

Annual List of Rulemaking Activity
Rules Adopted January 1, 2019 to December 31, 2019
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name: Department of Professional and Financial Regulation,
Board of Licensure in Medicine

Umbrella-Unit: **02-373**

Statutory authority: 32 MRS §§ 3269(3),(7)

Chapter number/title: **Ch. 10**, Sexual Misconduct (*jointly with 02-383, Board of Osteopathic Licensure*)

Filing number: **2019-146**

Effective date: 8/17/2019

Type of rule: Routine Technical

Emergency rule: No

Principal reason or purpose for rule:

To update the existing rule regarding sexual misconduct by physicians and physician assistants, including: prohibiting sexual misconduct with "key third parties" such as the spouse or parent of a patient; defining "sexual misconduct" to include additional acts by physicians and physician assistants using photographs or social media and certain criminal convictions; setting forth the range of sanctions applicable to violations of the rule; and identifying factors the Boards should consider in imposing sanctions.

Basis statement:

The Board of Licensure in Medicine and the Board of Osteopathic Licensure ("Boards") have an existing joint rule (Ch. 10) regarding Sexual Misconduct. The original joint rule was adopted by the Boards in 1997 - over 22 years ago. Since that time, the Federation of State Medical Boards ("FSMB") and the American Medical Association's Code of Medical Ethics have updated their standards and guidelines to further expand the definition of "sexual misconduct" and to prohibit sexual misconduct with "key third parties" of the patient such as the patient's spouse or guardian who may play an important role in the patient-physician relationship, including medical decision-making that directly affects the health and welfare of the patient. As both the FSMB and the AMA point out, sexual relationships with "key third parties" may negatively impact the physician-patient relationship, exploit the vulnerability of the "key third party", and negatively affect the physician's objectivity regarding the patient's health care.

The new joint rule: (1) defines two levels of sexual misconduct: "sexual violation" and "sexual impropriety"; and (2) outlines sanctions the Boards may impose for acts of sexual misconduct and identifies factors that the Board should consider.

The new joint rule as originally proposed was comprised of the following sections:

Section 1 defines "sexual misconduct" - to include two levels: "sexual violation" and sexual impropriety."

Section 2 outlines sanctions the Boards may impose for acts of sexual misconduct.

The Boards published the joint rule for public comment on March 13, 2019. The Boards did not receive any comments regarding the proposed joint rule.

Fiscal impact of rule:

Minimal.