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MAINE BOARD OF LICENSURE IN MEDICINE BOLIM

In this issue:

Prescribing for or Treating Self or Family: A Professional Quagmire

Dennis E. Smith, Executive Director

It is not illegal for physicians or physician assistants to prescribe drugs for themselves or their family members. Federal and Maine law do not specifically prohibit this practice ? even for controlled drugs. However, while not illegal, prescribing drugs for oneself or one?s family members may be unethical, unprofessional, or incompetent, and grounds for discipline by the Board.

Ethical Issues

It is the policy of the Board of Licensure in Medicine that the American Medical Association?s *Code of Medical Ethics*, most recent edition of *Current Opinions with Annotations*, is one of the primary sources in defining ethical physician and physician

assistant behavior. Section 81.9 of *The Code of Ethics of the American Medical Association* generally discourages physicians from treating themselves or family members for the following reasons:

- Professional objectivity may be compromised.
- Personal feelings may unduly influence a physician?s professional medical judgment.
- Physicians may fail to probe sensitive areas when taking medical histories or fail to perform intimate parts of physical examinations.
- Patients may feel uncomfortable disclosing sensitive information or undergoing an intimate examination
- Physicians may be inclined to try and treat problems beyond their medical expertise and training.
- Negative medical outcomes may be carried over into the personal/family relationship with the physician.
- Family members may feel reluctant to decline treatment recommended by the physician.
- Physicians may feel obligated to provide care to family even if they feel uncomfortable doing so.

Only where there is an emergency or isolated setting where there is no other qualified physician available should physicians treat themselves or family members. In addition, except in emergencies, physicians should not write prescriptions for controlled drugs to themselves or family members.

Professionalism and Competency Issues

Beyond the ethical issues, physicians or physician assistants who prescribe for or treat themselves or family members risk engaging in unprofessional or incompetent behavior. Examples include:

- Failing to obtain informed consent.
- Failing to perform an appropriate medical history and examination.
- Failing to create and maintain appropriate medical records.
- Failing to refer for specialty consultation.
- Failing to provide for follow-up care.
- Practicing beyond medical training and/or specialty.
- Violating the Board?s Sexual Misconduct Rule (prohibiting romantic/sexual relationships between physicians/physician assistants and patients).

Unprofessional and/or incompetent behavior constitutes grounds for disciplining a physician?s or physician assistant?s license. Discipline could include public censure, civil monetary penalties, probation, limitation or restrictions on ability to practice, license suspension, or license revocation. Any disciplinary action is reportable to the National Practitioner Data Bank and the Federation of State Medical Boards, and can have significant collateral consequences and result in reciprocal disciplinary action by other jurisdictions.

Conclusion

Practicing medicine or rendering medical services in Maine is a privilege, not a right. The Board confers that privilege when it issues a license. That privilege may be lost or restricted if physicians or physician assistants self-prescribe/self-treat or prescribe for or treat family members. While it may seem convenient to provide medical care to oneself and/or family members, physicians and physician assistants who do so risk engaging in unethical and unprofessional behavior that may have a detrimental impact upon their licenses.

New Guidelines on Chaperones and Electronic Medical Records

Peg Duhamel, M.D., Medical Director

On September 13, 2016 the Board adopted new guidelines on ?The Use of Chaperones? and ?The Use of Copy and Paste Functions in Electronic Medical Records? in an effort to protect patients and clinicians, and to help maintain the integrity of the medical record.

The Board receives complaints on a regular basis alleging inappropriate behavior by clinicians during physical exams. The use of a chaperone can help avoid these complaints by providing reassurance to patients about the professional/medical character of the exam, and helping to support the clinician should a patient perceive part of the exam as unnecessarily intimate or inappropriate.

The Board has also noted that the use of copy and paste or copy forward technology, or pre-population of clinical fields in electronic medical records has played a role in complaints leading to the discipline of some clinicians. Routine use of these technologies without careful editing and updating can lead to outdated, inaccurate, or irrelevant information, and often

does not show evidence for the clinician?s medical decision making. Reflex use of this practice can also cause records to become overloaded with data that may cause other clinicians to miss critical information and ultimately result in medical errors.

Please take a few minutes to review the new guidelines.

Chaperones for Physical Exams

The Board receives complaints on a regular basis alleging inappropriate behavior by clinicians during physical exams. The use of a chaperone can help avoid these complaints by providing reassurance to patients about the professional/medical character of the exam, and helping to support the clinician should a patient perceive part of the exam as unnecessarily intimate or inappropriate.

Clinicians should have a policy notifying patients of the right to have a chaperone present during any exam, but most certainly for any exam of the breast, genitalia or rectum. This is especially prudent if the patient is of the opposite sex of the clinician; however, patients of all demographic categories should feel comfortable requesting a chaperone. The offer of a chaperone should be posted.

Clinicians should respect patient dignity and comfort by providing privacy to undress, providing dressing gowns or drapes, and explaining the components of the exam both before and during the exam.

An authorized health professional should serve as a chaperone whenever possible, rather than office clerks or family members. Health professionals are held to standards for safeguarding patient privacy, confidentiality and safety. The patient should approve of the gender of the chaperone. Clinicians should be careful not to reveal confidential patient information in the presence of the chaperone. The name and gender of the chaperone should be recorded in the patient?s medical record.

If a suitable chaperone is not available, the clinician should offer to postpone the examination until one is available, if this does not impact the patient?s healthcare. A clinician should ensure the patient does not feel pressured into proceeding with the exam if a chaperone is not available.

If the clinician would like a chaperone to be present as a general policy or because of particular concerns about a patient, but the patient does not consent to having a chaperone present, the clinician does not have to perform the examination and should consider deferring the exam to another clinician.
EFFECTIVE DATE: September 13, 2016

The Use of Copy and Paste Functions for Electronic Medical Records

The primary purpose of clinical documentation should be to support patent care and improve outcomes through enhanced communication. Since the electronic medical record (EMR) is now the primary tool for documenting patient encounters and communication among clinicians, the integrity of the data they contain is of great significance.

EMRs have greatly improved medical record legibility and accessibility, but not necessarily their readability or accuracy. Of particular concern is the use of the copy and paste function (CPF). Although CPF has the potential to improve efficiency, it also poses potential risks to the integrity and accuracy of the medical record.

Clinicians can use CPF to copy a note from a previous patient encounter, paste it into a new patient encounter and edit it, rather than writing an entirely new note at each visit. Problems arise when the clinician performs CPF and performs little or no editing at all, resulting in notes that:

- contain outdated or irrelevant information
- propagate false information
- misrepresent what actually occurred during a patient encounter
- make it difficult to identify the duration of a problem
- confuse medication dose changes or other instructions to the patient

Unedited CPF can also lead to notes that do not have a clear narrative style and are unnecessarily lengthy. Carrying forward large amounts of possibly irrelevant information can also cause information overload, which can cause clinicians to miss important pieces of information and result in medical errors.

In addition, regular use of duplicate entries, especially in the history of present illness and assessment and plan, may be grounds for denial of payments by insurance carriers, and may facilitate or appear to facilitate attempts to inflate, duplicate or create fraudulent healthcare claims.

Similarly, pre-populating data fields in an EMR before a patient visit raises ethical and legal concerns where it documents exams that were not performed and/or documents the review of systems/physical exam as normal when, in fact, they were abnormal, changed, or not performed at that visit.

Clinicians using CPF or pre-populating data should do so carefully and judiciously to create efficient and complete clinical notes that will enhance communication, while avoiding

duplication of notes and the propagation of outdated information that does not reflect the current condition of the patient. Clinicians should ensure that information contained in EMR for each patient encounter is based on the actual information that was obtained or reviewed and the assessments that occurred at that visit.

References:
https://www.jointcommission.org/assets/1/23/Quick_Safety_Issue_10.pdf
http://www.cmsdocs.org/news/emr-cloning-a-bad-habit
http://bok.ahima.org/PdfView?oid=300306
EFFECTIVE DATE: September 13, 2016

Board Member Introduction - Susan Dench, Public Member

Susan, a corporate veteran and owner of Success & Co., serves on the Board of the Maine Heritage Policy Center, the President's Council of the Portland Symphony Orchestra, the New England Board of the Fellowship of Christian Athletes, as a volunteer at the Preble Street Teen Resource Center, as a mentor for the Maine Center for Entrepreneurial Development and a business judge for Greenlight Maine, and is also the founder and president of the non-profit Informed Women's Network. A dual citizen (UK/US) now a resident of Portland, she is an enthusiastic gardener, Boston Bruins fan, and keen soprano. Susan and her husband, Bryan, share five children, three grandchildren, and two canines, who spread joy to others as therapy dogs.

Introduction to Staff

Tim Terranova, Assistant Executive Director
Tim was born and raised in Maine. He has received degrees from the University of Maine Farmington and Harvard. Tim joined the Board in 2000 and served as the Consumer Assistant for both the Medical and Osteopathic Boards for many years. Tim was named Assistant Executive Director in 2014. His responsibilities include overseeing licensing, finances, and technology changes. Tim and his wife have two children. The entire family enjoys volunteering and is active in their community. In his spare time Tim enjoys hiking, reading, and spending time with his family. Tim can be reached by e-mail at Tim.E.Terranova@maine.gov or by phone at (207) 287-6930.

Maureen Lathrop, Administrative Assistant
Maureen was born and raised in central Maine. She began working at the Board in 1995 processing renewal applications. Maureen was the Board?s investigative secretary for many years and is currently the Board?s administrative assistant. She is responsible for compiling Board meeting agendas, preparing meeting minutes, and assisting with rulemaking initiatives. Maureen resides in Sidney with her husband, Cory, and their two golden retrievers, Baxter and Ranger. She enjoys reading, going for motorcycle rides, and spending time at camp. Maureen can be reached by email at maureen.s.lathrop@maine.gov and by phone at 207-287-3603.

Tracy Morrison, Licensing Specialist
Tracy Morrison earned her high school diploma at Lincoln Academy and later went to further her education in mental health at Kennebec Valley Community College. She was recently elected as a 2017 board member for Maine Association Medical Staff Services (MeAMSS), which she has been an active member of since 2012. Tracy is the licensing specialist; she began working for the board as a temp assisting the licensing specialist in June of 2008. Tracy was offered the position as a full time employee in August of 2008. She continued as the assistant until July of 2010 when she took a position with the Bureau of Consumer Credit Protection. Once the position of licensing specialist became open she was

selected and returned to the Board in January of 2011. Tracy lives in Monmouth with her girlfriend of 7 years and her 15 year old puppy, Keisha. Tracy can be reached by email at tracy.a.morrison@maine.gov and by phone at 207-287-3602.

Definitions for Adverse Actions

?Adverse Actions? ? The imposition of discipline through a consent agreement, decision and order, or the denial of an application for licensure.
?Censure? ? A formal and public expression of disapproval or condemnation for action or inaction that violates Board statutes or rules. (Stronger than a Reprimand.)
?Civil Penalty? ? A monetary penalty that is made payable to the Treasurer, State of Maine.
"Disruptive behavior" -- aberrant behavior that interferes with or is likely to interfere with the delivery of care.
?Effective Date of the Adverse Action? ? The date at the beginning of the summary means that it is the date that the adverse action goes into operation.
?Incompetence? - Engaging in conduct that evidences a lack of ability or fitness to discharge the duty owed by the licensee to a client or patient or the general public; or Engaging in conduct that evidences a lack of knowledge or inability to apply principles or skills to carry out the practice for which the licensee is licensed.
?Probation? ? A period of time during which conditions and/or restrictions are placed upon the license, and compliance is monitored by the Board.
?Reprimand? - A formal and public rebuke for action or inaction that violates Board statutes or rules. (Stronger than a Warning.)
?Revocation? ? A formal taking away of a license and ability to practice medicine or render medical services.
?Surrender? ? A formal giving up of a license to practice medicine or render medical services.
?Suspension? ? A formal prohibition on practicing medicine or rendering medical services for a specified period of time.
?Unprofessional Conduct? - violating a standard of professional behavior that has been established in the practice for which the licensee is licensed. (Including but not limited to ?disruptive behavior,? supra.)
?Warning? ? A formal and public counseling to be careful about, or to cease engaging in certain conduct.

Adverse Actions

Michael B. Bruehl, M.D. License# MD8517
Date: November 8, 2016
Action: Consent Agreement ? License Restriction (No prescribing of controlled substances for more than 7 days) and License Probation for 1 year with continuing education and professional monitoring.
Basis: Unprofessional conduct and violation of Board Rule Chapter 21 by failing to perform appropriate assessments, treatment plans, monitoring, and documentation while prescribing controlled drugs.

Elmer H. Lommler, M.D. License# MD9862
Date: November 8, 2016
Action: Consent Agreement ? License Probation for indeterminate period with prescribing limitations, continuing medical education requirements, and chart reviews.
Basis: Unprofessional conduct regarding controlled substance prescribing.

John C. O?Connell, M.D. License #MD19349
Date: November 8, 2016
Action: Consent Agreement ? Surrender of License.
Basis: Disciplinary action taken by the Kentucky Board of Medical Licensure for prescribing controlled substances for his wife, daughter, and mother-in-law.

Hans H. Shuhaiber, M.D. License# MD20498
Date: October 11, 2016
Action: Denial of application for licensure.
Basis: Failure to pass Step Three (3) of the United States Medical Licensing Examination (USMLE) within three (3) attempts.

Lowell I. Gerber, M.D. License# MD17412
Date: October 11, 2016
Action: Consent Agreement -- Reprimand and $1,000 civil penalty.
Basis: Engaging in the practice of misrepresentation by providing incorrect information on a license renewal application and on a reappointment application submitted to a health care facility.

Geeta Godara, M.D. License# MD20181
Date: October 11, 2016
Action: Consent Agreement ? License Probation for 1 year with behavioral and professional monitoring.
Basis: Unprofessional conduct and the practice of fraud, deceit or misrepresentation in connection with services rendered within the scope of the license by making untruthful statements to two health care facilities.

David P. Johnson, P.A.-Clinical, License# PA1157
Date: October 11, 2016
Action: Consent Agreement ? License Probation for 5 years with treatment and monitoring.
Basis: 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.

Peter J. Ameglio, M.D. License# MD15265
Date: September 13, 2016
Action: Consent Agreement ? License Probation for indeterminate period with educational conditions.
Basis: Engaging in conduct that evidenced a lack of ability or fitness to discharge duties owed to patients or ability to apply principles or skills to carry out the practice of medicine following notification that his privileges had been suspended at a medical facility, and consideration of an independent outside review of patient charts.

Robert J. Weiss, M.D. License# MD11892
Date: July 12, 2016
Action: Consent Agreement ? License Probation for 18 months with practice limitations and professional monitoring.
Basis: Unprofessional conduct arising out of his treatment of a patient and communications with the patient?s family.

Mark Overton, M.D. License# MD18675
Date: July 12, 2016
Action: Consent Agreement ? Reprimand, 10-day license suspension, and $1,000 civil penalty.
Basis: Unprofessional conduct relating to his treatment of a female employee of the hospital at which he worked, and tratment of her daughter eight months after the termination of a romantic relationship with that female employee.

Jack L. Flippo, M.D. License# MD21015 (June 16, 2016)
Date: June 16, 2016
Action: Consent Agreement ? Complance with all terms and conditions of a December 2, 2015 North Carolina Medical Board Consent Order, a monitoring contract with the North Carolina Physicians Health Program, and a monitoring contract with the Maine Medical Professionals Health Program.
Basis: Disciplinary action taken by the North Carolina Medical Board.

James Grossman, P.A.-Clinical, License# PA44
Date: June 16, 2016
Action: Consent Agreement ? Reprimand, $1,000 civil penalty, License Probation for at least

10 months with continuing education requirements and chart reviews.
Basis: Engaging in incompetence and unprofessional conduct for prescribing scheduled drugs on several occasions to a person who was not his patient.

Robert S. LaMorgese, M.D. License# MD19083
Date: June 16, 2016
Action: Decision and Order ? License Probation for 6 months with conditions including professional monitoring and updated neurological evaluation.
Basis: Not actively engaging in the practice of medicine since early 2014, which evidenced a lack of ability or fitness to discharge the duty owed to patients.

Two Kinds of Listening

David Nyberg, Ph.D., Editor-in-Chief

Case: A 19-year-old patient complains her physician does not listen, does not manage her pain well, and shows no empathy; she is in pain nine days after a tonsillectomy and he won?t prescribe adequate pain medication.

The surgeon is affronted by the accusation that he doesn?t listen; he says he listens carefully to all his patients. He tries to balance his concern for patient comfort and the patient?s safety with regard to overmedicating and potential addiction.

Impression: the surgeon does listen, but he disagrees with the patient; or, the surgeon listens to, but does not *hear* the patient.

Two kinds of listening

There is a useful distinction physicians can use as a guideline to help preclude this kind of patient complaint:
1) Keenly focused attention with regard to the technical/medical concerns of the listener: like recording post-surgical details.
2) Empathetic attention with the aim of assuming the speaker?s perspective: like identifying with a character in a novel, or a movie.

The first kind is not always drawn to anomaly, to outliers in the range of expectation, which is based in personal experience and demographic studies of similar patients. If what is heard

does not fit within what is already known and familiar, it may sometimes be discounted or ignored.

The second kind of listening is deliberately drawn to anomaly, to the descriptive details and explanations that make the speaker unique as a person who is also a patient, or make the situation unique because *this* person is in it.

Recognition of the anomalous patient for who *she* is in *this* situation can lead to exploration of alternative ways of making expedient and beneficial exceptions to what would be done routinely with the great majority of patients who fall within one or two standard deviations of the mean, that is, who fall within the parameters of the physician?s expectation.

Failure to recognize the anomalous patient can usually be traced to the physician?s skills and style of listening. Luckily, this manner of listening can be improved ? but only if the physician has a sincere interest in doing so. In dealing with a complaint that involves these issues, if the Board mandates a course in communication for a reluctant physician, the course may well be completed, but likely without result. So, a learning opportunity is lost.

However, a formal course is not always necessary for honing listening skills. The skills of empathetic understanding can be improved simply and without cost (except in terms of time set aside for the purpose). Start by engaging a partner who is willing to sit with you and explain something of personal importance. Attend to what is offered and do not interrupt except to clarify your understanding of a word or expression. At certain junctures, ask to paraphrase in your own words what you believe you have heard. Repeat until the speaker can certify your understanding by saying something like ?Yes, that is what I mean. You understand.? Then go on to the next point in the narrative. As you are listening, look at the speaker?s body language, notice changes in voice tone and pace, notice what comes up again and again, notice the *exact* words used and compare them to the words you would normally use to describe your, or your patients? similar experiences.

This exercise takes time because first impressions, first interpretations are often only partially correct. They need refinement to capture subtlety; that is, to become accurate, and precise. Accuracy and precision in understanding what a patient is saying can be more than helpful in diagnostics and treatment planning.

Achieving this kind of accuracy can be described as having temporarily acquired the improved but still limited ability to assume another person?s point of view (. . . at this time, on this subject, for this purpose). This is a privileged opportunity to obtain data about a patient that is otherwise out of reach to the physician who listens only, or primarily, to achieve objective clarity within an already established frame of reference.

If a good scientific physician is one who seeks, acquires, interprets, and understands all data relevant to diagnosing and treating a given condition, and if empathetic understanding offers access to more of these data that would otherwise be unavailable, then the physician who has developed skills of empathetic understanding is a better *scientific* physician, as well as a more adaptable one.

Medical Advisory Board Vacancies

The **Medical Advisory Board**, which is administered by the Secretary of State?s Office, is looking for candidates to fill three vacancies; one each in Gerontology, Internal Medicine, and Family Practice.

The MAB exists to advise the Secretary of State on matters relating to medical conditions and vision standards relating to driver?s licenses. By law, the board has to meet at least once every two years, but typically it meets twice a year.

Interested physicians should send their resum?s to the Secretary of State for consideration.
Contact Barbara A. Redmond, Chief Deputy Secretary of State Office of the Secretary of State
148 State House Station Augusta, ME 04333-0148
Tel: 207-626-8400
Fax: 207-287-8598
TTY users call Maine Relay 711
http://www.maine.gov/sos/

The relevant law is MRS Title 29-A Chapter 11 (pdf)

Recurring Notices

CME regarding Opioid Prescribing: Recently enacted legislation requires licensees of the Board who prescribe controlled substances to complete 3 hours of continuing medical education on the prescription of opioid medication every 2 years. This CME must initially be completed on or before December 31, 2017. The legislation also requires the Board to create rules to implement this CME requirement. Because rule making may take time and in order to encourage licensees who prescribe controlled drugs to complete this required CME as soon as possible, licensees who complete 3 hours of AMA PRA Category 1 CME in this content

specific area between July 29, 2016 and December 31, 2017, will be deemed to have satisfied this new CME requirement.

Attention Physician Assistants! It is your responsibility to ensure that your license application and registration are properly filed with the Board ? and that you have both a license and registration prior to rendering any medical services in the State of Maine. Physician assistants who do not ensure that they have both a license and registration face possible disciplinary action and sanction by the Board. For information regarding physician assistant licensure and registration, visit the Board?s website: http://www.maine.gov/md/licensure/physician-assistants.html.

Attention Physicians and Physician Assistants! Updating your contact information with the Board can save you time and money. Important Board documents (license renewal notifications, complaint notifications, electronic newsletters, licenses) are sent to the last address (mailing/email) you provide to the Board. Failure to update your contact information can result in your not receiving these important notifications, which may have an impact upon your license. You can review and update your contact information online anytime by visiting the Board?s website: http://www.maine.gov/md/online-services/services.html.

Attention Physicians! Physicians who do not ensure that their physician assistants have both a license and registration also face possible disciplinary action and sanction by the Board.

Editor-in-Chief David Nyberg, Ph.D. ? Graphic Design Ann Casady