

### **360-3-.02 Unprofessional Conduct Defined.**

O.C.G.A. §§ 43-34-8 and 43-1-19 authorize the Board to take disciplinary action against licensees for unprofessional conduct. “Unprofessional conduct” shall include, but not be limited to, the following:

- (1) Prescribing controlled substances for a known or suspected habitual drug abuser or other substance abuser in the absence of substantial justification.
- (2) Writing prescriptions for controlled substances for personal use or, except for documented emergencies, for immediate family members. For purposes of this rule, “immediate family members” include spouses, children, siblings, and parents.
- (3) Prescribing, ordering, dispensing, administering, selling or giving any amphetamine, sympathomimetic amine drug or compound designated as a Schedule II Controlled Substance under O.C.G.A. T. 16, Ch. 13, to or for any person except in the following situations:
  - (a) Treatment of any of the following conditions:
    1. Attention deficit disorder;
    2. Drug induced brain dysfunction;
    3. Narcolepsy and/or hypersomnolence;
    4. Epilepsy; or
    5. Depression or other psychiatric diagnosis.
  - (b) For clinical investigations conducted (1) under protocols approved by a state medical institution permitted by the Georgia Department of Human Services (DHS) with human subject review under the guidelines of the United States Department of Health and Human Services.
- (4) Pre-signing prescriptions that have the patient’s name, type of medication, or quantity blank.
- (5) Prescribing controlled substances (O.C.G.A. T. 16, Ch. 13, Art. 2) and/or dangerous drugs (O.C.G.A. T. 16, Ch. 13, Art. 3) for a patient based solely on a consultation via electronic means with the patient, patient’s guardian or patient’s agent. This shall not prohibit a licensee who is on-call or covering for another licensee from prescribing up to a 72-hour supply of medications for a patient of such other licensee nor shall it prohibit a licensee from prescribing medications when documented emergency circumstances exist.
- (6) Providing treatment via electronic or other means unless a history and physical examination of the patient has been performed by a Georgia licensee. This shall not prohibit a licensee who is on call or covering for another licensee from treating and/or consulting a patient of such other licensee. Also, this paragraph shall not prohibit a patient’s attending physician from obtaining consultations or recommendations from other licensed health care providers.

- (7) Failing to maintain appropriate patient records whenever Schedule II, III, IV or V controlled substances are prescribed. Appropriate records, at a minimum, shall contain the following:
- (a) The patient's name and address;
  - (b) The date, drug name, drug quantity, and patient's diagnosis necessitating the Schedule II, III, IV, or V controlled substances prescription; and
  - (c) Records concerning the patient's history.
- (8) Committing any act of sexual intimacy, abuse, misconduct, or exploitation of any individual related to the physician's practice of medicine regardless of consent. The rule shall apply to former patients where the licensee did not terminate in writing the physician patient relationship before engaging in a romantic or sexual relationship with the patient and/or where the licensee used or exploited the trust, knowledge, emotions or influence derived from the prior professional relationship. The Board will consider the physician patient relationship terminated if the physician has not evaluated or treated the patient for a period of at least two (2) years.
- (9) Failing to comply with the provisions of O.C.G.A. Section 31-9- 6.1 and Chapter 360-14 of the Rules of Georgia Composite Medical Board relating to informed consent, which requires that certain information be disclosed and that consent be obtained regarding any surgical procedure performed under general anesthesia, spinal anesthesia, or major regional anesthesia or an amniocentesis procedure or a diagnostic procedure that involves the intravenous injection of a contrast material.
- (10) Failing to conform to the recommendation of the Centers for Disease Control for preventing transmission of the Human Immunodeficiency Virus, Hepatitis B Virus, Hepatitis C Virus, and Tuberculosis to patients during exposure-prone invasive procedures. It is the responsibility of all persons currently licensed by the Board to maintain familiarity with these recommendations, which the Board considers the minimum standards of acceptable and prevailing medical practice.
- (11) Failing to timely respond to an investigative subpoena issued by the Board.
- (12) Conducting a physical examination of the breast and/or genitalia of a patient of the opposite sex without a chaperone present.
- (13) Practicing medicine while mentally, physically, or chemically impaired.
- (14) Failing to use such means as history, physical examination, laboratory, or radiographic studies, when applicable, to diagnose a medical problem.
- (15) Failing to use medications and other modalities based on generally accepted ~~and~~ or approved indications, with proper precautions to avoid adverse physical reactions, habituation, or addiction in the treatment of patients. However, nothing herein shall be interpreted to prohibit investigations conducted under protocols approved by a state medical institution permitted by DHS and with human subject review under the guidelines of the United States Department of Health and Human Services.

(16) Failing to maintain patient records documenting the course of the patient's medical evaluation, treatment, and response.

(a) A physician shall be required to maintain a patient's complete medical record, which may include, but is not limited to, the following: history and physical, progress notes, Xray reports, photographs, laboratory reports, and other reports as may be required by provision of the law. A physician shall be required to maintain a patient's complete treatment records for a period of no less than 10 years from the patient's last office visit.

(b) The requirements of this rule shall not apply to a physician who has retired from or sold his or her medical practice if:

1. such physician has notified his or her patients of retirement from or sale of practice by mail, at the last known address of his or her patients, offering to provide the patient's records or copies thereof to another provider of the patient's choice and, if the patient so requests, to the patient;

2. has caused to be published, in the newspaper of greatest circulation in each county in which the physician practices or practiced and in a local newspaper that serves the immediate practice area, a notice which shall contain the date of such retirement or sale that offers to provide the patient's records or copies thereof to another provider of the patient's choice, and if the patient so requests, to the patient; and

3. has placed in a conspicuous location in or on the façade of the physician's office, a sign announcing said retirement or sale of the practice. The sign shall be placed 30 days prior to retirement or the sale of the practice and shall remain until the date of retirement or sale.

4. Both the notice and sign required by Rule 360-3-.02(16)(c) shall advise the physician's patients of their opportunity to transfer or receive their records.

(c) The period specified in this rule may be less than the length of time necessary for a physician to protect himself or herself against other adverse actions. Therefore, physicians may wish to seek advice from private counsel or their malpractice insurance carrier.

(17) Continuing to practice after the expiration date of the license.

(18) Any other practice determined to be below the minimal standards of acceptable and prevailing practice.

(19) Providing a false, deceptive or misleading statement(s) as a medical expert.

(20) Failing to report to the Board within 30 days of becoming unable to practice medicine with reasonable skill and safety by result of illness or use of alcohol, drugs, narcotics, chemicals, or any other type of material, or as a result of any mental or physical condition.

(21) (For a physician) Delegating to unlicensed medical assistants the authority to inject botulinum toxin and dermal filler.

(22) Failing to comply with Rule 360-3-.06.

Authority O.C.G.A. Secs. 16-13-41, 16-13-74, 31-9-6.1, 31-33-2, 43-1-19, 43-1-25, 43-34-5, 43-34-8, 43-34-21, 43-34-23, 43-34-24, and 43-34-25

**Rule 360-3-.06. Pain Management.**

(1) Definitions. As used in this rule, the following terms shall mean:

(a) “Annual patient population” shall mean those patients seen by a clinic or practice in a twelve month calendar year, but shall not include patients that are in-patient in hospital, nursing home or hospice facilities licensed pursuant to O.C.G.A. T. 31, Ch. 7.

(b) “Board” shall mean the Georgia Composite Medical Board.

(c) “Chronic pain” shall mean pain requiring treatment which has persisted for a period of ninety days or greater in a year, but shall not include perioperative pain, i.e., pain immediately preceding and immediately following a surgical procedure, when such perioperative pain is being treated by a physician in connection with a surgical procedure.

(d) “Monitoring” means any method to assure treatment compliance including but not limited to the use of pill counts, pharmacy or prescription program verification. Monitoring must include a urine, saliva, sweat, or serum test performed on a random basis.

(e) “Terminal condition” means an incurable or irreversible condition, which would result in death in a relatively short period of time.

(2) O.C.G.A. § 43-34-8 authorizes the Board to take disciplinary action against licensees for unprofessional conduct, which includes conduct below the minimum standards of practice. With respect to the prescribing of controlled substances for the treatment of pain and chronic pain, the Board has determined that the minimum standards of practice include, but are not limited to the following:

(a) Physicians cannot delegate the dispensing of controlled substances to an unlicensed person.

(b) When prescribing controlled substances, a physician shall use a prescription pad that complies with state law.

(c) When initially prescribing a controlled substance for the treatment of pain or chronic pain, a physician shall have a medical history of the patient, a physical examination of the patient shall have been conducted, and informed consent shall have been obtained. In the event of a documented emergency, a physician may prescribe an amount of medication to cover a period of not more than 72 hours without a physical examination.

(d) When a physician is treating a patient with controlled substances for pain or chronic pain for a condition that is not terminal, the physician shall obtain or make a diligent effort to obtain any prior diagnostic records relative to the condition for which the controlled substances are being prescribed and shall obtain or make a diligent effort to obtain any prior pain treatment records. The records obtained from prior treating physicians shall be maintained by the prescribing physician with the physician’s medical records for a period of at least ten (10) years. If the physician has made a diligent effort and is unable to obtain prior diagnostic records, then the

physician must order appropriate tests to document the condition requiring treatment for pain or chronic pain. If the physician has made a diligent effort and the prior pain treatment records are not available, then the physician must document the efforts made to obtain the records and shall maintain the documentation of the efforts in his/her patient record.

(e) When a physician determines that a patient for whom he is prescribing controlled scheduled substances is abusing the medication, then the physician shall make an appropriate referral for treatment for substance abuse.

(f) When prescribing a Schedule II or III controlled substance for 90 (ninety) days or greater for the treatment of chronic pain arising from conditions that are not terminal, a physician must have a written treatment agreement with the patient and shall require the patient to have a clinical visit at least once every three (3) months to evaluate the patient's response to treatment, compliance with the therapeutic regimen through monitoring appropriate for that patient, and any new condition that may have developed and be masked by the use of Schedule II or III controlled substances. The physician shall respond to any abnormal result of any monitoring and such response shall be recorded in the patient's record. Exceptions to the requirement of a clinical visit once every three (3) months may be made for hardship in certain cases and such hardship must be well documented in the patient record. When a physician determines that a new medical condition exists that is beyond their scope of training, he/she shall make a referral to the appropriate practitioner.

(g) Any physician who prescribes Schedule II or III substances for chronic pain for greater than 50% of that physician's annual patient population must document competence to the Board through certification or eligibility for certification in pain management or palliative medicine as approved by the Georgia Composite Medical Board ("Board"). The Board recognizes certifications in pain medicine or palliative medicine by the American Board of Medical Specialties or the American Osteopathic Association, the American Board of Pain Medicine and the American Board of Interventional Pain Physicians. If the physician does not hold this certification or eligibility he/she must demonstrate competence by biennially obtaining 20 (twenty) hours of continuing medical education ("CME") pertaining to pain management or palliative medicine. Such CME must be an AMA/AOA PRA Category I CME, a board approved CME program, or any federally approved CME. The CME obtained pursuant to this rule may count towards the CME required for license renewal.

Authority: O.C.G.A. Secs. 31-32-2, 31-33-2, 16-13-21, 16-13-41, 16-13-74, 26-4-130, 43-1-19, 43-34-5, 43-34-8, 43-34-11, 43-34-21, 43-34-23 and 43-34-25.

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