

LOUISIANA STATE BOARD OF MEDICAL EXAMINERS

630 Camp Street, New Orleans, LA 70130
General Correspondence Address: Post Office Box 30250, New Orleans, LA 70190-0250
www.lsbme.org



Telephone: (504) 568-8820
FAX: (504) 599-0500
Writer's Direct Dial:

Ext. _____

May 24, 2007

Personal & Confidential

Ms. Natalie Banda
Regulatory Compliance Coordinator
Zurich Services Corporation
1705 USA Drive
Plano, TX 75025

Certified Mail No. _____
Return Receipt Requested

RE: MEDICAL NECESSITY REVIEW OFFICER, UNAUTHORIZED PRACTICE OF MEDICINE

Dear Ms. Banda:

At its last meeting the Louisiana State Board of Medical Examiners (the "Board") considered your inquiry as to whether a Statement of Position issued by the Board continues to express its views as to the qualifications necessary to make medical necessity determinations in this State. We understand the reason for your interest is that your organization provides workers' compensation managed care services (utilization review, peer review services) to injured workers in Louisiana and you would like to insure the organization's regulatory compliance. With apologies for the delay in responding, the Board asked that I acknowledge your correspondence and relay its advice.

In the Statement of Position to which you refer¹ the Board articulated its view that as a matter of law any diagnosis, prescription, recommendation for or administration of treatment, including the determination of medical necessity or appropriateness of proposed medical care, so as to effect the diagnosis or treatment for or with respect to an individual who is a resident of or located in Louisiana, constitutes the practice of medicine in this state, as defined by the Louisiana Medical Practice Act, and may

¹ *Statement of Position; Determination of Medical Necessity; Unlicensed Practice*, La. St. Board Med. Exam. (Mar. 25, 1998).

therefore only be made by a physician who is licensed to practice in Louisiana.² In the Statement the Board also opined that health plans' determinations not to pay for particular services or treatments that are recommended by a patient's treating physician, either at all or in favor of an alternative treatment, must be within the standard of care.³

While the Statement continues to reflect the Board's view, following its issuance the Louisiana Legislature amended the laws relative to Medical Necessity Review Organizations ("MNROs").⁴ The amendments confirm the Board's view that health insurance plans and issuers are not authorized to engage in the practice of medicine or adopt administrative treatment guidelines that impinge upon or encumber the independent medical judgment of treating physicians or health care providers. Rather, an MNRO is an entity that determines what medical services or procedures will be covered under a health benefit plan based on medical necessity. An MNRO must be licensed by the Louisiana Commissioner of Insurance and have a medical director who is "a duly licensed physician." Adverse determinations may only be made by a "duly licensed physician or clinical peer."⁵ A clinical peer who conducts *internal* reviews must be a physician or other health care professional who holds a non-restricted license in the same or an appropriate specialty that typically manages the medical condition, procedure, or treatment under review.⁶ A health benefit plan is also required to provide an independent, external review process to examine the plan's coverage decisions based on medical necessity. To conduct external reviews for an MNRO independent review organizations must, among other requirements, utilize clinical peers. A clinical peer that conducts independent *external* reviews for an MNRO need only hold an unrestricted license in any

² The 'practice of medicine' as defined by the Act in pertinent part means:

the holding out of one's self to the public as being engaged in the business of, or the actual engagement in, the diagnosing, treating, curing, or relieving of any bodily or mental disease, condition, infirmity, deformity, defect, ailment, or injury in any human being...whether by the use of any drug, instrument or force...or any other agency or means; or the examining...of any person or material from any person for such purpose....

La. Rev. Stat. §37:1262(1).

³ We are aware of no law or rule that would exclude workers' compensation determinations from the views expressed in our Statement. It is our understanding that the Louisiana Department of Labor provides oversight for utilization review in workers' compensation cases. You may wish to contact them directly on this issue.

⁴ La. Rev. Stat. §22:3070, *et seq.*

⁵ La. Rev. Stat. §22:3076(B).

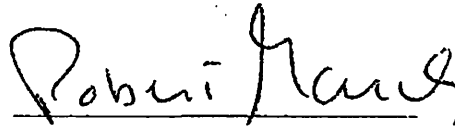
⁶ La. Rev. Stat. §22:3071(7).

state of the United States and certification by the American Board of Medical Specialties ("ABMS") in the area or areas appropriate to the external review.⁷

In sum, in the Board's view any physician making or reviewing the propriety of internal medical necessity determinations for Louisiana citizens and others located in this state, is required to hold a Louisiana medical license. Conversely, physicians serving as clinical peers for independent review organizations conducting external reviews for MNROs need only possess an unrestricted license in any state of the United States *and* ABMS specialty certification in the pertinent area(s) subject to external review.

Very truly yours,
**LOUISIANA STATE BOARD OF
MEDICAL EXAMINERS**

By:



ROBERT L. MARIER, M.D.

Executive Director

RLM/pt

⁷ La. Rev. Stat. §22:3086B(3).