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MISSISSIPPI STATE BOARD OF MEDICAL LICENSURE

TO: Mississippi Secretary of State

From: Mississippi State Board of Medical Licensure

Date: May 17, 2007

Subject: Notice of Proposed Rule Adoption - Final Rule

Mississippi Code §73-43-11 gives the Mississippi State Board of Medical Licensure the power 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.

This rule as adopted does not differ from the proposed rule.

The changes to Regulation XVII, Rules of Procedure, reflect the Board's attempt to simplify current language.

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XVII. RULES OF PROCEDURE

AUTHORITY: CHAPTER 41, TITLE 73, MISSISSIPPI CODE (1972) ANNOTATED, AS AMENDED

A. SCOPE

The following Rules of Procedure apply to all individuals licensed to practice medicine, osteopathic medicine and podiatric medicine in the State of Mississippi.

B. DEFINITIONS

For the purpose of Article XVII only, the following terms have the meanings indicated:

1. "Board" means the Mississippi State Board of Medical Licensure.

2. "Mississippi Medical Practice Act" means Sections 73-25-1, et seq., pertaining to licensure and discipline of individuals practicing medicine or osteopathic medicine, and Sections 73-27-1, et seq., pertaining to licensure and discipline of individuals practicing podiatric medicine, or any amendments or additions to said statutes which may hereinafter be made.

3. "Licensee" or "Physician" means any individual licensed to practice medicine, osteopathic medicine or podiatric medicine in the State of Mississippi.

4. "Respondent" means a physician against whom a disciplinary proceeding has been initiated.

5. "Complaint Counsel" means the attorney retained by the Board to prosecute physicians pursuant to the Mississippi Medical Practice Act.

6. "Executive Director" means the chief executive officer or other designee employed by the Board to run the day to day operations of the Board.

7. Masculine terms, when used in the following Rules of Procedure, shall also be deemed to include the feminine.

C. COMPLAINT/INVESTIGATION

1. An investigation of alleged violation(s) of the Mississippi Medical Practice Act may be initiated by the Investigative Staff of the Board either:

a. in response to a written complaint or adverse information duly received by the Board, or

b. based on information independently developed by the Investigative Staff of the Board.

2. Upon receipt of information indicating a possible violation of the Mississippi Medical Practice Act, the Investigative Staff with advice and consultation from the Board's Executive Director, shall make an initial determination as to whether the information justifies further investigation. A case may be dismissed without further investigation based on a determination of either:

a. lack of jurisdiction, or

b. no violation of the Mississippi Medical Practice Act.

3. During an investigation, the Investigative Staff may interview and take the statements of witnesses and licensees. During an interview of a licensee, the Investigative Staff shall inform the licensee of the nature and purpose for the investigation and, if requested, provide licensee with a copy of any written complaint, provided, that if anonymity has been requested all identifying data of the complainant shall be removed.

D. INITIATION OF DISCIPLINARY ACTION

1. Upon conclusion of an investigation, the results shall be presented to the Board's Executive Director to determine if there is proper jurisdiction and violation of the Mississippi Medical Practice Act. The Board's Executive Director may then authorize the issuance of a summons and affidavit, naming the accused licensee as a respondent in the proceedings.

a. The summons, signed by the Board's Executive Director, shall set forth:

(1) the style of the action,

(2) the name and address of the accused respondent,

(3) the address, date, and time at which the respondent is summoned to appear before the Board,

(4) the specific sections of the Mississippi Medical Practice Act which the respondent is charged with violating, and

(5) the actions which the Board has the authority to take, including placing the physician on probation, the terms of which may be set by the Board, suspending his right to practice medicine for a time deemed proper by the Board, revoking his license, or taking any other action in relation to his license as the Board may deem proper under the circumstances.

b. The affidavit, signed by the investigating officer, shall set forth, in numbered paragraphs, a concise statement of the material facts and allegations to be proven, including:

(1) facts giving rise to the Board's jurisdiction,

(2) facts constituting legal cause for administrative action against the respondent, and

(3) the statutory provisions alleged to have been violated by the respondent.

2. The summons and affidavit shall be delivered to the respondent, either through certified mail or by personal service.

3. The summons shall name a date for hearing not less than thirty (30) days or more than sixty (60) days from the date of the mailing or service of the summons.

4. The summons and affidavit shall bear the name, address, and telephone number of Complaint Counsel.

5. All pleadings, motions or other papers permitted or required to be filed with the Board in connection with a pending disciplinary proceeding shall be filed by personal delivery at or by mail to the office of the Board. A copy of all papers filed with the Board shall be delivered by certified mail or personally served on opposing counsel of record.

6. All pleadings, motions or other papers shall be submitted on plain white, letter size (8 ½ x 11") bond, with margins of at least one inch on all sides and text double spaced except as to quotations and other matter customarily single spaced; shall bear the style and caption of the case as it appears on the summons and shall include the certificate of the attorney or person making the filing that service of a copy of the same has been effected in the manner prescribed by Subsection 5 above.

7. The Board may refuse to accept for filing any pleading, motion or other

paper not in conformity with the requirements of this rule.

8. Within fifteen (15) days of service of the summons and affidavit, or such longer time as the Board, on motion of the respondent may permit, the respondent shall answer the summons/affidavit, admitting or denying each of the separate allegations of fact and of law set forth therein. Any matters admitted by the respondent shall be deemed proven and established for purposes of adjudication. Any matters or allegations not specifically denied are admitted for the purposes of the hearing. In the event that respondent does not file a response to the affidavit, all matters asserted therein shall be deemed admitted.

9. Any respondent may be represented before the Board by an attorney at law who:

   a. is admitted to practice in the State of Mississippi, or

   b. has been given express permission by the Board to appear on behalf of respondent.

10. Upon service of a summons and affidavit pursuant to Subsection 2 above, a respondent who is represented by legal counsel with respect to the proceeding shall personally or through such counsel, give written notice to the Board of the name, address and telephone number of such counsel. Following receipt of proper notice of representation, all further notices, affidavits, subpoenas, orders or other process related to the proceeding shall be served on respondent through the designated counsel of record.

E. SUBPOENAS

1. For the purpose of disciplinary hearings, the Board acting by and through its Executive Director, may subpoena persons and papers on its own behalf and on behalf of a respondent.

2. Before the Board shall issue on behalf of a respondent any subpoena for persons or papers, the respondent shall:

   a. File with the Board a written request for the issuance of said subpoenas, identifying with certainty the identity and address of all individuals to be subpoenaed, along with a concise description of the records to be subpoenaed with the identity and address of the custodian of said records.

   b. All requests for the issuance of subpoenas shall be filed with the Board sufficiently distant in time to allow for the preparation and

mailing of said subpoenas at least fifteen (15) days before the scheduled hearing date. The Board shall not be responsible for the timely receipt of subpoenas issued after the aforementioned deadline.

3. All subpoenas issued by the Board either on its own behalf or on behalf of a respondent shall be affected by either personal service of process or certified mail.

4. Any subpoena issued by the Board shall be returnable within 10 days to either the Board or other location as specified in the subpoena.

5. No subpoena shall be issued for the purpose of discovery, the means and manner of discovery being set forth at Paragraph F below.

6. The Board shall charge a respondent a reasonable fee, not to exceed $25.00 per subpoena, for preparation and mailing of subpoenas.

F. DISCOVERY

1. Upon written request by a respondent or his counsel, Complaint Counsel of the Board shall disclose and permit respondent or his counsel to inspect, copy or photograph the following information and material, which is in the possession, custody, or control of the Board, or the existence of which is known to the Complaint Counsel:

   a. Names and addresses of all witnesses proposed to be called in Complaint Counsel's case in chief, together with a copy of the contents of any statement, written, recorded, or otherwise preserved, of each such witness.

   b. Copy of any written or recorded statement of respondent and the substance of any oral statement made by the respondent.

   c. Copy of any criminal record of a respondent, if proposed to be used.

   d. Any written reports or statements of experts, if proposed to be offered as evidence in connection with the particular case.

   e. All records, documents, physical evidence or photographs which may be offered as evidence in Complaint Counsel's case in chief.

   f. Any exculpatory material concerning the respondent. The Board shall charge a respondent a reasonable fee, not to exceed 50¢ per

copy, payable in advance of delivery of copied documents.

2. The Board may deny disclosure authorized by Subsection 1 if it finds that there is a substantial risk to any person of physical harm, intimidation, bribery, economic reprisals, or unnecessary embarrassment, resulting from such disclosure, which outweighs any usefulness of the disclosure to respondent or his counsel.

3. If respondent requests discovery under this rule, respondent shall, promptly disclose to Complaint Counsel and permit him to inspect, copy or photograph, the following information and material which is in the possession, custody, or control of respondent or his counsel, or the existence of which is known to respondent or his counsel:

   a. Names and addresses of all witnesses proposed to be called in Respondent's defense, together with a copy of the contents of any statement, written, recorded, or otherwise preserved, of each such witness.

   b. All records, documents, physical evidence or photographs which may be offered as evidence in Respondent's defense.

   c. Any written reports or statements of experts, if proposed to be offered as evidence in connection with the particular case.

4. No depositions shall be taken in preparation for matters to be heard before the Mississippi State Board of Medical Licensure.

G. AMENDMENT OF PLEADINGS

1. The Complaint Counsel of the Board may amend a summons and affidavit after being duly served upon respondent at any time prior to the scheduled hearing date, provided, the amendment is for the purpose of correcting a clerical error or clarifying facts set forth in the affidavit. A summons/affidavit may be amended to add additional charges or counts provided the amended summons and affidavit is served upon respondent not less than thirty (30) days from the scheduled hearing date or by mutual agreement of the parties.

2. A respondent may amend his answer as a matter of course at any time before the answer is due. Otherwise, a respondent may amend his answer only by leave of the Board. Leave shall be freely given when justice so requires.

H. PRE-HEARING MOTIONS

1. All pre-hearing motions shall be filed not later than fifteen (15) days prior to the scheduled hearing. Said motion shall be accompanied by a memorandum setting forth a succinct explanation of the grounds on which relief is sought. A motion may be accompanied by an affidavit as necessary to establish facts alleged in support of the motion.

2. Within ten (10) days of the filing of any motion, opposing counsel may file a memorandum in opposition to the initial motion.

I. CONTINUANCES

1. Hearings shall be held before the full Board at the time and place designated in the summons, unless a continuance is granted for just cause by the Board. A motion for a continuance must be filed with the Board at least fifteen (15) days prior to the scheduled hearing, or upon a showing of good cause, at any time prior to the hearing.

2. It must be recognized that the Board consists of nine (9) practicing physicians representing various regions of the State. Unlike the judiciary, Board members are not in the business of conducting hearings, therefore hearings will be held only during regularly scheduled meetings or other date established by order of the Board. Attorneys representing physicians should take this fact into consideration. A scheduled hearing may be continued if the respondent shows substantial, legitimate grounds for continuing the hearing, based on the balance of:

   a. The right of respondent to a reasonable opportunity to prepare and present a defense, and

   b. The Board's responsibility to protect the public health, safety and welfare.

3. Where the counsel for respondent has a scheduling conflict on the initial hearing date, continuances will be liberally granted. However, Respondent's Counsel must submit written proof of the scheduling conflict. Thereafter, no further continuances will be granted based solely on scheduling conflicts.

4. So that counsel for the respondent and Complaint Counsel shall be able to adequately prepare for hearing, any motion for a continuance filed within the time limitations specified at Subsection 1 above, will be immediately considered by the Board's President, who shall have the authority to grant

or deny said motion. If granted, the order will be presented to the Board at the scheduled hearing date at which time the order will be formally entered and the rescheduled hearing date set.

5. It is the responsibility of the respondent to make a prompt decision as to whether to appear before the Board pro se (without counsel) or retain counsel for this purpose. Unless due to extraordinary circumstances, the Board will not consider as a valid ground for continuance, the Respondent's last minute decision to retain counsel.

J. INFORMAL SETTLEMENT, PRE-HEARING STIPULATIONS, CONSENT ORDERS

1. All disciplinary proceedings initiated by the Board shall be brought to a final resolution through one of three means:

   a. disciplinary hearings before the full Board,

   b. acceptance by the Board of a mutually agreeable Consent Order in lieu of hearing, or

   c. dismissal of the case.

2. As to disciplinary proceedings duly noticed and docketed for hearing, counsel for respondent and Complaint Counsel may agree, or the Board's President may require, that an Informal Settlement Conference be held for the purpose of possible resolution, simplifying the issues for hearing or promoting stipulations as to facts and proposed evidentiary offerings which will not be disputed at hearing.

3. The Informal Settlement Conference shall be conducted by respondent and/or his counsel and the Complaint Counsel. Other parties who may attend include the investigating officer, the Board's Executive Director, or any other party who may contribute to the conference. Board members shall not participate in the Informal Settlement Conference, other than to approve a Consent Order as hereinafter provided.

4. Discovery or exchange of information may be accomplished during the Informal Settlement Conference.

5. The Informal Settlement Conference may result in:

   a. dismissal of the case,

   b. return of the case for further investigation,

c. preparation of a proposed Consent Order as a resolution of the matter, or

d. proceed with the scheduled hearing.

6. Any action which the Board may take following a full disciplinary hearing may be taken in lieu thereof by Consent Order, duly executed by the respondent. Because of the lengthy dockets before the Board, Informal Settlement Conferences must be held in sufficient time to allow consummation of negotiations of a Consent Order at least ten (10) working days prior to the scheduled hearing date. After the terms of a Consent Order have been prepared, the Board's Executive Director, shall have the authority to accept, reject or modify the terms of a Consent Order. When a mutually acceptable Consent Order has been accepted by the Board's Executive Director, it shall be binding on the Board, but not effective until full Board approval. Notwithstanding, it is still the responsibility of the respondent to personally appear before the Board on the scheduled hearing date to answer any questions which the Board may have prior to full Board approval.

7. If the parties to the Informal Settlement Conference are unable to reach a mutually agreeable Consent Order and the matter is to proceed to a full Board hearing, the parties shall agree in writing by stipulation, to the following:

a. any undisputed claims, facts, testimony, documents or issues,

b. evidence to be introduced without objection, and

c. an estimate of the time required for the hearing.

K. FORMAL HEARING

1. At a disciplinary hearing, opportunity shall be given to Complaint Counsel and respondent to present evidence on all issues of fact and argument on all issues of law and policy involved, to call, examine, and cross-examine witnesses, and to offer and introduce documentary evidence and exhibits as may be required for full and true disclosure of the facts and disposition of the matter.

2. All testimony and other proceedings shall be recorded by a certified stenographer who shall be retained by the Board.

3. During the disciplinary hearing, the Board's President, acting as the

presiding officer, or his designee, shall rule on all evidentiary questions, but in his discretion may consult with the entire panel in executive session. At such hearing, the Board may be assisted by the Mississippi Attorney General, or his designee, who shall not have been involved in any way with the case otherwise. The Board's presiding officer may delegate ruling on procedural and evidentiary issues to the Attorney General or his designee.

4. In all disciplinary hearings before the Board, the record of the case shall include:

   a. the summons and affidavit issued,

   b. the Respondent's answer to the summons and affidavit,

   c. all pleadings, motions, and rulings issued,

   d. evidence received or considered at the hearing,

   e. offers of proof, objections, and rulings thereon,

   f. the Board's order or other disposition made by the Board.

5. Disciplinary hearings before the Board shall be conducted in the following order:

   a. opening statements,

   b. Complaint Counsel's case in chief,

   c. respondent's case in chief,

   d. Complaint Counsel's rebuttal,

   e. closing statements.

   Questioning of witnesses shall be conducted in the following order:

   a. direct examination,

   b. cross-examination,

   c. redirect examination.

6. Upon conclusion of the hearing, the Board shall conduct its deliberations

in Executive Session, outside the presence of the parties. The Board shall then render its determination and order, setting forth Findings of Fact, Conclusions of Law and Order. Although the Board's decision may be announced immediately following deliberations, the Board shall be provided adequate time for preparation of the written determination and order. A copy of such determination and order shall be sent by certified mail, or served personally upon the respondent. The decision of the Board revoking, suspending or otherwise disciplining respondent shall become final thirty (30) days after so mailed or served unless within said period the respondent appeals the decision to the Chancery Court, as provided by law.

L. REINSTATEMENT OF LICENSE

The procedural requirements enumerated above shall also apply to petition duly filed with the Board seeking reinstatement of a license pursuant to Section 73-25-32, Mississippi Code (1972) Annotated.

M. EFFECTIVE DATE OF REGULATIONS

1. The above procedural rules and regulations shall become effective June 19, 1995.

2. The above Rules of Procedure are adopted by the Board to implement its authority to investigate alleged violations of the Mississippi Medical Practice Act, conduct hearings on disciplinary matters, and consider petitions for termination of probationary and suspended licenses and restoration of revoked licenses, all as enumerated in Section 73-43-11, Mississippi Code (1972) Annotated.

3. The above Rules of Procedure shall not be interpreted to alter or amend that which is otherwise provided by Mississippi statutory law.

Amended May 17, 2007.