

**\*OKLAHOMA ADMINISTRATIVE CODE  
TITLE 435. STATE BOARD OF MEDICAL LICENSURE AND SUPERVISION**

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## CHAPTER 1. ADMINISTRATION AND ORGANIZATION

### Section

- 435:1-1-1. Purpose
- 435:1-1-1.1 Definitions
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- 435:1-1-9. Declaratory rulings
- 435:1-1-10. Duties of the Secretary/Medical Advisor

[**Authority:** Title 59 O.S., Section 489, 75 O.S., Sections 302, 305, 307]

[**Source:** Codified 12-30-91]

### **435:1-1-1. Purpose**

The rules of this Chapter have been adopted to establish the organizational and procedural framework of the agency and Board.

### **435:1-1-1.1 Definitions**

The following words and terms, when used in this Chapter, shall have the following meaning, unless the context clearly indicates otherwise:

“**Act**” means the Oklahoma Allopathic Medical and Surgical Licensure and Supervision Act, 59 O.S. §§ 480 **et seq.**

“**Board**” means the Oklahoma Board of Medical Licensure and Supervision.

“**Board offices**” or “**Board’s office**” means the offices of the Board at which business of the Board is conducted.

[**Source:** Added at 11 Ok Reg 4525, eff 7-27-94 (emergency); Added at 12 Ok Reg 1209, eff 5-11-95]

### **435:1-1-2. Description of organization**

(a) The Board is created by the Oklahoma Legislature, 59 O.S. Section 481. The Board has the authority and duty to regulate and administer the practice of allopathic medicine in this state and related practice placed under the authority of the Board by the Oklahoma Legislature.

(b) The Board consists of nine (9) members who are qualified and appointed in accordance with the provisions of 59 O.S. Section 482. The two (2) lay members of the Board, appointed in accordance with 59 O.S. § 481, shall participate in all matters before the Board.

(c) The powers and duties of the Board are set forth in the Act, the Physical Therapy Practice Act, 59 O.S. Sections 887.1 through 887.17, the Registered Electrologist Act, 59 O.S. Sections 536.1 through 536.14, the Occupational Therapy Practice Act, 59 O.S. Sections 888.1 through 888.16, the Registered Dietitian Act, 59 O.S. Sections 1721 through 1740, the Athletic Trainers Act, 59 O.S. Sections 525 through 535, and the Physician Assistant Act, 59 O.S. Sections 519 through 524, the Respiratory Care Practice Act, 59 O.S. Sections 2026 through 2045, the

Oklahoma Licensed Podiatrists Act, 59 O.S. Sections 2301 through 2308, and the Orthotics and Prosthetics Practice Act, 59 O.S. Sections 3001 through 3008 as amended.

[Source: Amended at 11 Ok Reg 4525, eff 7-27-94 (emergency); Amended at 12 Ok Reg 1209, eff 5-11-95; Amended at 16 Ok Reg 1999, eff 6-14-99; Amended at 21 Ok Reg 1047, eff 5-14-04]

**435:1-1-3. Method of operations**

- (a) The central office of the Oklahoma State Board of Medical Licensure and Supervision is located in Oklahoma City, Oklahoma. The central office will be open during regular business hours as determined by the Board, each day except Saturday and Sunday and any legal holiday established by statute or proclamation of the Governor.
- (b) The Board may open branch offices with location and hours of operation to be determined by the Board.
- (c) Every communication in writing to the Board shall be addressed to the Board at the Board's central or branch office(s) unless the Board directs otherwise.
- (d) The Board shall hold meetings in accordance with the Oklahoma Open Meetings Act. Special meetings may be called by the President and Secretary of the Board. Five (5) members of the Board constitute a quorum and may transact any business or hold any hearing by simple majority vote of a quorum.
- (e) All rules and other written statements of policy or interpretations formulated, adopted or used by the Board in the discharge of its functions and all final orders, decisions, and opinions will be made available for public inspection during regular office hours at the Board's central office or branch office(s) when electronically feasible.
- (f) All records of the Board which are public records pursuant to the Oklahoma Open Records Act shall be available for public review and copying during regular business hours at the Board's central office or branch office(s) when electronically feasible. Copies shall be available only upon appropriate arrangements for payment of applicable fees. Records of the Board which are subject to a permissive or mandatory privilege of confidentiality shall not be released to the public; provided that the Secretary of the Board or the Executive Director of the Board may, upon request, allow records subject to a permissive privilege of confidentiality to be open for public review and copying. It is the policy of the Board to maintain as confidential all patient records held by the Board in any file, pursuant to 12 O.S. § 2503, to every extent possible under law. It is the position and determination of the Board that investigative files of the Board are confidential under the Open Records Act.
- (g) In the event the Board convenes a meeting by teleconference, the Board shall provide adequate space for any person to listen and view the meeting via appropriate audio and video equipment.

[Source: Amended at 11 Ok Reg 4525, eff 7-27-94 (emergency); Amended at 12 Ok Reg 1209, eff 5-11-95; Amended at Ok Reg 761, eff 10-24-95 (emergency); Amended at Ok Reg 1691; eff 5-25-96; Amended at 14 Ok Reg 3539; eff 7-1-97 (emergency); Amended at 15 Ok Reg 2016; eff 5-26-98]

**435:1-1-4. Individual proceedings [Revoked]**

[Source: Revoked at 11 Ok Reg 4155, eff 6-21-94 (emergency); Revoked at 12 Ok Reg 1209, eff 5-11-95]

#### **435:1-1-5. Media coverage of Board meetings**

Board meetings, or any portion thereof, may be broadcast, televised, recorded, or photographed in accordance with the following guidelines.

- (1) The presiding officer of the Board, or his designee, shall designate a reasonable location or locations within the meeting room from which the broadcasting, televising, recording or photographing may take place.
- (2) The broadcasting, televising, recording or photographic equipment employed at the Board meeting shall be silent and unobtrusive so as not to interfere with any individual's ability to hear, see and participate in the meeting and so as not to interfere with the orderly transaction of Board business.
- (3) If the presiding officer, or his designee, determines that any such broadcasting, televising, recording or photographing is interfering with the orderly transaction of Board business, the presiding officer, or his designee, may limit such broadcasting, televising, recording or photographing to allow the orderly transaction of Board business.

#### **435:1-1-6. Rulemaking procedures**

- (a) **Submission of data.** Prior to the adoption, amendment, or repeal of any rule, the Board shall afford any interested person a reasonable opportunity to submit data, views, or arguments, orally or in writing, to the Board concerning the proposed action on the rule. Should the proposed action on a rule affect one's substantive rights, the opportunity for an oral hearing will be granted if requested in writing by an individual or by an association. If no substantive rights are involved, the opportunity for oral arguments or views is in the discretion of the Board. The Board shall decide whether any substantive rights are involved.
- (b) **Petition on rules.** Any interested person may petition the Board requesting the promulgation, amendment, or repeal of a rule. The petition shall be filed with the Secretary of the Board and shall set forth in writing, clearly and concisely, all matters pertaining to the requested action and reasons for the request. The request should also state whether there is someone known to the petitioner who is concerned with the subject and should be notified of the hearing.
- (c) **Hearing of petition.** The Board, at the next regularly scheduled session after the completion of notice or at a special meeting specified in the notice, will hear the petition and notify the petitioner of the ruling within twenty (20) days after the decision. The Board may, at its discretion, postpone the discussion and ruling of the petition until the next regularly scheduled meeting or at a special meeting and all parties shall be notified of the postponement.
- (d) **APA notice requirements.** In any rulemaking action, whether initiated by the Board or by petition, the Board shall comply with the current notice requirements in the Administrative Procedures Act [75 O.S., Section 301 et seq.].
- (e) **Notice of rulemaking proceedings.** The notice shall be mailed to all interested persons who have made a request of the Board for advance notice of the rulemaking proceedings, or who were specified in the petition for the rules, and shall be published in the Oklahoma Gazette or its successor publication. Twenty (20) days time shall be calculated from the date of the mailing of notice or the publication, whichever is later.
- (f) **Place for hearings.** Unless otherwise specified by the Board as stated in the notice, all hearings shall be conducted in the offices of the Board.

(g) **Appearance at hearings.** Any person who is interested in or affected by a proposed action may appear at such hearing. An appearance may be made individually, by an attorney, or by an authorized agent.

(h) **Emergency rules.** Emergency rules may be adopted by the Board without the prescribed notice and hearing in accordance with the provisions of the Administrative Procedures Act in regard to emergency rules.

[Source: Amended at 11 Ok Reg 4525, eff 7-27-94 (emergency); Amended at 12 Ok Reg 1209, eff 5-11-95]

#### **435:1-1-7. Fees**

(a) **Fee schedule.** The Board shall fix the amount of the fees so that the total fees collected will be sufficient to meet the expenses of administering the provisions as set for in Title 59 O.S., Section 495c and 511 of the Oklahoma Allopathic Medical and Surgical Licensure and Supervision Act provided, the Board shall not set the fees at an amount in excess of the amounts listed in this subsection.

(1) **Licensure/registration.** The following fees shall be assessed for licensure and registration:

(A) Medical Doctor - Full license

- (i) Application processing fee - \$500.00
- (ii) Reprocessing fee - \$125.00
- (iii) Temporary license - \$250.00

(B) Medical Doctor - Special license

(i) Special training application processing fee - \$250.00 (This fee may be applied toward the application processing fee in (a)(1)(A)(i) of this section when the special license was issued for first year post graduate training purposes.)

- (ii) Special training reprocessing fee - \$150.00

(C) Physician Assistants

- (i) Initial application for licensure - \$150.00
- (ii) Application to practice fee - \$50.00
- (iii) Disciplinary hearing fee - actual cost of proceedings (including probation and other fees) as determined by the Board.

(D) Physical Therapist

- (i) Application processing fee - \$100.00
- (ii) Reprocessing fee - \$50.00
- (iii) License - 50.00
- (iv) Temporary permit - 25.00

(E) Physical Therapist Assistant

- (i) Application processing fee - \$100.00
- (ii) Reprocessing fee - \$30.00
- (iii) License - 35.00
- (iv) Temporary permit - 25.00

(F) Athletic Trainer

- (i) Application processing fee - \$120.00
- (ii) Reprocessing fee - \$35.00
- (iii) License - 25.00



- (G) Apprentice athletic trainer
    - (i) Application processing fee - \$25.00
    - (ii) Transfer processing fee - \$20.00
    - (iii) License - 5.00
  - (H) Licensed Dietitian
    - (i) Application processing fee - \$60.00
    - (ii) Reprocessing fee - \$30.00
    - (iii) License - \$60.00
  - (I) Provisional licensed dietitian
    - (i) Application processing fee - \$15.00
    - (ii) Reprocessing fee - \$30.00
    - (iii) License -\$15.00
  - (J) Occupational therapist
    - (i) Application processing fee - \$70.00
    - (ii) Reprocessing fee - \$30.00
    - (iii) License - 50.00
  - (K) Occupational therapy assistant
    - (i) Application processing fee - \$70.00
    - (ii) Reprocessing fee -\$30.00
    - (iii) License - 50.00
  - (L) Registered electrologists
    - (i) Application processing fee -\$30.00
    - (ii) License - \$30.00
    - (iii) Examination fee - \$75.00
  - (M) Respiratory Care - Full license
    - (i) Application processing fee - \$100.00
    - (ii) Reprocessing fee - \$30.00
  - (N) Respiratory Care - Provisional license
    - (i) Application processing fee - \$100.00
    - (ii) Reprocessing fee - \$30.00
  - (O) Licensed Pedorthists application processing fee –\$180.00
  - (P) Licensed Orthotist/Prosthetist application processing fee –\$300.00
  - (Q) Registered Orthotist/Prosthetist Assistant application processing fee –\$100.00
  - (R) Registered Orthotist/Prosthetist Technician application processing fee –\$60.00
  - (S) Radiologist Assistant application processing fee – \$100.00
  - (T) Anesthesiology Assistant application processing fee - \$150.00
  - (U) Therapeutic Recreation Specialist application processing fee - \$125.00
- (2) Renewal/reregistration of license/registration. The following fees shall be assessed for renewal/reregistration:
- (A) Medical License - Full
    - (i) Application for annual reregistration fee - \$200.00
    - (ii) Reactivation processing fee - \$350.00
    - (iii) Reinstatement of license - \$500.00
  - (B) Medical License – Special
    - (i) Application for annual reregistration fee for special training - \$150.00

- (ii) Application for annual reregistration fee for special limited - \$175.00
- (iii) Reactivation processing fee for special training - \$200.00
- (iv) Reactivation processing fee for special limited - \$250.00
- (v) Reinstatement processing fee for special training - \$250.00
- (C) Physical Therapist
  - (i) Annual renewal fee - \$50.00
  - (ii) Renewal processing fee – \$40.00
  - (iii) Late fee (After January 31) - \$20.00
- (D) Physical Therapist Assistant
  - (i) Annual renewal fee - \$35.00
  - (ii) Renewal processing fee – \$25.00
  - (iii) Late fee (After January 31) - \$15.00
- (E) Physician Assistants
  - (i) Annual renewal fee - \$125.00
  - (ii) Late renewal fee - \$225.00
- (F) Athletic Trainer
  - (i) Application processing fee - \$45.00
  - (ii) Annual renewal fee - 10.00
  - (iii) Late fee (After August 30) - \$60.00
- (G) Apprentice athletic trainer
  - (i) Application processing fee - \$10.00
  - (ii) Annual renewal fee - 5.00
  - (iii) Late fee (After August 30) - \$10.00
- (H) Licensed Dietitian/provisional licensed dietitian
  - (i) Annual renewal fee - \$100.00
  - (ii) Penalty (after October 31) – \$50.00
  - (iii) Penalty (after January 31) - \$100.00
- (I) Occupational therapist/occupational therapy assistant
  - (i) Application processing fee - \$80.00
  - (ii) Annual renewal fee - 20.00
  - (iii) Late renewal (after October 31) - 20.00
- (J) Registered electrologists
  - (i) Application processing fee - \$25.00
  - (ii) Annual renewal fee - \$25.00
- (K) Respiratory Care - Full license
  - (i) Biennially renewal fee - \$100.00
  - (ii) Reinstatement - renewal fee plus \$120.00
- (L) Respiratory Care - Provisional license - six month renewal fee - \$100.00
- (M) Licensed Pedorthist
  - (i) Annual renewal fee – \$60.00
  - (ii) Late fee (up to 30 days late) –\$30.00
  - (iii) Late fee (30 days to 1 year late) –\$60.00
  - (iv) Reinstatement fee - \$180.00
- (N) Licensed Orthotist/Prosthetist
  - (i) Biennial renewal fee –\$150.00

- (ii) Late fee (up to 30 days late) –\$60.00
- (iii) Late fee (30 days to 1 year late) –\$120.00
- (iv) Reinstatement fee –\$300.00
- (O) Registered Orthotist/Prosthetist Assistant
  - (i) Biennial renewal fee –\$100.00
  - (ii) Late fee (up to 30 days late) – \$60.00
  - (iii) Late fee (30 days to 1 year late) – \$120.00
  - (iv) Reinstatement fee – \$100.00
- (P) Registered Orthotist/Prosthetist Technician
  - (i) Biennial renewal fee – \$60.00
  - (ii) Late fee (up to 30 days late) – \$60.00
  - (iii) Late fee (30 days to 1 year late) – \$120.00
  - (iv) Reinstatement fee – \$60.00
- (Q) Radiologist Assistants
  - (i) Biennial renewal fee - \$200.00
  - (ii) Late renewal fee - \$300.00
- (R) Anesthesiology Assistants
  - (i) Biennial renewal fee - \$150.00
  - (ii) Late renewal fee - \$250.00
- (S) Therapeutic Recreation Specialist
  - (i) Biennial renewal fee - \$100.00
  - (ii) Late renewal fee - \$125.00

(3) Duplication or modification of license/registration. The following fees shall be assessed for duplication or modification of a license/registration:

- (A) Medical License (Full) - \$60.00
- (B) Physician Assistant - \$30.00
- (C) Physical Therapist - \$60.00
- (D) Physical Therapy Assistant - \$30.00
- (E) Athletic Trainer - \$30.00
- (F) Apprentice Athletic Trainer - \$20.00
- (G) Licensed Dietitian - \$30.00
- (H) Provisional Licensed Dietitian - \$30.00
- (I) Occupational Therapist - \$30.00
- (J) Occupational Therapy Assistant - \$30.00
- (K) Special license - \$30.00
- (L) Respiratory Care - \$30.00
- (M) Licensed Pedorthist –\$30.00
- (N) Licensed Orthotist/Prosthetist –\$30.00
- (O) Registered Orthotist/Prosthetist Assistant –\$30.00
- (P) Registered Orthotist/Prosthetist Technician –\$30.00
- (Q) Radiologist Assistant - \$60.00
- (R) Anesthesiologist Assistant - \$60.00
- (S) Therapeutic Recreation Specialist - \$30.00

- (4) Miscellaneous fees. The following miscellaneous fees shall be assessed by the Board:
- (A) Certification of scores - \$50.00
  - (B) Written verification of license/registration - \$25.00
  - (C) Credentialing service –\$125.00 per licensee
  - (D) Web based services
    - (i) On-line monthly fee – \$60.00 (Three hundred (300) query returns included)
    - (ii) 301 to 350 queries per month – .60 per return
    - (iii) 351 to 400 queries per month – .30 per return
    - (iv) 401 and above queries per month – .15 per return
    - (v) Database, statistical reports, mailing labels on floppy disks, CDs or by electronic mail – \$120.00/hour, minimum of one (1) hour. Fee is for one set of labels per order. Multiple labels may be printed for \$50.00 each additional set.
  - (E) Duplicate renewal/registration card - \$15.00
  - (F) Certification of public records (per page) - 1.00
  - (G) Duplication of public records (per page) - .25
  - (H) Unofficial transcript of public Board/Committee meetings (per page) - \$2.00
  - (I) Issuance of subpoena - \$6.00
  - (J) Payment reprocessing fee - \$30.00
  - (K) Rate for Investigations for other agencies or bodies - at cost with deposit of \$120.00 required to initiate investigation
  - (L) Premedical or Medical Education Qualifications Review - at cost with deposit of \$120.00 required to initiate action
  - (M) Monitoring fees for Agreements: Actual costs of any testing or monitoring provided for in the Agreement.
  - (N) Disciplinary action fees:
    - (i) Probation fees - \$150.00 per month.
    - (ii) Investigation/Prosecution fees - actual cost incurred.
  - (O) Filing of motions:
    - (i) Rehearing or reconsideration of any disciplinary case - \$120.00
    - (ii) Rehearing or reconsideration of any licensing case –\$120.00
    - (iii) Terminate or modify probation/agreement - \$120.00
    - (iv) Request for Specialty Board Certification under 435:10-7-2 - \$120.00
    - (v) Priority issuance of subpoena or duces tecum subpoena within seven (7) days of hearing - \$15.00
    - (vi) Request for exception as allowed by law/rules –\$120.00
  - (P) Reproduction of Board meeting video recording (per recording) - \$20.00
  - (Q) Reproduction of Board meeting audio recording (per recording) - \$20.00
  - (R) Administrative fine for practicing after revocation of license pursuant to 59 O.S. 491B – \$6,000/day
  - (S) Letter of Incorporation - \$5
  - (T) Annual continuing education course application fee - \$40.00 per course
  - (U) Board publications fee – at printing cost
  - (V) Website advertisements limited to sub-pages on [www.okmedicalboard.org](http://www.okmedicalboard.org) and [www.awomansrighttoknowok.org](http://www.awomansrighttoknowok.org) websites. Vendor to sign a contract and agree to terms and conditions as set forth by the Board. Fee for six months advertising per page equals \$500.

(b) Submission of fees.

(1) All fees assessed by the Board as set out in the fee schedule in (a) of this section shall be received prior to processing an application for licensure or certification.

(2) All fees are non-refundable.

[Source: Amended at 9 Ok Reg 1585, eff 4-27-92; Amended at 10 Ok Reg 4371, eff 7-27-93 (emergency); Amended at 11 Ok Reg 2327, eff 5-26-94; Amended at 11 Ok Reg 4525, eff 7-27-94 (emergency); Amended at 12 Ok Reg 555, eff 12-12-94 (emergency); Amended at 12 Ok Reg 1209, eff 5-11-95; Amended at 13 Ok Reg 1563, eff 8-21-95 (emergency); Amended at 13 Ok Reg 1563, eff 2-26-96 (emergency); Amended at 13 Ok Reg 1693, eff 5-25-96; Amended at 13 Ok Reg 2681, eff 6-27-96; Amended at 16 Ok Reg 1999, eff 6-14-99; Amended at 19 Ok Reg 2299, eff 6-28-02; Amended at 22 Ok Reg 942, eff 5-12-05; Amended at 23 Ok Reg 1094, eff 5-11-06; Amended at 25 Ok Reg 1963, eff 6-26-08; Amended at 26 Ok Reg 2574, eff 1-1-10; Amended at 28 Ok Reg 1745, eff 6-25-11]

**435:1-1-8. Reporting information to Board**

The following entities are required to report within 30 days after action is taken, to the Oklahoma State Board of Medical Licensure and Supervision in the manner prescribed as follows:

(1) Each entity (including an insurance company) which makes payments in satisfaction of judgment in a medical malpractice action or claim shall report the name of the physician, the amount of the payment, the name(s) of any hospital(s) with which the physician is associated or affiliated, a description of the acts or omissions and injuries or illness upon which the action or claim was based and any other information deemed necessary and requested by the Board.

(2) Each health care entity that takes a professional review action that adversely affects the clinical privileges of a physician for longer than 30 days, shall report to the Board name, description, other information.

(3) Each health care entity that accepts the surrender of clinical privileges by a physician while said physician is under investigation by the entity relating to possible incompetence or improper professional conduct, shall report to the Board name, description, other information.

(4) Each health care entity that accepts the surrender of clinical privileges by a physician in exchange for not conducting an investigation of possible incompetence or improper professional conduct, shall report to the Board name, description, other information.

(5) Any professional society or association which takes professional review action which adversely affects the membership of the physician shall report to the Board name, description, other information. [Reference: PL 99-660, Sec. 401, Title IV 42 U.S.C. 11,101 et seq., part B - Reporting of Information]

**435:1-1-9. Declaratory rulings**

(a) Any individual or group may petition the Board for a declaratory ruling as to the applicability of any statute, rule or order of the Board. Any other individual or group may file a response thereto.

(b) All petitions filed for a declaratory ruling by the Board shall set out fully the views of the petitioner giving any reasons and citations of legal authority he has in support of such views.

(c) The Board may request the petitioner, or any respondent, to present witnesses on any facts involved in the petition, or legal memorandum with citations of authority on any legal issues

involved in his petition.

(d) The Board may initially assign a petition for declaratory ruling to an appropriate advisory committee and/or board subcommittee for its review and for a recommendation. The advisory committee and/or board subcommittee may hold hearings, take testimony, or require any legal memorandums that the Board may require. The findings or recommendation of any advisory committee or board subcommittee is not binding on the Board en banc.

(e) The Board shall give reasonable notice to the petitioner and any respondents in advance of making a final ruling and shall accompany any ruling with written findings of fact and conclusions of law.

[Source: Amended at 11 Ok Reg 4525, eff 7-27-94 (emergency); Amended at 12 Ok Reg 1209, eff 5-11-95]

#### **435:1-1-10. Duties of the Secretary/Medical Advisor**

(a) The Secretary/Medical Advisor of the Board is hereby hired to perform duties to include, but not be limited to, the following:

(1) Perform all duties and obligations specified in Oklahoma statutes and elsewhere in the Board rules.

(2) Function on behalf of the Board and represent the Board in all matters in the interim period between Board meetings.

(3) Make final review and sign all licenses and certificates.

(b) The Secretary/Medical Advisor is not a voting member of the Board, but a representative of the Board and liaison for the Board in all matters of law, rules or directives of the Board.

(c) Further duties of the Secretary/Medical Advisor shall include, but not be limited to, the provision of medical and other advice and assistance as is necessary in the review and investigation of complaints and actions before the Board, to assist staff in all licensure matters, to sign subpoenas and administer oaths, and to bring civil actions as set forth in (d) of this section.

(d) Pursuant to the authority of 59 O.S. Supp. 1994, Sec. 491.1, the Board designates to the Secretary/Medical Advisor the authority to initiate injunctive actions to prevent the unlicensed or uncertified practice of any profession under the authority of the Board, to seek declaratory ruling to ascertain the proper scope of the Act and any other act which the board has the duty to enforce and administer, to bring civil actions for the recovery of debts owed to the Board by defendants in administrative actions, to enforce subpoenas issued by the Board or any Board member, and/or to seek District Court enforcement of Board orders.

(e) The Secretary/Medical Advisor shall apprise the Board of any action initiated at the next Board meeting following filing of the action. The Board, in its discretion, may vote to instruct the Secretary/Medical Advisor to dismiss any action filed if possible under District Court rules and in the best interest of the agency.

(f) At any time the Secretary/Medical Advisor, with the concurrence of the President of the Board, determines that an emergency exists for which the immediate suspension of a license is necessary, the Secretary/Medical Advisor may conduct a hearing pursuant to 75 O.S. Sec. 314 to suspend such license temporarily upon a showing of clear and convincing evidence of unprofessional conduct. The Secretary/Medical Advisory shall comply with all notice requirements of the Administrative Procedures Act and immediately set the matter for full hearing before the Board in compliance with the Administrative Procedures Act and the Oklahoma Allopathic Medical and Surgical Licensure and Supervision Act.

(g) The Secretary/Medical Advisor may designate the duties set forth in (c) and (e) of this section to the Executive Director during the absence of the Secretary/Medical Advisor.

[Source: Added at 11 Ok Reg 4731, eff 9-9-94 (emergency); Added at 12 Ok Reg 1209, eff 5-11-95; Amended at 13 Ok Reg 645, eff 11-21-95 (emergency); Amended at 13 Ok Reg 2683, eff 6-27-96]

### CHAPTER 3. INDIVIDUAL PROCEEDINGS

Subchapter

- 1. Purpose and Definitions.....435:3-1-1
- 3. Investigations and Hearings.....435:3-3-1

[Source: Codified 5-11-95]

#### SUBCHAPTER 1. PURPOSE AND DEFINITIONS

Section

- 435:3-1-1. Purpose
- 435:3-1-2. Definitions

##### **435:3-1-1. Purpose**

The purpose of this Chapter is to set forth the procedures of the Board used in the investigation of and hearings held for complaints and individual proceedings.

[Source: Added at 11 Ok Reg 4159, eff 6-21-94 (emergency); Added at 12 Ok Reg 1215, eff 5-11-95]

##### **435:3-1-2. Definitions**

The following words and terms, when used in this Chapter, shall have the following meaning, unless the context clearly indicates otherwise:

"**Act**" means the Oklahoma Medical Practice Act, 59 O.S.1991, §§ 481, **et seq.**, as amended, or any health profession act over which the Board has regulatory jurisdiction.

"**APA**" means Article I and/or Article II of the Administrative Procedures Act, 75 O.S.1991, §§ 250, **et seq.**

"**Board**" means the Board of Medical Licensure and Supervision.

"**Complaint**" means a written or oral statement of alleged violation of the Act by a person licensed or certified by the Board and which is filed with the Secretary in anticipation of a citation. This definition is distinct from "**citizen complaint**," which refers to a written or oral statement of violation of the Act prior to investigation by the Staff and submission to the Secretary.

"**Defendant**" means the person against whom an individual proceeding is initiated.

"**Executive Director**" means the Executive Director of the Board.

"**Hearing**" means the trial mechanism employed by the Board to provide Due Process to a defendant in an individual proceeding.

"**Individual proceeding**" means the formal process by which the Board takes administrative action against a person licensed or certified by the Board in accordance with the Act and the APA.

"**Secretary**" means the Secretary of the Board.

"**Staff**" means the personnel of the Board.

[Source: Added at 11 Ok Reg 4159, eff 6-21-94 (emergency); Added at 12 Ok Reg 1215, eff 5-11-95]

### **SUBCHAPTER 3. INVESTIGATIONS AND HEARINGS**

#### Section

- 435:3-3-1. Investigations
- 435:3-3-2. Confidentiality during investigations
- 435:3-3-3. Confidentiality during hearings
- 435:3-3-4. Complaints
- 435:3-3-5. Notices
- 435:3-3-6. Service of notice
- 435:3-3-7. Hearing date
- 435:3-3-8. Response to a complaint
- 435:3-3-9. Discovery
- 435:3-3-10. Motions prior to hearing
- 435:3-3-11. Procedure of hearing
- 435:3-3-12. Rulings upon evidence and objections
- 435:3-3-13. Trial examiner
- 435:3-3-14. Failure to appear
- 435:3-3-15. Sequestration of witnesses
- 435:3-3-16. Subpoenas
- 435:3-3-17. Answer to subpoena
- 435:3-3-18. Hearing records
- 435:3-3-19. Maintenance of hearing records
- 435:3-3-20. Final orders
- 435:3-3-21. Petition for rehearing

#### **435:3-3-1. Investigations**

Any person may file a complaint with the Board in regard to any person licensed or certified by the Board. Complaints may be written or oral. The Staff may require complainants to reduce oral complaints to writing. The Staff may inquire of a complainant for any additional useful information related to the complaint. The Staff shall investigate all credible complaints over which the Board would reasonably have jurisdiction. In addition, the Staff may refer complaints to other entities, such as the Oklahoma State Bureau of Investigation, Oklahoma Bureau of Narcotics and Dangerous Drugs, appropriate District Attorney or Oklahoma State Medical Association, for action when the Board lacks jurisdiction. Further, the Staff may report alleged criminal violations to appropriate law enforcement agencies.

[Source: Added at 11 Ok Reg 4159, eff 6-21-94 (emergency); Added at 12 Ok Reg 1215, eff 5-11-95]

#### **435:3-3-2. Confidentiality during investigations**

During the conduct of any investigation, the investigative staff shall take all proper and necessary action to ensure the confidentiality of investigative files, in accordance with the Oklahoma Open Records Act, 51 O.S.1991, §§ 24a.1 **et seq.** In particular, staff shall take all necessary action to ensure patient files obtained by the agency during an investigation shall not



be disclosed to the public. The investigative staff shall emend all copies of patient records used during an investigation to delete, redact, black-out or otherwise render unreadable the name and other identification information of a patient, unless that information is pertinent to the hearing and reasonable efforts have been made by the Staff to secure the cooperation of the patient or the patient's parent or guardian.

[Source: Added at 11 Ok Reg 4159, eff 6-21-94 (emergency); Added at 12 Ok Reg 1215, eff 5-11-95]

#### **435:3-3-3. Confidentiality during hearings**

During a hearing before the Board or presentation of a witness before the Trial Examiner, patient records necessary for use in the hearing shall be so marked as to ensure the confidentiality of the patient where disclosure of the patient's identity is not pertinent to the hearing. In addition, a witness who is or was a patient of a physician before the Board may assume a pseudonym to protect the patient's identity. No patient shall be required to identify himself or herself. In the event of a minor patient, a parent or guardian shall be inquired of as to identification of the minor.

[Source: Added at 11 Ok Reg 4159, eff 6-21-94 (emergency); Added at 12 Ok Reg 1215, eff 5-11-95]

#### **435:3-3-4. Complaints**

(a) An individual proceeding, whether initiated by the Board or by a citizen complainant shall be initiated by the filing of a sworn complaint with the Secretary of the Board. The complaint shall contain a brief statement setting forth the allegations which are the basis of the complaint and naming the person against whom the complaint is made. The complaint shall set forth all notice and hearing requirements of the APA.

(b) After a complaint has been filed in accordance with (a) of this section, the Secretary of the Board shall review the complaint and may issue a citation notifying the person named in the complaint of said filing and the date and place of the hearing.

(c) The decision whether to issue a citation shall be left to the discretion of the Secretary.

[Source: Added at 11 Ok Reg 4159, eff 6-21-94 (emergency); Added at 12 Ok Reg 1215, eff 5-11-95]

#### **435:3-3-5. Notices**

(a) All notices or other papers, motions or documents which require service in an individual proceeding may be served personally or by certified mail to the defendant's last known address filed with the Board.

(b) If the Board is unable to provide service upon the defendant by either means provided in (a) of this section, after the exercise of due diligence, the Board may provide notice by publication in a newspaper for such time as the Secretary of the Board may direct as most likely to give opportunity for notice to the defendant.

[Source: Added at 11 Ok Reg 4159, eff 6-21-94 (emergency); Added at 12 Ok Reg 1215, eff 5-11-95]

#### **435:3-3-6. Service of notice**

Service of notice shall be complete upon personal service, upon receipt by the Board of the card showing receipt of certified mail by the addressee, or upon the posting of notice or last

publication thereof, as the case may be.

[Source: Added at 11 Ok Reg 4159, eff 6-21-94 (emergency); Added at 12 Ok Reg 1215, eff 5-11-95]

#### **435:3-3-7. Hearing date**

- (a) Upon the issuance and service of a complaint and citation to a defendant before the Board, the staff of the agency shall assign a tentative hearing date for the matter to be presented to the Board.
- (b) At the time of the issuance of the complaint and citation, a scheduling order shall be mailed to the defendant, which shall state the closing date for the exchange of witness and exhibit lists, discovery cut-off, the cut-off date for the filing of dispositive motions, a pretrial conference set at least fourteen (14) days prior to the hearing and other matters necessary to be scheduled which may arise from time to time.
- (c) Written motions for any continuances or extensions of time shall state the time desired and the reasons for the request. All such motions shall be filed at the offices of the Board. The Secretary of the Board, or the Trial Examiner at the pre-trial conference, may receive and rule on motions for continuance filed prior to seven (7) days before the hearing date. If the continuance is denied, the party may renew the request and move for a continuance at the hearing.

[Source: Added at 11 Ok Reg 4159, eff 6-21-94 (emergency); Added at 12 Ok Reg 1215, eff 5-11-95]

#### **435:3-3-8. Response to a complaint**

- (a) The defendant shall file a written answer under oath with the Secretary within 20 days after the service of the citation. If said answer is not filed, the defendant shall be considered in default. At the hearing of the complaint, the Board may accept the allegations set forth in the complaint as true. Further, the Board may then take action against the defendant based upon the complaint, which may include any sanction authorized by law, including revocation.
- (b) The Secretary may extend the time within which an answer must be filed.

[Source: Added at 11 Ok Reg 4159, eff 6-21-94 (emergency); Added at 12 Ok Reg 1215, eff 5-11-95]

#### **435:3-3-9. Discovery**

When time permits prior to a hearing, parties to the hearing shall be allowed to use discovery available in a civil action in the District Courts of Oklahoma. The failure of a party to have sufficient time to exercise any discovery mechanism on account of a lack of time shall not of itself constitute good cause for the granting of a continuance of a hearing.

[Source: Added at 11 Ok Reg 4159, eff 6-21-94 (emergency); Added at 12 Ok Reg 1215, eff 5-11-95]

#### **435:3-3-10. Motions prior to hearing**

- (a) Motions in regard to any matter as set forth on 435:3-3-13 shall be filed with the Trial Examiner at the offices of the Board. The Trial Examiner is authorized to schedule oral argument on such motions or may accept written argument only. The Order of the Trial Examiner shall be in writing and shall be appealable to the Board prior to the hearing. The Trial Examiner shall not have authority to dismiss a case or limit what matters are heard by the Board.
- (b) Motions shall be heard and/or ruled upon by the Trial Examiner at the scheduled pretrial

conference.

[Source: Added at 11 Ok Reg 4159, eff 6-21-94 (emergency); Added at 12 Ok Reg 1215, eff 5-11-95]

#### **435:3-3-11. Procedure of hearing**

(a) Immediately prior to the calling of the first case at a meeting of the Board during which hearings may be held, the president of the Board or designee may conduct a docket call, in which cases to be heard by the Board shall be scheduled. Scheduling may take into consideration factors such as anticipated length of a hearing, whether a matter is contested or uncontested, and, if necessary, special requirements of the parties or witnesses.

(b) The hearing shall be conducted in an orderly manner and shall be presided over by the President of the Board, or the Vice-President in the absence of the President. In the event of the absence of both the President and the Vice-President, the President shall designate a member of the Board to preside over the hearing. The burden of proof shall be upon the agency to prove the allegations contained in the complaint by clear and convincing evidence. The rules of evidence used during the hearing shall be those specified by the Oklahoma Administrative Procedures Act.

[Source: Added at 11 Ok Reg 4159, eff 6-21-94 (emergency); Added at 12 Ok Reg 1215, eff 5-11-95; Amended at 12 Ok Reg 3466, eff 6-26-95 (emergency); Amended at 13 Ok Reg 647, eff 11-21-95 (emergency); Amended at 13 Ok Reg 2207, eff 6-26-96; Amended at 13 Ok Reg 2685, eff 6-27-96; Amended at 15 Ok Reg 2018; eff 5-26-98]

#### **435:3-3-12. Board advisor**

The Board may utilize a Board Advisor in the course of a hearing/individual proceeding to perform any of the following duties:

- (1) To advise the Board on issues of law and rules of proceedings;
- (2) To participate with the Board in the questioning of witnesses/applicants;
- (3) To advise the President on the admissibility of evidence;
- (4) To advise the President on motions or objections arising in the course of the hearing/individual proceeding; and
- (5) To accompany the Board into Executive Session, provide assistance as legal advisor and take minutes.

[Source: Added at 11 Ok Reg 4159, eff 6-21-94 (emergency); Added at 12 Ok Reg 1215, eff 5-11-95; Amended at 21 Ok Reg, eff 5-11-04 (emergency); Amended at 22 Ok Reg 945, eff 5-12-05]

#### **435:3-3-13. Trial examiner**

(a) The Board or the Board Secretary may direct that the Board utilize a Trial Examiner to hear matters specified by the Secretary or as authorized by this Chapter. Generally, where the Trial Examiner is requested, the duties of the Trial Examiner in an individual proceeding shall be:

- (1) to hear and rule upon pretrial discovery disputes.
- (2) to hear and rule on Motions in Limine.
- (3) to review Motions to Dismiss in order to advise the Board on questions of law therein.
- (4) to hear and rule on Motions for Continuance of a hearing (a continuance which is granted by the Trial Examiner must be ratified by the Secretary of the Board).
- (5) to hear and rule on other preliminary motions.
- (6) to hear and rule on motions to have a Board Member recused from a hearing.

(b) The Board or the Secretary may assign the Trial Examiner to perform any of the following duties:

- (1) to mark, identify and admit or deny exhibits.
- (2) to hear non-physician prosecution witnesses.
- (3) to hear non-physician defense witnesses.
- (4) to hear prosecution/defense corroborating witnesses.
- (5) to hear character witnesses.
- (6) to hear cumulative witnesses.
- (7) to hear peripheral witnesses.
- (8) to receive offers of proof.
- (9) to prepare a written report to Board members and counsel summarizing all proceedings, rulings, testimony, and exhibits received. The Trial Examiner shall allow counsel time to file any written objections or exceptions to the report.

(c) The Board members shall read the Trial Examiner's report and any objections that were filed.

(d) In the event the Trial Examiner assumes the additional duties of (b) in this section, the format for the hearing before the Board shall be as follows:

- (1) The Board receives brief orientations from the Trial Examiner before each case is presented.
- (2) The Board hears only physician witnesses or expert witnesses that the Trial Examiner has permitted because of the nature of the testimony.
- (3) The Board hears rebuttal witnesses, if any.
- (4) The Board hears opening and closing arguments.

[Source: Added at 11 Ok Reg 4159, eff 6-21-94 (emergency); Added at 12 Ok Reg 1215, eff 5-11-95]

#### **435:3-3-14. Failure to appear**

Any defendant who fails to appear as directed, after first having received proper notice, shall be deemed by the Board to have waived his or her right to present a defense to the charges alleged in the complaint, and the Board may deem the allegation of the complaint and citation to be true and correct as alleged. Thereupon, the Board may vote to take disciplinary action upon the allegations of the complaint and citation, as appropriate for the nature of the allegations.

[Source: Added at 11 Ok Reg 4159, eff 6-21-94 (emergency); Added at 12 Ok Reg 1215, 5-11-95]

#### **435:3-3-15. Sequestration of witnesses**

The Board recognizes the difficulty faced by certain witnesses called to testify publicly in disciplinary actions in which a physician or other person regulated by the Board is charged with sexual misconduct or other cases of a particularly sensitive nature to persons of reasonable prudence. The Board authorizes the Secretary to make determinations, whether upon his own initiative, request of the staff, the request of a witness, or otherwise, to allow a witness to testify outside public view. To this end, the Secretary may arrange to have a witness testify in another room of the Board's offices for viewing by the Board via video equipment, or by video deposition, or by written deposition. The witness shall remain subject to cross examination and, where feasible, to questions from the Board.

[Source: Added at 11 Ok Reg 4159, eff 6-21-94 (emergency); Added at 12 Ok Reg 1215, eff 5-11-95]

#### **435:3-3-16. Subpoenas**

Subpoenas to compel the attendance of witnesses, for the furnishing of information required by the Board, and/or for the production of evidence or records of any kind may be issued by the Secretary, a Board member, or the Trial Examiner. Subpoenas shall be served, and a return made, in any manner prescribed by general civil law.

[Source: Added at 11 Ok Reg 4159, eff 6-21-94 (emergency); Added at 12 Ok Reg 1215, eff 5-11-95]

#### **435:3-3-17. Answer to subpoena**

Upon the failure of any person to obey a subpoena, upon the refusal of any witness to be sworn or make an affirmation or to answer a question put to her/him in the course of a hearing, the Secretary may institute appropriate judicial proceedings under the laws of the State for an order to compel compliance with the subpoena or the giving of testimony. The hearing shall proceed, so far as it is possible but the Board, in its discretion, at any time may continue the proceedings for such time as may be necessary to secure a final ruling in the compliance proceeding.

[Source: Added at 11 Ok Reg 4159, eff 6-21-94 (emergency); Added at 12 Ok Reg 1215, eff 5-11-95]

#### **435:3-3-18. Hearing records**

(a) A record of the hearing, by means of tape recording will be made of all hearings conducted by the Board. The record of the proceeding shall not be transcribed except upon written application by the defendant and a deposit sufficient in the amount to pay for having the record transcribed. The Staff shall then make appropriate arrangements with a certified court reporter to transcribe the hearing from tape.

(b) A defendant may, at his or her expense, arrange for a record of the hearing to be made by a court reporter.

[Source: Added at 11 Ok Reg 4159, eff 6-21-94 (emergency); Added at 12 Ok Reg 1215, eff 5-11-95]

#### **435:3-3-19. Maintenance of hearing records**

The record of the hearing and the file containing the pleadings will be maintained in a place designated by the Secretary of the Board. The tape recording of the proceedings shall be maintained in accordance with the Oklahoma Archives and Records Act and the Oklahoma Open Records Act.

[Source: Added at 11 Ok Reg 4159, eff 6-21-94 (emergency); Added at 12 Ok Reg 1215, eff 5-11-95]

#### **435:3-3-20. Final orders**

All final orders in individual proceedings shall be in writing. The final order shall include Findings of Fact and Conclusions of Law, separately stated. A copy of the final order shall be mailed to the defendant and to his or her attorney of record.

[Source: Added at 11 Ok Reg 4159, eff 6-21-94 (emergency); Added at 12 Ok Reg 1215, eff 5-11-95]

### **435:3-3-21. Petition for rehearing**

(a) A petition for rehearing is not required before an appeal may be perfected in accordance with 59 O.S. 1971, Section 513. A petition for rehearing, reopening or reconsideration of a final order may be filed with the Secretary of the Board within ten (10) days from the entry of the order. It must be signed by the party or his/her attorney or representative and must set forth with particularity the statutory grounds upon which it is based. However, a petition for rehearing based upon fraud by any party or procurement of the order by perjured testimony or fictitious evidence may be filed at any time.

(b) The Board shall not hear an appeal to a decision more than one time and shall limit the reconsideration of its decision on appeal to the findings of fact and imposition of terms, sanctions or other direction as set out in the Board Order.

[Source: Added at 11 Ok Reg 4159, eff 6-21-94 (emergency); Added at 12 Ok Reg 1215, eff 5-11-95; Amended at 12 Ok Reg 1219, eff 5-15-95]

## **CHAPTER 5. DISCIPLINARY ACTIONS**

### Section

435:5-1-1. Purpose

435:5-1-2. Definitions

435:5-1-3. Authority of Board

435:5-1-4. Determination of penalties

435:5-1-4.1. Administrative fines

435:5-1-5. Letters of concern

435:5-1-5.1. Voluntary submittal to jurisdiction

435:5-1-5.2. Suspension/revocation upon conviction of a felony

435:5-1-6. Reinstatement

435:5-1-6.1. Reinstatement requirements

435:5-1-7. Failure to comply with a Board order

435:5-1-8. Physicians on probation

### **435:5-1-1. Purpose**

The purpose of this Chapter is to set forth procedures and authority of the Board in regard to action the Board may take in and for disciplinary actions taken by administrative procedures against persons licensed or certified by the Board.

[Source: Added at 11 Ok Reg 4531, eff 7-27-94 (emergency); Added at 12 Ok Reg 1221, eff 5-11-95]

### **435:5-1-2. Definitions**

The following words and terms, when used in this Chapter, shall have the following meaning, unless the context clearly indicates otherwise:

“**Act**” means the Oklahoma Allopathic Medical and Surgical Licensure and Supervision Act, 59 O.S. §§ 480 **et seq.**

“**APA**” means either or both Article I and Article II, as applicable of the Administrative Procedures Act, 75 O.S.1991, §§ 250 **et seq.**, as amended.

**“Board”** means the Oklahoma Board of Medical Licensure and Supervision.

**“Secretary”** means the Secretary of the Board.

[Source: Added at 11 Ok Reg 4531, eff 7-27-94 (emergency); Added at 12 Ok Reg 1221, eff 5-11-95]

### **435:5-1-3. Authority of Board**

The Board is authorized by statute to take disciplinary action against persons licensed or certified by the Board. Action taken by the Board shall be done pursuant to the APA.

[Source: Added at 11 Ok Reg 4531, eff 7-27-94 (emergency); Added at 12 Ok Reg 1221, eff 5-11-95]

### **435:5-1-4. Determination of penalties**

(a) In determining the severity of any penalty assessed a person licensed or certified by the Board, the Board shall take into account, among other things, actual harm to the public, potential harm to the public, acceptance by the defendant for responsibility in the disciplinary action, remorse by the defendant, or action taken by the defendant to make amend for wrongful conduct, if appropriate.

(b) In general, a more severe or harmful violation of an act regulated by the Board will result in a more severe penalty to be imposed by the Board. A less severe or harmful violation of an act regulated by the Board will result in a less severe penalty imposed by the Board. The Board will review all possible penalties for the type of violation of which the defendant was convicted by the Board in making its determination of the penalty imposed.

[Source: Added at 11 Ok Reg 4531, eff 7-27-94 (emergency); Added at 12 Ok Reg 1221, eff 5-11-95]

#### **435:5-1-4.1. Administrative fines**

The following administrative fines shall only be assessed after formal hearing and a determination of guilt:

- (1) \$5,000 per day for practicing after revocation, suspension, surrender or failure to renew a license, pursuant to 59 O.S. §491B.
- (2) Up to \$5,000 per violation of unprofessional conduct, pursuant to 59 O.S. §509.1A(9).

[Source: Added at 22 Ok Reg 2095, eff 6-25-05]

### **435:5-1-5. Letters of concern**

The Secretary is hereby authorized, in the exercise of sound discretion, to issue a letter of concern to a physician whose conduct does not warrant formal disciplinary action by the Board, but whose action does warrant a letter of concern to apprise the physician of a potential for further action by the Board. Letters of concern shall remain in the confidential investigative file of the physician to whom the letter is issued.

[Source: Added at 11 Ok Reg 4531, eff 7-27-94 (emergency); Added at 12 Ok Reg 1221, eff 5-11-95]

#### **435:5-1-5.1. Voluntary submittal to jurisdiction**

(a) The Board may accept a Voluntary Submittal to Jurisdiction entered into by staff and defendant.

(b) Proffer of a Voluntary Submittal to Jurisdiction entered into by staff and defendant shall be the responsibility of the Secretary of the Board or Executive Director in his/her absence.

[Source: Added at 13 Ok Reg 1567, eff 8-21-95 (emergency); Added at 13 Ok Reg 1695, eff 5-25-96]

#### **435:5-1-5.2. Suspension/revocation upon conviction of a felony**

- (a) The Board may suspend the license of a person who has been convicted of a felony.
- (b) The Board shall revoke the license of a person licensed by the Board who has a final felony conviction.
- (c) The Board shall restore the license if the person's conviction is overturned on final appeal.

[Source: Added at 22 Ok Reg 945, effective 5-12-05]

#### **435:5-1-6. Reinstatement**

- (a) In any action by the Board in which a person licensed or certified by the Board has been suspended or revoked by the Board, or surrendered in lieu of prosecution, the Board may at any time, upon motion of any member of the Board reconsider such suspension or revocation if given the right to reapply.
- (b) In addition, the person whose license or certificate has been suspended, revoked or surrendered with the right to reapply may petition the Board for reinstatement in accordance with applicable law.
- (c) In any case in which a person whose license or certificate has been suspended or revoked is considered by the Board for reinstatement, it shall be the burden of that person to show compliance with all terms and conditions imposed by the Board in the disciplinary action. The Board may deny reinstatement to any such person who does not satisfy the Board of compliance with any Board requirement or condition imposed by the Board in disciplinary action or may approve reinstatement without restriction or may approve reinstatement with terms of probation or restrictions as deemed necessary to protect the health, safety and well-being of the public.
- (d) Upon the completion of any term of suspension imposed by the Board, the person whose license or certificate was suspended shall bear the burden to show compliance with all requirements and conditions imposed by the Board prior to reinstatement by the Board.
- (e) An application for reinstatement shall be filed with the Board in writing and shall set forth action taken by the applicant to comply with conditions and requirements imposed by the Board, including all documents in support thereof. Such application or motion shall be reviewed by the Secretary prior to being scheduled for action by the Board at a meeting of the Board. If the Secretary determines the applicant has met the requirements and conditions imposed by the Board, the matter shall be scheduled for Board action. If the Secretary determines the applicant has not complied with requirements and conditions imposed by the Board, the Secretary shall advise the applicant of the noncompliance in writing and the matter shall not be scheduled for Board action. In the event an applicant disagrees with the determination of the Secretary, the applicant may move in writing for the original application to be reviewed by the Board, upon payment of the appropriate fee.

[Source: Added at 11 Ok Reg 4531, eff 7-27-94 (emergency); Added at 12 Ok Reg 1221, eff 5-11-95; Amended at 18 Ok Reg 3555, eff 8-08-01 (emergency); Amended at 19 Ok Reg 1194, eff 5-13-02; Amended at 22 Ok Reg 945, eff 5-12-05]



#### **435:5-1-6.1. Reinstatement requirements**

An applicant for reinstatement after suspension, revocation or surrender in lieu of prosecution pursuant to 59 O.S. § 503 shall meet all application requirements in effect at the time reinstatement is requested, be of good moral character and have reimbursed the Board for taxed costs or worked out a repayment plan satisfactory to the Board. In addition, the Board may require the applicant to meet the continuing medical education (C.M.E.) requirements.

[Source: Added at 12 Ok Reg 3656, eff 5-9-95 (emergency); Added at 13 Ok Reg 1696, eff 5-25-96; Amended at 19 Ok Reg 2777, eff 6-24-02 (emergency); Amended at 20 Ok Reg 969, eff 5-21-03; Amended at 22 Ok Reg 945, eff 5-12-05]

#### **435:5-1-7. Failure to comply with a Board order**

In the event the Secretary determines that a person has not complied with an order of the Board, the Secretary may initiate additional disciplinary action against that person and may seek to have the Board impose additional penalties for failure to comply with a Board order.

[Source: Added at 11 Ok Reg 4531, eff 7-27-94 (emergency); Added at 12 Ok Reg 1221, eff 5-11-95]

#### **435:5-1-8. Physicians on probation**

It is the determination by the Board that allied health professionals that require surveillance of a licensed physician should not be supervised by physicians on probation.

[Source: Added at 13 Ok Reg 1173, eff 2-26-96 (emergency); Added at 13 Ok Reg 2687, eff 6-27-96]

### **CHAPTER 10. PHYSICIANS AND SURGEONS**

Subchapter	Section
1. General Provisions	435:10-1-1
3. Licensure of Physicians and Surgeons (Revoked)	435:10-3-1
4. Application and Examination Procedures for Licensure as Physician and Surgeon	435:10-4-1
5. Approval of Hospitals and Programs for Post-Graduate Training	435:10-5-1
7. Regulation of Physician and Surgeon Practice	435:10-7-1
9. Practice as Supervised Medical Doctor (Revoked)	435:10-9-1
11. Temporary and Special Licensure	435:10-11-1
15. Continuing Medical Education	435:10-15-1
17. Medical Micropigmentation	435:10-17-1

[Authority: Title 59 O.S., Section 489]

[Source: Codified 12-30-91]

#### **SUBCHAPTER 1. GENERAL PROVISIONS**

Section
435:10-1-1. Purpose
435:10-1-2. Interpretation of rules and regulations [REVOKED]
435:10-1-3. Limited liability company
435:10-1-4. Definitions

### **435:10-1-1. Purpose**

The rules in this Chapter describe application processes for licensure by examination and endorsement. It includes special provisions for foreign medical graduates. This Chapter also describes rules for the approval of hospitals and programs for post-graduate training and other regulations of the practice of physicians and surgeons.

[Source: Amended at 11 Ok Reg 4535, eff 7-27-94 (emergency); Amended at 12 Ok Reg 1223, eff 5-11-95]

### **435:10-1-2. Interpretation of rules and regulations [Revoked]**

[Source: Revoked at 11 Ok Reg 4535, eff 7-27-94 (emergency); Revoked at 12 Ok Reg 1223, eff 5-11-95]

### **435:10-1-3. Limited liability company**

Based on the enactment of 18 O.S., Supp. 1992, Section 2000 et seq. (SB456, 1992 Oklahoma Legislature), the Oklahoma State Board of Medical Licensure and Supervision recognizes that a lawfully formed and organized limited liability company, domestic limited liability company, or foreign limited liability company is a lawful business organization wherein an Oklahoma licensed physician may practice medicine and surgery.

[Source: Added at 10 Ok Reg 2455, eff 6-11-93]

### **435:10-1-4. Definitions**

The following words and terms, when used in this Chapter, shall have the following meaning, unless the context clearly indicates otherwise:

**"Act"** means the Oklahoma Allopathic Medical and Surgical Licensure and Supervision Act, 59 O.S. §§ 480 **et seq.**

**"APA"** means either or both Article I and Article II, as applicable of the Administrative Procedures Act, 75 O.S.1991, §§ 250 **et seq.**, as amended.

**"Applicant"** means a person who applies for licensure from the Board.

**"Board"** means the Oklahoma Board of Medical Licensure and Supervision.

**"Distant site"** means the location of medical doctor providing care via telecommunications systems.

**"Foreign applicant"** means an applicant who is a graduate of a foreign medical school.

**"Foreign medical school"** means a medical school located outside of the United States.

**"Originating site"** means the location of the patient at the time the service being furnished via a telecommunications system occurs.

**"Patient"** means the patient and/or patient surrogate.

**"Physician/patient relationship"** means a relationship established when a physician agrees by direct or indirect contact with a patient to diagnose or treat any condition, illness or disability presented by a patient to that physician, whether or not such a presenting complaint is considered a disease by the general medical community. The physician/patient relationship shall include a medically appropriate, timely-scheduled, actual face-to-face encounter with the patient, subject to any supervisory responsibilities established elsewhere in these rules except as allowed in OAC 435:10-7-12 in this Subchapter. The act of scheduling an appointment, whether by a physician or by a physician's agent, for a future evaluation will not in and of itself be considered to establish a

physician/patient relationship.

**"Secretary"** means the Secretary of the Board.

**"Supervision and Control"** means the physical presence of the supervising physician in the office or operating suite before, during and after the treatment or procedure and includes diagnosis, authorization and evaluation of the treatment or procedure with the physician/patient relationship remaining intact.

**"Surrogate"** means individuals closely involved in patients' medical decision-making and care and include:

- (A) spouses or partners;
- (B) parents;
- (C) guardian; and
- (D) other individuals involved in the care of and/or decision-making for the patient.

**"Telemedicine"** means the practice of healthcare delivery, diagnosis, consultation, treatment, including but not limited to, the treatment and prevention of conditions appropriate to treatment by telemedicine management, transfer of medical data, or exchange of medical education information by means of audio, video, or data communications. Telemedicine is not a consultation provided by telephone or facsimile machine (Oklahoma Statutes, Title 36, Sec. 6802). This definition excludes phone or Internet contact or prescribing and other forms of communication, such as web-based video, that might occur between parties that does not meet the equipment requirements as specified in OAC 435:10-7-13 and therefore requires an actual face-to-face encounter. Telemedicine physicians who meet the requirements of OAC 435:10-7-13 do not require a face to face encounter

[Source: Added at 11 Ok Reg 4535, eff 7-27-94 (emergency); Added at 12 Ok Reg 1223, eff 5-11-95; Amended at 24 Ok Reg 2246, eff 6-25-07; Amended at 27 Ok Reg 856, eff 4-25-10; Amended at 31 Ok Reg 1975, eff 9-12-14]

### **SUBCHAPTER 3. LICENSURE OF PHYSICIANS AND SURGEONS**

Section

- 435:10-3-1. General licensing requirements [REVOKED]
- 435:10-3-2. Graduates of American medical schools [REVOKED}
- 435:10-3-3. Graduates of foreign medical schools [REVOKED]
- 435:10-3-4. Licensure by endorsement [REVOKED]
- 435:10-3-5. Licensure by examination [REVOKED]
- 435:10-3-6. Premedical education; medical education and clinical competency [REVOKED]
- 435:10-3-1. General licensing requirements [Revoked]

[Source: Revoked at 11 Ok Reg 4535, eff 7-27-94 (emergency); Revoked at 12 Ok Reg 1223, eff 5-11-95]

#### **435:10-3-2. Graduates of American medical schools [Revoked]**

[Source: Revoked at 11 Ok Reg 4535, eff 7-27-94 (emergency); Revoked at 12 Ok Reg 1223, eff 5-11-95]

#### **435:10-3-3. Graduates of foreign medical schools [Revoked]**

[Source: Amended at 11 Ok Reg 1557, eff 4-4-94 (emergency); Amended at 11 Ok Reg 1867, eff 5-12-94; Revoked at 11 Ok Reg 4535, eff 7-27-94 (emergency); Revoked at 12 Ok Reg 1223, eff 5-11-95]

**435:10-3-4. Licensure by endorsement [Revoked]**

[Source: Amended at 11 Ok Reg 1867, eff 5-12-94; Revoked at 11 Ok Reg 4535, eff 7-27-94 (emergency); Revoked at 12 Ok Reg 1223, eff 5-11-95]

**435:10-3-5. Licensure by examination [Revoked]**

[Source: Amended at 11 Ok Reg 1867, eff 5-12-94; Revoked at 11 Ok Reg 4535, eff 7-27-94 (emergency); Revoked at 12 Ok Reg 1223, eff 5-11-95]

**435:10-3-6. Premedical education, medical education and clinical competency [Revoked]**

[Source: Revoked at 11 Ok Reg 4535, eff 7-27-94 (emergency); Revoked at 12 Ok Reg 1223, eff 5-11-95]

**SUBCHAPTER 4. APPLICATION AND EXAMINATION PROCEDURES  
FOR LICENSURE AS PHYSICIAN AND SURGEON**

Section

- 435:10-4-1. General licensure provisions
- 435:10-4-2. Board jurisdiction
- 435:10-4-3. Application forms
- 435:10-4-4. Application procedure
- 435:10-4-5. Additional requirements for foreign applicants
- 435:10-4-6. Medical licensure examination
- 435:10-4-7. Licensure by endorsement
- 435:10-4-8. Endorsement of certified applicants
- 435:10-4-9. Board review of applications
- 435:10-4-10. Personal appearance by an applicant
- 435:10-4-11. Written agreement

**435:10-4-1. General licensure provisions**

- (a) No person shall perform any act prohibited by the Act for any fee or other compensation, or hold himself or herself out as a physician and surgeon under the Act, unless first licensed by the Board to do so. The Board directs staff to undertake affirmative action to seek the prosecution of any person suspected by the staff to be in criminal violation of any provision of the Act.
- (b) No person shall be licensed by the Board unless and until that person first fully complies with all licensure provisions of the Act and this Subchapter and has satisfied the Board of the ability of that person to practice medicine and surgery with reasonable skill and safety.
- (c) The Board shall not engage in any application process with any agent or representative of any applicant except as is specifically approved by the Board at a meeting of the Board and majority vote. The Board shall entertain a request for authority for an agent or representative to represent an applicant only upon written motion by the applicant and after a personal interview with the applicant by the Secretary of the Board or the Board en banc. It is the purpose of the Board in this regard to prevent any subterfuge in the application process and so requires any person who

wishes to employ an agent or representative to meet personally with the Board or Secretary.  
(d) A license issued by the Board shall be signed by the Secretary and attested by the seal of the Board.

[Source: Added at 11 Ok Reg 4535, eff 7-27-94 (emergency); Added at 12 Ok Reg 1223, eff 5-11-95; Amended at 12 Ok Reg 3468, eff 6-26-95 (emergency); Amended at 13 Ok Reg 1697, eff 5-25-96; Amended at 16 Ok Reg 1210, eff 5-14-99]

#### **435:10-4-2. Board jurisdiction**

(a) The jurisdiction of the Board extends, for the purposes of 59 O.S. § 492, as amended by H.B. No. 2123, to allopathic medical practices. It is the duty of the Board to enforce licensure requirements for persons who perform any act contemplated by 59 O.S. § 492 (C) or any other provision of the Act. The Board construes licensure requirements of the Act to extend to residents and interns in any medical post-graduate training program in accordance with 59 O.S. § 492 (D)(1). Interns shall obtain a special license to practice pursuant to Subchapter 11 of this Chapter. In special circumstances, residents beyond the first year of post-graduate training may extend a special license for continuance of training, renewable annually.

(b) The Board construes “allopathic” to refer to any medical or surgical procedure, drug or act reasonably and/or normally performed or undertaken by an allopathic physician consistent with the education and training of an allopathic physician.

[Source: Added at 11 Ok Reg 4535, eff 7-27-94 (emergency); Added at 12 Ok Reg 1223, eff 5-11-95]

#### **435:10-4-3. Application forms**

(a) The Board directs staff to prepare and create new forms, or modify existing forms, to be used in the application process for licensure by examination and endorsement. Application forms shall require applicants to submit all information required by the Act.

(b) Application forms may be obtained upon written request from the Board office.

[Source: Added at 11 Ok Reg 4535, eff 7-27-94 (emergency); Added at 12 Ok Reg 1223, eff 5-11-95]

#### **435:10-4-4. Application procedure**

(a) An applicant for licensure by the Board shall provide the Board with all information required pursuant to 59 O.S. § 493.1 on forms created therefore by staff. In addition, an applicant shall provide either original documents required thereby or notarized or certified duplicates. Academic records may be provided by submission of certified transcripts from all applicable schools.

(b) The applicant shall be forthright and open in the provision of information to the Board in the application process. No applicant shall be awarded a license who does not provide the Board with complete, open and honest responses to all requests for information.

(c) Any Board member may request an applicant to provide any additional information the Board member feels is necessary or useful to determine the applicant’s ability to practice medicine and surgery in the application process which is raised by any response by an applicant to any question or request for information on the application form.

(d) The applicant shall present proof of graduation from an approved medical school and possess

a valid degree of Doctor of Medicine or its equivalent, as applicable. The Board will accept as proof the original diploma conferred or a notarized copy thereof, but may request additional written information or verification from the Dean or other authority from the applicant's medical school.

(e) The applicant shall provide written verification of successful completion of at least twelve (12) months of progressive post-graduate medical training in a program approved by The American Council on Graduate Medical Education (ACGME), The Royal College of Physicians and Surgeons of Canada, The College of Family Physicians of Canada, The Royal College of Surgeons of Edinburgh, The Royal College of Surgeons of England, The Royal College of Physicians and Surgeons of Glasgow, or The Royal College of Surgeons in Ireland. The Board requires this training to be obtained in the same medical specialty. The Board will not accept combinations of months from multiple specialties as evidence of one (1) year of acceptable training for licensure; except that the Board will accept transitional residencies. It shall be the burden of the applicant to provide information as to the progressive nature of the post-graduate training. The Board construes progressive training to be that which steadily increases the student's duties and responsibilities during the training and which prepares the student for increasingly difficult medical challenges. If Fellowships are used to meet post-graduate education requirements, the Fellowships must be approved by the American Council on Graduate Medical Education (ACGME) and be conducted in an ACGME approved facility. Clerkships shall not constitute necessary medical post-graduate training required for licensure.

(f) The applicant shall be candid in regard to the provision of information related to any academic misconduct or disciplinary action.

(g) The applicant shall be provided a copy of the Act and Board rules on unprofessional conduct. The applicant shall review such rules and state candidly and honestly whether the applicant has committed any act which would constitute grounds for disciplinary action by the Board under Act and rules of the Board.

(h) The applicant shall take and complete the jurisprudence examination prepared by the staff. Seventy-five percent (75%) or above shall be a passing grade. The examination shall cover the Act and any other significant statute, rule or material related to the practice of medicine and surgery in this state. The applicant shall be provided a copy of all statutes, rules or other material from which the examination was created and may review such material while taking the jurisprudence examination. An applicant who fails the jurisprudence examination three (3) times shall be required to meet with the Secretary in order to devise a study plan prior to taking the jurisprudence examination again. The Board has determined that the jurisprudence examination is an integral part of the application process. A passing score on the jurisprudence examination is a requirement for licensure.

(i) The applicant shall pay all necessary fees related to the application.

(j) It is the responsibility of the applicant to verify the applicant's identity and the validity of any documents or information submitted to the Board in the licensure process.

(k) The Board must be in receipt of correspondence from the American Medical Association (AMA) and Federation of State Medical Boards (Federation) prior to issuance of any medical license. The Board may also contact other sources as necessary. Should information be found through correspondence with the AMA, Federation, or other sources that was previously unknown to the Board, the application will be held until such time as the Secretary of the Board is satisfied that the information has been validated by the Staff.

(l) An applicant may withdraw an application for licensure at any time prior to the submission of the application for consideration by members of the Board. No application may be withdrawn by an applicant after it has been submitted to members of the Board.

(m) An applicant for reinstatement for failure to renew pursuant to 59 O.S. s.s. 495d shall meet all application requirements in effect at the time reinstatement is requested, be of good moral character and shall provide proof that continuing education requirements have been met.

[Source: Added at 11 Ok Reg 4535, eff 7-27-94 (emergency); Added at 12 Ok Reg 767, eff 1-5-95 (emergency); Added at 12 Ok Reg 1223, eff 5-11-95; Amended at 12 Ok Reg 1235, eff 5-15-95; Amended at 15 Ok Reg 2018; eff 5-26-98; Amended at 19 Ok Reg, eff 6-24-02 (emergency); Amended at 19 Ok Reg 2993, eff 8-19-02 (emergency); Amended at 20 Ok Reg 969, eff 5-21-03; Amended at 22 Ok Reg 946, eff 5-12-05]

#### **435:10-4-5. Additional requirements for foreign applicants**

(a) It is the intent of the Board to provide graduates of foreign medical schools equal opportunity in the licensure process. All foreign applicants shall meet the requirements of 435:10-4-4.

Additional requirements set forth in this Section are used solely for the purpose of ensuring the validity of the foreign applicant's fitness to practice and ability to work in the United States.

(b) Graduates of foreign medical schools whose documents are not printed in the English language shall provide all original documents in the manner of 435:10-4-4. In addition, foreign graduates shall identify a credible translator of applicant's documents. United States Consulates and formal educational foreign language programs from an institution accredited by the North Central Association of Colleges and Schools are approved to provide translations to the Board. An applicant may request to use another translator. Such a request shall be made in writing and include the proposed translator's name, address and qualifications to support the approval of the request. Upon approval by the Board of the proposed translator, all documents of the applicant shall be translated into English. Both the applicant and the translator shall attest to the accuracy of the translation.

(c) Effective January 1, 2004, any applicant that graduated from a foreign medical school after July 1, 2003 and completed clerkships in the United States, those clerkships must have been done in hospitals, schools or facilities that are accredited by the appropriate accrediting body such as the Accreditation Council for Graduate Medical Education. The Board may direct staff to contact an applicant's medical school to obtain any necessary information related to the school or the applicant. In the event the Board is unable to verify information related to an applicant or the applicant's medical school, the Board may in its discretion reject the applicant's application or require the applicant to score ten (10) percentage points higher on a medical licensure examination than is otherwise required.

(d) Graduates of foreign medical schools must submit a tape-recorded reading of a written selection created by the Board and evaluated by the Secretary as to the ability of the applicant to communicate in the English language or take an oral examination as determined by the Board.

(e) An applicant from a foreign medical school shall provide the Board with proof of successful completion of twenty-four (24) months of progressive post-graduate medical training, obtained in the same medical specialty, from a program approved by:

- (1) The American Council on Graduate Medical Education (ACGME);
- (2) The Royal College of Physicians and Surgeons of Canada;
- (3) The College of Family Physicians of Canada;
- (4) The Royal College of Surgeons of Edinburgh;

- (5) The Royal College of Surgeons of England;
  - (6) The Royal College of Physicians and Surgeons of Glasgow; or
  - (7) The Royal College of Surgeons in Ireland.
- (f) A foreign applicant shall provide the Board with written proof of the applicant's ability to work in the United States as authorized by the United States Immigration and Naturalization Service.
- (g) The Board requires original source verification of Educational Commission for Foreign Medical Graduates (ECFMG) Certification. The Board shall waive this requirement for applicants ineligible to obtain ECFMG Certification, such as Fifth Pathway graduates and graduates from Canadian Medical Schools.

[Source: Added at 11 Ok Reg 4535, eff 7-27-94 (emergency); Added at 12 Ok Reg 1223, eff 5-11-95; Amended at 12 Ok Reg 2581, eff 6-26-95; Amended at 13 Ok Reg 1569, eff 8-21-95 (emergency); Amended at 13 Ok Reg 1699, eff 5-25-96; Amended at 19 Ok Reg 2993, eff 8-19-02 (emergency); Amended at 20 Ok Reg 969, eff 5-21-03; Amended at 22 Ok Reg 946, eff 5-12-05; Amended at 28 Ok Reg 1748, eff 6-25-11]

#### **435:10-4-6. Medical licensure examination**

- (a) Upon submission and approval of a completed application for licensure by examination, and the payment of all fees, an applicant may sit for an examination approved by the Board. The Board has adopted the USMLE as its licensure examination. The passing score for the licensure examination is set at seventy-five percent (75%) or the 3-digit minimum passing score scale as set by the USMLE program.
- (b) In order to sit for the licensure examination, the applicant shall provide the Board with all information required by 59 O.S. § 494.1 on a form created or approved by the Board.
- (c) Submission of an application shall not guarantee an applicant the ability to sit for the licensure examination. No person shall sit for licensure examination until approved to do so by the Board.
- (d) The Board recognizes as acceptable for licensure the USMLE, NBME, FLEX and LMCC examinations. However, the Board will not accept test scores or combined FLEX scores from multiple sittings of the FLEX. In addition, the Board will accept the following combinations of those examinations:
  - (1) NBME part I or USMLE step 1, **plus** NBME part II or USMLE step 2, **plus** NBME part III or USMLE step 3;
  - (2) FLEX component 1 plus USMLE step 3; or
  - (3) NBME part I or USMLE step 1, **plus** NBME part II or USMLE step 2, **plus** FLEX component 2.
- (e) The factoring of scores or combination of scores taken from separate examinations is acceptable only as set forth in (d)(1) through (d)(3) of this Section.
- (f) All steps of the licensure examination must be passed within ten (10) years unless otherwise prohibited by applicable law.
- (g) The following applies to all applicants regarding examination failures unless otherwise prohibited by applicable law:
  - (1) Any applicant who fails any part of a licensing examination three times will not be eligible for a license. A score of incomplete shall be considered a failing score. The USMLE Step2-Clinical Knowledge and Step2-Clinical Skills shall be considered as separate steps.



(2) If a combination of NBME, FLEX and/or USMLE is utilized, any applicant who has failed more than six (6) examinations will not be eligible for a license.

(3) If an applicant has achieved certification by an American Board of Medical Specialties (ABMS) Board, an exception to 435:10-4-6 (g)(1) and (2) may be granted by a vote of the Board.

(h) As with the initial application, the Board may make additional inquiry of the applicant to provide additional information as necessary.

[Source: Added at 11 Ok Reg 4535, eff 7-27-94 (emergency); Added at 12 Ok Reg 1223, eff 5-11-95; Amended at 12 Ok Reg 2581, eff 6-26-95; Amended at 13 Ok Reg 1571, eff 8-21-95 (emergency); Amended at 13 Ok Reg 1699, eff 5-25-96; Amended at 15 Ok Reg 2739, eff 6-26-98; Amended at 16 Ok Reg 803, eff 2-4-99 (emergency); Amended at 16 Ok Reg 2001, eff 6-14-99; Amended at 21 Ok Reg 1048, eff 5-14-04; Amended at 23 Ok Reg 1097, eff 5-11-06; Amended at 23 Ok Reg 3122, eff 6-29-06 (emergency); Amended at 24 Ok Reg 213, eff 10-26-06 (emergency); Amended at 24 Ok Reg 2246, eff 6-25-07; Amended at 31 Ok Reg 1977, eff 9-12-14]

#### **435:10-4-7. Licensure by endorsement**

(a) The Board may license an applicant by endorsement based upon the applicant's current license in another state, the District of Columbia, U.S. territory, or Canada and who has passed a medical licensure examination allowed by 59 O.S. § 493.3(A)(2), and who has complied with all other current licensure requirements of the Act.

(b) The Board has approved for the purpose of a medical licensure examination the FLEX, USMLE, National Board and LMCC examinations or acceptable combinations thereof. All steps of the licensure examination must be passed within ten (10) years unless otherwise prohibited by applicable law.

(c) The following applies to all applicants regarding examinations failures unless otherwise prohibited by applicable law:

(1) Any applicant who fails any part of a licensing examination three times will not be eligible for a license. A score of incomplete shall be considered a failing score. The USMLE Step 2-Clinical Knowledge and Step 2-Clinical Skills shall be considered as separate steps.

(2) If a combination of NBME, FLEX and/or USMLE is utilized, any applicant who has failed more than six (6) examinations will not be eligible for a license.

(3) If an applicant has achieved certification by an American Board of Medical Specialties (ABMS) Board, an exception to 435:10-4-7 (c) (1) and (2) may be granted by a vote of the Board.

(d) To apply for licensure by endorsement, an applicant shall submit an application as required by 435:10-4-4 and 435:10-4-5, as applicable.

(e) In addition, the applicant shall provide information to the Board, on a form created by the Board, in regard to the applicant's current license and previous examination.

(f) In the event an applicant is not qualified for licensure by endorsement, the applicant may, upon payment of applicable fees, sit for licensure examination authorized by this rule.

[Source: Added at 11 Ok Reg 4535, eff 7-27-94 (emergency); Added at 12 Ok Reg 1223, eff 5-11-95; Amended at 15 Ok Reg 3945, eff 7-9-98 (emergency); Amended at 16 Ok Reg 803, eff 2-4-99 (emergency); Amended at 16 Ok Reg 1211, eff 5-14-99; Amended at 17 Ok Reg 1350, eff 5-11-00; Amended at 21 Ok Reg 1048, eff 5-14-04; Amended at 23 Ok Reg 1097, eff 5-11-06; Amended at 23 Ok Reg, eff 6-29-06 (emergency); Amended at 23 Ok Reg, eff 10-26-2006; Amended at 24 Ok Reg 2246, eff 6-25-07]

#### **435:10-4-8. Endorsement of certified applicants**

The Board recognizes that the degree conferred upon a student of medicine is not always a doctorate of medicine. The Board will accept equivalent degrees when the underlying education is similar to the education of the University of Oklahoma School Of Medicine.

[Source: Added at 11 Ok Reg 4535, eff 7-27-94 (emergency); Added at 12 Ok Reg 1223, eff 5-11-95]

#### **435:10-4-9. Board review of applications**

The Board may review applications by circularization and thereby vote to approve an application. Any Board member may vote to hold any application until a meeting of the Board for review en banc. Applications approved by circularization shall be ratified at a subsequent meeting of the Board. No application shall be denied except in a meeting of the Board upon a vote of a majority of the Board members.

[Source: Added at 11 Ok Reg 4535, eff 7-27-94 (emergency); Added at 12 Ok Reg 1223, eff 5-11-95]

#### **435:10-4-10. Personal appearance by an applicant**

- (a) Any Board member may require an applicant to make a personal appearance before the Board or the Secretary prior to action on an application.
- (b) An applicant may request to appear before the Board during the application process in order to provide the Board with additional relevant information.

[Source: Added at 11 Ok Reg 4535, eff 7-27-94 (emergency); Added at 12 Ok Reg 1223, eff 5-11-95]

#### **435:10-4-11. Written agreement**

- (a) **Board Authority.** The Board has been granted authority pursuant to 59 O.S. § 492.1, to require, among other things, that an applicant provide to the Board satisfactory evidence of the ability of the applicant to practice medicine and surgery in this state with reasonable skill and safety. In addition, the Board is empowered pursuant to 59 O.S. § 503 through 513, to take administrative and other action for violation of the Act for unprofessional conduct.
- (b) **Agreement between Board and applicant.**
  - (1) In consideration of this authority, the Board designates to the Secretary the authority to enter into a written Agreement with an applicant to provide the Board assurance that the applicant will be able to practice medicine and surgery in this state with reasonable skill and safety.
  - (2) The Secretary may enter into such an Agreement when circumstances and/or conditions of an applicant raise questions as to the fitness or ability of the applicant to practice medicine and surgery with reasonable skill and safety or questions as to prior actions of the applicant in this or any other jurisdiction which would constitute a violation of the Act or these rules, as the Secretary may determine.
  - (3) The Agreement shall be a written statement of conditions upon which a license may be granted to an applicant, although no license shall be guaranteed to be granted should an applicant enter into an Agreement, by which the Secretary shall devise and specify authority of the Board or its staff to meet with the applicant upon specified terms, to gather additional information from the applicant or to require the applicant to take certain specified actions if,

when and after the applicant is granted a license by the Board. Additionally, the Applicant will agree to pay the actual costs incurred for any testing or monitoring provided for under the Agreement.

(4) Any Agreement entered into by the Secretary and an applicant shall not be effective until ratified by the Board.

(5) The Board intends any Agreement entered into by the Secretary and an applicant to be of a continuing nature until set aside or otherwise terminated by the Board.

(6) An Agreement hereunder shall not be considered by the Board to be disciplinary action.

(7) The failure of a licensee who is the subject of an Agreement to comply with the terms of an Agreement shall be considered a violation of the rules of the Board and shall be grounds for disciplinary action by the Board pursuant to, among other things, OAC 435:10-7-4(11) and (39). Failure to comply with an Agreement hereunder may subject a licensee to revocation by the Board.

(8) At any time during the application process, the Board may hold an application and direct the Secretary to review the application for the possibility of entering into an Agreement with an applicant.

[Source: Added at 12 Ok Reg 3658, eff 5-9-95 (emergency); Added at 13 Ok Reg 1701, eff 5-25-96; Amended at 16 Ok Reg 2003, eff 6-14-99]

## **SUBCHAPTER 5. APPROVAL OF HOSPITALS AND PROGRAMS FOR POST-GRADUATE TRAINING**

### Section

435:10-5-1. Determination of hospitals and programs approved for post-graduate training

435:10-5-2. Suspension from hospitals and programs approved

### **435:10-5-1. Determination of hospitals and programs approved for post-graduate training**

In order to properly enforce the provisions of 59 O.S. 1971, Section 493.1(c) relative to post-graduate training, the State Board of Medical Licensure and Supervision shall each year approve sponsoring institutions and their programs which are acceptable for post-graduate training in Oklahoma.

(1) In determining which sponsoring institutions and programs shall be approved for post-graduate training, this Board shall consider among other things, the qualifications of physician educators serving in residencies in said sponsoring institutions and other facilities for giving first year post-graduate training. Physicians not eligible for full and unrestricted licensure in Oklahoma shall not be considered by this Board as qualified to train post-graduate residents.

(2) In determining the sponsoring institutions and programs that shall be approved for first year post-graduate training and residency programs, the Board shall consider as evidence of acceptability the sponsoring institution's accreditation by the Accreditation Council for Graduate Medical Education (ACGME).

(3) Each sponsoring institution shall appoint an institutional official responsible for meeting reporting requirements. The following list of reportable incidents shall be reported to the Board within thirty (30) days of a final action on the part of the sponsoring institution or program:

- (A) Whether any disciplinary actions relating to unprofessional conduct (as defined in Title 59 O.S., §509 and OAC 435:10-7-4) were taken against a resident physician in the post-graduate training program.
  - (B) Whether a resident physician has failed to advance in the residency program for reasons of unprofessional conduct.
  - (C) Whether a resident physician has been placed on restriction by the program director for reasons of unprofessional conduct.
  - (D) Whether any resident physician has been dismissed or terminated from the training program and the reasons for such action.
  - (E) Whether any resident physician has resigned from the training program while under investigation for program violations, misconduct, or unprofessional conduct.
  - (F) Whether any resident physician has been referred by the program director to a substance abuse program, unless the resident physician enrolls in an impaired physician program approved by the Board.
- (4) Failure to report unprofessional conduct or the inability to practice safely may be grounds for disciplinary action against the supervising physician.

[Source: Amended at 11 Ok Reg 4535, eff 7-27-94 (emergency); Amended at 12 Ok Reg 1223, eff 5-11-95; Amended at 14 Ok Reg 1412, eff 5-12-97; Amended at 21 Ok Reg 1049, eff 5-14-04]

**435:10-5-2. Suspension from hospitals and programs approved**

Any hospital or program appointing any person as a fellow, assistant resident, or resident physician or permitting anyone to practice medicine in such hospital or program without a license or special license to practice medicine in Oklahoma may be suspended from the Board’s list of hospitals and programs approved for post-graduate training. It shall be the duty of the hospital and/or medical school appointing such fellow, assistant resident, or resident to ascertain that such appointees hold a license to practice in Oklahoma at the time they begin post-graduate training. The hospital or program must submit within 30 days after the commencement of said employment the name and licensure information to include license number on each fellow, assistant resident or resident physician.

[Source: Amended at 11 Ok Reg 4535, eff 7-27-94 (emergency); Amended at 12 Ok Reg 1223, eff 5-11-95]

**SUBCHAPTER 7. REGULATION OF PHYSICIAN AND SURGEON PRACTICE**

Section

- 435:10-7-1. Physicians dispensing dangerous drugs
- 435:10-7-2. Use of Board certification
- 435:10-7-3. Administrative citation for violation (Revoked)
- 435:10-7-4. Unprofessional conduct
- 435:10-7-5. Determining continued competency of a physician and surgeon
- 435:10-7-6. Retired physicians and surgeons
- 435:10-7-7. Relocation of residence or practice
- 435:10-7-8. Communicable diseases
- 435:10-7-9. Disposal of human tissue
- 435:10-7-10. Annual reregistration

435:10-7-11. Use of controlled substances for the management of chronic pain

**435:10-7-1. Physicians dispensing dangerous drugs**

In compliance with Senate Bill 39, 1987 Session, all medical doctors who desire to dispense “dangerous drugs” to patients must comply with all requirements thereof.

- (1) **Annual registration.** Any medical doctor who desires to dispense “dangerous drugs,” as defined by 59 O.S.1991, §§ 355, **et seq.**, to patients must register annually with the Oklahoma State Board of Medical Licensure and Supervision on forms provided by the Board. Registration as a dispensing physician may be combined with annual renewal of licensure in order to simplify the process.
- (2) **Records made available.** The book, file or record required by the Oklahoma Pharmacy Act 59 O.S. 1991, Section 355.1, shall be available to inspection and copying by investigators of the Board during normal business hours.
- (3) **Initial registration.** For initial registration as a dispensing physician from November 1, 1987, to June 1, 1988, the physician may request a registration form from the Board or register in the normal, annual renewal of licensure process.
- (4) **Registration fee.** There is no fee for registration as a dispensing physician.

[Source: Amended at 11 Ok Reg 4535, eff 7-27-94 (emergency); Amended at 12 Ok Reg 1223, eff 5-11-95]

**435:10-7-2. Use of Board certification**

Allopathic physicians in Oklahoma who may lawfully claim to be “Board Certified” or “Certified by” or a “Diplomat” or “Fellow” are only physicians who have presented to the Oklahoma State Board of Medical Licensure and Supervision evidence of successful completion of all requirements for certification by a member Board of the organization of American Board of Medical Specialties as listed by the American Medical Association, or by any other organization whose program for the certification requested has been found by the Board to be equivalent thereto.

[Source: Amended at 11 Ok Reg 4535, eff 7-27-94 (emergency); Amended at 12 Ok Reg 1223, eff 5-11-95]

**435:10-7-3. Administrative citation for violation (Revoked)**

[Source: Amended at 11 Ok Reg 4535, eff 7-27-94 (emergency); Revoked at 12 Ok Reg 1223, eff 5-11-95]

**435:10-7-4. Unprofessional conduct**

The Board has the authority to revoke or take other disciplinary action against a licensee or certificate holder for unprofessional conduct. Pursuant to 59 O.S., 1991, Section 509, “Unprofessional Conduct” shall be considered to include:

- (1) Indiscriminate or excessive prescribing, dispensing or administering of Controlled or Narcotic drugs.
- (2) Prescribing, dispensing or administering of Controlled substances or Narcotic drugs in excess of the amount considered good medical practice or prescribing, dispensing or administering controlled substances or narcotic drugs without medical need in accordance with published standard.
- (3) The habitual or excessive use of any drug which impairs the ability to practice medicine

with reasonable skill and safety to the patient.

- (4) Issuing prescriptions for Narcotic or Controlled drugs to minors in violation of 63 O.S. 1978 Supp., Sections 2601 through 2606, as amended.
- (5) Purchasing or prescribing any regulated substance in Schedule I through V, as defined by the Uniform Controlled Dangerous Substances Act, for the physician's personal use.
- (6) Dispensing, prescribing or administering a Controlled substance or Narcotic drug without medical need.
- (7) The delegation of authority to another person for the signing of prescriptions for either controlled or non-controlled drugs, except as provided for in 59 O.S., 519.6D.
- (8) Fraud or misrepresentation in applying for or procuring a medical license or in connection with applying for or procuring periodic reregistration of a medical license.
- (9) Cheating on or attempting to subvert the medical licensing examination(s).
- (10) The conviction of a felony or any offense involving moral turpitude whether or not related to the practice of medicine and surgery.
- (11) Conduct likely to deceive, defraud, or harm the public.
- (12) Making a false or misleading statement regarding skill or the efficacy or value of the medicine, treatment, or remedy prescribed by a physician or at a physician's direction in the treatment of any disease or other condition of the body or mind.
- (13) Representing to a patient that an incurable condition, sickness, disease, or injury can be cured.
- (14) Willfully or negligently violating the confidentiality between physician and patient to the detriment of a patient except as required by law.
- (15) Gross or repeated negligence in the practice of medicine and surgery.
- (16) Being found mentally incompetent or insane by any court of competent jurisdiction; commitment to an institution for the insane shall be considered prima facie evidence of insanity of any physician or surgeon.
- (17) Being physically or mentally unable to practice medicine and surgery with reasonable skill and safety.
- (18) Practice or other behavior that demonstrates an incapacity or incompetence to practice medicine and surgery.
- (19) The use of any false, fraudulent, or deceptive statement in any document connected with the practice of medicine and surgery.
- (20) Practicing medicine and surgery under a false or assumed name.
- (21) Aiding or abetting the practice of medicine and surgery by an unlicensed, incompetent, or impaired person.
- (22) Allowing another person or organization to use a physician's license to practice medicine and surgery.
- (23) Commission of any act of sexual abuse, misconduct, or exploitation related or unrelated to the licensee's practice of medicine and surgery.
- (24) Prescribing, selling, administering, distributing, ordering, or giving any drug legally classified as a controlled substance or recognized as an addictive or dangerous drug for other than medically accepted therapeutic purposes.
- (25) Except as otherwise permitted by law, prescribing, selling, administering, distributing, ordering, or giving to a habitue or addict or any person previously drug dependent, any drug legally classified as a controlled substance or recognized as an addictive or dangerous drug.

- (26) Prescribing, selling, administering, distributing, ordering, or giving any drug legally classified as a controlled substance or recognized as an addictive dangerous drug to a family member or to himself or herself. Provided that this paragraph shall not apply to family members outside the second degree of consanguinity or affinity. Provided further that this paragraph shall not apply to medical emergencies when no other medical doctor is available to respond to the emergency.
- (27) Violating any state or federal law or regulation relating to controlled substances.
- (28) Obtaining any fee by fraud, deceit, or misrepresentation, including fees from Medicare, Medicaid, or insurance.
- (29) Employing abusive billing practices.
- (30) Directly or indirectly giving or receiving any fee, commission, rebate, or other compensation for professional services not actually and personally rendered, though this prohibition shall not prohibit the legal function of lawful professional partnerships, corporations, or associations.
- (31) Disciplinary action of another state or jurisdiction against a license or other authorization to practice medicine and surgery based upon acts of conduct by the licensee similar to acts or conduct that would constitute grounds for action as defined in this section, a certified copy of the record of the action taken by the other state or jurisdiction being conclusive evidence thereof.
- (32) Failure to report to the Board any adverse action taken against him or her by another licensing jurisdiction (United States or foreign), by any governmental agency, by any law enforcement agency, or by any court for acts or conduct similar to acts or conduct that would constitute grounds for action as defined in this section.
- (33) Failure to report to the Board surrender of a license or other authorization to practice medicine and surgery in an other state or jurisdiction, or surrender of membership on any medical staff or in any medical or professional association or society while under disciplinary investigation by any of those authorities or bodies for acts or conduct similar to acts or conduct that would constitute grounds for action as defined in this section.
- (34) Any adverse judgment, award, or settlement, or award arising from a medical liability claim related to acts or conduct similar to acts or conduct that would constitute grounds for action as defined in this section.
- (35) Failure to transfer pertinent and necessary medical records to another physician in a timely fashion when legally requested to do so by the subject patient or by a legally designated representative of the subject patient.
- (36) Improper management of medical records.
- (37) Failure to furnish the Board, its investigators or representatives, information lawfully requested by the Board.
- (38) Failure to cooperate with a lawful investigation conducted by the Board.
- (39) Violation of any provision(s) of the medical practice act or the rules and regulations of the Board or of an action, stipulation, or agreement of the Board.
- (40) The inability to practice medicine and surgery with reasonable skill and safety to patients by reason of age, illness, drunkenness, excessive use of drugs, narcotics, chemicals, or any other type of material or as a result of any mental or physical condition. To enforce this paragraph, the Board may, upon probable cause, request a physician to submit to a mental or physical examination by physicians designated by it. If the physician refuses to

submit to the examination, the Board shall issue an order requiring the physician to show cause why he will not submit to the examination and shall schedule a hearing on the order within thirty (30) days after notice is served on the physician. The physician shall be notified by either personal service or by certified mail with return receipt requested. At the hearing, the physician and his attorney are entitled to present any testimony and other evidence to show why the physician should not be required to submit to the examination. After a complete hearing, the Board shall issue an order either requiring the physician to submit to the examination or withdrawing the request for examination. The medical license of a physician ordered to submit for examination may be suspended until the results of such examination are received and reviewed by the Board.

(41) Failure to provide a proper setting and assistive personnel for medical act, including but not limited to examination, surgery, or other treatment. Adequate medical records to support treatment or prescribed medications must be produced and maintained.

(42) Failure to inform the Board of a state of physical or mental health of the licensee or of any other health professional which constitutes or which the licensee suspects constitutes a threat to the public.

(43) Failure to report to the Board unprofessional conduct committed by another physician.

(44) Abuse of physician's position of trust by coercion, manipulation or fraudulent representation in the doctor-patient relationship.

(45) Engaging in predatory sexual behavior.

(46) Any doctor licensed in Oklahoma using that license for practice in another state, territory, district or federal facility who violates any laws in the state in which he/she is practicing or any federal, territorial or district laws that are in effect in the location in which he/she is using his/her Oklahoma license to practice.

(47) Causing, or assisting in causing, the suicide, euthanasia or mercy killing of any individual; provided that it is not causing, or assisting in causing, the suicide, euthanasia or mercy killing of any individual to prescribe, dispense or administer medical treatment for the purpose of alleviating pain or discomfort in accordance with Oklahoma Administrative Code 435:10-7-11, even if such use may increase the risk of death, so long as it is not also furnished for the purpose of causing, or the purpose of assisting in causing, death for any reason.

(48) Failing to obtain informed consent, based on full and accurate disclosure of risks, before prescribing, dispensing, or administering medical treatment for the therapeutic purpose of relieving pain in accordance with Oklahoma Administrative Code 435:10-7-11 where use may substantially increase the risk of death.

(49) Failure to establish a physician/patient relationship prior to providing patient-specific medical services, care or treatment, except in a clearly emergent, life threatening situation.

[Source: Amended at 9 Ok Reg 1579, eff 4-27-92; Amended at 10 Ok Reg 1529, eff 4-26-93; Amended at 10 Ok Reg 4375, eff 7-27-93 (emergency); Amended at 11 Ok Reg 1559, eff 4-4-94 (emergency); Amended at 11 Ok Reg 2329, eff 5-26-94; Amended at 11 Ok Reg 4535, eff 7-27-94 (emergency); Amended at 12 Ok Reg 1223, eff 5-11-95; Amended at 13 Ok Reg 1573, eff 8-21-95 (emergency); Amended at 13 Ok Reg 1703, eff 5-25-96; Amended at 16 Ok Reg 1211, eff 5-14-99; Amended at 27 Ok Reg 856, eff 4-25-10]

#### **435:10-7-5. Determining continued competency of a physician and surgeon**

(a) **Criteria for review.** Any active licensed physician who meets any of the following criteria



shall be required to demonstrate his continued competence as a physician and surgeon in the State of Oklahoma. The criteria for review shall include:

- (1) Physicians who are more than 75 years of age;
  - (2) Physicians who have recently had significant illnesses or medical events which could effect their ability to practice medicine with reasonable competency;
  - (3) Physicians who have been the subject of letters of complaint or concern submitted to the Board from persons in the practitioner's sphere of influence.
- (b) **Upon meeting criteria.** Any physician meeting any of these criteria may be:
- (1) Required to submit to physical, psychological or psychiatric examination;
  - (2) Required to submit to the SPEX examination or any examination deemed appropriate for the purpose of evaluation of clinical competence by the Board or its designee;
  - (3) Required to submit evidence satisfactory to the Board or the Secretary to show successful completion of adequate continuing medical education;
  - (4) Required to appear for an interview with the Board, the Board Secretary, or a Board designated physician or group of physicians.
- (c) **Re-evaluation after meeting criteria.** After a physician has met the criteria for determination of continued competence, he/she may be re-evaluated no less frequently than five-year intervals as deemed necessary by the Board.

[Source: Amended at 9 Ok Reg 1573, eff 4-27-92]

#### **435:10-7-6. Retired physicians and surgeons**

- (a) Holders of full and unrestricted licenses may choose at any time to apply for Physician Emeritus (fully retired) status by notifying this office. There will be no fee associated with obtaining or maintaining this licensure status.
- (b) Physicians in this status may continue to use the title or append to their name the letters, M.D., Doctor, Professor, Specialist, Physician or any other title, letters or designation which represents that such person is a physician. Service on boards, committees or other such groups which require that a member be a physician shall be allowed.
- (c) Once this status is acquired the physician shall not practice medicine in any form, prescribe, dispense or administer drugs.
- (d) When a physician has retired from practice and subsequently chooses to return to active practice from retired status within six (6) months of the date of retirement, the physician shall:
- (1) Pay required fees and
  - (2) Complete required forms
- (e) When a physician has retired from practice and chooses to return to active practice from retired status more than six (6) months after date of retirement, in addition to the requirements of payment of fees and completion of forms, the physician may be required by the Board to:
- (1) Make a personal appearance before the Board or Secretary of the Board;
  - (2) submit to a physical examination, psychological and/or psychiatric examination;
  - (3) provide evidence of successful completion of continuing medical education;
  - (4) Successfully take a competency and/or jurisprudence examination as directed by the Board or the Secretary of the Board.

[Source: Amended at 14 Ok Reg, eff 10-1-97 (emergency); Amended at 15 Ok Reg 2019, eff 5-26-98; Amended at 25 Ok Reg 1966, eff 6-26-08]

#### **435:10-7-7. Relocation of residence or practice**

All physicians licensed in the State of Oklahoma must submit a street address upon relocation of residence, if used as mailing address, and/or practice address.

[Source: Amended at 11 Ok Reg 4535, eff 7-27-94 (emergency); Amended at 12 Ok Reg 1223, eff 5-11-95]

#### **435:10-7-8. Communicable diseases**

Any physician and surgeon licensed to practice in Oklahoma has a continuing, affirmative obligation to maintain freedom from any communicable disease or condition. In the event a physician contracts a communicable disease or condition, the physician shall either cease performing invasive procedures and take all other relevant precautions, or the physician shall give actual notice to patients of the nature and extent of his communicable disease or condition.

[Source: Added at 9 Ok Reg 1575, eff 4-27-92]

#### **435:10-7-9. Disposal of human tissue**

(a) The following words and terms, when used in this Section, shall have the following meaning, unless the context clearly indicates otherwise:

- (1) **“Conviction”**, as used in SB668, 1992 Legislative Session, shall mean a finding, by the Board, that a physician did violate any provision of this Section.
- (2) **“Human tissue”** means all parts of the human body recognizable as such without the use of specialized equipment.
- (3) **“Physician”** means a person licensed under the provisions of Title 59 O.S., Section 481 et seq.

(b) All human tissue, which is collected in the course of the diagnosis and/or treatment of any human condition by a doctor of allopathic medicine, his employee or agent, must be handled in one of the following ways:

- (1) Sent for analysis and possible retention as a surgical specimen;
- (2) Sent for autopsy;
- (3) Sent for embalming and burial in accordance with accepted interment standards; or
- (4) Sent for disposal by incineration in a pathological incinerator in the same manner as hazardous medical waste is handled under the applicable state statutes, rules and regulations.

(c) Nothing herein shall preclude the doctor’s right to use human tissue for the treatment of disease or injury. Likewise, the doctor shall have the right to assist in arranging appropriate donations through the processes of the Anatomical Board, under the provisions of the Anatomical Gift Act or the preservation of human tissue for other legitimate educational purpose in any accredited educational endeavor.

(d) In no event shall any person knowingly dispose of any human tissue in a public or private dump, refuse or disposal site or place open to public view.

(e) Any allopathic physician who violates or whose employees or agents violate this Section shall, upon conviction in a hearing before the Board, be fined an amount not to exceed Ten Thousand Dollars (\$10,000).

(f) A presumption of compliance occurs once the attending physician has executed one of these methods of handling and his responsibility is deemed fulfilled. In no event shall the allopathic physician be responsible for the acts or omissions of any other licensed professional, independent

contractor or other indirect assistant incidental to the ultimate disposal of human tissue by any of the designated methods.

[Source: Added at 10 Ok Reg 1527, eff 4-26-93]

#### **435:10-7-10. Annual reregistration**

(a) On an annual basis, each person licensed by the Board shall reregister with the Board. Reregistration shall be conducted during the month of initial licensure of each individual licensee by the Board. Each licensee shall provide to the Board all information required by the Board pursuant to statute, 59 O.S. ss 495a.1, in a form approved by the Board. The Board's staff shall prorate all fees for reregistration periods to equal the actual reregistration period during the period of transition from the uniform June annual reregistration period to the new period of reregistration based upon month of initial licensure.

(b) It shall be the affirmative duty of each licensee to comply with reregistration requirements. No grace period beyond that provided by law shall be allowed. The Board will not hear requests for extensions for reregistration or exemption from any reregistration requirement that the licensee did not receive reregistration materials.

[Source: Added at 12 Ok Reg 767, eff 1-5-95 (emergency); Added at 12 Ok Reg 1235, eff 5-15-95]

#### **435:10-7-11. Use of controlled substances for the management of chronic pain**

The Board has recognized that principles of quality medical practice dictate that the people of the State of Oklahoma have access to appropriate and effective pain relief and has adopted the following criteria when evaluating the physician's treatment of pain, including the use of controlled substances:

(1) **Evaluation of the patient.** A medical history and physical examination must be obtained, evaluated and documented in the medical record. The medical record should document the nature and intensity of the pain, current and past treatments for pain, underlying or coexisting diseases or conditions, the effect of the pain on physical and psychological function and history of substance abuse. The medical record also should document the presence of one or more recognized medical indications for the use of a controlled substance.

(2) **Treatment plan.** The written treatment plan should state objectives that will be used to determine treatment success, such as pain relief and improved physical and psychosocial function, and should indicate if any further diagnostic evaluations or other treatments are planned. After treatment begins, the physician should adjust drug therapy to the individual medical needs of each patient. Other treatment modalities or a rehabilitation program may be necessary depending on the etiology of the pain and the extent to which the pain is associated with physical and psychosocial impairment.

(3) **Informed consent and agreement for treatment.** The physician should discuss the risks and benefits of the use of controlled substances with the patient, persons designated by the patient or with the patient's surrogate or guardian if the patient is without medical decision-making capacity. The patient should receive prescriptions from one physician and one pharmacy whenever possible. If the patient is at high risk for medication abuse or has a history of substance abuse, the physician should consider the use of a written agreement between physician and patient outlining patient responsibilities, including:

- (A) urine/serum medication levels screening when requested;
  - (B) number and frequency of all prescription refills; and
  - (C) reasons for which drug therapy may be discontinued (e.g. violation of agreement)
- (4) **Periodic review.** The physician should periodically review the course of pain treatment and any new information about the etiology of the pain or the patient's state of health. Continuation or modification of controlled substances for pain management therapy depends on the physician's evaluation of progress toward treatment objectives. Satisfactory response to treatment may be indicated by the patient's decreased pain, increased level of function or improved quality of life. Objective evidence of improved or diminished function should be monitored and information from family members or other caregivers should be considered in determining the patient's response to treatment. If the patient's progress is unsatisfactory, the physician should assess the appropriateness of continued use of the current treatment plan and consider the use of other therapeutic modalities.
- (5) **Consultation.** The physician should be willing to refer the patient, as necessary, for additional evaluation and treatment in order to achieve treatment objectives. Special attention should be given to those patients with pain who are at risk for medication misuse, abuse or diversion. The management of pain in patients with a history of substance abuse or with a comorbid psychiatric disorder may require extra care, monitoring, documentation and consultation with or referral to an expert in the management of such patients.
- (6) **Medical records.** Records should remain current and be maintained in an accessible manner, readily available for review. The physician should keep accurate and complete records to include:
- (A) the medical history and physical examination (including vital signs),
  - (B) diagnostic, therapeutic and laboratory results,
  - (C) evaluations, consultations and follow-up evaluations,
  - (D) treatment objectives,
  - (E) discussion of risks and benefits,
  - (F) informed consent,
  - (G) treatments,
  - (H) medications (including date, type, dosage and quantity prescribed),
  - (I) instructions and agreements and
  - (J) periodic reviews.
- (7) **Compliance with controlled substances laws and regulations.** To prescribe, dispense or administer controlled substances, the physician must be licensed in Oklahoma and comply with applicable federal and state regulations. Physicians are referred to the Physicians Manual of the U.S. Drug Enforcement Administration for specific rules governing controlled substances as well as applicable state regulations.

[Source: Added at 16 Ok Reg 2003, eff 6-14-99; Amended at 22 Ok Reg 2096, eff 6-25-05]

#### **435:10-7-12. Establishing a physician/patient relationship; exceptions**

A physician/patient relationship is established when a physician agrees by direct or indirect contact with a patient to diagnose or treat any condition, illness or disability presented by a patient to that physician, whether or not such a presenting complaint is considered a disease by the general medical community. The physician/patient relationship shall include a medically

appropriate, timely-scheduled, face-to-face encounter with the patient, subject to any supervisory responsibilities established elsewhere in these rules except the following providers are not subject to the face-to-face encounter:

- (1) Providers covering the practice of another provider may approve refills of previously ordered medications if they have access to the medical file of the patient.
- (2) Hospice medical directors may initiate prescriptions based on requests from licensed health care providers and on information from Hospice records.
- (3) Providers ordering appropriate medications for persons with laboratory-proven, sexually transmitted diseases and persons who have been in contact with certain infectious diseases.
- (4) Telemedicine physicians who meet the criteria set out in OAC 435:10-7-13 of this Subchapter.
- (5) Licensed healthcare providers providing medical immunizations, which may be implemented by means of standing order(s) and/or policies.
- (6) Licensed providers ordering opioid antagonists pursuant to 63 O.S. §1-2506.1.

[Source: Added at 31 Ok Reg , eff 12-3-13 (emergency); Added at 31 Ok Reg, eff 3-18-14 (emergency); Amended at 31 Ok Reg 1978, eff 9-12-14]

#### **435:10-7-13. Telemedicine**

- (a) Physicians treating patients in Oklahoma through telemedicine must be fully licensed to practice medicine in Oklahoma; and
- (b) Must practice telemedicine in compliance with standards established in these rules. In order to be exempt from the face-to-face meeting requirement set out in these rules, the telemedicine encounter must meet the following:
  - (1) **Telemedicine encounters.** Telemedicine encounters require the distant site physician to perform an exam of a patient at a separate, remote originating site location. In order to accomplish this, and if the distant site physician deems it to be medically necessary, a licensed healthcare provider trained in the use of the equipment may be utilized at the originating site to “present” the patient, manage the cameras, and perform any physical activities to successfully complete the exam. A medical record must be kept and be accessible at both the distant and originating sites, preferably a shared Electronic Medical Record, that is full and complete and meets the standards as a valid medical record. There should be provisions for appropriate follow up care equivalent to that available to face-to-face patients. The information available to the distant site physician for the medical problem to be addressed must be equivalent in scope and quality to what would be obtained with an original or follow-up face-to-face encounter and must meet all applicable standards of care for that medical problem including the documentation of a history, a physical exam, the ordering of any diagnostic tests, making a diagnosis and initiating a treatment plan with appropriate discussion and informed consent.
  - (2) **Equipment and technical standards**
    - (A) Telemedicine technology must be sufficient to provide the same information to the provider as if the exam has been performed face-to-face.
    - (B) Telemedicine encounters must comply with HIPAA (Health Insurance Portability and Accountability Act of 1996) security measures to ensure that all patient communications and records are secure and remain confidential.
  - (3) **Technology guidelines**

- (A) Audio and video equipment must permit interactive, real-time communications.
- (B) Technology must be HIPAA compliant.
- (4) **Board Approval of Telemedicine.** In the event a specific telemedicine program is outside the parameters of these rules, the Board reserves the right to approve or deny the program.

[Source: Added at 31 Ok Reg 1975, eff 9-12-14]

## **SUBCHAPTER 9. PRACTICE AS A SUPERVISED MEDICAL DOCTOR**

### Section

- 435:10-9-1. Application for SMD certification (Revoked)
- 435:10-9-2. Evaluation of application for SMD certification (Revoked)
- 435:10-9-3. Certificates issued (Revoked)
- 435:10-9-4. Practice under supervision; Supervisor's Agreement (Revoked)
- 435:10-9-5. Identification (Revoked)
- 435:10-9-6. Board jurisdiction (Revoked)
- 435:10-9-7. SMD responsibility to obtain full licensure (Revoked)
- 435:10-9-8. Replacement of supervising physician (Revoked)

[Authority: Title 59 O.S., Section 489]

### **435:10-9-1. through 435:10-9-8. (Revoked)**

[Source: Revoked at 12 Ok Reg 1223, eff 5-11-95]

## **SUBCHAPTER 11. TEMPORARY AND SPECIAL LICENSURE**

### Section

- 435:10-11-1. Purpose
- 435:10-11-2. Procedure for temporary licensure
- 435:10-11-3. Procedure for special licensure
- 435:10-11-3.1. Special license for post-graduate training
- 435:10-11-4. Fees
- 435:10-11-5. Practice within scope of license
- 435:10-11-6. Change of supervisory medical doctor

### **435:10-11-1. Purpose**

The purpose of this Subchapter is to set forth requirements for the approval of a temporary license or special license to practice medicine and surgery in this state. In general, temporary licensure rules apply to applicants who demonstrably meet all requirements for the granting of an unrestricted license to practice medicine and surgery but must await Board approval of the application. Special licensure, in general, is applicable to persons who do not meet all requirements for an unrestricted license to practice medicine and surgery but who are qualified to practice medicine and surgery on a limited basis, whether by specialty, level of medical post-

graduate training, location or type of practice.

[Source: Added at 11 Ok Reg 4535, eff 7-27-94 (emergency); Added at 12 Ok Reg 1223, eff 5-11-95]

#### **435:10-11-2. Procedure for temporary licensure**

(a) Any applicant for an unrestricted license to practice medicine and surgery in this state, whether by examination or endorsement, may make a written application to the Secretary for the issuance of a temporary license to practice medicine and surgery. An applicant for such a license shall meet all statutory and regulatory requirements for the issuance of an unrestricted license to practice medicine and surgery in this state and has complied with all requirements.

(b) Upon receipt by the Secretary of an application for a temporary license to practice medicine and surgery in this state, the Secretary shall review the application of the applicant for an unrestricted license to practice medicine and surgery and confer with staff to verify that the applicant has met or will meet within a reasonable time all requirements for unrestricted licensure but awaits only a vote of the Board on the application for an unrestricted license. If the Secretary is satisfied the applicant has met or will meet within a reasonable time all requirements for unrestricted license to practice medicine and surgery in this state, the Secretary may issue the applicant a temporary license to practice.

(c) A temporary license granted by the Secretary pursuant to this section shall terminate at the next Board meeting at which the Board is scheduled to act upon the applicant's application for an unrestricted license.

(d) The Secretary is authorized to seek injunctive relief against any person who practices beyond the termination of a temporary license granted pursuant to this Section and who has not obtained an unrestricted or special license to practice medicine and surgery in this state.

[Source: Added at 11 Ok Reg 4535, eff 7-27-94 (emergency); Added at 12 Ok Reg 1223, eff 5-11-95]

#### **435:10-11-3. Procedure for special licensure**

(a) Absent Board determination of exceptional qualifications and need to warrant special licensure, effective June 9, 2004 only special licenses for training will be issued by the Board. Persons issued special licenses prior to June 9, 2004 may continue to apply for renewal.

(b) No person granted a special license to practice medicine or surgery in this state shall practice outside the scope of the special license. Any practice outside the scope of a special license shall be deemed to be the unlicensed practice of medicine or surgery. The Secretary is authorized to seek injunctive action to prevent any person from violating terms or limitations of a special license granted by the Board.

(c) Upon application for renewal, the Secretary shall review all special licenses granted on an annual basis to determine if such license should be renewed by the Board or amended as to its terms or limitations. In addition, the Board may grant the holder of a special license a license without practice limitation when appropriate.

[Source: Added at 11 Ok Reg 4535, eff 7-27-94 (emergency); Added at 12 Ok Reg 1223, eff 5-11-95; Amended at 15 Ok Reg 2020, eff 5-26-98; Amended at 22 Ok Reg 946, eff 5-12-05]

##### **435:10-11-3.1. Special license for post-graduate training**

(a) The Secretary of the Board is authorized to issue a special license for training to first-year

residents. Unless otherwise renewed, amended, suspended or revoked by the Board, a special license issued under this section may be extended without renewal by the Secretary for a period not to exceed ninety (90) days until scores from the first-year resident's final licensing examination are received and application for full licensure is acted on by the Board.

(b) No special license for post-graduate training may be issued unless the applicant has passed Step 1 and Step 2-Clinical Knowledge and Step2-Clinical Skills of the United States Medical Licensing Examination (USMLE) within the limits set forth in 435:10-4-6(g).

[Source: Added at 13 Ok Reg 1175, eff 2-26-96 (emergency); Added at 13 Ok Reg 2689, eff 6-27-96; Amended at 15 Ok Reg 2740, eff 6-26-98; Amended at 18 Ok Reg 1309, eff 5-11-01; Amended at 22 Ok Reg 946, eff 5-12-05; Amended at 22 Ok Reg, eff 6-20-05 (emergency); Amended at 23 Ok Reg 1097, eff 5-11-06]

#### **435:10-11-4. Fees**

An applicant for either a temporary or special training license shall pay all appropriate fees to the Board prior to the issuance of such a license.

[Source: Added at 11 Ok Reg 4535, eff 7-27-94 (emergency); Added at 12 Ok Reg 1223, eff 5-11-95; Amended at 22 Ok Reg 946, eff 5-12-05]

#### **435:10-11-5. Practice within scope of license**

(a) It is the duty of any person issued a temporary license to ensure that such licensee completes the licensure process and does not practice beyond the termination of the temporary license without the issuance of an unrestricted license to practice.

(b) It is the duty of any person issued a special license to practice to comply with any and all restrictions or limitations of the special license. A person who has been issued a special license shall respond promptly to an inquiry from the Board or its staff as to compliance with the restrictions or limitations of the special license.

[Source: Added at 11 Ok Reg 4535, eff 7-27-94 (emergency); Added at 12 Ok Reg 1223, eff 5-11-95]

#### **435:10-11-6. Change of supervisory medical doctor**

In the event a special license is granted with the agreed practice limitation that the licensee shall practice under the supervision of another medical doctor, said supervisory physician shall hold a full and unrestricted license to practice medicine and surgery in this state. It shall be the duty of the licensee to request approval from the Board of any change of the supervisory medical doctor prior to effecting such change.

[Source: Added at 11 Ok Reg 4535, eff 7-27-94 (emergency); Added at 12 Ok Reg 1223, eff 5-11-95]

### **SUBCHAPTER 13. SUPERVISION OF ADVANCED PRACTICE NURSE WITH PRESCRIPTIVE AUTHORITY**

#### Section

435:10-13-1. Purpose

435:10-13-2. Eligibility to supervise advanced practice nurse with prescriptive authority



### **435:10-13-1. Purpose**

The purpose of this Subchapter is to set forth the requirements for allopathic physicians to supervise the advanced practice nurse with prescriptive authority pursuant to 59 O.S., §567.1 et seq.

[Source: Added at 13 Ok Reg, eff 9-3-96 (emergency); Added at 14 Ok Reg, eff 9-10-97 (emergency); Amended at 15 Ok Reg 2021, eff 5-26-98]

### **435:10-13-2. Eligibility to supervise advanced practice nurse with prescriptive authority**

(a) To be eligible to serve as supervising physician for the advanced practice nurse with prescriptive authority, an allopathic physician shall meet the following criteria:

- (1) Have possession of a full and unrestricted Oklahoma medical license with Drug Enforcement Agency (DEA) and Oklahoma Bureau of Narcotics (OBN) permits for any drug on the formulary as defined in the Oklahoma Nursing Practice Act.
- (2) The physician shall be in an active clinical practice in which no less than twenty (20) hours per week shall involve direct patient contact.
- (3) The supervising physician shall be trained and fully qualified in the field of the advanced practice nurse's specialty.
- (4) No physician shall supervise more than two (2) full time equivalent advanced practice nurses regarding their prescriptive authority at any one time. For purposes of this section, each "full time equivalent" advanced practice nurse position equals forty (40) hours per week collectively worked by the part-time advanced practice nurses being supervised by the physician. Notwithstanding the provisions for the supervision of two (2) full time equivalent advanced practice nurses above, no physician shall supervise more than a total of four (4) advanced practice nurses. The Board may make an exception to any limit set herein upon request by the physician.

(b) Proper physician supervision of the advanced practice nurse with prescriptive authority is essential. The supervising physician should regularly and routinely review the prescriptive practices and patterns of the advanced practice nurse with prescriptive authority. Supervision implies that there is appropriate referral, consultation, and collaboration between the advanced practice nurse and the supervising physician.

[Source: Added at 13 Ok Reg, eff 9-3-96 (emergency); Added at 15 Ok Reg 42, eff 9-10-97 (emergency); Added at 15 Ok Reg 2021, eff 5-26-98]

## **SUBCHAPTER 15. CONTINUING MEDICAL EDUCATION**

Section

435:10-15-1. Continuing medical education

### **435:10-15-1. Continuing medical education**

(a) **Requirements.**

- (1) Each applicant for re-registration (renewal) of licensure shall certify every three years that he/she has completed the requisite hours of continuing medical education (C.M.E.).
- (2) Requisite hours of C.M.E. shall be sixty (60) hours of Category I obtained during the

preceding three (3) years as defined by the American Medical Association/Oklahoma State Medical Association/American Academy of Family Physicians or other certifying organization recognized by the Board.

(3) Newly licensed physicians will be required to begin reporting three years from the date licensure was granted.

(b) **Audit/Verification.**

(1) The Board staff will, each year, randomly or for cause select licensees to be audited for verification that C.M.E. requirements have been met.

(2) The Board shall accept as verification:

(A) Current American Medical Association Physician Recognition Award (AMAPRA);

(B) Specialty board certification or recertification that was obtained during the three year reporting period, by an American Board of Medical Specialties (ABMS) specialty board;

(C) Proof of residency or fellowship training during the preceding three years. Fifty (50) hours of CME may be awarded for each completed year of training;

(D) Copies of certificates for the Category I education.

(c) **Compliance.**

(1) Licensees selected for audit must submit verification of meeting the CME requirement.

(2) Failure to submit such records shall constitute an incomplete application and shall result in the application being returned to the licensee and the licensee being unable to practice.

(3) A license obtained through misrepresentation shall result in Board action.

[Source: Added at 14 Ok Reg 1413, eff. 5-12-97; Amended at 17 Ok Reg 1351, eff 5-11-00; Amended at 19 Ok Reg 2777, eff 6-24-02 (emergency); Amended at 20 Ok Reg 971, eff 5-21-03]

## **SUBCHAPTER 17. MEDICAL MICROPIGMENTATION**

### Section

435:10-17-1. Purpose

435:10-17-2. Definitions

435:10-17-3. Duties and responsibilities

### **435:10-17-1. Purpose**

The purpose of this subchapter is to set forth the duties and responsibilities of an allopathic physician electing to employ and/or utilize a medical micropigmentationologist.

[Source: Added at 19 Ok Reg 422, eff. 11-19-01 (emergency); Added at 19 Ok Reg 2302, eff 6-28-02; Amended at 21 Ok Reg 128, eff 10-29-03 (emergency); Amended at 21 Ok Reg 1050, eff 5-14-04]

### **435:10-17-2. Definitions**

The following words and terms, when used in this Subchapter, shall have the following meaning, unless the context clearly indicates otherwise:

"**Medical micropigmentationologist**" means a person credentialed according to the provisions of Title 63 O.S., Section 1-1450 et seq.

"**Patient**" means any person undergoing a micropigmentation procedure.

"**Physician**" means an allopathic physician licensed by the Oklahoma State Board of

## Medical Licensure and Supervision.

[Source: Added at 19 Ok Reg 422, eff. 11-19-01 (emergency); Added at 19 Ok Reg 2302, eff 6-28-02; Amended at 21 Ok Reg 128, eff 10-29-03 (emergency); Amended at 21 Ok Reg 1050, eff 5-14-04]

### **435:10-17-3. Duties and responsibilities**

- (a) To be eligible to serve as a supervising physician for a medical micropigmentationologist a physician shall meet the following criteria:
- (1) Have possession of a full and unrestricted license to practice allopathic medicine and surgery in the state of Oklahoma.
  - (2) The supervising physician shall be in full time practice with a minimum of twenty (20) hours per week of direct patient contact.
- (b) Medical micropigmentation procedures may only be undertaken within the context of an appropriate doctor/patient relationship wherein a proper patient record is maintained.
- (c) The supervising physician may employ and/or utilize no more than two (2) medical micropigmentationologists at any one time.
- (d) The supervising physician shall determine the level of supervision

[Source: Added at 19 Ok Reg 422, eff. 11-19-01 (emergency); Added at 19 Ok Reg 2302, eff 6-28-02; Amended at 21 Ok Reg 128, eff 10-29-03 (emergency); Amended at 21 Ok Reg 1050, eff 5-14-04]

## **SUBCHAPTER 19. SPECIAL VOLUNTEER MEDICAL LICENSE**

435:10-19-1. Purpose

435:10-19-2. Procedure for volunteer license

435:10-19-3. Annual renewal

### **435:10-19-1. Purpose**

The purpose of this Subchapter is to set forth the requirements for receiving and maintaining a special volunteer medical license. This volunteer medical license shall be issued as provided for in Title 59 O.S., §493.5 for the sole treatment of indigent and needy persons without expectation of receiving any payment or compensation.

[Source: Added at 21 Ok Reg 128, eff 10-29-03 (emergency); Added at 21 Ok Reg 1051, eff 5-14-04]

### **435:10-19-2. Procedure for volunteer license**

- (a) Application for a volunteer medical license shall be submitted on forms provided by the Board and document all information as required in Title 59 O.S., §493.5.
- (b) The volunteer medical license shall be issued without the payment of an application fee.
- (c) No person granted a volunteer medical license shall practice outside the scope of the license. Any practice outside the scope of the volunteer medical license shall be deemed to be unprofessional conduct and may be grounds for disciplinary action by the Board.
- (d) All other provisions of the act and rules shall apply to holders of a volunteer medical license.

[Source: Added at 21 Ok Reg 128, eff 10-29-03 (emergency); Added at 21 Ok Reg 1051, eff 5-14-04]

**435:10-19-3. Annual renewal**

- (a) Holders of a volunteer medical license must apply for renewal on an annual basis on forms provided by the Board.
- (b) Renewals issued by the Board will be without any continuing education requirements or renewal fee.

[Source: Added at 21 Ok Reg 128, eff 10-29-03 (emergency); Added at 21 Ok Reg 1051, eff 5-14-04]

**SUBCHAPTER 21. ABORTIONS**

**435:10-21-1. Informed consent**

- (a) No abortion shall be performed in this state except with the voluntary and informed consent of the woman upon whom the abortion is to be performed.
- (b) Requirements for obtaining voluntary and informed consent are set forth in Title 63, O.S., §1-738.2.
- (c) Any physician performing an abortion in violation of Title 63, O.S., §1-738.2 shall be subject to disciplinary action by the Board.

[Source: Added at 24 Ok Reg 214, eff 10-26-2006 (emergency); Amended at 24 Ok Reg 2248, eff 6-25-07]