

Louisiana State Board of Medical Examiners

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DEPARTMENT OF HEALTH AND HOSPITALS

La. Rev. Stat. §§37:1261-92

***** STATEMENT OF POSITION *****

Internet/Telephonic Prescribing

May 24, 2000

OBJECTIVES. In announcing this Statement of Position it is the goal of the Louisiana State Board of Medical Examiners to protect the citizens of this state against:

- harm resulting from the prescription or dispensation of medication which may be contraindicated or dangerous in certain circumstances; and
- the unprofessional, improper, unauthorized and/or unqualified practice of medicine by individuals who are not licensed to practice medicine in this state.

SUMMARY. It is the position of the Louisiana State Board of Medical Examiners that: (i) it is in contravention of the Louisiana Medical Practice Act¹ for a physician to prescribe medication, treatment or a plan of care generally if the physician has not established a physician-patient relationship; (ii) the issuance of a prescription or dispensation of medication to individuals who are residents of or physically located in the state of Louisiana constitutes the practice of medicine and may only be undertaken by physicians licensed to practice medicine in this state.

STATEMENT OF POSITION. As the administrative agency constituted under and charged with implementation and enforcement of the Louisiana Medical Practice Act governing the practice of medicine in this state, the Louisiana State Board of Medical Examiners (the "Board") is accorded the responsibility and primary jurisdiction to construe and enforce the Act. We continually apply its provisions in the performance of our principal functions—licensing

¹LA. REV. STAT. ANN. §§37:1261-1292 (West & Supp. 1999).

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of physicians; investigation, prosecution and adjudication of violations of the Act; and promulgation of procedural rules and substantive regulations. To aid compliance by physicians and other persons subject to or affected by the Medical Practice Act, on occasion the Board considers it appropriate to issue a general statement of its position as to an issue of broad interest and applicability. One instance in which we may do so is when a particular question is raised so persistently or frequently as to warrant a pronouncement of general applicability. Into this category falls the general subject of the Statement of Position which we are now announcing—that the order of or prescription for medication, either in the absence of a physician-patient relationship or by non-licensed Louisiana physicians, to individuals who are residents of or located in this state is unlawful in Louisiana.

The order of or prescription for medication constitutes a treatment determination which can have critical implications for the patient. Prescribing or authorizing the dispensation of medication in the absence of an appropriate physical examination and physician-patient contact is contraindicated. In most circumstances such conduct is very likely to cause harm to unwittingly and inappropriately diagnosed patients who are required to engage in self-assessment. Yet, such is precisely the nature of the practice employed by entrepreneurs' touting the availability of certain medications and even controlled substances without the "bother" of ever seeing or speaking with a physician. In the Board's view, it is unlawful for a physician to prescribe medication, treatment or a plan of care generally if the physician has not examined the patient and established a diagnostic basis for such therapy. Thus, in Louisiana, dispensing or prescribing medication in the absence of a physician-patient relationship represents conduct which is inconsistent with the prevailing and usually accepted standards of care and may be indicative of professional or medical incompetency. A physician establishes a physician-patient relationship by:

- verifying that the person requesting the medication is in fact who they claim to be;
- conducting an appropriate examination of the patient;
- establishing a diagnosis through the use of accepted medical practices, *i.e.*, a patient history, mental status, examination, physical examination and appropriate diagnostic and laboratory testing;
- discussing with the patient the diagnosis, risks and benefits of various treatment options; and
- insuring the availability for appropriate follow-up care.

As in all physician-patient interactions, the issuance of a prescription or order for medication must be documented in an adequate medical record, which includes the rationale for the medication prescribed. For these reasons, an online or telephonic evaluation by questionnaire

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for an individual that a physician has never seen is inadequate.² A Louisiana licensed physician who participates in such activities, by ordering medication for dispensation to individuals who are residents of or located in this or another state, moreover, would be subject to administrative sanctions, including revocation of licensure.³

Perhaps more significant, 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.⁴ As matter of law, to be valid, effective and lawful, each prescription or order for medication 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 examination and diagnosis of the patient. This is necessarily so because the Medical Practice Act restricts the practice of medicine to persons possessing a license issued by the Board.⁵ An individual who issues a prescription or orders medication for an individual who is a resident of or located in Louisiana, who does not possess a Louisiana medical license or other authorization to practice medicine in this state, is necessarily engaged in the unauthorized practice of medicine in contravention of the Medical Practice Act. Participants and entities engaged in such misconduct are subject to investigation, civil injunction, monetary fines and penalties. Such individuals may also be referred by the Board to the Louisiana Attorney General or an appropriate district attorney for criminal prosecution and incarceration for up to five (5) months for *each* such offense.⁶

In announcing these views, it must be emphasized that our statement is in one sense a limited one. We do not mean to suggest, that is, that all internet or telephonic prescribing is unlawful.⁷ The explosion of technology has and will continue to provide *physicians and their*

²The position expressed herein would equally apply to a prescription or order for medication to a patient which is effected through written communication or any other medium which does not satisfy the criteria set forth in this Statement.

³Among the causes for which the Board may suspend, revoke, or impose probationary conditions and restrictions on a medical license is a finding that a physician has been culpable of [P]rofessional or medical incompetency; [C]ontinuing or recurring medical practice which fails to satisfy the prevailing and usually accepted standards of medical practice in this state; and [K]nowingly performing any act which, in any way, assists an unlicensed person to practice medicine, or having professional connection with or lending one's name to a illegal practitioner. La. Rev. Stat. §37:1285(A)(12), (14) and (18), respectively.

⁴LA. REV. STAT. ANN. §§37:1261-1292 (West & Supp. 1999). In pertinent part, as defined by the Act, the 'practice of medicine' means [T]he 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... La. Rev. Stat. §37:1262(1).

⁵La. Rev. Stat. §37:1271 provides that '[N]o person shall practice medicine...as defined herein, until he possesses a duly recorded license issued under [the Act].'

⁶SEE—LA. REV. STAT. ANN. §§37:1271, 1286 AND 1290.

⁷For example, prescribing for a patient whom the physician has not personally examined may be suitable under certain, limited circumstances. Such may include admission orders for a newly hospitalized patient, prescribing for a patient of

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patients with greater and more immediate accessibility to one another and to the delivery of health care services in general. There is, thus, no attempt here to limit true consultations between out-of-state physicians and Louisiana licensed physicians or to resolve all questions relating to the propriety of internet or telephonic prescribing by Louisiana licensed physicians to their patients. We will continue to address such issues, as they may arise, on a case-by-case basis. For the present, we state only our position that the order of or prescription for medication, either in the absence of a physician-patient relationship or by non-licensed Louisiana physicians, to individuals who are residents of or located in Louisiana, constitutes *per se* violations of the Medical Practice Act.

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another physician for whom the prescriber is taking the call or continuing medication on a short-term basis for a new patient prior to the patient's first appointment.