

# LOUISIANA STATE BOARD OF MEDICAL EXAMINERS NEWSLETTER



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## Rules and Regulations

**Board proposes rules implementing self-referral prohibition, financial disclosure requirements, clinical laboratory personnel licensing, occupational therapist continuing education**

During its 1993 session, the Legislature enacted several measures which call upon the Board to develop and promulgate implementing rules and regulations. Among the more significant were acts prohibiting payments for patient referrals and requiring health care providers to disclose financial interests in entities to which they refer patients, providing for the licensure of clinical laboratory personnel, and imposing mandatory continuing education as a condition to renewal of occupational therapy licensure. Proposed rules responsive to each of these enactments are being published by the Board for public comment. Amendment of existing rules to conform to amendment of the laws governing physician assistants and responding to inauguration of a new licensing examination are also being developed by the Board.

■ **Rules Implementing Prohibition on Payment for Referral, Required Disclosure of Financial Interests.** Paralleling, and expanding upon, Federal fraud and abuse statutes in the Medicare and Medicaid context, and in line with a growing number of states, the Louisiana Legislature last year adopted two laws which seek to restrict referrals, by physicians and other health care providers, which are or may be influenced by financial incentives. Act 657 of 1993, La. Rev. Stat. § 37:1744, directs the Board and other health care professional licensing agencies to promulgate rules and regulations providing for enforcement of its mandate that health care providers provide written disclosure to a patient prior to referring the patient to another health care provider in which the referring provider, or member of the provider's immediate family, has a significant financial interest. Act 827, La. Rev. Stat. 37:1745, similarly, but more broadly, directs the Board to promulgate rules to enforce its prohibition on the making or receipt of payments for referring or soliciting patients.

In accordance with these statutory mandates, the Board is this month publishing proposed rules for public comment in the *Louisiana Register*. Because the two statutes generally address the same subject, albeit by different means, the proposed implementing rules are consolidated in a single chapter, La. Admin. C.

§ 46:XLV.4201-4217. Following interpretive definition of crucial statutory and regulatory terms, Subchapter A (§§ 4205-4209) embodies the Board's implementation of the payment-for-referral proscription by providing that a physician shall not knowingly and willfully make or offer to make, or solicit, receive or accept any payment for the referral of patients for health care services or products. So as not to proscribe otherwise legitimate compensation, the proposed rules also delineate a number of exceptions, or safe harbors—payments, remunerations, practices and arrangements which will not be deemed a payment prohibited by the statute or rules. Such exceptions give definition to a general safe harbor prescribed in the state law with respect to proportionate returns on investment and, exercising the authority accorded the Board, incorporate the several safe harbors recognized by the Office of Inspector General of the Department of Health and Human Services with respect to Federal fraud and abuse rules.

Subchapter B deals with those referrals which are not prohibited absolutely under La. Rev. Stat. § 37:1745, but which nonetheless implicate prior written disclosure by the referring practitioner who makes a referral outside of his or her group practice to another provider in which the referring practitioner, or a member of his or her immediate family, has a "significant financial interest." The proposed rules establish an objective test for determining whether a financial interest is "significant," (§ 4211(B)), specify the minimum content of a required disclosure, and set forth a presumptively valid form for such disclosure. Consistent with the law, the proposed rules provide for administrative sanctions against the licenses of physicians who fail to comply with the disclosure requirement, which may include an order that all or any portion of the amount paid by a patient who has not received the necessary disclosure be refunded by the physician, with interest.

The proposed rules appear in the April 20, 1994 edition of the *Louisiana Register*, and copies of the rules may be obtained from the Board office. Written comments on and questions regarding the proposed rules should be directed to the Board office and will be accepted at least through June 20, 1994. If a public hearing is properly requested, it will be scheduled between May 25-30; the date and place of any public hearing will be published in the May 20 *Register* and may be determined by contacting the Board office.

■ **Licensing of Clinical Laboratory Personnel.** With the Clinical Laboratory Personnel Law, Acts 1993, No. 396, La. Rev. Stat. §§ 37:1311-1329, the Louisiana Legislature has for the first time provided for the licensing of all persons who work in a technical capacity in clinical laboratories in the state, prohibiting anyone, subject to limited exceptions, from practicing

ing clinical laboratory science on and after January 1, 1995, unless they hold licensure or registration issued by the Board. To implement the licensing requirements of the Law, the Board is publishing proposed regulations recommended by the semi-autonomous 11-member Clinical Laboratory Personnel Committee constituted under the law.

It is estimated that some 6,000-8,000 clinical laboratory employees will be subject to the Law and proposed rules, which provide licensure qualifications and procedures for six categories of personnel—Clinical Laboratory Scientist-Generalist (CLS-G), Clinical Laboratory Scientist-Specialist (CLS-S), Clinical Laboratory Scientist-Technician (CLS-T), Cytotechnologist, Laboratory Assistant and Phlebotomist. While the proposed rules generally require applicants to have successfully passed prescribed certifying examinations to be eligible for licensure, persons currently engaged in practice in any of such categories will be eligible for grandfathered licensure without examination for 12 months following the effective date of the rules. Subject to the Board's action on any public comments, the proposed rules may be adopted as final rules and become effective in September of this year, following which the Board, through the CLP Committee will begin processing licensure applications. Licensure application forms should be available by the last week of September 1994.

The proposed rules appear in the April 20, 1994 edition of the *Louisiana Register* and are available from the Board office. Written comments on the proposed rules should be directed to the Board office and will be accepted through June 20, 1994. A public hearing on the proposed rules has been scheduled by the Board to be held at 4:00 P.M., Thursday, May 26, 1994, in the Denechaud Room of Le Pavillon Hotel, 833 Poydras Street in New Orleans. All interested persons are invited to attend.

■ **Occupational Therapy; Continuing Education Requirements.** By legislative amendment of the Occupational Therapy Practice Act, occupational therapists and occupational therapy assistants were added to the growing list of professionals for whom continuing education is now a condition of licensure renewal. As prescribed by Act 566 of 1993, amending La. Rev. Stat. § 37:3012(B), the Board has accordingly published a notice of its intent to amend existing rules and adopt new rules to implement the continuing education requirement. The proposed rules and Notice of Intent were published in the February 20, 1994 *Louisiana Register* and will be considered by the Board for adoption as final rules at its June 1994 meeting.

■ **Other Rules Under Development: Physician Assistants, Physician Licensing.** As the law governing the licensure and practice of physician assistants was substantially amended by the 1993 Legislature, the Board is undertaking to develop conforming amendments to its rules and regulations for PA licensure and practice. Actual drafting of the rule amendments has been deferred pending completion of gubernatorial appointments to a Physician Assistant Advisory Committee, newly constituted under the law, with which the Board is required to consult in the development of implementing rules and regulations. The Board has also undertaken a revision of its rules prescribing examination requirements for initial licensure applicants corresponding to nationwide implementation of the new United States Medical Licensing Examination, and the concurrent phase-out of the long-standing Federation Licensing Examination (FLEX). It is currently anticipated that draft physician assistant and physician licensing rule amendments will be available within 60-90 days.

## 1993 in Review

### Year-end data reported

As the data have not previously been reported here, complete statistics on the licensure and disciplinary matters handled and disposed of by the Board during 1993 are reported below.

■ **Licensure.** During 1993, the Board issued new licenses and renewals as follows:

	New	Renewal
Acupuncturists	0	1
Acupuncture Assistants	1	1
Athletic Trainers	9	71
Emergency Medical Technicians—Intermediate	116	n/a
Emergency Medical Technicians—Paramedic	273	n/a
Medicine		
Unrestricted Licensure	676	12,175
Institutional Temporary Permits	0	7
Intern Registrations	263	n/a
Preceptorship/MiniResidency Permits	8	n/a
Visiting Resident Permits	9	5
Visiting Physicians Temporary Permits	45	n/a
Dispensation Registrations	13	120
Midwives		
Full Licensure	1	0*
Apprentice Permits	3	0*
Senior Apprentice Permits	0	0*
Occupational Therapists	112	579
Occupational Therapy Assistants	24	34
Physician Assistants	30	37
Podiatrists	14	108
Radiological Technologists	1	n/a
Respiratory Therapy		
Therapists	118	655
Technicians	368	1,564
18-Month Permits	350	46
<b>Total All Categories:</b>	<b>2,434</b>	<b>15,403</b>

\*Biennial renewal

■ **Disciplinary actions.** As of January 1, 1993, some 207 complaints were pending. During the year, the Board received 375 additional complaints. Following inquiry and investigation, 370 were concluded without Board action, leaving 212 pending as of January 1, 1994. On January 1, 1993, the Board had 138 formally docketed cases pending. During the year 130 new cases were formally docketed and 131 concluded, leaving 137 formally docketed cases pending as of January 1, 1994. The disciplinary actions relative to physicians for 1993 were as follows:

Revoked	4
Voluntarily Surrendered	4
Revoked, Revocation Stayed, Probation	3
Suspended	10
Suspended, Reinstated on Probation	10
Summarily Suspended	4
Probation	10
Reprimand, Caution, Fine	1
Letters of Concern	3
Miscellaneous	13

The Board also obtained three injunctions, two against unlicensed persons practicing medicine and one against an unlicensed individual practicing midwifery. Following review, several other discipline-related actions were taken by the Board as follows: seven licensees completed all terms and conditions of probation and were restored to full licensure; 14 miscellaneous requests related to Board orders were denied and 18 granted; 10 other miscellaneous items were reviewed but required no action.

#### Remaining 1994 Board Meeting Dates

June 22-24	September 21-23
July 20-22	October 19-21
August 24-26	December 7-9

## President's Letter

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Dear Doctors:

Falsification of responses to questions on licensure and renewal application forms is a problem of continuing concern to the Board. Untruthful answers and misrepresentations, may have significant consequences, for while misrepresentations may not bear directly on an individual's professional competence, under applicable Board rules misrepresentations, or the failure to disclose material information, whether knowing or unknowing, intentional or unintentional, provides grounds for the Board to deny an initial or renewal license application or, depending on the significance of the misrepresentation, to suspend or revoke a medical license. In all cases that misrepresentation is discovered by the Board, aided by information reported by the National Practitioner Data Bank, the Federation of State Medical Boards, other state boards and similar sources, action will be taken.

It is incumbent on each licensee and applicant, accordingly, to review application questions meticulously and to ensure that all responses are accurate and complete. The Board will not accept the oft-proffered excuse that the form was completed by the licensee's secretary. Responding to licensing questions accurately is the individual, non-delegable responsibility of the licensee.



### ANTHONY J. HACKETT, JR., M.D.

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It was with great sadness that the Board noted the death of ANTHONY J. HACKETT, JR., M.D., who retired from the Board in January 1990 after more than ten years of service. Dr. Hackett was a respected physician, businessman and community leader who continued to serve his patients and his community until his untimely death on February 25, 1994. We hope that those of you who knew Dr. Hackett join the Board in expressing sincere condolences to his family.

## Student Loans

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### Defaulters at risk

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Pursuant to Federal legislation and laws enacted in most states, including Louisiana, individuals who default on student loans may be denied licenses, encounter other licensure difficulties and be excluded from participation in the Medicare program as well as any state health care program. The Board urges all licensees with outstanding student loans to make arrangements for repayment before the indebtedness impacts your licensure status or results in exclusion from participation in the Medicare or Medicaid programs.