Georgia Composite Medical Board

Executive Director
LaSharn Hughes, MBA

Chairperson
John Jeffery Marshall, MD

Vice Chairperson
B. Krishna Mohan, MD

2 Peachtree Street, NW • 6th Floor • Atlanta, Georgia 30303 • (404) 656-3913 • www.medicalboard.georgia.gov

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-.06 "Pain Management." An exact copy of the proposed rules 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 http://medicalboard.georgia.gov/notice-intent-amendadopt-rules.

A public hearing is scheduled to begin at **8:00 a.m**. on **June 13, 2019 at** 2 Peachtree Street, N.W., 5th Floor, Atlanta, Georgia 30303 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 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 5 minutes per person. Additional comments should be presented in writing. To ensure their consideration, submit all written comments by **June 6, 2019 to Diane Atkinson at matkinson@dch.ga.gov** or via mail to the Georgia Composite Medical Board Rules Committee at 2 Peachtree Street, N.W., 6th Floor, Atlanta, Georgia 30303.

The Board voted to adopt this Notice of Intent on **April 11, 2019**. Upon conclusion of the public hearing on **June 13, 2019,** 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. §§43-34-5(c), and 4-34-8(a)(7).

Issued this day May 7, 2019.

LaSharn Hughes, MBA
Executive Director
Georgia Composite Medical Board

ECONOMIC IMPACT AND SYNOPSIS FOR

RULE CHAPTER 360-3

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:

Rule360-3-.06 "Pain Management"

Purpose/Main Features: The purpose of the proposed amendment is to refine the minimum standards for ongoing clinical examination of patients in the use of controlled substances in the treatment of pain and chronic pain.

Authority: O.C.G.A. §§43-34-5(c) and 43-34-8(a)(7)

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) consecutive days or greater for the treatment of chronic pain arising from conditions that are not terminal or patients who are not in a nursing home or hospice, 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, while treating for pain, to evaluate the patient's response to treatment, compliance with the therapeutic regimen and any new condition that may have developed and be masked by the

use of Schedule II or III controlled substances. The requirement of a visit at a minimum of once every three months can be waived and the clinical visit be at least once per year if the doctor determines there is a substantial hardship and documents such hardship in the patient's record or if the morphine equivalent daily dose ("MEDD") is 30 mg. or less.

(g) When prescribing a Schedule II or III controlled substance for 90 (ninety) consecutive days or greater for the treatment of chronic pain arising from conditions that are not terminal or patients in a nursing home or hospice, a physician must monitor compliance with the therapeutic regimen. Patients should be randomly monitored at least annually via bodily fluid analysis. ~~Drug Screens: Body fluid analysis must be randomly performed and documented at least once per year.~~ However, body fluid analysis may be performed more frequently than once a year, if the provider considers it to be necessary in his/her patient population, in order to assess and assure compliance with the prescribed treatment regimen. ~~This means that body fluid analysis (drug screens) must be performed at least four times a year on a random basis or done at the same frequency proportionate to the period of treatment. Exceptions to the requirement of a~~ A clinical examination should occur once every three (3) months, ~~may be made~~ except for ~~for~~ hardship in certain cases, which ~~and such hardship~~ must be well documented in the patient record. ~~The exception to this monitoring is when the morphine equivalent daily dose (MEDD) is 30 mg or less. In that case fluid monitoring shall be performed at least once per year.~~

(h) The physician shall respond to any abnormal result of any monitoring and such response shall be recorded in the patient's record.

(i) 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.

(j) 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.