



Alabama Board of Medical Examiners Newsletter and Report

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Improving communication may avoid some complaints to the Board

by Ed Munson, senior investigator

“Can my doctor fire me for asking too many questions?”

“I want to file a complaint against my doctor; his office manager treats me like dirt and won’t let me talk to the doctor.”

“My son’s doctor told him to be quiet and learn to behave like a human being! I want his license pulled!”

This is a very small sampling of the types of calls the Board office receives every day. In an average week, we receive at least 50 complaints, 90 percent of which could have been avoided with a little more patience, professionalism or awareness of the patient’s educational or physical limitations.

By far, the most common complaint is rudeness on the part of the physician and/or the physician’s staff. Often this is

not the result of any real discourtesy to the patient but a perception on the part of the

patient of being rushed, talked down to, intimidated, bullied or misunderstood.

Sometimes the patient or family member does not have adequate skills to cope with these feelings, and as a result they may become angry or hostile. When this happens, they often incur the

frustration and anger of the physician or staff members in the office. It is up to the physician and staff to recognize and defuse this kind of situation before it becomes a problem. There are many learning opportunities available for physicians

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Many complaints can be avoided with a little more patience, professionalism or awareness of the patient’s needs.

Certain patient conditions must be reported by physicians

These are just some patient conditions and occurrences we have come across that state laws and regulations require be reported to various agencies. This does not purport to be a comprehensive or exhaustive list. You should consult an attorney or your malpractice insurance carrier if you have specific questions or concerns about reporting this or other information.

Communicable Diseases

There are three types of diseases/conditions that physicians and other healthcare professionals must report to the Alabama Department of Public Health (ADPH) within certain time frames. Group A diseases include TB, botulism, measles, Hepatitis A, outbreaks of

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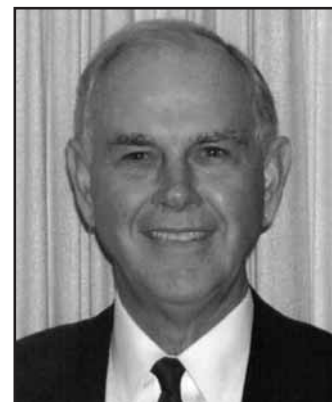
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A Message from the Executive Director Follow guidelines for treating chronic pain

by Larry Dixon

Doctors in Alabama should know – if you prescribe pain medication to a patient on a continuous or repeated basis, you have a chronic pain patient, even if that person doesn't fit the classic "pain patient" mold, and you should follow the Board's pain management guidelines. You might not have a pain practice or a family practice, and it may be an unusual or rare circumstance for you to treat a patient for pain, but if you prescribe pain medication to even one patient frequently, continuously or repeatedly, you should be familiar with and use the Board's "Guidelines for the Use of Controlled Substances for the Treatment of Pain." These are in the form of an administrative rule and are available on the Internet (see "On the Net" below) or by calling the Board's office. Of course, patients should be referred as necessary for additional evaluation and treatment if treatment objectives are not being met.



Larry Dixon

A future newsletter article will discuss the Board's pain control policy in detail and provide practical advice and solutions for the physician who treats chronic pain. Briefly, the cornerstones of the guidelines are: evaluation of the patient; a treatment plan; informed consent and agreement for treatment; periodic review; consultation; medical records; and compliance with controlled substances laws and regulations.

A part of informed consent and agreement for treatment is the employment of a "pain contract," a written agreement outlining patient responsibilities, including number and frequency of prescription refills, use of urine drug screens, and the reasons for which the relationship may be discontinued (for example, violation of the agreement). Periodic review and consultation are important to achieve treatment objectives. Accurate and complete medical records are especially vital; patient records should remain current, be maintained in an accessible manner, and be readily available for review. Finally, physicians must comply with all state and federal laws and regulations concerning controlled substances.

A fairly new tool that has proved valuable for physicians in general but especially in treating chronic pain patients is the Prescription Drug Monitoring Data Bank. Now physicians can easily check to see if a patient is receiving medications from other physicians or submitting early refills. All you have to do is register with the Alabama Department of Public Health to access the Data Bank (see link below).

I have attempted to provide you with the Board's expectations for chronic pain control. The Board expects each physician treating patients for pain to follow the published guidelines.

On the Net:

Board Rules Chapter 540-X-4 (see section .08): <http://www.alabamaadministrativecode.state.al.us/docs/mexam/MicrftWrd4MEXAM.pdf>
Prescription Drug Monitoring Data Bank: <http://www.adph.org/PDMP/>

Avoid complaints

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and their employees to gain experience and communication skills that can be useful in daily practice and called upon in the case of a problem patient.

The second most frequent type of call is more avoidable (and thus less explainable) than complaints of rudeness. In this case, the complaints come from pharmacists who experience difficulty making direct contact with a physician, or someone in authority, when there is a question about a prescription. The pharmacist may have a question about the dosage strength or drug interactions, or may have important information about the patient receiving medications from other physicians. At times, the pharmacist is simply trying to ensure that the prescription is not a forgery or an attempt at forgery. In these cases, the pharmacist must be able to contact the physician in a timely manner. Most often the problem arises when a member of the physician's staff fails, or refuses, to notify the physician of the pharmacist's needs. The impact this problem has on patient care is serious and should not be minimized. Make certain that you have an acceptable procedure in place to comply with these needs and deal with such problems.

We have seen many cases where there was not such a procedure and a staff member has authorized controlled substance prescriptions, or phoned in controlled substance prescriptions, without the physician's approval. Unfortunately, some of the most trusted members of an office staff have obtained controlled substances for personal use, or for their family members, by phoning in prescriptions without the physician's knowledge, authority or approval. When this occurs, the physician should report the incidents to a local law enforcement agency or an area Drug Task Force. Such activity constitutes a Class C felony offense in Alabama and may be punishable by imprisonment and/or significant fines.

Less often, but still too frequently, we receive complaints that a physician's office repeatedly failed to call a patient back about medications, health questions, test results, etc. Evidence suggests that these are often the same medical offices that pharmacists have experienced communication problems with. Again, the need here is to develop appropriate lines of communication and procedures for taking and returning messages. It is an important part of your practice and may go a long way in helping to avoid complaints being made to our agency.

Complaints about medical records copying and transfer are very common. These issues range from patients having difficulty locating a previous provider to obtain records, to difficulties having copies of medical information transferred to a new provider. In some instances, medical

offices have refused to transfer medical information or have failed to do so in a timely manner. This can interfere in the continuity of care, which could become a viable medical complaint. When a physician leaves a practice, patients should be notified in writing about the departure, as well as the procedure for transfer of their medical information. Also, the Medical Licensure Commission must be notified of any change of address within 15 days. If you receive a request to transfer records to another physician, it is customary to waive copying charges. Requests should be honored in a timely manner. If a patient requests a copy of his or her medical record, you may charge a reasonable fee (see link below) and request payment in advance, but you may not withhold medical information because of an unpaid bill for medical services. This is another area where staff persons may be short circuiting communication between patient, staff and physician. You should be aware of the procedures in your office concerning medical records transfer/copying, and whether the procedure is operating efficiently.

Another area of confusion for patients is when medical services have to be discontinued. As previously mentioned, upon a physician leaving a practice, patients should be notified in advance and when possible, in writing. If the practice is closing, the patients should be provided with as much advance notice as possible in order for them to secure another practitioner and have medical information transferred. It is when patients receive no notification, or cannot contact the physician to request medical information, that they call the medical board to complain. This can give the appearance of patient abandonment. Sometimes a patient will have to be "fired" for one reason or another – suspected drug diversion, non-compliance, unpaid bills, etc. You can discharge a patient for any reason, but you cannot do so without adequate written notice and provisional coverage while the patient is finding another physician. The provisional coverage does involve providing adequate parting medications. You cannot refuse to treat a non-discharged patient due to unpaid bills.

Our agency's staff often attempts to resolve these issues by providing the individual with pertinent information or by contacting the physician for more information. The physician's timely and full cooperation with Board staff in providing the requested information is important. If we can satisfy the complainant at this stage, a formal complaint and a visit from a Board investigator might be avoided.

On the Net:

BME Web page on medical records:

<http://www.albme.org/Default.aspx?Page=MedRec>

Reportable conditions

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any kind, cases related to nuclear, biological, or chemical terroristic agents and cases of potential public health importance (as determined by the reporting healthcare provider). These must be reported within 24 hours of diagnosis. There are other diseases in Group A, and these can be reviewed at the ADPH Web site (see link below).

Group B diseases are notifiable within seven days and include HIV, Lyme Disease, salmonellosis, tetanus, gonorrhea and cryptosporidiosis. This is a very small sampling of the diseases in Group B; the full list can be viewed at the ADPH Web site. In addition, physicians attending a pregnant woman during gestation or delivery are required to test for sexually transmitted diseases.

The third type of notifiable disease/condition is the notification of the suspected presence of *Bacillus anthracis* or other agent suspected to be related to an act of bioterrorism. All labs and physicians operating in office labs must immediately notify the director of the Bureau of Clinical Laboratories to report such and follow the directions for transportation of the sample to the state laboratory.

Animal Bites

ADPH requires any health care professional who treats a bite or exposure (“Has been exposed” is defined as “Seized with the teeth or claws, so that the skin of the person or animal seized has been nipped or gripped, or has been wounded or pierced and includes suspected or confirmed contact of saliva with a break or abrasion of the skin or with any mucous membrane, as determined by a licensed physician”) by any mammal to a human to report the incident to the county health officer or his authorized agent within 24 hours of knowledge of the bite. Reports may be given by written notice, telephone or any reliable communication system (e.g., facsimile, e-mail).

Cancer

All cases of confirmed cancer or benign brain-related tumor are required to be reported to the ADPH Alabama Statewide Cancer Registry within 180 days of admission or diagnosis on a monthly basis. ADPH provides online and webinar training modules for instruction on data submission.

Abuse of Child, Elder or Handicapped

A physician who suspects or knows a child to be a victim of child abuse or neglect is required to report orally, either by telephone or direct communication, immediately, followed by a written report, to the Department of Human Relations or to local law enforcement, which is required in turn to contact DHR. The law provides immunity from

civil or criminal legal action for making such reports. Physicians are also required to report known or suspected abuse of elderly or physically or mentally handicapped adults who are unable to protect themselves and have no one to protect them.

Unfit Drivers

There is no mandatory reporting requirement for suspected or known unfit drivers; however, the law provides immunity from civil liability for making a report to the Department of Public Safety (DPS) in good faith and without negligence or malicious intent.

Gunshot and stab wounds

At this time there does not appear to be a state law requiring the reporting of gunshot and stab wounds to a state entity. There may be local laws in some areas that require the reporting of these or other injuries consistent with possible criminal activity to local law enforcement agencies.

On the Net:

ADPH Notifiable Diseases: <http://adph.org/administration/assets/NotifiableDiseases.pdf>

ADPH Rule concerning animal bites (420-4-4-.04): <http://www.alabamaadministrativecode.state.al.us/docs/hlth/4hlth4.htm#T1>

ADPH Web page about Alabama Cancer Registry: http://www.adph.org/cancer_registry/

DHR Web page about child abuse:

<http://www.dhr.state.al.us/page.asp?pageid=348>

DHR Web page about elder abuse:

<http://www.dhr.state.al.us/page.asp?pageid=286>

Law providing immunity for reporting to DPS (32-6-45):

<http://alisd.b.lslgislature.state.al.us/acas/CodeOfAlabama/1975/32-6-45.htm>

Your Medical License

As a physician, your license to practice medicine in the State of Alabama is one of your most important assets. It allows you to apply what you learned during years of school and post-graduate training to earn a livelihood to support your family. Exercise care to protect this asset.

What to expect in a collaborative practice audit

The “collaboration” in “collaborative practice” refers to the formal relationship with a physician under which a nurse practitioner may engage in advanced practice nursing. It includes written protocols and medical oversight and direction that is approved by the Board of Medical Examiners and the Board of Nursing. The Medical Board employs two nurse inspectors that audit existing collaborative practices with regard to the medical oversight and direction provided by the collaborating physicians. Collaborative practices are inspected on a random basis, or when the Board has received information that there may be irregularities present, or as a courtesy upon request.

Random or investigative collaborative practice audits are generally conducted without prior notification to the physician or nurse practitioner. Upon arrival, the nurse inspectors will present their credentials and request to see the office manager. While meeting with the office manager, the inspectors will request to view copies of the collaborative practice application, the prescription pad in use by the nurse practitioner and the physician’s collaborative practice registration certificate. Additionally, the inspectors will ask to see the quality assurance (QA) reviews in place for the physician and nurse practitioner.

After reviewing the QA documentation, the inspectors will request that random charts, corresponding with the physician’s chart reviews, be pulled for their review. Some offices have expressed concern that providing patient information to the nurse inspectors without the patient’s consent may violate HIPAA laws. The Board of Medical Examiners is a health oversight agency and as such is provided an exemption from the HIPAA privacy rule’s requirements concerning patient consent and authorization. The inspectors can provide a written opinion to this effect.

After reviewing the selected charts and comparing them with the review process, the inspectors will meet, as desired by the parties involved, with the office manager, the physician(s) and/or the nurse practitioner(s) for an exit interview. Following the audit, the physician can expect to receive written follow-up of the visit within 10 days to two weeks. This letter is also copied to the nurse practitioner.

If there are issues discovered that only pertain to the QA process, the inspectors will work closely with the office manager, physician and nurse practitioner to bring the collaborative practice into compliance. They have many tools at their disposal to share with physicians in need of assistance with the QA process. However, if there are serious problems, i.e., the prescribing of controlled substances by the nurse practitioner, no physician ever on site or unapproved collaboration, a formal report is made to the Medical Board, and the Board makes a determination whether any action concerning the physician is warranted.

The inspectors also offer courtesy audits if you have concerns about your collaborative practice procedures. They will come to your office and review your QA process, advise and work with you if any changes need to be made. You may schedule a courtesy audit by calling (334) 242-4116 and asking to speak with one of the collaborative practice inspectors. The Board is more interested in working toward having all collaborative practices in full compliance with all rules than in disciplining physicians for infractions.

Joint Commission issues alert on disruptive behavior

The Joint Commission issued an alert in July 2008, warning that disruptive behavior by health care professionals poses a serious threat to patient safety and the overall quality of care. Effective Jan. 1, 2009, the Joint Commission is introducing new standards requiring accredited health care organizations to create a code of conduct that defines acceptable and unacceptable behaviors.

The Joint Commission recommends that health care organizations educate health care team members about professional behavior, enforce the code of conduct consistently and equitably, establish a comprehensive approach to addressing intimidating and disruptive behaviors that includes a zero tolerance policy and to develop a system to detect and receive reports of unprofessional behavior.

On the Net:

Joint Commission News Release:

http://www.jointcommission.org/newsroom/newsreleases/nr_07_09_08.htm

Joint Commission Alert:

http://www.jointcommission.org/sentinelevents/sentinelevent/alert/sea_40.htm

Meet the Staff

Mary Leigh Meredith
Assistant to the Executive Director,
Alabama Controlled Substances
Certificates Coordinator

Ms. Meredith has been employed with the Board of Medical Examiners since 1981 and has served as Assistant to the Director for more than 10 years. In his absence she serves as liaison to the medical community and the general public. Her responsibilities include routine daily correspondence, computer and data maintenance, recording and maintaining disciplinary records as well as minutes and records from monthly meetings. Ms. Meredith is also responsible for all controlled substance certificates issued to physicians in the state.

Responsible Opioid Prescribing: A Physician's Guide available for online purchase

Responsible Opioid Prescribing: A Physician's Guide offers physicians effective strategies for reducing the risk of addiction, abuse and diversion of opioids that they prescribe for their patients in pain. This concise, 150-page book offers pragmatic steps for risk reduction and improved patient care, including:

- Patient evaluation, including risk assessment
- Treatment plans that incorporate functional goals
- Informed consent and prescribing agreements
- Periodic review and monitoring of patients
- Referral and patient management
- Documentation
- Compliance with state and federal law

Written by pain medicine specialist Scott M. Fishman, MD, chief of the Division of Pain Medicine at the University of California, Davis, the book translates the Federation of State Medical Boards' (FSMB) consensus model policy on pain management into practical, office-based pain management guidelines.

FSMB's model was also used when the Alabama Board of Medical Examiners adopted its administrative rule, *Guidelines for the Use of Controlled Substances for the Treatment of Pain*.

Responsible Opioid Prescribing: A Physicians Guide is available at www.fsmb.org for \$12.95.

On the Net:

FSMB's Model Policy for the Use of Controlled Substances for the Treatment of Pain: http://www.fsmb.org/pdf/2004_grpol_Controlled_Substances.pdf
Alabama Board of Medical Examiners' Rule 540-X-4-.07, Guidelines for the Use of Controlled Substances for the Treatment of Pain (see section .07): <http://www.alabamaadministrativecode.state.al.us/docs/mexam/MicrftWrd4MEXAM.pdf>

Board issues opinion on continuing medical education exemption for retired physicians

Fully retired physicians licensed to practice medicine in Alabama may choose to claim an exemption from the minimum continuing medical education requirement mandated by state law and Board rules by submitting a statement that they do not engage in the practice of medicine in any form, including the treatment of family members and the prescribing, to anyone, of controlled and/or legend drugs, and voluntarily surrendering their Alabama Controlled Substances Registration Certificate. The license status under this exemption is "active with restriction due to retirement," and the license is renewed annually at the full renewal fee. If a physician who has claimed this exemption re-enters the practice of medicine in any form at a subsequent time, application must be made for removal of the waiver status with submission of proof that the current continuing medical education requirements have been met.

Recently, the Board was asked if reviewing records for Social Security or disability determination constituted the practice of medicine and required a full license with no restriction due to retirement. It is the opinion of the Board that these record reviews do constitute the practice of medicine and should be performed by physicians with full licenses without restrictions due to retirement.

FDA Electronic Tools

There are a growing number of electronic tools available from the U.S. Food and Drug Administration for accessing important safety information on medical products you use and prescribe. You can subscribe to safety alerts for medical products and safety-related drug labeling changes or view the alerts at the FDA Web site. You can also download audio broadcasts (podcasts). FDA makes updated prescription drug labels available to physicians free of charge through the National Library of Medicine's DailyMed Web site. Drug and device manufacturers are also turning to electronic methods to disseminate safety information in a timely, targeted and secure manner. FDA supports the use of electronic methods to disseminate medical product safety information, whether by industry or by FDA, and it is part of the agency's larger patient safety effort to expand its risk communication activities.

On the Net:

FDA MedWatch (medical product safety information):
<http://www.fda.gov/medwatch/safety.htm>
National Library of Medicine's DailyMed Web site:
<http://dailymed.nlm.nih.gov/dailymed/about.cfm>

Report of Public Actions of the Medical Licensure Commission and Board of Medical Examiners

MLC – October 2008

◆ On Oct. 22, the Commission entered an Order summarily suspending the license to practice medicine in Alabama of **Wallace B. McGahan Jr., MD**, license number MD.9963, Weaver, AL. Effective Nov. 5, Dr. McGahan is no longer authorized to practice medicine in Alabama.

BME – October 2008

◆ On Oct. 20, the Board entered an Order removing all restrictions and reinstating to full, unrestricted status the certificate of qualification to practice medicine in Alabama of **Timothy A. Gooden, MD**, license number MD.27029, Warrior, AL.

MLC – November 2008

◆ On Nov. 5, the Commission entered an Order reinstating to active status and placing on probation the license to practice medicine in Alabama of **Ervin Wells, MD**, license number MD.28241, Brewton, AL.

◆ On Nov. 12, the Commission entered an Order assessing an administrative fine against the license to practice medicine in Alabama of **Sandra L. Zahradka, MD**, license number

18417, Hoover, AL, requiring continuing medical education, and prohibiting the application for or possession of a DEA or ACSC license for two years.

◆ On Nov. 14, the Commission entered an Order terminating the probation and restoring to full, unrestricted status the license to practice medicine in Alabama of **Leonides V. Santos, MD**, license number MD.8441, Russellville, AL.

◆ On Nov. 26, the Commission entered an Order removing all conditions from the license to practice medicine in Alabama of **Victoria L. Woods Anderson, MD**, license number MD.14888, Montgomery, AL.

◆ On Nov. 26, the Commission entered an Order reprimanding the license to practice medicine in Alabama of **Virgil E. McGrady, DO**, license number DO.204, Pinson, AL, assessing an administrative fine and costs, and providing for continued monitoring.

◆ On Nov. 26, the Commission entered an Order reinstating the license to practice medicine in Alabama of **Bruce A. Williams, MD**, license num-

ber MD.10995, Birmingham, AL, subject to certain conditions.

BME – November 2008

◆ On Nov. 10, **William R. Jordan, MD**, license number MD.13263, Columbus, GA, entered a Voluntary Restriction on his certificate of qualification and license to practice medicine in Alabama.

BME – December 2008

◆ On Dec. 11, **James C. Dilday, MD**, license number MD.12437, Tuscaloosa, AL, entered a Voluntary Restriction on his certificate of qualification and license to practice medicine in Alabama. Dr. Dilday's private practice will have no involvement with third party payors, and any change in his practice setting will require approval by the Board and Commission.

◆ On Dec. 29, **Christen Z. Zuschke, MD**, license number MD.15546, Mobile, AL, voluntarily surrendered his Alabama Controlled Substances Certificate number ACSC.15546 and is not permitted to possess, dispense, administer or prescribe controlled substances in Schedules II, IIN, III, IIIN, IV and V.

Ryan Haight Online Pharmacy Consumer Protection Act (HR 6353) becomes public law

The Ryan Haight Online Pharmacy Consumer Protection Act of 2008 (Public Law No. 110-425), signed into law by President Bush on Oct. 15, 2008, provides consumers protection from "rogue" Internet pharmacies and the flexibility the health care system needs to take advantage of the technological improvements in the delivery of health care through legitimate telemedicine services.

The bill amended the Controlled

Substances Act and:

- Bars the sale, distribution and delivery of a controlled substance via the Internet without a valid prescription;
- Addresses concerns related to the practice of telemedicine;
- Requires online pharmacies seeking to deliver controlled substances via the Internet to display information identifying the business, the pharmacist and any

physician associated with the web site; and

- Authorizes states to apply for injunctions or obtain damages and other civil remedies against online pharmacies that are deemed a threat to state residents

On the Net:

HR 6353:

<http://www.govtrack.us/congress/billtext.xpd?bill=h110-6353>



Alabama State Board of Medical Examiners

Newsletter and Report

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from the Board of Medical
Examiners that pertains to your
license to practice medicine
in Alabama.*

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If you would like to receive the newsletter by e-mail, please send a request to masa@masalink.org.

Change of Address

Alabama law requires that every licensed physician notify the Board of Medical Examiners in writing within **15 days** of a change of the physician's practice location address and/or mailing address.