



# ALABAMA BOARD OF MEDICAL EXAMINERS NEWSLETTER

VOLUME 13, NUMBER 4  
Winter Issue 1998



## Dispensing Physician Registration Requirement

The regulations of the Board of Medical Examiners (Rule 540-X-4-.04) require that physicians who dispense controlled substances to their patients register as a dispensing physician. A dispensing physician is one who dispenses or distributes to a patient for the patient's use or consumption off of the premises of the clinic, hospital or other facility where the physician practices any control substance except pre-packaged samples or starter packs and irrespective of whether a separate charge is made for the control substance dispensed. Pre-packaged samples and starter packs are those control substances which are packaged and labeled by the manufacturer in individual or small dosage units and which are intended to be distributed to patients for consumption or administration within a limited period of time. Registration is accomplished by submission of a dispensing physician registration form which may be obtained from the Board. The registration is informational only and no registration fee is required. After initially registering as a dispensing physician, registrants are required to advise the Board of any change in practice location of the dispensing physician. Dispensing physicians are required to comply with inventory, labeling and record keeping requirements established by Rule 540-X-4-.03.

Compliance with registration and record keeping requirements is the responsibility of each individual dispensing physician, regardless of the ownership of the clinic, hospital or other facility where the physician practices. Failure to comply with Board rules concerning the dispensing of control substances could result in the assessment of administrative fines or the restriction or suspension of the physician's Alabama Control Substances Registration Certificate. For copies of the registration form and rules, contact the Board at 334-242-4116. ■

## Joint Guidelines Of The State Board Of Medical Examiners And Medical Licensure Commission For Medical Records Management

1. Physicians should maintain legible well documented records reflecting the history, findings, diagnosis and course of treatment in the care of a patient. Medical records should be maintained by the treating physician for such period as may be necessary to treat the patient and for such additional time as may be required for medical-legal purposes.
2. Access. On the request of a patient, and with the authorization of the patient, a physician should provide a copy or a summary of the medical record to the patient or to another physician, attorney or other person designated by the patient. By state law, a physician is allowed to condition the release of copies of medical records on the payment by the requesting party of the reasonable costs of reproducing the record. Reasonable cost as defined by law may not exceed one dollar (\$1.00) per page for the first twenty-five (25) pages, fifty cents (\$.50) per page for each page in excess of twenty-five (25) pages, a search fee of five dollars (\$5.00) plus the actual cost of mailing the record. In addition, the actual cost of reproducing x-rays or other special records may be included. Records subpoenaed by the State Board of Medical Examiners are exempt from this law. Physicians charging for the cost of reproduction of medical records should give primary consideration to the ethical and professional duties owed to other physicians and to their patients, and waive copying charges when appropriate.
3. Transfer or Disposal. When a physician retires, terminates employment or otherwise leaves a medical practice, he or she is responsible for ensuring that active patients receive reasonable notification and are given the opportunity to arrange for the transfer of their medical records. A physician or physician group should not

withhold information from a departing physician which is necessary for notification of patients. A physician or the estate of a deceased physician transferring medical records in connection with the sale of a medical practice should notify the physician's active patients that the records are being transferred and should provide the patient with information sufficient to secure the transfer of the medical record. BME Rule 540-X-9-10.

**NOTE:** Additional information concerning medical records may be obtained on the MASA web site at [www.masalink.org](http://www.masalink.org). Click on *MASA Highlights* and then on *Policy and Literature* to enter the MASA Library. ■

*The following is reprinted from the September/October issue of the Legal Adviser with permission from the AMA Organized Medical Staff Services office.*

### **Sexual Misconduct, Sexual Harassment or Disruptive Behavior**

The unbecoming behavior of America's elite dominates the news today. While this is nothing new, the degree to which it is exposed certainly is. Public interest in behavioral problems is growing nationally and could very well have similar appeal locally—in hospitals, clinics and offices. Before these interests turn into issues, medical staffs need to have appropriate mechanisms in place for dealing with behavior-related problems.

Behavior is difficult to legislate, but certain legal and policy standards do exist to deter and deal with unacceptable behavior. Medical staffs and other physician organizations should incorporate such standards into their bylaws, rules and regulations, or policies and enforce them in an effort to protect patients, employees, their members and the organizations themselves.

To develop effective policies on disruptive behavior, sexual misconduct, and sexual harassment, it is important that these terms be clearly defined.

**Sexual Misconduct** Under the Current Opinions of the Council on Ethical and Judicial Affairs of the American Medical Association, §8.14, "sexual contact that occurs concurrent with the physician-patient relationship constitutes sexual misconduct. Sexual or romantic interactions between physicians and patients detract from the goals of the physician-patient relationship, may exploit the vulnerability the patient, may obscure the physicians objective judgment concerning the patient's health care, and ultimately may be detrimental to the patient's well-being..." Sexual misconduct should not be confused with sexual harassment.

**Sexual Harassment** The federal Equal Employment Opportunity Commission Guidelines on Discrimination Because of Sex defines sexual harassment as unwelcome

### **Alabama Board of Medical Examiners**

sexual advances, requests for sexual favors, or verbal or physical activity through which submission to sexual advances is made an explicit or implicit condition of employment or future employment-related decisions. Actionable sexual harassment is also defined as unwelcome conduct of a sexual nature which has the purpose or effect of unreasonably interfering with the employee's work performance or creates an offensive, intimidating or otherwise hostile work environment. The fact that the harasser is not employed by the hospital or institution, as is often the case with physicians, does not relieve the hospital or institution of liability.

**Disruptive Behavior** Bylaws, policies, or other internal documents are typically the only source of definition for what is considered "disruptive behavior." When an institution's definition/policy is the basis for disciplinary action against a medical staff member or affects membership decisions, physicians must be involved in standard setting.

All policies, especially those governing behavior, must be clearly defined to avoid unnecessary exposure. Courts have upheld disciplinary actions against physicians competing against their hospital for financial deals because their behavior, as defined in their medical staff bylaws, was considered disruptive to "hospital operations."

Every medical staff and physician organization should have disruptive behavior policies on sexual harassment and other disruptive behavior. Sexual harassment cannot be tolerated, and disruptive behavior should not be ignored.

At the same time, economic credentialing should not be carried out under the guise of behavioral policy, nor should clinical problems be buried out of fear of behavioral policy violation.

Elements of an effective disruptive behavior policy are:

- ..... Disruptive behavior may be a symptom of another problem. A Medical Staff Wellness Committee or other non-disciplinary mechanism should be instituted to assist members exhibiting disruptive behavior.
- Corrective action should be commensurate with the nature and severity of the disruptive behavior.
- Frank and constructive criticism of an institution, its procedures and performance by other health care providers should not be categorized as "disruptive." Enforced silence on such matters could affect the quality of care.
- The medical staff organization should continually educate its staff and promote awareness of its policies on disruptive behavior and harassment.

3-4  
1DY;  
ME:CAZ.

- Complaints should be directed to an appropriate medical staff officer, such as the chief of staff, for prompt evaluation. This individual must determine whether or not the complaint is baseless or warrants further review. Only then can effective action be taken.
- Disruptive behavior directed against a medical staff member by a hospital employee, board member, contractor, or other member of the hospital community should be reported by that member to a hospital official, in accordance with hospital policy governing conduct.
- Medical staff review must be patient care-related to be protected under federal law and, in many cases, state law. Medical staff review of non-patient-related allegations, such as a physician harassing a parking lot attendant, may not be covered and should not be carried out without institutional indemnification.
- Threats or any other retribution directed at a complainant should not be tolerated under any circumstance, even if the allegations are false. On the other hand individuals who intentionally submit a false complaint should be subject to discipline.

The conduct of medical staff members should be exempt from hospital or other institution policy unless approved by the medical staff organization. Medical staffs should develop their own policies on disruptive behavior and harassment to appropriately govern their members. ■

**Public Action Report  
Medical Licensure Commission  
October through December 1998**

On October 28, 1998, the Medical Licensure Commission entered an Order which Temporarily Suspended the medical license of David Stewart Englehardt, M.D., license number 19272.

On October 28, 1998, the Medical Licensure Commission entered an Order which Temporarily Suspended the medical license of Richard Marlin Horn, Jr., M.D., license number 7856.

On October 28, 1998, the Medical Licensure Commission entered an Order which Temporarily Suspended the medical license of Charles E. Porter, Jr., M.D., license number 16285.

On October 28, 1998, the Medical Licensure Commission entered an Order which Temporarily Suspended the medical license of William Daniel Potter, III, M.D., license number 5166.

On November 4, 1998, the Medical Licensure Commission entered an Order which dismissed Dr. Jeffrey David Neidhart's appeal of the decision of the Board of Medical Examiners to deny him a certificate of qualification to practice medicine based upon his appeal being untimely filed.

On November 4, 1998, the Medical Licensure Commission entered an order which reinstated the medical license of Janie

10/14/98

Teresa Bush, M.D., license number 14227, and placed Dr. Bush's medical license on indefinite probation subject to the terms contained in the Commission's order.

On November 4, 1998, the Medical Licensure Commission entered an order which denied the reinstatement of Dr. Jerry Wayne Sheffield's medical license, license number 6587.

On December 8, 1998, the Medical Licensure Commission entered an order which affirmed the Alabama Board of Medical Examiner's decision to deny a certificate of qualification to practice medicine to Deborah D. Martinez, M.D.

On December 8, 1998, the Medical Licensure Commission entered an order which affirmed the decision of the Alabama Board of Medical Examiners to deny Dr. Joe Roy Wardlaw, M.D. a certificate of qualification to practice medicine in Alabama.

On December 8, 1998, the Medical Licensure Commission entered an order which revoked the Alabama medical license of Phillipa Louise Zylanoff, M.D., license number 11832.

On December 8, 1998, the Medical Licensure Commission entered an order which reinstated and placed on indefinite probation the medical license of Gerhard Jan Hinnen, M.D., license number 8409. Dr. Hinnen's probation remains subject to the terms and conditions contained in the order of the Commission.

On December 8, 1998, the Medical Licensure Commission entered an order which states that the medical license of John Scott Houston, M.D., license number 12293, should be reinstated and placed on indefinite probation upon Dr. Houston's proof of compliance with the terms and conditions contained in the Commission's order.

**Public Action Report  
Alabama Board of Medical Examiners  
October 1998 through December 1998**

On September 16, 1998, the Alabama Board of Medical Examiners voted to deny the application for a certificate of qualification for a license to practice medicine in Alabama of Abiodun O. Obadina, M.D., Georgia. The application was denied on the ground that Dr. Obadina had had his clinical staff privileges removed at a hospital in Marietta, Georgia, due to problems with quality of clinical care.

On September 16, 1998, the Alabama Board of Medical Examiners denied the application for a certificate of qualification for a license to practice medicine in Alabama of Robert Harold Walker, D.O., Birmingham, Alabama. The application was denied on the ground that Dr. Walker had had his clinical staff privileges at the branch clinic, Marine Corp. Air Station, Beauford, South Carolina, denied based on a finding that Dr. Walker had committed an act misconduct by submitting a fraudulent South Carolina medical license for credentialing purposes.

On November 18, 1998, a hearing was held on the application of Oscar B. Turner, M.D., Dothan, Alabama, license number 11627, for reinstatement of his certificate of qualification for a license to practice medicine in Alabama, which he voluntarily surrendered on February 25, 1997. The Alabama Board of

Medical Examiners entered an order on November 30, 1998, denying the reinstatement of Dr. Turner's certificate of qualification, based on a finding that Dr. Turner was unable to practice medicine with reasonable skill and safety to patients by reason of impairment.

On November 18, 1998, the Alabama Board of Medical Examiners accepted the voluntary surrender of the certificate of qualification and license to practice medicine in Alabama of Brian Keith Waltman, M.D., Georgia, license number 17057. Dr. Waltman surrendered his Alabama license following the surrender of his license to practice medicine in North Carolina and following a chemical dependency relapse.

On November 18, 1998, the Alabama Board of Medical Examiners accepted the voluntary surrender of the Alabama Controlled Substance Certificate of Horace C. Clayton, M.D., Pell City, Alabama, license number 354, and on December 16, 1998, the Board accepted the voluntary surrender of Dr. Clayton's certificate of qualification and license to practice medicine in Alabama. Dr. Clayton surrendered his certificate of qualification and license while under investigation by the Board for possible violations of the Code of Alabama concerning prescribing practices.

On December 16, 1998, the Alabama Board of Medical Examiners accepted the voluntary surrender of the certificate of qualification and license to practice medicine in Alabama of David Stewart Engelhardt, M.D., Siesta Key, Florida, license number 19272. Dr. Engelhardt surrendered his Alabama certificate and license after the Board had filed an Administrative Complaint alleging impairment and fraud in applying for his Alabama license.

On December 16, 1998, the Alabama Board of Medical Examiners accepted the voluntary surrender of the certificate of qualification and license to practice medicine in Alabama of Richard Martin Horn, Jr., M.D., Birmingham, Alabama, license number 7856. Dr. Horn surrendered his Alabama certificate and license after the Board had filed an Administrative Complaint seeking the revocation of Dr. Horn's license based on allegations of impairment.

On December 16, 1998, the Alabama Board of Medical Examiners accepted the voluntary surrender of the certificate of qualification and license to practice medicine in Alabama of Joseph Richard Logic, M.D., Birmingham, Alabama, license number 6514. Dr. Logic surrendered his Alabama certificate and license after the Board had filed an Administrative Complaint seeking the revocation of Dr. Logic's license based on allegations of impairment. ■

## Chronic Non-Cancer Pain Treatment

Pain is an area which permeates every physician's practice—one that involves many of your patients. The Alabama State Board of Medical Examiners has purchased a set of videotapes dealing with "Chronic Non-Cancer Pain Treatment" developed by the University of Wisconsin-Madison Medical School. These videos are designed to provide you a current overview, rapid review, and update your knowledge of pain and pain treatment.

The object of this course is to present currently developing standards in the use of opioids for treatment of non-cancer pain. Experts in the field of pain management will address the important components of a treatment program that relies on chronically administered opioids for relief. At the end of the course you will be able to: improve pain diagnosis, develop realistic treatment plans, and initiate treatment follow-up.

This course has been approved for 13 hours of AMA PRA Category I credit.

The course materials include four videotapes and a syllabus, written specifically for this course. The videotapes have been purchased and are available for check out. However, if you wish to obtain the credit hours there is a \$125.00 fee charged by the University of Wisconsin-Madison Medical School for the syllabus. Please contact the Medical Association Education Department at (800) 239-6272 or (334) 263-6441 for further details. ■

STANDARD PRESORTED  
U.S. POSTAGE  
PAID  
Montgomery, AL  
Permit No. 417

Alabama State Board of Medical Examiners  
P.O. Box 946  
Montgomery, AL 36102-0946

ALABAMA BOARD  
OF MEDICAL EXAMINERS  
NEWSLETTER

