



7/22/2020

To Whom It May Concern:

I have always felt that this rule has nothing to do with patient safety and everything to do with restraining trade to gain a competitive advantage. I now see it also as a not so subtle attempt to lend credence to and codify a self-defined and unrecognized "cosmetic surgery" board certification. I feel that patient safety would be much better served by passing a transparency in advertising rule illuminating the unethical behavior of non-board-certified plastic surgeons calling themselves (even sneakily) plastic surgeons. As for rule 46, the only thing it does is open us up to heavy handed oversight and endless complaints from every competing injection center who is not as busy as they think they should be. I consider the whole thing a prime example of a circular firing squad and have devoted all the mental energy to its passing that it deserves, which of course, is none.

Robert Taylor, MD, FACS

Dear (name)

This Wednesday, September 16, the Arkansas Medical Board will present Proposed Rule 46 on Minor Aesthetic Cosmetic Surgical Procedures before the ALC Administrative Rules Committee. On behalf of nearly 1000 Arkansans who have spoken out in opposition to this rule, we ask you to **VOTE TO REJECT Proposed Rule 46**.

While this "rule change" will have a substantial economic impact on over a hundred-million-dollars-worth of existing business investments across the state, and also affect multiple professions across three occupational licensing boards, we are **not** asking you to vote against the proposed rule because it is poor public policy.

**We are asking you to reject Proposed Rule 46 because it violates state law and well-established legislative intent in multiples ways.**

The Arkansas Medical Practices Act is the statutory authority over the practice of medicine in Arkansas and is the law from which the state Medical Board derives its rulemaking power. The Medical Practices Act explicitly includes "surgery" and "surgical procedures" as being within the scope of practice of a physician. A.C.A. §17-95-202(3). However, the ability to perform surgery is specifically not included within the Nursing Practices Act. See A.C.A. 17-87-201 et seq. Proposed Rule 46 defines surgery as any procedure which cuts, alters or infiltrates the skin, and thus, allows a physician to delegate these "surgical procedures" to Medical Assistants, RN's, APRN's, and PA's. The legislature has clearly said who has the ability to perform surgical procedures, and this rule, through its arbitrary definition of surgery, expressly contradicts legislative action and state law.

Proponents of this rule will say Medical Board rules do not govern nurses and therefore, the point is irrelevant. However, they miss the more important fact, which is that the proposed rule is inconsistent with state law. Rules should align with the law, not contradict it.

Additionally, this rule violates legislative intent in another glaring way. The legislature has said an APRN may operate fully inside their scope as long as they enter into a collaborative practice agreement "with a practicing physician who is licensed under the Arkansas Medical Practices Act... and who has training in scope, specialty, or expertise to that of the advanced practice registered nurse on file with the Arkansas State Board of Nursing." (Act 824 of 2015, By: Representatives Vaught, M. Gray). Act 824 specifically struck the language "~~a practice comparable,~~" removing the requirement on physicians to be a specialist in order to collaborate on certain procedures. In contrast, Proposed Rule 46, requires "[a]ll Physicians collaborating with an (APRN) to provide minor aesthetic/cosmetic procedures must be board certified in one of the core specialties to include Cosmetic, Plastic, Facial Plastics, Dermatology and Oculoplastics or must show sufficient training and clinical experience in performing the procedure to be performed by the APRN." Under the proposed rule's standard, APRNs would need to enter into multiple agreements with specialists, adding additional costs and unnecessary bureaucracy. State law allows APRNs to operate fully within their scope, as long as they collaborate with a

practicing medical doctor. These additional requirements contradict the legislative intent that governs collaborative practice agreements.

These points are not trivial technicalities to be explained away by bureaucratic explanation. Rather, they go directly to the core of state government and how it functions. Rules and regulations should offer clarity to law, not contradict it. Boards and Commissions should establish rules within the legislative intent, not override it through regulation.

Most importantly, public policy should be established by policy makers, who are elected by the people and accountable to the people...not by unelected and unaccountable bureaucracy.

For these reasons, we ask that you **VOTE TO REJECT Proposed Rule 46.**

Respectfully,

Arkansas Cosmetic Health Coalition

Holly Hudson	Jamie Gallagher	Cassie Gonzales
R.N.	P.A.	A.P.R.N.



4/29/2020

Dear Colleagues,

I hope all of you are staying well during this unprecedented time. I am writing today to discuss with you proposed changes to Rule 46-Minor Aesthetic/Cosmetic Surgical Procedures guideline that the Arkansas Medical Board is trying to get enacted. Concerns have been brought to them about the safety of non-physicians injecting neurotoxins and fillers in the state. Many of us have concerns about this as well since there are minimally trained estheticians and medical assistants performing these procedures with marginal to no supervision. I do believe the Medical Board needs to address this in order to protect patient safety. I have included the proposed rule with this email. I agree with some of the proposed document. It also has many flaws in my opinion. Many of you have APRN's injecting rather than RN's and therefore not affected by this rule. The following are my personal views and I do not want to cause controversy with this letter. I do think that it is important for all of us who have extenders doing cosmetic injectables formulate our own opinion of the rule and decide whether to be for or against it.

I do not agree that properly trained RNs, and PAs need a doctor to personally diagnose every patient as is currently being proposed. In addition, the current language is not specific. If we are to evaluate every patient, how often should this be done? Every visit? Every year? How will this improve patient safety? How will the board be enforcing this mandate if it passes? None of these questions are addressed in the current rule. This rule specifically says that estheticians and LPNs cannot perform cosmetic injections. I'm sure we all agree with this. However, the proposal has a clause in it allowing medical assistants to possibly inject if they are appropriately supervised. I am adamantly opposed to this. I will include a list of bullet points that I think are also flaws in this proposed rule as well as the clause regarding medical assistants.

I encourage you all to follow the link below and make your thoughts known.  
<https://www.arkansaschc.com/> The medical board will hold a public hearing regarding this proposed rule on Thursday, June 4, 2020 at 8:50 in the boardroom of the Medical Board office. I plan to attend and would welcome any of you who have interest in this matter to attend as well.

Please feel free to reach out to me with thoughts or concerns at [urclifton@premierderm.net](mailto:urclifton@premierderm.net) or my cell phone 479-466-4771. Thank you for reading this and stay safe and healthy.

Warm regards,

Missy Clifton, MD, FAAD

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July 22, 2020

In regard to rule 46 and the attempt to proclaim the sole reason of this rule is to make Arkansans safe, I would like to point out what I think is a real travesty and a blatant disregard for just that purpose. The rule includes that the physician must be board certified in cosmetic surgery which is NOT a board recognized by the American Board of Medical Specialty (ABMS). Nor do physicians who falsely claim to be "board certified in cosmetic surgery" go through a recognized nor standardized training program recognized nor comparable to those by the ACGME. In fact, in 2017 California struck down the ability of those advertising themselves as cosmetic surgeons specifically finding the American Board of Cosmetic Surgeons (ABCS) and the American Association of Cosmetic Surgeons (AACCS) as NOT on par with ABMS specialties such as Plastic Surgery, Otolaryngology with a subspecialty of Facial Plastic Surgery, Ophthalmology, or Dermatology. Thus, to suggest that a physician must be board certified by a non-recognized board such as the ABCS is to be incredibly deceitful and potentially harmful to the patients of Arkansas and to the reputation of recognized medical boards. I would go so far as to suggest that the entire rule 46 is actually meant to do only one thing and that is not to protect Arkansans. It is to deceive Arkansans into thinking that a cosmetic surgeon has the credentials of a Plastic Surgeon. This is not even a turf issue nor a scope of practice issue. If a physician is ABMS board Certified in Oral Surgery, Gynecology, Family Practice, General Surgery, Otolaryngology, Radiology, etc. then proudly display such. Even if the physician is non-core (operating outside their original training) but does not lie and deceive patients about the nature of their training, I personally have no qualms about their right to do so. On the other hand, feel free to search Arkansas cosmetic surgeon and see how many even list their original training. They may list their program but not even say what specialty. Furthermore, I have researched each and noted how many times they say Plastic Surgery on nearly every page. Yet they are NOT plastic surgeons. In fact, one has a whole page on why it is so important to be "board certified". This is the ultimate in deceit and should absolutely be condemned by our medical community.

I think every physician can safely administer and proctor injectables and minimally invasive procedures with the proper training. Safety is the utmost of importance and further discussion is prudent to give the best care to Arkansans. However, to deceive our patients and sew discord amongst the medical community is truly despicable.

<https://caselaw.findlaw.com/ca-court-of-appeal/1387214.html>

<https://www.medpagetoday.com/surgery/plasticsurgery/77246>

<https://www.plasticsurgery.org/for-medical-professionals/publications/psn-extra/news/american-board-of-cosmetic-surgery-denied-right-to-advertise-as-board-certified-in-california>



Adam G. Newman, MD, ASPS, ASAPS

May 26, 2020

Dear Members of the Board:

This letter is regarding Proposed Rule 46-Minor Aesthetic/Cosmetic Surgical Procedures Guidelines. I am a practicing Obstetrician/Gynecologist in Bentonville. We also offer some aesthetic services for which we employ a Physician Assistant and aestheticians.

There are several areas of concern with the proposed rule. This rule was apparently shared with a small group of plastic surgeons prior to its release (please see attached). Why were physicians of other specialties who provide aesthetic services not included in the discussions? The inclusion of only "core specialties" is concerning and appears more consistent with a "turf war" than concerns over patient safety. I am unaware of any other verbiage in the Medical Practices Act and Regulations that calls out specific specialties as requirement for performance or delegation of the practice of medicine or specific procedures. This includes the sections pertaining to bariatric surgery, laser procedures, abortion, and office-based surgery; all of which carry far greater risks than the minor aesthetic/cosmetic procedures addressed in this rule. This inclusion of specific specialties sets a concerning precedent regarding liability and decreasing access to patient care. The list provided in Section 1 of the proposed rule allowing for physicians outside the "core" specialties to be able to show sufficient training and experience does not specify what the exact requirements will be, how they will be determined or how they will be assessed.

The inclusion of Physician Assistants in the requirement for a physician to "personally diagnose and document the condition of the patient, prescribe the treatment and procedure to be performed" prior to delegation is contradictory to existing sections in the Medical Practices Act and Regulations regarding Physician Assistants. They already practice under physician-drafted protocols that have been approved by the Board allowing them to diagnose and treat patients without a physician personally seeing them first. The language in this proposed rule would result in a regression in the existing scope of practice of Physician Assistants in Arkansas.

According to the State Board of Cosmetology Rules, licensed cosmetologists and aestheticians may use chemical exfoliation substances as outlined in Rule Number 11, Section B. 1. (a-f). The prohibition of the performance of chemical peels by aestheticians would also result in a restriction of their current scope of practice. This proposed new rule would now require an RN (or PA or APRN) apply all chemical peels. This creates an unnecessary financial hardship on practices providing aesthetic services as well as further limiting access to patient care.

There is no question there are currently situations where minor aesthetic/cosmetic procedures are being performed with inadequate or no physician supervision and a definite need exists to remedy the problem. This proposed rule in its current form is not that solution. It is overly restrictive and a regression in current scope of practice for PAs and aestheticians. I am respectfully requesting the Board Members vote against its approval.

Kind regards,

  
Amy Sarvet, MD, FACOG

Attachment: (1 page)