



# ISSUES and ANSWERS

Oklahoma State Board  
of Medical Licensure  
and Supervision

Vol 17 No 1  
Summer 2006

## Looking for Love in All the Wrong Places

By Gerald C. Zumwalt, MD

A continuing number of sexual misconduct cases before the Board brings to mind the above title of the old Johnny Lee country western song. Despite the long universally accepted prohibition against having sex with a patient, it continues to be an ethical and legal problem to the profession.

As amazing as the number of cases occurring is that virtually all of the doctors involved profess that they didn't realize that the relationship was inappropriate.

The AMA's Council on Ethical and Judicial Affairs issues a new Code of Ethics book about every two years and it is a "must read" for all physicians. Section 8.14, first issued in 1989, fully explores and explains "that sexual contact that occurs concurrent with the patient-physician relationship constitutes sexual misconduct." Section 8.145, added in 1998, extends this even to "Key Third Parties" (e.g. spouses, parents, proxies, etc).

Title 59, Oklahoma Statutes, Section 509 (17) defines as Unprofessional Conduct, "Engaging in physical conduct with a patient which is sexual in nature, or in any verbal behavior which is seductive or sexually demeaning to a patient." The Oklahoma Administrative Code 435:10-7-4 (23) and (45) further defines sexual misconduct. Violations of any or all of these provisions can (and probably will) result in discipline ranging from reprimand to revocation.

This newsletter has repeatedly published reports on doctors and other healthcare professionals disciplined for sexual misconduct as well as the Board's Position Statement/Guidelines Regarding Sexual Misconduct.

The psychiatric segment of the medical professional has long recognized the use/abuse and potential good/harm of transference and counter-transference. Knowing and acknowledging that this is a real and ongoing mechanism, it is still gospel that the doctor has full control and responsibility. Not only is this proper but it is the doctor's, not the patient's, license and assets which are at risk.

All of this said, it should be known that the Board members are not a group of sex adverse, puritanical blue noses. There is no objection to free flowing libido. Whether it is a naïve single looking for a life-long commitment or a libertine bouncing from partner to partner like pool balls on a sexual green-covered table, there are no rules against procreating to your heart's content.

But as the old, politically incorrect, chauvinistic saying went, "Women are like street cars. If you miss this one, there will be another along in ten minutes." (This is an old, old saying.) There is a vast world of potential sexual mates out there – don't pick one from your patient list.

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# Reportable Health Information and Notification in Oklahoma (RHINO)

The Oklahoma State Department of Health (OSDH), Communicable Disease Division (CDD) along with Information Technology Services (ITS) has created a Health Alert Network (HAN) system for Oklahoma. The system is the **Reportable Health Information and Notification in Oklahoma (RHINO)** system. The purpose of a HAN is to have the ability to quickly provide vital health information to health care providers and public health partners. The need to distribute this type of information is increasing rapidly as we attempt to fight terrorism and protect the public from disease outbreaks.

## The RHINO system consists of

1. A secure Web site where users can:
  - View alerts, advisories, updates, and events.
  - Use the included document library as a resource to share sensitive information through controlled access groups.
  - Update their own professional or personal information to ensure the delivery of alerting messages.
2. Electronic capabilities to quickly send broadcast fax, email, voice, and text messages.

Future goals of RHINO include a Bulletin Board to provide groups such as emergency department or infectious disease physicians a forum to communicate with others in real time discussions that will be viewable only by others in their group.

The RHINO system is part of a nationwide network of HANs that follow guidelines and policies set from the Centers for Disease Control and Prevention (CDC). Oklahoma's HAN is unique from other HANs but must meet CDC standards such as contacting key stakeholders in a timely manner, and must be capable of sharing confidential information in a secure format.

The OSDH has embarked on a collaborative effort with the Oklahoma Board of Medical Licensure and Supervision (OSBMLS). The OSBMLS will supply a regularly updated database containing physician fax numbers. This will be used to fax emergent HAN information to physicians. It is important that physicians update their contact information through the OSBMLS Web site.

HAN began in 1999 when 33 States and 3 City/County Health Departments were funded to develop capabilities for emergency communication and continuous

access to public health information. The HAN has grown now to include all 50 States, 8 US Territories, and 4 City/County Health Departments.<sup>1</sup>

The current network of contacts includes physicians, physician assistants, nurse practitioners, veterinarians, all public health nurses, county health department personnel, law enforcement, federal and state officials, and emergency contact persons in other states. These professions may obtain access to the RHINO web site by contacting Kim Mitchell, HAN Coordinator, at (405) 271-4060 or [kimberm@health.ok.gov](mailto:kimberm@health.ok.gov).

<sup>1</sup> CDC. Health Alert Network. <http://www.phppo.cdc.gov/han>

# Hand Me Downs

By Gerald C. Zumwalt, MD

Being born and raised during the “Great Depression” of 1930-40, I was clothed in the outgrown garments of my older brother (Robert – OU School of Medicine, 1953) until the ripe old age of 12. Now my youngest grandson at the same age of 12 towers over me by two inches, outweighs me by ten pounds and is passing his barely touched, recently undersized clothes on to his grandfather.

These non-financial giftifying transactions raise thoughts of what great value hand-me-down knowledge, counsel and character attributes have played in the medical profession. Who among us has not benefited from watching our childhood doctor knock on our door on his way home from a full day’s work, bringing relief and reassurance to our folks (even if the medicines he had access to were primarily placebos)? While germ specific chemicals may have been lacking, there was an abundance of kindness, sympathy and personal care.

Through secondary school and college, we were given the gifts of music, literature and philosophy by those willing not to cast off but to share their enthusiasm and knowledge.

Our parents filtered down to us by example and requirement, a work effort that had allowed them to escape the spirit-killing morass of the ‘30s. When finally we achieved the lofty status of medical students, we learned not just facts and charts from teachers. We inherited a way to stand, to address our patients, to dress professionally and even how to relate to our peers.

And unlike my hand-me-downs from a younger person, have we considered what movable legacy we are presenting to the on-coming generations of physicians? Will they observe a willingness to serve, with or without adequate recompense? Will they absorb a cloud of peace, softness and sympathy? Will they perceive from example that the true center of medical practice is the patient, not the doctor? Or will it be a message of grab while you can, abandon good taste for cheap profits, and “Up yours, Jack, I’ve got mine”?

Will our gifts be treasured garments or tattered bitterness?

# Digital Signatures

The DEA has published a rule permitting the use of digital signatures and Public Key Infrastructure technology to sign and order Schedule I and II controlled dangerous substances for office use. Most doctors will continue to use the preprinted DEA Form 222 to obtain their supplies from pharmacies and manufacturers.

It is the position and policy of the DEA that the electronic orders have the same legal status as the traditional Form 222. A preliminary check with the Pharmacy Board and OBN revealed that neither have a problem with this use.

Information and application for the digital certificate may be found at [www.dea.gov](http://www.dea.gov). The final rule is available at [www.deadiversion.usdoj.gov](http://www.deadiversion.usdoj.gov). Questions may be addressed by the Liaison and Policy Section at (202) 307-7297.

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## FDA Proposes Regulations for Preventing Deaths and Injuries from medical Gas Mix-ups and Contamination

The Food and Drug Administration (FDA) is issuing a proposed rule designed to make the contents of medical gas containers more readily identifiable, in order to prevent deaths and injuries from inadvertent use of incorrect medical gas or from use of contaminated medical gas.

This regulation would apply to medical gas manufacturers and distributors and will require that certain portable medical gas containers comply with the following requirements:

- Have gas-use outlet connections (used to connect these containers to gas supply systems) that cannot be readily removed;
- Be identified by labels that wrap all the way around the tops of these containers;
- Have high-pressure medical gas cylinders painted according to a standard color-coding system that corresponds to the gases stored in them; and
- Be dedicated to medical use and not converted from industrial use.

For more information, please visit [http://www.fda.gov/cder/dmpq/MedGas\\_QA\\_20060410.htm](http://www.fda.gov/cder/dmpq/MedGas_QA_20060410.htm)

# **FDA Guidance for Industry**

## **Prescription Drug Marketing Act — Donation of Prescription Drug Samples to Free Clinics**

The Food and Drug Administration is announcing the availability of a guidance for industry entitled “Prescription Drug Marketing Act – Donation of Prescription Drug Samples to Free Clinics.” The guidance provides information for free clinics that receive donated prescription drug samples from licensed practitioners or other charitable institutions. The guidance discusses concerns that have been expressed by certain individuals regarding regulatory requirements for drug sample donations. The guidance announces that FDA, after reviewing an independent study report analyzing the potential effects of the regulations on free clinics, has decided to propose revisions to those regulations. In the interim, FDA intends to exercise its enforcement discretion and does not intend to object if a free clinic fails to comply with certain regulatory requirements for drug sample donations. Copies of the guidance may be obtained at: <http://www.fda.gov/cder/guidance/5519fnl.pdf>.

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