



ALABAMA STATE BOARD OF MEDICAL EXAMINERS

LARRY D. DIXON, EXECUTIVE DIRECTOR

P.O. BOX 946
MONTGOMERY, ALABAMA 36101-0946

TELEPHONE
(334) 242-4116

April 12, 2006

William W. Horton, Esq.
Haskell Slaughter Young & Redeker, LLC
1400 Park Pl Twr
2001 Park Pl N
Birmingham AL 35203

RE: Practice Across State Lines

Dear Mr. Horton:

This opinion is issued by the Alabama Board of Medical Examiners pursuant to your request of January 20, 2006, concerning the applicability of Ala. Code §34-24-502 to the provision of laboratory services by an Alabama hospital to patients who are not Alabama residents, which services were ordered by a physician who is likewise not an Alabama resident. The Board understands that the factual background which constitutes the basis for your request is the following:

I. Factual Background

Your client ("Hospital") is a licensed, general acute-care hospital located in an Alabama municipality ("City") that is near the Georgia/Alabama border. The adjacent area in Georgia is a rural area, with no municipalities comparable in size to City; therefore, Hospital is more conveniently located to some residents of the adjacent area in Georgia than are comparable hospitals in Georgia.

Hospital operates a hospital-based clinical laboratory capable of providing usual and customary laboratory tests. There is no other clinical laboratory in City. From time to time, Georgia residents ("Georgia Patients") under the care of physicians resident in Georgia will present at Hospital with orders from such Georgia-based physicians for laboratory tests of a type that can be performed at Hospital. While it is possible that some Georgia-based physicians may also hold regular or special purpose licenses in Alabama, you have assumed for purposes of the question that such physicians are licensed only in Georgia ("Georgia Physicians").

Hospital has been declining to fill such orders out of concern that the Georgia Physicians were violating Ala. Code §34-24-502 by writing orders for Georgia patients which would be

filled in Alabama by Hospital, and that Hospital would be facilitating such violation. Hospital would like to fill such orders, believing that such a service would be valuable to Georgia Patients living in the geographic area adjacent to City who might not otherwise have convenient access to comparable laboratory services.

Similarly, the area surrounding City tends to draw a certain number of “snowbird” winter vacationers from Northern states. From time to time, such vacationers will present at Hospital for certain tests or procedures ordered by physicians in their home states. Hospital has similarly declined to perform such services out of concern for the applicability of Ala. Code §34-24-502. While such services would likely fall within the regularly exception for “irregular or infrequent” out-of-state practice, Hospital would have greater assurance in providing those services (and thus providing necessary medical care to this particular patient population) if it received confirmation that such a situation was outside the ambit of Ala. Code §34-24-502 altogether.

Hospital from time to time receives orders for outpatient imaging, respiratory diagnostics and other services provided by Hospital that are written by out-of-state physicians for out-of-state patients. Such orders are subject to the same concerns as those relating to laboratory services, and Hospital is likewise desirous of an interpretation of Ala. Code §34-24-502 as it applies to those situations.

Accordingly, Hospital would like clarification that Ala. Code §34-24-502 does not prohibit out-of-state physicians from issuing orders for Hospital-provided services (including, but not necessarily limited to, laboratory, imaging and diagnostic services) for out-of-state patients even where those orders will be filled in Alabama.

II. Legal Analysis

Sections 34-24-500 through 34-24-508 of the *Code of Alabama* authorize the licensing of the practice of medicine and osteopathy across state lines. These sections were added to the Code in 1997, and the Legislative findings indicate that such new statutory provisions were intended to address and appropriately regulate the practice of medicine and osteopathy across state lines in light of “technological advances and changing practice patterns.” *See* §34-24-500. The specific language of the new provisions makes it clear that a primary concern of the Legislature was to address and appropriately regulate so-called “telemedicine” activities, pursuant to which physicians in another state might provide clinical services to, or render medical opinions with respect to Alabama residents as the result of the electronic or other transmission of data from Alabama to such out-of-state physicians. *See* §34-24-501.

Section 34-24-502(a) provides that

No person shall engage in the practice of medicine or osteopathy *across state lines in this state*, hold himself or herself out as qualified to do the same, or use any title, word, or abbreviation to indicate to or induce others to believe that he or she is licensed to practice medicine or osteopathy *across state lines in this state* unless he or she has been issued a special purpose license to practice medicine or osteopathy across state lines in accordance with the provisions of this article [or holds a “regular” full and unrestricted license to practice in Alabama].

(Emphasis added.) The italicized language suggests that the focus of the statute is on the rendition of services to patients located in Alabama by out-of-state physicians who are not licensed in Alabama, which is undeniably a proper concern of the Legislature.

The statute is implemented by regulations of the Alabama Board of Medical Examiners set forth at Ala. Admin. Code Chapter 540-X-16 and by regulations of the Medical Licensure Commission of Alabama set forth at Ala. Admin. Code Chapter 545-X-6. Board Rule 540-X-16-.02(1) provides that

The practice of medicine or osteopathy across state lines means the practice of medicine or osteopathy as defined in Code of Ala. 1975, §34-24-50(1), as it applies to:

- (a) The rendering of a written or otherwise documented medical opinion concerning the diagnosis or treatment of *a patient located within this state by a physician located outside this state* as a result of transmission of individual patient data by electronic or other means from within this state to such physician or his or her agent; or
- (b) The rendering of treatment to *a patient located within this state by a physician located outside this state* as a result of transmission of individual patient data by electronic or other means from this state to such physician or his or her agent.

(Emphasis added.) The regulations show that the Board has interpreted Ala. Code §34-24-502 to apply only when a physician is providing services to a patient located in Alabama. There is no suggestion in the statute or the regulations that either the Legislature or the Board intended to regulate any physician-patient relationship where both the physician and the patient were located and resident outside the state of Alabama.

It is clear that the statutes and the related regulations would apply in the case where an out-of-state physician received patient data on an Alabama resident and rendered a medical opinion concerning the diagnosis or treatment of such patient or rendered treatment to such

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patient. The Board is of the opinion that neither the statutes nor the regulations have applicability where an out-of-state physician treats a patient who is not an Alabama resident and, in connection with such treatment, such patient elects – for reasons of convenience, quality, transient location in Alabama (*e. g.*, vacation), or simply personal choice – to have an order for diagnostic or treatment services filled by a hospital in Alabama, even though the hospital may report the results of such test or procedure to the out-of-state treating physician. The Board is of the opinion that such activity is not regulated by Ala. Code §34-24-502 and related regulations and that such activity was never intended to be regulated by Ala. Code §34-24-502 and related regulations.

III. Conclusion

Based upon the facts and analysis recited in previous paragraphs, the Alabama Board of Medical Examiners concludes that nothing in Ala. Code §§34-24-5002 through 34-24-507 or the applicable regulations of the Board would restrict or prohibit hospitals from filling orders for tests or procedures from out-of-state physicians with respect to out-of-state patients and providing the results of such tests or procedures to the out-of-state treating physicians.

This opinion is limited to the facts stated herein and is not binding upon the Medical Licensure Commission of Alabama.

The Board specifically reserves its authority and discretion to determine, in individual situations and circumstances, whether, for the purposes of Ala. Code §§34-24-500 through 508 and applicable Board regulations, a patient located in Alabama is an out-of-state patient and whether, consequently, a special purpose license is required by an out-of-state treating physician.

Sincerely,
ALABAMA BOARD OF MEDICAL EXAMINERS

/s/ Larry D. Dixon

Larry D. Dixon
Executive Director

LDD:chk