

## REGULATION 16

### PHYSICIANS, HIV AND HBV

Arkansas Code § 17-95-409 (7) and (10) provides that the Arkansas State Medical Board may revoke or suspend a license if the practitioner is grossly negligent and becomes physically incompetent to practice medicine to such an extent as to endanger the public.

Public Law 102-141 passed in the First Session of the 102<sup>nd</sup> Congress of the United States of America approved on 28 October, 1991 provides that the states will establish guidelines to apply to health professionals and will determine appropriate disciplinary and other actions to ensure compliance with those guidelines in order to prevent the transmission of human immunodeficiency syndrome and hepatitis B virus during exposure-prone invasive procedures except for emergency situations where the patient's life or limb is in danger.

#### **DEFINITIONS:**

As used in this Rule the term:

1. HIV means the human immunodeficiency virus, whether HIV-1 or HIV-2.
2. HIV seropositive means with respect to practitioner, that a test under the criteria of the Federal Centers for Disease Control or approved by the Arkansas State Medical Board has confirmed the presence of HIV antibodies.
3. HBV means hepatitis B virus.
4. HCV means hepatitis C virus.
5. HbeAg seropositive means with respect to a practitioner, that a test of the practitioner's blood under the criteria of the Federal Centers for Disease Control or approved by the Arkansas State Medical Board has confirmed the presence of the hepatitis Be antigens.
6. Body fluids means amniotic, pericardial, peritoneal, pleural, synovial and cerebrospinal fluids, semen, vaginal secretions and other body fluids, secretions and excretions containing visible blood.
7. Exposure-prone Procedure means an invasive procedure in which there is a risk of percutaneous injury to the practitioner by virtue of digital palpation of a needle tip or other sharp instrument in a body cavity or the simultaneous presence of the practitioner's fingers and a needle or other sharp instrument or object in a poorly visualized or highly confined anatomic site, or any other invasive procedure in which there is a significant risk of contact between the blood or body fluids of the practitioner and the blood or body fluids of the patient.
8. Invasive procedure means any surgical or other diagnostic or therapeutic procedure

involving manual or instrumental contact with or entry into any blood, body fluids, cavity, internal organ, subcutaneous tissue, mucous membrane or percutaneous wound of the human body.

9. Practitioner means physician or physician's trained assistant, who performs or participates in an invasive procedure or functions ancillary to invasive procedures.

#### **GENERAL REQUIREMENTS:**

10. A practitioner who performs or participates in an invasive procedure or performs a function ancillary to an invasive procedure shall, in the performance of or participation in any such procedure or function be familiar with, observe and rigorously adhere to both general infection control practices in universal blood and body fluid precautions as then recommended by the Federal Centers for Disease Control to minimize the risk of HBV or HIV from a practitioner to a patient, a patient to a practitioner, or from a patient to a patient.

11. Universal blood and body fluid precautions for purposes of this section, adherence to the universal blood and body fluid precautions requires observance of the following minimum standards: Protective Barriers:

A practitioner shall routinely use appropriate barrier precautions to prevent skin and mucous membrane contact with blood and other bodily fluids of the patient, to include:

(1) Gloves shall be used by the physician and direct care staff during treatment, which involved contact with items potentially contaminated with the patient's bodily fluids. Fresh gloves shall be used for all such patient contact. Gloves shall not be washed or reused for any purpose. The same pair of gloves shall not be used, removed, and reused for the same patient at the same visit or for any other purpose.

(2) Masks shall be worn by the physician and direct care staff when splatter or aerosol is likely. Masks shall be worn during surgical procedures except in those specific instances in which the physician determines that the use of a mask would prevent the delivery of health care services or would increase the hazard and risk to his or her patient.

(3) Protective eyewear shall be worn by the physician and offered to all patients during times when splatter or aerosol is expected.

(4) Hands and other skin surfaces shall be washed immediately and thoroughly if contaminated with blood or other bodily fluids. Hands shall be washed immediately after gloves are removed.

#### **PERCUTANEOUS PRECAUTIONS:**

12. A practitioner shall take appropriate precautions to prevent injuries caused by needles, scalpels, and other sharp instruments or devices during procedures; when cleaning used instruments; during disposal of used needles; and when handling sharp

instruments after procedures. If a needle stick injury occurs, the needle or instrument involved in the incident should be removed from the sterile field to prevent needle stick injuries, needles should not be recapped, purposely bent or broken by hand, removed from disposable syringes, or otherwise manipulated by hand. After they are used, disposable syringes and needles, scalpel blades, and other sharp items should be placed for disposal in puncture resistant containers located as close as practical to the use area. Large-bore reusable needles should be placed in puncture-resistant containers for transport to the reprocessing area.

13. Resuscitation Devices. To minimize the need for emergency mouth-to-mouth resuscitation, a practitioner shall ensure that mouthpieces, resuscitation bags, or other ventilation devices are available for use in areas in which the need for resuscitation is predictable.
14. Sterilization and Disinfection. Instruments or devices that enter sterile tissue or the vascular system of any patient or through which blood flows should be sterilized before reuse. Devices or items that contact intact mucous membranes should be sterilized or receive high-level disinfection. Sterile disposable needles shall be used. The same needle may be recapped with a single-handed recapping technique or recapping device and subsequently reused for the same patient during the same visit.
15. A practitioner who is HbeAg seropositive or HIV seropositive or who otherwise knows or should know that he or she carries and is capable of transmitting HBV or HIV or HCV, shall not thereafter perform or participate directly in an exposure-prone procedure except as provided in this Rule or Regulation.
16. A practitioner may participate in exposure-prone procedure with a patient when each of the following four conditions have been met:
  - (A) The practitioner has affirmatively advised the patient, or the patient's lawfully authorized representative, that the practitioner has been diagnosed as HbeAg seropositive, HIV seropositive and/or HCV as the case may be.
  - (B) The patient or the patient's lawfully authorized representative, has been advised of the risk of the practitioner's transmission of HBV, HIV and/or HCV to the patient during an exposure-prone procedure. The practitioner, shall personally communicate such information to the patient or the patient's representative. The physician shall also communicate such information to the patient's physician.
  - (C) The patient, or the patient's lawfully authorized representative, has subscribed a written instrument setting forth:
    - (1) Identification of the exposure-prone procedure to be performed by the practitioner with respect to the patient.
    - (2) An acknowledgment that the advise required by Subsections (15)(a) and (15)(b) hereabove have been given to and understood by the patient or the patient's representative; and
    - (3) The consent of the patient, or the patient's lawfully authorized representative, to the performance of or participation in the designated procedure by the practitioner.

(D) The practitioner's HbeAg and/or HIV seropositivity and HCV diagnosis has been affirmatively disclosed to each practitioner or other health care personnel who participates or assists in the exposure-prone procedure.

**REVOCAION OF CONSENT:**

17. Consent given pursuant to this section may be revoked by a patient or a patient's lawfully authorized representative at any time prior to performance of the subject procedure by any verbal or written communication to the practitioner expressing an intent to revoke, rescind or withdraw such consent.

**REPORTS AND INFORMATION CONFIDENTIALITY:**

18. Reports and information furnished to the Arkansas State Medical Board relative to the HbeAg, HIV or HCV status of the practitioner shall not be deemed to constitute a public record but shall be deemed and maintained by the Board as confidential and privileged as a medical record and shall not be subject to disclosure by means of subpoena in any judicial, administrative or investigative proceedings; provided that the practitioner adheres to the Rules and Regulations of the Board and is willing to subject himself to counseling, review and monitoring by the Board or its designated agent.
19. Upon the Board learning that a practitioner is HbeAg or HIV seropositive or HCV diagnosis the Board, or the Board's agents, will make contact with said practitioner, review the Rules and Regulations of the Board and set up a process of monitoring that individual's practice.
20. The monitoring of practitioners and disciplining of practitioners as set forth in this Rule and Regulation will be reported to the Arkansas Department of Health but will remain confidential.
21. If the practitioner does not comply with this Rule and Regulation of the Board that practitioner will be deemed to have been grossly negligent and committed ignorant malpractice and further that practitioner would be physically incompetent to practice medicine to such an extent as to endanger the public; thus subjecting the practitioner to a disciplinary hearing and possibly sanctioning of his license.