# Spring 2020 Newsletter

Spring 2020

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# WHAT EVERYONE SHOULD KNOW

## Chair's Corner

### Rulemaking: The What, Why, When & How

Louisa Barnhart, MD, MPH
Chair of BOLIM

The Maine Legislature has provided the Board with general rulemaking authority to "adopt rules as the Board deems necessary and proper to carry out" the licensing and regulation of physicians and physician assistants. Rulemaking authority is not unique to the Board of Medicine. Many other State agencies also possess such authority.

Organization of current rules:
(* indicates joint rules with other boards (Osteopathic, Nursing, Dental and or Podiatry); ** indicates Pharmacy)

- Chapter 1 Physicians
- Chapter 2 Physician Assistants*
- Chapter 3 Issuance of citations
- Chapter 5 Collaborative Drug Therapy** (Directed by the legislature)
- Chapter 6: Telemedicine Standards of Practice
- Chapter 10: Sexual Misconduct*
- Chapter 21 Use of Controlled Substances for Treatment of Pain*

Full text of the existing rules can be found on the Board's website: https://www.maine.gov/md/laws-rules-updates/rules.

Rules in progress: Amendments to Chapter 21 "Use of Controlled Substances for Treatment of Pain" and a new Chapter 12 "Joint Rule Regarding Office Based Treatment of Opioid Use Disorder." The period for commenting on each of these rules is closed. Once all of the boards have had an opportunity to review and address the comments and adopt the rules, the proposed rules will be reviewed by the Office of Attorney General. Full text of the proposed rules can be found on the Board's website: https://www.maine.gov/md/home.

What is a rule?

A rule that is adopted by the Board following proper procedure is enforceable by the Board or a court. In this sense, a duly adopted rule is similar to a law. In contrast, Board policies and guidelines are advisory and informative and promote consistency, but not enforceable by the Board or the courts.

When is the decision made to create a rule?

The Board adopts and updates its rules in response to developments in licensing processes and in response to significant issues that impact public safety. The decision to undertake the rulemaking process is not made lightly and is generally made by a vote of the Board.

How is a rule created and adopted?

In general, the Board creates a subcommittee of Board members who meet to discuss and draft a proposed rule for the Board. Once the subcommittee develops a draft of the rule, it is presented to the Board for review. At that time, the Board could decide to approve the rule as presented, to make changes to the proposed rule, or not to proceed with rulemaking. When the Board makes a decision to formally propose a rule, it must follow the Administrative Procedure Act ("A.P.A."). The A.P.A. is a law passed by the Legislature that requires State agencies to follow a formal process when creating rules. The A.P.A. requires:

- The proposed rule to be filed with the Secretary of State for publication
- A Notice of Rulemaking Proposal be published to inform the public of the proposed rule
- The board to identify a period for the submission of comments regarding the proposed rule (in general the board provides 30 days to submit comments)
- The board to identify to whom the comments about a proposed rule can be submitted
- The board to review and respond (accept or not accept) to every comment received regarding the proposed rule, including providing its rationale for accepting or not accepting a comment
- The board to re-publish a proposed rule for additional public comment if it makes a substantive change to the rule in response to comments received
- The board to adopt the proposed rule within 120 days of the close of the comment period
- The Office of Attorney General to certify to the form and legality of a proposed rule within 150 days of the close of the comment period
- The Office of Attorney General to file the final rule with the Secretary of State

In addition to the publication of a proposed rule by the Secretary of State, the Board posts any proposed rules on its website: https://www.maine.gov/md/home. The Board takes seriously its obligation to review all comments submitted regarding any proposed rule as well as the potential impact of any rule upon licensees. For more information regarding the rulemaking process, visit the Secretary of State website: https://www.maine.gov/sos/cec/rules/guide.html.

## Child Abuse Mandated Reporting Requirements

Licensees should continue to be mindful of the mandated reporting requirements regarding suspected child abuse. The following information from Dr. Lawrence R. Ricci, M.D. is provided to inform licensees about the importance of this issue.

- CDSIRP Letter to BOLIM (PDF)
- Lawrence Ricci, MD's 2014 BOLIM Article (PDF)

## Legislation

During the emergency (short) legislative session the following laws were enacted that have a direct impact on licensees of the Board:

**LD1660 "An Act to Improve Access to Physician Assistant Care"**
Summary: This law represents a paradigm shift from physician delegation and oversight towards independent practice for physician assistants with more than 4,000 hours of experience. In effect the legislation creates 3 categories of physician assistant practice in Maine:

1. PAs with less than 4,000 hours experience must have a "collaboration agreement" that includes a scope of practice approved by the Board. PAs in a "health care facility" or a "physician group practice" that have a credentialing process may use the healthcare system's credentialing document as a substitute for the "collaboration agreement."
2. PAs with more than 4,000 hours of experience who are within a healthcare system or a physician group practice do not have to have a "collaboration agreement" or a "practice agreement."
3. PAs with more than 4,000 hours of experience and who work in an office by themselves with no physician in the practice must have a "practice agreement" that includes a scope of practice approved by the Board. This was a significant concession by MEAPA – to include the scope of practice in the "practice agreement."

The law empowers the Board to make rules regarding "collaborative agreements" and "practice agreements." The Board will be working diligently to propose and adopt rules to implement this new law.

**LD1948 "An Act To Prohibit, Except in Emergency Situations, the Performance without Consent of Pelvic Examinations on Unconscious or Anesthetized Patients"**

Summary: This law is similar to laws enacted in other states to address general concern about medical students performing pelvic exams for training purposes on unconscious patients without prior informed consent and specific concerns about patients waking up during a pelvic examination to which they did not consent. The new law was incorporated into Title 24 M.R.S. § 2905-B, in a section following the law requiring "Informed Consent for Breast Cancer (Treatment)."

## COVID-19: An Urgent Message from the Board

The novel COVID-19 virus is challenging all of us in many ways. Like many of you who continue to provide clinical care, the Board must continue to provide services to the public while safeguarding the health of Board members and Board staff. The Board offices remain open and Board staff continue their work of processing license applications and complaints and investigations. Board staff have the option of working from home using technology. However, until such time as the Board office is directed to close there will be some Board staff working at the office.

### Governor Mills' Executive Order

The Board has been working closely with the Office of Attorney General and the Governor's Office regarding an executive order that:

- Allows the expedited licensure (at no cost) of qualified retired physicians and physician assistants to provide assistance for the duration of the emergency (COVID-19 Emergency Application);
- Allows the expedited licensure (at no cost) of qualified physicians and physician assistants licensed in other jurisdictions to provide assistance for the duration of the emergency(COVID-19 Emergency Application);
- Keep licenses from expiring or needing to be renewed for 30 days after the declaration of the emergency (including CME requirements);
- Suspends the requirement of supervision or collaboration for nurses and physician assistants for the duration of the emergency;
- Maximizes the use of telemedicine and telehealth and eliminates the need for some in-person patient visits for the duration of the emergency by:
  - Allowing voice-only technology to be used; and
  - Suspending any laws or rules related to state medical record privacy and HIPAA that would interfere with the use of telemedicine and telehealth technology.

A copy of the executive order issued by the Governor can be found here: Executive Order. Any retired physician or physician assistant who is interested in obtaining an emergency COVID-19 license from the Board should contact:

- Applicants with last names A-L call (207) 287-3602 tracy.a.morrison@maine.gov
- Applicants with last names M-Z call (207) 287-3782 Elena.I.Crowley@maine.gov

### Information from Maine CDC:

Retired physicians and physician assistants who are not interested in obtaining an emergency COVID-19 license can monitor the most recent updates from the Maine CDC and/or register with Maine CDC's public health system:

- COVID-19 Updates: https://www.maine.gov/dhhs/mecdc/infectious-disease/epi/airborne/coronavirus.shtml
- Public Health Emergency Preparedness: https://www.maine.gov/dhhs/mecdc/public-health-systems/phep/
- Maine Responds Emergency Health Volunteer System: https://maineresponds.org/

### Information from Maine DHHS:

Effective 03/17/20 DHHS issued emergency rules to:

1. Waive all copay for prescriptions, office visits, emergency department visits, radiology and lab services;
2. Allow early refills of prescriptions letting providers extend to a 34-day supply maximum om brand prescriptions.
3. Work closely with all at-risk populations to ensure they have equipment they need such as oxygen tanks and inhalers.
4. Allow for prescribing through telehealth.
5. Waive premiums for MaineCare services, such as the Working Disabled, Cub Care, Katie Beckett, and Special Benefit programs (Failure to pay those premiums will not result in case closure).

Copies of the emergency rules can be found at:
https://www.maine.gov/dhhs/oms/rules/emergency.shtml#anchor2225289.

### Information from the Federal Government:

Effective 03/17/20 the federal government is immediately suspending HIPAA enforcement and penalties to facilitate use of telehealth for health care services in both the Medicare and Medicaid programs: https://www.cms.gov/newsroom/fact-sheets/medicare-telemedicine-health-care-provider-fact-sheet.

### Emergency Preparedness Plans:

The Board asks all licensees, especially those who are in private practice, to consider developing ways in which to provide continuity of care to their patients in the event that they are exposed to the COVID-19 virus and must self-quarantine.

- Who will care for your patients in such an eventuality?
- Have you considered teaming up with other clinicians (including physician assistants and nurse practitioners) for mutual assistance coverage in the event of exposure?

## The Schmidt Institute: A Resource for Prescribers of Opioids and Benzodiazepines

The Schmidt Institute – a non-profit joint venture between St. Joseph Healthcare and Penobscot Community Health Care ("PCHC") – was created to pursue clinical and translational research, including the evaluation and dissemination of innovative models of primary care.

In 2013, the Schmidt Institute implemented its Controlled Substance Stewardship program ("CSS") at PCHC. CSS provides support and consultation to prescribing clinicians with the goal of providing compassionate, coordinated care for patients whose prescriptions are being tapered. It also offers tools for clinicians and their staff, such as informed consent and clinician-provider agreements that provide clear descriptions of risks and expectations of treatment, and prompt referral and access to experts in alternative pain management and other services such as medication-assisted treatment for Opioid Use Disorder.

Maine's Office of Substance Abuse and Mental Health Services ("SAMHS") is sponsoring a state-wide expansion of the CSS model with the goal of promoting safer, evidence-based treatment options for chronic pain. The program includes establishing state-wide prescribing guidelines and clinical case reviews (at no cost to clinicians in Maine) by the CSS Committee, an interdisciplinary team with expertise in pharmacy, pain management, family medicine, psychiatry, and care management.

Larry Clifford, Director of Planning & Development at the Schmidt Institute, was contacted regarding the CSS project and provided the following answers to questions posed by Board staff:

**1. How do you sign up for the program?**
Providers/prescribers who want to sign up for the Schmidt Institute's Controlled Substance Stewardship case reviews (CSS) simply need to get in touch with Robin Bouchard (robin.bouchard@pchc.com or 207-404-8032). The process starts with some information-gathering between the new client and CSS' interdisciplinary team, and concludes with the on-site training of prescribing providers. Our aim is to support frontline providers who are caring for patients with chronic pain, substance use disorders, mental illness, and other complex conditions, by providing detailed tapering and comprehensive care plans derived from evidence-based prescribing practices.

**2. How much does it cost?**
There is no cost to providers located within the State of Maine, thanks to financial support for the CSS program (including case review services) from the Maine Office of Substance Abuse and Mental Health Services (SAHMS) – through *Overdose Data to Action*, a federal CDC grant recently awarded to the State of Maine.

**3. How long does it take – in general – to schedule a review?**
The Schmidt Institute is very deliberate about ensuring the provider onboarding process is as quick as possible. The steps that are required to begin having patient cases reviewed by the CSS team include:

1. Signing of a professional services agreement and a business associate agreement;
2. A review of the provider/provider organization's existing controlled substance stewardship policies (if available), followed by the development of a customized CSS policy that can be implemented going forward (as needed);
3. Establishing secure, remote access to the provider/provider organization's electronic medical records;
4. Identifying patients that are in need of review.

Subject to demand, this can all be accomplished in two-to-three weeks. A typical case review takes approximately one week from point of referral to point of response, with the result being a detailed care and tapering plan that is routed to the referring provider.

**4. How many providers have you assisted thus far?**
Since October of last year (i.e., since the launch of the CSS contract with SAMHS), the Schmidt Institute has conducted 250 case reviews for ~25 providers in Maine. The program has gone a long way in

supporting prescribing providers (via consultation and case reviews), with the goal of promoting compassionate, coordinated care for patients whose prescriptions are being tapered.

**5. What are the common issues (if any) that you find during your review?**
Every case review is unique, but some of some of the common issues and challenges we see include:

1. The co-prescribing of benzodiazepines;
2. Undiagnosed or un-addressed trauma;
3. A need for treatment of mental illness combined with substance use disorder treatment;
4. Limited access to evidence-based, pain treatment modalities;
5. Inadequate appointment access (along with limited time to appropriately discuss changes in treatment plans); and
6. The need to attend to other, medical issues for this population of patients (screenings, chronic disease management, etc.).

For more information regarding the Schmidt Institute and/or the CSS program, you may contact Larry Clifford at lcifford@pchc.com or by phone at (207) 404-8032.

## Supporting Primary Care in Rural Maine Through Project Echo: Please Respond to the Questions Below

In 2017 the Maine Legislature created the “The Maine Telehealth and Telemonitoring Advisory Group” (“Advisory Group”) under the Department of Health and Human Services to evaluate technical difficulties related to telehealth and telemonitoring services in Maine and to make recommendations to improve them. One of the subgroups of the Advisory Group is the “Primary Care Workgroup” which is developing a long-term, sustainable plan to provide “Project Echo” to Maine primary care providers.

Project Echo is a telemedicine platform launched in 2003 at the University of New Mexico School of Medicine. Project Echo is currently used in many states to assist physicians and physician assistants learn and collaborate with specialists and manage the diagnosis and treatment of patients with complex medical conditions. It utilizes a hub-and-spoke model to connect rural and remote practitioners with specialists in order to discuss cases that might otherwise require referral to a distant health care facility. At the hub of the model is an academic medical center or large healthcare system that provides secure telemedicine links to primary care providers who participate in teleECHO clinics and share/discuss patient cases with specialists. For more information regarding Project Echo visit: https://echo.unm.edu/.

As part of its study, the Primary Care Workgroup is conducting an environmental study regarding the existing access to and use of Project Echo in Maine. To assist with this study, the Primary Care Workgroup is requesting that primary care practitioners answer the following questions:

1. Are you aware of Project Echo?
2. Are you using Project Echo?
3. How frequently are you using Project Echo?
4. What are some of the barriers to your use of Project Echo?

Please submit your answers to these questions to Danielle Louder at dlouder@mcdph.org.

## 2019 Annual Reports

Each year Board staff prepares reports of activites that have happened during the past year. The attached Annual Report (PDF) includes 3 seperate sections:

- Board Meetings and Accomplishments
- Licensing
- Complaints and Investigations

# ADVERSE ACTIONS

## Introduction

In 2019 the Board reviewed 335 complaints – an average of about 27.9 per meeting. While the number of complaints received by the Board remains consistently large, the number of complaints that result in adverse action is quite small. In most cases, the conduct resulting in adverse action is egregious or repeated or both.

The majority of complaints received by the Board continue to center around patient dissatisfaction with the communication of the physician/physician assistant. Patients who feel that they were not listened to, ignored, or disrespected (talked down to) are more likely to file a complaint with the Board than patients who may believe their treatment was not optimal but have a good relationship with their physician/physician assistant. The Board developed guidelines entitled “Communication with Patients” which licensees are encouraged to review: https://www.maine.gov/md/sites/maine.gov.md/files/inline-files/COMM_WITH_PTS.pdf.

The Board’s complaint process is relatively straight-forward. FAQs about the complaint process are available on the Board’s website: https://www.maine.gov/md/complaint/discipline-faq. Brochures regarding the complaint process are also available on the Board’s website: https://www.maine.gov/md/resources/forms. Upon receipt of a complaint, it is forwarded to the licensee for a written response and a copy of the medical records. In general, the licensee’s response is shared with the complainant, who may submit a reply. The Board reviews the complaint file once completed, and may take any of the following actions:

- Dismiss
- Dismiss and issue a letter of guidance
- Further investigate
- Invite the licensee to an informal conference
- Schedule an adjudicatory hearing

## Adverse Actions

The following adverse actions are being reported for the purpose of educating licensees regarding ethical and/or legal issues that can lead to discipline, and to inform licensees of any limitations or restrictions imposed upon scope of practice.

**Adam W. Grasso, M.D. License #MD21359 (Date of Action 03/10/2020)**
On March 10, 2020, Dr. Grasso entered into a Consent Agreement with the Board for misuse of alcohol, drugs or other substances that may result in the licensee performing services in a manner that endangers the health or safety of patients. The Board imposed a requirement that Dr. Grasso maintain and comply with his substance misuse Monitoring Agreement with the Maine Professionals Health Program through at least December 9, 2021 and to notify the Board upon certain events.

**Tiffany J. Troxel, P.A. License #PAN1761 (Date of Action 02/11/2020)**
On February 11, 2020, the Board considered the complaint and Ms. Troxel's failure to respond as required. The Board voted to report the non-renewal of her Maine physician's assistant license while under investigation related to representations made on a credentialing application and a pending licensing action with the Guam Board of Allied Health Examiners to the National Practitioner Data Bank and Federation of State Medical Boards.

**Jennifer A. Moore, P.A. License #PAN1878 (Date of Action 02/11/2020)**
On February 11, 2020, the Board considered the complaint, response, and Ms. Moore's communications related to the Board required evaluation. The Board voted to report the non-renewal of Ms. Moore's Maine physician's assistant license while under investigation related to her arrest and conviction for Operating Under the Influence to the National Practitioner Data Bank and Federation of State Medical Boards.

**Hugh V. MacDonald, M.D. License #MD18115 (Date of Action 01/14/2020)**
On January 14, 2020 Dr. MacDonald entered into a Consent Agreement with the Board imposing the immediate permanent surrender of his Maine medical license for engaging in unprofessional conduct and conviction of a crime that directly relates to the practice of medicine.

**Brandt E. Rice, M.D. License #MD17950 (Date of Action 01/14/2020)**
On January 14, 2020 Dr. Rice entered into a Consent Agreement with the Board imposing the immediate permanent surrender of his Maine medical license based upon violation of the following

provisions: a) fraud, deceit or misrepresentation; b) engaging in conduct that evidences a lack of ability or fitness to practice; c) unprofessional conduct; d) inappropriate prescribing of controlled substances; e) violation of Board statue or rule ; f) misuse of alcohol, drugs or other substances; g) conviction of a crime that involves dishonesty or false statement, relates directly to the practice of medicine or for which incarceration of one year or more may be imposed; h) disciplinary action by another state; i) failing to produce documents upon request of the Board; and j) failing to respond timely to a complaint notification by the Board.

**Stephen M. Dierks, M.D. License #MD16874 (Date of Action 12/2/19)**
On December 2, 2019, the Board accepted Dr. Dierks request to withdraw his application to renew his Maine medical license while under investigation.

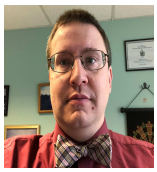
**Baharak Bagheri, M.D. License #MDE18430 (Date of Action 10/23/2019)**
On October 23, 2019, the Board and Dr. Bagheri entered into a Consent Agreement pursuant to which the Board issued a warning to Dr. Bagheri for engaging in unprofessional conduct.

# BOARD NEWS

## Board Member and Assistant Executive Director Receive National Awards

On February 11, 2020 the Board received notification from the Federation of State Medical Boards ("FSMB") that it had selected a member of the Board and a member of the Board staff to receive awards.

The FSMB selected Dr. Maroulla S. Gleaton, M.D. to receive the John H. Clark, MD Leadership Award for her outstanding and exemplary leadership, commitment and contribution to advancing the public good at the state board level. In 2007, the Governor appointed Dr. Gleaton to the Board. Notably, she was subsequently re-appointed to the Board by two different Governors from different political parties. In 2010, fellow Board members elected her to serve as Secretary, a position that she held for two years. In 2012, fellow Board members elected her Chair, a position that she held until June 2019. Under her leadership, the Board accomplished a number of significant initiatives, including updating Board rules and statutes, and developing guidelines for licensees. In addition to her duties with the Board, Dr. Gleaton serves on the Nominating Committee for the FSMB, which identifies and recruits individuals to serve on FSMB committees and work groups, and also serves on the FSMB Workgroup on Physician Sexual Misconduct, which has developed a draft report and recommendations regarding this very important issue.



The FSMB selected Assistant Executive Director Timothy E. Terranova to receive the FSMB 2020 Award of Merit for his contributions that positively impacted and strengthened the profession of medical licensure and discipline, and consequently helped enhance public protection. Mr. Terranova has been with the Board since 2000. In 2014, Mr. Terranova assumed the position of Assistant Executive Director. Under his leadership, the Board made significant improvements to medical licensure, including implementation of online licensing and re-licensing, and developing protocols for licensing physicians pursuant to the Interstate Medical Licensure Compact ("IMLC"). The IMLC recently elected Mr. Terranova Chair of the Executive Committee. In addition, Mr. Terranova played an integral role in the Board's decision to join the International Association of Medical Regulatory Authorities ("IAMRA"), which resulted in developing contacts with the medical regulatory authorities of other countries. In addition to his duties with the Board and IMLC, Mr. Terranova is an active member of IAMRA's Continued Competency Working Group.

The FSMB represents 70 state medical and osteopathic regulatory boards within the United States, its territories and the District of Columbia. It provides support to medical boards as they fulfill their mandate to protect the public health, safety, and welfare through the proper licensing, disciplining, and regulating of physicians and physician assistants. More information regarding the FSMB can be found at https://www.fsmb.org/about-fsmb/.

# BOARD OPPORTUNITIES

## The Maine Board of Licensure in Medicine Seeks Physician Member

Take advantage of this opportunity to gain a broad and deeply informed perspective on the spectrum of medical practice in Maine while performing an essential public service in overseeing public safety.

The Maine Board of Licensure in Medicine ("Board") has been licensing and regulating allopathic physicians in Maine since 1895. Today, it consists of 10 members – 6 actively practicing physicians, 1 actively practicing physician assistant, and 3 public members. The Board is seeking a physician member who meets the following statutory qualifications:

> [Be a] graduate of a legally chartered medical college or university having authority to confer degrees in medicine and must have been actively engaged in the practice… in this State for a continuous period of 5 years preceding… appointment to the board.

The Board meets once a month at its offices located in Augusta, Maine. The members of the Board are provided with materials for an upcoming meeting 1-2 weeks in advance. A typical Board meeting commences at 08:30 am and lasts until 4:00-5:00 pm. During a meeting, the Board conducts reviews of applications for licensure, complaints and investigations, and rule making. In addition, the Board occasionally holds informal conferences and adjudicatory hearings to resolve complaints and investigations.

The Board is composed of motivated, hard-working individuals committed to ensuring the protection of the public. The Board is supported by a dedicated staff of professionals. Anyone who may be interested in this challenging and rewarding opportunity should contact Dennis E. Smith, Esq., Executive Director for the Board at: (207) 287-3605 or by email at dennis.smith@maine.gov.

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**Information**

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**Commemorating 200 Years of Statehood**

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