

NEWSLETTER

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In this issue of the Newsletter we provide timely updates on rules and that may affect your practice. For more information about all of these topics and more - visit our web site at www.lsbme.la.gov and while you are visiting subscribe to the RSS feed to keep up with the News from the Board.

We welcome your feedback on the topics that are presented and recommendations regarding future topics as well as legislative and/or rule making efforts, and board services. Please contact us at feedback@lsbme.la.gov. Thank you

Guidance

Improper Prescribing of Human Chorionic Gonadotropin (HCG)

The Board has received a number of inquiries recently regarding the use of human chorionic gonadotropin (HCG) in the treatment of obesity. The following should be noted

1. The FDA requires labeling and advertising of HCG to state that "HCG has not been demonstrated to be effective adjunctive therapy in the treatment of obesity. There is no substantial evidence that it increases weight loss beyond that resulting from caloric restriction, that it causes a more attractive or "normal" distribution of fat, or that it decreases the hunger and discomfort associated with calorie-restricted diets"

2. In 2009, the American Society of Bariatric Physicians issued a position statement on the use of HCG in the treatment of obesity concluding that numerous clinical trials have shown HCG to be ineffectual in producing weight loss and recommending that HCG not be used in the treatment of this condition. The report may be found on the web site of the ABPS here.

3. Physicians should review the Boards rules re treatment of obesity (LAC 46 XLV §6901 and following) before treating anyone for obesity. It should be noted that the use of HCG to treat obesity is strictly prohibited.

4. §6905. Prohibitions

Absolute Prohibitions: A physician shall not prescribe, dispense, administer, supply, sell, give, or otherwise use to or for any person for the purpose of weight control or weight reduction in the treatment of obesity any amphetamine, dextroamphetamine, methamphetamine, or phenmetrazine drug or compound; any Schedule II controlled substance; human chorionic gonadotropin (HCG); thyroid hormones;

5. The Board is also concerned about the misuse of anabolic steroids among athletes and students and the related misuse of HCG. More information is available about steroid abuse by children on the FDA web site here.

6. Authorized prescribers should be VERY careful to prescribe HCG ONLY for FDA approved indications and in keeping with the Board's rules and accepted standards of practice. Improper prescribing of HCG to treat obesity or enabling the illegal or improper prescribing of anabolic steroids for any purpose by knowingly prescribing HCG to treat the side effects of these drugs or to treat an "unrelated" condition with HCG when the intent is otherwise would be viewed by the Board as a violation of the medical practice act and depending on the circumstances may as well be in violation of other state and federal laws and regulations.

Treatment of Patients with Chronic Pain and Opioid Dependence

The HHS Substance Abuse and Mental Health Services Administration has developed a resource for physicians related to the prescribing of opioids, the caring of opioid-dependent patients and chronic pain patients being treated with methadone and buprenorphine. Information about the program may be found on the Physician Clinical Support System (PCSS) web site with links to clinical tools/resources, information for patients, articles from the medical literature and other useful information.

Pronouncement of Death

The statutory authority governing the pronouncement of death in this state is R.S. 9: 111. It provides as follows:

A. A person will be considered dead if in the announced opinion of a physician, duly licensed in the state of Louisiana based on ordinary standards of approved medical practice, the person has experienced an irreversible cessation of spontaneous respiratory and circulatory functions. In the event that artificial means of support preclude a determination that these functions have ceased, a person will be considered dead if in the announced opinion of a physician, duly licensed in the state of Louisiana based upon ordinary standards of approved medical practice, the person has experienced an irreversible total cessation of brain function. Death will have occurred at the time when the relevant functions ceased. In any case when organs are to be used in a transplant, then an

additional physician, duly licensed in the state of Louisiana, not a member of the transplant team, must make the pronouncement of death. (Emphasis supplied)

While the language of the statute is perhaps not as clearly worded as it could be, it is clear that the statute's requirement that pronouncement of death be accompanied by the "announced opinion of a physician" requires the physician to render a medical diagnosis that the patient is, in fact, deceased. Separate and apart from the statute in question, it has long been the Board's formally stated position that any diagnosis with respect to an individual located in Louisiana constitutes the practice of medicine in this state, as defined by the Louisiana Medical Practice Act (1), and may lawfully be made only by a Louisiana licensed physician. In particular, the diagnosis of death carries such paramount consequences that the ordinary standards of approved medical practice (*i.e.*, the standard of care) would not, in the Board's view, allow its diagnosis to be based on the observation or examination of anyone other than the physician unless specifically authorized by law.

The Board's view is buttressed by and consistent with the fact that the very same law which requires physician pronouncement of death also spells out a mechanism that allows a coroner, who is not physically present, to make a pronouncement of death based on the observation, information and statements of others" coroners or emergency medical technicians at the scene who are reporting from firsthand observation of the physical condition of the deceased." R.S. 9:111B provides:

B. The medical pronouncement of death by a coroner may also be based on personal observation, information, or statements obtained from coroner investigators or emergency medical technicians at the scene who are reporting from firsthand observation of the physical condition of the deceased. The time of death shall be reported as the time that the death was reported or discovered. The name of the personnel that the coroner is relying on shall be noted on the coroner's day record or protocol.

That the legislature did not provide a similar mechanism for physician pronouncement of death based on the firsthand observation of another-as it did with coroners-underscores the need that physician pronouncement of death be preceded by a physician's personal evaluation and diagnosis that the individual is dead.

We should note that the Board is not unsympathetic to delays encountered in this area generally and in particular with the difficulties experienced in connection with the execution of death certificates. Although we realize that such is a separate issue from that raised in your inquiry, you should be aware that the Board has over the past several years worked with the Louisiana Office of Vital Records Registry and the Louisiana State Board of Embalmers and Funeral Directors to educate, encourage and compel, when needed, physicians to satisfy their lawful obligations under the law. On this particular issue, however, the Board is firmly committed to the view that the pronouncement of death is one of the most significant diagnoses that a physician is called upon to make and should be preceded by his personal evaluation and diagnosis. We believe that R.S. 9:111A is consistent with that view. (Advisory Opinion April 5, September 28, 2005 reaffirmed 2009)

(1) LA Rev Stat Ann §§ 37:1261-1292: 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) (emphasis supplied)

Legislation

Ultrasound Prior to Abortion Required

Act 888 (2010) except in an emergency requires a physician to establish/document viability of an unborn child by ultrasound prior to an abortion; outlines the procedure for consent; provides for professional disciplinary action (by the LSBME) for failure to comply with law. The State has agreed to withhold enforcement pending the outcome of lawsuits filed in connection with this matter.

Assessment of Fines and Collection of Fines and Costs

Act 602 (2010) amends the Medical Practice Act, (R.S. 37:1285C) by expanding the LSBME's authority to assess/collect costs and fines via the courts.

The board may, as part of a decision, consent order, or other agreed order, require a license or permit holder or an applicant to pay all costs of the board proceedings, including but not limited to investigators', stenographers', and attorney fees, witness fees and expenses, and the per diem and expenses of the members of the board's hearing panel, and to pay a fine not to exceed the sum of five thousand dollars. (2) If for any reason the costs or fines imposed by the board under this Section are not paid within the time specified by the board, the board may recover costs and attorney fees associated with their collection. (3) The board may authorize any member of the board to sign an affidavit petition, or other legal process authorized by this Part, including but not limited to a petition in any court of competent jurisdiction, for a money judgment for any and all costs and fines payable pursuant to a final decision, consent order, or other agreed order.

Administration of Influenza Immunization

Act 287 (2010) allows pharmacists credentialed by the Pharmacy Board to administer influenza immunizations without physician order, in accordance with CDC protocols; establishes reporting, record maintenance requirements.

Life Sustaining Treatment

Act 954 (2010) establishes the La. Physician Order for Scope of Treatment ("LaPOST") program by which a person may convert his wishes concerning life-sustaining medical treatment into a standing medical order. The legislation requires DHH to promulgate rules for program and standard LaPOST form.

Volunteer License

Act 298 (2010) authorizes the LSBME to waive fees/costs for any license it may issue when the applicant meets all qualifications and attests that practice will be limited exclusively to gratuitous, uncompensated, volunteer services in this state.

In the News

Refunds of renewal fees for physicians completing their training and leaving the state

If you are leaving the state upon completion of your training and if you have obtained an unrestricted license and have renewed your license within 3 months of completing the training, you are eligible for a prorated refund of the renewal fee upon request.

The request must be received within three months of your leaving the state and must specify the name of the program and the date of completion. Upon submission of the required information you will be issued a prorated refund and the expiration date of your license will be reset to the date your training was completed



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