a physician/physician assistant for his own use or for the use of his immediate family.
6. *The treatment of pain with dangerous drugs and controlled substances is a legitimate medical purpose when done in the usual course of medical practice. If the provisions as set out below in this Resolution are met, and if all drug treatment is properly documented, the Board will consider such practices as prescribing in a therapeutic manner, and prescribing and practicing medicine in a manner consistent with public health and welfare.
   A. However, a physician/physician assistant who prescribes **narcotic agents Schedule 2 [except 2.6(e)], 3, 4, and 5, and to include the schedule drugs Talwin, Stadol, and Nubain, for a patient with pain not associated with malignant or terminal illness will be considered exhibiting gross negligence or ignorant malpractice unless he or she has complied with the following:
      a. The physician/physician assistant will keep accurate records to include the medical history, physical examination, other evaluations and consultations, treatment plan objective, informed consent noted in the patient record, treatment, medications given, agreements with the patient and periodic reviews.
      b. The physician/physician assistant will periodically review the course of schedule drug treatment of the patient and any new information about etiology of the pain. If the patient has not improved, the physician should assess the appropriateness of continued prescribing of scheduled medications or dangerous drugs, or trial of other modalities.
      c. The physician/physician will obtain written informed consent from those patients he or she is concerned may abuse controlled substances and discuss the risks and benefits of the use of controlled substances with the patient, his or her guardian, or authorized representatives.
      d. The physician/physician assistant will be licensed appropriately in Arkansas and have a valid controlled substance registration and comply with the Federal and State regulations for the issuing of controlled substances and prescriptions, more especially the regulations as set forth in 21 Code of Federal Regulations Section 1300, et sequence.
   B. Treatment of Chronic Nonmalignant Pain:
      a. "Chronic nonmalignant pain" means pain requiring more than three (3) consecutive months of prescriptions for:
         i. An opioid that is written for more than the equivalent of ninety (90) tablets, each containing five milligrams (5mg) of hydrocodone;
         ii. A morphine equivalent dose of more than fifteen milligrams (15mg) per day; or
         iii. In the specific case of tramadol, a dose of fifty milligrams (50mg) per one hundred twenty (120) tablets;

         "Opioid" means a drug or medication that relieves pain, including without limitation:
            i. Hydrocodone;
            ii. Oxycodone;
            iii. Morphine;
            iv. Codeine;
            v. Heroin; and
            vi. Fentanyl;

         "Prescriber" means a practitioner or other authorized person who prescribes a Schedule II, III, IV, or V controlled substance.
      b. Patient evaluation – a patient who is being treated with controlled substances for chronic nonmalignant pain shall be evaluated at least one (1) time every six (6) months by a physician who is licensed by the Arkansas State Medical Board.
      c. Prescriber requirements:
         i. For a patient with chronic nonmalignant pain, a prescriber, at a minimum and in addition to any additional requirements of the Arkansas State Medical Board, shall:
            1. Check the prescriptive history of the patient on the Prescription Drug Monitoring Program pursuant to Regulation 41;
            2. Follow the specific requirements of Regulation 19 and any and all other regulations of the Arkansas State Medical Board pertaining to prescribing.

ii. For prescribers licensed after December 31, 2015, within the first two (2) years of being granted a license in the state, a prescriber shall obtain a minimum of three (3) hours of prescribing education approved by the Arkansas State Medical Board. The education approved by the board under this section shall include:

1. Options for online and in-person programs; and
2. Information on prescribing rules, regulations, and laws that apply to individuals who are licensed in the state.
3. Information and instructions on prescribing controlled substances, record keeping and maintaining safe and professional boundaries.

7. A licensed physician/physician assistant engaging in sexual contact, sexual relations or romantic relationship with a patient concurrent with the physician/physician assistant-patient relationship; or a licensed physician/physician assistant engaging in the same conduct with a former patient, if the physician/physician assistant uses or exploits trust, knowledge, emotions or influence derived from the previous professional relationship, shows a lack of fidelity of professional duties and immoral conduct, thus exhibiting gross negligence and ignorant malpractice. A patient's consent to, initiation of, or participation in sexual relationship or conduct with a physician/physician assistant does not change the nature of the conduct nor the prohibition.
8. **Requiring minimum standards for establishing Patient/Provider relationships. Provider is defined as a person licensed by the Arkansas State Medical Board. A Provider exhibits gross negligence if he provides and/or recommends any form of treatment, including prescribing legend drugs, without first establishing a proper Patient/Provider relationship.

A. For purposes of this regulation, a proper Patient/Provider relationship, at a minimum requires that:

1. A. The Provider performs a history and an "in person" physical examination of the patient adequate to establish a diagnosis and identify underlying conditions and/or contraindications to the treatment recommended/provided; OR

B. The Provider performs a face to face examination using real time audio and visual telemedicine technology that provides information at least equal to such information as would have been obtained by an in-person examination; OR

C. The Provider personally knows the patient and the patient's general health status through an "ongoing" personal or professional relationship;

2. Appropriate follow-up be provided or arranged, when necessary, at medically necessary intervals.

B. For the purposes of this regulation, a proper Patient/Provider relationship is deemed to exist in the following situations:

1. When treatment is provided in consultation with, or upon referral by, another Provider who has an ongoing relationship with the patient, and who has agreed to supervise the patient's treatment, including follow up care and the use of any prescribed medications.
2. On-call or cross-coverage situations arranged by the patient's treating Provider.

C. Exceptions – Recognizing a Provider's duty to adhere to the applicable standard of care, the following situations are hereby excluded from the requirement of this regulation:

1. Emergency situations where the life or health of the patient is in danger or imminent danger.
2. Simply providing information of a generic nature not meant to be specific to an individual patient.
3. This Regulation does not apply to prescriptions written or medications issued for use in expedited heterosexual partner therapy for the sexually transmitted diseases of gonorrhea and/or chlamydia.
4. This Regulation does not apply to the administration of vaccines containing tetanus toxoid (e.g., DTaP, DTP, DT, Tdap, Td, or TT) or inactive influenza vaccines.

**HISTORY:** Adopted June 17, 1976; Amended March 13, 1997; December 5, 1997; Adopted December 3, 1998; Adopted April 6, 2001; Amended February 7, 2002; Amended April 3, 2008; Amended April 12, 2012; Amended December 14, 2015; Amended June 9, 2016; Effective September 6, 2016; Amended April 5, 2018; Effective August 8, 2018; Amended December 6, 2018, Effective June 15, 2019.

## REGULATION NO. 3: UNRESTRICTED LICENSURE FOR GRADUATES OF FOREIGN MEDICAL SCHOOLS

Unrestricted license may now be applied for by graduates of foreign medical schools provided they can comply with the following requirements and meet the approval of the Board of Medical Examiners;

1. Be twenty-one years of age.
2. Be of good moral character.
3. Demonstrated in personal interview the ability to read, write, and speak English fluently; and also demonstrate adequate training and ability sufficient to permit the practice of medicine in accordance with accepted medical practice in the State of Arkansas.
4. Present documented evidence that he or she served three years as an intern or resident in an accredited postgraduate medical education program in the United States; or, completed one year as an intern or resident in an accredited post-graduate medical program in the United States and be currently enrolled in an accredited post-graduate medical program in Arkansas. The Applicant should further provide a Letter of Recommendation from the Intern or Residency Director, outlining the Applicant Physician's competence in the practice of medicine and his ability to appropriately interact with patients and other medical staff.
5. Provide indisputable identification.
6. Present a Standard ECFMG (Educational Commission for Foreign Medical Graduates Exam) Certificate.
7. A. Present proof of successful completion of Steps 1, 2 and 3 of the USMLE (United States Medical Licensing Exam).

   B. The applicant must successfully complete each step in no more than 3 attempts per step.

A waiver may be granted by the Board, if requested by the applicant, from the "3 attempt per step limit," for Step 1 and/or Step 2. The waiver will be granted if the Board finds that the applicant can show documentation and proof that he/she suffered from a significant health condition or personal problem, and that by its severity would necessarily cause delay to the applicant's medical education and successful completion of the step testing. The waiver will not exceed 4 attempts per step.

A waiver may also be granted to the "3 attempt per step limit" on step 3 not to exceed 4 attempts if:

1. The applicant has completed one year of approved graduate medical education after the 3rd failed attempt and before the fourth and final attempt at step 3; or
2. The applicant can show proof that he/she is certified in a Specialty Board by the American Board of Medical Specialties.

**HISTORY:** Amended June 17, 1982; June 16, 1983; April 13, 1984; September 7, 1995; August 4, 2005; June 5, 2008; April 8, 2010; Implemented June 1, 2010; Amended December 4, 2014.

## REGULATION NO. 4: REGULATIONS GOVERNING PHYSICIAN'S ASSISTANTS

*REPEALED:* OCTOBER 7, 1999; REPLACED BY REGULATION 24; ADOPTED FEBRUARY 4, 2000.

## REGULATION NO. 5: REGULATIONS FOR PHYSICAL THERAPIST ASSISTANTS AND PHYSICAL THERAPIST ASSISTANTS TRAINEE

*REPEALED*: BOARDS SEPARATED, JULY 1, 1991

## RULE NO. 6: RULES GOVERNING THE LICENSING AND PRACTICE OF OCCUPATIONAL THERAPISTS

1. APPLICATION FOR LICENSURE. Any person who plans to practice as a licensed occupational therapist or occupational therapy assistant in the state of Arkansas shall, in addition to demonstrating his or her eligibility in accordance with the requirements of Section 7 of Act 381 of 1977, apply for licensure to the Board, on forms and in such a manner as the Board shall prescribe.

1.1 FORMS. Application forms can be secured from the Arkansas State Medical Board.

1.2 FILING REQUIREMENTS. Completed applications shall be submitted together with necessary documents and filing fee to the Board. The filing fee is not refundable. Applications and documentation must be completed within one year of date of receipt by the Arkansas State Medical Board. Applications and documentation over one year old are voided and the applicant must reapply.

1.3 BOARD ACTION ON APPLICANTS. Applications for licensure shall be acted upon by the Board no later than its next regularly scheduled meeting following the receipt of the required fee and all credentials.

2. EXAMINATION. All occupational therapists and occupational therapy assistants are required to pass

an examination, approved by the Board, for licensure to practice the profession in Arkansas, except as otherwise provided in Arkansas Code 17-88-103. The Board has adopted for this purpose the examination administered by the National Board for Certification in Occupational Therapy for the certification of occupational therapists and occupational therapy assistants. For this purpose the Board shall follow the schedule, format and acceptable passing scores set by the National Board for Certification in Occupational Therapy and its designated agent. Applicants may obtain their examination scores in accordance with such rules as the National Board for Certification in Occupational Therapy may establish.

2.1 RE-EXAMINATION. An applicant who fails an examination may make reapplication to the National Board for Certification in Occupational Therapy for re-examination accompanied by the prescribed fee. Any applicant who fails or misses three (3) examinations must take additional educational work in the areas of his weakness as determined by the Committee before being eligible for re-examination.

3. LICENSING. All occupational therapists and occupational therapy assistants must be licensed to practice in the state of Arkansas prior to practicing the profession.

3.1 BY EXAMINATION. The Board shall register as an occupational therapist or occupational therapy assistant and shall issue a license to any person who satisfactorily passes the said examination provided for in these Rules and Regulations, and who otherwise meets the requirements for qualification contained herein and pays a fee as determined by the Board.

3.2 TEMPORARY LICENSES. The Secretary of the Board shall issue a temporary license, without examination, to practice occupational therapy, in association with an occupational therapist, licensed under the Act, to persons who have completed the education and experience requirements of the Act and rules and who are required to be licensed in order to obtain employment as an occupational therapist or an occupational therapy assistant. The temporary license shall only be renewed once if the applicant has not passed the examination or if the applicant has failed to take the qualifying examination, unless the failure is justified by good cause acceptable at the discretion of the Board, with recommendation of the Committee.

3.3 RENEWAL.

(A) A renewal or re-registration fee shall be paid annually to the Board by each occupational therapist and occupational therapy assistant who holds a license to practice occupational therapy in the State of Arkansas.

(B) Each licensee must complete, answer truthfully, and provide such information on a Renewal Application prior to being relicensed.

(C) Each occupational therapist and occupational therapy assistant shall be required to complete ten (10) continuing education credits each year, as a prerequisite for license renewal in the State of Arkansas. Credit for continuing education requirements may be earned in the following manner:

(1) Workshops, refresher courses, professional conferences, seminars, or facility-based continuing education programs, designated for occupational therapists. Hour for hour credit on program content only.

(a) Evaluate professional skills using the National Board for Certification in Occupational Therapy online Self-Assessment tool or similar professional skills assessment tool; limited to one (1) continuing education credit.

(b) Volunteer for an organization that enhances one's practice roles; limited to two (2) continuing education credits. Five (5) hours of volunteer work equals one (1) continuing education credit. Hours will need to be verified from the organization on their letterhead. Letter will confirm hours and the overall outcome of the service.

(c) Mentoring an occupational therapist or occupational therapy assistant colleague to improve skills; limited to two (2) continuing education credits. Form on the National Board for Certification in Occupational Therapy website must be completed and submitted to the Board.

(d) Receive mentoring from a current licensed occupational therapist or occupational therapy assistant. Form from NBCOT's website must be completed and submitted to the Board; limited to two (2) continuing education credits.

(e) Participation in a professional occupational therapy study group/online study group designed to expand one's knowledge; limited to two (2) continuing education credits.

(f) Level I fieldwork supervision equals two (2) continuing education credits; Level II

fieldwork supervision equals four (4) continuing education credits; limited to four (4) continuing education credits; and Level III field work/doctoral capstone experience equals six (6) continuing education credits.

(2) Professional presentation at a state, national, or international workshop, seminar, or conference. One-time presentation per topic; time spent on preparation cannot be included. Limited to ten (10) continuing education credits.

(3) Formal academic coursework related to the field of occupational therapy. One (1) to two (2) semester hour class equivalent to five (5) continuing education credits. Three (3) to four (4) semester hour class equivalent to ten (10) continuing education credits.

(a) Serve as adjunct faculty teaching an occupational therapy course (must not be one's primary role); limited to ten (10) continuing education credits.

(4) Publications/Media; Research/Grant activities. A request to receive credit for these activities must be submitted in writing, for approval, to the Arkansas State Occupational Therapy Examining Committee thirty (30) days prior to the expiration of the license. Ten (10) continuing education credits earned however grant must be complete and the Committee must provide pre-approval before being accepted for continuing education credits.

(a) Developing training manuals, multimedia, or software programs that advance the professional skills of occupational therapist (must not be one's primary role); limited to five (5) continuing education credits for non-peer review and ten (10) continuing education credits for published peer review.

(b) Author of a practice-area related article in a non-peer reviewed professional publication; limited to five (5) continuing education credits.

(c) Author of a practice-area related article in a peer-reviewed professional publication; limited to ten (10) continuing education credits.

(d) Author of a practice-area related article in a newsletter or community newspaper; limited to one (1) continuing education credit.

(e) Author of a chapter in a practice-area related professional textbook; limited to ten (10) continuing education credits.

(5) Self-study.

(a) Book, journal or video reviews. Must be verified by submission of a one (1) page typewritten review of the material studied, including application to clinical practice, one (1) continuing education credit per review; two (2) hour maximum per year.

(b) Self-study coursework verified by submission of proof of course completion. The number of contact hours credited will be determined by the Arkansas Occupational Therapy Examining Committee. Course outline and proof of completion must be submitted to the Committee thirty (30) days prior to the expiration of the license.

(6) Any deviation from the above continuing education categories will be reviewed on a case by case basis by the Committee. A request for special consideration or exemption must be submitted in writing sixty (60) days prior to the expiration of the license.

(7) All continuing education programs shall directly pertain to the profession of occupational therapy. The Committee will not pre-approve continuing education programs. All occupational therapists licensed by the Board in the State of Arkansas must complete annually ten (10) continuing education hourly units as a condition for renewal of a license. Each licensee will sign his or her renewal application verifying that he or she has completed said ten (10) hours and will maintain for a period of three (3) years proof of the courses taken, should it be requested by the Board for audit purposes. Acceptable documentation to maintain on file is as follows:

(a) Official transcripts documenting completion of academic coursework directly related to the field of occupational therapy.

(b) A signed verification by a program director or instructor of the practitioner's attendance in a program, by letter on letterhead of the sponsoring agency, certificate, or official continuing education transcript, accompanied by a brochure, agenda, program or other applicable information indicating the program content.

(c) A letter from a practitioner's supervisor on the agency's letterhead, giving the names of the

continuing education programs attended, location, dates, subjects taught, and hours of instruction.

(8) Therapists receiving a new license will not be required to submit for continuing education credit during the first partial year of licensure. Failure to submit verification of continuing education for renewal will result in issuance of a "failure to comply" notification. If the continuing education submitted for credit is deemed by the Committee to be unrelated to the profession of occupational therapy, the applicant will be given three (3) months to earn and submit replacement hours. These hours will be considered as replacement hours and cannot be counted during the next licensure period. If the applicant feels the continuing education credit has been denied inappropriately, the applicant may appeal the issue to the Board for determination within thirty (30) days of the date of receiving notice from the Committee. The Board will be responsible for maintaining all of the records involved in the continuing education requirements set forth in this regulation. The re-registration fee and proof of continuing education completed, as set forth above, shall be presented to the Board and the Committee before or during the birth month of the license holder each year. Failure to re-register and comply with the continuing education requirements by the last day of the birth month of the license holder of that year shall cause the license of the occupational therapist or occupational therapy assistant in question to automatically expire. This requirement becomes effective 1993 with the first submission of continuing education credits being required in January of 1994.

3.4 REINSTATEMENT. Any delinquent license of less than five (5) years may be reinstated, at the discretion of the Board by,

(A) Paying all delinquent fees and a penalty of Twenty Five and No/100 ($25.00) Dollars for each year or part of a year he or she has been delinquent, and

(B) by providing proof of completion of the continuing education requirement for each year, and

(C) completing the Renewal Application provided by the Board.

Any person who shall fail to re-register and pay the annual license fee for five (5) consecutive years shall be required to make reapplication to the Board before his or her license may be reinstated.

4. REFUSAL, REVOCATION, AND/OR SUSPENSION OF LICENSE. The Board after due notice and hearing may deny or refuse to renew a license, or may suspend or revoke a license, or impose such penalties as provided by the Practice Act, where the licensee or applicant for license has been guilty of unprofessional conduct which has endangered or is likely to endanger the health, welfare, or safety of the public.

Such unprofessional conduct shall include:

(A) Obtaining a license by means of fraud, misrepresentation or concealment of material facts; or providing false material to the Board at application or renewal.

(B) Being guilty of unprofessional conduct or gross negligence as defined by rules established by the Committee, or violating the Code of Ethics adopted and published by the Committee;

(C) Treating, or undertaking to treat, ailments of human beings otherwise than by occupational therapy, as authorized by the Act;

(D) Being convicted of a crime other than minor offenses defined as "minor misdemeanors", "violations", or "offenses", in any court, except those minor offenses found by the Board to have direct bearing on whether one should be entrusted to serve the public in the capacity of an occupational therapist or occupational therapy assistant;

(E) Use of any drug or alcohol to an extent that impairs his or her ability to perform the work of an occupational therapist with safety to the public;

(F) Being adjudged to have a mental condition that renders him or her unable to practice occupational therapy with reasonable skill and safety to patients.

5. FEES. The fees are as follows:

| | | OT | OTA |
|---|---|---|---|
| A. | Application Fee | $25.00 | $25.00 |
| B. | Full License Fee | $50.00 | $25.00 |
| C. | Temporary Permit Fee | $25.00 | $25.00 |
| D. | Reinstatement Fee | | |
| | All delinquent fees plus $25.00 late fee per year for each year delinquent up to five (5) years. | | |
| E. | Annual Renewal Fee | $65.00 | $65.00 |
| F. | Renewal Late Fee | $25.00 | $25.00 |

6. DEFINITIONS

6.1 ACT DEFINED. The term Act as used in these rules shall mean the Arkansas State Occupational Therapy Licensing Act 381 of 1977.

6.2 FREQUENT AND REGULAR SUPERVISION DEFINED: As specified in the Occupational Therapy Practice Act 17-88-102, (3) an "occupational therapy assistant" means a person licensed to assist in the practice of occupational therapy under the frequent and regular supervision by or in consultation with an occupational therapist whose license is in good standing. "Frequent" and "regular" are defined by the Arkansas State Occupational Therapy Examining Committee as consisting of the following elements:

(A) The supervising occupational therapist shall have a legal and ethical responsibility to provide supervision, and the supervisee shall have a legal and ethical responsibility to obtain supervision regarding the patients seen by the occupational therapy assistant.

(B) Supervision by the occupational therapist of the supervisee's occupational therapy services shall always be required, even when the supervisee is experienced and highly skilled in a particular area.

(C) Frequent/Regular Supervision of an occupational therapy assistant by the occupational therapist is as follows:

1) The supervising occupational therapist shall meet with the occupational therapy assistant for on-site, face to face supervision a minimum of one (1) hour per forty (40) occupational therapy work hours performed by the occupational therapy assistant, to review each patient's progress and objectives.

2) The supervising occupational therapist shall meet with each patient and the occupational therapy assistant providing services on a monthly basis, to review patient progress and objectives.

3) Supervision Log. It is the responsibility of the occupational therapy assistant to maintain on file signed documentation reflecting supervision activities. This supervision documentation shall contain the following: date of supervision, time (start to finish), means of communication, information discussed, number of patients, and outcomes of the interaction. Both the supervising occupational therapist and the occupational therapy assistant must sign each entry.

4) Each occupational therapy assistant will maintain for a period of three (3) years proof of a supervision log, should it be requested by the Board for audit purposes.

(D) The occupational therapists shall assign, and the occupational therapy assistant shall accept, only those duties and responsibilities for which the occupational therapy assistant has been specifically trained and is qualified to perform, pursuant to the judgment of the occupational therapist.

(1) Assessment/reassessment. Patient evaluation is the responsibility of the occupational therapists. The occupational therapy assistant may contribute to the evaluation process by gathering data, and reporting observations. The occupational therapy assistant may not evaluate independently or initiate treatment prior to the occupational therapist's evaluation.

(2) Treatment planning/Intervention. The occupational therapy assistant may contribute to treatment planning as directed by the occupational therapist. The occupational therapist shall advise the patient/client as to which level of practitioner will carry out the treatment plan.

(3) Discontinuation of intervention. The occupational therapy assistant may contribute to the discharge process as directed by the occupational therapist. The occupational therapist shall be responsible for the final evaluation session and discharge documentation.

(E) Before an occupational therapy assistant can assist in the practice of occupational therapy, he or she must file with the Board a signed, current statement of supervision of the licensed occupational therapist(s) who will supervise the occupational therapy assistant. Change in supervision shall require a new status report to be filed with the Board, prior to starting work and when supervision ends.

(F) In extenuating circumstances, when the occupational therapy assistant is without supervision, the occupational therapy assistant may carry out established programs for up to thirty (30) calendar days while appropriate occupational therapy supervision is sought. It shall be the responsibility of the occupational therapy assistant to notify the Board of these circumstances.

(G) Failure to comply with the above will be considered unprofessional conduct and may result in punishment by the Board.

6.3 DIRECT SUPERVISION OF AIDES DEFINED.

(A) The occupational therapy aide as defined in 17-88-102 (4) means a person who aids a licensed occupational therapist or occupational therapy assistant in the practice of occupational therapy, whose activities require an understanding of occupational therapy but do not require professional or advanced training in the basic anatomical, biological, psychological, and social sciences involved in the practice of occupational therapy.

(B) The aide functions with supervision appropriate to the task as determined by the supervisor. This supervision is provided by the occupational therapists or the occupational therapy assistant. The aide is not trained to make professional judgments or to perform tasks that require the clinical reasoning of an occupational therapy practitioner. The role of the aide is strictly to support the occupational therapist or the occupational therapy assistant with specific non-client related tasks, such as clerical and maintenance activities, preparation of a work area or equipment, or with routine client-related aspects of the intervention session.

(C) Any duties assigned to an occupational therapy aide must be determined and appropriately supervised on-site, in-sight daily by a licensed occupational therapist or occupational therapy assistant and must not exceed the level of training, knowledge, skill and competence of the individual being supervised. Direct client related duties shall require continuous visual supervision by the occupational therapist or the occupational therapy assistant. The Board holds the supervising occupational therapist professionally responsible for the acts or actions performed by any occupational therapy aide supervised by the therapist in the occupational therapy setting.

(D) Duties or functions which occupational therapy aides shall not perform include the following:

(1) Interpreting referrals or prescriptions for occupational therapy services;

(2) Performing evaluative procedures;

(3) Developing, planning, adjusting, or modifying treatment procedures;

(4) Preparing written documentation of patient treatment or progress for the patient's record;

(5) Acting independently or without on-site, in-sight supervision of a licensed occupational therapist during patient therapy sessions.

(E) Direct client related services provided solely by an occupational therapy aide/tech without on-site, in-sight continuous visual supervision by a licensed occupational therapist or an occupational therapy assistant cannot be billed as occupational therapy services.

(F) Failure of licensee to supervise an Aide as described herein will be considered as unprofessional conduct and may result in punishment by the Board.

7. Occupational therapists and occupational therapy assistants should abide by the principles and standards in the current Occupational Therapy Code of Ethics published by the American Occupational Therapy Association.

**HISTORY**: Adopted June 15, 1978; Amended December 11, 1992; March 12, 1993; December 4, 1997; February 1, 2001; April 6, 2001; April 4, 2002; October 6, 2005; June 5, 2014; February 5, 2015, Effective August 17, 2015; Amended June 4, 2020, Effective August 7, 2020..

## REGULATION NO. 7: REGULATIONS GOVERNING THE PRESCRIBING OF AMPHETAMINES

Schedule II controlled substances are drugs that have a legitimate medical indication, but also have a high potential for abuse that may lead to severe psychological or physical dependence. Included in the list of Schedule II drugs are the stimulants: amphetamines and methamphetamines and their salts and optical isomers (e.g. Adderall, Desoxyn, Dexedrine and Vyvanse) and methylphenidate and its salts and isomers (e.g. Ritalin, Concerta, Focalin and Daytrana).

The ASMB believes it is prudent to provide prescribing guidelines to help ensure the safety of patients in the state of Arkansas. Therefore, in addition to the requirement that all prescriptions for stimulants comply with both state and federal laws, this regulation will also require the following:

1. Prescriptions for these drugs may be written by a physician for a legitimate medical indication. Such indications include Attention Deficit Hyperactivity Disorder and Narcolepsy. Other off label uses may be justified with appropriate medical rationale and documentation of evidence-based research and experience. These alternative uses include, but are not limited to other sleep disorders, augmentation of

antidepressants or treatment of post-stroke depression.

2. No second or subsequent prescription for these controlled drugs may be written for the patient until the physician reassesses the patient and documents in the medical record:
    a. The patient's response to the medication
    b. Reports from family, educators or counselors as to the patient's response to the medication
    c. Record of an examination of the patient to identify possible adverse effects secondary to the medication
    d. An informed judgment as to the overall benefit of the medication versus potential adverse or side effects
    e. A written plan for providing scheduled refills and return visits.

Violations of this regulation may be interpreted by the Board as the physician exhibiting gross negligence or ignorant malpractice and shall subject the physician to all penalties provided by Arkansas Code Ann. §17-95-410.

**HISTORY:** Adopted April 23, 1979; Amended April 18, 1986; Amended June 14, 2001; Amended June 9, 2011.

## REGULATION NO. 8

*REPEALED*: JUNE 9, 1995.

## REGULATION NO. 9

*REPEALED*: DECEMBER 1, 1994.

## REGULATION NO. 10: REGULATIONS GOVERNING THE LICENSING AND PRACTICE OF RESPIRATORY CARE PRACTITIONERS

1. APPLICATION FOR LICENSURE. Any person who plans to practice as a licensed respiratory care practitioner (LRCP) in the state of Arkansas shall, in addition to demonstrating eligibility in accordance with the requirement of Arkansas Code Ann. 17-99-302 or 17-99-303, apply for licensure to the Board on forms and in such manner as the Board shall prescribe.

1.1 FORMS. Application forms may be secured from the Arkansas State Medical Board.

2. EXAMINATION. All respiratory care practitioners shall be required to pass an examination for a license to practice the profession in Arkansas, except as otherwise stated in Arkansas Code Ann. 17-99-301. It is not the intent of the Board to examine for licensure as a respiratory care practitioner those individuals engaged solely in the practice of pulmonary function testing.

3. LICENSING. All respiratory care practitioners in the state of Arkansas must be licensed to practice, except as otherwise stated in Arkansas Code Ann. 17-99-301.

3.1 BY EXAMINATION. The Board shall register as a respiratory care practitioner and shall issue a license to any person who satisfactorily passes the examination provided for in the Act and who otherwise meets the requirements for qualification contained herein and pays a fee as determined by the Board.

3.2. BY WAIVER OF EXAMINATION. The Board shall waive the examination and grant a license as a licensed respiratory care practitioner (LRCP) to any person who meets the qualifications outlined in Arkansas Code Ann. 17-99-302.

3.3 TEMPORARY LICENSE. The secretary of the Board may issue a temporary permit without examination to practice respiratory care to persons who are not licensed in other states but otherwise meet the qualifications for licensure set out in the Act. The temporary permit is valid for six (6) months and is not renewable.

3.4 RECIPROCITY. A licensed respiratory care practitioner who has been issued a license in another state or territory whose qualifications for licensure meet or exceed those prescribed in the Act shall be issued a license to practice respiratory care in the state of Arkansas upon payment of the prescribed fees if the state or territory from which the applicant comes accords a similar privilege of licensure to persons licensed in this state by the Board.

3.5 RENEWAL. A license or re-registration fee of $40.00 shall be paid to the Board by each respiratory care practitioner who holds a license to practice respiratory care in the state of Arkansas. Registration fee shall be paid by the last day of the birth month. The license of any person failing to re-register and pay said fee by the last day of the birth month shall expire automatically.

3.6 REINSTATEMENT. Any delinquent license of less than five (5) years may be reinstated by paying all delinquent fees and a penalty of $10.00 for each year or part of a year they have been delinquent. They will also be required to submit twelve (12) continuing educational units (CEU's) for each year delinquent. Any person who shall fail to re-register and pay the annual fee for five (5) consecutive years shall be required to be re-examined by the Board, as per Rule 2, before their license may be reinstated.

3.7 REFUSAL, REVOCATION, AND/OR SUSPENSION OF LICENSE. The Board after due

notice and hearing may deny or refuse to renew a license, or may suspend or revoke a license, of any licensee or applicant for licensure:

(a) Who is habitually drunk or who is addicted to the use of narcotic drugs;

(b) Who has been convicted of a violation of state or federal narcotic laws;

(c) Who is, in the judgment of the Board, guilty of immoral or unprofessional conduct;

(d) Who has been convicted of any crime involving moral turpitude;

(e) Who is guilty, in the judgment of the Board, of gross negligence in their practice as a respiratory care practitioner;

(f) Who has obtained or attempted to obtain registration by fraud or material misrepresentation;

(g) Who has been declared insane by a court of competent jurisdiction and has not thereafter been lawfully declared sane;

(h) Who has treated or undertaken to treat ailments to human beings other than by respiratory care and as authorized by this Act, or who has undertaken to practice independent of the prescription and direction of a licensed physician.

4. FEES. The fees are as follows:

Initial application for licensure by examination or by reciprocity: $75.00.

An applicant whose application is rejected shall be refunded all but $25.00 of the paid application fee.

Application for temporary permit: $35.00

Annual renewal: $40.00

Reinstatement: All delinquent fees plus a penalty of $10.00 per year for all years delinquent.

5. CONTINUING EDUCATION. All respiratory care practitioners licensed by the Board in the state of Arkansas must complete twelve (12) continuing education hourly units as a condition for renewal of a license. Each licensee will sign their renewal application verifying that they have completed said twelve hours and will maintain, for a period of three years, proof of the courses taken, should it be requested by the Board for audit purposes.

5.1 TYPES OF ACCEPTABLE CONTINUING EDUCATION.

The following categories of experience will be accepted for meeting the continuing education requirements:

a. Courses completed in the techniques and application of respiratory therapy care provided through an approved respiratory care educational program.

b. Participation in programs which provide for the awarding of continuing respiratory care education, continuing education units or equivalent credits which may be granted through national or state organizations such as the American Association of Respiratory Care, Arkansas Society for Respiratory Care, American Thoracic Society or the American College of Chest Physicians, or their successor organizations.

c. Instruction in programs as described in the preceding sections (a, b) provided such instruction is not related to one's employment responsibilities.

d. Passage of the National Board for Respiratory Care credentialing or re-credentialing examinations for the entry level practitioner or the written or clinical simulation for advanced practitioners.

e. Any activity completed within the 12 months prior to the issuance of the initial license.

5.2 DOCUMENTATION. All licensed practitioners shall submit documentation of completion of continuing education experiences on such forms as the Board shall supply, upon request by the Board. Acceptable documentation is as follows:

a. Official transcripts documenting completion of respiratory care course work.

b. A signed certificate by a program leader or instructor of the practitioner's attendance in a program.

c. A letter from a sponsoring institution on the agency's letterhead giving the name of the program, location, dates, subjects taught, and hours of instruction.

d. A copy of the official transcript indicating successful passage of the National Board of Respiratory Care credentialing or re-credentialing examinations for the entry level practitioner or simulation for advanced practitioners.

5.3 CONTINUING EDUCATION CREDIT. Continuing education credits will be awarded based on the following criteria:

a. For completed applicable respiratory care course work, five (5) continuing education units will be awarded for each semester credit or hour successfully completed.

b. For programs attended, continuing education units will be awarded as stated in the program

literature or one (1) continuing education unit will be awarded for each hour of instruction.

c. For instruction, three (3) continuing education units will be awarded for each clock hour of respiratory care instruction, signed by program director.

d. For passage of the National Board for Respiratory Care credentialing or re-credentialing examinations for the entry level practitioner or the written or clinical simulation or advanced practitioner (RRT), Adult Critical Care Specialty Examination (ACCS), Certified Respiratory Therapy Sleep Disorders Specialist Examination (CRT-SDS), Registered Respiratory Therapy Sleep Disorders Specialist Examination (RRT-SDS), Neonatal/Pediatric Specialty Examination (NPS), Certified Pulmonary Function Technologist (CPFT), and Registered Pulmonary Function Technologist (RPFT), six (6) continuing education units will be awarded.

e. Advanced Cardiovascular Life Support (ACLS), Neonatal Advanced Life Support (NALS), Pediatric Advanced Life Support (PALS), Neonatal Resuscitation Program (NRP), and Sugar, Temperature, Airway, Blood work, Lab work, and Emotional support for the family (STABLE) are awarded six (6) CEUs on initial and/or re-certifications.

f. Any activity approved by the Arkansas Respiratory Care Examining Committee.

5.4 FAILURE TO COMPLETE THE CONTINUING EDUCATION REQUIREMENT. A practitioner who has failed to complete the requirements for continuing education as specified in Section 5:

a. Only active licensees may be granted up to a three (3) month extension at which time all requirements must be met.

b. A practitioner may not receive another extension at the end of the new reporting period.

5.5 EXCESSIVE CONTINUING EDUCATION CREDITS.

Credits reported to the Board which exceed the required number as specified in Section 5 shall not be credited to the new reporting period.

5.6 HARDSHIP. The Board has considered hardship situation in formulating these sections.

5.7 The provisions of this Section (5 - 5.7) shall become effective January 1, 1989.

6. DEFINITIONS.

6.1 ACT DEFINED. The term Act as used in these rules shall mean Act 1094, the Arkansas Respiratory Care Act of 1995.

6.2 NATIONAL CREDENTIALS DEFINED. The National Board for Respiratory Care issues the credentials of C.R.T. (Certified Respiratory Therapist) and R.R.T (Registered Respiratory Therapist). Persons holding these credentials meet the qualifications for licensure in the state of Arkansas until otherwise determined by the Board.

6.3 STATE CREDENTIALS DEFINED. Persons who have met the qualifications and obtained a license in the state of Arkansas shall be designated by the credentials of L.R.C.P. (Licensed Respiratory Care Practitioner).

7. OTHER DEFINITIONS.

7.1 STUDENT. A Person currently enrolled in an accredited, approved training program who is actively engaged in the clinical practice of respiratory care at the level of their clinical education.

7.2 LIMITED. The clinical practice of respiratory care shall be restricted to the level of current and progressive clinical training as provided by an accredited, approved training program in respiratory care. The definition applies to respiratory care students.

7.3 SUPERVISION. Supervision by a licensed respiratory care practitioner who is responsible for the functioning of the practitioner.

7.4 APPROVED TRAINING PROGRAM. Respiratory care programs approved by the Arkansas State Board of Higher Education or like organizations in other states.

8. Members of the Arkansas Respiratory Care Examining Committee will be paid the sum of $35.00 per day per diem when they are meeting as a Committee.

**HISTORY:** Adopted May 25, 1988; Amended September 8,1995, December 4, 1997; Revised March 5, 1999; *Revised February 4, 2000; Amended December 6, 2001; Amended October 6, 2005; Amended October 4, 2012; Amended January 1, 2013; Amended June 5, 2014; Amended August 6, 2015; Effective December 14, 2015.

## REGULATION NO. 11

*REPEALED*: SCHEDULED MEETING DATES.

## REGULATION NO. 12

1. Pursuant to other provisions of Act 515 of 1983 any physician licensed to practice medicine in the state

of Arkansas who is a "dispensing physician" as defined by Act 515 of 1983 shall comply with all provisions of the Act and shall register with the Arkansas State Medical Board on a form provided by it for that purpose.

2. Any physician desiring to dispense legend drugs, who is not exempt by the terms of Act 515 of 1983 from the requirement of prior approval of the Arkansas State Medical Board shall apply to the Board on a form provided for it for that purpose and shall be required to demonstrate the need for such dispensing of legend drugs prior to receiving approval.
3. All records maintained by a dispensing physician pursuant to the requirements of Act 515 of 1983 shall be subject to inspection by a designated inspector of the Arkansas State Medical Board and at its direction during all regular business hours.
4. Violation of the provision of Act 515 of 1983 or violations of these regulations shall constitute "unprofessional conduct" and shall subject the violator to disciplinary action as provided by Ark. Code Ann. 17-95-409.

**HISTORY:** Adopted June 16, 1983.

## REGULATION NO. 13

WHEREAS, the Arkansas State Medical Board is vested with discretion (pursuant to Arkansas Code Annotated § 17-95-405) to issue a license to practice medicine to a physician who has been issued a license to practice medicine in another state, "whose requirements for licensure are equal to those established by the State of Arkansas" without requiring further examination; and in order to establish objective criteria of equivalency in licensure requirements, the Board hereby finds that all applicants for licensure who were graduated from an American or Canadian medical school prior to 1975 and who otherwise meet all other requirements for licensure in this State shall be determined to meet the requirements for licensure in this State upon presentation of satisfactory evidence that they have successfully completed the examination required by the licensing authority in the State in which they were originally licensed. All applicants for licensure who were graduated from an American or Canadian Medical School subsequent to 1975 shall be required to present evidence of satisfactory completion of one of the examinations listed in Regulation 14. Graduates of Canadian medical schools shall be deemed to have satisfied the equivalency requirements by providing proof of completion of the LMCC (Licentiate of the Medical Council of Canada) examination. Graduates of foreign medical schools must comply with the requirements of Regulation 3 and Regulation 14, regardless of the State in which they are licensed. All applicants must complete and submit such information as the Board requests on its application form for licensure by credentials.

**HISTORY:** Adopted April 19, 1985; Amended October 6, 2000.

## REGULATION NO. 14

WHEREAS the Medical Practices Act; more specifically Arkansas Code Annotated Sec. 17-95-403(a)(2) and Arkansas Code Annotated Sec. 17-95-404, sets forth that anyone desiring a license to practice medicine in the State of Arkansas must successfully pass an examination as approved by the Board.

WHEREAS the Arkansas State Medical Board is charged with selecting said examinations. WHEREFORE the Arkansas State Medical Board designates the following examinations as appropriate examinations for licensure:

1. Those individuals desiring a license to practice medicine and having graduated from an American or Canadian medical school must show proof of satisfactory completion of one of the following exams:
   (a) Federation Licensing Examination
   (b) The National Board of Medical Exam
   (c) The United States Medical Licensing Exam
   (d) Le Medical Counsel of Canada Exam
   (e) Examinations developed by the National Board of Osteopathic Medical Examiners
2. Those individuals desiring a license who have graduated from a foreign country's medical school in addition to the other requirements will show proof of successful completion of the ECFMG (Educational Commission for Foreign Medical Graduates Exam) and one of the following exams:
   (a) Federation Licensing Examination
   (b) The National Board of Medical Exam
   (c) The United States Medical Licensing Exam
   (d) Le Medical Counsel of Canada Exam
3. Those individuals desiring a license to practice medicine as an Osteopath in the State of Arkansas, in addition to the other requirements, will show proof of successful completion of one of the following exams:
   (a) Federation Licensing Examination
   (b) Examinations developed by the National Board of Osteopathic Medical Examiners
   (c) The United States Medical Licensing Exam
   (d) The National Board of Medical Exam
   (e) Le Medical Counsel of Canada Exam
4. Those individuals desiring a license by credential must show proof of successful completion of an

examination accepted and stated above of one of the following:

(a) All of those listed under the first category

(b) Any State exam if it was taken prior to 1975

5. It is recognized by the Arkansas State Medical Board that the Federation Licensing Exam (FLEX) and the National Board of Medical Examiners (NBME) are being phased out as an accepted examinations for licensure. It is also recognized by the Arkansas State Medical Board that the United States Medical Licensing Exam (USMLE) is being phased in as the primary form of examination for state licensure.

   During this period of transition, the following will be accepted by the Arkansas State Medical Board as completion of an approved examination:

   NBME Part I or USMLE Step I

   plus

   NBME Part II or USMLE Step 2

   plus

   NBME Part III or USMLE Step 3

   FLEX Component I

   plus

   USMLE Step 3

   or

   NBME Part I or USMLE Step I

   plus

   NBME Part II or USMLE Step 2

   plus

   FLEX Component 2

   The above combinations of examinations in no way is to imply that one cannot take the entire examination, that being those exams listed in Regulation 14-1, and passing the same.

6. All applicants for a license to practice medicine in the State of Arkansas, who choose to take the United States Medical Exam (USMLE) or the Comprehensive Osteopathic Medical Licensing Examination (COMLEX) must comply with the following:

   A. Present proof of successful completion of Steps 1, 2 and 3 of the USMLE (United States Medical Licensing Exam) or the Comprehensive Osteopathic Medical Licensing Examination (COMLEX).

   B. The applicant must successfully complete each step in no more than 3 attempts per step.

      A waiver may be granted by the Board, if requested by the applicant, from the "3 attempt per step limit," for Step 1 and/or Step 2. The waiver will be granted if the Board finds that the applicant can show documentation and proof that he/she suffered from a significant health condition or personal problem, and that by its severity would necessarily cause delay to the applicant's medical education and successful completion of the step testing. The waiver will not exceed 4 attempts per step.

      A waiver may also be granted to the "3 attempt per step limit" on step 3 not to exceed 4 attempts if:

      1) the applicant has completed one year of approved graduate medical education after the 3rd failed attempt and before the fourth and final attempt at step 3; or

      2) the applicant can show proof that he/she is certified in a Specialty Board by the American Board of Medical Specialties.

   C. The limitation on the number of attempts of the step exams as set forth in Paragraph B, may begin anew, if the applicant begins his or her entire medical school education anew.

**HISTORY:** Adopted March 12, 1992; Amended May 7, 1993; Amended June 5, 1998; Amended October 7, 2010; Amended June 9, 2011; Amended December 4, 2014.

## REGULATION NO. 15: NURSE PRACTITIONER REGISTRATION AND SUPERVISION

*REPEALED*: OCTOBER 25, 1993.

## REGULATION NO. 16: PHYSICIANS, HIV, HBV AND HCV

Arkansas Code S17-95-409 (G) and (J) provides that the Arkansas State Medical Board may revoke or suspend a license if the practitioner is grossly negligent and becomes physically incompetent to practice medicine to such an extent as to endanger the public.

Public Law 102-141 passed in the First Session of the 102nd Congress of the United States of America approved on 28 October, 1991 provides that the states will establish guidelines to apply to health professionals and will determine appropriate disciplinary and other actions to ensure compliance with those guidelines in order to prevent the transmission of human immunodeficiency syndrome and hepatitis B virus during exposure-prone invasive procedures except for emergency situation where the patient's life or limb is in danger.

**DEFINITIONS:**

As used in this Rule the term:

1. HIV means the human immunodeficiency virus, whether HIV-1 or HIV-2.
2. HIV seropositive means with respect to a practitioner, that a test under the criteria of the Federal Centers for Disease Control or approved by the Arkansas State Medical Board has confirmed the presence of HIV antibodies.
3. HBV means the hepatitis B virus.
4. HCV meanes the hepatitis C virus.
5. HbeAg seropositive means with respect to a practitioner, that a test of the practitioner's blood under the criteria of the Federal Centers for Disease Control or approved by the Arkansas State Medical Board has confirmed the presence of the hepatitis Be antigens.
6. Body fluids means amniotic, pericardial, peritoneal, pleural, synovial and cerebrospinal fluids, semen, vaginal secretions and other body fluids, secretions and excretions containing visible blood.
7. Exposure-prone Procedure means an invasive procedure in which there is a significant risk of percutaneous injury to the practitioner by virtue of digital palpation of a needle tip or other sharp instrument in a body cavity or the simultaneous presence of the practitioner's fingers and a needle or other sharp instrument or object in a poorly visualized or highly confined anatomic site, or any other invasive procedure in which there is a significant risk of contact between the blood or body fluids of the practitioner and the blood or body fluids of the patient.
8. Invasive procedure means any surgical or other diagnostic or therapeutic procedure involving manual or instrumental contact with or entry into any blood, body fluids, cavity, internal organ, subcutaneous tissue, mucous membrane or percutaneous wound of the human body.
9. Practitioner means physician or physician's trained assistant, who performs or participates in an invasive procedure or functions ancillary to invasive procedures.

**GENERAL REQUIREMENTS:**

10. A practitioner who performs or participates in an invasive procedure or performs a function ancillary to an invasive procedure shall, in the performance of or participation in any such procedure or function be familiar with, observe and rigorously adhere to both general infection control practices in universal blood and body fluid precautions as then recommended by the Federal Centers for Disease Control to minimize the risk of HBV, HVC or HIV from a practitioner to a patient, from a patient to a practitioner, or from a patient to a patient.
11. Universal blood and body fluid precautions for purposes of this section, adherence to the universal blood and body fluid precautions requires observance of the following minimum standards:

    **Protective Barriers:** A practitioner shall routinely use appropriate barrier precautions to prevent skin and mucous membrane contact with blood and other bodily fluids of the patient, to include:

    (1) Gloves shall be used by the physician and direct care staff during treatment, which involved contact with items potentially contaminated with the patient's bodily fluids. Fresh gloves shall be used for all such patient contact. Gloves shall not be washed or reused for any purpose. The same pair of gloves shall not be used, removed, and reused for the same patient at the same visit or for any other purpose.

    (2) Masks shall be worn by the physician and direct care staff when splatter or aerosol is likely. Masks shall be worn during surgical procedures except in those specific instances in which the physician determines that the use of a mask would prevent the delivery of health care services or would increase the hazard and risk to his or her patient.

    (3) Protective eyewear shall be worn by the physician and offered to all patients during times when splatter or aerosol is expected.

    (4) Hands and other skin surfaces shall be washed immediately and thoroughly if contaminated with blood or other bodily fluids. Hands shall be washed immediately after gloves are removed.

**PERCUTANEOUS PRECAUTIONS:**

12. A practitioner shall take appropriate precautions to prevent injuries caused by needles, scalpels, and other sharp instruments or devices during procedures; when cleaning used instruments; during disposal of used needles; and when handling sharp instruments after procedures. If a needle stick injury occurs, the needle or instrument involved in the incident should be removed from the sterile field. To prevent needle stick injuries, needles should not be recapped, purposely bent or broken by hand, removed from disposable syringes, or otherwise manipulated by hand. After they are used, disposable syringes and needles, scalpel blades, and other sharp items should be placed for disposal in puncture-resistant containers located as close as

practical to the use area. Large-bore reusable needles should be placed in puncture-resistant containers for transport to the reprocessing area.

13. Resuscitation Devices. To minimize the need for emergency mouth-to-mouth resuscitation, a practitioner shall ensure that mouthpieces, resuscitation bags, or other ventilation devices are available for use in areas in which the need for resuscitation is predictable.

14. Sterilization and Disinfection. Instruments or devices that enter sterile tissue or the vascular system of any patient or through which blood flows should be sterilized before reuse. Devices or items that contact intact mucous membranes should be sterilized or receive high-level disinfection. Sterile disposable needles shall be used. The same needle may be recapped with a single-handed recapping technique or recapping device and subsequently reused for the same patient during the same visit.

15. A practitioner who is HbeAg seropositive or HIV seropositive, or who otherwise knows or should know that he or she carries and is capable of transmitting HBV, HCV or HIV, shall not thereafter perform or participate directly in an exposure-prone procedure except as provided in this Rule or Regulation:

16. A practitioner may participate in exposure-prone procedure with a patient when each of the following four conditions have been met:

    (a) The practitioner has affirmatively advised the patient, or the patient's lawfully authorized representative, that the practitioner has been diagnosed as HbeAg seropositive and/or HIV seropositive and/or HCV positive, as the case may be.

    (b) The patient, or the patient's lawfully authorized representative, has been advised of the risk of the practitioner's transmission of HBV, HCV and/or HIV to the patient during an exposure-prone procedure. The practitioner shall personally communicate such information to the patient or the patient's representative. The physician shall also communicate such information to the patient's physician.

    (c) The patient, or the patient's lawfully authorized representative, has subscribed a written instrument setting forth:

        (1) Identification of the exposure-prone procedure to be performed by the practitioner with respect to the patient.

        (2) An acknowledgment that the advice required by Subsections (15)(a) and (15)(b) hereabove have been given to and understood by the patient or the patient's representative; and

        (3) The consent of the patient, or the patient's lawfully authorized representative, to the performance of or participation in the designated procedure by the practitioner.

    (d) The practitioner's HbeAg and/or HIV seropositivity and/or HCV positivity has been affirmatively disclosed to each practitioner or other health care personnel who participates or assists in the exposure-prone procedure.

**REVOCATION OF CONSENT:**

17. Consent given pursuant to this section may be revoked by a patient or a patient's lawfully authorized representative, at any time prior to performance of the subject procedure by any verbal or written communication to the practitioner expressing an intent to revoke, rescind or withdraw such consent.

**REPORTS AND INFORMATION CONFIDENTIALITY:**

18. Reports and information furnished to the Arkansas State Medical Board relative to the HbeAg, HCV or HIV status of a practitioner shall not be deemed to constitute a public record but shall be deemed and maintained by the Board as confidential and privileged as a medical record and shall not be subject to disclosure by means of subpoena in any judicial, administrative or investigative proceeding; provided that the practitioner adheres to the Rules and Regulations of the Board and is willing to subject himself to counseling, review and monitoring by the Board or its designated agent.

19. Upon the Board learning that a practitioner is HbeAg or HIV seropositive the Board, or the Board's agents, will make contact with said practitioner, review the Rules and Regulations of the Board and set up a process of monitoring that individual's practice.

20. The monitoring of practitioners and disciplining of practitioners as set forth in this Rule and Regulation will be reported to the Arkansas Department of Health but will remain confidential.

21. If the practitioner does not comply with this Rule and Regulation of the board that practitioner will be deemed to have been grossly negligent and committed ignorant malpractice and further that practitioner would be physically incompetent to practice medicine to such an extent as to endanger the public; thus subjecting the practitioner to a disciplinary hearing and possibly sanctioning of his license.

**HISTORY:** Adopted May 6, 1993; Amended October 4, 2001, October 2, 2003.

## REGULATION NO. 17: CONTINUING MEDICAL EDUCATION

A. Pursuant to Ark. Code Ann. 17-80-104, each person holding an active license to practice medicine in the State of Arkansas shall complete twenty (20) credit hours per year of continuing medical education. Fifty (50%) percent of said hours shall be in subjects pertaining to the physician's primary area of practice, and designated as Category I as defined in Paragraph B.4 below. One hour of credit will be allowed for each clock hour of participation and approved continuing education activities, unless otherwise designated in Subsection B below.

B. Approved continuing medical education activities include the following:

1. Internship, residency or fellowship in a teaching institution approved by the Accreditation Counsel for Graduate Medical Education (ACGME) or programs approved by the American Osteopathic Association Council on Postdoctoral Training or the American Medical Association or the Association of American Medical Colleges or the American Osteopathic Association. One credit hour may be claimed for each full day of training. No other credit may be claimed during the time a physician is in full-time training in an accredited program. Less than full-time study may be claimed on a pro-rata basis.

2. Education for an advanced degree in a medical or medically related field in a teaching institution approved by the American Medical Association or the Association of American Medical Colleges or the American Osteopathic Association. One credit hour may be claimed for each full day of study. Less than full-time study may be claimed on a pro-rata basis.

3. Full-time research in a teaching institution approved by the Liaison Committee on Medical Education (LCME) or the American Osteopathic Association Bureau of Professional Education or the American Medical Association or the Association of American Medical Colleges or the American Osteopathic Association. One credit hour may be claimed for each full day of research. Less than full-time study may be claimed on a pro-rata basis.

4. Activities designated as Category 1 by an organization accredited by the Accreditation Council on Continuing Medical Education or a state medical society or be explicitly approved for Category 1 by American Medical Association, or the Arkansas State Medical Board, or by the Council on Continuing Medical Education of the American Osteopathic Association. Activities designated as prescribed hours by the American Academy of Family Physicians.

5. Medical education programs may also be claimed for credit if said medical education programs have not been designated for specific categories referred to in Number 4 above, and are designed to provide necessary understanding of current developments, skills, procedures or treatment related to the practice of medicine.

6. Serving as an instructor of medical students, house staff, other physicians or allied health professionals from a hospital or institution with a formal training program, where the instruction activities are such as will provide the licentiate with necessary understanding of current developments, skills, procedures or treatment related to the practice of medicine.

7. Publication or presentation of a medical paper, report, book, that is authored and published, and deals with current developments, skills, procedures or treatment related to the practice of medicine. Credits may be claimed only once for materials, presented. Credits may be claimed as of the date of the publication or presentation. One credit hour may be reported per hour of preparation, writing and/or presentation.

8. Credit hours may be earned for any of the following activities which provide necessary understanding of current developments, skills, procedures or treatment related to the practice of medicine: (a) completion of a medical education program based on self-instruction which utilized videotapes, audiotapes, films, filmstrips, slides, radio broadcasts and computers; (b) independent reading of scientific journals and books; (c) preparation of the specialty Board certification or recertification examinations; (d) participation on a staff committee or quality of care and/or utilization review in a hospital or institution or government agency.

C. Each year, each physician and physician assistant shall obtain at least one (1) hour of CME credit specifically regarding the prescribing of opioids and benzodiazepines. The one hour may be included in the twenty (20) credit hours per year of continuing medical education required in Paragraph A of this

regulation and shall not constitute an additional hour of CME per year.

D. If a person holding an active license to practice medicine in this State fails to meet the foregoing requirements because of illness, military service, medical or religious missionary activity, residence in a foreign country, or other extenuating circumstances, the Board upon appropriate written application may grant an extension of time to complete same on an individual basis.

E. Each year, with the application for renewal of a active license to practice medicine in this State, the Board will include a form which requires the person holding the license to certify by signature, under penalty of perjury, that he or she has met the stipulated continuing medical education requirements. In addition, the Board may randomly require physicians submitting such a certification to demonstrate, prior to renewal of license, satisfaction of the continuing medical education requirements stated in his or her certification. A copy of an American Medical Association Physician's Recognition Award (AMA PRA) certificate awarded to the physician and covering the reporting period shall be bona fide evidence of meeting the requirements of the Arkansas State Medical Board. A copy of the American Osteopathic Association or the State Osteopathic Association certificate of continuing medical education completion or the American Osteopathic Association's individual activity report shall be bona fide evidence of meeting the requirements of the Arkansas State Medical Board.

F. Continuing medical education records must be kept by the licensee in an orderly manner. All records relative to continuing medical education must be maintained by the licensee for at least three (3) years from the end of the reporting period. The records or copies of the forms must be provided or made available to the Arkansas State Medical Board upon request.

G. Failure to complete continuing medical education hours as required or failure to be able to produce records reflecting that one has completed the required minimum continuing medical education hours shall be a violation of the Medical Practices Act and may result in the licensee having his license suspended and/or revoked.

**HISTORY:** Adopted September 14, 1996. Amended August 5, 2010; Amended June 9, 2011; Amended February 2, 2012; Amended April 5, 2018, Effective June 13, 2018.

## REGULATION NO. 18: FEE SCHEDULE FOR CENTRALIZED VERIFICATION SERVICE

Pursuant to Ark. Code Ann. § 17-95-107(d)(7) provides that the Board may charge credentialing organizations a reasonable fee for the use of credentialing services as established by rule and regulation.

Credentialing Organizations will be charged the following fees for requests for physician information:

| | |
|---|---|
| A. One time entity setup fee: | $250.00 |
| B. Fees for individual information requests: | |
| Initial Credentialing Information | $80.00 |
| Recredentialing Information | $60.00 |
| Recredentialing Information (Out of birth month cycle) *Effective January 1, 2003* | $80.00 |
| "Expedited Service" Credentialing Information (Information requested in five (5) business days or less) | $250.00 |
| Credentialing or Recredentialing information concerning out of state physicians requiring a license pursuant to A.C.A. § 17-95-206 | $275.00 |

**HISTORY:** Adopted June 6, 1996; Amended December 6, 2001; Amended December 6, 2007; Amended April 12, 2012.

## REGULATION NO. 19: PAIN MANAGEMENT PROGRAMS

A. Physicians operating a pain management program for specific syndromes...that is headache, low back pain, pain associated with malignancies, or temporomandibular joint dysfunctions...are expected to meet the standards set forth in this section or in fact be in violation of the Medical Practice Act by exhibiting gross negligence or ignorant malpractice.

B. Definitions:

1. Chronic Pain Syndrome: Any set of verbal and/or nonverbal behaviors that: (1) involves the complaint of enduring pain, (2) differs significantly from a person's premorbid status, (3) has not responded to previous appropriate medical and/or surgical treatment, and (4) interferes with a person's physical, psychological and social and/or vocational functioning.

2. Chronic Pain Management Program provides coordinated, goal-oriented, interdisciplinary team services to reduce pain, improving functioning, and decrease the dependence on

the health care system of persons with chronic pain syndrome.

3. "Chronic nonmalignant pain" means pain requiring more than three (3) consecutive months of prescriptions for:
    i. An opioid that is written for more than the equivalent of ninety (90) tablets, each containing five milligrams (5mg) of hydrocodone;
    ii. A morphine equivalent dose of more than fifteen milligrams (15mg) per day; or
    iii. In the specific case of tramadol, a dose of fifty milligrams (50mg) per one hundred twenty (120) tablets;
4. "Opioid" means a drug or medication that relieves pain, including without limitation:
    i. Hydrocodone;
    ii. Oxycodone;
    iii. Morphine;
    iv. Codeine;
    v. Heroin; and
    vi. Fentanyl;
5. "Prescriber" means a practitioner or other authorized person who prescribes a Schedule II, III, IV, or V controlled substance.

C. The following standards apply to both inpatient and outpatient programs and the physician should conform to the same.
1. There should be medical supervision of physician prescribed services.
2. A licensee should obtain a history and conduct a physical examination prior to or immediately following admission of a person to the Chronic Pain Management Program.
3. At the time of admission to the program, the patient and the physician should enter into a written contract stating the following:
    a. The presenting problems of the person served.
    b. The goals and expected benefits of admission.
    c. The initial estimated time frame for goal accomplishment.
    d. Services needed.

D. In order to provide a safe pain program, the scope and intensity of medical services should relate to the medical care needs of the person served. The treating physician of the patient should be available for medical services. Services for the patient in a Chronic Pain Management Program can be provided by a coordinated interdisciplinary team of professionals other than physicians. The members of the core team, though each may not serve every person should include:
    a. A Physician.
    b. A clinical psychologist or psychiatrist.
    c. An occupational therapist.
    d. A physical therapist.
    e. A rehabilitation nurse.

E. A physician managing a Chronic Pain Management Program to a patient should meet the following criteria:
1. Three years experience in the interdisciplinary management of persons with chronic pain.
2. Participation in active education on pain management at a local or national level.
3. Board certification in a medical specialty or completion of training sufficient to qualify for examinations by members of the American Board of Medical Specialties.
4. Two years experience in the medical direction of an interdisciplinary Chronic Pain Program or at least six (6) months of pain fellowship in an interdisciplinary Chronic Pain Program.

The physician must have completed and maintained at least one (1) of the following:

5. Attendance at one (1) meeting per year of a regional and national pain society.
6. Presentation of an abstract to a regional national pain society.
7. Publication on a pain topic in a peer review journal.
8. Membership in a pain society at a regional or national level.

F. Treatment of Chronic Malignant Pain: Patient evaluation – a patient who is being treated with controlled substances for chronic nonmalignant pain shall be evaluated at least one (1) time every six (6) months by a physician who is licensed by the Arkansas State Medical Board.
    a. Prescriber requirements:
        i. For a patient with chronic nonmalignant pain, a prescriber, at a minimum and in addition to any additional requirements of the Arkansas State Medical Board, shall:
            1. Check the prescriptive history of the patient on the Prescription Drug Monitoring Program at least every six (6) months;

2. Have a signed pain contract with the patient that states, at a minimum, the expectations of the prescriber for the behavior of the patient which may include:
    a. A requirement for random urine drug screenings to help ensure that the patient is abiding by the requirements of the contract; and
    b. A requirement for random pill counts to ensure compliance with the prescription.

ii. The requirements of this section shall not apply to a patient:
1. Whose pain medications are being prescribed for a malignant condition:
2. With a terminal condition;
3. Who is a resident of a licensed healthcare facility;
4. Who is enrolled in a hospice program; or
5. Who is in an inpatient or outpatient palliative care program.

A prescriber who has been found by his or her licensing board to be in violation of a rule or law involving prescription drugs shall be required by the Arkansas State Medical Board to register with the Prescription Drug Monitoring Program and access patient information before writing a prescription for an opioid. The licensing board, in its discretion, may remove this requirement after a period of time if the board deems removal of the requirement appropriate.

**HISTORY:** Adopted December 11, 1996; Amended October 1, 2015, Effective December 14, 2015.

## REGULATION NO. 20: PRACTICE OF MEDICINE BY A NON-RESIDENT

Pursuant to Ark. Code Ann. 17-95-401 and 17-95-202, the Arkansas State Medical Board sets forth the following Rule and Regulation concerning the practice of medicine by a non-resident physicians or osteopaths:

Any non-resident physician or osteopath who, while located outside the State of Arkansas, provides diagnostic or treatment services to patients within the State of Arkansas on a regular basis or under a contract with the health care provider, a clinic located in this state, or a health care facility, is engaged in the practice of medicine or osteopathy in this state and, therefore must obtain a license to practice medicine in this State. Any nonresident physician or osteopath who, while located outside of the state, consults on an irregular basis with a physician or osteopath who holds a license to practice medicine within the State of Arkansas and who is located in this State, is not required to obtain a license to practice medicine in the State of Arkansas.

**HISTORY:** Adopted March 14, 1997.

## REGULATION NO. 21: ANOREXIANT DRUG GUIDELINES

**Short term treatment of obesity with Schedule III and IV drugs.**

A physician will be considered as exhibiting gross negligence or ignorant malpractice if he prescribes Schedule III and IV scheduled drugs under the Uniform Controlled Substance Act for obesity, except in conformity with the requirements as set below:

1. Anorexiant drugs listed on Schedule III and IV under the Uniform Controlled Substances Act shall not be dispensed or prescribed for the treatment of obesity, except in conformity with the following minimal requirements. Schedule II drugs may not be used in the treatment of obesity (see Regulation 7 of the Arkansas State Medical Board.)
2. The physician should be knowledgeable in the pathophysiology and treatment of obesity. An established physician/patient relationship should exist. The patient should be age 18 or older, or have written consent from parent or guardian. The medication should only be an adjunct to a comprehensive weight loss program focused on appropriate nutrition education, a change in lifestyle, counseling, and an individualized exercise program. The physician should determine whether or not the patient has made a substantial good faith effort to lose weight through diet and alteration of lifestyle prior to beginning drug therapy. The treating physician shall take a complete history of the patient and shall give a complete physical examination. The physical examination shall include checking the blood pressure and pulse, examining the heart and lungs, recording weight and height, and administering any other appropriate diagnostic tests. The history and examination shall be sufficient to determine if the patient has previously been drug dependent, to determine if there is a metabolic cause of the obesity which would make anorexiant drugs inappropriate (e.g. hypothyroidism) and to determine if other contraindications to use of the drugs exist. The treating physician shall enter each of those findings in the patient's records.
3. The physician should discuss with the patient different approaches to the treatment of obesity, and the risks and benefits associated with each approach. Risks should include potential side effects (e.g. cardiovascular and pulmonary complications, as outlined in the package insert), as well as the

potential for lack of success with weight loss. The physician should be aware of potential drug interactions between anorexiants, and other centrally acting drugs. The treating physician shall prescribe a diet for weight loss and appropriate counseling regarding lifestyle change, and record these changes on the patient record. Consideration on the use of anorexiant medications should take into account the degree of overweight, and concomitant medical conditions. The body mass index (BMI) should be used as a guide to determine the degree of overweight. The BMI is defined as the weight (kg) divided by the height (meters squared). A chart to determine BMI is enclosed. In general, anorexiant medication should only be used if the BMI is more than 27. In the case of concomitant obesity-related medical conditions, anorexiant medications may be considered with a BMI above 25. Obesity related medical conditions include diabetes, hypertension, dyslipidemia, cardiovascular disease, sleep apnea, psychological conditions, disc disease and severe arthritis of the lower extremities.

4. The treating physician shall prescribe a daily dosage that does not exceed the dosage recommended in the manufacturer's prescribing information for the drug prescribed or dispensed, unless peer reviewed medical literature exists in support of this cause.
5. The treating physician shall not dispense or prescribe more than a 30-day supply for a patient on the first visit. The patient shall be weighed at each visit prior to dispensing or prescribing an additional supply of the drug and the weight shall be entered in the patient's record.
6. At the time of each return patient visit, the treating physician shall monitor progress of the patient. The patient's weight, blood pressure, pulse, heart and lungs shall be checked. The findings shall be entered in the patient's record. In addition to any side effects of the medications, the physician should perform appropriate exams and tests to monitor the safety of any weight loss. This may include a more detailed dietary questionnaire, serum electrolytes, blood glucose, and other tests deemed appropriate. The Rule and Regulation for patients who are no longer obese for such period of time as to allow the patient to adapt to a lifestyle change for no more than an additional sixty (60) days.
7. Except as otherwise provided by this regulation, Schedule III or IV anorexiant drugs are only recommended for short-term use (e.g. 90 days). However, the treating physician may extend therapy beyond 90 days under the following conditions:
    a. When the anorexiant drugs are indicated for treatment of diseases other than obesity; and
    b. When, in the physician's professional judgment, the treating physician is observing and recording significant progress or benefit from the drugs and no adverse effects occur that are related to the treatment. These observations shall be documented in the patient's record.
    c. When the drug involved has been FDA approved for longer use or maintenance.
8. Specialty clinics which market themselves to the public as centers for the treatment of obesity will be required to prescribe a comprehensive behavior modification program and dietary counseling directed by a professional during the course of treatment.
9. The Board encourages any physician who prescribes medications pursuant to Regulation 21 to make themselves fully aware of the guidelines set forth by the American Heart Association for the management of obesity.

**HISTORY:** Adopted March 13, 1998; Amended August 6, 2015, Effective December 14, 2015.

## REGULATION NO. 22: LASER SURGERY GUIDELINES

Pursuant to Ark. Code Ann. 17-95-202, the practice of medicine involves the use of surgery for the diagnosing and treatment of human disease, ailment, injury, deformity, or other physical conditions. Surgery is further defined by this Board as any procedure in which human tissue is cut, altered, or otherwise infiltrated by mechanical means, to include the use of lasers. The Board further finds that the use of medical lasers on human beings, for therapeutic or cosmetic purposes, constitutes the practice of medicine.

Under appropriate circumstances, that being the performing of minor procedures, a physician may delegate certain procedures and services to appropriately train non-physician office personnel. The physician, when delegating these minor procedures, must comply with the following protocol:

1. The physician must personally diagnose the condition of the patient and prescribe the treatment and procedure to be performed.
2. The physician may delegate the performance of certain tasks in the treatment only to trained non-physician personnel skilled in that procedure.
3. The physician must make himself available to respond to the patient should there be any complications from the minor procedure.
4. The physician should ensure and document patient records that adequately describe the condition of the patient and the procedure performed, and who performed said procedure.

A physician who does not comply with the above-stated protocol when performing minor procedures will be considered as exhibiting gross negligence, subjecting the physician to a disciplinary hearing before the Board, pursuant to the Medical Practices Act and the Rules and Regulations of the Board.

Ark. Code Ann. 17-95-409(a)(2)(g) states that the Board may revoke an existing license, or suspend the same, if a physician has committed unprofessional conduct, further defined as committing gross negligence or ignorant malpractice. The Board finds that a physician has, in fact, committed gross negligence if he performs laser surgery on patients without benefit of: a) clinical experience in the use of lasers; b) training of clinical management of patients; c) continuing medical education courses in the use of lasers; d) providing appropriate preoperative, operative, and post operative management.

**HISTORY:** Adopted June 5, 1998; Amended June 2, 2005.

## REGULATION NO. 23: MALPRACTICE REPORTING

A.C.A. § 17-95-103 requires every physician licensed to practice medicine and surgery in the State of Arkansas to report to the Arkansas State Medical Board within ten days after receipt or notification of any claim or filing of a lawsuit against him charging him with medical malpractice. The notice from the physician to the Board shall be sent by registered letter upon such forms as may be obtained at the office of the Board. In addition to completing the form, the physician should attach to the form a copy of the complaint if a lawsuit has been filed against him.

Should a physician fail to comply with the terms of Ark. Code Ann. § 17-95-103 and this Regulation, then the same, shall be cause for revocation, suspension, or probation or monetary fine as may be determined by the Board; after the bringing of formal charges and notifying the physician as required by the Medical Practices Act and the Administrative Procedure Act.

**HISTORY:** Adopted August 12, 1999.

## RULE NO. 24 RULES GOVERNING PHYSICIAN ASSISTANTS

1. A physician assistant must possess a license issued by the Arkansas State Medical Board prior to engaging in such occupation.
2. To obtain a license from the Arkansas State Medical Board the physician assistant must do the following:
    a. Answer all questions to include the providing of all documentation requested on an application form as provided by the Arkansas State Medical Board;
    b. Pay the required fee for licensure as delineated elsewhere in this regulation;
    c. Provide proof of successful completion of Physician Assistant National Certifying Examination, as administered by the National Commission on Certification of Physician Assistants;
    d. Certify and provide such documentation, as the Arkansas State Medical Board should require that the applicant is mentally and physically able to engage safely in the role as a physician assistant;
    e. Certify that the applicant is not under any current discipline, revocation, suspension or probation or investigation from any other licensing board;
    f. Provide letters of recommendation as to quality of practice history;
    g. The applicant should be at least 21 years of age;
    h. Show proof of graduation with a Bachelor's Degree from an accredited college or university or prior service as a military corpsman;
    i. Provide proof of graduation of a physician assistant education program recognized by the Accreditation Review Commission on Education for the Physician Assistant or by its successor agency and has passed the Physician Assistant National Certifying Examination administered by the National Commission on Certification of Physician Assistants.
    j. The submission and approval by the Board of a delegation agreement delineating the scope of practice that the physician assistant will engage in, the program of evaluation and supervision by the supervising physician;
    k. The receipt and approval by the Arkansas State Medical Board of the supervising physician for the physician assistant on such forms as issued by the Arkansas State Medical Board;
3. If an applicant for a license submits all of the required information, complies with all the requirements in paragraph 2, except paragraph 2 (j) and the same is reviewed and approved by the Board, then the applicant may request a Letter of Intent from the Board and the Board may issue the same. Said Letter of Intent from the Board will state that the applicant has complied with all licensure requirements of the Board except the submission of a Delegation Agreement and supervising physician and that upon those being submitted and approved by the Board, it is the intent of the board to license

the applicant as a physician assistant. Said Letter of Intent will expire six (6) months from date of issue.

4. The Delegation Agreement.

   a. This delegation agreement is to be completed and signed by the physician assistant and his/her designated supervising physician. Said delegation agreement will be written in the form issued by the Arkansas State Medical Board.

   b. The delegation agreement as completed by the physician assistant and the supervising physician will include the following:

      (1) area or type of practice;

      (2) location of practice;

      (3) geographic range of supervising physician;

      (4) the type and frequency of supervision by the supervising physician;

      (5) the process of evaluation by the supervising physician;

      (6) the name of the supervising physician;

      (7) the qualifications of the supervising physician in the area or type of practice that the physician assistant will be functioning in;

      (8) the type of drug prescribing authorization delegated to the physician assistant by the supervising physician;

      (9) the name of the back up supervising physician(s) and a description of when the back up supervising physician(s) will be utilized.

   c. A copy of the approved delegation agreement must be kept at the practice location of the physician assistant.

5. A. A physician assistant must be authorized by his supervising physician to prescribe legend drugs and scheduled medication for patients. Said authorization must be stated in the delegation agreement and the request approved by the Board. A supervising physician may only authorize a physician assistant to prescribe schedule medication that the physician is authorized to prescribe. A physician assistant may only be authorized to prescribe schedule 3 through 5 medications, except that a physician assistant may prescribe hydrocodone combination products reclassified from Schedule 3 to Schedule 2 as of October 6, 2014, if authorized by the physician assistant's supervising physician, and in accord with other requirements of the section. Prescriptions written by a physician assistant must contain the name of the supervising physician on the prescription.

   B. The physician assistant will make an entry in the patient chart noting the name of the medication, the strength, the dosage, the quantity prescribed, the directions, the number of refills, together with the signature of the physician assistant and the printed name of the supervising physician for every prescription written for a patient by the physician assistant.

   C. The supervising physician shall be identified on all prescriptions and orders of the patient in the patient chart if issued by a physician assistant.

   D. Physician assistants who prescribe controlled substances shall register with the Drug Enforcement Administration as part of the Drug Enforcement Administration's Mid-Level Practitioner Registry, 21 C.F.R. Part 1300, 58 FR 31171-31175, and the Controlled Substances Act.

6. A supervising physician and/or back-up supervising physician(s) should be available for immediate telephone contact with the physician assistant any time the physician assistant is rendering services to the public.

7, A. The supervising physician for a physician assistant must fill out a form provided by the Board prior to him becoming a supervising physician. Said supervising physician must provide to the Board his name, business address, licensure, his qualifications in the field of practice in which the physician assistant will be practicing and the name(s) of the physician assistant(s) he intends to supervise.

   B. The supervising physician must attest to the Board that they have read the regulations governing physician assistant and will abide by them and that they understand that they take full responsibility for the actions of the physician assistant while that physician assistant is under their supervision.

   C. Back up or alternating supervising physicians must adhere to the same statutory and regulatory rules as the primary supervising physician.

   D. The supervising physician and the back-up supervising physician must be skilled and

trained in a similar scope of practice as the tasks that have been assigned to and will be performed by the physician assistant that they will supervise.

8. A. Physician assistants provide medical services to patients in a pre approved area of medicine. Physician assistants will have to provide medical services to the patients consistent with the standards that a licensed physician would provide to a patient. As such, the physician assistant must comply with the standards of medical care of a licensed physician as stated in the Medical Practices Act, the Rules and Regulations of the Board and the Orders of the Arkansas State Medical Board. A violation of said standards can result in the revocation or suspension of the license when ordered by the Board after disciplinary charges are brought.

   B. A physician assistant must clearly identify himself or herself to the patient by displaying an appropriate designation, that is a badge, name plate with the words "physician assistant" appearing thereon.

   C. A physician assistant will not receive directly from a patient or an insurance provider of a patient any monies for the services he or she renders the patient. Payment of any bills or fees for labor performed by the physician assistant will be paid to the employer of the physician assistant and not directly to the physician assistant.

9. The supervising physician is liable for the acts of a physician assistant whom he or she is supervising if said acts of the physician assistant arise out of the powers granted the physician assistant by the supervising physician. The supervising physician may have charges brought against him by the Arkansas State Medical Board and receive sanctions if the physician assistant should violate the standards of medical practice as set forth in the Medical Practices Act, the Rules and Regulations of the Board and the standards of the medical community.
   A supervising physician will notify the Arkansas State Medical Board within 10 days after notification of a claim or filing of a lawsuit for medical malpractice against a Physician Assistant, whom he supervises. Notice to the Board shall be sent to the office of the Board and upon such forms as may be approved by the Board. If the malpractice claim is in the form of a complaint in a filed lawsuit, a copy of the complaint shall be furnished to the Board along with the notification required by this Section.

10. Continuing Medical Education:

    a. A physician assistant who holds an active license to practice in the State of Arkansas shall complete 20 credit hours per year continuing medical education.

    b. If a person holding an active license as a physician assistant in this State fails to meet the foregoing requirement because of illness, military service, medical or religious missionary activity, residence in a foreign country, or other extenuating circumstances, the Board upon appropriate written application may grant an extension of time to complete the same on an individual basis.

    c. Each year, with the application for renewal of an active license as a physician assistant in this state, the Board will include a form which requires the person holding the license to certify by signature, under penalty of perjury, and disciplined by the Board, that he or she has met the stipulating continuing medical education requirements. In addition, the Board may randomly require physician assistants submitting such a certification to demonstrate, prior to renewal of license, satisfaction of continuing medical education requirements stated in his or her certification.

    d. Continuing medical education records must be kept by the licensee in an orderly manner. All records relative to continuing medical education must be maintained by the licensee for at least three years from the end of the reporting period. The records or copies of the forms must be provided or made available to the Arkansas State Medical Board.

    e. Failure to complete continuing education hours as required or failure to be able to produce records reflecting that one has completed the required minimum medical education hours shall be a violation and may result in the licensee having his license suspended and/or revoked.

    f. A physician assistant who is authorized to prescribe Schedule II hydrocodone combination products reclassified from Schedule 3 to Schedule 2 as of October 6, 2014, must complete at least five (5) continuing education hours in the area of pain management.

    g. Each year, each physician assistant shall obtain at least one (1) hour of CME credit specifically

regarding the prescribing of opioids and benzodiazepines. The one hour may be included in the twenty (20) credit hours per year of continuing medical education required and shall not constitute an additional hour of CME per year.

11. Physician Assistants, HIV, HBV and HCV: Physicians assistants shall adhere to Regulation 16 concerning HIV, HBV, and HCV.

**HISTORY**: Adopted December 7, 1977; Amended October 9, 1999; Amended December 10, 1999; Amended February 4, 2000; Amended April 8, 2005; Amended June 5, 2008; Amended April 12, 2012; Amended October 1, 2015, Effective December 14, 2015; Amended December 7, 2017, Effective June 12, 2018; Amended June 4, 2020, Effective August 7, 2020.

Replaced Regulation 4.

## REGULATION NO. 25: CENTRALIZED CREDENTIALS VERIFICATION SERVICE ADVISORY COMMITTEE GUIDELINES

1. PURPOSE. The Centralized Credentials Verification Advisory Committee (CCVSAC) is established in accordance with Act 1410 of 1999 for the purpose of providing assistance to the Arkansas State medical Board in operating a credentialing service to be used by credentialing organizations, and health care professionals. The CCVSAC shall advocate the system throughout the state, and work with customers to identify opportunities to improve the system.
2. MEMBERSHIP. The CCVSAC will consist of ten (10) standing members who are recommended by the CCVSAC and appointed by the Arkansas State Medical Board, at least six (6) of which shall be representatives of credentialing organizations which must comply with Act 1410. Of these six (6) members, at least two (2) shall be representatives of licensed Arkansas hospitals and at least two (2) shall be representatives of insurers or health maintenance organizations. The term of each member shall be annual, and members may serve consecutive terms. Ad hoc members will be appointed as necessary by the CCVSAC. Committee members will complete and file with the secretary, a conflict of interest disclosure statement annually. This statement will be retained in the permanent records of the CCVSAC.
3. OFFICERS. The Arkansas State Medical Board will appoint the Chairman of the CCVSAC. The CCVSAC will elect a Vice-Chairman and any other officers or workgroups desired. CCVSAC meetings will be staffed by Arkansas State Medical Board personnel.
4. MEETINGS. Meetings of the CCVSAC will be held on a quarterly basis, or more frequently if needed. CCVSAC members will be notified of changes in operations of the credentials verification service between meetings. CCVSAC members will be consulted or informed of major operational changes before such changes are implemented.
5. POLICIES. It is the intent of the Arkansas State Medical Board to provide the CCVSAC maximum input into policies concerning the operation of the credentialing verification service. Policies will be developed and adopted concerning:
    a. Fees to be charged for use of the service. Fees will be based on costs of operating the service, and the costs shall be shared pursuant to Act 1410.
    b. Availability of the service. Availability includes time required to gain access, time allowed in the system and geographic availability.
    c. Accessibility and Security of the service.
        1. Release of information from physicians.
        2. Approval for users to gain access.
        3. Password identification requirements.
    d. Audit Privileges for records maintained by the Arkansas State Medical Board. (The CCVSAC will represent all users and will perform periodic audits in accordance with established procedure [POLICY FOR AUDITS, POLICY NO. 95-4] to ensure the integrity of Arkansas State Medical Board processes and information available.)
    e. Contract Format development for subscribers who use the service.
    f. Other Policies as needed for operation of the credentials verification service.
6. APPROVALS. A quorum (fifty percent of the CCVSAC) must be present to approve changes in policies or other actions. Proxies may be given to other CCVSAC members voting. A majority of voting members will be considered sufficient to provide a recommendation to the Arkansas State Medical Board for implementation.

**HISTORY:** Adopted February 4, 2000.

## REGULATION NO. 26: GOVERNING INFORMED CONSENT FOR AN ABORTION

Act 353 of 2001 Regular Session of the 83rd General Assembly required the Arkansas State Medical Board to

pass such regulation that may be necessary to ensure that physicians who perform abortions obtain the correct informed consent from their patients. Arkansas Code Annotated § 17-95-409(a)(2)(p) provides that a physician may have his license revoked or suspended or other sanctions imposed if he is found by the Board to have violated a regulation of the Board.

A physician shall not perform an abortion in the State of Arkansas, except with the voluntary and informed consent of the patient. Except in the case of a medical emergency, consent to an abortion is considered voluntary and informed if, and only if:

1. Prior to and in no event on the same day as the abortion procedure, the patient is told the following, by telephone or in person, by the physician who is to perform the abortion, or by a referring physician or by an agent of either physician:
    1. The name of the physician who will perform the abortion procedure;
    2. The medical risks associated with the particular abortion procedure to be employed;
    3. The probable gestational period of the fetus at the time the abortion is to be performed; and
    4. The medical risks associated with carrying the fetus to term.

The information above may be provided by telephone without the physician or referring physician performing a physical examination or tests of the patient. If the information above is supplied by telephone, the information may be based on both facts supplied to the physician by the patient and any other relevant information that is reasonably available to the physician. The information described herein may not be provided by a tape recording, but shall be provided during a consultation in which the physician or his agent is able to ask questions of the patient and the patient is able to ask questions of the physician or his agent. If a physical examination, test, or other new information subsequently indicates, in the medical judgment of the physician, the need for a revision of the information previously supplied to the patient, the revised information may be communicated to the patient at any time prior to the performance of the procedure. Nothing in this regulation is to be construed to preclude providing the information through a translator in a language understood by the patient.

2. Prior to and in no event on the same day of the abortion, the patient is to be informed, by telephone or in person, by the physician who is to perform the abortion procedure, or by a referring physician or by an agent for either physician the following:
    a. That medical assistance benefits may be available for the prenatal care, childbirth, and neo-natal care.
    b. That the father is liable to assist in the support of the child, even in instances in which the father has offered to pay for the abortion procedure.
    c. That the patient has the option to review the printed or electronic materials described in this Section 2 and that those materials have been provided by the State of Arkansas and that they describe the fetus and list agencies that offer alternatives to the abortion procedure.

That if the patient chooses to exercise her option to view the material in a printed form, the materials shall be mailed to her by a method chosen by the patient, or may view the material via the internet if the patient informs the physician of the specific address of the internet website where the information may be provided. The information required in this Section 2 may be provided by a tape recording if provision is made to record, or otherwise register specifically whether the patient does or does not choose to review the printed materials.

The information required to be distributed by the physician to the patient in Section 2 above may be obtained from the Arkansas Department of Health. No penalty may be imposed by the Arkansas State Medical Board against the physician until the Arkansas Department of Health has the printed materials available to the physician so that they may be distributed or made available to the patient.

3. Prior to the abortion procedure, and thus the termination of the pregnancy, the patient must certify in writing that the information and options described in Section 1 and 2 above have been furnished to the patient, as well as the fact that the patient has been informed of her option to review the information. The physician, prior to the abortion procedure, must obtain this written certification and maintain that document in the records of the patient.
4. Prior to the abortion procedure being performed, the physician who is to perform the procedure, shall confirm with the patient, that the patient has received the following information:
    a. The medical risks associated with the particular procedure to be employed.
    b. The probable gestational age of the unborn child at the time the abortion is to be performed.
    c. The medical risks associated with carrying the fetus to term.

If in fact, the abortion procedure is performed by a physician on a patient due to a medical emergency, the informed consent requirements stated above are not required. Medical emergency as defined by Arkansas Law means any condition which, on the basis of the physician's good faith clinic judgment, so complicates the medical

condition of the pregnant woman as to necessitate the immediate termination of her pregnancy to avert her death or for which a delay will create serious risks of substantial and deemed to be irreversible impairment of a major bodily function. In such a case, the physician is to inform the patient that an abortion is necessary to avert her death or that the delay will create a serious risk of substantial and deemed to be irreversible impairment of a major bodily function.

**HISTORY:** Adopted: June 7, 2002.

## REGULATION NO. 27: INFORMED CONSENT FOR GASTRIC BYPASS SURGERY

Pursuant to Act 1356 of the 84th General Assembly of 2003, all physicians in this state, prior to performing gastric bypass surgery, also known as open or laparoscopic Roux En Y, will have the patient sign an informed consent form acknowledging that they have been told information about various complication that can result from the surgery. The complications and information the patient must be informed of are as follows:

A. The potential risks, complications and benefits of the weight loss surgery.

B. The alternatives to surgery including non-surgical options.

C. The need for dietary changes, a development of an exercise plan and the possible need for counseling.

D. The importance of proper nutrition, eating a balanced diet and taking vitamin and mineral supplements for the remainder of their life.

E. There is no guarantee of weight loss or long-term weight management as a result of getting the surgery.

F. A lifetime of follow up medical care is required.

G. Lab work will be required annually or more often than that as directed by the physician.

H. Potentially serious complications from the surgery could result in death, further surgery or prolonged hospital stays for the patient.

I. The following surgical complications may arise:

1. Bleeding, this may require a transfusion of blood or blood products.
2. Surgical site infections, either superficial or deep to include port sites for laparoscopic access. These could lead to wound breakdowns and hernia formation.
3. Perforations (leaks) of the stomach or intestine causing peritonitis, subphrenic abscess or enteroenteric or enterocutaneous fistulas.
4. Sepsis
5. Systemic Inflammatory Response Syndrome (SIRS)
6. Adult Respiratory Distress Syndrome (ARDS)
7. Myocardial infarction (heart attack)
8. Cardiac rhythm disturbances
9. Congestive heart failure
10. Atelectasis
11. Pneumonia
12. Pulmonary edema (fluid in the lungs)
13. Pleural effusions (fluid around the lungs)
14. Injury to adjacent structures, including the spleen, liver, diaphragm, pancreas and colon.
15. Possible removal of the spleen
16. Stroke
17. Kidney failure
18. Pressure sores
19. Deep vein thrombosis (blood clots in the legs or arms)
20. Pulmonary embolism (blood clots migrating to the heart and lungs)
21. Staple line disruption
22. Ulcer formation (marginal ulcer or in the distal stomach)
23. Small bowel obstructions
24. Internal hernias
25. Incisional hernias, this includes port sites for laparoscopic access
26. Dehiscence or evisceration
27. Inadequate or excessive weight loss
28. Kidney stones
29. Gout
30. Encephalopathy
31. Stoma stenosis
32. Urinary tract infections
33. Esophageal, pouch or small bowel motility disorders

J. Nutritional complications to include:

1. Protein malnutrition
2. Vitamin deficiencies, including B12, B1, B6, Folate and fat soluble vitamins A, D, E and K
3. Mineral deficiencies, including calcium, magnesium, iron, zinc, copper and other trace minerals
4. Uncorrected deficiencies can lead to anemia, neuro-psychiatric disorders and nerve damage, that is neuropathy

K. Psychiatric complications include:

1. Depression
2. Bulimia
3. Anorexia
4. Dysfunctional social problem

L. Other complications to include:

1. Adverse outcomes may be precipitated by smoking
2. Constipation
3. Diarrhea
4. Bloating
5. Cramping
6. Development of gallstones
7. Intolerance of refined or simple sugars, dumping with nausea, sweating and weakness
8. Low blood sugar, especially with improper eating habits
9. Vomiting, inability to eat certain foods, especially with improper eating habits or poor dentition
10. Loose skin
11. Intertriginous dermatitis due to loose skin
12. Malodorous gas, especially with improper food habits
13. Hair loss (alopecia)
14. Anemia
15. Bone disease
16. Stretching of the pouch or the stoma
17. Low blood pressure
18. Cold intolerance
19. Fatty liver disease or non-alcoholic liver disease (NALF)
20. Progression of preexisting NALF or cirrhosis
21. Vitamin deficiencies some of which may already exist before surgery
22. Diminished alcohol tolerance

M. Pregnancy complications should be explained as follows:

1. Pregnancy should be deferred for 12-18 months after surgery or until after the weight loss is stabilized
2. Vitamin supplementation during the pregnancy should be continued
3. Extra folic acid should be taken if the pregnancy is planned
4. Obese mothers have children with a higher incidence of neural tube defects and congenital heart defects
5. Pregnancy should be discussed with the obstetrician
6. Special nutritional needs may be indicated or necessary
7. Secure forms of birth control should be used in the first year after surgery
8. Fertility may improve with weight loss

Some or all of the complications listed in this regulation may exist in a patient whether the surgical procedure of gastric bypass is performed on the patient or not. This regulation is not meant to imply that in all cases gastric bypass surgery is the only cause of these complications.

The failure of a physician to inform a patient, prior to gastric bypass surgery, of the above complications and obtaining the patient's signature on a form acknowledging the same will be a violation of the Arkansas Medical Practices Act and may result in disciplinary proceedings before the Board pursuant to law.

**HISTORY:** Adopted December 4, 2003; Amended February 5, 2004.

## REGULATION NO. 28: EDUCATIONAL LICENSE TO PRACTICE MEDICINE IN THE STATE OF ARKANSAS

Pursuant to Act 497 of the 85th General Assembly of the Regular Session of 2005 and amended by Act 1061 of 2017, the Arkansas State Medical Board is empowered to issue an educational license to applicants who meet the following requirements:

1. Be 21 years of age.
2. Be of good moral character.
3. Submit a completed application to the Board.
4. Submit a $400.00 application fee and a $100.00 licensure-processing fee.
5. Be serving as a faculty member in the State of Arkansas or be affiliated with and under the supervision of a faculty member licensed by the Board at an academic medical program accredited by the Accreditation Council for Graduate Medical Education or the American Osteopathic Association operated in the State of Arkansas and established by and under the control of a medical school accredited by an accrediting agency recognized by the United States Department of Education or approved by the Arkansas Higher Education Coordinating Board to seek accreditation by an accrediting agency recognized by the United States Department of Education.
6. The educational license to practice medicine in the State of Arkansas shall authorize the practice of medicine only within the clinical and educational

programs in the State of Arkansas that are established and administered by a medical school accredited by an accrediting agency recognized by the United States Department of Education or approved by the Arkansas Higher Education Coordinating Board to seek accreditation by an accrediting agency recognized by the United States Department of Education.

7. Appear personally before the Arkansas State Medical Board, together with the sponsoring supervising faculty member physician.
8. Present to the Board such information as to what department he or she will be practicing medicine and who will be his/her supervisor.
9. Said educational license will authorize the licensee to practice medicine only within the clinical and educational programs established and administered by the accredited medical school.
10. Said educational license will be valid for a period of one (1) year from the date of issuance.

The educational license issued to a licensee will lapse at the end of one year and must be re-applied for by the licensee under the following conditions:

1. Submit a completed application to the Arkansas State Medical Board providing such information as the Board requests.
2. Pay a renewal fee of $220.00.
3. If requested, appear in person before the Board, together with the supervising faculty physician of the clinical or educational program wherein the applicant will be practicing medicine in the State of Arkansas.

**HISTORY:** Adopted August 4, 2005; Amended June 5, 2014; Amended August 3, 2017, Effective October 4, 2017.

## REGULATION NO. 29: GOVERNING RADIOLOGY ASSISTANTS/RADIOLOGY PRACTITIONER ASSISTANTS

### I. DEFINITIONS

A. Licensed Practitioner means a person licensed to practice medicine, dentistry, podiatry, chiropractic, osteopathic, or optometry in the State of Arkansas;

B. Radiation Practitioner means a licensed practitioner who has completed a residency in radiology, nuclear medicine, or radiation oncology, AND is certified by the American Board of Radiology, the American Osteopathic Board of Radiology, or the American Board of Nuclear Medicine or its equivalent;

C. Radiologist Assistant (RA) or Radiology Practitioner Assistant (RPA) a person other than a licensed practitioner, who has specific qualifications, education, certification and responsibilities as recognized by the Arkansas State Medical Board and who has been issued a license to perform certain functions under the supervision of Licensed Radiation Practitioner;

D. Supervising Radiation Practitioner means a radiation practitioner using the services of RA or RPA and is responsible for the professional activities and services of the RA or RPA under these Rules and Regulations;

E. Alternate Supervising Radiologist means a radiation practitioner other than the supervising radiologist who is responsible for the supervision of RA or RPA for specific procedures in accordance with all Rules and Regulations applicable to the supervising radiation practitioner;

F. Personal Supervision means the supervising and/or alternate supervising radiation practitioner must be in attendance in the room with the RA or RPA during the performance of the procedure or task;

G. Direct Supervision means the supervising and/or alternate supervising radiation practitioner and/or radiologist must be present in the facility and immediately available to furnish assistance and direction to the RA or RPA during the performance of the procedure or task. The radiation practitioner is not required to be present in the room during the performance of the procedure or task;

H. General Supervision means the procedure is furnished under the supervising and/or alternate supervising radiation practitioner's overall direction and control, but the practitioner is not required to be in the same room or facility with the RA or RPA during the performance of the procedure or task;

### II. REQUIREMENTS

The Radiologist Assistant (RA) and the Radiology Practitioner Assistant (RPA) must obtain a permit from the Arkansas State Medical Board to practice in the State of Arkansas, in order to obtain said permit the RA or RPA must comply with the following:

A. Complete and submit an application and provide such information as the Board requires.

B. Provide proof of successfully passing the Registered Radiologist Assistant examination by the American Registry of Radiologic Technologists, or provide proof of licensure in Arkansas by 2007 as a RA or RPA through the Division of Ionizing Radiation at the Arkansas State Department of Health.

C. Be at least 18 years of age.

D. Provide the names and signatures of the supervising and alternate supervising radiation

practitioners licensed to practice in the State of Arkansas who agree to supervision of the RA or RPA under the terms of these Rules and Regulations.

E. Provide a practice-specific document delineating the specific procedures and tasks to be performed by the RA or RPA in each facility utilized, including the level of supervision to be provided by the supervising licensed radiation practitioners.

F. Pay a licensure fee of $75.00 to the Board with the application for the initial permit. The supervising and alternate supervising radiation practitioners must sign the application form that they have read the Rules and Regulations and will abide by same, including disciplinary actions pertaining to the RA or RPA and themselves.

G. Pay a renewal fee of $60.00 with the annual renewal form for a permit and a copy of the practice privileges for each facility where the procedures are performed. The supervising and alternate supervising radiation practitioners must sign the renewal form that they have read the Rules and Regulations and will abide by same, including disciplinary actions pertaining to the RA or RPA and themselves.

H. A request must be submitted for Board approval of any changes in supervising or alternate supervising radiation practitioners, and for any changes to the practice-specific document delineating the specific procedures and tasks to be performed by the RA or RPA in each facility utilized, including the level of supervision to be provided by the supervising licensed radiation practitioner(s).

**III. ROLES AND RESPONSIBILITIES**

The RA or RPA may perform the tasks and functions as approved by the Board AND for which practice privileges have been secured at each facility where the procedure is performed.

Prescriptive authority for medications and images interpretation are expressly prohibited. Initial observation of the images by the RA and RPA may be communicated only to the supervising radiation practitioner. The RA and RPA may communicate the radiologist's interpretation to other care providers.

**IV. THE PRACTICE-SPECIFIC DOCUMENT**

The practice-specific document is to be completed and signed by the RA or RPA and the supervising licensed radiation practitioner supervisor. The practice-specific document must be accepted and approved by the Arkansas State Medical Board prior to the licensure of the RA or RPA. Any change in the practice-specific document shall include the following:

A. Procedures or tasks to be performed by the RA or RPA with the level of supervision to be provided by the licensed practitioner(s). All invasive procedures listed require a minimum level of direct supervision.

B. Name and address of facility where the procedure(s) will be performed.

C. The name of the alternate supervising licensed radiation practitioner(s).

**V. SUPERVISION**

The radiation practitioners assume full responsibility for the actions of the RA and RPA. If there is any uncertainty regarding supervision of the Ra and RPA, the designated supervising radiation practitioner has ultimate responsibility.

Supervising and alternate supervising radiation practitioners must have the privileges to perform the procedures for which he/she is supervising for the RA and RPA. If it is an invasive procedure, the radiation practitioners must satisfy, at a minimum, the same educational and experience requirements as the RA or RPA.

All invasive procedures require a minimum level of direct supervision, and conscious sedation requires personal supervision by the radiation practitioner.

**VI. DISCIPLINARY ACTION**

An RA and RPA must comply with the Medical Practices Act and the Rules and Regulations of the Board. Should the Board find that there is probable cause that in RA or RPA has not complied with the Medical Practices Act and the Rules and Regulations of the Board, the Board will bring charges alleging the wrongful conduct and said disciplinary proceeding will comply with the Administrative Procedure Act of the State of Arkansas. At the conclusion of the disciplinary hearing, if the Board finds that the RA or RPA has violated the medical Practices Act or the Rules and Regulations of the Board, the Board may impose one or more of the following sanctions:

A. Revoke the permit to practice in Arkansas as a RA or RPA.

B. Suspend the permit for a period of time as determined by the Board.

C. Issue a reprimand.

D. Supervising radiation practitioners may be subject to disciplinary action by the Board if the RA or RPA violates the Medical Practices Act or the Rules and Regulations.

**VII. CONTINUING MEDICAL EDUCATION**

A. An RA or RPA with an active permit to practice in the State of Arkansas shall complete 6 credit hours per year of continuing medical education acceptable to the American Registry of Radiologic

Technologists and/or the American Medical Association.

B. If a person holding an active permit as an RA or RPA in this State fails to meet the foregoing requirement because of illness, military service, medical or religious missionary activity, residence in a foreign country, or other extenuating circumstances, the Board upon appropriate written application may grant an extension of time to complete the same on an individual basis.

C. Each year with the application for renewal of an active permit as an RA or RPA in this state, the Board will include a form which requires the person holding the permit to certify by signature under penalty of perjury, and discipline by the Board, that he or she has met the stipulating continuing medical education requirements. In addition, the Board may randomly require the RA or RPA submitting such certification to demonstrate, prior to renewal of the permit, satisfaction of continuing medical education requirements stated in his or her certification.

D. Continuing medical education records must be kept by the permit holder in an orderly manner. All records relative to continuing medical education must be maintained by the licensee for at least 3 years from the end of the reporting period. The records or copies of the forms must be provided or made available to the Arkansas State Medical Board upon request.

E. Failure to complete continuing education hours as required, or failure to be able to produce records reflecting that one has completed the required minimal medical education hours shall be a violation and may result in the permit holder having his permit suspended and/or revoked.

**HISTORY:** Adopted February 7, 2008; Amended June 5, 2014.

## REGULATION NO. 30: COLLABORATIVE PRACTICE REGULATION

***Approved by the Board August 8, 2008; not implemented upon the request of the Legislature.***

ACA § 17-87-102(2) states that a "collaborative practice agreement" means a written plan that identifies a physician who agrees to collaborate with an advanced practice nurse in the joint management of the health care of the advanced practice nurse's patients, and outlines procedures for consultation with or referral to the collaborating physician or other health care professionals as indicated by a patient's health care needs;

ACA § 17-87-310(a)(2) provides that: "An advanced practice nurse may obtain a certificate of prescriptive authority from the Arkansas State Board of Nursing if the advanced practice nurse has a collaborative practice agreement with a physician who is licensed under the Arkansas Medical Practices Act, and who has a practice comparable in scope, specialty, or expertise to that of the advanced practice nurse on file with the Arkansas State Board of Nursing."

ACA § 17-87-310(c) states: "A collaborative practice agreement shall include, but not be limited to, provisions addressing:

(1) The availability of the collaborating physician for consultation or referral, or both;

(2) Methods of management of the collaborative practice, which shall include protocols for prescriptive authority;

(3) Coverage of the health care needs of a patient in the emergency absence of the advanced practice nurse or physician; and

(4) Quality assurance."

ACA § 17-87-310(d) provides that: "If a collaborative practice results in complaints of violations of the Arkansas Medical Practices Act, the Arkansas State Medical Board may review the role of the physician in the collaborative practice to determine if the physician is unable to manage his or her responsibilities under the agreement without an adverse effect on the quality of care of the patient."

To better delineate and explain the requirements on a physician who desires to enter into a collaborative practice agreement with an advanced practice nurse, the Arkansas State Medical Board states affirmatively that the licensed physician must comply with Arkansas law as stated hereinabove, as well as the following:

I. The collaborating physician must be licensed to practice in the state of Arkansas, and be in the active clinical practice of medicine located within the state of Arkansas, or in a state which borders Arkansas and in a county in such state contiguous to the state of Arkansas.

II. The collaborating physician must be easily in contact with the APN by radio, telephone, electronic or other telecommunication device.

III. The collaborating physician must be engaged in the active practice of medicine and have a practice comparable in scope, specialty, or expertise to that of the Advanced Practice Nurse with whom he or she has entered into a collaborative practice agreement.

IV. The collaborating physician must provide notification of the following information to the ASMB, in a manner and form established by the Board:

A. The names and professional titles of anyone with whom they are collaborating;

B. When a material change has occurred in the collaborative agreement or practice;

C. Termination of any collaborative practice agreement.

D. List the scope, specialty and expertise of practice in which the physician is engaged.

E. List the scope, specialty and expertise of practice in which the Advanced Practice Nurse is engaged.

F. Provide a copy of the Collaborative Agreement exclusive of specific protocols.

G. Provide a copy of the quality assurance plan that is utilized by the physician and the advanced practice nurse that have entered into a collaborative agreement.

The physician should inform the Board when there are changes to the information that is to be provided to the Board by the physician as stated in this paragraph.

V. A copy of the collaborative agreement must be maintained by the collaborating physician and made available to the Arkansas State Medical Board upon request and must include, at a minimum, provisions addressing:

A. The availability of the collaborating physician for consultation or referral or both;

B. Methods of management of the collaborative practice, which shall include protocols for prescriptive authority;

C. Coverage of the health care needs of the patient in the emergency absence of the APN or the physician;

D. Quality Assurance Plan

VI. The collaborating physician shall be responsible for ensuring that each patient receives written documentation as to who the collaborating physician is and how he or she may be reached and/or contacted.

The failure of a physician to comply with this Regulation will be considered a violation of the Medical Practices Act and § 17-95-409(a)(2)(P), and subject the physician to the possibility of a disciplinary hearing and the imposition of sanctions against his or her license pursuant to Arkansas law and the Administrative Procedure Act.

**HISTORY:** Approved August 8, 2008.
*THE IMPLEMENTATION DATE OF THIS REGULATION HAS BEEN DELAYED UPON THE REQUEST OF THE LEGISLATURE.*

## REGULATION NO. 31: PHYSICIAN DELEGATION REGULATION

Act 472 of the 87th General Assembly of the State of Arkansas, as of the year 2009, authorized Physicians to delegate the performance of certain medical practices or tasks to qualified and properly trained employees (commonly referred to as medical assistants), who are not licensed or otherwise specifically authorized by Arkansas law to perform the practice or task. This Regulation will set forth standards to be met and the procedures to be followed by the Physician when delegating to employees.

Definitions for Purposes of this Regulation:

1. "Physician" means an individual licensed by the Arkansas State Medical Board to practice medicine in the State of Arkansas.
2. "Medical Practice" means those tasks or functions that are delegated to a qualified and properly trained employee, including the administration of drugs, pursuant to Act 472 of 2009 and this Regulation.
3. "Delegate" means to authorize a qualified and properly trained employee to perform a medical practice that does not conflict with a provision of the Arkansas Code that specifically authorizes an individual to perform a particular practice.
4. "Supervision" means the act by a Physician in directing and overseeing an employee who performs a delegated medical practice.
5. "Medical Assistant" means an employee of a Physician who has been delegated medical practices or tasks, and who has not been licensed by or specifically authorized to perform the practice or task pursuant to other provisions of Arkansas law.

**Section 1. General Provisions**

A. The delegating Physician remains responsible for the acts of the employee performing the delegated medical practice;

B. The employee performing the delegated medical practice shall not be represented to the public as a licensed physician) licensed nurse, licensed physician's assistant, or other licensed healthcare provider; and

C. Medical practices delegated pursuant to this statute and regulation shall be performed under the physician's supervision.

**Section 2. Procedures for Delegating a Medical Practice**

A. Prior to delegating a medical practice or task, the physician shall determine the following:

1) That the medical practice or task is within that Physician's authority to perform;

2) That the medical practice or task is indicated for the patient;

3) The appropriate level of supervision for the Physician to exercise while the medical practice or task is being performed;

4) That the person to whom the medical practice or task is being delegated is qualified and properly trained to perform the medical practice or task; and

5) That the medical practice is one that can be appropriately delegated when considering the following factors:

   i. That the medical practice can be performed without requiring the exercise of judgment based on medical knowledge;

   ii. That the results of the medical practice are reasonably predictable;

   iii. That the medical practice can be safely performed according to exact, unchanging directions;

   iv. That the medical practice can be performed without the need for complex observations or critical decisions; and

   v. That the medical practice can be performed without repeated medical assessments.

**Section 3. Additional Requirements for Delegating the Administration of Drugs**

A. A Physician may only delegate the administration of drugs that do not require substantial, specialized judgment and skill based on knowledge and application of the principles of biological, physical, and social sciences.

B. Administration of drugs, delegated pursuant to this Regulation, shall only be permissible within the physical boundaries of the delegating physician's offices;

C. The Physician shall evaluate the acuity of the patient and make a determination that delegation is appropriate;

D. The Physician shall determine the competency of the person to whom the administration of drugs is being delegated through training and experience, including the physician's personal observation.

**Section 4. Prohibitions**

A. A physician shall not transfer his or her responsibility for supervising an unlicensed person in the performance of a delegated medical practice, except to another physician who has knowingly accepted that responsibility;

B. A physician shall not authorize or permit an unlicensed person to whom a medical practice is delegated to delegate the performance of that practice to another person;

C. A physician shall not delegate to an unlicensed person the administration of anesthesia;

D. A physician shall not delegate a medical practice that is not within the authority of that physician or is beyond the physician's training, expertise, or normal course of practice; and

E. A physician shall not delegate a medical practice to an unlicensed person if the practice is beyond that person's competence.

**HISTORY:** Adopted February 4, 2010; Effective June 1, 2010.

## REGULATION NO. 32: ETHICAL VIOLATIONS FOR PHYSICIANS

Pursuant to Act 1178 of the 87th General Assembly, the Arkansas State Medical Board determines that the following conduct is an ethical violation:

A. A licensed physician engaging in sexual contact, sexual relations or a romantic relationship with a patient concurrent with the physician-patient relationship; or a licensed physician engaging in the same conduct with a former patient, if the physician uses or exploits trust, knowledge, emotions or influence derived from the previous professional relationship. A patient’s consent to, initiation of, or participation in the sexual relationship or conduct with the physician does not change the nature of the conduct nor the prohibition.

B. A licensed physician reveals or discloses confidential communications or information concerning a patient without the consent of the patient unless said disclosure is authorized or required by law or by the need to protect the individual patient or the public interest.

C. A licensed physician fails to disclose to a patient that the physician has an ownership interest in a facility or service to which the physician refers the patient that is outside of the physician’s own practice.

D. A licensed physician utilizing words or acts which sexually harass co-workers or employees or patients within the clinic or hospital setting.

E. A licensed physician grossly over-utilizing or ordering or performing tests or procedures on a patient when that may result in harm to the patient.

**HISTORY:** Adopted February 4, 2010; Effective April 1, 2010.

## REGULATION NO. 33: NOTIFICATION OF CHANGE OF PRACTICE

1. DEFINITIONS:
   a. "Entity" means any person, organization, or business entity of any type that engages a healthcare provider as an employee, independent contractor, member, or in any other capacity for the practice of medicine as defined in §17-95-202. "Entity" does not include insurance companies, health maintenance organizations, or hospital and medical service corporations;
   b. "Existing Patient" means a person who is seen for a medical diagnosis or treatment, or both, by a healthcare provider within the previous twelve (12) months as evidenced by an entry in the medical record of the patient. The twelve (12) month period described herein shall be calculated by counting back twelve (12) months from the later of the following dates:
      i. The date that the healthcare provider's relationship with the entity terminates; or
      ii. The date that the healthcare provider gave the entity notice of a new practice location.
   c. "Healthcare Provider" means a person who is licensed by the Arkansas State Medical Board and has ultimate responsibility and legal liability for the care of the patient.
2. PROHIBITED CONDUCT:
   a. If the healthcare provider has made new practice location information or new contact information available to the entity, an entity or person on behalf of an entity shall not:
      i. Mislead any patient about the new practice location of a healthcare provider or new contact information of a healthcare provider; or
      ii. Fail to provide a patient with the new practice location of a healthcare provider or new contact information of a healthcare provider when requested.
   b. When requested by a healthcare provider who is relocating his or her practice, an entity with a relationship with healthcare provider shall within twenty-one (21) calendar days:
      i. Provide the healthcare provider with a list of the healthcare provider's existing patient names and addresses;
      ii. Send a notice with the new practice location information to all of the health care provider's existing patients after providing the healthcare provider a copy of the proposed notice for review and comment; or
      iii. Post the new practice location information of the healthcare provider on the website of the entity after providing the healthcare provider a copy of the proposed posting for review and comment. The posting shall remain on the website of the entity for twelve (12) months after the healthcare provider's last day of employment with the entity posting the information.
   c. Within (2) business days of the request described in this section, the entity shall provide the healthcare provider with a list or schedule of upcoming patient appointments with the healthcare provider and the contact information of the patients.
3. HEALTHCARE PROVIDER'S DUTY TO INFORM BOARD.
   In order to avoid defrauding, misrepresenting or deceiving the public or the Board, a healthcare provider will inform the Arkansas State Medical Board within 30 days of his or her terminating, retiring from, or relocating his or her practice setting. The healthcare provider will inform the Board of his or her new location and address and of his or her practice setting if applicable. The healthcare provider will further inform the Board of where the patient records are stored, who is the custodian of those records and how the patients or other individuals may obtain the records.

**HISTORY:** Adopted June 3, 2010; Effective July 1, 2010; Amended August 3, 2017, Effective October 4, 2017.

## RULE 34: REQUIREMENTS OF LICENSED PHYSICIANS IN COMPLETING DEATH CERTIFICATES

ACA §20-18-601 requires physicians in the State of Arkansas to comply with the requirements when completing death certificates. ACA §17-95-409 (a)(2)(P) provides that the Arkansas State Medical Board may revoke or suspend a license of physicians, or impose other sanctions as provided by law, if a licensed physician violates a rule of the Board.

A. A licensed Physician who has been in charge of a patient's care for the illness or condition that resulted in the death of the patient shall complete, sign and return to the funeral director the medical certification on the death certificate within three (3) business days after receipt of the death certificate, except when an inquiry is required by law pursuant to ACA §12-12-315 as set forth herein:

(1) The county coroner, prosecuting attorney, and either the county sheriff or the chief of police of the municipality in which the death of a human being occurs shall be promptly notified by any physician, law enforcement officer, undertaker or embalmer, jailer, or coroner or by any other person present with knowledge of the death if:

(A) The death appears to be caused by violence or appears to be the result of a homicide or a suicide or to be accidental;

(B) The death appears to be the result of the presence of drugs or poisons in the body;

(C) The death appears to be the result of a motor vehicle accident, or the body was found in or near a roadway or railroad;

(D) The death appears to be the result of a motor vehicle accident and there is no obvious trauma to the body;

(E) The death occurs while the person is in a state mental institution or hospital and there is no previous medical history to explain the death, or while the person is in police custody or jail other than a jail operated by the Department of Correction;

(F) The death appears to be the result of a fire or an explosion;

(G) The death of a minor child appears to indicate child abuse prior to death;

(H) Human skeletal remains are recovered or an unidentified deceased person is discovered;

(I) Postmortem decomposition exists to the extent that an external examination of the corpse cannot rule out injury, or in which the circumstances of death cannot rule out the commission of a crime;

(J) The death appears to be the result of drowning;

(K) The death is of an infant or a minor child under eighteen (18) years of age;

(L) The manner of death appears to be other than natural;

(M) The death is sudden and unexplained;

(N) The death occurs at a work site;

(O) The death is due to a criminal abortion;

(P) The death is of a person where a physician was not in attendance within thirty-six (36) hours preceding death, or, in prediagnosed terminal or bedfast cases, within thirty (30) days;

(Q) A person is admitted to a hospital emergency room unconscious and is unresponsive, with cardiopulmonary resuscitative measures being performed, and dies within twenty-four (24) hours of admission without regaining consciousness or responsiveness, unless a physician was in attendance within thirty-six (36) hours preceding presentation to the hospital, or, in cases in which the decedent had a prediagnosed terminal or bedfast condition, unless a physician was in attendance within thirty (30) days preceding presentation to the hospital;

(R) The death occurs in the home; or

(S) (i) The death poses a potential threat to public health or safety.

(ii) Upon receiving notice of a death that poses a potential threat to public health or safety, the county coroner shall immediately notify the Department of Health.

(2) Nothing in this section shall be construed to require an investigation, autopsy, or inquest in any case in which death occurred without medical attendance solely because the deceased was under treatment by prayer or spiritual means in accordance with the tenets and practices of a well-recognized church or religious denomination.

With regard to any death in a correctional facility, the county coroner and the State Medical Examiner shall be notified, and when previous medical history does not exist to explain the death, the Arkansas State Police shall be notified.

Or pursuant to ACA §12-12-318; or pursuant to ACA §14-15-301 et seq as set forth herein:

When a death is reported to a coroner, he shall conduct an investigation concerning the circumstances surrounding the death of an individual and gather and review background information, including, but not limited to, medical information and any other information which may be helpful in determining the cause and manner of death.

B. In the absence of the physician or with his or her approval, the certificate may be completed and signed by his or her associate physician, by the chief medical officer of the institution in which death occurred, by the pathologist who performed an autopsy upon the decedent, or by a registered nurse as provided in this subsection c, if the individual has access to the medical history of the case and has reviewed the coroner's report if required and if the death is due to natural causes. The individual completing the cause-of-death section of the certificate shall attest to its accuracy either by a signature or by approved electronic process.

C. (i) If a physician refuses or otherwise fails to sign and return the medical certification to the funeral director within three (3) business days as required by subdivision (A) of this section. The funeral director may notify the Board of the failure to complete, sign or return the medical certification within three (3) business days as required by subdivision (A) of this section.

(ii) The Board shall assess against a physician described in subdivision (c) of this section a fine not to exceed two hundred fifty dollars ($250) unless the physician shows good cause for the refusal or failure.

D. Except as provided herein below, a medical certification shall be completed using the electronic process or system designated by the division. except:

(i) Upon request, the Medical Board may grant a waiver from the requirement of subdivision (c)(1)(A)(ii) of this section that a medical certification be completed using an electronic process or system if a person requesting the waiver:

(A) Lacks reliable internet connectivity sufficient to ensure access and secure submission to the electronic system:

(B) Has not received requested training or technical assistance from the division on the use of the system and correct submission procedure;

(C) Regularly signs fewer than five (5) medical certifications per month; or

(D) Shows other good cause for a waiver as determined by the Medical Board in its discretion.

(ii) A physician who is granted a waiver under subdivision (D) of this section.

(A) Shall not be fined under subsection (c)(ii) of this section for failure to submit medical certification using an electronic process or system; and

(B) Is liable for failure to submit a medical certification in a timely manner under subdivision (C) of this section.

**HISTORY:** Adopted August 5, 2010; Implementation Date October 1, 2010; Amended October 3, 2019, implementation date November 28, 2019.

## REGULATION NO. 35: OFFICE-BASED SURGERY

A physician shall not perform any office-based surgery, as defined by Act 587 of 2013, unless the office meets the requirements of this regulation. Except in an emergency, a physician shall not perform any office-based surgery on and after July 1, 2014, unless they are in compliance with the provisions of this regulation.

1) Definition Section –

a) Office Based Surgery means that:

i. Is performed by a physician in a medical office that is not a hospital, outpatient clinic, or other facility licensed by the State Board of Health;

ii. Requires the use of general or intravenous anesthetics; and

iii. In the opinion of the physician, does not require hospitalization.

b) General or intravenous anesthetics:

i. Deep Sedation/Analgesia – A drug induced depression of consciousness during which patients cannot be easily aroused but respond purposefully following repeated or painful stimulation. The ability to independently maintain ventilator function may be impaired. Patients may require assistance in maintaining a patent airway, and spontaneous ventilation may be inadequate. Cardiovascular function is usually maintained. (Source: 2009 American Society of Anesthesiologist Continuum of Depth of Sedation).

ii. General Anesthesia is a drug induced loss of consciousness during which patients are not arousable, even by painful stimulation. The ability to independently maintain ventilator function is often impaired. Patient often require assistance in maintaining a patent airway, and positive pressure ventilation may be required because of depressed spontaneous ventilation or drug-induced depression of

neuromuscular function. Cardiovascular function may be impaired. (Source: same as above)

2) Personnel –

a) All health care personnel shall be qualified by training, experience, and licensure as required by law.

b) At least one person shall have training in advanced resuscitative techniques and shall be in the patient's immediate presence at all times until the patient is discharged from anesthesia care.

3) Office-based surgery –

a) Each office-based surgery shall be within the scope of practice of the physician.

b) Each office-based surgery shall be of a duration and complexity that can be undertaken safely and that can reasonably be expected to be completed, with the patient discharged, during normal operational hours.

c) Before the office-based surgery, the physician shall evaluate and record the condition of the patient, any specific morbidities that complicate operative and anesthesia management, the intrinsic risks involved, and the invasiveness of the planned office-based surgery or any combination of these.

d) The person administering anesthesia shall be physically present during the intraoperative period and shall be available until the patient has been discharged from anesthesia care. They must be licensed, qualified and working within his/her scope of practice as defined by state law.

e) Each patient shall be discharged only after meeting clinically appropriate criteria. These criteria shall include, at a minimum, the patient's vital signs, the patient's responsiveness and orientation, the patient's ability to move voluntarily, and the ability to reasonably control the patient's pain, nausea, or vomiting, or any combination of these.

4) Equipment –

a) All operating equipment and materials shall be sterile, to the extent necessary to meet the applicable standard of care.

b) Each office at which office-based surgery is performed shall have a defibrillator, a positive-pressure ventilation device, a reliable source of oxygen, a suction device, resuscitation equipment, appropriate emergency drugs, appropriate anesthesia devices and equipment for proper monitoring, and emergency airway equipment including appropriately sized oral airways, endotracheal tubes, laryngoscopes, and masks.

c) Each office shall have sufficient space to accommodate all necessary equipment and personnel and to allow for expeditious access to the patient, anesthesia machine, and all monitoring equipment.

d) All equipment shall be maintained and functional to ensure patient safety.

e) A backup energy source shall be in place to ensure patient protection if an emergency occurs.

5) Administration of anesthesia – In an emergency, appropriate life-support measures shall take precedence over the requirements of this subsection. If the execution of life-support measures requires the temporary suspension of monitoring otherwise required by this subsection, monitoring shall resume as soon as possible and practical. The physician shall identify the emergency in the patient's medical record and state the time when monitoring resumed. All of the following requirements shall apply:

a) A preoperative anesthetic risk evaluation shall be performed and documented in the patient's record in each case. In an emergency during which an evaluation cannot be documented preoperatively without endangering the safety of the patient, the anesthetic risk evaluation shall be documented as soon as feasible.

b) Each patient receiving intravenous anesthesia shall have the blood pressure and heart rate measured and recorded at least every five minutes.

c) Continuous electrocardiography monitoring shall be used for each patient receiving intravenous anesthesia.

d) During any anesthesia other than local anesthesia and minimal sedation, patient oxygenation shall be continuously monitored with a pulse oximeter. Whenever an endotracheal tube or laryngeal mask airway is inserted, the correct functioning and positioning in the trachea shall be monitored throughout the duration of placement.

e) Additional monitoring for ventilation shall include palpation or observation of the reservoir breathing bag and auscultation of breath sounds.

f) Additional monitoring of blood circulation shall include at least one of the following:

i. Palpation of the pulse;

ii. Auscultation of heart sounds;

iii. Monitoring of a tracing of intra-arterial pressure;

iv. Pulse plethysmography; or

v. Ultrasound peripheral pulse monitoring.

g) When ventilation is controlled by an automatic mechanical ventilator, the functioning of the ventilator shall be monitored continuously with a device having an audible alarm to warn of disconnection of any component of the breathing system.

h) During any anesthesia using an anesthesia machine, the concentration of oxygen in the patient's breathing system shall be measured by an oxygen analyzer with an audible alarm to warn of low oxygen concentration.

6) Administrative policies and procedures –

a) Informed consent for the nature and objectives of the anesthesia planned and surgery to be performed should be in writing and obtained from patients before the procedure is performed. Informed consent should only be obtained after a discussion of the risks, benefits and alternatives and should be documented in the medical record.

b) Each office shall have written protocols in place for the timely and safe transfer of the patients to a prespecified medical care facility within a reasonable proximity if extended or emergency services are needed.

The protocols shall include one of the following:

i. A plan for patient transfer to the specified medical care facility;

ii. A transfer agreement with the specified medical care facility; or

iii. A requirement that all physicians performing any office-based surgery have admitting privileges at the specified medical care facility.

c) Each physician who performs any office-based surgery that results in any of the following quality indicators shall notify the board in writing within 15 calendar days following discovery of the event:

i. The death of a patient during any office-based surgery, or within 72 hours thereafter;

ii. The transport of a patient to a hospital emergency department;

iii. The discovery of a foreign object erroneously remaining in a patient from an office-based surgery performed at that office; or

iv. The performance of the wrong surgical procedure, surgery on the wrong site, or surgery on the wrong patient.

**HISTORY:** Adopted February 6, 2014.

## REGULATION NO. 36: REGULATIONS GOVERNING PROCEDURES FOR ABORTIONS

A. A person authorized to perform abortions under Arkansas law shall not perform an abortion on a pregnant woman before the person tests the pregnant woman to determine whether the fetus that the pregnant woman is carrying possesses a detectible heartbeat.

B. A person authorized to perform abortions under Arkansas law shall perform an abdominal ultrasound test necessary to detect a heartbeat of an unborn human individual according to standard medical practice, including the use of medical devices as determined by standard medical practice.

C. Tests performed pursuant to Ark. Code Ann.§20-16-1303(b)(1) shall be:

a. Based on standard medical practice for testing for the fetal heartbeat of an unborn human individual which testing includes an abdominal ultrasound test necessary to detect a heartbeat of an unborn human individual according to standard medical practice, including the use of medical devices as determined by standard medical practice;

b. A test for fetal heartbeat is not required in the case of a medical emergency; and

D. The physician shall obtain, based on available medical evidence, including testing and physical examination, the statistical probability of bringing an unborn human individual to term based on the gestational age of the unborn human individual possessing a detectible heartbeat.

E. If a heartbeat is detected during the test required pursuant to this Rule, the person performing the test shall inform the pregnant woman in writing:

a. That the unborn human individual that the pregnant woman is carrying possesses a heartbeat;

b. Of the statistical probability of bringing the unborn human individual to term based on the gestational age of the unborn human individual possessing a detectible heartbeat; and

c. If a heartbeat has been detected, the pregnant woman shall sign a form acknowledging that she has received the information required under Ark. Code Ann. §20-16-1303(d).

F. DEFINITIONS: As used in this section:

1) "Abortion" means the use or prescription of any instrument, medicine, drug or any other substance or device or means with the intent to terminate the clinically diagnosable pregnancy of a woman known to be pregnant, with knowledge that the termination by those means will with reasonable likelihood cause the death of the unborn child, other than to increase the probability of a live birth, to preserve the life or health of the child after live birth, or to remove a dead unborn child who died in utero as the result of natural causes, accidental trauma, or a criminal assault on the pregnant woman or her unborn child, and that causes the premature termination of the pregnancy; An act under this section is not an abortion if the act is performed with the intent to:

i. Save the life or preserve the health of the unborn child;

ii. Remove a dead unborn child caused by spontaneous abortion;

iii. Remove an ectopic pregnancy; or

iv. Treat a maternal disease or illness for which the prescribed drug is indicated;

2) "Abortion-inducing drug" means a medicine, drug, or any other substance prescribed or dispensed with the intent of terminating the clinically diagnosable pregnancy of a woman, with knowledge that the termination will with reasonable likelihood cause the death of the unborn child.

i. "Abortion-inducing drugs" includes off-label use of drugs known to have abortion-inducing properties, which are prescribed specifically with the intent of causing an abortion, such as misoprostol, Cytotec, and methotrexate.

ii. This definition does not apply to drugs that may be known to cause an abortion, but which are prescribed for other medical indicts such as chemotherapeutic agents or diagnostic drugs.

iii. Use of drugs to induce abortion is also known as a medical, drug-induced, or chemical abortion.

3) "Attempt to perform or induce an abortion" means an act or an omission of a statutorily required act that, under the circumstances as the physician believes them to be, constitutes a substantial step toward the performance or induction of an abortion in violation of this section;

4) "Mifeprex regimen" means the abortion-inducing drug regimen that involves administration of mifepristone or the brand name "Mifeprex" and misoprostol which is the only abortion-inducing drug regimen approved by the United States Food and Drug Administration and is also known as the RU-486 regimen or simply RU-486.

5) "Mifepristone" means the specific abortion-inducing drug regimen known as RU-486 and the first drug used in the Mifeprex regimen;

6) "Mifepristol" means the second drug used in the Mifeprex regimen;

7) "Physician" means any person licensed to practice medicine in the State of Arkansas under the Arkansas Medical Practices Act, §17-95-201 et seq., §17-95-301 et seq., and §17-95-401 et seq., including medical doctors and doctors of osteopathy;

8) "Adverse event" means an undesirable experience associated with the use of a medical product in a patient, including without limitation an event that causes:

i. Death;

ii. Threat to life;

iii. Hospitalization;

iv. Disability or permanent damage;

v. Congenital anomaly or birth defect, or both;

vi. Required intervention to prevent permanent impairment or damage;

vii. Other serious important medical events, including without limitation:

1. Allergic bronchospasm requiring treatments in an emergency room;

2. Serious blood dyscrasias;

3. Seizures or convulsions that do not result in hospitalization; and

4. The development of drug dependence or drug abuse;

9) "Final printed labeling" means the United States Food and Drug Administration approved informational document for an abortion-inducing drug which outlines the protocol authorized by the United States Food and Drug Administration and agreed upon by the drug

company applying for United States Food and Drug Administration authorization of that drug.

10) "Conception" means the fusion of a human spermatozoon with a human ovum;

11) "Emancipated minor" means a person under eighteen (18) years of age who is or has been married or who has been legally emancipated;

12) "Facility" means a public or private hospital, clinic, center, medical school, medical training institution, healthcare facility, physician's office, infirmary, dispensary, ambulatory surgical treatment center, or other institution or location where medical care is provided to a person.

13) "First trimester" means the first twelve (12) weeks of gestation;

14) "Gestational age" means the time that has elapsed since the first day of the woman's last menstrual period or as stated in Act 171 of 2013, which prohibits abortions after 20 weeks, which also uses the term "post-fertilization" age;

15) "Hospital" means any institution licensed as a hospital pursuant to the laws of this state;

16) "Medical emergency" means that condition which, on the basis of the physician's good-faith clinical judgment, complicates the medical condition of a pregnant woman and necessitates the immediate termination of her pregnancy to avert her death or for which a delay will create serious risk of substantial and irreversible impairment of a major bodily function;

17) "Pregnant" or "pregnancy" means that female reproductive condition of having an unborn child in the woman's uterus;

18) "Qualified person" means an agent of the physician who is a psychologist, licensed social worker, licensed professional counselor, registered nurse, physician assistant, or physician;

19) "Unborn child" means the offspring of human beings from conception until birth.

20) "Viability" means the state of fetal development when, in the judgment of the physician based on the particular facts of the case before him or here and in light of the most advanced medical technology and information available to him or her, there is a reasonable likelihood of sustained survival of the unborn child outside the body of his or her mother, with or without artificial support.

G. 1. When mifepristone or another drug or chemical regimen is used to induce an abortion, the initial administration of the drug or chemical shall occur in the same room and in the physical presence of the physician who prescribed, dispensed, or otherwise provided the drug or chemical to the patient.

2. The physician who induces the abortion, or a person acting on behalf of the physician who induces the abortion, shall make all reasonable efforts to ensure that the patient returns twelve (12) to eighteen (18) days after the administration or use of mifepristone or another drug or chemical for a follow-up visit so that the physician can confirm that the pregnancy has been terminated and can assess the patient's medical condition.

3. A brief description of the efforts made to comply with this section, including the date, time, and identification by name of the person making the efforts, shall be included in the patient's medical record.

H. This section does not affect telemedicine practice that does not involve the use of mifepristone or another drug or chemical to induce an abortion.

I. 1. If the Arkansas State Medical Board finds that a physician licensed by the board has violated the rules of professional conduct by performing an abortion in violation of Act 139 of 2015, the board shall revoke the physician's license.

2. A penalty shall not be assessed against the woman upon whom the abortion is performed or attempted to be performed.

J. 1. (A) A woman who receives an abortion, the father of the unborn child who was the subject of the abortion if the father was married to the woman who received the abortion at the time the abortion was performed, or a maternal grandparent of the unborn child may maintain an action against the person who performed the abortion in violation of this section for actual and punitive damages.

(B) A woman who attempts to receive an abortion in violation of this section may maintain an action against the person who attempted to perform the abortion for actual and punitive damages.

2. (A) Upon petition by any citizen in the county in which an alleged violation of this section occurred or in which the Defendant resides, a court may enjoin a healthcare professional who has

knowingly or recklessly violated this section.

(B) An injunction under subdivision J.2(A) of this section shall prevent the abortion provider from performing further abortions in violation of this section.

K. 1. If a judgment is rendered in favor of the Plaintiff who prevails in an action under subsection J of this section, the court shall award reasonable attorney's fees and costs in favor of the Plaintiff against the Defendant.

2. If a judgment is rendered in favor of the Defendant and the court finds that the Plaintiff's suit was frivolous and brought in bad faith, the court shall order the Plaintiff to pay reasonable attorney's fees to the Defendant.

L. A pregnant woman who obtains or possesses mifepristone or another drug or chemical used for the purpose of inducing an abortion to terminate her pregnancy shall not be subject to an action under subsection J of this section.

M. 1. In a civil proceeding or action brought under this section, the court shall determine if the anonymity of a woman who receives or attempts to receive an abortion shall be preserved from public disclosure without her consent.

2. (A) Upon determining that the woman's anonymity shall be preserved, the court shall issue an order to the parties, witnesses, and counsel and shall direct the sealing of the record and exclusion of individuals from courtrooms or hearing rooms to the extent necessary to safeguard the woman's identity from public disclosure.

(B) An order under subdivision M.2.A. of this section shall be accompanied by specific written findings explaining:

i.) Why the anonymity of the woman should be preserved from public disclosure;

ii.) Why the order is essential to that end;

iii) How the order is narrowly tailored to serve that interest; and

iv) Why no reasonable, less restrictive alternative exists.

(C) In the absence of written consent of the woman who receives or attempts to receive an abortion, anyone other than a public official who brings an action under subsection J of this section shall bring the action under a pseudonym.

(D) This subsection does not conceal the identity of the Plaintiff or of a witness from the Defendant.

N. This section does not create or recognize a right to abortion.

**Unlawful distribution of abortion-inducing drug.**

(a) (1) It shall be unlawful to knowingly give, sell, dispense, administer, or otherwise provide or prescribe an abortion-inducing drug to a pregnant woman to induce an abortion or enabling another person to induce an abortion, unless the person who gives, sells, dispenses, administers, or otherwise provides or prescribes the abortion-inducing drug is a physician and the provision of prescription of the abortion-inducing drug satisfies the protocol authorized by the USFDA as outlined in the final printed labeling for the drug or drug regimen.

(2) In the case of the Mifeprex regimen, the final printed labeling for Mifeprex includes the USFDA-approved dosage and administration instructions for both mifepristone and misoprostol.

(b) Because the failure and complication rates from medical abortion increase with advancing gestational age, because the physical symptoms of medical abortion can be identical to the symptoms of ectopic pregnancy, and because abortion-inducing drugs do not treat ectopic pregnancies but rather are contraindicated in ectopic pregnancies, the physician giving, selling, dispensing, administering, or otherwise providing or prescribing the abortion-inducing drug shall first examine the woman and document in the woman's medical chart prior to giving, selling, dispensing, administering, or otherwise providing or prescribing the abortion-inducing drug the following information without limitation:

(1) Gestational age; and

(2) Intrauterine location of the pregnancy.

(c) Every pregnant woman to whom a physician gives, sells, dispenses, administers, or otherwise provides or prescribes any abortion-inducing drug shall be provided with a copy of the drug's label.

(d) (1) The physician who gives, sells, dispenses administers, or otherwise provides or prescribes any abortion-inducing drug shall have a signed contract with a physician who agrees to handle complications and be

able to produce that signed contract on demand by the patient or by the Department of Health.

(2) The physician who contracts to handle emergencies shall have active admitting privileges and gynecological/surgical privileges at a hospital designated to handle any emergencies associated with the use or ingestion of the abortion-inducing drug.

(3) Every pregnant woman to whom a physician gives, sells, dispenses, administers, or otherwise provides or prescribes any abortion-inducing drug shall receive the name and phone number of the contract physician and the hospital at which that physician maintains admitting privileges and which can handle any emergencies.

(e) (1) The physician who gives, sells, dispenses administers, or otherwise provides or prescribes any abortion-inducing drug, or an agent of the physician, shall schedule a follow-up visit for the woman for approximately fourteen (14) days after administration of the abortion-inducing drug to confirm that the pregnancy is completely terminated and to assess the degree of bleeding.

(2) The physician or agent of physician shall make all reasonable efforts to ensure that the woman returns for the scheduled appointment.

(3) A brief description of the efforts made to comply with this subsection, including without limitation the date, time, and identification by name of the person making such efforts, shall be included in the woman's medical record.

**Reporting**

(a) If a physician provides an abortion –inducing drug to another for the purpose of inducing an abortion as authorized herein, and if the physician knows that the woman who uses the abortion-inducing drug for the purpose of inducing an abortion experiences an adverse event, the physician shall provide a written report of the adverse event within three (3) days of the event to the Arkansas State Medical Board

(b) The Board

a. Shall compile and retain all reports it receives under this section.

b. Shall not release to any person or entity the name or any other personal identifying information regarding a person who:

i. Uses an abortion-inducing drug to induce an abortion; and

ii. Is the subject of a report received by the board under this section.

**Informed Consent Requirement**

(a) A person shall not perform or induce an abortion without the voluntary and informed consent of the woman upon whom the abortion is to be performed or induced.

(b) Except in the case of a medical emergency, consent to an abortion is voluntary and informed only if:

a. At least forty-eight (48) house before the abortion, the physician who is to perform the abortion or the referring physician has informed the woman, orally and in person, of the following:

i. The name of the physician who will perform the abortion;

ii. Medically accurate information that a reasonable patient would consider material to the decision concerning whether or not to undergo the abortion, including:

1. A description of the proposed abortion method;

2. The immediate and long-term medical risks associated with the proposed abortion method, including without limitation the risks of:

a. Cervical or uterine perforation;

b. Danger to subsequent pregnancies;

c. Hemorrhage; and

d. Infection; and

3. Alternatives to the abortion;

iii. The probable gestational age of the unborn child at the time the abortion is to be performed;

iv. The probable anatomical and physiological characteristics of the unborn child at the time the abortion is to be performed;

v. The medical risks associated with carrying the unborn child to term;

vi. Any need for anti-Rh immune globulin therapy if the woman is Rh negative, the likely consequences of refusing such therapy, and the cost of the therapy; and

vii. Information on reversing the effects of abortion-inducing drugs;

b. At least forty-eight (48) hours before the abortion, the physician who is to perform the abortion, the referring physician, or a qualified person informs the woman, orally and in person, that;

i. Medical assistance benefits may be available for prenatal care, childbirth, and neonatal care, and that more detailed information on the availability of such assistance is contained in the printed materials and informational DVD given to her under §20-16-1504;

ii. The printed materials and information DVD under §20-16-1504 describe the unborn child and list agencies that offer alternatives to abortion;

iii. The father of the unborn child is liable to assist in the support of the child, even in instances where he has offered to pay for the abortion. In a case of rape or incest, the information required under this subsection may be omitted.

iv. The woman is free to withhold or withdraw her consent to the abortion at any time without affecting her right to future care or treatment and without the loss of any state or federally funded benefits to which she otherwise might be entitled; and

v. The information contained in the printed materials and information DVD given to her under §20-16-1504, is also available on a state website;

c. (A) The information required under subdivisions b(a) and (b) of this section is provided to the woman individually and in a private room to protect her privacy to maintain the confidentiality of her decision, to ensure that the information focuses on her individual circumstances, and to ensure that she has an adequate opportunity to ask questions.

(B) Subdivision (c)c.(A) of this section does not preclude the provision of required information through a translator in a language understood by the woman;

d. (A) At least forty-eight (48) hours before the abortion, the woman is given a copy of the printed materials and permitted to view and given a copy of the information DVD under §20-16-1504

(B) If the woman is unable to read the materials, the materials shall be read to her in a language she can understand.

(C) If the woman asks questions concerning any of the information or materials under this subdivision d, the person who provides or reads the information or materials shall answer her questions in a language she can understand.

e. (A) At least forty-eight (48 (hours before an abortion is performed or induced on a woman whose pregnancy has progressed to twenty (20) weeks gestation or more, the physician performing the abortion on the pregnant woman, the referring physician, or a qualified person assisting the physician shall, orally and in person, offer information on fetal pain to the patient.

(B) The information required under the previous section and counseling related to that information shall include without limitation the following:

i. That by twenty (20) weeks gestational age, the unborn child possesses all anatomical links in its nervous system, including spinal cord, nerve tracts, thalamus, and cortex, that are necessary in order to feel pain;

ii. That an unborn child at twenty (20) weeks gestation or more is fully capable of experiencing pain;

iii. A description of the actual steps in the abortion procedure to be performed or induced and at which steps in the abortion

procedure the unborn child is capable of feeling pain;

iv. That maternal anesthesia typically offers little pain prevention for the unborn child; and

v. That an anesthetic, analgesic, or both are available so that pain to the unborn child is minimized or alleviated.

f. (A) Before the abortion, the pregnant woman certifies in writing on a checklist form provided or approved by the Department of Health that the information required under this section has been provided.

(B) A physician who performs an abortion shall report monthly to the department the total number of certifications the physician has received.

(C) The department shall make available to the public annually the number of certifications received under this section.

g. (A) Except in the case of a medical emergency, the physician who is to perform the abortion shall receive and sign a copy of the written certification required under this section before performing the abortion.

(B) The physician shall retain a copy of the checklist certification form in the pregnant woman's medical record; and

h. At least forty-eight (48) hours before an abortion that is being performed or induced utilizing abortion-inducing drugs, the physician who is to perform the abortion, the referring physician, or a qualified person informs the pregnant woman, orally and in person, that:

(A) It may be possible to reverse the effects of the abortion if the pregnant woman changes her mind, but that time is of the essence; and

(B) Information on reversing the effects of abortion-inducing drugs is available in materials prepared by the department.

(c) (1) In the event of a medical emergency requiring an immediate termination of pregnancy, the physician who performed the abortion clearly certifies in writing the nature of the medical emergency and the circumstances that necessitated the waiving of the informed consent requirements under this subchapter.

(2) The certification required under this chapter shall be signed by the physician who performed the emergency abortion and shall be permanently filed in both the records of the physician performing the abortion and the records of the facility where the abortion took place.

(d) A physician shall not require or obtain payment for a service provided in relation to abortion to a patient who has inquired about an abortion or scheduled an abortion until the expiration of the forty-eight (48) hour reflection period required under this section.

(e) All ultrasound images, test results, and forms signed by the patient or legal guardian shall be retained as a part of the patient's medical record and be made available for inspection by the department or other authorized agency.

**HISTORY:** Adopted December 4, 2014; Amended April 7, 2016. Effective July 1, 2016.

## RULE NO. 37: ARKANSAS GRADUATE REGISTERED PHYSICIAN ACT

**Act 929 of 2015 codified in A.C.A. §17-95-901-917**

**I. Definitions.**

A. "Graduate registered physician" means an individual who:

1. Is a resident of Arkansas who has graduated from an accredited allopathic medical school or osteopathic medical school and is not currently enrolled in an accredited graduate medical education training program; or

2. Is a citizen of the United States or a legal resident alien who has graduated from an accredited Arkansas allopathic medical school medical school or Arkansas osteopathic medical school and is not currently enrolled in an accredited graduate medical education training program.

3. The graduate registered physician is a dependent medical practitioner who:

4. Only provides healthcare services under the supervision of a physician; and

5. Works under a physician-drafted protocol approved by the Arkansas State Medical

Board, which describes how the graduate registered physician and the physician will work together and practice guidelines required by the supervising physician;

B. “Medical school” means an accredited allopathic medical school or osteopathic medical school;

C. "Resident of Arkansas" means a natural person who provides evidence deemed sufficient to the Arkansas State Medical Board that the person uses an Arkansas residence address for federal or state tax purposes;

1. “Supervising physician” means a physician who is board eligible in his or her specialty and licensed under the Arkansas Medical Practices Act, §17-95-201 et seq., § 17-95-301 et seq., and §17-95-401 et seq., who has agreed to practice in consultation with a graduate registered physician and; and

D. “Supervision” means overseeing the activities of and accepting responsibility for the medical services rendered by a graduate registered physician.

1. Supervision of each graduate registered physician by a physician or physicians shall be continuous.

**II. Qualifications for licensure.**

A. Except as otherwise provided in this subchapter, an individual shall be licensed by the Arkansas State Medical Board before the individual may practice as a graduate registered physician.

B. The board may grant a license as a graduate registered physician to an applicant who:

1. Submits an application on forms approved by the board;
The application and licensing fees shall be the same amount as those paid by regular physicians;

2. Has successfully completed Step 1 and Step 2 of the United States Medical Licensing Examination, Comprehensive Osteopathic Medical Licensing Examination, or the equivalent of both steps of an Arkansas State Medical Board-approved medically licensing examination within the two-year period immediately preceding application for licensure as a graduate registered physician, but not more than two (2) years after graduation from a medical school, an allopathic medical college, or an osteopathic medical college; All graduates must have already passed Step 1 and Step 2 of the United States Medical Licensing Examination, Comprehensive Osteopathic Medical Licensing Examination, as well as the COMLEX Cognitive Evaluation and Performance Evaluation prior to graduating from Medical School. Any individual applying for graduate registered physician will be held to the same standards as outlined in Board Regulations 3 and 14 with regard to the number of pass attempts for each step.

3. Has not completed an accredited postgraduate residency but has successfully completed Step 2 of the United States Medical Licensing Examination or the equivalent of Step 2 from a board accredited medically licensing examination within the two-year period immediately preceding application for licensure as graduate registered physician;

4. Has no licensure, certification, or registration under current discipline, revocation, suspension, or probation for cause resulting from the applicant's medical practice, unless the board considers the conditions and agrees to licensure;

5. Enters into a physician-drafted protocol within six (6) months of initial licensure and;

6. Submits to the board any other information that the board deems necessary to evaluate the applicant's qualifications.

C. Individuals applying to practice as graduate registered physicians shall be subject to criminal background checks as outlined in 17-95-306.

D. Registered graduate physician applicant must obtain supervising physician who is in good standing pursuant to Section VI.D below and appear before the Board for approval prior to practicing.

E. The license will expire the day the physician enters residency.

**III. Renewal.**

A. Upon notification from the Arkansas State Medical Board, an individual who holds a license as a graduate registered physician in this state shall renew the license by:

1. The renewal fees shall be the same amount as those of regular physicians;

2. Completing the appropriate renewal forms;

3. Submitting verification of actual practice under a physician-drafted protocol during

the immediately preceding licensure period; and

4. Meeting other requirements set by the board.

B. The Arkansas State Medical Board shall determine the renewal period.

C. An individual who holds a license as a graduate registered physician in this state cannot renew his or her license more than two times after the initial license has been granted.

**IV. Scope of authority.**

A. A graduate registered physician

1. May provide healthcare services with physician supervision.

2. The supervising physician shall be identified on all prescriptions and orders.

3. A graduate registered physician may perform those duties and responsibilities, including the prescribing, ordering, and administering of drugs and medical devices that are delegated by his or her supervising physician.

B. A graduate registered physician shall be considered the agent of his or her supervising physician in the performance of all practice-related activities, including but not limited to, the ordering of diagnostic, therapeutic, and other medical services.

C. A graduate registered physician may perform healthcare services in a setting authorized by the supervising physician in accordance with any applicable facility policy.

**V. Prescriptive authority.**

A. A physician who is supervising a graduate registered physician may

1. Delegate prescriptive authority to a graduate registered physician to include prescribing, ordering, and administering Schedules III-V controlled substances as described in the Uniform Controlled Substances Act, §§ 5-64-101 — 5-64-510, and 21 C.F.R. Part 1300, all legend drugs, and all nonscheduled prescription medications and medical devices.

2. All prescriptions and orders issued by a graduate registered physician also shall identify his or her supervising physician.

B. A graduate registered physician's level of prescriptive authority shall not exceed the authority of the supervising physician.

C. A graduate registered physician who prescribes controlled substances shall register with the Drug Enforcement Administration as part of the Drug Enforcement Administration's Mid-Level Practitioner Registry, C.F.R. Part 1300, 58 FR 31171-31175, and the Controlled Substances Act, 21 30 U.S.C. § 801 et seq.

**VI. Supervision.**

A. Supervision of a graduate registered physician shall be continuous and require the physical presence of the supervising physician at the place that the services are rendered.

B. Each team of physicians and graduate registered physicians has an obligation to ensure that:

1. The graduate registered physician's scope of practice is identified;

2. The delegation of a medical task is appropriate to the graduate registered physician's level of competence;

3. The relationship and access to the supervising physician is defined; and

4. A process of evaluation of the graduate registered physician's performance is established.

C. The graduate registered physician and supervising physician may designate back-up physicians who agree to supervise the graduate registered physician during the absence of the supervising physician.

D. A physician who desires to supervise a graduate registered physician shall:

1. Be licensed in this state and must have an unencumbered license, and have no disciplinary action by the Arkansas State Medical Board;

2. Notify the Arkansas State Medical Board of his or her intent to supervise a graduate registered physician;

3. Submit a statement to the board that he or she will exercise supervision over the graduate registered physician in accordance with rules adopted by the board; and

4. Limit supervision to no more than two (2) graduate registered physicians per supervising physician.

**VII. Notification of intent to practice.**

A. Before initiating practice, a graduate registered physician licensed in this state must submit on

forms approved by the Arkansas State Medical Board notification of an intent to practice.

B. The notification shall include:

1. The name, business address, email address, and telephone number of the supervising physician; and
2. The name, business address, and telephone number of the graduate registered physician.

C. A graduate registered physician shall notify the board of any changes or additions in supervising physicians within ten (10) calendar days. If a graduate registered physician leaves their current employment, their license would become "Inactive."

**VIII.Exclusions of limitations of employment**

This chapter shall not be construed to limit the employment arrangement of a graduate registered physician licensed under this subchapter.

**IX. Violation.**

Following the exercise of due process, the Arkansas State Medical Board may discipline a graduate registered physician who:

A. Fraudulently or deceptively obtains or attempts to obtain a license;

B. Fraudulently or deceptively uses a license;

C. Violates any provision of this subchapter or any rules adopted by the board pertaining to this chapter;

D. Is convicted of a felony;

E. Is a habitual user of intoxicants or drugs to the extent that he or she is unable to safely perform as a graduate registered physician;

F. Has been adjudicated as mentally incompetent or has a mental condition that renders him or her unable to safely perform as a graduate registered physician; or

G. Has committed an act of moral turpitude.

**X. Disciplinary authority.**

Upon finding that a graduate registered physician has committed an offense described in § 17-95-910, the Arkansas State Medical Board may:

A. Refuse to grant a license;

B. Administer a public or private reprimand;

C. Revoke, suspend, limit, or otherwise restrict a license;

D. Require a graduate registered physician to submit to the care, counseling, or treatment of a physician or physicians designated by the board;

E. Suspend enforcement of its finding and place the graduate registered physician on probation with right to vacate the probationary order for noncompliance; or

F. Restore or reissue, at its discretion, a license and impose any disciplinary or corrective measure that may have been imposed previously.

**XI. Title and practice protection**

An individual who is not licensed under this subchapter is guilty of a Class A misdemeanor and is subject to penalties applicable to the unlicensed practice of medicine if he or she:

A. Holds himself or herself out as a graduate registered physician; or

B. Uses any combination or abbreviation of the term "graduate registered physician" to indicate or imply that he or she is a graduate registered physician.

**XII. Identification requirements.**

A graduate registered physician licensed under this subchapter shall keep his or her license available for inspection at his or her primary place of business, and when engaged in professional activities, a graduate registered physician shall wear a name tag identifying himself or herself as a graduate registered physician, and immediately below the licensure of degree, information, in equal size or larger lettering.

**XIII.Rule-making authority.**

The Arkansas State Medical Board shall promulgate rules that are reasonable and necessary to implement this subchapter.

**XIV."Good Samaritan" provision.**

A graduate registered physician shall be subject to the "Good Samaritan" provisions embodied in §17 -95-101.

**XV. Patient care orders.**

A. Patient care orders generated by a graduate registered physician shall be construed as having the same medical, health, and legal force and effect as if the orders were generated by his or her supervising physician, provided that the supervising physician's name is identified in the patient care order.

B. The orders shall be complied with and carried out as if the orders had been issued by the graduate registered physician's supervising physician.

**XVI.Medical malpractice - Professional and legal liability for actions.**

A graduate registered physician shall be covered under the provisions regarding medical malpractice and legal liability as such applies to his or her supervising physician as embodied in §§ 16-114-20 -16-114-203 and §§ 416-114-205 -16-114-209.

**HISTORY**: Adopted December 3, 2015; Effective February 10, 2016. Amended June 4, 2020; Effective August 7, 2020.

## REGULATION NO. 38: TELEMEDICINE

**Act 887 of 2015 codified in A.C.A. §17-80-118**

Requirement for all services provided by Providers using telemedicine:

1. A Patient/Provider relationship must be established in accordance with Regulation 2.8 before the delivery of services via telemedicine. Provider is defined as a person licensed by the Arkansas State Medical Board. A patient completing a medical history online and forwarding it to a Provider is not sufficient to establish the relationship, nor does it qualify as store-and-forward technology.
2. The following requirements apply to all services provided by Providers using telemedicine:
   A. The practice of medicine via telemedicine shall be held to the same standards of care as traditional in-person encounters.
   B. The Provider must obtain a detailed explanation of the patient's complaint from the patient or the patient's treating Provider.
   C. If a decision is made to provide treatment, the Provider must agree to accept responsibility for the care of the patient.
   D. If follow-up care is indicated, the Provider must agree to provide or arrange for such follow-up care.
   E. A Provider using telemedicine may NOT issue a prescription for any controlled substances defined as any scheduled medication under schedules II through V unless the Provider has seen the patient for an in-person exam or unless a relationship exists through consultation or referral; on-call or cross-coverage situations; or through an ongoing personal or professional relationship.
   F. The Provider must keep a documented medical record, including medical history.
   G. At the patient's request, the Provider must make available to the patient an electronic or hardcopy version of the patient's medical record documenting the encounter. Additionally, unless the patient declines to consent, the Provider must forward a copy of the record of the encounter to the patient's regular treating Provider if that Provider is not the same one delivering the service via telemedicine.
   H. Services must be delivered in a transparent manner, including providing access to information identifying the Provider in advance of the encounter, with licensure and board certifications, as well as patient financial responsibilities.
   I. If the patient, at the recommendation of the Provider, needs to be seen in person for their current medical issue, the Provider must arrange to see the patient in person or direct the patient to their regular treating Provider or other appropriate provider if the patient does not have a treating Provider. Such recommendation shall be documented in the patient's medical record.
   J. Providers who deliver services through telemedicine must establish protocols for referrals for emergency services.
   K. All Providers providing care via telemedicine to a patient located within the State of Arkansas shall be licensed to practice medicine in the State of Arkansas.
   L. A physician shall not issue a written medical marijuana certification to a patient based on an assessment performed through telemedicine.

**HISTORY:** Adopted October 6, 2016. Effective December 25, 2016; Amended August 3, 2017, Effective October 4, 2017; Amended December 6, 2018, Effective June 15, 2019.

## REGULATION NO. 39: REINSTATEMENT OF ARKANSAS LICENSE

A. Pursuant to Ark. Code Ann. 17-1-107, and Act 1066 of the 2015 Arkansas Legislature, the Arkansas State Medical Board shall not require a person who meets credentialing requirements to participate in the apprenticeship, education, or training required as a prerequisite to licensing registration or certification of a new professional in the field.

B. The Arkansas State Medical Board may reinstate the license of a person who demonstrates that:

1. He or she was previously licensed, registered, or certified to practice in the field of his or her profession at any time in the State of Arkansas;
2. Held his or her license in good standing at the time of licensing;
3. Did not have his or her license revoked for:
    a. An act of bad faith;
    b. A violation of law, rule, or ethic;
4. Is not holding a suspended or probationary license in any state; and
5. Is sufficiently competent in his or her field; and
6. Pays any reinstatement fee required.

C. The Board may require that sufficient competency in a particular field be demonstrated by:

1. Proficiency testing, which could include:
    a. A clinical skills assessment program evaluation;
    b. Refresher training;
    c. A mentorship program based on the Massachusetts State Medical Board's model;
    d. Passage of special examinations, i.e., SPEX examination, Part III of the USMLE; and/or
    e. Passage of ABMS Board examination/initial or passage of an ABMS Board examination recertification.
    f. Any physician re-entering a skills-based medical specialty will require a mentoring program determined on a case-by-case basis.
2. Letters of recommendation; or
3. Both proficiency testing and letters of recommendation.
4. Continuing education or training if the continuing education or training is required for all professionals in the field to maintain the license, registration, or certification, which could include fifty (50) hours of specialty specific category 1 credit for each inactive year of medical practice.

D. A person shall not be required to comply with requirements to obtain reinstatement of his or her license, registration, or certification if the person meets the requirements for reciprocity.

E. If a criminal background check is required of a person currently holding a license, registration, or certification, then the Arkansas State Medical Board may require a person seeking reinstatement under this section to meet the same criminal background check requirements as the person currently holding a license, registration, or certification.

**HISTORY:** Adopted February 4, 2016. Effective April 1, 2016.

## REGULATION NO. 40: ARKANSAS SURGICAL TECHNOLOGISTS

1. DEFINITIONS:

A. "Surgical technologist" means an individual who performs the skills and techniques of surgical technology under the direction and supervision of a licensed practitioner other than in the course of practicing as a licensed healthcare professional; and

B. "Surgical technology" means surgical patient care that includes without limitation:

(1) Preparing an operating room and a sterile field for surgical procedures by ensuring that surgical equipment is assembled and functioning properly and safely;

(2) Preparing sterile supplies, instruments, and equipment using sterile technique;

(3) Performing tasks in a sterile field, including:

(a) Maintaining asepsis and a sterile operating field;

(b) Passing supplies, equipment, or instruments according to the needs of the surgical team;

(c) Sponging or suctioning an operative site;

(d) Preparing and cutting suture material;

(e) Providing irrigation solutions to the supervising physician and irrigating an operative site;

(f) Providing drugs within the sterile field for administration by the supervising physician;

(g) Handling specimens;

(h) Holding retractors and other instruments;

(i) Applying electrocautery to clamp on blood vessels;

(j) Connecting drains to a suction apparatus;

(k) Applying dressing to closed wounds; and

(l) Performing counts of supplies such as sponges, needles, and instruments with the registered nurse circulator; and

(4) The practice of surgical technology is a separate and distinct healthcare profession that does not include the practice of surgical assisting as performed by physician assistants, surgical assistants, or first assistants.

2. REGISTRATION:
The Arkansas State Medical Board shall register as a surgical technologist an applicant who:

A. Successfully completed a nationally accredited surgical technology program and holds a current credential as a certified surgical technologist from the National Board of Surgical Technology and Surgical Assisting or its successor or a national organization approved by the Arkansas State Medical Board;

B. Has successfully completed a surgical technologist training program during the person's service as a member of any branch of the United States Armed Forces; or

C. Has been employed to practice as a surgical technologist at any time within the six (6) months before July 1, 2017, if the applicant registers with the Arkansas State Medical Board on or before July 1, 2018.

3. TITLE PROTECTION:
A person shall not use or assume the title "registered surgical technologist" unless the person is registered with the Arkansas State Medical Board.

4. RENEWAL:
In order to maintain registration, each individual who holds a surgical technologist registration must renew the registration each year.

5. FEES:
The Board will charge an application fee of $25.00 and an annual renewal fee of $10.00 for surgical technologists registered with the Board.

**HISTORY:** Adopted August 3, 2017. Effective October 29, 2017.

## REGULATION NO. 41: PRESCRIPTION DRUG MONITORING PROGRAM

A. Pursuant to Arkansas Code Annotated §20-7-604(d), healthcare providers are encouraged to access or check the information in the controlled substance database before prescribing, dispensing, or administering medications. For purposes of this Regulation a healthcare provider is defined as a "physician" or "physician assistant".

B. A healthcare provider shall check the information in the Prescription Drug Monitoring Program when prescribing:

1. An opioid from Schedule II or Schedule III for every time prescribing the medication to a patient; and

2. A benzodiazepine medication for the first time prescribing the medication to a patient.

C. This Regulation does not apply to the following:

1. A healthcare provider administering a controlled substance:

i. Immediately before or during surgery;

ii. During recovery from a surgery while in a healthcare facility;

iii. In a healthcare facility; or

iv. Necessary to treat a patient in an emergency situation at the scene of an emergency, in a licensed ground ambulance or air ambulance, or in the intensive care unit of a licensed hospital;

2. A healthcare provider prescribing or administering a controlled substance to:

i. A palliative care or hospice patient; or

ii. A resident in a licensed nursing home facility; or

3. Situations in which the Prescription Drug Monitoring Program is not accessible due to technological or electrical failure.

D. A licensed oncologist shall check the Prescription Drug Monitoring Program when prescribing to a patient on an initial malignant episodic diagnosis and every three (3) months following the diagnosis while continuing treatment.

E. A healthcare provider must document in the patient record that the Prescription Drug Monitoring Program was checked.

F. A healthcare provider who purposely fails to access the Prescription Drug Monitoring Program as required is subject to disciplinary action by the Arkansas State Medical Board.

**HISTORY:** Adopted August 3, 2017, Effective October 4, 2017.

## REGULATION NO. 42: LICENSURE FOR ACTIVE MILITARY MEMBERS

**Licensure for Active Military Members**

1. DEFINITIONS:

a. As used in this section, "returning military veteran" means a former member of the United States Armed Forces who was discharged from active duty under circumstances other than dishonorable.

2. LICENSURE:

a. Pursuant to Act 248 of 2017, the Arkansas State Medical Board shall allow the following individuals to secure employment with a temporary license, certificate, or permit while completing the application process for full licensure or certification or permitting if the individual is the holder in good standing of a substantially equivalent license, certificate, or permit issued by another state:

(1) An active duty military service member stationed in the State of Arkansas;

(2) A returning military veteran applying within one (1) year of his or her discharge from active duty; or

(3) The spouse of a person under subdivisions (b)(1) and (2) of this section.

b. The Medical Board shall expedite the process and procedures for full licensure, certification, or permitting for the following individuals:

(1) An active duty military service member stationed in the State of Arkansas;

(2) A returning military veteran applying within one (1) year of his or her discharge from active duty; or

(3) The spouse of a person under subdivisions (c)(1) and (2) of this section.

c. When considering an application for full licensure, certification, or permitting for an active duty military service member stationed in the State of Arkansas or a returning military veteran applying within one (1) year of his or her discharge from active duty, the Medical Board:

(1) Shall consider whether or not the applicant's military training and experience in the area of licensure, certification, or permitting is substantially similar to experience or education required for licensure, certification, or permitting; and

(2) Shall accept the applicant's military training and experience in the area of licensure, certification, or permitting in lieu of experience or education required for licensure, certification, or permitting if the state board or commission determines the military training and experience is a satisfactory substitute for the experience or education required for licensure, certification, or permitting.

d. A license required to enable the holder to lawfully engage in a profession, trade, or employment in this state held by an active duty military service member deployed outside the State of Arkansas or his or her spouse shall not expire until one hundred eighty (180) days following the active duty military service member's or spouse's return from active deployment.

e. (1) The Medical Board shall allow a full or partial exemption from continuing education required as part of licensure, certification, or permitting for a profession, trade, or employment in this state for the following individuals:

(A) An active duty military service member deployed outside of the State of Arkansas;

(B) A returning military veteran within one (1) year of his or her discharge from active duty; or

(C) The spouse of a person under subdivisions (f)(1) and (2) of this section.

(2) If the Medical Board allows a full or partial exemption from continuing education required under subdivision (f)(1) of this section, the Board may require evidence of completion of continuing education before issuing the individual a subsequent license, certificate, or permit or authorizing the renewal of a license, certificate, or permit.

**HISTORY**: Adopted December 6, 2018, Effective June 15, 2019.

## RULE NO. 43:
## GENETIC COUNSELOR LICENSURE

A. Pursuant to Arkansas Code Annotated § 17-95-1101, this Rule shall be known and cited as the "Rule 43 - Arkansas Genetic Counselor Licensure."

B. Pursuant to Arkansas Code Annotated § 17-95-1102, definitions as used in this Rule: "Genetic counseling" means the process of assisting individuals with understanding and adapting to the medical, psychological, and familial implications of genetic contributions to disease, which includes without limitation:

1. Interpreting family and medical histories to assess the chance of disease occurrence or recurrence.
2. Educating an individual or an individual's family about inheritance, testing, management, prevention, resources, and research.
3. Counseling an individual or an individual's family to promote informed choices and adaption to the risk or condition.
4. Estimating the likelihood of occurrence or recurrence of any potentially inherited or genetically influenced condition which may involve:
    a. Obtaining and analyzing a complete health history of the individual and the individual's family;
    b. Reviewing the pertinent medical records;
    c. Evaluating the risks from exposure to possible mutagens or teratogens; and
    d. Discussing genetic testing to assist in the diagnosis of a condition to determine the carrier status of one (1) or more family members.
5. Assisting the individual, the individual's family, the individual's healthcare provider, or the public to:
    a. Appreciate the medical, psychological, and social implications of a disorder, including the features, variability, usual course, and management options of the disorder;
    b. Learn how genetic factors contribute to the disorder and affect the chance for recurrence of the condition in other family members;
    c. Understand available options for coping with, preventing, or reducing the chance of occurrence or recurrence of a condition; and
    d. Understand genetic tests, including without limitation diagnostic genetic tests, screening tests, or predispositional genetic tests, coordinate testing for inherited disorders, and interpret complex genetic test results.
6. Facilitating an individual's or an individual's family's:
    a. Exploration of the perception of risk and burden associated with a genetic disorder;
    b. Decision-making regarding testing or medical interventions consistent with their beliefs, goals, needs, resources, culture, and ethical or moral views; and
    c. Adjustment and adaption to the condition or their genetic risk by addressing needs for psychological, social, and medical support.
7. "Licensed genetic counselor" means a person who is licensed under this Rule to engage in the practice of genetic counseling; and
8. "Supervision" means the ongoing, direct clinical review for the purposes of training or teaching, by an approved supervisor who monitors the performance of a person's supervised interaction with a client and provides regular documented face-to-face consultation, guidance, and instructions with respect to the clinical skills and competencies of the person supervised.
9. "Supervision" may include without limitation the review of case presentation, audio tapes, video tapes, and direct observation.

C. Pursuant to Arkansas Code Annotated § 17-95-1103 exemptions from genetic licensure. This Rule does not require licensure as a genetic counselor of:
1. An individual who is *licensed* or *lawfully* permitted to *practice by this* state as a healthcare professional and who is practicing within his or her scope of practice, including without limitation a physician or an advanced practice registered nurse.
2. An *individual* who has successfully completed an accredited genetic counseling training program and who is:
    a. Reapplying for the American Board of Genetic Counseling certification examination and gathering logbook case numbers under supervision in an approved genetic counseling training site; or
    b. Practicing under direct supervision of a licensed physician.
3. A student enrolled in an approved academic program in genetic counseling if the practice constitutes a part of a supervised course of study and the student is designated by a title that clearly indicates the student's status as a student or trainee.
4. An individual who is employed by a state genetics center to provide education regarding single gene conditions, including without limitation sickle cell, cystic fibrosis, and hemoglobinopathies.

5. An individual described in subdivision E(4) of this section shall not use the title "genetic counselor" or any other title tending to indicate that he or she is a genetic counselor unless he or she is licensed in this state.

    a. A visiting genetic counselor who is certified by the American Board of Genetic Counseling or American Board of Medical Genetics from outside the state performing activities and services for a period of thirty (30) days each year.

    b. A visiting genetic counselor shall be licensed if the license is available in his or her home state.

D. Pursuant to Arkansas Code Annotated § 17-95-1104, Authority of the Arkansas State Medical Board. The Arkansas State Medical Board shall:

1. Receive, review, and approve applications for genetic counselor licensure.

2. Issue, renew, suspend, revoke, or deny licensure as a genetic counselor.

3. Conduct hearings on investigative and disciplinary proceedings.

4. Maintain a database of all licensees and all persons whose license has been suspended, revoked, or denied.

    a. Access to a database under subdivision D of this section shall be available upon written request.

5. Perform other functions and duties required to carry out this Rule.

E. Pursuant to Arkansas Code Annotated § 17-95-1105 Title Protection. A person shall not use or assume the titled "licensed genetic counselor" or "genetic counselor" or use any words, letters, abbreviations, or insignia indicating or implying that the person holds a genetic counselor license unless the person is licensed by the Arkansas State Medical Board.

F. Pursuant to Arkansas Code Annotated § 17-95-1106 Genetic counselor licensure. The Arkansas State Medical Board shall license as a *licensed genetic* counselor an applicant who:

1. Submits an application approved by the Arkansas State Medical Board.

2. Pays an application fee of $90.00 that is comparable to other fees for licensure of other midlevel healthcare professionals licensed by the Arkansas State Medical Board and provides evidence of:

    a. Having earned a master's degree from a genetic counseling training program that is accredited by the American Board of Genetic Counseling or an equivalent as determined by the American Board of Genetic Counseling or the American Board of Medical Genetics; and

    b. Meets the examination requirements for certification and has current certification as a genetic counselor by the American Board of Genetic Counseling or the American Board of Medical Genetics.

3. The Arkansas State Medical Board may issue a license to an applicant who provides evidence that he or she is licensed to practice as a genetic counselor in another state or territory if the requirements for licensure in the other state or territory are equal to the requirements in this Rule.

4. The issuance of a license by reciprocity shall be at the sole discretion of the Arkansas State Medical Board. The Board shall issue a license by reciprocity if:

    a. The applicant submits a fully-executed application, the required fee of $90.00;

    b. Evidence that the applicant's license from another jurisdiction is substantially similar to Arkansas';

    c. Evidence of current and active licensure in the state; and

    d. Evidence that the other state's licensure requirements match those of Arkansas and this Rule.

G. Pursuant to Arkansas Code Annotated § 17-95-1107, Renewal of genetic counselor license.

1. Except in the case of a temporary license under § 17-95-1108, a license shall be valid for a two-year period from the date of issuance.

2. Upon receipt of a renewal application and renewal fees of $100.00, the Board shall renew a license to practice as a *licensed genetic* counselor. A late fee of $50.00 shall be charged for a renewal not filed within the licensure time period.

3. As a condition of licensure renewal, a *licensed genetic* counselor shall submit documentation that he or she has completed fifty (50) hours of continuing education units approved by the Board.

4. A *licensed genetic* counselor is responsible for maintaining:

    a. Competent records of having completed qualified professional education for a period of four (4) years after close of the

two-year period to which the records pertain; and

b. Information with respect to having completed a qualified professional education to demonstrate that the education meets the requirements of this Rule.

5. The Arkansas State Medical Board may waive the continuing education requirement or grant an extension of time to complete the continuing education requirement in cases of retirement, illness, disability, or other undue hardship.

H. Pursuant to Arkansas Code Annotated § 17-95-1108 the Arkansas State Medical Board may issue a temporary license.

1. If the applicant:

a. Has been granted an active-candidate status by the American Board of Genetic Counseling; and

(i) The Arkansas State Medical Board may issue a temporary license, to an applicant who does not meet the certification requirement in § 17-95-1106.

b. Applies for and takes the certification examination within twelve (12) months of the issuance of a temporary license and submits an application and application fees of $50.00; and

2. A temporary license is valid for one (1) year from the date of issuance.

3. A temporary license may be renewed for one (1) year if the applicant fails his or her first attempt to pass the certification examination of the American Board of Genetic Counseling or the American Board of Medical Genetics and Genomics.

4. An application for renewal shall be signed by a supervisor of the applicant.

5. A temporary license shall expire automatically upon the earliest of:

a. The date of issuance of a license under § 17-95-1106;

b. Ninety (90) days after the date that the applicant fails on his or her second attempt to pass the certification examination; or

c. The date printed on the temporary license.

6. As a condition of a temporary licensure, an applicant shall work under the supervision of a licensed genetic counselor or a licensed physician with current American Board of Genetic Counseling certification in clinical genetics when the applicant provides genetic counseling services.

7. A temporary license shall not be issued if the applicant has failed the American Board of Genetic Counseling certification examination more than two (2) times.

I. Pursuant to Arkansas Code Annotated § 17-95-1109 Denial, Suspension, Revocation, or Refusal to Renew – Censure.

1. The Arkansas State Medical Board may deny, suspend, revoke, or refuse to renew a license, or may reprimand, censure, place on probation, or otherwise discipline a licensee, upon proof that the licensee has:

a. Obtained or attempted to obtain a license by fraud or deception;

b. Been convicted of a felony under state or federal law;

c. Been adjudicated mentally ill or incompetent by a court;

d. Used illicit drugs or intoxicating *liquors, narcotics, controlled substances, or other drugs or stimulants* to an extent that adversely affects the practice of genetic counseling;

e. Engaged in unethical or unprofessional conduct, including without limitation willful acts, negligence, or incompetence in the course of professional practice;

f. Violated any provision of this Rule or any rule of the Board; or

g. Been denied licensure or disciplined in another state or territory in connection with a license in another state or territory.

2. A licensee under subsection I(1) of this section shall promptly deliver his or her license to the Board if the licensee:

a. Has his or her license suspended or revoked; or

b. Surrenders his or her license with or without prejudice if the surrender is approved by the Board.

3. The Board may restore a license or remove a probation on a license based upon the decision of the Board after a hearing.

J. Pursuant to Arkansas Code Annotated § 17-95-1110 Surrendering license due to retirement.

1. In order to retire his or her license, a licensed genetic counselor shall file an affidavit with the Arkansas State Medical Board stating the date on which the individual will retire or has

retired, and other information determined necessary by the Board.

2. If a licensed genetic counselor retires his or her licensed as described in subsection J(1) of this section, the individual shall apply for licensure as provided in § 17-95-1106 and is not liable for renewal fees that may accrue during the retirement period.

**HISTORY:** Adopted October 3, 2019, implementation date, November 28, 2019.

## RULE NO. 44: PRE-LICENSURE CRIMINAL BACKGROUND CHECK

A. Pursuant to Act 990 of 2019, an individual may petition for a pre-licensure determination of whether the individual's criminal record will disqualify the individual from licensure and whether a waiver may be obtained.

B. The individual must obtain the pre-licensure criminal background check petition form from the Board.

C. The Board will respond with a decision in writing to a completed petition within a reasonable time.

D. The Board's response will state the reason(s) for the decision.

E. All decisions of the Board in response to the petition will be determined by the information provided by the individual.

F. Any decision made by the Board in response to a pre-licensure criminal background check petition is not subject to appeal.

G. The Board will retain a copy of the petition and response and it will be reviewed during the formal application process.

Waiver Request

A. If an individual has been convicted of an offense listed in A.C.A. § 17-2-102(a), except those permanently disqualifying offenses found in subsection (e), the Board may waive disqualification of a potential applicant or revocation of a license based on the conviction if a request for a waiver is made by:

1. An affected applicant for a license; or

2. An individual holding a license subject to revocation.

B. The Board may grant a waiver upon consideration of the following, without limitation:

1. The age at which the offense was committed;

2. The circumstances surrounding the offense;

3. The length of time since the offense was committed;

4. Subsequent work history since the offense was committed;

5. Employment references since the offense was committed;

6. Character references since the offense was committed;

7. Relevance of the offense to the occupational license; and

8. Other evidence demonstrating that licensure of the applicant does not pose a threat to the health or safety of the public.

C. A request for a waiver, if made by an applicant, must be in writing and accompany the completed application and fees.

D. The Board will respond with a decision in writing and will state the reasons for the decision.

E. An appeal of a determination under this section will be subject to the Administrative Procedures Act §25-15-201 et seq.

**HISTORY:** Adopted June 4, 2020; Effective August 7, 2020.

## RULE 45: RECIPROCITY

Pursuant to Act 1011 of 2019:

A. **Required Qualifications**. An applicant applying for reciprocal licensure shall meet the following requirements:

1. The applicant shall hold a substantially similar license in another United States jurisdiction.
   a. A license from another state is substantially similar to an Arkansas medical license if the other state's licensure qualifications require:
      i. The application must meet the educational requirements of Ark. Code. Ann. § 17-95-403 or Ark. Code Ann. § 17-105-102;
   b. The applicant shall hold his or her occupational licensure in good standing;
   c. The applicant shall not have had a license revoked for:
      i. An act of bad faith; or
      ii. A violation of law, rule, or ethics.
   d. The applicant shall not hold a suspended or probationary license in a United States jurisdiction.
2. The applicant shall be sufficiently competent in the medical field.

B. **Required Documentation**. An applicant shall submit a fully-executed application, the required fee, pursuant to Ark. Code Ann. §17-95-411, Ark. Code Ann. §17-95-107(7)(e), Ark. Code Ann. §17-105-117, Ark. Code Ann. §17-88-384(2), and Rule

6(5), Ark. Code Ann. §17-99-302 and Rule 10 and the documentation described below:

1. As evidence that the applicant's license from another jurisdiction is substantially similar to Arkansas', the applicant shall submit the following information:
    a. Evidence of current and active licensure in the state. The Board may verify this information online if the jurisdiction at issue provides primary source verification on its website or by telephone to the other state's licensing board; and
    b. Evidence that the other state's licensure requirements match those listed in A.1.a.i. The Board may verify this information online or by telephone to the other state's licensing board.
2. To demonstrate that the applicant meets the requirement in A.1.b through d., the applicant shall provide the Board with:
    a. The names of all states in which the applicant is currently licensed or has been previously licensed;
    b. Letters of good standing or other information from each state in which the applicant is currently or has ever been licensed showing that the applicant has not had his license revoked for the reasons listed in A.1.c. and does not hold a license on suspended or probationary status as described in A.1.d. The Board may verify this information online if the jurisdiction at issue provides primary source verification on its website or by telephone to the other state's licensing board.
3. As evidence that the applicant is sufficiently competent in the field of medicine, an applicant shall:
    a. Pass testing requirements as outlined in Ark. Code Ann. § 17-95-403 or Ark. Code Ann. § 17-105-102.
    b. Submit letters of recommendation as outlined in Ark. Code Ann. § 17-95-403 or Ark. Code Ann. § 17-105-102.

**HISTORY:** Adopted October 1, 2020; Effective December 3, 2020