

APA-4
10/91

CERTIFICATION OF EMERGENCY RULES
FILED WITH LEGISLATIVE REFERENCE SERVICE
JERRY L. BASSETT, DIRECTOR

Pursuant to Code of Alabama 1975, §§41-22-5(b) and 41-22-6(c)(2)a. and b.

I certify that the attached emergency amendment is a correct copy as promulgated and adopted on the 20TH Day of December, 2016.

AGENCY NAME: Alabama Medical Licensure Commission

RULE NO. AND TILE: 545-X-3.01(1) ER - DEFINITIONS

EFFECTIVE DATE OF RULE: January 3, 2017

EXPIRATION DATE (If less than 120 days): n/a

NATURE OF EMERGENCY: Adoption of additional definitions related to the issuance of expedited licenses as a member of the Interstate Medical Licensure Compact (Ala. Code § 34-24-530). (The Compact Commission adopted preliminary administrative rules in December 2016 with the expectation that the licensure process will go active on a date to be determined in January 2017.)

STATUTORY AUTHORITY: Ala. Code § 34-24-530

SUBJECT OF RULE TO BE ADOPTED ON PERMANENT BASIS

YES NO

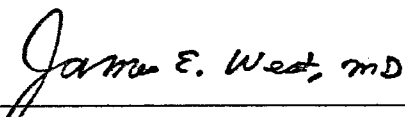
NAME, ADDRESS, AND TELEPHONE NUMBER OF PERSON TO CONTACT FOR COPY OF RULE:

REC'D & FILED

JAN 03 2017

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James E. West, M.D., Chairman

FILING DATE
(For APA Use Only)

545-X-3-.01 ER - Definitions

(1) These rules incorporate by reference those definitions contained in §20-2-2 and §41-22-3, Code of Alabama, 1975, unless the context clearly indicates otherwise. For the purposes of these rules, the following words and phrases shall have the respective meanings ascribed by this section:

(a) Licensee shall mean a physician licensed to practice medicine or osteopathy in the state of Alabama.

(b) Commission shall mean the Medical Licensure Commission of the state of Alabama.

(c) Certificate shall mean a certificate of qualification duly issued by the Alabama State Board of Medical Examiners.

(d) Board shall mean the Alabama State Board of Medical Examiners.

(e) Complainant shall mean the party that is responsible for preparing and prosecuting complaints in contested cases before the Medical Licensure Commission.

(f) Respondent shall mean the licensee whose license to practice medicine or osteopathy is the subject of the complaint filed before the Commission.

(g) Legal Counsel shall mean an individual designated as legal counsel by the Medical Licensure Commission of Alabama and appointed pursuant to these rules.

(h) Parties shall mean the complainant, the respondent, and any person permitted to intervene in a contested case.

(i) Legitimate medical purpose shall mean a therapeutic treatment regimen or program generally recognized and accepted in the field of medical science as being

safe and effective in the diagnosis, treatment, correction or alleviation of a specific medical condition of the patient, under all relevant circumstances.

(j) Practicing medicine in such a manner as to endanger the health of the patient of the practitioner shall mean to expose the health of the patient to unreasonable risks of harm which are not medically justified by the expected benefits to the patient, under all the circumstances evident in the diagnosis and treatment of the medical condition of the patient.

(k) Performance of unnecessary diagnostic tests or medical or surgical services shall mean to administer medical tests, or medical or surgical services which are not reasonably indicated or which are not reasonably required in order to insure the well being of the patient of the practitioner, after considering all of the circumstances.

(l) Malpractice as used in these rules shall mean negligence. Gross malpractice shall mean gross negligence. Negligence shall mean the failure to do that which a reasonably prudent physician would have done under the same or similar circumstances, or the doing of that which a reasonably prudent physician would not have done under the same or similar circumstances. Gross negligence is the conscious doing of an act or the omission of some duty to act with a conscious disregard of known conditions of danger or with careless and reckless indifference to the consequences of such act or omission. For the purposes of this rule the existence of negligence or gross negligence may be established without proof of actual injury or harm to the patient, provided that, the act or omission complained of created a substantial risk of harm to the health and well being of the patient which risk was known or should have been

known to a reasonably prudent practitioner and which was not medically justified by the expected benefits to the patient from the act or omission.

(m) In considering whether a fee for medical services is grossly excessive, as this term is used in these rules, the Commission may consider the following factors:

1. the difficulty and/or uniqueness of the service performed as well as the time, skill and/or experience required;
2. the fee customarily charged in the locality for similar physician services;
3. the amount of the charges involved;
4. the nature and length of the professional relationship with the patient;
5. the experience, reputation and ability of the physician in performing the kind of services involved;
6. the costs to the physician of devices or appliances or other special items (excessive of reasonable overhead expenses) furnished in connection with the service; and
7. the facts relating to the opportunity of the patient and physician to discuss the amount of fees in question prior to the initiation of the medical services.

(n) Licensed practitioners specializing in the treatment of depression shall mean a psychiatrist licensed to practice medicine in the state of Alabama or a physician or osteopath licensed to practice medicine in the state of Alabama who devotes a substantial portion of his practice to the specialized treatment of mental or emotional illness.

(o) Physician shall mean either a doctor of medicine or a doctor of osteopathy.

(p) Licensed to practice medicine shall mean either the practice of medicine by a doctor of medicine or the practice of osteopathy by a doctor of osteopathy.

(q) Doctor shall mean either a doctor of medicine or a doctor of osteopathy.

(r) False or fraudulent claims for medical services shall mean any claim or claims requesting payment for any medical services which contain any misrepresentation of any material fact, or any suppression of any material fact, regarding any services for which the claim or claims is made if such misrepresentation or suppression is made with knowledge that such fact is being misrepresented or suppressed or if such misrepresentation or suppression is made recklessly without knowledge.

(s) Minimum standards for medical records shall mean medical records maintained as to each patient in each physician's office which shall be written legibly in the English language and which shall include, at a minimum, a record of:

- (1) the patient's complaint or complaints;
- (2) the history and physical examination;
- (3) the treatment given or recommended; and,
- (4) all follow up recommendations.

(t) The Interstate Medical Licensure Compact is an agreement among states which have adopted legislation substantially similar to Alabama Code Sections 34-24-520 through 34-24-543.

(u) A Member State is any state which is a member of the Interstate Medical Licensure Compact.

(v) An Expedited License is a full and unrestricted license to practice medicine in Alabama granted to an eligible physician through the process set forth in the Interstate Medical Licensure Compact.

(w) Physician eligible for an expedited license. Any person who:

(1) Is a graduate of a medical school accredited by the Liaison Committee on Medical Education, the Commission on Osteopathic College Accreditation, or a medical school listed in the International Medical Education Directory or its equivalent;

(2) Passed each component of the United States Medical Licensing Examination (USMLE) or the Comprehensive Osteopathic Medical Licensing Examination (COMLEX-USA) within three attempts, or any of its predecessor examinations accepted by a state medical board as an equivalent examination for licensure purposes;

(3) Successfully completed graduate medical education approved by the Accreditation Council for Graduate Medical Education or the American Osteopathic Association;

(4) Holds specialty certification or a time-unlimited specialty certificate recognized by the American Board of Medical Specialties or the American Osteopathic Association's Bureau of Osteopathic Specialists;

(5) Possesses a full and unrestricted license to engage in the practice of medicine issued by a member board;

(6) Has never been convicted, received adjudication, deferred adjudication, community supervision, or deferred disposition for any offense by a court of appropriate jurisdiction;

(7) Has never held a license authorizing the practice of medicine subjected to discipline by a licensing agency in any state, federal, or foreign jurisdiction, excluding any action related to nonpayment of fees related to a license;

(8) Has never had a controlled substance license or permit suspended or revoked by a state or the United States Drug Enforcement Administration;
and

(9) Is not under active investigation by a licensing agency or law enforcement authority in any state, federal, or foreign jurisdiction.

(x) State of Principal License is a member state where a physician holds a license to practice medicine and which has been designated as such by the physician for the purpose of registration and participation in the Interstate Medical Licensure Compact.

(y) Letter of Qualification shall mean a letter, issued by a state which has been designated as the state of principal license by a physician, which certifies that such physician is eligible for an expedited license.

Author: Wayne P. Turner

Statutory Authority: Code of Alabama 1975, §§ 34-24-311, 34-24-360, 41-22-1, 34-24-530, 34-24-521

History: Filed May 6, 1983. Repealed and new rule adopted in lieu thereof: Filed May 1, 1984. Amended: Filed June 27, 1986. Amendment approved for publication Nov. 20, 2002. Adopted February 26, 2003. Filed March 4, 2003; effective April 8, 2003.

Amended: Approved for Publication January 27, 2010.

Filed: February 3, 2010; Final Approval April 28, 2010; Filed May 5, 2010; Effective Date June 9, 2010

Adopted for Emergency Filing: December 20, 2016. Filed as Emergency Rule January 3, 2017