

LOUISIANA STATE BOARD OF MEDICAL EXAMINERS

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



Telephone: (504) 524-6763
FAX: (504) 568-8893
Writer's Direct Dial:

September 12, 2000

Ext. _____

RE: Request for Advisory Opinion
—Therapeutic/Automatic
Substitutions of Medication

During its most recent meeting, the Louisiana State Board of Medical Examiners (the "Board") considered your request for an advisory opinion, respecting the propriety of hospitals, nursing homes, rehabilitation units and other facilities developing medication formularies which provide for the automatic substitution of medication ordered by physicians for their patients within such facilities. As we understand, the automatic substitution occurs without the prescribing physician's prior patient-specific authorization and, in some instances, the medication substituted for that originally prescribed may expose the patient to adverse clinical effects and/or risks. The Board has asked that I acknowledge the receipt of your letter and attachments of July 24, 2000 and relate its advice to you.

It has long been the Board's formally-stated position that any diagnosis, prescription, recommendation or administration of treatment, 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.¹ Thus, irrespective of the euphemism by which a medication substitution is accomplished, as a matter of law to be valid, effective and lawful each prescription or order for the administration of medication—or its substitution—must be issued or given by an authorized practitioner (*i.e.*, a Louisiana licensed physician) with respect to an *individually* identified patient, based on the practitioner's assumption of

¹LA. REV. STAT. ANN. §§37:1261-1292 (West 1988 & Supp. 1995). In pertinent part, as defined by the Act, the "practice of medicine" 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).

responsibility for and diagnosis and treatment of the patient. Legal authority to substitute a medication order, moreover, is not delegable. By definition, an "automatic substitution" does not have reference to a specified patient, is neither based on the treating physician's determination that the substituted medication will not have adverse effects on his patient, nor provide the therapeutic benefits to address the clinical considerations attendant to his diagnosis and serves, in effect, to delegate treatment recommendations and prescriptive authority to unauthorized persons. It is the Board's opinion, then, that automatic substitution of medication, without the prescribing physician's patient-specific authorization, is *per se* inappropriate and unlawful.

A pharmacist who initiates a medication substitution would, in fact, be making assessments of a patient's symptoms and critical determinations as to whether a medication, other than that prescribed by the treating physician, will provide the therapeutic benefits intended without any attendant adverse affects or risks. By definition, such services go well beyond the scope of authority provided to pharmacists by law. Indeed, such determinations are essentially diagnostic and treatment decisions which can have critical implications for the patient and which only licensed physicians can make.

We hope that we have properly understood your inquiry and that the foregoing advice is responsive. If not, please feel free to contact us.

Very truly yours,

LOUISIANA STATE BOARD
OF MEDICAL EXAMINERS

By: Virginia G. Benoist
Virginia Gerace Benoist
Executive Director

VGB/ln