

Georgia Composite Medical Board

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NOTICE OF INTENT TO AMEND AND ADOPT RULES

TO ALL INTERESTED PARTIES:

Notice is hereby given that pursuant to the authority set forth below, the Georgia Composite Medical Board (hereinafter “Board”) proposes amendments to the Georgia Composite Medical Board Rules by amending **Rule 360-3-.02 “Unprofessional Conduct Defined.”** An exact copy of the proposed rule is attached to this Notice.

This notice, together with an exact copy of the proposed rules and a synopsis of the proposed amendments may be reviewed between 8:00 a.m. and 4:00 p.m., Monday through Friday, except official state holidays, at 2 Peachtree Street, NW, 6th Floor, Atlanta, GA 30303. These documents can also be reviewed online at <https://medicalboard.georgia.gov/board/notice-intent-amendadopt-rules>.

A public hearing is scheduled to begin at **8:30 a.m. on January 5, 2023, via TEAMS** to provide the public an opportunity to comment upon and provide input into the proposed rules. At the public hearing, any interested person may present data, make a statement or comment, or offer a viewpoint or argument orally or in writing. Lengthy statements and statements of a considerable technical or economic nature, as well as previously recorded messages, must be submitted for the official record. Oral statements should be concise and will be limited to five minutes per person. Additional comments should be presented in writing. To ensure their consideration, submit all written comments by **December 22, 2022, to Kierra.Battle@dch.ga.gov** or via mail to the Georgia Composite Medical Board Rules Committee at 2 Peachtree Street, NW, 6th Floor, Atlanta, Georgia 30303.

The Board voted to adopt this Notice of Intent on **November 3, 2022**. Upon conclusion of the public hearing on **January 5, 2023**, the Board will consider whether the formulation and adoption of these proposed rule amendments imposes excessive regulatory costs on any license or entity, and whether any cost to comply with the proposed rule amendments could be reduced by a less expensive alternative that accomplishes the objectives of the statutes which are the basis of the proposed rule. Additionally, the Board will consider whether it is legal or feasible in meeting the objectives of the applicable laws to adopt or implement differing actions for businesses as listed in O.C.G.A. § 50-13-4(3)(A), (B), (C), and (D).

This Notice is adopted and posted in compliance with O.C.G.A. § 50-13-4 of the Georgia Administrative Procedures Act. A synopsis of the proposed rules and an economic impact statement are attached to this Notice. The authority for promulgation of these rules is O.C.G.A. Secs. 43-34-5, 43-34-103, and 43-34-108.

Issued this day November 3, 2022.

Daniel R. Dorsey
Executive Director

ECONOMIC IMPACT AND SYNOPSIS FOR

RULE CHAPTER 360-3 Investigations and Discipline

ECONOMIC IMPACT:

The attached rules are promulgated under the authority of the Medical Practice Act, Title 43, Chapter 34. The Georgia Composite Medical Board licenses and regulates nine professions. The formulation and adoption of these rules do not impose excessive regulatory cost on any licensee, and any cost to comply with the proposed rule cannot be reduced by a less expensive alternative that fully accomplishes the objectives of Article 2 of Chapter 34 of Title 43 of the Official Code of Georgia Annotated. Additionally, it is not legal or feasible to meet the objectives of the Article 2 of Chapter 34 of Title 43 of the Official Code of Georgia Annotated to adopt or implement differing actions for businesses listed in O.C.G.A. §50-13-4(a)(3)(A), (B), (C) and (D).

RULE SYNOPSIS:

Rule 360-3-.02 “Unprofessional Conduct Defined”

Purpose/Main Features: The purpose of the proposed amendment is to remove the condition that the chaperone be of the opposite sex and allow for situations either where the patient does not want a chaperone in the room or when the patient affirmatively makes the request of the practitioner.

Authority: O.C.G.A. §§ 16-13-41, 16-13-74, 31-9-6.1, 31-33-2, 43-1-19, 43-1-25, 43-34-5(c), 43-34-8(a)(7), 43-34-21, 43-34-23, 43-34-24, 43-34-24.1, 43-34-25, 43-34-37, 21, U.S.C. § 802(54) (the Ryan Haight Act)

Rule 360-3-.02 Unprofessional Conduct Defined

O.C.G.A. §§ 43-1-19 and 43-34-37 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.
 6. Weight loss management, if drug has been approved by the FDA for that indication.
 - (b) For clinical investigations conducted 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 from prescribing a dangerous drug for a patient pursuant to a valid physician-patient relationship in accordance with O.C.G.A. 33-24-56.4 or a licensee who is on-call or covering for another licensee from prescribing up to a 30-day supply of medications for a patient of such other licensee nor shall it prohibit a licensee from prescribing medications when documented emergency circumstances exist.

This shall also not prevent a licensed physician from prescribing Schedule II sympathomimetic amine drugs for the treatment of attention deficit disorder to a patient in the physical presence of a licensed nurse, provided the initial diagnosis was made and an initial prescription was issued in accordance with 21 U.S.C. § 829(e), as amended from time to time, including but not limited to the following:

- (a) The physician has conducted at least one in-person medical evaluation of the patient; or
- (b) The physician is covering for a licensee who is temporarily unavailable and has conducted at least one in-person medical evaluation of the patient; or
- (c) The physician is engaged in the practice of telemedicine in accordance with Board Rule 360-3-.07 and with 21 U.S.C. §§ 802(54) and 829Ce)(3)(A), including, but not limited to:

1. Where the patient is being treated by, and physically located in, a hospital or clinic registered with the U.S. Drug Enforcement Agency ("DEA"), the physician is registered with the DEA, and all other requirements of 21 U.S.C. § 802(54)(A) are met; or
2. Where the patient is being treated by, and physically in the presence of, a licensee who is registered with the DEA, and all other requirements of 21 U.S.C. § 802(54)(B) are met; or
3. Where the physician has obtained from the U.S. Attorney General a special registration for telemedicine in accordance with 21 U.S.C. §§ 802(54)(E) and 831(h).

(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.~~ Conducting a physical examination of the breast and/or genitalia without a chaperone present, unless the patient or the patient's parent or guardian specifically requests that a chaperone not be present for this portion of the clinical encounter which shall be

documented in the patient's medical record. Physicians at their discretion may refuse to conduct an examination of the breast and/or genitalia 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 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, X-ray 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 active 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 facade 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 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 minima I 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, unless the physician has reported to the Physician Health Program.

(21)(For a physician) Delegating the injection of botulinum toxin and/or dermal fillers to medical assistants.

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

Authority: O.C.G.A. §§ 16-13-41, 16-13-74, 31-9-6.1, 31-33-2, 43-1-19, 43-1-25, 43-34-5(c), 43-34-8(a)(7), 43-34-21, 43-34-23, 43-34-24, 43-34-24.1, 43-34-25, 43-34-37, 21 U.S.C. § 802(54) (the Ryan Haight Act).