

GEORGIA COMPOSITE MEDICAL BOARD

EXECUTIVE DIRECTOR
LaSharn Hughes, MBA



BOARD CHAIRPERSON
William J. Butler, MD

2 Peachtree Street, N.W., 36th Floor • Atlanta, Georgia 30303 • Tel: 404.656.3923 • <http://www.medicalboard.georgia.gov>
E-Mail: medbd@dch.ga.gov

GEORGIA COMPOSITE MEDICAL BOARD **NOTICE OF INTENT TO AMEND AND ADOPT RULES**

TO ALL INTERESTED PARTIES:

Notice is hereby given by the Georgia Composite Medical Board that it intends to amend **360-3-.02 Unprofessional Conduct Defined and 360-3-.07 Practice Through Electronic or Other Such Means**” 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 rules are being emailed to all persons who have requested, in writing, that they be placed on the mailing list. A copy of this notice, an exact copy of the proposed rules and a synopsis of the proposed rules may be reviewed during normal business hours of 8:00a.m. to 5:00 p.m., Monday through Friday, except official State holidays, at the office of the Georgia Composite Medical Board, 2 Peachtree Street, N.W., 36th Floor, Atlanta, Georgia 30303.

Any interested person who will be affected by these rules may present his or her comments to the Board no later than **May 30, 2013** or make comments at the public hearing. Comments may be directed to Carol Dorsey, Georgia Composite Medical Board, 2 Peachtree Street, N.W., 36th Floor, Atlanta, Georgia 30303-3465 or may be received by the Board by e-mail at cdorsey@dch.ga.gov.

A public hearing is scheduled to begin at **8:30 a.m. on June 6, 2013** at the 36th Floor Board Room, 2 Peachtree Street, N.W., Atlanta, Georgia 30303, to provide the public an opportunity to comment upon and provide input into the proposed rules.

The Board voted to adopt this Notice of Intent on **April 4, 2013** meeting. The Board will consider at its meeting on **June 6, 2013 at 8:30 a.m.** the comments from the public hearing 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 at its meeting on **June 6, 2013**, 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)(D).

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The authority for promulgation of these rules is O.C.G.A. Secs. 16-13-41, 16-13-74, 31-9-6.1, 31-33-2, 43-1-19, 43-34-21, 43-34-23, 43-34-24, 43-34-24.1, 43-34-25, 43-34-37. and the specific statutes cited in the proposed rules.

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.

Date: April 8, 2013

Signed: LaSharn Hughes
LaSharn Hughes, MBA
Executive Director
Georgia Composite Medical Board

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ECONOMIC IMPACT AND SYNOPSIS FOR AMENDMENTS TO 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 this rule does 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 at O.C.G.A. § 50-13-4(a)(3)(A), (B), (C) and (D).

RULE SYNOPSIS:

360-3-.02 Unprofessional Conduct Defined.

Purpose/Main Feature:

Rule 360-3-.02(5)(6)(24) The purpose of this rule change is to reflect the changes in the new Rule 360-3-.07.

Rule 360-3-.02(22) The purpose of this rule is to refer physicians to the scope of practice for a medical assistant.

360-3-.07 Practice Through Electronic or Other Such Means

Purpose/Main Feature:

The new rule clarifies under what circumstances medical practice by electronic means (commonly referred to as telemedicine) is within the minimum standards of practice.

Authority O.C.G.A. Secs. 16-13-41, 16-13-74, 31-9-6.1, 31-33-2, 43-1-19, 43-34-21, 43-34-23, 43-34-24, 43-34-24.1, 43-34-25, 43-34-37.

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) Except as provided in Board Rule 360-3-.07 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 as provided in Board Rule 360-3-.07. 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 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) For a physician to delegate to a medical assistant items outside of the scope of Rule 360-3-.05.

~~(22)~~ (23) Failing to comply with Rule 360-3-.06.

(24) Failing to comply with Rule 360-3-.07.

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

360-3-.07 Practice Through Electronic or Other Such Means

(a) Under O.C.G.A. §§ 43-34-8 and 43-1-19, the Board is authorized to take disciplinary action against licensees for unprofessional conduct, and in connection therewith, to establish standards of practice. Except as otherwise provided, in order for a physician to practice within the minimum standards of practice while providing treatment and/or consultation recommendations by electronic or other such means, all the following conditions must be met:

(1) All treatment and/or consultations must be done by Georgia licensed practitioners;

(2) A history of the patient shall be available to the Georgia licensed physician, physician assistant or advanced practice registered nurse who is providing treatment or consultation via electronic or other such means;

(3) A Georgia licensed physician, physician assistant or advanced practice registered nurse either:

a. Has personally seen and examined the patient and provides ongoing or intermittent care by electronic or other such means; or

b. Is providing medical care by electronic or other such means at the request of a physician, physician assistant or advanced practice registered nurse licensed in Georgia who has personally seen and examined the patient; or

c. Is providing medical care by electronic or other such means at the request of a Public Health Nurse, a Public School Nurse, the Department of Family and Children's Services, law enforcement, community mental health center or through an established child advocacy center for the protection of a minor, and the physician, physician assistant or advanced practice registered nurse is able to examine the patient using technology and peripherals that are equal or superior to an examination done personally by a provider within that provider's standard of care; or

d. Is able to examine the patient using technology and peripherals that are equal or superior to an examination done personally by a provider within that provider's standard of care.

(4) The Georgia licensed physician, physician assistant or advanced practice registered nurse providing treatment or consultations by electronic or other means must maintain patient records on the patient and must document the evaluation and treatment along with the identity of the practitioners providing the service by electronic or other means, and if there is a referring practitioner, a copy of this record must also be provided to the referring physician, physician assistant or advanced practice registered nurse;

(5) A Georgia licensed physician may not delegate the provision of medical care by electronic or other such means to a Georgia licensed physician assistant or an advanced practice registered nurse unless:

a. The Georgia licensed physician participates regularly in providing care to the patients by electronic or other such means, and

b. The Georgia licensed physician has:

1. Seen or examined the same patient in person first or has provided the initial treatment or consultation for the patient by electronic or other such means; or

2. Personally and directly observed the physician assistant or advanced practice registered nurse on six patient consultations by electronic or other means and has documented such observations and filed such documentation with the Board; or

3. Filed with the Board evidence that the physician assistant or advanced practice registered nurse has completed a minimum of three (3) hours of Board approved training in the area of telemedicine techniques and Georgia rules on providing patient care by electronic or other means.

(6) Patients treated by electronic or other such means or patient's agent must be given the name, credentials and emergency contact information for the Georgia licensed physician, physician assistant and/or advanced practice registered nurse providing the treatment or consultation. Emergency contact information does not need to be provided to those treated within the prison system while incarcerated but should be provided to the referring provider. For the purposes of this rule, "credentials" is defined as the area of practice and training for physicians, and for physician assistants and advanced practice registered nurses, "credentials" shall mean the area of licensure and must include the name of the delegating physician or supervising physician;

(7) The patient being treated via electronic or other means or the patient's agent must be provided with clear, appropriate, accurate instructions on follow-up in the event of needed emergent care related to the treatment. In the case of prison patients, prison staff will be provided this information if the consult is provided to an inmate; and

(8) The physician, physician assistant or nurse practitioner who provides care or treatment for a patient by electronic or other such means must make diligent efforts to have the patient seen and examined in person by a Georgia licensed physician, physician assistant or nurse practitioner at least annually.

(b) This rule should not be interpreted to interfere with care and treatment by telephonic communication in an established physician-patient relationship, call coverage for established physician-patients relationships, or telephone and internet consultations between physicians, nurse practitioners, physician assistants, other healthcare providers or child protection agencies.

(c) This rule does not authorize the prescription of controlled substances for the treatment of pain or chronic pain by electronic or other such means. All treatment of pain or chronic pain must be in compliance with Rule 360-3-.06.

(d) Nothing in this rule shall excuse a physician, nurse practitioner or physician assistant from ordering appropriate laboratory or other diagnostic tests needed to make diagnoses within the minimum standard of care.

(e) Nothing in this rule shall supersede any requirements provided for by other rules or laws.

(f) Licensees practicing by electronic or other means will be held to the same standard of care as licensees employing more traditional in-person medical care. A failure to conform to the appropriate standard of care, whether that care is rendered in person or via electronic or other such means, may subject the licensee to disciplinary action by the Board.

Authority: O.C.G.A. Sections 43-34-5(c), 43-34-8, 43-34-23 and 43-34-25, 43-34-31, 43-34-103 and 43-34-105.

4/4/2013