

TRANSMITTAL SHEET FOR
NOTICE OF INTENDED ACTION

Control 540 Department or Agency Alabama State Board of Medical Examiners
Rule No. 540-X-23
Rule Title: Physician Reentry into Practice

X New _____ Amend _____ Repeal _____ Adopt by Reference _____

Would the absence of the proposed rule significantly harm or endanger the public health, welfare, or safety? NO

Is there a reasonable relationship between the state's police power and the protection of the public health, safety, or welfare? YES

Is there another, less restrictive method of regulation available that could adequately protect the public? NO

Does the proposed rule have the effect of directly or indirectly increasing the costs of any goods or services involved and, if so, to what degree? NO

Is the increase in cost, if any, more harmful to the public than the harm that might result from the absence of the proposed rule? NO

Are all facets of the rulemaking process designed solely for the purpose of, and so they have, as their primary effect, the protection of the public? YES

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

Does the proposed rule have an economic impact? NO

If the proposed rule has an economic impact, the proposed rule is required to be accompanied by a fiscal note prepared in accordance with subsection (f) of Section 41-22-23, Code of Alabama 1975.

Certification of Authorized Official

I certify that the attached proposed rule has been proposed in full compliance with the requirements of Chapter 22, Title 41, Code of Alabama 1975, and that it conforms to all applicable filing requirements of the Administrative Procedure Division of the Legislative Services Agency.

Signature of certifying officer *Sarah J. Moore*

Date February 20, 2019

REC'D & FILED
2019 FEB 20 PM 4:10

LEGISLATIVE SVC AGENCY
(DATE FILED)
(STAMP)

APA-2

ALABAMA STATE BOARD OF MEDICAL EXAMINERS

NOTICE OF INTENDED ACTION

AGENCY NAME: Alabama Board of Medical Examiners

RULE NO. & TITLE: 540-X-23, Physician Reentry into Practice


INTENDED ACTION: To add a new rule

SUBSTANCE OF PROPOSED ACTION: To allow the Board to implement or recommend a reentry plan when a physician has not been in the active practice of medicine for two years or more.

TIME, PLACE, MANNER OF PRESENTING VIEWS: All interested persons may submit data, views, or arguments concerning the proposed new rule(s) and regulation(s) in writing to: Carla H. Kruger, Office of the General Counsel, Alabama State Board of Medical Examiners, Post Office Box 946, Montgomery, Alabama 36101-0946, by mail or in person between the hours of 8:30 a.m. and 4:30 p.m., Monday through Friday, until and including April 4, 2019. Persons wishing to obtain copies of the text of this rule and submit data, views, or comments or arguments orally should contact Carla H. Kruger by telephone (334-242-4116) during said period in order to set up an appointment for a hearing respecting such oral data, views, or arguments. Copies can also be obtained at the Board's web site, www.albme.org.

FINAL DATE FOR COMMENT AND COMPLETION OF NOTICE: April 4, 2019

CONTACT PERSON AT AGENCY: Carla H. Kruger



(Signature of officer authorized
to promulgate and adopt
rules or his or her deputy)

NEW
RULES OF THE
ALABAMA BOARD OF MEDICAL EXAMINERS
CHAPTER 540-X-23
PHYSICIAN REENTRY INTO PRACTICE

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540-X-23-.01 Definitions.

(1) Active Practice: A physician may be said to be in active clinical practice when any amount of direct patient care has been provided during the preceding two years.

(2) Direct Patient Care: Direct patient care has been provided when a physician treats, or professes to diagnose, treat, perform surgery on, or prescribe medication to a patient for any physical ailment or injury in a clinical or professional setting.

(3) Burden of Proof: The reentry candidate shall have the burden of providing appropriate proof of direct patient care. Ideally, such proof will include a patient chart but may include other documentation as deemed appropriate by the Board.

(4) Two-Year Period: The beginning of the two-year period will begin from the date the physician last provided direct patient care and will be tolled by the filing of an initial or reinstatement application for a certificate of qualification to practice medicine or a medical license reinstatement application.

(5) Board: Alabama Board of Medical Examiners

(6) Commission: Medical Licensure Commission of Alabama

540-X-23-.02 Application.

(1) This rule shall apply in the following instances:

(a) Physician applicants seeking a certificate of qualification, who otherwise qualify for a certificate of qualification, but who have been absent from clinical practice for two years or more may obtain a certificate of qualification by entering into a reentry agreement with the Board.

(b) Licensees seeking reinstatement of a certificate of qualification may be ordered to complete a reentry plan as a condition of reinstatement. Licensees whose reinstatement is contested and whose certificate of qualification is reinstated shall be required to complete a reentry plan as part of the reinstatement order.

(c) When a licensee who has been absent from clinical practice for two years or more is seeking reinstatement of a medical license by the Commission pursuant to Ala. Code § 34-24-337, the Board shall file a notice to contest such reinstatement. In such cases, the Board shall recommend that the Commission order the licensee to complete a reentry plan as a condition of reinstatement.

(d) The Board shall recommend implementation of a reentry plan to the Commission as a condition of probation, as a restriction, or as a condition of reinstatement in any case where a licensee has violated Ala. Code § 34-24-360(20).

(2) This rule shall apply to physicians.

540-X-23-.03 Reentry to Practice Rule

(1) A physician's absence from clinical practice for more than two years creates a rebuttable presumption of clinical incompetence. A physician, whether he or

she is an applicant or licensee, who has not actively practiced or who has not maintained continued competency, as determined by the Board, during the two-year period immediately preceding the filing of an application for licensure or reinstatement or during any consecutive two-year period may be required to complete a reentry plan as a condition of licensure/reinstatement.

(2) The reentry plan may contain any or all of the following:

(a) An assessment of the physician's current strengths and weaknesses in his or her intended area(s) of practice. The process may include testing and evaluation by colleagues, educators, or any other person or entity approved by the Board or Commission.

(b) The physician must also obtain education. Education shall address the applicant's area(s) of needed improvement and consist of a reentry period of retraining and education upon terms based on the factors set forth in Paragraph (3) of this rule.

(c) Depending upon the amount of time out-of-practice, the physician may be required to complete one or more of the following:

1. Receive a passing score on the Special Purpose Examination ("SPEX") or the Comprehensive Osteopathic Medical Variable-Purpose Examination ("COMVEX") examination;
2. Participate in a national assessment readiness program;
3. Undergo a competency assessment by the Board and/or the Commission;
4. Practice for a specified period of time under a mentor/supervising physician who will provide periodic reports to the Board;

5. Obtain certification or recertification by a specialty board recognized by the American Board of Medical Specialties ("ABMS") or the American Osteopathic Association's ("AOA") Bureau of Osteopathic Specialists;

6. Complete one year of accredited postgraduate or clinical fellowship training, which must be preapproved by the Board;

7. Complete up to 50 hours of Board-approved continuing medical education each year that the agreement is in place.

(3) Factors that may affect the Board's determination regarding competency and the length and scope of the reentry plan include:

(a) The physician's length of time out of practice;

(b) The physician's prior intensity of practice;

(c) The reason for the interruption in practice;

(d) The physician's activities during the interruption in practice, including the amount of practice-relevant continuing medical education;

(e) The physician's previous and intended area(s) of practice;

(f) The skills required of the intended area(s) of practice;

(g) The developments in the intended area(s) of practice over the time the physician has been out of continuous practice;

(h) The length of time since the physician has completed his or her medical education and/or training;

(i) As applicable, the date of the most recent ABMS, AOA, or equivalent specialty board.

(4) A physician who fails to receive a passing score on the SPEX or COMVEX examination three times, whether in Alabama or other states, must successfully complete one year of an accredited residency or an accredited or Board-approved clinical fellowship before retaking the SPEX or COMVEX.

(5) If the Board approves a physician's reentry plan, it shall be incorporated by reference into a reentry agreement and executed by the applicant, the Board, and any applicable Board agents assisting with the reentry agreement.

(6) After the reentry agreement has been executed and the applicant has completed all other requirements for licensure, the Board shall issue a restricted certificate of qualification. The licensee may not practice outside the scope of the reentry agreement and its referenced reentry plan during the reentry period.

(7) While the reentry agreement is in effect, the licensee shall meet with members of the Board at such dates, times, and places as directed by the Board to discuss the licensee's transition back into practice and any other practice related matters. Practicing outside the scope of the reentry agreement, as determined by the Board, is unprofessional conduct, a violation of Ala. Code § 34-24-360(2).

(8) Upon successful completion of the reentry agreement, the licensee must petition the Board to lift the restrictions from his or her certificate of qualification. Once the petition is received, the Board may terminate the reentry agreement and remove the restrictions from the certificate of qualification.

(9) Unsatisfactory completion of the reentry agreement, as determined by the Board, may result in an extension of the agreement, the initiation of proceedings under Ala. Code § 34-24-361, or both.

Author: Alabama Board of Medical Examiners

Statutory Authority: Code of Alabama §§ 34-24-53, 34-24-53.1, 34-24-70, 34-24-337, 34-24-360, 34-24-360.1, and 34-24-361;

History: Approved for publication: February 20, 2019.