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NEWSLETTER

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1989 Renewals

Renewal applications for 1989 were mailed in early November with renewal registrations and fees due January 1, 1989. Licensure which is not timely renewed is deemed lapsed (suspended) and may be restored only by meeting the applicable requirements for reinstatement, which have been amended during the past year. The rules governing reinstatement are set out on the reverse of the code sheet. If you have misplaced the form, send a stamped, self-addressed envelope with a request to the Board office and we will be happy to provide a copy of the rules.

To answer a couple of common questions concerning renewals, the Board does not currently have a reduced fee for interns, residents or retired physicians. At one time, physicians in training did enjoy a reduced fee, subject to listing and practice at their training hospital as interns or residents exclusively. The classification was discontinued many years ago as it proved impossible for the Board to enforce restriction of practice to institutional training. At present, retired physicians are also required to satisfy the normal renewal fee, though the Board currently has under consideration a renewal fee reduction available to physicians 70 years of age or over, or disabled, who are willing to forego prescription privileges. Amendments implementing the reduced fees—to be effective for the 1990 renewal year—will be published as proposed rules in the near future.

1989 Meeting Calendar

The Board's meetings for 1989 have been tentatively scheduled as follows:

January 18-20	June 21-23
February 22-24	July 19-21
March 22-24	September 21-23
April 12-14	October 25-27
May 24-26	December 6-8

Items for meeting agendas must be received in the Board office in writing at least 20 working days prior to the meeting.

Complaints

The Board receives hundreds of complaints relating to physicians every year. While a substantial number provoke investigations ranging from a matter of days to several months, or even a year or more, to fully develop, many are complaints that need never have been reported to

the Board. Two of the most common of such complaints: "He/She didn't tell me how much it was going to cost," and "He/She won't give me my records."

Some patients simply feel they have been "had" when they receive a large medical bill. The best "cure" for the complaint is preventive medicine. Talk to your patients. Discuss fees and costs openly and be certain that the patient understands the necessity for the tests or procedures, the anticipated results, and any side effects or risks. If the patient is gravely ill, communicate with the family. Then, keep well documented records.

Failure or refusal to provide patients (or their subsequent physicians) with copies of medical records is not among the specific causes for administrative action against a physician. The Board has nonetheless consistently taken the position that, subject to limited exceptions, upon proper authorization and satisfaction of reasonable expenses, a physician has an ethical obligation to respond to patient requests for their medical records by providing either photocopies of such records or a written report on the material substance of the records. Physicians should also be aware of a Louisiana statute (R.S. 40:1299.96) which stipulates that a health care provider must provide patients, on request, with a copy of "any information related in any way to the patient which the health care provider has transmitted to any company, or any public or private agency, or any person."

How Much Do You Know About the Medical Practice Act?—Part II

Continuing our discussion of the Louisiana Medical Practice Act (Act), below we ask and answer additional questions concerning our principal state law regulating the practice of medicine. A copy of the Act is included in the official list of Board licensees, the current edition of which should be published and sent out in the near future. Take the time to read through it. The law has changed somewhat in the past few years, and you should be knowledgeable about its contents. Should you have specific questions, please send them in writing to the Board office and we will try to address them in future issues of the *Newsletter*.

Does the Act Address Advertising by Physicians? Yes, to an extent. One of the causes for action against a physician's license is the solicitation of patients or self-promotion through public or private advertising which is fraudulent, false, deceptive or misleading. A related ground for disciplinary action includes efforts to deceive or defraud the public. Thus, an advertisement in which a physician claims to be able to cure an incurable disease

would violate the Act, as would an advertisement in which the physician's training or credentials are grossly overstated or misrepresented.

What Is the Most Common Violation of the Act the Board Addresses? The violation the Board most frequently confronts is prescribing or dispensing controlled substances without legitimate medical justification, or in other than a legal or legitimate manner. As noted in an earlier issue of the *Newsletter*, the Board has witnessed a recurrence of the promiscuous prescription of anorectic medications. While many clinics do not advocate the use of anorectics, some prescribe them too frequently and for excessive durations. Some physicians illegally allow patients to receive repeated prescriptions without seeing the physician other than on the initial visit, occasionally by means of presigned prescriptions. By Federal regulations, prescriptions for controlled substances must be signed and dated on the day when issued, bear the full name, address and registration number of the physician, and the name and address of the patient. Though a prescription may be prepared by a secretary or agent for the signature of the physician, the physician is responsible in the event the prescription does not conform to all laws and regulations. If a physician allows an unlicensed individual to issue presigned prescriptions, he not only lends his name to an unlicensed practitioner (another cause for action against a license), he exposes himself to the danger of having prescriptions issued in his name for illegitimate and/or illegal purposes.

What Can Happen to My License if I Am Found Guilty of Medicare/Medicaid Fraud? While conviction of any felony is cause for action against a physician's license, the Act also provides for action against a physician for making or submitting false, deceptive or unfounded claims to a patient, insurance company, governmental authority, or other payor, for the purpose of obtaining anything of economic value. Cases of this type have resulted in penalties ranging from probation, to long-term suspension of licensure, depending on the nature and severity of the case.

- Under Louisiana law,² a radiologic technologist's legal capacity to perform radiographic procedures on patients requires the order of a physician given with respect to an identified, individual patient. In prohibiting a radiologic technologist from performing diagnostic or therapeutic radiography on humans "unless under the direction and supervision of a licensed practitioner and *unless so directed by prescription of a licensed practitioner*,"³ the law contemplates, by "prescription," a specific order given by a practitioner (*i.e.*, a physician, dentist, podiatrist, chiropractor, osteopath) with respect to an identified, individual patient.
- "Blanket prescriptions" for diagnostic radiography do not suffice as the "prescription of a licensed practitioner" required by state law to authorize a radiologic technologist to perform such procedures.
- A radiologic technologist who performs radiography pursuant to non-specific physician authorization would equally exceed the scope of his or her licensure and be engaged in the practice of medicine, subjecting his or her license to suspension or revocation by the Louisiana Radiologic Technology Board of Examiners,⁴ to a suit for injunction by this Board,⁵ and/or to criminal prosecution.⁶
- A physician participant in such a relationship would be subject to suspension or revocation of licensure by this Board.⁷

Mammography Requires Physician Order/Prescription

In the course of the past year, the Board has received several requests for advisory opinions as to the legality of mobile mammography units offering diagnostic examinations to the public generally, including women who present themselves for mammographic screening in the absence of referral or prior examination by a physician. Most typically, the Board has been asked to express its views regarding the performance of diagnostic radiography by technologists, either in mobile or fixed facilities, with no physician present during the procedure and with a substantial number of the women screened presenting themselves without a physician's prescription or referral. In such context, the technician may act either without physician authority or solely pursuant to a standing protocol, or "blanket" authorization, by a radiologist or other physician, with radiographic films being processed for later interpretation by a physician.

In response to an August 1987 inquiry as to whether a radiologic technician could lawfully perform diagnostic radiography on "self-referred" patients on the general authority of a physician, the Board ruled that a technician's legal capacity to administer diagnostic radiography was contingent upon the specific order of a physician given with respect to a specified patient.¹ Since then the Board has on several occasions given reconsideration to its initial advisory ruling. In each instance, the Board has maintained and reaffirmed the substance of its original ruling.

Because the Board's position may affect parties other than those with whom the Board has communicated directly, and because inquiries on the subject are recurring, the Board recently expressed its views on this subject in a formal Statement of Position, advising that:

In the course of considering the issue, the Board solicited and received various opinions regarding the relative medical benefits and risks attending the provision of mammographic screening as described and has observed that there appears to be a conflict of medical opinion on this issue. It is argued that mammographic procedures should only be performed pursuant to a medical history and correlative physical examination by a physician,⁸ that there are risks inherent in performing such procedures in the absence of a physician and deferring the processing and interpretation of the films, and that mammography so offered is otherwise sub-optimal. The converse position is, of course, that, the risks, if any, are acceptable when weighed against the benefit of regular mammographic screening made more accessible by such operations.

The Board's rulings, however, do not turn on its resolution of the medical questions raised by self-referred, nonphysician-administered mammography. Rather, the Board's position is compelled by the constraints of state law. Without regard to whether such mammography screening may be good or bad as a medical matter, State law simply does not permit the procedure to be performed in the absence of a practitioner's specific prescription with respect to a specific individual patient.

²Acts 1984, No. 485, as amended by, Acts 1985, No. 797; Acts 1986, No. 1039, LA. REV. STAT. ANN. §§ 37:3200-3219 (West Supp. 1987).

³LA. REV. STAT. ANN. § 37:3213D (West Supp. 1987). See also LA. REV. STAT. ANN. § 37:3200(4)-(8).

⁴LA. REV. STAT. ANN. § 37:3219A(5), (9).

⁵LA. REV. STAT. ANN. §§ 37:1271, 1286 (West 1988).

⁶LA. REV. STAT. ANN. § 37:3217.

⁷LA. REV. STAT. ANN. § 37:1285A(18).

⁸The Louisiana State Medical Society, for example, has advised the Board of its official position that "[n]o mammogram should be performed without concurrent history and physical breast examination by a licensed physician." Letter, D. H. Johnson, Jr., M.D., Pres., La. State Med. Soc'y, to I. Minslow, M.D., Pres., La. State Bd. Med. Exam. (Oct. 27, 1988).

¹Letter Ruling, D. Rozison, Exec. Dir., La. State Bd. Med. Exam., to A. Dauzat, R.T., Chairman, Rad. Tech. Bd Exam. (Oct. 6, 1987).