



# STATE OF ALABAMA ETHICS COMMISSION



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June 3, 2026

## **ADVISORY OPINION NO. 2026-06**

William Perkins  
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Alabama Board of Medical Examiners

Conflict of Interest / Business with which a  
Person is Associated

Under the Ethics laws, the State Board of Medical Examiners (BME) may conduct business with the Medical Association of the State of Alabama (Medical Association), an associated business of the BME's members, and its affiliated entities, provided that the BME members do not use their public position or influence to direct business to the Medical Association and are not involved in the negotiation or approval of any contract between the BME and the Medical Association, or an affiliated entity.

Under the Ethics laws, the BME's executive director may conduct business with the Medical Association, a business associated with the BME's members, and its affiliated entities, provided that the BME members do not use their public position to influence or direct business to the Medical Association, or an affiliated entity, and the executive director follows an established procedure adopted by him or her to ensure that the BME members wholly abstain from the transaction. A copy of any contract that the Medical Association enters into with the BME or that is otherwise

to be paid in whole or in part with state, county, or municipal funds, must be filed with the Ethics Commission within 10 days after it is entered into.

Under the Ethics laws, BME board members are permitted to act as reviewers for cases pending before the BME provided the member does not review or participate in any case that could result in personal gain for a family member, an associated business, or themselves other than the fee customarily paid for that service.

Dear Mr. Perkins:

The Alabama Ethics Commission is in receipt of your request for an Advisory Opinion of this Commission, and this opinion is issued pursuant to that request. This opinion applies only to the restrictions of the Ethics Act and applies prospectively only.

### **FACTS**

The facts as have been presented to this Commission are as follows:

The State Board of Medical Examiners (“the BME”) is the quasi-governmental agency charged with regulating the practice of medicine to benefit the health, welfare, and safety of the public. By statute, the “Board of Censors of the Medical Association of the State of Alabama, as constituted under the laws now in force, or which may hereafter be in force, and under the constitution of the association, as the constitution now exists or may hereafter exist, is constituted the State Board of Medical Examiners and is charged with the duties and clothed with the powers hereinafter prescribed.”<sup>1</sup> The Board of Censors of the Medical Association of the State of Alabama (hereinafter “Medical Association” and “Medical Association Board”) is comprised of sixteen physicians selected pursuant to its Constitution. The Medical Association Board is, in effect, the ‘board of directors’ of the Medical Association, which is a 501(c)(6) nonprofit incorporated in Alabama. These same sixteen physicians are, by operation of law, the State Board of Medical Examiners.<sup>2</sup> This structure and the corresponding relationship between the Medical Association

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<sup>1</sup> Ala. Code § 34-24-53.

<sup>2</sup> Ala. Code § 34-24-53.

Board and the BME has been in place for 150 years, dating back to the *Code of Alabama of 1876*. The BME employs a full staff, including an executive director, attorneys, and investigators, and maintains its own offices.<sup>3</sup> Funding for the BME is derived solely from its own licensure fees and administrative fines it may assess. The BME does not receive an appropriation from the Legislature and maintains its funds outside of the State Treasury in its own “checkbook accounts.” Ancillary to its primary function of regulating the practice of medicine, the Legislature has also tasked the BME with additional duties, which include providing specific services and resources to its licensees. Like many other agencies, the BME has determined that several of its statutorily imposed duties are best and more efficiently performed through the utilization of a contracted vendor.

The Legislature has placed on the BME “the duty and obligation . . . to promote the early identification, intervention, treatment and rehabilitation of physicians and osteopaths licensed to practice medicine in the State of Alabama who may be impaired.”<sup>4</sup> To “carry out this obligation, [the BME] is hereby empowered to contract with any nonprofit corporation or medical professional association for the purpose of creating, supporting, and maintaining a committee of physicians to be designated the Alabama Physician Wellness Committee.”<sup>5</sup> This contract “shall not be subject to any provision of law requiring competitive bidding.”<sup>6</sup>

The Board’s duties and functions require it to utilize expert medical review and testimony on a routine basis. The Board is charged by the Legislature with aiding the Medical Licensure Commission with “bringing about and maintaining a rigid administration and enforcement of” Alabama’s laws governing the practice of medicine.<sup>7</sup> The Board is vested with a number of investigative powers<sup>8</sup> and generally functions as “the investigative and prosecutive arm of the state’s medical profession.”<sup>9</sup> The Board also functions as a certifying board under the Controlled Substances Act and has investigative and enforcement powers to issue, revoke, or sanction the authority of physicians, physician assistants, and advanced practice nurses to prescribe controlled substances.<sup>10</sup> The Legislature has further charged the Board with conducting an annual review of all medical malpractice judgments and settlements “for the purpose of determining whether the agency should take disciplinary action against the [physician.]”<sup>11</sup> In performing each of these functions, expert medical review is a necessary part of evaluating the performance, actions, and intentions of physicians, physician assistants, and advanced practice nurses.

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<sup>3</sup> Ala. Code § 34-24-311.1.

<sup>4</sup> Ala. Code § 34-24-400.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> Ala. Code § 34-24-313(a).

<sup>8</sup> Ala. Code §§ 34-24-361; 34-24-363

<sup>9</sup> *Evers v. Board of Medical Examiners*, 516 So. 2d 650, 652 (Ala. Civ. App. 1987).

<sup>10</sup> Ala. Code §§ 20-2-50, et seq.

<sup>11</sup> Ala. Code § 34-24-57.

The Legislature has provided the Board with the authority to contract with consultants for the purposes of “reviewing medical records and providing expert testimony in contested cases.”<sup>12</sup> Nearly every case or matter the Board investigates involves confidential medical, pharmacy, and laboratory records, and requires advanced medical and pharmacological training to evaluate the investigative information. The reviewer must also operate under confidentiality statutes that mirror the intense confidentiality and privilege statutes governing peer review at hospitals. For decades, the Board has found that the confidential and peer-review nature of its duties is best served by using the expertise of its own members to perform this expert review. It is also more economical and removes the time-intensive and costly burden of identifying, credentialing, and contracting with an outside consultant for every case it investigates. Accordingly, the Legislature has expressly granted the members of the Board the ability to “render [these] professional services to the board as consultants” and to be compensated as such.<sup>13</sup> The Board members, who are practicing physicians, conduct these reviews on their own time. The Board utilizes a robust recusal and conflict of interest policy to ensure that no member serves as a reviewer on any case where he or she may have an interest in the outcome.

Beginning in 1990, the BME has contracted with the Medical Association to create, support, and maintain the Alabama Physician Wellness Committee (“APWC”). The Alabama Professionals Health Program (“APHP”), as it is better known, has, under the direction of the APWC, provided a program for confidential, early detection and treatment of clinicians with problems related to possible impairment due to alcohol, drugs, psychiatric disorders or behavior. By identifying these problems early, the public is protected and health professionals’ careers are preserved. APHP is a resource for physicians, physician assistants, residents, and medical students in Alabama. Since 1990, APHP has assisted over 3,000 participants.

Troubling trends currently plaguing the healthcare workforce have driven a response from the medical community nationwide to look for avenues to detect and offer support and resources to licensees *before* they become impaired as a result of health conditions other than substance misuse, such as depression and burnout. The BME has identified a need to expand the services provided through the APWC and offer these resources to its licensees. Expanding the role of the APWC into this important area will require a commitment of more of the APWC’s resources and potentially impact a greater number of licensees than APHP already serves. While the BME and the APWC are early in their research into how to best provide these expanded services, it is a nationally recognized principle that these services be offered at arm’s length from the BME and its disciplinary apparatus in order for licensees to utilize them when they are in need of lifesaving help. It is anticipated that the Medical Association, as the current administrator of the APWC, or one of its affiliated foundations may be a viable vendor for these important, expanded services.

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<sup>12</sup> Ala. Code § 34-24-313(b).

<sup>13</sup> Ala. Code § 34-24-313(c).

Furthermore, the Legislature has declared that “[i]t shall be the duty of the [BME] to promote continuing medical education of all physicians and osteopaths . . . and [the BME] is empowered to spend a portion of its funds in any manner it deems desirable for carrying out this purpose. [The BME] is specifically empowered to provide funds to any nonprofit corporation for the purpose of conducting continuing medical education programs without being bound by the provisions of any law requiring competitive bidding.”<sup>14</sup>

Certain laws and regulations require licensees of the BME to gain continuing medical education (“CME”) as a condition of licensure or the issuance of a permit. The BME has contracted with the Medical Foundation of Alabama (“the Medical Foundation”), a 501(c)(3) nonprofit corporation, to provide these CME courses free of charge to licensees. The Medical Foundation, while possessing its own board of directors, by-laws, and corporate identity, contracts with the Medical Association for administrative services and provides CME opportunities that satisfy the Medical Foundation’s contractual obligations with the BME.

This arrangement has been driven by guidance issued by the Accreditation Council for Continuing Medical Education (“ACCME”), which is the national accrediting body for providers of CME to health care professionals. An entity can be accredited directly by the ACCME or through a Recognized State Medical Society (“RSMS”). The Medical Association is an RSMS and can accredit organizations seeking to offer CME; however, it cannot offer CME itself. Under ACCME guidance, the Medical Association has accredited the Medical Foundation to provide CME. The ACCME has approved this common model because the Medical Foundation has a separate board, which ensures that the RSMS is not accrediting itself to provide CME. Thus, the Medical Foundation works with the Medical Association under an ACCME “joint providership” arrangement to provide nationally accredited CME to the BME’s licensees. All CME provided under this arrangement and sponsored by the BME is currently offered free of charge to all of its licensees and without regard to membership in any association.

Finally, the BME currently leases a building located at 848 Washington Avenue, Montgomery, Alabama, which is owned by the Medical Association. The BME has leased this building since 1981 and currently leases the entire premises as the sole tenant of the property. The BME may continue leasing this building or may endeavor to purchase a building at a later date.<sup>15</sup>

The contracts identified herein were obtained under a procedure intended to comply with prior guidance issued by the Commission concerning public officials whose governmental

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<sup>14</sup> Ala. Code § 34-24-336.

<sup>15</sup> See Ala. Code § 34-24-314 (the BME “may acquire and hold, in its own name, real property by purchase, gift, or other lawful means, except eminent domain, which real property is to be used by the [BME] to carry out its responsibilities”).

instrumentalities may be contracting with a business associated with those officials. Under this procedure, the BME Board members and the Medical Association Board members have been intentionally excluded from soliciting, negotiating, executing, or approving any contract between the BME and the Medical Association or one of its related entities. Instead, the BME executive director has identified the Medical Association as an appropriate vendor for the contracts, and the executive directors of each entity, with assistance from staff, negotiated the contracts in compliance with enabling statutes, applicable regulations, and other legal and practical considerations. The contracts have been executed by the executive directors of BME and the Medical Association pursuant to their respective inherent authorities. At this point, the Medical Association and the BME have a longstanding relationship, predating the passage of Act 2025-71, and the Medical Association has developed the expertise and professional staffing, as well as, in the CME field, national standing, which make it a competitive vendor for continuing to provide the BME's statutorily mandated services.

The BME members do not meet the definition of a "public official" in Ala. Code § 36-25-1(27) because they are neither "elected to public office" nor "appointed." Likewise, BME staff are not "public employees" under the Ethics Act, Ala. Code § 36-25-1(26), because they are not paid from "state, county, or municipal funds." Accordingly, the BME members and staff have historically not been covered by the Ethics Act, and the Commission has previously confirmed this for both classes. However, in 2025, the Legislature passed Act 2025-71, the BME's sunset renewal law, and included a provision stating: "Commencing June 1, 2025, each member and employee of the State Board of Medical Examiners is subject to the state ethics laws, Chapter 25 of Title 36, or any successor act thereof providing an ethics code for public servants." Although the BME has been conducting itself as if it were subject to the Ethics Act for many years as a matter of principle, this definitive change in its legal standing prompts this request for an advisory opinion from the Commission.

### **QUESTIONS PRESENTED**

1. May the Alabama Board of Medical Examiners continue to lease property from and contract with the Medical Association of the State of Alabama to provide statutorily authorized services to licensees of the Alabama Board of Medical Examiners when the Medical Association is an associated business of the members of the Board of Medical Examiners?
2. Under what process and procedures may the executive director of the Board of Medical Examiners contract with the Medical Association of the State of Alabama to ensure compliance with the Ethics Act for himself or herself, the members of the Board of Medical Examiners, and their staff?

3. May members of the Alabama Board of Medical Examiners be compensated for providing expert medical review and testimony in contested cases as a reviewer for cases pending before the BME?

### ANALYSIS

Although the BME members still do not fit the statutory definition of a public official and Act 2025-71 does not specifically designate them as such, based on their role and function, and in order to provide guidance to the BME and the Medical Association Board members, the Commission will consider them as such for the purposes of this Opinion. Similarly, despite not satisfying the statutory definition under the Ethics Act, and without further clarification from Act 2025-71, the Commission will consider the BME executive director and BME staff as “public employees” for the purposes of this Opinion.

Under Ala. Code § 36-25-5(a), “[n]o public official or public employee shall use or cause to be used his or her official position or office to obtain personal gain for himself or herself . . . or any business with which the person is associated unless the use and gain are otherwise specifically authorized by law.” A “business with which the person is associated” is “[a]ny business of which the person . . . is an officer, owner, partner, [or] board of director member.”<sup>16</sup> A “business” includes an association such as the Medical Association.<sup>17</sup>

The BME is authorized by law to contract with a nonprofit corporation or association such as the Medical Association to meet its statutory obligations. The contracts authorized by Ala. Code §§ 34-24-336 and -400 are not required to be competitively bid. The business relationship between the BME and the Medical Association has existed for decades prior to the BME being subject to the Ethics Act. The Commission held in Advisory Opinion No. 2019-10:

The mere fact that a public official or public employee’s *associated business* is contracting with their public agency is not prohibited by the language of the Ethics Act . . . What is prohibited within the Ethics Act is using one’s official position in order to acquire or create a business opportunity for personal gain or using one’s official position in order to benefit an associated business or family member . . . [T]he test is whether the public employee or public official used their position or influence to obtain the opportunity and the transaction must occur under circumstances that make it clear the transaction is due to some reason other than

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<sup>16</sup> Ala. Code § 36-25-1(2).

<sup>17</sup> Ala. Code § 36-25-1(1); *see also* Ethics Commission Opinion. No. 2021-03 (“Nonprofits on whose boards a public official or employee sits are businesses with which they are associated.”)

the employee or officials' public position and that must be determined on a case-by-case basis.

Under the facts provided, the Commission understands that the BME members have not used their position or influence to obtain the opportunity for the Medical Association to provide contractual services to the BME<sup>18</sup>; in fact, the specific identification of a nonprofit corporation as a suitable vendor within the BME's enabling statutes indicates that the Legislature did not intend for the Medical Association to be disqualified from being considered for contracts with the BME. Consequently, the BME is authorized by law to contract with the Medical Association, even though the Medical Association is a business with which the BME's members are associated.

The Commission has consistently held that a public official may not influence, attempt to influence, or otherwise participate in any transaction, potential contracts, proposals, discussions, etc. when the public entity of which the public official is a member engages in a transaction which may affect the public official's associated business or result in personal gain.<sup>19</sup> Accordingly, the BME may contract with the Medical Association, provided that the BME members do not participate in any way in the solicitation, negotiation, awarding, or subsequent amending of any contract for which the Medical Association, or one of its affiliated entities, could be a potential vendor to the BME. This standard of conduct extends to both sides of a contract or solicitation: a public official may not participate either in their official capacity or as a representative of the associated business, and they must require the associated business to adhere to this standard. Furthermore, with the exception of ministerial acts such as executing a contract<sup>20</sup>, the participation bar applies when a public official is acting collectively as a governing body as well as prohibiting him or her from unlawfully using his or her position on an individual basis.

To answer the second question, the BME's executive director may solicit, negotiate, and execute a contract with the Medical Association, or one of its affiliated entities, provided that (1) the BME members do not use their position or influence to direct business to the Medical Association, or one of its affiliated entities, and (2) the executive director adopts and follows a procedure which makes it clear that the BME members are not involved in the transaction on either side. However, a copy of any contract that the Medical Association enters into with the BME or that is otherwise to be paid in whole or in part with state, county, or municipal funds, must be filed with the Ethics Commission within 10 days after it is entered into.<sup>21</sup>

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<sup>18</sup> See, e.g., Ethics Advisory Opinions Nos. 2019-10 and 2021-01, where the existence of a contractual relationship prior to the Ethics Act becoming applicable is evidence that a public official did not use his or her position in violation of Ala. Code § 36-25-5(a).

<sup>19</sup> See Ethics Advisory Opinions Nos. 2017-09, 2019-09, 2021-01.

<sup>20</sup> See Ethics Advisory Opinion No. 2017-09.

<sup>21</sup> Ala. Code § 36-25-11.

As for the final question, members of the BME are expressly permitted to provide professional services to the board as consultants and reviewers of contested cases pending before the BME and be reimbursed for those services per Ala. Code § 34-24-313(c). Provided the member does not review or participate in a contested case that could result in personal gain for themselves, aside from the reimbursement provided to them consistent with Ala. Code § 34-24-313(b), an associated business, or a family member, a board member is not prohibited by the Ethics Act from serving as a reviewer for cases pending before the BME.

### **CONCLUSION**

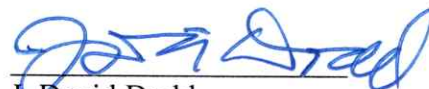
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### **AUTHORITY**

By 5/0 vote of the Alabama Ethics Commission on June 3, 2026.



J. David Dodd  
Chair  
Alabama Ethics Commission