

**TRANSMITTAL SHEET FOR
NOTICE OF INTENDED ACTION**

Control 545 Department or Agency Alabama Medical Licensure Commission

Rule No. 545-X-3-.09

Rule Title: Rules Of Evidence In Contested Cases

 New X Amend Repeal Adopt by Reference

Would the absence of the proposed rule significantly harm or endanger the public health, welfare, or safety? YES

Is there a reasonable relationship between the state's police power and the protection of the public health, safety, or welfare? YES

Is there another, less restrictive method of regulation available that could adequately protect the public? NO

Does the proposed rule have the effect of directly or indirectly increasing the costs of any goods or services involved and, if so, to what degree? NO

Is the increase in cost, if any, more harmful to the public than the harm that might result from the absence of the proposed rule? NO

Are all facets of the rulemaking process designed solely for the purpose of, and so they have, as their primary effect, the protection of the public? YES

Does the proposed rule have an economic impact? NO

If the proposed rule has an economic impact, the proposed rule is required to be accompanied by a fiscal note prepared in accordance with subsection (f) of Section 41-22-23, Code of Alabama 1975.

Certification of Authorized Official
I certify that the attached proposed rule has been proposed in full compliance with the requirements of Chapter 22, Title 41, Code of Alabama 1975, and that it conforms to all applicable filing requirements of the Administrative Procedure Division of the Legislative Reference Service.

Signature of certifying officer James E. West, MD
Date: 6/28/16

APA-2
6/93

ALABAMA MEDICAL LICENSURE COMMISSION

NOTICE OF INTENDED ACTION

AGENCY NAME: Alabama Medical Licensure Commission

RULE NO. & TITLE: 545-X-3.09, Rules Of Evidence In Contested Cases

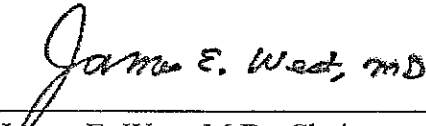
INTENDED ACTION: To amend 545-X-3-.09

SUBSTANCE OF PROPOSED ACTION: To delete the notarization requirement on the certification form.

TIME, PLACE, MANNER OF PRESENTING VIEWS: All interested persons may submit data, views or arguments concerning the proposed new rule(s) and regulation(s) in writing to: Karen H. Silas, Executive Assistant, Alabama Medical Licensure Commission, Post Office Box 887, Montgomery, Alabama 36101-0887, by mail or in person between the hours of 8:30 a.m. and 4:30 p.m., Monday through Friday, until and including **Friday, September 2, 2016**. Persons wishing to obtain copies of the text of this rule and submit data, views or comments or arguments orally should contact Karen H. Silas, by email at ksilas@albme.org or phone at 334-242-4153 during said period in order to set up an appointment for a hearing respecting such oral data, views, or arguments.

FINAL DATE FOR COMMENT AND COMPLETION OF NOTICE: September 2, 2016

CONTACT PERSON AT AGENCY: Karen H. Silas



James E. West, M.D., Chairman

1. 545-X-3-.09 Rules Of Evidence In Contested Cases.

- (1) In contested cases, the rules of evidence as applied in nonjury civil cases in the circuit courts of the state shall be followed. When necessary to ascertain facts not reasonably susceptible of proof under those rules, evidence not admissible thereunder may be admitted (except where precluded by statute) if it is of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs. Objections to evidentiary offers may be made and shall be noted in the record. Whenever any evidence is excluded as inadmissible, all such evidence existing in written form shall remain a part of the record as an offer of proof. The party seeking the admission of oral testimony may make an offer of proof by means of a brief statement on the record describing the testimony excluded. All rulings on the admissibility of evidence shall be final and shall appear in the record. Subject to these requirements, when a hearing will be expedited and the interest of the parties will not be prejudiced substantially, any part of the evidence may be received or may be required to be submitted in verified form, provided the adversary party shall not be denied the right of cross-examination of the witness. The testimony of parties and witnesses shall be made under oath.
- (2) Documentary evidence otherwise admissible may be received in the form of copies or excerpts, or by incorporation by reference to material already on file with the Commission. Upon request, parties shall be given an opportunity to compare the copy with the original.

- (3) A party may conduct cross-examination required for a full and true disclosure of the facts, except as may otherwise be limited by law.
- (4) Official notice may be taken of all facts of which judicial notice may be taken and of other scientific and technical facts within the specialized knowledge of the Commission. Parties shall be notified at the earliest practicable time, either before or during the hearing, or by reference in preliminary reports, preliminary decisions or otherwise, of the facts proposed to be noticed and their course, including any staff memoranda or data, and the parties shall be afforded an opportunity to contest such facts before the decision is announced unless the agency determines as part of the record or decision that fairness to the parties does not require an opportunity to contest such facts.
- (5) The experience, technical competence, and specialized knowledge of the Commission may be utilized in the evaluation of the evidence.
- (6) A copy of records that are certified by the custodian of those records shall be admissible in evidence in a contested hearing before the Commission or Board. The certificate of the custodian of records provided for in this paragraph shall be in substantially the form as follows:
- I, _____, hereby certify and affirm in writing that I am _____ of _____ and that I am custodian of the records that are attached hereto. The copies of the records are exact, full,

true and correct copies of records pertaining to the case of

_____.

All of which I hereby certify and affirm, under oath, this _____ day
of _____, 20__.

Custodian of Records

~~SWORN to and subscribed before me this the _____ day of~~
~~_____, 20__.~~

~~NOTARY PUBLIC~~

~~My commission expires:~~

Author:

Statutory Authority: Code of Ala. 1975 §§41-22-13.

History: Filed May 6, 1983. **Repealed and new rule adopted in lieu thereof:** Filed
May 1, 1984. **Amendment Approved for publication:** August 27, 2003. **Amendment**
Adopted: November 19, 2003. Filed November 25, 2003; effective December 30, 2003.
Amendment Approved for Publication: May 25, 2016