

LOUISIANA STATE BOARD OF MEDICAL EXAMINERS NEWSLETTER



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Rules and Regulations

Board Proposes Rules Implementing Conversion of Renewal Period to Birth Month-No Increase in Fees

In recent years, the increased number of individuals and additional allied health care professionals licensed by the Board has resulted in a tremendous burden on the Board's staff during the annual December renewal process. Although the Board mailed out renewals earlier last year than in previous years, few took the opportunity to submit their renewal applications early, resulting in the last minute rush during the holiday season and the usual overloading of the Board's resources to process the now more than 27,000 renewals in a limited period of time. As some of you have wisely suggested, the Board is proposing rule amendments to be effective prior to the end of the year, which would allow a change in the renewal process commencing in 1999. Although a number of options were considered, *i.e.*, quarterly, semi-annually, bi-annually, based on an analysis of the statistical data, the Board has concluded that the best distribution of the effort would be to convert to a renewal cycle based upon the first day of the month in which each licensee is born ("the birth month"). Such a conversion would facilitate processing and greatly diminish the burden imposed on the Board's staff by distributing renewals more evenly throughout the year. While the renewal cycle for midwives, who renew biannually in March, athletic trainers, who renew annually in June, clinical laboratory personnel and, due to their limited number, acupuncturists, would remain in December, the Board is proposing rule amendments to convert all other categories of licensees to a birth month cycle commencing in the years 1999/2000. Set forth below is an illustration of how the proposed conversion would apply to physicians. Prorations similar to those for physicians would apply to all licensees based on the current fee for each health care professional.

With 1999 renewal notices each licensee will receive a statement for the existing fee of \$150.00 for the year 1999, plus a prorated monthly fee of \$12.50 to the licensee's birth month, for every month beyond January 1, 2000:

Birth Month	Renewal Fee for 1999 + Birth Month in 2000	Next Renewal of \$150.00 Due
January	\$150.00	January 1, 2000
February	\$162.50	February 1, 2000
March	\$175.00	March 1, 2000

April	\$187.50	April 1, 2000
May	\$200.00	May 1, 2000
June	\$212.50	June 1, 2000
July	\$225.00	July 1, 2000
August	\$237.50	August 1, 2000
September	\$250.00	September 1, 2000
October	\$262.50	October 1, 2000
November	\$275.00	November 1, 2000
December	\$287.50	December 1, 2000

Like any change, the rule amendments being proposed will, no doubt, be problematic during the first year of implementation. Such will not, however, result in any increase in fees, as the prorated amount assessed in 1999 will extend the licensee through the licensee's birth month in the year 2000. If the conversion process is adopted, the Board requests your indulgence, assistance and cooperation during the upcoming renewal period.

Board Policies

Statements of Position Relative to the Board's Rules Respecting Treatment of Chronic Pain; Determination of Medical Necessity

From time to time, for the information and guidance of practitioners, the Board attempts to articulate its views on problems and issues which are recurring or of broad concern and applicability. The Board has recently approved the following statements of position relative to its rules regarding the use of controlled substances in the treatment of non-malignant, chronic or intractable pain and the determination of medical necessity and unlicensed practice.

Controlled Substances used in the Treatment of Chronic Pain

THE LOUISIANA STATE BOARD OF MEDICAL EXAMINERS WISHES TO EMPHASIZE TO ALL LOUISIANA PHYSICIANS THAT IT FULLY SUPPORTS PRESCRIBING OF CONTROLLED SUBSTANCES WHEN MEDICALLY INDICATED FOR THE TREATMENT OF PAIN, INCLUDING CHRONIC PAIN.

The Board recognizes that pain, whether due to trauma, cancer, surgery or other diseases, is often undertreated. Unrelieved pain has a harsh and sometimes disastrous impact on the quality of life of patients and their families.

Principles of quality medical practice dictate that citizens of Louisiana who suffer from pain should be capable of obtaining relief that is currently available, including controlled and non-controlled medications and alternative treatment modalities. The Board believes that the appropriate application of currently available knowledge and treatments would greatly improve the quality of life for many Louisiana citizens.

While some progress is being made to improve access to appropriate care, the Board is concerned that a number of factors continue to interfere with effective pain management. These include the low priority of pain management in our health care system, incomplete integration of current knowledge into medical education and clinical practice, lack of knowledge among consumers about pain management, and exaggerated fears of physicians about disciplinary action for employing controlled substances in the management of patients suffering from chronic pain.

In addition to promulgating this statement, the Board and the Legislature have undertaken several other steps to help make effective pain management a reality in Louisiana, while at the same time removing barriers to discipline unscrupulous practitioners who issue illegal or illegitimate prescriptions or prescribe such medications outside of well accepted norms.

Thus, in 1997, induced in large measure by physicians who sought guidance, the Board promulgated rules relating to the treatment of non-malignant chronic or intractable pain (the "pain rules" or the "rules"). Such rules were disseminated to physicians throughout the state in the Board's September, 1997 issue of its *Newsletter*. During that same year, the Legislature enacted a measure establishing a Pain Advisory Committee to the Board to both assess and provide the Board with comments and recommendations on its pain rules and to provide the Legislature with recommendations respecting, among other matters, barriers to access to care by patients suffering from chronic pain. The Committee is currently in the process of undertaking its tasks, and it is anticipated that in accordance with the legislation its report will be received by the Board towards the end of this year.

In the meantime, the Board is in the process of formulating methods and strategies to both educate physicians of the requirements of its pain rules and to address perceived misconceptions as to the rules' scope and application. This installment represents the Board's first attempt toward these goals.

■ **Why are Rules Necessary?** A prescription for a controlled substance is one which is issued for a *legitimate medical purpose* by a physician in the *usual course of practice*, and in accordance with the *prevailing and usually accepted standards of care in this state*. The Medical Practice Act does not, however, define what is considered to be a "legitimate medical purpose" nor what the "prevailing and usually accepted standards of practice" are in this state. These terms were left to the Board to define either on a case-by-case basis, through expert testimony in disciplinary proceedings, or by promulgation of rules relating to the subject.

In the course of discharging its investigative enforcement and adjudicative responsibilities over many years in a substantial number of administrative disciplinary cases, the Board became convinced, based on expert testimony and authoritative scientific studies and publications offered in such cases and otherwise developed by the Board in its general consideration of the subject, that controlled substances were under utilized in many instances by physicians treating chronic pain. In many other

instances the Board observed that such substances were subject to abuse and/or that they have been provided to patients other than in conformity with the prevailing and usually accepted standards of medical practice in this state. Thus, in 1991, the Board promulgated its preliminary views on the matter in the form of a statement of position.[†] Therein, the Board articulated and disseminated throughout the physician community a statement of its views regarding appropriate evaluation, monitoring and treatment of patients suffering from chronic pain with controlled substances.

While such principles were apparently adhered to by many practitioners, it also appeared to the Board that a number of physicians continued to prescribe or otherwise utilize such medications without a legitimate medical basis. At the same time, the Board continued to receive reports and evidence of abuse of such substances by patients. Concurrently, while we continued to believe that controlled substances serve a legitimate and useful function in the treatment of chronic pain, we questioned their utility when unaccompanied by appropriate physician evaluation, monitoring, assessment and management of the patient.

Prompted, in part, by rules, guidelines and legislation adopted in other states, continued reported instances of abuse of such substances by patients, public and professional inquiries, complaints regarding utilization of such medication therapies and contraindications for and medical risks associated with their administration, the Board considered promulgating rules. In exploring the subject, the Board conducted a survey of the laws, rules, regulations and guidelines of other states relative to the issue, considered relevant scientific research and authoritative publications and solicited and received public and professional comment. This extended study led the Board to conclude that its responsibility to protect the public health, welfare and safety made it appropriate for it to adopt and promulgate specific rules.

The pain rules, in large measure, incorporate practice standards which the Board perceived to be adhered to by many physicians treating chronic pain with controlled substances. It was also believed that the rules would greatly assist physicians by clarifying what constitutes acceptable medical practice for management of pain with controlled substances by providing the elements necessary for legitimate pain treatment and in allaying physician fears of disciplinary action when none is justified. In short, the Board believed that the rules would be of assistance to everyone concerned by better defining the elements of legitimate pain treatment, thereby providing the Board, physicians and the courts a sound and definitive basis to judge instances which clearly fall outside of acceptable standards of practice.

■ **What do the Rules Require?** Section 6921 identifies the provisions to which physicians should adhere in treating non-malignant chronic or intractable pain with controlled substances on a protracted basis (*in excess of 12 weeks during any 12 month period*). If controlled therapy is employed in treatment of a patient suffering from *cancer* or if such therapy is utilized for *less than 12 weeks during a 12 month period*, the rules would not apply to that patient. When they are applicable, the rules require the following:

- evaluation of the patient;
- a medical diagnosis;
- formulation of a treatment plan;
- informed consent;

[†] The Board's statement of position was published in its *Newsletter* (Nov., 1991).

- assessment of treatment and efficacy not less frequently than at 12 week intervals;
- a drug screen if the physician *reasonably* believes that patient is suffering from "addiction," "drug abuse" or is "diverting" controlled substances as such terms are defined by the rules;
- consultation *or* documentation in the patient's chart of the reason that such was not obtained;
- physician responsibility for the controlled substance therapy he prescribes;
- documentation of controlled substances prescribed, as well as the necessity for the use of more than one type or schedule of controlled substance, and treatment in the patient's chart; and
- tapering, discontinuance and referral for consultation upon evidence of behavioral indications of addiction, drug abuse or diversion.

■ **Questions and Answers.** Physicians are encouraged to review the Board's pain rules to insure a complete understanding of the requirements. Although the rules are short, concise and clear, the following questions and answers may provide some assistance to physicians with respect to the scope and application of the rules.

Q 1. Evaluation. May the physician rely upon the history provided by the patient?

A: Yes. The cornerstone upon which the physician-patient relationship is founded is one of trust. As is customary in the treatment of a patient, the rules do require physicians to request and review records from previous treating physicians. The Board, however, neither expects nor do the rules require the physician to otherwise investigate the accuracy of the history related by the patient or to survey pharmacies to assess prior or current controlled prescription usage.

Q 2. Treatment Plan. Must a physician reinstate alternative treatment modalities which have previously failed?

A: No. While in any given instance the physician may determine that alternative treatment measures should be attempted or re-attempted, the rules require simply that the physician document in the patient's record the fact that such measures have been offered or that such have been attempted without adequate or reasonable success.

Q 3. Assessment of Treatment Efficacy and Monitoring. How often should the physician see the patient?

A: The rules require that the physician see the patient at intervals of no more than 12 weeks to assess the efficacy of treatment, assure that controlled substance therapy remains indicated and evaluate the patient's progress toward treatment objectives and any adverse drug effects.

Q 4. Drug Screen. If a patient is displaying the anticipated physical signs of addiction which accompany the use of controlled substances, must the physician obtain a drug screen?

A: Only if the physician *reasonably suspects* that a patient is suffering from "Addiction," which is defined by the pain rules as "a compulsive disorder in which an individual becomes preoccupied with obtaining and using a substance, despite adverse social, psychological and/or physical consequences, the continued use of which results in a decreased quality of life," or if the patient is suffering from drug abuse evidenced by inappropriate use or inappropriate over use of the medication or diverting controlled substances, must a drug screen be obtained. In such an instance, it is within the physician's discretion to decide the nature and type(s) of drugs to be screened.

Q 5. Consultation. Must consultation be obtained in all cases?

A: No. While a physician may believe that consultation is advisable, it is not required in every case. It may well be that the treating physician himself is a specialist in the particular field involved in the patient's care, rendering consultation unnecessary or inappropriate. Still in other cases it may also be that the patient's insurer or medical provider will not approve consultation and the patient is unable to bear this cost independently. When consultation is not obtained, for whatever reason, the rules require only that a physician document in the patient's medical chart the reason he has not obtained consultation.

Q 6. If consultation is obtained, must such be with a particular specialist?

A: No. When the physician believes that consultation is indicated, i.e., consultation with an orthopedic surgeon or neurosurgeon with respect to a patient suspected of or diagnosed with a spinal injury; consultation with a neurologist in connection with a patient suffering from chronic migraine headaches, etc., it is within the physician's discretion to decide the level and type of consultation which he believes to be medically warranted.

Q 7. Medications Employed. Can a physician prescribe more than one type or schedule of controlled substance to the patient?

A: Yes. A physician who believes that more than one type or schedule of controlled substance is medically indicated in the treatment of a patient may prescribe more than one type or schedule of medication. The rules require only that a physician document in the patient's chart the medical necessity for the use of more than one type or schedule of controlled substance employed in the management of the patient's pain.

Q 8. Termination of Controlled Substance Therapy/ Consultation. When must a physician taper and discontinue controlled substances?

A: Controlled substance therapy need be tapered and discontinued only upon evidence of behavioral indications of "addiction," "drug abuse" or "diversion," as such terms are defined by the rules. Thereafter, such therapy should be reinstated only after the written concurrence by an addiction medicine specialist, a pain management specialist, a psychiatrist or other substance abuse specialist. For illustrative purposes only, if a patient misunderstands the physician's instructions for ingesting the medication, takes more medication than instructed due to an exacerbation of pain, or if the patient loses a prescription, it is within the physician's discretion to determine that such conduct does not evidence addiction, drug abuse or diversion and, thus, not require tapering, termination and consultation. Conversely, if the patient repeatedly returns to the office for prescription refills before such are due if taken in accordance with the physician's instructions, repeatedly fails to follow the physician's medication instructions, or repeatedly "loses" his prescriptions and requests replacements, the physician should be alerted as to a potential problem. As made explicitly clear by the rules, documentation in the patient's chart is of utmost importance.

■ **Education Strategies/Requests for Input.** The Board is considering other measures for further educating physicians with respect to its pain rules, including presentations conducted on a parish by parish basis in conjunction with the Louisiana State Medical Society and a hot-line available to physicians to answer questions regarding the application of the rules. Information relating to these or other educational measures, as well as additional questions and answers, will be addressed in subsequent additions of the *Newsletter*. In the interim, physicians are encouraged to submit any specific written questions regarding

its pain rules and/or further suggestions for educational formats to the attention of the Board's Executive Director.

Determination of Medical Necessity; Unlicensed Practice

Most simply stated, it is the position of the Louisiana State Board of Medical Examiners that the act of determining medical necessity or appropriateness of proposed medical care, so as to effect the diagnosis or treatment of a patient located in Louisiana, is the practice of medicine and must be made by a physician licensed to practice medicine in this state. Making determinations of medical necessity or appropriateness of medical care requires independent medical judgment that is reserved to physicians. To engage in such determinations so as to effect the diagnosis or treatment of a patient in Louisiana requires a Louisiana medical license.

A person physically located in this or another jurisdiction who, through any medium, performs an act that is part of patient service initiated in this state so as to effect the diagnosis or treatment of a patient in Louisiana is engaged in the practice of medicine so as to require a Louisiana medical license. As in all physician-patient interactions, medical decisions must be in

accordance with the prevailing and usually accepted standards of practice in Louisiana and documented in an adequate medical record which includes the rationale for the medical decision.

An individual or entity which makes a determination of medical necessity or appropriateness of any medical evaluation or care, so as to effect the diagnosis or treatment of a patient in Louisiana, and who does not possess a Louisiana medical license or other authorization to practice medicine in this State, may be engaged in the unauthorized practice of medicine in contradiction to the Louisiana Medical Practice Act. Participants in such misconduct are subject to further investigation and injunctive action by the Board. An individual who engages in the unauthorized practice of medicine in Louisiana without a license or permit may also be referred for criminal prosecution and imprisonment for up to five (5) months for each such offense, civil action, monetary fine and, when available, disciplinary action.

Louisiana physicians are encouraged to report to the Board in writing the unlicensed practice of medicine. To avoid a violation of the law regarding unlicensed practice, reviewers, insurers, medical directors and managed care gatekeepers should all be particularly conscientious in allowing physician providers to exercise independent medical judgment to the greatest extent possible.