Part 2635 Practice of Medicine

Part 2635: Chapter 1 Surgery/Post-Operative Care

Rule 1.1 Scope. The following regulation sets forth the policies of the Mississippi State Board of Medical Licensure regarding post-operative surgical care rendered by individuals licensed to practice medicine, osteopathic medicine and podiatric medicine in the state of Mississippi.

Source: Miss. Code Ann. §73-43-11 (1972, as amended).

Rule 1.2 Definitions. For the purpose of Part 2635, Chapter 1 only, the following terms have the meanings indicated:

A. "Auxiliary" or "Auxiliaries" shall include, but is not limited to, registered nurses, licensed practical nurses, certified nursing assistants, physical therapists, nurse practitioners and optometrists.
B. "Under the supervision" means to critically watch, direct, advise and oversee, and to inspect and examine the actions of another health care practitioner.
C. "Physician" means any person licensed to practice medicine, osteopathic medicine or podiatric medicine in the state of Mississippi.
D. "Surgery" is defined as any operative procedure, including the use of lasers, performed upon the body of a living human being for the purposes of preserving health, diagnosing or curing disease, repairing injury, correcting deformity or defects, prolonging life, relieving suffering or any elective procedure for aesthetic, reconstructive or cosmetic purposes, to include, but not be limited to: incision or curettage of tissue or organ; suture or other repair of tissue or organ, including a closed as well as an open reduction of a fracture; extraction of tissue including premature extraction of the products of conception from the uterus; insertion of natural or artificial implants; or an endoscopic procedure.

Source: Miss. Code Ann. §73-43-11 (1972, as amended).

Rule 1.3 Informed Consent. The responsibility for medical and surgical diagnoses is that of the licensed physician. In addition, it is the responsibility of the operating physician to explain the procedure and to obtain informed consent of the patient. It is not necessary, however, that the operating physician obtain or witness the signature of a patient on a written form evidencing informed consent.

Source: Miss. Code Ann. §73-43-11 (1972, as amended).

Rule 1.4 Post-Surgical Care. The management of post-surgical care is the responsibility of the operating physician. The operating physician should provide those aspects of post-surgical care which are within the unique competence of the physician. Patients are best served by having post-surgical care conducted by the physician who best knows their condition--the operating physician.

Where the operating physician cannot personally provide post-surgical care, the physician must arrange ***before*** surgery for post-surgical care to be performed by another qualified physician who is acceptable to the patient. In this case, the operating physician may delegate discretionary post-operative activities to a qualified licensed physician. Like the operating physician, the physician

to whom a patient has been referred for post-surgical care should provide, at a minimum, those aspects of post-surgical care that are not delegable.

Unless otherwise provided by law, delegation of post-surgical activities to an auxiliary is permitted only if the auxiliary is under the supervision of the operating physician or the physician to whom the operating physician has referred a patient for post-surgical care. While an auxiliary may be authorized by law to provide certain aspects of post-surgical care, this does not relieve the operating physician of his or her responsibility to provide post-surgical care or arrange for the delegation of post-surgical care, when appropriate, as required by this rule.

Those aspects of post-surgical care which may be delegated to an auxiliary must be determined on a case-by-case basis, but shall be limited to those procedures which the auxiliary is authorized by law to perform and within the unique competence and training of the auxiliary.

Source: Miss. Code Ann. §73-43-11 (1972, as amended).

Rule 1.5 Effective Date of Rules. The rules pertaining to Surgery/Post-Operative Care shall become effective October 23, 1994.

Source: Miss. Code Ann. §73-43-11 (1972, as amended).

Part 2635: Chapter 2 Office Based Surgery

Rule 2.1 Scope. This regulation sets forth the policies of the Mississippi State Board of Medical Licensure regarding office based surgery rendered by individuals licensed to practice medicine, osteopathic medicine and podiatric medicine in the state of Mississippi.

Source: Miss. Code Ann. §73-43-11 (1972, as amended).

Rule 2.2 Definitions. For the purpose of Part 2635, Chapter 2 only, the following terms have the meanings indicated:

A. "Surgery" is defined as any operative procedure, including the use of lasers, performed upon the body of a living human being for the purposes of preserving health, diagnosing or curing disease, repairing injury, correcting deformity or defects, prolonging life, relieving suffering or any elective procedure for aesthetic, reconstructive or cosmetic purposes, to include, but not be limited to: incision or curettage of tissue or organ; suture or other repair of tissue or organ, including a closed as well as an open reduction of a fracture; extraction of tissue including premature extraction of the products of conception from the uterus; insertion of natural or artificial implants; or an endoscopic procedure. The use of local, general or topical anesthesia and/or intravenous sedation is the prerogative of the surgeon.
B. "Surgeon" is defined as a licensed physician performing any procedure included within the definition of surgery.
C. Implicit within the use of the term "equipment" is the requirement that the specific item named must meet current performance standards.
D. "Office surgery" is defined as surgery which is performed outside a hospital, an ambulatory surgical center, abortion clinic, or other medical facility licensed by the Mississippi State Department of Health or a successor agency. Physicians performing Level II or Level III office based surgery must register with the Mississippi State

Board of Medical Licensure. A copy of the registration form is attached hereto (Appendix A).

E. A "Surgical Event" for the purpose of this regulation is recognized as a potentially harmful or life-threatening episode related to either the anesthetic or the surgery. Any "Surgical Event" in the immediate perioperative period that must be reported are those which are life-threatening, or require special treatment, or require hospitalization, including, but not limited to the following: (1) serious cardiopulmonary or anesthetic events; (2) major anesthetic or surgical complications; (3) temporary or permanent disability; (4) coma; or (5) death.

Source: Miss. Code Ann. §73-43-11 (1972, as amended).

Rule 2.3 General Requirements for Office Surgery. For all surgical procedures, the level of sterilization shall meet current OSHA requirements.

The surgeon must maintain complete records of each surgical procedure, including anesthesia records, when applicable and the records on all Level II and Level III cases shall contain written informed consent from the patient reflecting the patient's knowledge of identified risks, consent to the procedure, type of anesthesia and anesthesia provider.

The surgeon must maintain a log of all Level II and Level III surgical procedures performed, which must include a confidential patient identifier, the type of procedure, the type of anesthesia used, the duration of the procedure, the type of post-operative care, and any surgical events. The log and all surgical records shall be provided to investigators of the Mississippi State Board of Medical Licensure upon request.

In any liposuction procedure, the surgeon is responsible for determining the appropriate amount of supernatant fat to be removed from a particular patient. Using the tumescent method of liposuction, the surgeon must fully document the anticipated amount of material to be removed in a manner consistent with recognized standards of care. Post-operatively, any deviation from the anticipated amount, and the reason for deviation, should be fully documented in the operative report. Morbidly obese patients should have liposuction performed in the hospital setting unless the surgeon can document significant advantage to an alternative setting.

A policy and procedure manual must be maintained in the office and updated annually. The policy and procedure manual must contain the following: duties and responsibilities of all personnel, cleaning and infection control, and emergency procedures.

The surgeon shall report to the Mississippi State Board of Medical Licensure any surgical events that occur within the office based surgical setting. This report shall be made within 15 days after the occurrence of a surgical event. A suggested form for reporting is attached hereto (Appendix B). The filing of a report of surgical event as required by this rule does not, in and of itself, constitute an acknowledgment or admission of malpractice, error, or omission. Upon receipt of the report, the Board may, in its discretion, obtain patient and other records pursuant to authority granted in Mississippi Code, Section 73-25-28.

The surgeon must have a written response plan for emergencies within his or her facility.

In offices where Level II and Level III office based surgery is performed, a sign must be prominently posted in the office which states that the office is a doctor's office regulated pursuant to the rules of the Mississippi State Board of Medical Licensure. This notice must also appear prominently within the required patient informed consent.

Office surgery facilities should adhere to recognized standards such as those promulgated by the American Society of Anesthesiologists' ***Guidelines for Office-Based Anesthesia*** or ***American Association of Nurse Anesthetists' Standards for Office Based Anesthesia***.

Source: Miss. Code Ann. §73-43-11 (1972, as amended).

Rule 2.4 Level I Office Surgery.

A. Scope
   1. Level I office surgery includes, but not limited to, the following:
      i. Minor procedures such as excision of skin lesions, moles, warts, cysts, lipomas, Loop Electrosurgical Excision Procedures (LEEP), laser cone of cervix, laser/cautery ablation of warts or other lesions, and repair of lacerations or surgery limited to the skin and subcutaneous tissue performed under topical or local anesthesia not involving drug-induced alteration of consciousness.
      ii. Incision and drainage of superficial abscesses, limited endoscopies such as proctoscopies, flexible sigmoidoscopies, hysteroscopies, skin biopsies, arthrocentesis, paracentesis, dilation of urethra, cystoscopy procedures, and closed reduction of simple fractures or small joint dislocations (i.e., finger and toe joints).
      iii. Procedures requiring only topical, local or no anesthesia. Only minimal or no preoperative sedation should be required or used. No drug-induced alteration of respiratory effort or consciousness other than minimal pre-operative tranquilization of the patient is permitted in Level I Office Surgery.
      iv. Chances of complication requiring hospitalization are remote.
   2. Standards for Level I Office Surgery
      i. Training Required
      The surgeon's continuing medical education should include management of toxicity or hypersensitivity to local anesthetic drugs. The surgeon's continuing medical education ***shall*** include Basic Life Support Certification.
      ii. Equipment and Supplies Required
      Oral airway, positive pressure ventilation device, epinephrine (or other vasopressor), corticosteroids, antihistamines and atropine, if any anesthesia is used. The equipment and skills to establish intravenous access must be available if any other medications are administered. The equipment and supplies should reflect the patient population, i.e., pediatrics, etc.
      iii. Assistance of Other Personnel Required
      No other assistance is required, unless the specific surgical procedure being performed requires an assistant.

Source: Miss. Code Ann. §73-43-11 (1972, as amended).

Rule 2.5 Level II Office Surgery.

A. Scope

1. Level II Office Surgery is that in which perioperative medication and sedation are used orally, intravenously, intramuscularly, or rectally. If perioperative or intraoperative medication is administered, intraoperative and postoperative monitoring is required. Such procedures include, but are not limited to: hernia repair, hemorrhoidectomy, reduction of simple fractures, large joint dislocations, breast biopsies, dilatation and curettage, thoracentesis, and colonoscopy.
2. Level II Office surgery also includes any surgery in which the patient is sufficiently sedated to allow the patient to tolerate unpleasant procedures while maintaining adequate cardiorespiratory function and the ability to respond purposefully to verbal command and/or tactile stimulation. Patients whose only response is reflex withdrawal from a painful stimulus are sedated to a greater degree than encompassed by this definition.
3. Any procedures that may yield an excessive loss of blood should be covered under Level II.

B. Transfer Agreement Required

The surgeon must have a written transfer agreement from a licensed hospital within reasonable proximity. The transfer agreement should also include physician coverage of transferred patients if the physician does not have privileges at the hospital.

C. Level of Anesthetic

Local or peripheral nerve block, including Bier Block, plus intravenous or intramuscular sedation, but with preservation of vital reflexes.

D. Training Required

To perform office based surgery, the physician must be able to document satisfactory completion of surgical training such as Board certification or Board eligibility by a Board approved by the American Board of Medical Specialties or American Board of Osteopathic Specialties. The certification should include training in the procedures performed in the office setting. Alternative credentialing for procedures outside the physician's core curriculum must be applied for through the Mississippi State Board of Medical Licensure and reviewed by a multi-specialty board appointed by the Director. In addition to the surgeon, there must be at least one assistant certified in Basic Life Support present during any Level II or III procedure. There should be at least one person certified in Advanced Cardiac Life Support present during any Level II or III procedure unless there is an anesthesiologist or certified registered nurse anesthetist to manage the anesthetic.

E. Equipment and Supplies Required

1. Full and current crash cart at the location the anesthetizing is being carried out.

   The crash cart must include, at a minimum, the following resuscitative medications, or other resuscitative medication subsequently marketed and available after initial adoption of this regulation, provided said medication has the same FDA approved indications and usage as the medications specified below:

   i. Adrenalin (epinephrine) Abboject 1mg-1:10,000; 10ml
   ii. Adrenalin (epinephrine) ampules 1mg-1:1000; 1ml
   iii. Atropine Abboject 0.1mg/ml; 5ml
   iv. Benadryl (diphenhydramine) syringe 50mg/ml; 1ml
   v. Calcium chloride Abboject 10%; 100mg/ml; 10ml
   vi. Dextrose Abboject 50%; 25g/50ml

vii. Dilantin (phenytoin) syringe 250mg/5ml
viii. Dopamine 400mg/250ml pre-mixed
ix. Heparin 10,000 units/ml; 1 ml vial
x. Inderal (propranolol) 1mg/ml; 1 ml ampule
xi. Isuprel (isoproterenol) 1mg/5ml; 1:5000 ampule
xii. Lanoxin (digoxin) 0.5 mg/2ml ampule
xiii. Lasix (furosemide) 40 mg/4ml vial
xiv. Lidocaine Abboject 2%; 100mg/5ml
xv. Lidocaine 2 grams/500ml pre-mixed
xvi. Magnesium sulfate 50%; 20ml vial (1g/2ml)
xvii. Narcan (naloxone) 0.4mg/ml; 1ml ampule
xviii. Pronestyl (procainamide) 100mg/ml; 10ml vial
xix. Romazicon 5ml or 10 ml (0.1mg/ml)
xx. Sodium bicarbonate Abboject 50mEq/50ml
xxi. Solu-medrol (methylprednisolone) 125mg/2ml vial
xxii. Verapamil syringe 5mg/2ml

The above dosage levels may be adjusted, depending on ages of the patient population.

2. Suction devices, endotracheal tubes, laryngoscopes, etc.
3. Positive pressure ventilation device (e.g., Ambu) plus oxygen supply.
4. Double tourniquet for the Bier Block procedure.
5. Monitors for blood pressure/EKG/Oxygen saturation and portable approved defibrillator.
6. Emergency intubation equipment.
7. Adequate operating room lighting with onsite backup sufficient to supply required equipment perioperative equipment and monitors for a minimum of two (2) hours.
8. Sterilization equipment or facilities meeting Joint Commission requirements.
9. IV solution and IV equipment.

F. Assistance of Other Personnel Required

In addition to the surgeon there must be at least one assistant certified in Basic Life Support present during any Level II or III procedure. There should be at least one person certified in Advanced Cardiac Life Support present during any Level II or III procedure unless there is an anesthesiologist or certified registered nurse anesthetist to manage the anesthetic.

A registered nurse may only administer analgesic doses of medications on the direct order of a physician. An assisting anesthesia provider, including nurse providing sedation, may not function in any other capacity during the procedure. If additional assistance is required by the specific procedure or patient circumstances, such assistance must be provided by a physician, registered nurse, licensed practical nurse, or operating room technician.

Source: Miss. Code Ann. §73-43-11 (1972, as amended).

Rule 2.6 Level III Office Surgery.

A. Scope

1. Level III Office Surgery is that surgery which involves, or might foreseeably require, the use of a general anesthesia or major conduction anesthesia and perioperative sedation. This includes the use of:
    i. Intravenous sedation beyond that defined for Level II office surgery;
    ii. General Anesthesia: loss of consciousness and loss of vital reflexes with probable requirement of external support of pulmonary or cardiac functions; or
    iii. Major Conduction anesthesia.
2. Only patients classified under the American Society of Anesthesiologist's (ASA) risk classification criteria as Class I, II, or III are appropriate candidates for Level III office surgery. For ASA Class III patients, the surgeon must document in the patient's record the justification for an office procedure rather than other surgical venues. The record must also document precautions taken that make the office a preferred venue for the particular procedure to be performed.

B. Transfer Agreement Required

The surgeon must have a written transfer agreement from a licensed hospital within reasonable proximity. The transfer agreement must include physician coverage of transferred patients if the physician does not have privileges at the hospital. Level of Anesthetic

1. General Anesthetic: loss of consciousness and loss of vital reflexes with probable requirement of external support of pulmonary or cardiac functions.
2. Major Conduction: epidural, spinal, caudal or any block of a nerve or plexus more proximal than the hip or shoulder joint including visceral nerve blocks.

C. Training Required

1. To perform office based surgery, the physician must be able to document satisfactory completion of surgical training such as board certification or board eligibility by a board approved by the American Board of Medical Specialties or American Board of Osteopathic Specialties. The certification should include training in the procedures performed in the office setting. Alternative credentialing for procedures outside the physician's core curriculum must be applied for through the Mississippi State Board of Medical Licensure and reviewed by a multi-specialty board appointed by the Executive Director.
2. In addition to the surgeon there must be at least one assistant certified in Basic Life Support present during any Level II or III procedure. There should be at least one person certified in Advanced Cardiac Life Support present during any Level II or III procedure unless there is an anesthesiologist or certified registered nurse anesthetist to manage the anesthetic.
3. Emergency procedures related to serious anesthesia complications should be formulated, periodically reviewed, practiced, updated, and posted in a conspicuous location.

D. Equipment and Supplies Required

1. Equipment, medication and monitored post-anesthesia recovery must be available in the office. If anesthetic agents include inhaled agents, other than nitrous oxide, medications must include a stock of no less than 12 vials of Dantrolene.
2. The facility, in terms of general preparation, equipment, and supplies, must be comparable to a free standing ambulatory surgical center, including, but not limited to, recovery capability, and must have provisions for proper record keeping.

3. Blood pressure monitoring equipment; EKG; end tidal CO2 monitor; pulse oximeter, precordial or esophageal stethoscope, emergency intubation equipment and a temperature monitoring device must be available for all phases of perioperative care.
4. Table capable of Trendelenburg and other positions necessary to facilitate the surgical procedure.
5. IV solutions and IV equipment.
6. All equipment and supplies listed under Part 2635, Rule 2.5, Level II.

E. Assistance of Other Personnel Required

An anesthesiologist or certified registered nurse anesthetist must administer the general or regional anesthesia and a physician, registered nurse, licensed practical nurse, or operating room technician must assist with the surgery. The anesthesia provider may not function in any other capacity during the procedure. A licensed physician or a licensed registered nurse with post-anesthesia care unit experience or the equivalent, and credentialed in Advanced Cardiac Life Support, or in the case of pediatric patients, Pediatric Advanced Life Support, must be available to monitor the patient in the recovery room until the patient has recovered from anesthesia.

Source: Miss. Code Ann. §73-43-11 (1972, as amended).

Rule 2.7 Effective Date of Rules. The above rules pertaining to office based surgery shall become effective September 1, 2001.

Adopted July 31, 2001. Amended April 18, 2002, with a June 1, 2002, effective date. Amended September 19, 2002.

Source: Miss. Code Ann. §73-43-11 (1972, as amended).

Part 2635 Chapter 3: Laser Devices

Rule 3.1 Laser Devices. The use of laser, pulsed light or similar devices, either for invasive or cosmetic procedures, is considered to be the practice of medicine in the state of Mississippi and therefore such use shall be limited to physicians and those directly supervised by physicians, such that a physician is on the premises and would be directly involved in the treatment if required. These rules shall not apply to any person licensed to practice dentistry if the laser, pulsed light, or similar device is used exclusively for the practice of dentistry.

Adopted March 18, 1999. Amended May 19, 2005. Amended January 18, 2007. Amended March 8, 2007. Amended May 17, 2007. Amended March 27, 2008.

Source: Miss. Code Ann. §73-43-11 (1972, as amended).

Part 2635 Chapter 4: Chelation Therapy

Rule 4.1 Chelation Therapy. The use of EDTA (ethylenediaminetetraacetic acid) outside of FDA approved clinical indications or an approved research protocol (see below) is not permitted. Other off-label uses may be permissible if there is substantial, high-quality research to support such use. The research should be peer-reviewed and published in recognized journals such as

those cited in PubMed or in the National Library of Medicine. Specific reference should be made to the publications and research in the medical record. Informed consent for off-label use should be obtained. Use of EDTA in any other manner may be considered to be violation of Mississippi Code, Section 73-25-29(8)(d).

However, EDTA may be used when a licensee experienced in clinical investigations has applied for and received from the Board written approval for off-label use in a clinical investigation. The licensee applying for approval must be the principal investigator for the protocol or subject to the direction of the principal investigator.

Advertising EDTA's administration for off-label use, except for approved research protocols, is prohibited. Such advertising may be considered to be violation of Mississippi Code, Section 73-25-29(8)(d) and/or the rules promulgated pursuant thereto.

Adopted July 18, 2002.

Source: Miss. Code Ann. §73-43-11 (1972, as amended).

Part 2635 Chapter 5: Practice of Telemedicine

Rule 5.1 Definitions. For the purpose of Part 2635, Chapter 5 only, the following terms have the meanings indicated:

A. "Physician" means any person licensed to practice medicine or osteopathic medicine in the state of Mississippi.
B. Telemedicine" is the practice of medicine using electronic communication, information technology or other means between a physician in one location and a patient in another location with or without an intervening health care provider. This definition does not include the practice of medicine through postal or courier services.
C. Telemergency medicine" is a unique combination of telemedicine and the collaborative/consultative role of a physician board certified in emergency medicine, and an appropriate skilled health professional (nurse practitioner or physician assistant).

Source: Miss. Code Ann. §73-25-34 (1972, as amended).

Rule 5.2 Licensure. The practice of medicine is deemed to occur in the location of the patient. Therefore only physicians holding a valid Mississippi license are allowed to practice telemedicine in Mississippi. The interpretation of clinical laboratory studies as well as pathology and histopathology studies performed by physicians without Mississippi licensure is not the practice of telemedicine provided a Mississippi licensed physician is responsible for accepting, rejecting, or modifying the interpretation. The Mississippi licensed physician must maintain exclusive control over any subsequent therapy or additional diagnostics.

Source: Miss. Code Ann. §73-25-34 (1972, as amended).

Rule 5.3 Informed Consent. The physician using telemedicine should obtain the patient's informed consent before providing care via telemedicine technology. In addition to information relative to treatment, the patient should be informed of the risk and benefits of being treated via a

telemedicine network including how to receive follow-up care or assistance in the event of an adverse reaction to treatment or if there is a telemedicine equipment failure.

Source: Miss. Code Ann. §73-25-34 (1972, as amended).

Rule 5.4 Physician Patient Relationship. In order to practice telemedicine a valid "physician patient relationship" must be established. The elements of this valid relationship are:

A. verify that the person requesting the medical treatment is in fact who they claim to be;
B. conducting an appropriate history and physical examination of the patient that meets the applicable standard of care;
C. establishing a diagnosis through the use of accepted medical practices, i.e., a patient history, mental status exam, physical exam and appropriate diagnostic and laboratory testing;
D. discussing with the patient the diagnosis, risks and benefits of various treatment options to obtain informed consent;
E. insuring the availability of appropriate follow-up care; and
F. maintaining a complete medical record available to patient and other treating health care providers.

Source: Miss. Code Ann. §73-25-34 (1972, as amended).

Rule 5.5 Examination. Physicians using telemedicine technologies to provide medical care to patients located in Mississippi must provide an appropriate examination prior to diagnosis and treatment of the patient. However, this exam need not be in person if the technology is sufficient to provide the same information to the physician as if the exam had been performed face to face.

Other exams may be appropriate if a licensed health care provider is on site with the patient and is able to provide various physical findings that the physician needs to complete an adequate assessment. However a simple questionnaire without an appropriate exam is in violation of this policy and may subject the physician to discipline by the Board.

Source: Miss. Code Ann. §73-25-34 (1972, as amended).

Rule 5.6 Medical Records. The physician treating a patient through a telemedicine network must maintain a complete record of the patient's care. The physician must maintain the record's confidentiality and disclose the record to the patient consistent with state and federal laws. If the patient has a primary treating physician and a telemedicine physician for the same medical condition, then the primary physician's medical record and the telemedicine physician's record constitute one complete patient record.

Source: Miss. Code Ann. §73-25-34 (1972, as amended).

Rule 5.7 Collaborative/Consultative Physician Limited. No physician practicing telemergency medicine shall be authorized to function in a collaborative/consultative role as outlined in Part 2630, Chapter 1 unless his or her practice location is a Level One Hospital Trauma Center that is able to provide continuous twenty-four hour coverage and has an existing air ambulance system in place. Coverage will be authorized only for those emergency departments of licensed hospitals who have an average daily census of thirty (30) or fewer acute care/medical surgical occupied beds as defined by their Medicare Cost Report.

Source: Miss. Code Ann. §73-25-34 (1972, as amended).

Rule 5.8 Reporting Requirements. Annual reports detailing quality assurance activities, adverse or sentinel events shall be submitted for review to the Mississippi State Board of Medical Licensure by all institutions and/or hospitals operating telemergency programs.

Amended October 15, 2003. Amended November 4, 2004. Amended January 30, 2006. Amended May 20, 2010.

Source: Miss. Code Ann. §73-25-34 (1972, as amended).

Part 2635 Chapter 6: Electrodiagnostic Testing

Rule 6.1 General. Electrodiagnostic testing includes two primary categories: needle electromyography testing and nerve conduction testing.

The purpose of both categories of electrodiagnostic testing is to detect abnormalities of the peripheral neuromuscular system or to determine the extent and degree of recovery of neuromuscular abnormalities.

Source: Miss. Code Ann. §73-43-11 (1972, as amended).

Rule 6.2 Delegation of Electrodiagnostic Testing Procedures. Electrodiagnostic testing is a clinical diagnostic study that must be considered only in the light of the clinical finding. The person performing electrodiagnostic testing must be able to elicit the pertinent history and perform the necessary examination to define the clinical problems. Differential diagnoses must be considered, and as abnormalities unfold or fail to unfold during the course of testing, the electrodiagnostic testing may be modified until a probable diagnosis is reached.

Electrodiagnostic testing procedures may be delegated to a specifically trained non-physician or physician in a residency or fellowship training program. The responsible electrodiagnostic physician need not be physically present but must be immediately available within the same building throughout the performance of the entire procedure.

Adopted November 20, 2003.

Source: Miss. Code Ann. §73-43-11 (1972, as amended).

Part 2635 Chapter 7: Internet Prescribing

Rule 7.1 Internet Prescribing. Essential components of proper prescribing and legitimate medical practice require that the physician obtains a thorough medical history and conducts an appropriate physical and/or mental examination before prescribing any medication.

Prescribing drugs to individuals that the physician has never met and based solely on answers to a set of questions, as is found in Internet or toll-free telephone prescribing fails to meet an acceptable standard of care and could constitute unprofessional conduct subject to disciplinary action.

Adopted September 18, 2003. Amended July 15, 2004.

Source: Miss. Code Ann. §73-43-11 (1972, as amended).

Part 2635 Chapter 8: Withdrawn January 12, 2017.

Part 2635 Chapter 9 Community-Based Immunization Programs

Rule 9.1 Scope. The administration of vaccinations constitutes the practice of medicine, as defined by Mississippi Code Section 73-43-11, and thus may only be performed by a physician licensed to practice medicine in this state, or by a licensed nurse under the direction and supervision of a licensed physician.

Source: Miss. Code Ann. §73-43-11 (1972, as amended).

Rule 9.2 Position. It is the position of the Mississippi State Board of Medical Licensure that vaccinations administered pursuant to a community-based public immunization program are considered to be under the direction and supervision of a physician, and thus do not constitute the unlawful practice of medicine, when all of the following criteria are met:

A. the vaccinations are administered to the public by a licensed provider who is:
    1. authorized under Mississippi statute or regulation to provide vaccinations and is
    2. subject to the regulation of a Mississippi regulatory agency.
B. The vaccinations are carried out pursuant to state and federal public health immunization programs or other programs which:
    1. shall be approved in advance by the Board;
    2. shall be conducted under the general supervision of a physician
        a. licensed in the state of Mississippi,
        b. who actively practices medicine at least 20 hours/week, and
        c. resides in the state of Mississippi; and,
    3. a single physician assumes responsibility for the safe administration of the vaccine.

Adopted March 24, 2011.

Source: Miss. Code Ann. §73-43-11 (1972, as amended).

Part 2635 Chapter 10: Release of Medical Records

Rule 10.1 Definitions. For the purpose of Part 2635, Chapter 10 only, the following terms have the meanings indicated:

A. "Licensee" means any person licensed to practice medicine, osteopathic medicine, podiatric medicine or acupuncture in the state of Mississippi.
B. "Medical Records" means all records and/or documents relating to the treatment of a patient, including, but not limited to, family histories, medical histories, report of clinical findings and diagnosis, laboratory test results, x-rays, reports of examination and/or evaluation and any hospital admission/discharge records which the licensee may have.

C. "Patient" means a natural person who receives or should have received health care from a licensed licensee, under a contract, express or implied, whether or not the licensee is compensated for services rendered.
D. "Legal Representative" means an attorney, guardian, custodian, or in the case of a deceased patient, the executor/administrator of the estate, surviving spouse, heirs and/or devisees.
E. "Authorized Requesting Party" includes patient and legal representative as defined above who holds a valid written release and authorization.

Source: Miss. Code Ann. §73-43-11 (1972, as amended).

Rule 10.2 Medical Records - Property of Licensee. Medical records, as defined herein, are and shall remain the property of the licensee in whose facility said records are maintained, subject to reasonable access to the information by authorized individuals or entities.

In the case of employed or contracted licensees (those lacking authority to manage or maintain medical records, medical record ownership shall be determined by federal and state statute and regulations. Licensees in such relationships shall make reasonable efforts to assure reasonable access to the information by authorized individuals or entities. Further, licensees should inform patients of procedures for release of records if the licensee is not the custodian of the records.

Source: Miss. Code Ann. §73-43-11 (1972, as amended).

Rule 10.3 Transfer of Patient Records to Another Licensee. A licensee shall not refuse for any reason to make the information contained in the medical records available upon valid request by authorized requesting party to another licensee presently treating the patient. The licensee has a right to request a written release from the patient or legal representative of the patient, authorizing the transfer prior to transfer of said documents. Upon receipt of the written release and authorization, the licensee must tender a copy of said documents to the other licensee within a reasonable period of time. Transfer of said documents shall not be withheld because of an unpaid bill for medical services, but the licensee is entitled to reasonable compensation paid in advance for any copy expenses as provided in Part 2635, Rule 10.6.

Source: Miss. Code Ann. §73-43-11 (1972, as amended).

Rule 10.4 Release of Patient Records to Patient. A licensee shall, upon request of authorized requesting party holding a written release and authorization, provide a copy of a patient's medical record to the authorized requesting party within a reasonable period of time.

In those cases where release of psychiatric/psychological records directly to a patient would be deemed harmful to the patient's mental health or well-being, the licensee shall not be obligated to release the records directly to the patient, but shall, upon request, release the records to the patient's legal representative. The licensee has a right to request a written authorization prior to release of the records to any party other than the patient. Upon receipt of the written release and authorization, the licensee must tender a copy of the records to the authorized requesting party within a reasonable period of time. Transfer of the records shall not be withheld because of an unpaid bill for medical services, but the licensee is entitled to reasonable compensation paid in advance for any copy expenses as provided in Part 2635, Rule 10.6.

Source: Miss. Code Ann. §73-43-11 (1972, as amended).

Rule 10.5 Narrative Summary of Medical Record. In some cases, a requesting party may wish to obtain a narrative summary of the medical record, in lieu of, or in addition to a copy of the medical record. Upon such a request, the licensee may provide the narrative summary. The licensee may charge a reasonable fee for the time devoted to preparation of the medical record narrative summary.

Source: Miss. Code Ann. §73-43-11 (1972, as amended).

Rule 10.6 Duplication and Administrative Fees.

A. Licensees have a right to be reimbursed for duplication and other expenses relating to requests for medical records. The copying charge is set by Mississippi Code, Section 11-1-52 as follows:
    1. Any medical provider or hospital or nursing home or other medical facility shall charge no more than the following amounts to an authorized requesting party for photocopying any patient's records:
        i. Twenty Dollars ($20.00) for pages one (1) through twenty (20);
        ii. One Dollar ($1.00) per page for the next eighty (80) pages;
        iii. Fifty Cents (50¢) per page for all pages thereafter.
        iv. Ten percent (10%) of the total charge may be added for postage and handling.
        v. Fifteen Dollars ($15.00) may be recovered by the medical provider or hospital or nursing home or other medical facility for retrieving medical records in archives at a location off the premises where the facility/office is located.
        vi. In addition, the actual costs of reproducing x-rays or other special records may be included.
        vii. The duplication and administrative fees authorized herein are not intended to include or restrict any fees charged in relation to expert testimony.

Source: Miss. Code Ann. §11-1-52 (1972, as amended).

Rule 10.7 Exclusion. Federal or state agencies providing benefit programs as well as contractual third party payers and administrators are excluded from the above stated fees. Records that are requested by state or federal agencies as well as contracted payers and administrators may be billed at rates established by those payers and contracts. The release of records as requested by state or federal agencies or third party payers and administrators may not be refused for failure to pay required fees.

Source: Miss. Code Ann. §73-43-11 (1972, as amended).

Rule 10.8 Violation of Rules. A refusal by a licensee to release patient records shall constitute unprofessional conduct, dishonorable or unethical conduct likely to deceive, defraud or harm the public in violation of Mississippi Code, Section 73-25-29(8)(d).

Amended March 16, 1995. Amended July 18, 2002. Amended September 18, 2003. Amended September 16, 2004. Amended May 17, 2007. Amended January 21, 2010.

Source: Miss. Code Ann. §73-43-11 (1972, as amended).

Part 2635 Chapter 11: Withdrawn January 12, 2017

Part 2635 Chapter 12: Physician Advertising

Rule 12.1 Scope. The following rule on physician advertising applies to all individuals licensed to practice medicine, osteopathic medicine or podiatric medicine in the state of Mississippi.

Source: Miss. Code Ann. §73-43-11 (1972, as amended).

Rule 12.2 Definitions. For the purpose of Part 2635, Chapter 12 only, the following terms have the meanings indicated:

A. "Board" means the Mississippi State Board of Medical Licensure.
B. "Physician" means any individual licensed to practice medicine, osteopathic medicine or podiatric medicine in the state of Mississippi.
C. "Advertisement" or "Advertising" means any form of public communication, such as office signage, newspaper, magazine, telephone directory, medical directory, radio, television, direct mail, billboard, sign, computer, business card, billing statement, letterhead or any other means by which physicians may communicate with the public or patients.

Source: Miss. Code Ann. §73-43-11 (1972, as amended).

Rule 12.3 Requirements.

A. Subject to the requirements set forth herein below, any advertisement by a physician may include:
    1. The educational background or specialty of the physician.
    2. The basis on which fees are determined, including charges for specific services.
    3. Available credit or other methods of payment.
    4. Any other non-deceptive information.
B. A physician may publicize himself or herself as a physician through any form of advertisement, provided the communication, (i) shall not be misleading because of the omission of necessary information, (ii) shall not contain any false or misleading statement, or (iii) shall not otherwise operate to deceive.
C. Because the public may be deceived by the use of medical terms or illustrations that are difficult to understand, physicians should design the advertisement to communicate the information contained therein to the public in a readily comprehensible manner.
D. It is unethical to advertise in such a manner as to create unjustified medical expectations by the public. The key issue is whether advertising or publicity is true and not materially misleading.
E. In addition to the above general requirements, any advertisement or other form of public communication shall comply with the following specific requirements:
    1. All advertisements and written communications pursuant to these rules shall include the name of at least one (1) physician responsible for its content. In the case of office signage at least one sign in reasonable proximity to the main entrance must bear the name of the responsible physician.
    2. Whenever a physician is identified in an advertisement or other written communication, the physician should not be identified solely as "Doctor" or "Dr." but

shall be identified as M.D. for medical doctors, D.O. for osteopathic physicians and D.P.M. for podiatric physicians.

3. A physician who advertises a specific fee for a particular service or procedure shall honor the advertised fee for at least ninety (90) days unless the advertisement specifies a longer period; provided that for advertisements in the yellow pages of a telephone directory or other media not published more frequently than annually, the advertised fee shall be honored for no less than one (1) year following publication.
4. A physician shall not make statements which are merely self-laudatory or statements describing or characterizing the quality of the physician's services.
5. No physician shall advertise or otherwise hold himself or herself out to the public as being “Board Certified” without, (i) a complete disclosure in the advertisement of the specialty board by which the physician was certified, and (ii) can submit proof of current certification by a specialty board recognized by the American Board of Medical Specialties or the American Osteopathic Association. The term “Board Certified” frequently appears in conjunction with a list of services that the physician or clinic provides. The general public could easily be misled into thinking that the physician is certified in all of those services.
6. No physician shall hold himself or herself out as a specialist in a particular field unless that physician has either, (i) completed a residency program recognized by the Accreditation Council for Graduate Medical Education, by the American Osteopathic Association or by the American Podiatric Medical Association and can submit proof that such training was completed, or (ii) can submit proof that the licensee was “grandfathered” into a specialty by board certification by a recognized specialty board of the American Board of Medical Specialties or the American Osteopathic Association.
7. No physician shall compare his or her service with other physicians' services, unless the comparison can be factually substantiated; this precludes the use of terms such as “the best,” “one of the best,” or “one of the most experienced” or the like.
8. Where an advertisement includes a consumer-endorser's experience (i.e., patient testimonials), the advertisement must contain clear and prominent disclosure of (a) what the generally expected outcome would be in the depicted circumstances, and (b) the limited applicability of the endorser's experience. Although testimonials and endorsements are authorized under this rule, compliance will be strictly monitored as endorsements and testimonials are inherently misleading to the lay public and to those untrained in medicine.
9. Any claims of success, efficacy or result (i.e., cure) must have scientific evidence in substantiation of such claims.
10. Any claims that purport to represent “typical” results (results that consumers will generally achieve) must be based on a study of a sample of all patients who entered the program, or, if the claim refers to a subset of those patients, a sample of that subset.
11. Any claim made regarding the safety of a medical procedure or drug must also disclose the risk of adverse medical complications.
12. No physician shall claim to have any drug or medication or use of a drug or medication for a specific ailment or condition unless such drug or medication has an F.D.A. approved indication for such purpose.

13. Any claim that improvements can be achieved through surgery in a specified time period must also include disclosure of the typical recovery time.

F. Consistent with federal regulatory standards which apply to commercial advertising, a physician who is considering the placement of an advertisement or publicity release, whether in print, radio or television, should determine in advance that the communication or message is explicitly and implicitly truthful and not misleading. These standards require the advertiser to have a reasonable basis for claims before they are used in advertising. The reasonable basis must be established by those facts known to the advertiser, and those which a reasonable, prudent advertiser should have discovered.

G. The above rules do not prohibit physicians or clinics from authorizing the use of the physician's name or clinic name in medical directories, HMO directories, preferred provider agreements or other communications intended primarily for referral purposes.

Source: Miss. Code Ann. §73-43-11 (1972, as amended).

Rule 12.4 Violation of Rules. The above rules on physician advertising shall not be interpreted to alter or amend that which is otherwise provided by Mississippi statutory law or the rules on advertising adopted by the Federal Trade Commission.

If any physician subject to this rule advertises or enters into any communication in violation of the above rules, such act shall constitute unprofessional conduct, which includes dishonorable or unethical conduct likely to deceive, defraud or harm the public, in violation of Mississippi Code, Sections 73-25-29(8)(d) and 73-27-13(h)(iv).

Source: Miss. Code Ann. §73-43-11 (1972, as amended).

Rule 12.5 Effective Date of Rules. The above rules pertaining to physician advertising shall become effective November 2, 1995. Amended January 24, 2008.

Source: Miss. Code Ann. §73-43-11 (1972, as amended).

Part 2635: Chapter 1 Surgery/Post-Operative Care

Rule 1.1 Scope. The following regulation sets forth the policies of the Mississippi State Board of Medical Licensure regarding post-operative surgical care rendered by individuals licensed to practice medicine, osteopathic medicine and podiatric medicine in the state of Mississippi.

Source: Miss. Code Ann. §73-43-11 (1972, as amended).

Rule 1.2 Definitions. For the purpose of Part 2635, Chapter 1 only, the following terms have the meanings indicated:

A. "Auxiliary" or "Auxiliaries" shall include, but is not limited to, registered nurses, licensed practical nurses, certified nursing assistants, physical therapists, nurse practitioners and optometrists.
B. "Under the supervision" means to critically watch, direct, advise and oversee, and to inspect and examine the actions of another health care practitioner.
C. "Physician" means any person licensed to practice medicine, osteopathic medicine or podiatric medicine in the state of Mississippi.
D. "Surgery" ~~means any invasive procedure which results in the projection into (i.e. laser surgery), entering, cutting or suturing of tissue or any body organ~~ is defined as any operative procedure, including the use of lasers, performed upon the body of a living human being for the purposes of preserving health, diagnosing or curing disease, repairing injury, correcting deformity or defects, prolonging life, relieving suffering or any elective procedure for aesthetic, reconstructive or cosmetic purposes, to include, but not be limited to: incision or curettage of tissue or organ; suture or other repair of tissue or organ, including a closed as well as an open reduction of a fracture; extraction of tissue including premature extraction of the products of conception from the uterus; insertion of natural or artificial implants; or an endoscopic procedure.

Source: Miss. Code Ann. §73-43-11 (1972, as amended).

Rule 1.3 Informed Consent. The ~~ultimate~~ responsibility for ~~diagnosing medical and surgical problems~~ medical and surgical diagnoses is that of the licensed physician. In addition, it is the responsibility of the operating physician to explain the procedure and to obtain informed consent of the patient. It is not necessary, however, that the operating physician obtain or witness the signature of a patient on a written form evidencing informed consent.

Source: Miss. Code Ann. §73-43-11 (1972, as amended).

Rule 1.4 Post-Surgical Care. The management of post-surgical care is the responsibility of the operating physician. The operating physician should provide those aspects of post-surgical care which are within the unique competence of the physician. Patients are best served by having post-surgical care conducted by the physician who best knows their condition--the operating physician.

Where the operating physician cannot personally provide post-surgical care, the physician must arrange ***before*** surgery for post-surgical care to be performed by another qualified physician who is acceptable to the patient. In this case, the operating physician may delegate discretionary post-

operative activities to ~~an equivalently trained~~ a qualified licensed physician. Like the operating physician, the physician to whom a patient has been referred for post-surgical care should provide, at a minimum, those aspects of post-surgical care ~~that are not permitted to be performed by auxiliaries~~ that are not delegable.

Unless otherwise provided by law, delegation of post-surgical activities to an auxiliary is permitted only if the auxiliary is under the supervision of the operating physician or the physician to whom the operating physician has referred a patient for post-surgical care. While an auxiliary may be authorized by law to provide certain aspects of post-surgical care, this does not relieve the operating physician of his or her responsibility to provide post-surgical care or arrange for the delegation of post-surgical care, when appropriate, as required by this rule.

Those aspects of post-surgical care which may be delegated to an auxiliary must be determined on a case-by-case basis, but shall be limited to those procedures which the auxiliary is authorized by law to perform and within the unique competence and training of the auxiliary.

Source: Miss. Code Ann. §73-43-11 (1972, as amended).

Rule 1.5 Effective Date of Rules. The rules pertaining to Surgery/Post-Operative Care shall become effective October 23, 1994.

Source: Miss. Code Ann. §73-43-11 (1972, as amended).

Part 2635: Chapter 2 Office Based Surgery

Rule 2.1 Scope. This regulation sets forth the policies of the Mississippi State Board of Medical Licensure regarding office based surgery rendered by individuals licensed to practice medicine, osteopathic medicine and podiatric medicine in the state of Mississippi.

Source: Miss. Code Ann. §73-43-11 (1972, as amended).

Rule 2.2 Definitions. For the purpose of Part 2635, Chapter 2 only, the following terms have the meanings indicated:

A. "Surgery" is defined as any operative procedure, including the use of lasers, performed upon the body of a living human being for the purposes of preserving health, diagnosing or curing disease, repairing injury, correcting deformity or defects, prolonging life, relieving suffering or any elective procedure for aesthetic, reconstructive or cosmetic purposes, to include, but not be limited to: incision or curettage of tissue or organ; suture or other repair of tissue or organ, including a closed as well as an open reduction of a fracture; extraction of tissue including premature extraction of the products of conception from the uterus; insertion of natural or artificial implants; or an endoscopic procedure. The use of local, general or topical anesthesia and/or intravenous sedation is the prerogative of the surgeon.
B. "Surgeon" is defined as a licensed physician performing any procedure included within the definition of surgery.
C. Implicit within the use of the term "equipment" is the requirement that the specific item named must meet current performance standards.
D. "Office surgery" is defined as surgery which is performed outside a hospital, an ambulatory surgical center, abortion clinic, or other medical facility licensed by the

Mississippi State Department of Health or a successor agency. Physicians performing Level II or Level III office based surgery must register with the Mississippi State Board of Medical Licensure. A copy of the registration form is attached hereto (Appendix A).

E. A "Surgical Event" for the purpose of this regulation is recognized as a potentially harmful or life-threatening episode related to either the anesthetic or the surgery. Any "Surgical Event" in the immediate peri-operative period that must be reported are those which are life-threatening, or require special treatment, or require hospitalization, including, but not limited to the following: (1) serious cardiopulmonary or anesthetic events; (2) major anesthetic or surgical complications; (3) temporary or permanent disability; (4) coma; or (5) death.

Source: Miss. Code Ann. §73-43-11 (1972, as amended).

Rule 2.3 General Requirements for Office Surgery. For all surgical procedures, the level of sterilization shall meet current OSHA requirements.

The surgeon must maintain complete records of each surgical procedure, including anesthesia records, when applicable and the records on all Level II and Level III cases shall contain written informed consent from the patient reflecting the patient's knowledge of identified risks, consent to the procedure, type of anesthesia and anesthesia provider.

The surgeon must maintain a log of all Level II and Level III surgical procedures performed, which must include a confidential patient identifier, the type of procedure, the type of anesthesia used, the duration of the procedure, the type of post-operative care, and any surgical events. The log and all surgical records shall be provided to investigators of the Mississippi State Board of Medical Licensure upon request.

In any liposuction procedure, the surgeon is responsible for determining the appropriate amount of supernatant fat to be removed from a particular patient. Using the tumescent method of liposuction, ~~it is strongly recommended that a reasonable amount of fat should be removed in the office setting, i.e., a range of 4000cc to 5000cc of supernatant fat in a 70 Kg patient with a BMI (body mass index) of less than 30. This range should be adjusted downward in thin patients (less than 25 BMI) and upward in obese patients (over 30 BMI)~~ the surgeon must fully document the anticipated amount of material to be removed in a manner consistent with recognized standards of care. Post-operatively, any deviation from the anticipated amount, and the reason for deviation, should be fully documented in the operative report. Morbidly obese patients should ~~preferably~~ have liposuction performed in the hospital setting unless the surgeon can document significant advantage to an alternative setting.

A policy and procedure manual must be maintained in the office and updated annually. The policy and procedure manual must contain the following: duties and responsibilities of all personnel, cleaning and infection control, and emergency procedures. ~~This shall not apply to offices that limit surgery to Level I procedures.~~

The surgeon shall report to the Mississippi State Board of Medical Licensure any surgical events that occur within the office based surgical setting. This report shall be made within 15 days after the occurrence of a surgical event. A suggested form for reporting is attached hereto (Appendix B). The filing of a report of surgical event as required by this rule does not, in and of itself,

constitute an acknowledgment or admission of malpractice, error, or omission. Upon receipt of the report, the Board may, in its discretion, obtain patient and other records pursuant to authority granted in Mississippi Code, Section 73-25-28.

The surgeon's ~~office~~ must have a written response plan for emergencies within ~~their~~ his or her facility.

In offices where Level II and Level III office based surgery is performed, a sign must be prominently posted in the office which states that the office is a doctor's office regulated pursuant to the rules of the Mississippi State Board of Medical Licensure. This notice must also appear prominently within the required patient informed consent.

~~It is strongly recommended that~~ Office surgery facilities should adhere to recognized standards such as those promulgated by the American Society of Anesthesiologists' ***Guidelines for Office-Based Anesthesia*** ~~and/~~or ***American Association of Nurse Anesthetists' Standards for Office Based Anesthesia*** ~~be utilized for Level III procedures~~.

Source: Miss. Code Ann. §73-43-11 (1972, as amended).

Rule 2.4 Level I Office Surgery.

A. Scope

1. Level I office surgery includes, but not limited to, the following:
   i. Minor procedures such as excision of skin lesions, moles, warts, cysts, lipomas, Loop Electrosurgical Excision Procedures (LEEP), laser cone of cervix, laser/cautery ablation of warts or other lesions, and repair of lacerations or surgery limited to the skin and subcutaneous tissue performed under topical or local anesthesia not involving drug-induced alteration of consciousness.
   ii. Incision and drainage of superficial abscesses, limited endoscopies such as proctoscopies, flexible sigmoidoscopies, hysteroscopies, skin biopsies, arthrocentesis, paracentesis, dilation of urethra, cysto-scopic procedures, and closed reduction of simple fractures or small joint dislocations (i.e., finger and toe joints).
   iii. ~~Pre-operative medications not required or used other than minimal pre-operative tranquilization of the patient; anesthesia is local, topical, or none.~~ Procedures requiring only topical, local or no anesthesia. Only minimal or no preoperative sedation should be required or used. No drug-induced alteration of respiratory effort or consciousness other than minimal pre-operative tranquilization of the patient is permitted in Level I Office Surgery.
   iv. Chances of complication requiring hospitalization are remote.
2. Standards for Level I Office Surgery
   i. Training Required
      The surgeon's continuing medical education should include ~~proper dosages and~~ management of toxicity or hypersensitivity to ~~regional~~ local anesthetic drugs. The surgeon's continuing medical education ***shall*** include Basic Life Support Certification ~~is required~~.
   ii. Equipment and Supplies Required
      Oral airway, positive pressure ventilation device, ~~E~~epinephrine (or other vasopressor), ~~Corticoids~~ corticosteroids, ~~A~~antihistamines and ~~A~~atropine, if any anesthesia is used.

The equipment and skills to establish intravenous access must be available if any other medications are administered. The equipment and supplies should reflect the patient population, i.e., pediatrics, etc.

iii. Assistance of Other Personnel Required
No other assistance is required, unless the specific surgical procedure being performed requires an assistant.

Source: Miss. Code Ann. §73-43-11 (1972, as amended).

Rule 2.5 Level II Office Surgery.

A. Scope
1. Level II Office Surgery is that in which perioperative medication and sedation are used orally, intravenously, intramuscularly, or rectally.~~, thus making~~ If perioperative or intraoperative medication is administered, intraopreative and postoperative monitoring ~~necessary~~ is required. Such procedures ~~shall~~ include, but are not ~~be~~ limited to: hernia repair, hemorrhoidectomy, reduction of simple fractures, large joint dislocations, breast biopsies, dilatation and curettage, thoracentesis, and colonoscopy.
2. Level II Office surgery also includes any surgery in which the patient is ~~placed in a state which~~ sufficiently sedated to allow~~s~~ the patient to tolerate unpleasant procedures while maintaining adequate cardiorespiratory function and the ability to respond purposefully to verbal command and/or tactile stimulation. Patients whose only response is reflex withdrawal from a painful stimulus are sedated to a greater degree than encompassed by this definition.
3. Any procedures that may yield an excessive loss of blood should be covered under Level II.

B. Transfer Agreement Required
The surgeon must have a written transfer agreement from a licensed hospital within reasonable proximity. ~~if the surgeon does not have staff privileges to perform the same procedure as that being performed in the office based surgical setting at a licensed hospital within reasonable proximity.~~ The transfer agreement should also include physician coverage of transferred patients if the physician does not have privileges at the hospital.

C. Level of Anesthetic
Local or peripheral ~~major~~ nerve block, including Bier Block, plus intravenous or intramuscular sedation, but with preservation of vital reflexes.

D. Training Required
To perform office based surgery, the physician must be able to document satisfactory completion of surgical training such as Board certification or Board eligibility by a Board approved by the American Board of Medical Specialties or American Board of Osteopathic Specialties. The certification should include training in the procedures performed in the office setting. Alternative credentialing for procedures outside the physician's core curriculum must be applied for through the Mississippi State Board of Medical Licensure and reviewed by a multi-specialty board appointed by the Director. In addition to t~~T~~he surgeon, ~~and~~ there must be at least one ~~attending~~ assistant ~~must be~~ certified in Basic Life Support present during any Level II or III procedure. ~~It is recommended that the surgeon and at least one assistant be~~ There should be at least one person certified in Advanced Cardiac Life Support present during any Level II or III

procedure ~~or have a~~ unless there is an anesthesiologist or certified registered nurse anesthetist ~~qualified anesthetic provider, practicing within the scope of the provider's license,~~ to manage the anesthetic.

E. Equipment and Supplies Required

1. Full and current crash cart at the location the anesthetizing is being carried out.

   The crash cart must include, at a minimum, the following resuscitative medications, or other resuscitative medication subsequently marketed and available after initial adoption of this regulation, provided said medication has the same FDA approved indications and usage as the medications specified below:

   i. Adrenalin (epinephrine) Abboject 1mg-1:10,000; 10ml
   ii. Adrenalin (epinephrine) ampules 1mg-1:1000; 1ml
   iii. Atropine Abboject 0.1mg/ml; 5ml
   iv. Benadryl (diphenhydramine) syringe 50mg/ml; 1ml
   v. Calcium chloride Abboject 10%; 100mg/ml; 10ml
   vi. Dextrose Abboject 50%; 25g/50ml
   vii. Dilantin (phenytoin) syringe 250mg/5ml
   viii. Dopamine 400mg/250ml pre-mixed
   ix. Heparin 10,000 units/ml; 1 ml vial
   x. Inderal (propranolol) 1mg/ml; 1 ml ampule
   xi. Isuprel (isoproterenol) 1mg/5ml; 1:5000 ampule
   xii. Lanoxin (digoxin) 0.5 mg/2ml ampule
   xiii. Lasix (furosemide) 40 mg/4ml vial
   xiv. Lidocaine Abboject 2%; 100mg/5ml
   xv. Lidocaine 2 grams/500ml pre-mixed
   xvi. Magnesium sulfate 50%; 20ml vial (1g/2ml)
   xvii. Narcan (naloxone) 0.4mg/ml; 1ml ampule
   xviii. Pronestyl (procainamide) 100mg/ml; 10ml vial
   xix. Romazicon 5ml or 10 ml (0.1mg/ml)
   xx. Sodium bicarbonate Abboject 50mEq/50ml
   xxi. Solu-medrol (methylprednisolone) 125mg/2ml vial
   xxii. Verapamil syringe 5mg/2ml

   The above dosage levels may be adjusted, depending on ages of the patient population.

2. Suction devices, endotracheal tubes, laryngoscopes, etc.
3. Positive pressure ventilation device (e.g., Ambu) plus oxygen supply.
4. Double tourniquet for the Bier Block procedure.
5. Monitors for blood pressure/EKG/Oxygen saturation and portable approved defibrillator.
6. Emergency intubation equipment.
7. Adequate operating room lighting with onsite backup sufficient to supply ~~Emergency power source able to produce adequate power to run~~ required equipment perioperative equipment and monitors for a minimum of two (2) hours~~, which would require generator on site~~.
8. ~~Appropriate s~~Sterilization equipment or facilities meeting Joint Commission requirements.
9. IV solution and IV equipment.

F. Assistance of Other Personnel Required

~~The surgeon and at least one attending assistant must be certified in Basic Life Support. It is recommended that the surgeon and at least one assistant be certified in Advanced Cardiac Life Support.~~ In addition to the surgeon there must be at least one assistant certified in Basic Life Support present during any Level II or III procedure. There should be at least one person certified in Advanced Cardiac Life Support present during any Level II or III procedure unless there is an anesthesiologist or certified registered nurse anesthetist to manage the anesthetic.

A registered nurse may only administer analgesic doses of ~~anesthetic agents~~ medications ~~under~~ on the direct order of a physician. An assisting anesthesia provider, including nurse providing sedation, ~~cannot~~ may not function in any other capacity during the procedure. If additional assistance is required by the specific procedure or patient circumstances, such assistance must be provided by a physician, registered nurse, licensed practical nurse, or operating room technician. ~~Surgeon must have a written agreement with a qualified support physician with hospital privileges within reasonable proximity to cope with any problems that may arise if the surgeon performing the procedure does not have such privileges.~~

Source: Miss. Code Ann. §73-43-11 (1972, as amended).

Rule 2.6 Level III Office Surgery.

A. Scope

1. Level III Office Surgery is that surgery which involves, or ~~reasonably should~~ might foreseeably require, the use of a general anesthesia or major conduction anesthesia and ~~pre~~peri-operative sedation. This includes the use of:
   i. Intravenous sedation beyond that defined for Level II office surgery;
   ii. General Anesthesia: loss of consciousness and loss of vital reflexes with probable requirement of external support of pulmonary or cardiac functions; or
   iii. Major Conduction anesthesia.
2. Only patients classified under the American Society of Anesthesiologist's (ASA) risk classification criteria as Class I, II, or III are appropriate candidates for Level III office surgery. For ASA Class III patients, the surgeon must document in the patient's record the justification ~~and~~ for an office procedure rather than other surgical venues. The record must also document precautions taken that make the office ~~an appropriate forum~~ a preferred venue for the particular procedure to be performed.

B. Transfer Agreement Required

The surgeon must have a written transfer agreement from a licensed hospital within reasonable proximity. The transfer agreement must include physician coverage of transferred patients if the physician does not have privileges at the hospital. ~~if the surgeon does not have staff privileges to perform the same procedure as that being performed in the office based surgical setting at a licensed hospital within reasonable proximity.~~

C. Level of Anesthetic

1. General Anesthetic: loss of consciousness and loss of vital reflexes with probable requirement of external support of pulmonary or cardiac functions.

2. Major Conduction: epidural, spinal, caudal or any block of a nerve or plexus more proximal than the hip or shoulder joint including visceral nerve blocks.

D. Training Required
   1. To perform office based surgery, the physician must be able to document satisfactory completion of surgical training such as board certification or board eligibility by a board approved by the American Board of Medical Specialties or American Board of Osteopathic Specialties. The certification should include training in the procedures performed in the office setting. Alternative credentialing for procedures outside the physician's core curriculum must be applied for through the Mississippi State Board of Medical Licensure and reviewed by a multi-specialty board appointed by the Executive Director.
   2. In addition to t~~T~~he surgeon ~~and~~ there must be at least one ~~attending~~ assistant ~~must be~~ certified in Basic Life Support present during any Level II or III procedure. ~~It is recommended that the surgeon and~~ There should be at least one person ~~assistant be~~ certified in Advanced Cardiac Life Support present during any Level II or III procedure unless there is an anesthesiologist or certified registered nurse anesthetist to manage the anesthetic.
   3. Emergency procedures related to serious anesthesia complications should be formulated, periodically reviewed, practiced, updated, and posted in a conspicuous location.

E. Equipment and Supplies Required
   1. Equipment, medication, ~~including at least 12 ampules of dantrolene on site (in cases involving general inhalation or general endotracheal anesthesia),~~ and monitored post-anesthesia recovery must be available in the office. If anesthetic agents include inhaled agents, other than nitrous oxide, medications must include a stock of no less than 12 vials of Dantrolene.
   2. The ~~office~~ facility, in terms of general preparation, equipment, and supplies, must be comparable to a free standing ambulatory surgical center, including, but not limited to, recovery capability, and must have provisions for proper record keeping.
   3. Blood pressure monitoring equipment; EKG; end tidal CO2 monitor; pulse oximeter, precordial or esophageal stethoscope, emergency intubation equipment and a temperature monitoring device must be available for all phases of perioperative care.
   4. Table capable of Trendelenburg and other positions necessary to facilitate the surgical procedure.
   5. IV solutions and IV equipment.
   6. All equipment and supplies listed under Part 2635, Rule 2.5, Level II.

F. Assistance of Other Personnel Required

   An anesthesiologist or certified registered nurse anesthetist must administer the general or regional anesthesia and a physician, registered nurse, licensed practical nurse, or operating room technician must assist with the surgery. The anesthesia provider ~~cannot~~ may not function in any other capacity during the procedure. A licensed physician or a licensed registered nurse with post-anesthesia care unit experience or the equivalent, and credentialed in Advanced Cardiac Life Support, or in the case of pediatric patients, Pediatric Advanced Life Support, must be available to monitor the patient in the recovery room until the patient has recovered from anesthesia.

Source: Miss. Code Ann. §73-43-11 (1972, as amended).

Rule 2.7 Effective Date of Rules. The above rules pertaining to office based surgery shall become effective September 1, 2001.

Adopted July 31, 2001. Amended April 18, 2002, with a June 1, 2002, effective date. Amended September 19, 2002.

Source: Miss. Code Ann. §73-43-11 (1972, as amended).

Part 2635 Chapter 3: Laser Devices

Rule 3.1 Laser Devices. The use of laser, pulsed light or similar devices, either for invasive or cosmetic procedures, is considered to be the practice of medicine in the state of Mississippi and therefore such use shall be limited to physicians and those directly supervised by physicians, such that a physician is on the premises and would be directly involved in the treatment if required. These rules shall not apply to any person licensed to practice dentistry if the laser, pulsed light, or similar device is used exclusively for the practice of dentistry.

Adopted March 18, 1999. Amended May 19, 2005. Amended January 18, 2007. Amended March 8, 2007. Amended May 17, 2007. Amended March 27, 2008.

Source: Miss. Code Ann. §73-43-11 (1972, as amended).

Part 2635 Chapter 4: Chelation Therapy

Rule 4.1 Chelation Therapy. The use of EDTA (ethylenediaminetetraacetic acid) ~~in a clinical setting by delivering the medicine through parenteral or oral routes beyond its~~ outside of FDA approved clinical indications or an approved research protocol (see below) is not permitted. Other off-label uses may be permissible if there is substantial, high-quality research to support such use. The research should be peer-reviewed and published in recognized journals such as those cited in PubMed or in the ~~of laboratory documented heavy metal poisoning/intoxication/toxicity, without support of the scientific literature contained within the~~ National Library of Medicine. Specific reference should be made to the publications and research in the medical record. Informed consent for off-label use should be obtained.~~, or certainly much more than anecdotal evidence of its effective use in the treatment of a disease or medical condition for which a licensee uses it~~ Use of EDTA in any other manner may be considered to be violation of Mississippi Code, Section 73-25-29(8)(d).

However, EDTA may be used ~~in the clinical setting~~ when a licensee experienced in clinical investigations has applied for and received from the Board written approval for off-label use in a ~~carefully controlled~~ clinical investigation. The licensee applying for approval must be the principal investigator for the protocol or subject to the direction of the principal investigator.~~ of its effectiveness in treating diseases or medical conditions other than those approved by the FDA under a protocol satisfactory to the Board to be conducted in an academic institution. That the a~~

Advertising ~~of~~ EDTA's administration for off-label use, except for approved research protocols, is prohibited. ~~in any matter to prevent or cure diseases or medical conditions other than laboratory documented heavy metal poisoning/intoxication/toxicity, without support of the scientific literature contained within the National Library of Medicine or certainly much more~~

~~than anecdotal evidence of its effective use in the treatment of a disease or medical condition for which a licensee advertises it~~ Such advertising may be considered to be violation of Mississippi Code, Section 73-25-29(8)(d) and/or the rules promulgated pursuant thereto.

Adopted July 18, 2002.

Source: Miss. Code Ann. §73-43-11 (1972, as amended).

Part 2635 Chapter 5: Practice of Telemedicine

Rule 5.1 Definitions. For the purpose of Part 2635, Chapter 5 only, the following terms have the meanings indicated:

A. "Physician" means any person licensed to practice medicine or osteopathic medicine in the state of Mississippi.
B. Telemedicine" is the practice of medicine using electronic communication, information technology or other means between a physician in one location and a patient in another location with or without an intervening health care provider. This definition does not include the practice of medicine through postal or courier services.
C. Telemergency medicine" is a unique combination of telemedicine and the collaborative/consultative role of a physician board certified in emergency medicine, and an appropriate skilled health professional (nurse practitioner or physician assistant).

Source: Miss. Code Ann. §73-25-34 (1972, as amended).

Rule 5.2 Licensure. The practice of medicine is deemed to occur in the location of the patient. Therefore only physicians holding a valid Mississippi license are allowed to practice telemedicine in Mississippi. ~~However, a valid Mississippi license is not required where the evaluation, treatment and/or medicine given to be rendered by a physician outside of Mississippi is requested by a physician duly licensed to practice medicine in Mississippi, and the physician who has requested such evaluation, treatment and/or medical opinion has already established a doctor/patient relationship with the patient to be evaluated and/or treated.~~ The interpretation of clinical laboratory studies as well as pathology and histopathology studies performed by physicians without Mississippi licensure is not the practice of telemedicine provided a Mississippi licensed physician is responsible for accepting, rejecting, or modifying the interpretation. The Mississippi licensed physician must maintain exclusive control over any subsequent therapy or additional diagnostics.

Source: Miss. Code Ann. §73-25-34 (1972, as amended).

Rule 5.3 Informed Consent. The physician using telemedicine should obtain the patient's informed consent before providing care via telemedicine technology. In addition to information relative to treatment, the patient should be informed of the risk and benefits of being treated via a telemedicine network including how to receive follow-up care or assistance in the event of an adverse reaction to treatment or if there is a telemedicine equipment failure.

Source: Miss. Code Ann. §73-25-34 (1972, as amended).

Rule 5.4 Physician Patient Relationship. In order to practice telemedicine a valid "physician patient relationship" must be established. The elements of this valid relationship are:

A. verify that the person requesting the medical treatment is in fact who they claim to be;
B. conducting an appropriate history and physical examination of the patient that meets the applicable standard of care;
C. establishing a diagnosis through the use of accepted medical practices, i.e., a patient history, mental status exam, physical exam and appropriate diagnostic and laboratory testing;
D. discussing with the patient the diagnosis, risks and benefits of various treatment options to obtain informed consent;
E. insuring the availability of appropriate follow-up care; and
F. maintaining a complete medical record available to patient and other treating health care providers.

Source: Miss. Code Ann. §73-25-34 (1972, as amended).

Rule 5.5 Examination. Physicians using telemedicine technologies to provide medical care to patients located in Mississippi must provide an appropriate examination prior to diagnosis and treatment of the patient. However, this exam need not be in person if the technology is sufficient to provide the same information to the physician as if the exam had been performed face to face.

Other exams may be appropriate if a licensed health care provider is on site with the patient and is able to provide various physical findings that the physician needs to complete an adequate assessment. However a simple questionnaire without an appropriate exam is in violation of this policy and may subject the physician to discipline by the Board.

Source: Miss. Code Ann. §73-25-34 (1972, as amended).

Rule 5.6 Medical Records. The physician treating a patient through a telemedicine network must maintain a complete record of the patient's care. The physician must maintain the record's confidentiality and disclose the record to the patient consistent with state and federal laws. If the patient has a primary treating physician and a telemedicine physician for the same medical condition, then the primary physician's medical record and the telemedicine physician's record constitute one complete patient record.

Source: Miss. Code Ann. §73-25-34 (1972, as amended).

Rule 5.7 Collaborative/Consultative Physician Limited. No physician practicing telemergency medicine shall be authorized to function in a collaborative/consultative role as outlined in Part 2630, Chapter 1 unless his or her practice location is a Level One Hospital Trauma Center that is able to provide continuous twenty-four hour coverage and has an existing air ambulance system in place. Coverage will be authorized only for those emergency departments of licensed hospitals who have an average daily census of thirty (30) or fewer acute care/medical surgical occupied beds as defined by their Medicare Cost Report.

Source: Miss. Code Ann. §73-25-34 (1972, as amended).

Rule 5.8 Reporting Requirements. Annual reports detailing quality assurance activities, adverse or sentinel events shall be submitted for review to the Mississippi State Board of Medical Licensure by all institutions and/or hospitals operating telemergency programs.

Amended October 15, 2003. Amended November 4, 2004. Amended January 30, 2006. Amended May 20, 2010.

Source: Miss. Code Ann. §73-25-34 (1972, as amended).

Part 2635 Chapter 6: ~~Electromyography~~ Electrodiagnostic Testing

Rule 6.1 General. ~~Electromyography (EMG) falls into~~ Electrodiagnostic testing includes two primary categories: needle electromyography testing and nerve conduction testing. ~~Needle electromyography testing involves insertion of needle electrodes into skeletal muscles and concurrent observation of the electrical activity in those muscles by means of an oscilloscope and a loudspeaker. Nerve conduction testing is performed using the same equipment, but consists of surface stimulation or needle stimulation of peripheral nerves with an evaluation of the motor and/or sensory action potentials produced.~~

The purpose of both categories of ~~electromyography~~ electrodiagnostic testing is to detect abnormalities of the peripheral neuromuscular system or to determine the extent and degree of recovery of neuromuscular abnormalities~~ – that is, to diagnose~~.

Source: Miss. Code Ann. §73-43-11 (1972, as amended).

Rule 6.2 Delegation of ~~EMG~~ Electrodiagnostic Testing Procedures. ~~Electromyography~~ Electrodiagnostic testing is ~~an extension of the history and physical examination and~~ a clinical diagnostic study that must be considered only in the light of the clinical finding. The person performing ~~electromyography~~ electrodiagnostic testing must be able to elicit the pertinent history and perform the necessary examination to define the clinical problems. Differential diagnoses must be considered, and as abnormalities unfold or fail to unfold during the course of testing, the ~~electromyographic procedure~~ electrodiagnostic testing may be modified until a probable diagnosis is reached. ~~Results of electromyographic examinations are used for recommending surgical procedures and for determining the absence of disease with most serious prognoses.~~

~~EMG test~~ Electrodiagnostic testing procedures ~~do not follow any stereotyped pattern, and electromyography is almost impossible to standardize, including both needle explorations and nerve conduction testing. Collection of clinical and electrophysiologic data during EMG test procedures should be done by a qualified electrodiagnostic (EDX) physician consultant, but collection of some data can~~ may be delegated to a specifically trained non-physician or physician in a residency or fellowship training program ~~or fellowship~~. ~~This is to be done under the direct supervision of the EDX qualified physician consultant,~~ The responsible electrodiagnostic physician need not be physically present ~~whose presence is not required in the room where the procedure is being performed,~~ but must be immediately available within the same building~~, in order to furnish the non-physician employee (or other physician) with assistance and direction, if needed,~~ throughout the performance of the entire procedure.

Adopted November 20, 2003.

Source: Miss. Code Ann. §73-43-11 (1972, as amended).

Part 2635 Chapter 7: Internet Prescribing

Rule 7.1 Internet Prescribing. Essential components of proper prescribing and legitimate medical practice require that the physician obtains a thorough medical history and conducts an appropriate physical and/or mental examination before prescribing any medication ~~for the first time~~.

~~Exceptions to this circumstance that would be permissible may include, but not be limited to: admission orders for a newly hospitalized patient, prescribing for a patient of another physician for whom the prescriber is taking call, or continuing medication on a short-term basis for a new patient prior to the patient's first appointment. Established patients may not require a new history and physical examination for each new prescription, depending on good medical practice.~~

Prescribing drugs to individuals that the physician has never met and based solely on answers to a set of questions, as is found in Internet or toll-free telephone prescribing~~, is inappropriate,~~ fails to meet ~~a basic~~ an acceptable standard of care ~~that potentially places patient's health at risk~~ and could constitute unprofessional conduct ~~punishable by~~ subject to disciplinary action.

Adopted September 18, 2003. Amended July 15, 2004.

Source: Miss. Code Ann. §73-43-11 (1972, as amended).

~~***Part 2635 Chapter 8: Medical Expert Activities by Physicians***~~

~~*Rule 8.1 Authority and Purpose*. The Mississippi State Board of Medical Licensure (hereinafter referred to as "the Board") adopts these rules 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 rules 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.~~

~~*Source: Miss. Code Ann. §73-43-11 (1972, as amended).*~~

~~*Rule 8.2 Scope*. These rules 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).~~

~~No part of these rules 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 rules 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, or decisions of any court or administrative agency.~~

No part of these rules 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 rules to have any effect on physicians' participation in legal proceedings in a capacity other than as a medical expert.

Source: Miss. Code Ann. §73-43-11 (1972, as amended).

Rule 8.3 Definition of Medical Expert Activities. For the purposes of these rules 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:

A. Suggest or recommend to a person any medical advice or other agency (whether material or not material).
B. Perform medical services (including, but not limited to, a physical or mental examination of a person).
C. Conduct a review of a person's medical record.
D. Serve as a medical consultant.
E. Render a medical opinion concerning the diagnosis or treatment of a person.
F. Produce a written medical expert opinion report, affidavit, or declaration.
G. 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.

Source: Miss. Code Ann. §73-43-11 (1972, as amended).

Rule 8.4 Licensure and Qualification Requirements. 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 supersede the policies and rules of the Board in regards to unreferred diagnostic screening tests.

The practice of any physician not licensed in Mississippi that meets the licensure and qualification requirements stated in the above paragraph 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.

Source: Miss. Code Ann. §73-43-11 (1972, as amended).

Rule 8.5 Professional Standards. Any physician who performs medical expert activities must:

A. Comply with these rules and all applicable provisions of Mississippi law (e.g., statutes, court rules and decisions, and other administrative agency rules) with regard to the performance of medical expert activities.

B. Comply with medical ethics principles, including, but not limited to, ethics principles established by the American Medical Association and relevant medical specialty associations.

C. Be honest in all professional interactions involving his or her medical expert activities.

D. 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.

E. Not make or use any false, fraudulent, or forged statement or document.

Source: Miss. Code Ann. §73-43-11 (1972, as amended).

Rule 8.6 Professional Accountability for Violation of Rules. 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.

Any violation of Part 2635, Rule 8.5 as enumerated above shall constitute unprofessional conduct in violation of Mississippi Code, Section 73-25-29(8).

Source: Miss. Code Ann. §73-43-11 (1972, as amended).

Rule 8.7 Complaint Procedure, Investigation, Due Process, and Actions Available to the Board. Any person who has reason to believe that any physician may have failed to comply with any part of these rules 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.

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 rules. 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.

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 rules. 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 rules *in absentia*.

In disciplining a physician licensed to practice medicine in Mississippi or otherwise holding any physician professionally accountable pursuant to these rules and to the statutes, rulings, and other rules 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:

A. Denying, suspending, restricting, or revoking a Mississippi license to practice medicine.

B. Administering a public or private reprimand to a Mississippi licensed physician.

C. Assessing up to $10,000 of the reasonable investigation costs expended by the Board in investigating a Mississippi licensed physician.

D. Moving for an injunction in Chancery Court to prohibit any physician's further performance of medical expert activities.

E. Petitioning the Chancery Court to cite any noncompliant physician for contempt of court.

F. Referring the matter to another medical licensure authority or other legal authority for action regarding any physician.

G. 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).

Any physician who is found by the Mississippi State Board of Medical Licensure to have failed to comply with any part of these rules 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.

Source: Miss. Code Ann. §73-43-11 (1972, as amended).

Rule 8.8 Compliance Policy and Exemptions. In assuring compliance with these rules, 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 rules. Any physician who claims to be exempt from these rules shall have the burden of proving to the Board that the exemption is valid.

Amended May 20, 2010.

Source: Miss. Code Ann. §73-43-11 (1972, as amended).

References.

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

Mississippi Rule of Evidence 702

"Rules, 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.ms.gov

Hall v. Hilbun, 466 So. 2d 856 (Miss. 1985)

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.

"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)

Findings of Fact adopted by the Mississippi State Board of Medical Licensure on May 18, 2006.**

**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.

Part 2635 Chapter 9 Community-Based Immunization Programs

Rule 9.1 Scope. The administration of vaccinations clearly constitutes the practice of medicine, as defined by Mississippi Code Section 73-43-11, and thus may only be performed by a physician licensed to practice medicine in this state, or by a licensed nurse under the direction and supervision of a licensed physician.

Source: Miss. Code Ann. §73-43-11 (1972, as amended).

~~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 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 rules, the Mississippi State Board of Medical Licensure has attempted to tailor these rules 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 rules, 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 rules 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 rules, 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 rules.~~

~~*Rule 9.2 Definitions.* For the purpose of Part 2635, Chapter 9 only, the following term has the meaning indicated:~~

~~"Part-time" means a minimum of 20 hours per week.~~

Source: Miss. Code Ann. §73-43-11 (1972, as amended).

Rule 9.~~3~~2 Position. It is the position of the Mississippi State Board of Medical Licensure that vaccinations administered pursuant to a community-based public immunization program are considered to be under the direction and supervision of a physician, and thus do not constitute the unlawful practice of medicine, when all of the following criteria are met:

A. the vaccinations are administered to the public by a licensed ~~nurse and~~ provider who is:
    1. authorized under Mississippi statute or regulation to provide vaccinations and is
    2. subject to the regulation of a Mississippi regulatory agency.
B. The vaccinations are carried out pursuant to state and federal public health immunization programs or other programs which:
    1. shall be approved in advance by the Board;
    2. shall be conducted under the general supervision of a physician
        a. licensed in the state of Mississippi,
        b. who ~~is in at least part-time practice of~~ actively practices medicine at least 20 hours/week, and
        c. resides in the state of Mississippi; and,
    3. a single physician assumes responsibility for the safe ~~conduct of the immunization program~~ administration of the vaccine.

Adopted March 24, 2011.

Source: Miss. Code Ann. §73-43-11 (1972, as amended).

Part 2635 Chapter 10: Release of Medical Records

Rule 10.1 Definitions. For the purpose of Part 2635, Chapter 10 only, the following terms have the meanings indicated:

A. "Licensee" means any person licensed to practice medicine, osteopathic medicine, podiatric medicine or acupuncture in the state of Mississippi.
B. "Medical Records" means all records and/or documents relating to the treatment of a patient, including, but not limited to, family histories, medical histories, report of clinical findings and diagnosis, laboratory test results, x-rays, reports of examination and/or evaluation and any hospital admission/discharge records which the licensee may have.
C. "Patient" means a natural person who receives or should have received health care from a licensed licensee, under a contract, express or implied, whether or not the licensee is compensated for services rendered.
D. "Legal Representative" means an attorney, guardian, custodian, or in the case of a deceased patient, the executor/administrator of the estate, surviving spouse, heirs and/or devisees.

E. "Authorized Requesting Party" includes patient and legal representative as defined above who holds a valid written release and authorization.

Source: Miss. Code Ann. §73-43-11 (1972, as amended).

Rule 10.2 Medical Records - Property of Licensee~~/Clinic~~. Medical records, as defined herein, are and shall remain the property of the licensee ~~or licensees~~, in whose ~~clinic or~~ facility said records are maintained, subject~~, however,~~ to reasonable access to the information ~~contained in said records as set forth herein below~~ by authorized individuals or entities.

In the case of employed or contracted licensees (those lacking authority to manage or maintain medical records, medical record ownership shall be determined by federal and state statute and regulations. Licensees in such relationships shall make reasonable efforts to assure reasonable access to the information by authorized individuals or entities. Further, licensees should inform patients of procedures for release of records if the licensee is not the custodian of the records.

Source: Miss. Code Ann. §73-43-11 (1972, as amended).

Rule 10.3 Transfer of Patient Records to Another Licensee. A licensee ~~who formerly treated a patient~~ shall not refuse for any reason to make the information contained in ~~his or her~~ the medical records ~~of that patient~~ available upon valid request by ~~the patient, or legal representative of the patient,~~ authorized requesting party to another licensee presently treating the patient. The licensee has a right to request a written release from the patient or legal representative of the patient, authorizing the transfer prior to transfer of said documents. Upon receipt of the written release and authorization, the licensee must tender a copy of said documents to the other licensee within a reasonable period of time. Transfer of said documents shall not be withheld because of an unpaid bill for medical services, but the licensee is entitled to reasonable compensation paid in advance for any copy expenses as provided in Part 2635, Rule 10.6.

Source: Miss. Code Ann. §73-43-11 (1972, as amended).

Rule 10.4 Release of Patient Records to Patient. A licensee shall, upon request of ~~the patient, patient's legal representative, or other person~~ authorized requesting party holding a written release and authorization ~~(hereinafter, "authorized requesting party")~~, provide a copy of a patient's medical record to the authorized requesting party within a reasonable period of time. ~~; provided, however,~~

In those cases where release of psychiatric/psychological records directly to a patient would be deemed harmful to the patient's mental health or well-being, the licensee shall not be obligated to release the records directly to the patient, but shall, upon request, release the records to the patient's legal representative. The licensee has a right to request a written authorization prior to release of the records to any party other than the patient. Upon receipt of the written release and authorization, the licensee must tender a copy of the records to the authorized requesting party within a reasonable period of time. Transfer of the records shall not be withheld because of an unpaid bill for medical services, but the licensee is entitled to reasonable compensation paid in advance for any copy expenses as provided in Part 2635, Rule 10.6.

Source: Miss. Code Ann. §73-43-11 (1972, as amended).

Rule 10.5 Narrative Summary of Medical Record. In some cases, a requesting party may wish to obtain a narrative summary of the medical record, in lieu of, or in addition to a copy of the medical record. Upon such a request, the licensee may provide the narrative summary. The licensee may charge a reasonable fee for the time devoted to preparation of the medical record narrative summary.

Source: Miss. Code Ann. §73-43-11 (1972, as amended).

Rule 10.6 Duplication and Administrative Fees.

A. Licensees have a right to be reimbursed for duplication and other expenses relating to requests for medical records. The copying charge is set by Mississippi Code, Section 11-1-52 as follows:
   1. Any medical provider or hospital or nursing home or other medical facility shall charge no more than the following amounts to ~~patients or their representatives~~ an authorized requesting party for photocopying any patient's records:
      i. Twenty Dollars ($20.00) for pages one (1) through twenty (20);
      ii. One Dollar ($1.00) per page for the next eighty (80) pages;
      iii. Fifty Cents (50¢) per page for all pages thereafter.
      iv. Ten percent (10%) of the total charge may be added for postage and handling.
      v. Fifteen Dollars ($15.00) may be recovered by the medical provider or hospital or nursing home or other medical facility for retrieving medical records in archives at a location off the premises where the facility/office is located.
      vi. In addition, the actual costs of reproducing x-rays or other special records may be included.
      vii. The duplication and administrative fees authorized herein are not intended to include or restrict any fees charged in relation to expert testimony.

~~B. A licensee shall only charge normal, reasonable and customary charges for a deposition related to a patient that the licensee is treating or has treated.~~

~~C. Any medical provider shall charge no more than Twenty-five Dollars ($25.00) for executing a medical record affidavit, when the affidavit is requested by the patient or the patient's representative.~~

Source: Miss. Code Ann. §11-1-52 (1972, as amended).

Rule 10.7 Exclusion. Federal or state agencies providing benefit programs as well as contractual third party payers and administrators are excluded from the above stated fees. Records that are requested by state or federal agencies as well as contracted payers and administrators ~~for said benefit programs~~ may be billed at rates established by those payers and contracts. ~~shall pay an acceptable rate as established by the requesting federal or state agency.~~ The release of records as requested by state or federal agencies or third party payers and administrators may not be refused for failure to pay required fees.

Source: Miss. Code Ann. §73-43-11 (1972, as amended).

Rule 10.8 Violation of Rules. A refusal by a licensee to release patient records ~~as enumerated above~~ shall constitute unprofessional conduct, dishonorable or unethical conduct likely to deceive, defraud or harm the public in violation of Mississippi Code, Section 73-25-29(8)(d).

Amended March 16, 1995. Amended July 18, 2002. Amended September 18, 2003. Amended September 16, 2004. Amended May 17, 2007. Amended January 21, 2010.

Source: Miss. Code Ann. §73-43-11 (1972, as amended).

~~***Part 2635 Chapter 11: Prevention of Transmission of Hepatitis B Virus (HBV), Hepatitis C Virus (HCV) and Human Immunodeficiency Virus (HIV) to Patients***~~

~~*Rule 11.1 Scope.* The following rules of prescribed practice and reporting requirements for physicians and podiatrists licensed in the state of Mississippi are to protect the public from the risk of transmission of Hepatitis B Virus, Hepatitis C Virus and Human Immunodeficiency Virus from physicians to patients and to insure the maintenance of quality medical care by physicians and podiatrists who are HbeAg, HCV and HIV seropositive.~~

~~*Source: Miss. Code Ann. §73-43-11 (1972, as amended).*~~

~~*Rule 11.2 Definitions.* For the purpose of Part 2635, Chapter 11 only, the following terms have the meanings indicated:~~

- ~~A. "HBV" means Hepatitis B Virus.~~
- ~~B. "HCV" means Hepatitis C Virus.~~
- ~~C. "HIV" means Human Immunodeficiency Virus.~~
- ~~D. "HBeAg seropositive" means that a test of the practitioner's blood has confirmed the presence of Hepatitis Be antigen.~~
- ~~E. "HCV seropositive" means that a test of the practitioner's blood has confirmed the presence of Hepatitis C antigen.~~
- ~~F. "HIV seropositive" means that a test of the practitioner's blood has confirmed the presence of HIV antibody.~~
- ~~G. "Exposure Prone Procedure" means an invasive procedure in which there is an increased risk of per cutaneous injury to the practitioner by virtue of digital palpation of a needle tip or other sharp object in a body cavity or the simultaneous presence of the practitioner's fingers and a needle or other sharp instrument or object in a poorly visualized or highly confined anatomic site, or any other invasive procedure in which there is a significant risk of contact between the blood or body fluids of the practitioner and the blood or body fluids of the patient.~~
- ~~H. "Practitioners" or "Physicians" means any individual licensed to practice medicine, osteopathic medicine or podiatric medicine in the state of Mississippi.~~
- ~~I. "Act" means the Mississippi Medical Practice Act as found at Sections 73-25-1 through 73-27-19, Mississippi Code.~~

~~*Source: Miss. Code Ann. §73-43-11 (1972, as amended).*~~

~~*Rule 11.3 Use of Infection Control Precautions.* General Requirements~~
~~A practitioner who performs or participates in an invasive procedure or performs a function ancillary to an invasive procedure shall, in the performance of or participation in any such procedure or function, be familiar with, observe and rigorously adhere to both general infection control practices and universal blood and body fluid precautions as then recommended by the Federal Centers for Disease Control and Prevention to minimize the risk of transmission of the HBV or HIV from a practitioner to a patient, from a patient to a practitioner, from a patient to a patient, or from a practitioner to a practitioner.~~

~~Universal Blood and Body Fluid Precautions. For purposes of this rule, adherence to universal blood and body fluid precautions requires observance of the following minimum standards:~~

~~A. Protective Barriers. A practitioner shall routinely use appropriate barrier precautions to prevent skin and mucous membrane contact with blood and other body fluids of all patients. Gloves and surgical masks shall be worn and shall be changed after contact with each patient. Protective eyewear or face shields and gowns or aprons made of materials that provide an effective barrier shall be worn during procedures that commonly result in the generation of droplets, splashing of blood or body fluids, or the generation of bone chips. A practitioner who performs, participates in, or assists in a vaginal or cesarean delivery shall wear gloves and gowns when handling the placenta or the infant until blood and amniotic fluid have been removed from the infant's skin and shall wear gloves during post delivery care of the umbilical cord. If, during any invasive procedure, a glove is torn or punctured, the glove should be removed and a new glove used as promptly as patient safety permits.~~

~~B. Hand Washing. Hands and other skin surfaces shall be washed immediately and thoroughly if contaminated with blood or other body fluids. Hands shall be washed immediately after gloves are removed.~~

~~C. Per Cutaneous Injury Precautions. A practitioner shall take appropriate precautions to prevent injuries caused by needles, scalpels, and other sharp instruments or devices during procedures; when cleaning used instruments; during disposal of used needles, and when handling sharp instruments after procedures. If a needle stick injury occurs, the needle or instrument involved in the incident should be removed from the sterile field. To prevent needle stick injuries, needles should not be recapped, purposely bent or broken by hand, removed from disposable syringes, or otherwise manipulated by hand. After they are used, disposable syringes and needles, scalpel blades, and other sharp items should be placed for disposal in puncture resistant containers located as close as practical to the use area. Large bore reusable needles should be placed in puncture-resistant containers for transport to the reprocessing area.~~

~~D. Resuscitation Devices. To minimize the need for emergency mouth to mouth resuscitation, a practitioner shall ensure that mouthpieces, resuscitation bags, or other ventilation devices are available for use in areas in which the need for resuscitation is predictable.~~

~~E. Sterilization and Disinfection. Instruments or devices that enter sterile tissue or the vascular system of any patient or through which blood flows should be sterilized before reuse. Devices or items that contact intact mucous membranes should be sterilized before reuse. Devices or items that contact intact mucous membranes should be sterilized or receive high-level disinfection.~~

~~F. Precautions for Practitioners with High Risk Lesions and Dermatitis. Practitioners who have exudative lesions or weeping dermatitis must refrain from all direct patient care and from handling patient care equipment and devices used in performing invasive procedures until the condition is resolved.~~

~~G. Failure to Comply with Standards. Failure by a practitioner to adhere to the Universal Blood and Body Fluid Precautions established herein shall be deemed unprofessional conduct in violation of Section 73-25-29(8)(d). Upon report of a violation, the Board of Medical Licensure shall take action consistent with the~~

Medical Practice Act to determine if a violation has occurred, and if a violation has occurred, determine what sanctions, if any, are appropriate. The practitioner shall be entitled to the procedures guaranteed by the Act, including, but not necessarily limited to, a hearing concerning the charge(s).

Source: Miss. Code Ann. §73-43-11 (1972, as amended).

Rule 11.4 Screening/Reporting. It is recommended that physicians know their HIV, HBV or HCV antibody status and submit to the appropriate tests to determine this status on an annual basis on or before the physician's birthday.

Any practitioner who is or becomes HBeAg seropositive, HCV seropositive or HIV seropositive shall give written notice of such seropositivity to the Board of Medical Licensure on or before thirty (30) days from the date the seropositivity is determined.

The written notice of seropositivity as required in above paragraph shall be sent by registered mail to the attention of the Board's Executive Officer, and shall include a copy of the test results and identification of the physician's treating physician.

A panel shall be established to monitor physicians who are HIV seropositive, HBeAg seropositive or HCV seropositive. The panel shall consist of the physician's private physician(s), an infectious disease specialist with expertise in the epidemiology of HIV, HBV and HCV transmission, a practitioner with expertise in the procedures performed by the infected practitioner, a psychiatrist, and a member and/or Executive Officer of the Board of Medical Licensure. The above list is not intended to be all inclusive and other physicians or representatives of other fields of medicine can be added to the panel, at the request of either the infected physician, a panel member, and/or the Board of Medical Licensure.

The panel shall designate two or more of its members to meet with seropositive physicians to evaluate the physicians' practice, extent of illness and other factors to determine what modifications, if any, will be required in their practice patterns. In addition, the panel shall meet at least annually with the Board to report its progress, discuss enforcement and related issues.

Source: Miss. Code Ann. §73-43-11 (1972, as amended).

Rule 11.5 Confidentiality of Reported Information.

A. General Confidentiality.

Reports and information furnished to the Board pursuant to Part 2635, Rule 11.4 shall be confidential and privileged. Said reports and information shall not be subject to disclosure without prior written consent of the practitioner identified in the report.

B. Confidentiality of Identity of Seropositive Practitioners.

The identity of practitioners who have reported their status as carriers of HBV, HCV or HIV to the Board pursuant to Part 2635, Rule 11.4 shall be maintained in confidence by the Board and shall not be disclosed to any person, firm, organization, or entity, governmental or private, except as may be necessary in the investigation or prosecution of suspected violations of this rule and regulation or violation of the Mississippi Medical Practice Act.

C. Disclosure of Statistical Data.

~~Provided that the identity of reporting practitioners is not disclosed, the provisions of this rule shall not be deemed to prevent disclosure by the panel or Board of statistical data derived from such reports, including, the number and licensure class of practitioners having reported themselves as HbeAg, HCV and/or HIV seropositive and their geographical distribution.~~

~~*Source: Miss. Code Ann. §73-43-11 (1972, as amended).*~~

~~*Rule 11.6 Penalties.* HIV, HBV or HCV positive practitioners who perform exposure-prone procedures or otherwise practice contrary to the direction of the panel shall be guilty of unprofessional conduct in violation of Section 73-25-29(8)(d). Upon report of a violation, the Board shall take action consistent with the Act to determine if a violation has occurred and if so, determine what sanctions, if any, are appropriate. The practitioner shall be entitled to the procedures guaranteed by the Act including, but not limited to, a hearing concerning the charge(s).~~

~~*Source: Miss. Code Ann. §73-43-11 (1972, as amended).*~~

~~*Rule 11.7 HIV, HBV and HCV Tests.* All tests to determine HIV, HbeAg or HCV seropositivity should be performed at a standardized laboratory that is licensed in the state of Mississippi.~~

~~**Adopted July 1, 1992. Amended November 18, 1993. Amended September 23, 1999.**~~

~~*Source: Miss. Code Ann. §73-43-11 (1972, as amended).*~~

Part 2635 Chapter 12: Physician Advertising

Rule 12.1 Scope. The following rule on physician advertising applies to all individuals licensed to practice medicine, osteopathic medicine or podiatric medicine in the state of Mississippi.

Source: Miss. Code Ann. §73-43-11 (1972, as amended).

Rule 12.2 Definitions. For the purpose of Part 2635, Chapter 12 only, the following terms have the meanings indicated:

A. "Board" means the Mississippi State Board of Medical Licensure.
B. "Physician" means any individual licensed to practice medicine, osteopathic medicine or podiatric medicine in the state of Mississippi.
C. "Advertisement" or "Advertising" means any form of public communication, such as office signage, newspaper, magazine, telephone directory, medical directory, radio, television, direct mail, billboard, sign, computer, business card, billing statement, letterhead or any other means by which physicians may communicate with the public or patients.

Source: Miss. Code Ann. §73-43-11 (1972, as amended).

Rule 12.3 Requirements.

A. Subject to the requirements set forth herein below, any advertisement by a physician may include:
    1. The educational background or specialty of the physician.

2. The basis on which fees are determined, including charges for specific services.
3. Available credit or other methods of payment.
4. Any other non-deceptive information.

B. A physician may publicize himself or herself as a physician through any form of advertisement, provided the communication, (i) shall not be misleading because of the omission of necessary information, (ii) shall not contain any false or misleading statement, or (iii) shall not otherwise operate to deceive.

C. Because the public ~~can sometimes~~ may be deceived by the use of medical terms or illustrations that are difficult to understand, physicians should design the advertisement to communicate the information contained therein to the public in a readily comprehensible manner.

D. It is unethical to advertise in such a manner as to create unjustified medical expectations by the public. The key issue is whether advertising or publicity~~, regardless of format or content,~~ is true and not materially misleading.

E. In addition to the above general requirements, any advertisement or other form of public communication shall comply with the following specific requirements:

1. All advertisements and written communications pursuant to these rules shall include the name of at least one (1) physician responsible for its content. In the case of office signage at least one sign in reasonable proximity to the main entrance must bear the name of the responsible physician.
2. Whenever a physician is identified in an advertisement or other written communication, the physician should not be identified solely as "Doctor" or "Dr." but shall be identified as M.D. for medical doctors, D.O. for osteopathic physicians and D.P.M. for podiatric physicians.
3. A physician who advertises a specific fee for a particular service or procedure shall honor the advertised fee for at least ninety (90) days unless the advertisement specifies a longer period; provided that for advertisements in the yellow pages of a telephone directory or other media not published more frequently than annually, the advertised fee shall be honored for no less than one (1) year following publication.
4. A physician shall not make statements which are merely self-laudatory or statements describing or characterizing the quality of the physician's services.
5. No physician shall advertise or otherwise hold himself or herself out to the public as being "Board Certified" without, (i) a complete disclosure in the advertisement of the specialty board by which the physician was certified, and (ii) can submit proof of current certification by a specialty board recognized by the American Board of Medical Specialties or the American Osteopathic Association. The term "Board Certified" frequently appears in conjunction with a list of services that the physician or clinic provides. The general public could easily be misled into thinking that the physician is certified in all of those services.
6. No physician shall hold himself or herself out as a specialist in a particular field unless that physician has either, (i) completed a ~~"board approved" residency program, which provides specific training in the specialized field~~ residency program recognized by the Accreditation Council for Graduate Medical Education, by the American Osteopathic Association or by the American Podiatric Medical Association and can submit proof that such training was completed, or (ii) can submit proof that ~~while not completing a residency,~~ the licensee was "grandfathered" into a specialty by

~~successful completion of board examinations followed by~~ board certification by ~~the~~ a recognized specialty board of the American Board of Medical Specialties or the American Osteopathic Association. ~~A "board approved" residency program shall be limited to residency programs recognized by the American Medical Association, by the American Osteopathic Association, and by the American Podiatric Medical Association.~~

7. No physician shall compare his or her service with other physicians' services, unless the comparison can be factually substantiated; this precludes the use of terms such as "the best," "one of the best," or "one of the most experienced" or the like.
8. Where an advertisement includes a consumer-endorser's experience (i.e., patient testimonials), the advertisement must contain ~~an appropriately worded,~~ clear and prominent disclosure of (a) what the generally expected ~~performance~~ outcome would be in the depicted circumstances, and (b) the limited applicability of the endorser's experience. Although testimonials and endorsements are authorized under this rule, compliance will be strictly monitored as endorsements and testimonials are inherently misleading to the lay public and to those untrained in medicine.
9. Any claims of success, efficacy or result (i.e., cure) must have scientific evidence in substantiation of such claims.
10. Any claims that purport to represent "typical" results (results that consumers will generally achieve) must be based on a study of a sample of all patients who entered the program, or, if the claim refers to a subset of those patients, a sample of that subset.
11. Any claim made regarding the safety of a medical procedure or drug must also disclose the risk of adverse medical complications.
12. No physician shall claim to have any ~~new~~ drug or medication or ~~new~~ use of a drug or medication for a specific ailment or condition unless such drug or medication has an F.D.A. approved indication for such purpose.
13. Any claim that improvements can be achieved through surgery in a specified time period must also include disclosure of the typical recovery time.

F. Consistent with federal regulatory standards which apply to commercial advertising, a physician who is considering the placement of an advertisement or publicity release, whether in print, radio or television, should determine in advance that the communication or message is explicitly and implicitly truthful and not misleading. These standards require the advertiser to have a reasonable basis for claims before they are used in advertising. The reasonable basis must be established by those facts known to the advertiser, and those which a reasonable, prudent advertiser should have discovered.
G. The above rules do not prohibit physicians or clinics from authorizing the use of the physician's name or clinic name in medical directories, HMO directories, preferred provider agreements or other communications intended primarily for referral purposes.

Source: Miss. Code Ann. §73-43-11 (1972, as amended).

Rule 12.4 Violation of Rules. The above rules on physician advertising shall not be interpreted to alter or amend that which is otherwise provided by Mississippi statutory law or the rules on advertising adopted by the Federal Trade Commission.

If any physician subject to this rule advertises or enters into any communication in violation of the above rules, such act shall constitute unprofessional conduct, which includes dishonorable or

unethical conduct likely to deceive, defraud or harm the public, in violation of Mississippi Code, Sections 73-25-29(8)(d) and 73-27-13(h)(iv).

Source: Miss. Code Ann. §73-43-11 (1972, as amended).

Rule 12.5 Effective Date of Rules. The above rules pertaining to physician advertising shall become effective November 2, 1995. Amended January 24, 2008.

Source: Miss. Code Ann. §73-43-11 (1972, as amended).