

## Chapter 22 Medical Expert Activities by Physicians

### Authority and Purpose

100 The Mississippi State Board of Medical Licensure (hereinafter referred to as “the Board”) adopts these regulations governing medical expert activities by physicians pursuant to Chapters 25 and 43 of Title 73 of the Mississippi Code. The Mississippi State Board of Medical Licensure finds it necessary to fulfill its statutory responsibilities by adopting these regulations in order to protect the public, to set professional standards, to enforce the provisions of law regarding the performance of medical expert activities by physicians, and to further other legitimate government purposes in the public interest.

### Scope

200 These regulations apply to any physician who performs medical expert activities regarding any person, facility, or entity located within the state of Mississippi, or regarding an event alleged to have occurred within the state of Mississippi, regardless of the location, type, or status of the physician’s medical expert activity, the presence or absence of the physician expert’s license to practice medicine in Mississippi, the physician expert’s presence or absence of a physician-patient relationship in Mississippi, the type of medical expert activity performed (e.g., oral testimony or a written statement), or the setting in which the medical expert activity is performed (e.g., a state or federal court or administrative agency).

201 No part of these regulations is intended to conflict with or supercede the authority of any state or federal court or administrative agency to designate a physician as a medical expert in a legal matter then pending before the court or agency. The Board does not intend for these regulations to conflict with or supercede the description or regulation of the function of a physician serving as an “expert” as that term is used in the Mississippi Rules of Evidence or in other provisions of law, rules, regulations, or decisions of any court or administrative agency.

202 No part of these regulations is intended to conflict with or supercede the authority of a person other than a physician to serve as an expert in a legal matter. Furthermore, the Board does not intend for these regulations to have any effect on physicians’ participation in legal proceedings in a capacity other than as a medical expert.

### Definition of Medical Expert Activities

300 For the purposes of these regulations only, the Mississippi State Board of Medical Licensure has determined that the definition of the term “medical expert activities” includes, but is not limited to, the use of medical knowledge and professional judgment by a physician to:

1. Suggest or recommend to a person any medical advice or other agency (whether material or not material).
2. Perform medical services (including, but not limited to, a physical or mental

- examination of a person).
3. Conduct a review of a person's medical record.
  4. Serve as a medical consultant.
  5. Render a medical opinion concerning the diagnosis or treatment of a person.
  6. Produce a written medical expert opinion report, affidavit, or declaration.
  7. Give testimony under oath as a medical expert at a state or federal hearing, deposition, trial, administrative agency proceeding, alternative dispute resolution proceeding, or any other legal proceeding, regarding the medical issues in a legal matter or claim for injuries that is then pending in a court or administrative agency, or which may be filed or asserted whether or not such claim ever results in a pending legal matter and which involves a person, facility, or entity located within the state of Mississippi, or an event alleged to have occurred within the state of Mississippi.

### Licensure and Qualification Requirements

- 400 Except as otherwise provided by law, rule or regulation of this state, any medical expert activity by a physician regarding a legal matter pending in a state or federal court or administrative agency in Mississippi must be performed by a physician who holds a current unrestricted medical license in Mississippi, another state or foreign jurisdiction, and who has the qualifications to serve as a medical expert on the issue(s) in question by virtue of knowledge, skill, experience, training, or education. This rule does not supercede the policies and regulations of the Board in regards to unreferral diagnostic screening tests.
- 401 The practice of any physician not licensed in Mississippi that meets the licensure and qualification requirements stated in Section 400 of this regulation shall be deemed automatically by the Board to be authorized to include the performance of medical expert activities as an otherwise lawful practice, without any need for licensure verification or further requirement for licensure. In accordance with the provisions of law in Mississippi, any physician not licensed in Mississippi whose practice is deemed automatically by the Board to be authorized to include the performance of medical expert activities as an otherwise lawful practice shall be subject to regulation by the Board regarding the physician's performance of such medical expert activities in the state of Mississippi.

### Professional Standards

- 500 Any physician who performs medical expert activities must:
1. Comply with these regulations and all applicable provisions of Mississippi law (e.g., statutes, court rules and decisions, and other administrative agency rules and regulations) with regard to the performance of medical expert activities.
  2. Comply with medical ethics principles, including, but not limited to, ethics principles established by the American Medical Association and relevant medical specialty associations.
  3. Be honest in all professional interactions involving his or her medical expert

- activities.
4. Not accept payment for medical expert activities that is contingent upon the result or content of any medical diagnosis, opinion, advice, services, report, or review; or that is contingent upon the outcome of any case, claim, or legal matter then pending or contemplated.
  5. Not make or use any false, fraudulent, or forged statement or document.

#### Professional Accountability for Violation of Regulations

- 600 Any physician who performs medical expert activities, whether or not licensed to practice medicine in Mississippi, may be disciplined or otherwise held professionally accountable by the Board, upon a finding by the Board that the physician is unqualified as evidenced by behavior including, but not limited to, incompetent professional practice, unprofessional conduct, or any other dishonorable or unethical conduct likely to deceive, defraud, or harm the public.
- 601 Any violation of Section 500 of this regulation as enumerated above shall constitute unprofessional conduct in violation of Mississippi Code, Section 73-25-29(8).

#### Complaint Procedure, Investigation, Due Process, and Actions Available to the Board

- 700 Any person who has reason to believe that any physician may have failed to comply with any part of these regulations in the performance of medical expert activities may make a complaint to the Mississippi State Board of Medical Licensure on a complaint form that is furnished by the Board.
- 701 Any physician, whether or not licensed to practice medicine in Mississippi, who performs medical expert activities in the context of a legal matter regarding any person, facility, entity, or event located within the state of Mississippi may be subject to an investigation by the Mississippi State Board of Medical Licensure upon the receipt of a complaint regarding the physician's conduct or practice. Any such physician shall be afforded the due process procedures of the law and Board regulations. The Board, in its sole discretion, may refer the complaint to the medical licensure authority of another state, or to any other appropriate legal authority.
- 702 Any physician may request, or may be summoned by the Board, to appear before the Board at a hearing to consider the physician's compliance with these regulations. Any physician's failure to appear when summoned to a hearing may be deemed by the Board to be a waiver of the physician's due process opportunity to appear before the Board and may result in a finding by the Board that the physician is out of compliance with these regulations *in absentia*.
- 703 In disciplining a physician licensed to practice medicine in Mississippi or otherwise holding any physician professionally accountable pursuant to these regulations and to the statutes, rulings, and other regulations and provisions of Mississippi law, the actions that the Mississippi State Board of Medical Licensure may take include, but are not limited to,

one or more of the following:

1. Denying, suspending, restricting, or revoking a Mississippi license to practice medicine.
2. Administering a public or private reprimand to a Mississippi licensed physician.
3. Assessing up to \$10,000 of the reasonable investigation costs expended by the Board in investigating a Mississippi licensed physician.
4. Moving for an injunction in Chancery Court to prohibit any physician's further performance of medical expert activities.
5. Petitioning the Chancery Court to cite any noncompliant physician for contempt of court.
6. Referring the matter to another medical licensure authority or other legal authority for action regarding any physician.
7. Any other action regarding any physician that the Board may deem proper under the circumstances (e.g., issuing an advisory letter of concern; issuing a notice of warning; issuing a cease and desist notice; or adopting a resolution of disapproval of any physician's medical expert activities).

704 Any physician who is found by the Mississippi State Board of Medical Licensure to have failed to comply with any part of these regulations may be reported by the Board to any person or organization appropriate under the circumstances in order to enforce or comply with the law or to protect the public, including, but not limited to, the National Practitioner Data Bank, the U.S. Department of Health and Human Services Office of the Inspector General, the Centers for Medicare and Medicaid Services, the Federation of State Medical Boards, the medical licensure authority or state medical association in any state in which the physician is licensed to practice medicine, the American Board of Medical Specialties and any of its member specialty boards, the Mississippi Attorney General or District Attorney, the United States Attorney, any state or federal court or administrative agency, any national or state professional organization or medical specialty association, and any other appropriate person, government agency, healthcare entity, or legal authority.

#### Compliance Policy and Exemptions

800 In assuring compliance with these regulations, the duty shall be on the physician, not on the party who engaged the physician to perform medical expert activities and not on any other person or entity, to ensure that his or her medical expert activities comply with these regulations. Any physician who claims to be exempt from these regulations shall have the burden of proving to the Board that the exemption is valid.

**Amended May 20, 2010.**

#### References

2000 Mississippi Code, Sections 11-1-61, 73-25-27, 73-25-29, 73-25-30, 73-25-33, 73-25-34, 73-25-83, 73-25-87, 73-43-11, 73-51-1, et al

- 2001 Mississippi Rule of Evidence 702
- 2002 “Rules, Regulations, Laws, and Policies of the Mississippi State Board of Medical Licensure.” Published by the Mississippi State Board of Medical Licensure and available at Internet address [www.msbml.state.ms.us](http://www.msbml.state.ms.us)
- 2003 Hall v. Hilbun, 466 So. 2d 856 (Miss. 1985)
- 2004 Code of Medical Ethics, Current Opinions with Annotations. Published by the Council on Ethical and Judicial Affairs of the American Medical Association, 2006-07 edition.
- 2005 “The Role of Licensing Boards in the Evaluation and Discipline of the Expert Witness.” Authored by William J. Wenner, Jr., M.D., J.D. Published in the Journal of Medical Licensure and Discipline, Vol. 90, No. 3, 2004, Pp. 15-20 (collecting cases and scholarly publications)
- 2006 Findings of Fact adopted by the Mississippi State Board of Medical Licensure on May 18, 2006.<sup>1</sup>

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COMMENT: Based on information presented to the Board at a public hearing on this matter on March 9, 2006, and on May 18, 2006, and on research and analysis of information obtained by Board members and its staff and attorneys, and also on comments received from numerous sources, including the Board’s Consumer Health Committee, leaders of the medical and legal professions, former judges, officials from the Federation of State Medical Boards, and members of the public, the Mississippi State Board of Medical Licensure makes the following Findings of Fact:

1. A physician’s professional practice, conducted pursuant to the privilege of possessing a medical license, historically has been subject to regulation by other members of the medical profession, by methods such as peer review, performance evaluation, quality assurance monitoring, and other methods of regulation. However, there is a problem in Mississippi with the lack of regulation of medical expert activities by physicians. This lack of regulation causes the performance of medical expert activities to be vulnerable to fraud, abuse, dishonesty, deception, incompetence, and other forms of unprofessional, dishonorable, and unethical conduct by physician experts, all of which are harmful to the public.
2. A physician’s performance of medical expert activities involves a lawful part of a physician’s practice that is historically an area of state concern and that the Board has the statutory authority and duty to regulate in order to protect the public.
3. A physician’s medical expert activities involve practices that are likely to affect the health, safety, rights, remedies, and general welfare of persons in Mississippi.
4. In keeping with the public policy and provisions of law in Mississippi, the performance of medical expert activities, regardless of the physician expert’s location or state(s) of medical licensure, is a lawful practice that requires a qualified physician, and is therefore subject to regulation by, and professional accountability to, the Mississippi State Board of Medical Licensure.
5. Due to its physician membership and statutory authority, the Mississippi State Board of Medical Licensure is uniquely able to establish and enforce licensure requirements, qualification requirements, and Professional Standards related to the performance of medical expert activities by physicians, especially with regard to ethical conduct and competent practice.
6. Regardless of a physician’s state(s) of medical licensure, a physician who performs medical expert activities in a legal matter has an ethical duty to practice according to the standards of medical professionalism, to perform all medical expert activities in an honest and competent manner, and to strive to report to appropriate entities any physician who is deficient in character or competence or who engages in fraud or deception.
7. In keeping with the public policy and provisions of law in Mississippi and principles of medical ethics, it is unprofessional, dishonorable, and unethical for a physician to willfully state an opinion or a material fact as a

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medical expert in the context of a legal matter that the physician knows or should know is false, or that a reasonable person could objectively conclude was a misrepresentation or other distortion of the truth, or was intended by the physician to mislead or deceive a judge, juror, lawyer, litigant, other expert, hearing officer, administrative body, investigator, legal authority, or any finder of fact.

8. In adopting these regulations, the Mississippi State Board of Medical Licensure has attempted to tailor these regulations as closely as possible to the current provisions of Mississippi law, in order to regulate medical expert activities for the legitimate government purpose of protecting the public and to further other legitimate government purposes in the public interest.
9. In adopting these regulations, the Mississippi State Board of Medical Licensure states that its intent is only to regulate the conduct and practice of physicians who perform medical expert activities in Mississippi. The Board does not intend for these regulations to be subverted or misused by participants in legal proceedings as a procedural weapon to intimidate or harass a physician expert or to delay or otherwise complicate the administration of justice.

The Mississippi State Board of Medical Licensure shall provide a copy of these regulations, with these Comments appended, to the Mississippi Supreme Court, the Mississippi Court of Appeals, the respective conferences of the Mississippi Circuit, Chancery, and County Judges, the Administrative Office of the Courts, the Mississippi Attorney General, the United States District Courts and United States attorneys located in Mississippi, the Mississippi Workers' Compensation Commission, the Mississippi Bar Association, the Mississippi State Medical Association, the Federation of State Medical Boards, and any other appropriate person or organization at the discretion of the Board's Executive Director, with the request that those organizations give notice to their members or other interested parties of the existence of these regulations.