

Mississippi Administrative Code

Title 30 - Professions and Occupations

Part 2635 - Practice of Medicine

Chapter 8 - Medical Expert Activities by Physicians

Rule 30-2635-8.8 - Compliance Policy and Exemptions

Universal Citation: MS Code of Rules 30-2635-8.8

Current through March 29, 2023

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.

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.msaml.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.

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.

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

Amended May 20, 2010.

Amended 5/10/2017

Amended 9/14/2017

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