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MISSISSIPPI STATE BOARD OF MEDICAL LICENSURE

TO: Mississippi Secretary of State
From: Mississippi State Board of Medical Licensure
Date: September 22, 2006
Subject: Notice of Proposed Rule Adoption

Mississippi Code §73-43-11 gives the Mississippi State Board of Medical Licensure the authority to promulgate and publish reasonable rules and regulations necessary to enable it to discharge its functions and to enforce the provisions of law regulating the practice of medicine and the conduct of physicians.

Pursuant to the Administrative Procedures Law, the attached regulation describes the Board's organization and structure and the Board's contact information. It also outlines procedures for conducting oral proceedings and issuing declaratory opinions.

Any comments concerning the proposed regulation may be sent to the following address:

Mississippi State Board of Medical Licensure
1867 Crane Ridge Drive, Suite 200-B
Jackson, MS 39216

XXXIII. ADMINISTRATIVE RULES

A. METHOD OF OPERATION

1. SCOPE

This regulation is promulgated pursuant to Miss. Code Ann. Section 25-43-2.104 of the Mississippi Administrative Procedures Law.

2. DESCRIPTION OF THE MISSISSIPPI STATE BOARD OF MEDICAL LICENSURE

Reference is made to Title 73, Chapter 43 of the Mississippi Code, which establishes the Mississippi State Board of Medical Licensure (“the Board”) and sets forth its composition, general powers and duties. Further reference is made to the following additional provisions of Mississippi law;

- a. Title 73, Chapter 25, which sets forth the Board’s specific powers and duties in relation to licensure and discipline of physicians and osteopaths;
- b. Title 73, Chapter 26, which sets forth the Board’s specific powers and duties in relation to licensure and regulation of physician assistants;
- c. Title 73, Chapter 27, which sets forth the Board’s specific powers and duties in relation to licensure and discipline of podiatrists;
- d. Title 41, Chapter 58, which sets forth the Board’s specific powers and duties in relation to licensure and regulation of radiologist technicians and assistants; and
- e. Title 41, Chapter 29, which sets forth the Board’s specific powers and duties in relation to investigations of potential violations of the Mississippi Controlled Substance Laws.

Regulations adopted by the Board pursuant to the various authorities cited above are referred to as the Rules and Regulations of the Mississippi State Board of Medical Licensure. Pursuant to Miss. Code. Ann. Section 73-43-13, the Board employs an Executive Director. The Board’s staff is organized into two (2) divisions: Licensure, which addresses matters related to the licensure of physicians, osteopaths, physician assistants, podiatrists, and radiologist technicians and assistants, and Investigations, which investigates matters or allegations related to the potential violation of any state statute or regulation under the Board’s jurisdiction.

3. WHERE AND HOW TO OBTAIN PUBLIC INFORMATION

The text of all Board rules and regulations, as well as information regarding pending rules, regulation, schedules of meetings and the like may be obtained by visiting the Board's website at www.msbml.state.ms.us. Requests for Declaratory Opinions may be made pursuant to Part III of these rules. Otherwise, requests for information may be made pursuant to and in accordance with the Mississippi Open Records Act by submitting written request to the Board's current mailing address.

B. ORAL PROCEEDINGS ON PROPOSED RULES

1. SCOPE

This rule applies to all oral proceedings held for the purpose of providing the public with an opportunity to make oral presentations on proposed new rules and amendments to rules before the Mississippi State Board of Medical Licensure ("the Board") pursuant to Miss. Code Ann. Section 25-43-3.104.

2. WHEN ORAL PROCEEDINGS WILL BE SCHEDULED ON PROPOSED RULES

The Board will conduct an oral proceeding on a proposed rule or amendment if requested by a political subdivision, and agency or ten (10) persons in writing within twenty (20) days after the filing of the notice of the proposed rule. The Board may also schedule an oral proceeding on a proposed rule on its own motion.

3. REQUEST FORMAT

Each request must be printed or typewritten, or must be in legible handwriting. Each request must be submitted on standard business letter-size paper (8 ½" by 11"). Requests may be in the form of a letter addressed to the Board and signed by the requestor(s).

4. NOTIFICATION OF ORAL PROCEEDING

The date, time and place of all oral proceedings shall be filed with the Secretary of State's office and mailed to each requestor. The oral proceedings will be scheduled no earlier than twenty (20) days from the filing of this information with the Secretary of State.

5. PRESIDING OFFICER

The President of the Board shall preside at the oral proceeding on a proposed rule.

6. PUBLIC PRESENTATIONS AND PARTICIPATION

- a. At an oral proceeding on a proposed rule, persons may make oral statements and make documentary and physical submissions, which may include data, views, comments or arguments concerning the proposed rule.
- b. Persons wishing to make oral presentations at such a proceeding shall notify the Board at least one business day prior to the proceeding and indicate the general subject of their presentation. For good cause shown, the presiding officer in his/her discretion may allow individuals to participate that have not previously contacted the Board.
- c. At the proceeding, all those who participate shall indicate their names and addresses, identify any persons or organizations they may represent, and provide any other information relating to their participation deemed appropriate by the presiding officer.
- d. The presiding officer may place time limitations on individual oral presentations when necessary to assure the orderly and expeditious conduct of the oral proceeding. To encourage joint oral presentations and to avoid repetition, additional time may be provided for persons whose presentations represent the views of other individuals as well as their own views.
- e. Persons making oral presentations are encouraged to avoid restating matters that have already been submitted in writing.
- f. There shall be no interruption of a participant who has been given the floor by the presiding officer, except that the presiding officer may in his or her discretion (i) recognize Board members for questions of the participant, or (ii) interrupt or end the participant's time where the orderly conduct of the proceeding so requires. Should the presiding officer recognize a member of the Board for questions during the participant's presentation, additional time will be afforded the participant in making his or her presentation.

7. CONDUCT OF ORAL PROCEEDING.

- a. Presiding Officer

The presiding officer shall have the authority to conduct the proceeding in his or her discretion for the orderly conduct of the proceeding. The presiding officer shall:

- (i) call the proceeding to order;
- (ii) give a brief synopsis of the proposed rule, a statement of the statutory authority for the proposed rule, and the reasons provided by the Board for the proposed rule;
- (iii) call on those individuals who have contacted the Board about speaking on or against the proposed rule;
- (iv) recognize Board members for questions of any participant during their presentation;
- (v) allow for rebuttal statements following all participants' comments; and
- (vi) adjourn the proceeding.

b. Physical and Documentary Submissions

Submission presented by participants in an oral proceeding shall be submitted to the presiding officer. Such submissions become the property of the Board and become subject to the Open Records Act.

c. Recording

The Board will record oral proceedings by stenographic means.

C. DECLARATORY OPINIONS

1. SCOPE

This regulation sets forth the rules of the Mississippi State Board of Medical Licensure ("the Board") governing the form and content of requests for declaratory opinions, and the Board's procedures regarding such requests, as required by Miss. Code Ann. Section 25-43-2.103. This regulation is intended to supplement and be read in conjunction with the provisions of the Mississippi Administrative Procedures Law, and may contain additional information regarding the issuance of declaratory opinions. In the event of any conflict between this rule and the Mississippi Administrative Procedures Law, the latter will control.

2. PERSONS WHO MAY REQUEST DECLARATORY OPINIONS

Any person with a substantial interest in the subject matter may request a declaratory opinion from the Board by following the procedures set forth in this

rule. For purposes of this rule, “substantial interest in the subject matter” means the individual, business, group or other entity making the request is directly affected by the Board’s administration of the laws, rules or regulations within its jurisdiction. To be a substantial interest, the interest affected by the statute, rule or regulation must be different from the interest of the general public in that same statute, rule or regulation.

3. SUBJECTS WHICH MAY BE ADDRESSED IN DECLARATORY OPINIONS

The Board will issue declaratory opinions regarding the applicability to specified facts of: (i) a statute administered or enforced by the Board; or (ii) a rule or regulation promulgated by the Board.

4. WRITTEN REQUEST REQUIRED

Each request must be printed or typewritten, or must be in legible handwriting. Each request must be submitted on standard business letter-size paper (8 ½” by 11”). Requests may be in the form of a letter addressed to the Board. No oral, telephone or e-mail requests for declaratory opinions will be accepted.

5. WHERE TO SEND REQUESTS

All requests must be mailed, hand-delivered or transmitted via facsimile to the Board’s current mailing address or current facsimile number.

6. QUESTION PRESENTED

Each request shall contain the following:

- a. a full, complete and accurate statement of all relevant facts on which the opinion is requested, presented in a clear and concise manner;
- b. a citation to the statute, rule or regulation at issue;
- c. the question(s) sought to be answered in the opinion, stated clearly;
- d. a suggested proposed opinion from the requestor, stating the answers desired by the petitioner and a summary of the reasons in support of those answers;
- e. the identity of all other persons known to the requestor who may be involved in or impacted by the described factual situation, including the relationship of each to the facts, name, mailing address and phone number; and
- f. a statement that the person seeking the opinion has a substantial interest in the

subject matter, and sufficient information to support that statement.

7. NAME, ADDRESS AND SIGNATURE OF REQUESTOR

Each request must include the full name, telephone number and mailing address of the requestor. All requests must be signed by the person filing the request, who shall attest that the request complies with the requirements set forth in this regulation.

8. CIRCUMSTANCES IN WHICH DECLARATORY OPINIONS WILL NOT BE ISSUED

The Board may, for good cause, refuse to issue a declaratory opinion. The circumstances in which declaratory opinions will not be issued include, but are not limited to:

- a. the request is not made with sufficient clarity to facilitate the rendering of a declaratory opinion, or the request does not provide a complete or accurate statement of all relevant facts;
- b. there exists pending or anticipated litigation, or a pending administrative or disciplinary action, or other adjudication, which has as its subject the precise question presented to the Board for declaratory opinion, the conclusion of which will resolve the question;
- c. the statute or rule on which a declaratory opinion is sought is clear and not in need of interpretation to answer the question presented by the request;
- d. the facts presented in the request are not sufficient to answer the question presented;
- e. the request fails to contain information required by this regulation or the requestor failed to follow the procedures established by this regulation;
- f. the request seeks to resolve issues which have become moot, or are abstract or hypothetical such that the requestor is not substantially affected by the statute, rule or regulation on which a declaratory opinion is sought;
- g. the facts, whether existing or anticipated, do not support that the requestor will be substantially affected by the application of the statute, rule or regulation;
- h. the question presented by the request concerns the legal validity of a statute, rule or regulation;

- i. the request is not based upon facts calculated to assist the requestor in the planning of future conduct, but is instead based on past conduct of the requestor in an attempt to determine the affect of the statute, rule or regulation on that past conduct;
- j. no clear answer is determinable;
- k. the question presented by the request may involve the application of a criminal statute or presents a set of facts which may constitute a crime;
- l. the answer to the question presented would require the disclosure of information which is privileged or otherwise protected by law from disclosure;
- m. the question is currently the subject of an Attorney General's opinion request or has been answered by an Attorney General's opinion;
- n. a similar request is pending before the Board or any other agency or a proceeding is pending on the same subject matter before any agency, administrative or judicial tribunal, or where such an opinion would constitute the unauthorized practice of law;
- o. where issuance of a declaratory opinion may adversely affect the interests of the State of Mississippi, the Board or any of their officers or employees in any litigation which is pending or may reasonably be expected to arise; or
- p. the question involves eligibility for a license, permit, certificate or other approval by the Board or some other agency, and there is a statutory or regulatory application process by which eligibility for said license, permit, certificate or other approval would be determined.

9. TIME FOR BOARD'S RESPONSE

Within forty-five (45) days after the receipt of a request for a declaratory opinion which complies with the requirements of this regulation, the Board shall, in writing:

- a. issue a declaratory opinion regarding the specific statute, rule or regulation as applied to specific facts presented in the request;
- b. decline to issue a declaratory opinion, stating the reasons for its action; or
- c. agree to issue a declaratory opinion by a specific time not later than ninety (90) days after receipt of the written request.

The forty-five (45) day period shall begin running on the first regular business day after the request is received by the Board, excluding legal holidays and weekends.

10. EFFECTIVE DATE OF DECLARATORY OPINIONS

A declaratory opinion shall not become final until the expiration of sixty (60) days after its issuance. Prior to the expiration of sixty (60) days, the Board may, in its discretion, withdraw or amend the declaratory opinion for any reason which is not arbitrary or capricious. Reasons for withdrawing or amending an opinion include, but are not limited to, a determination that the request failed to meet the requirements of these rules or that the opinion issued contains a legal or factual error.

11. NOTICE TO THIRD PARTIES

The Board may give notice to any person, agency or entity that a declaratory opinion has been requested and may receive and consider data, facts, arguments and opinions from individuals, agencies or entities other than the requestor.

12. PUBLIC AVAILABILITY OF REQUESTS AND DECLARATORY OPINIONS

Declaratory opinions and requests for declaratory opinions shall be available for public inspection and copying in accordance with the Mississippi Public Records Act. All declaratory opinions and requests shall be indexed by name of requestor and subject. Declaratory opinions and requests which contain information which is confidential or exempt from disclosure under the Mississippi Public Records Act or other laws shall be exempt from this requirement and shall remain confidential.

13. EFFECT OF A DECLARATORY OPINION

The Board will not pursue any civil, criminal or administrative action against a person who issued a declaratory opinion from the Board and who, in good faith, follows the direction of the opinion and acts in accordance therewith unless a court of competent jurisdiction holds that the opinion is manifestly wrong. Any declaratory opinion rendered by the Board shall be binding only on the Board and the person to whom an opinion is issued. No declaratory opinion will be used as a precedent for any other transaction or occurrence beyond that set forth by the requesting person.