



ISSUES and ANSWERS

Oklahoma State Board
of Medical Licensure
and Supervision

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Web-Based Medical Advice: Benefits and Pitfalls

by Curtis Harris, MD

Internet medicine is here to stay. Like any new technology, benefits and hazards abound. With 45 million uninsured persons in the United States, the likelihood of Internet use for health care advice has increased. While the Internet could help you build a referral base for future patients, you might face problems of medical malpractice liability, HIPAA violations or violations of interstate medical practice laws, affecting your medical license.

Before launching your own website, or writing your own blog on MySpace or FaceBook, there are a few things you need to know.

First, as long as you are giving general medical advice, and as long as that advice is sound, there are few if any liability issues you will face. You can make therapeutic recommendations, as long as you are making those recommendations to the public at large, and not to a specific person. The problems arise when someone responds to your blog, and asks a question about what you have written. Even if the question is by way of clarification, you run the risk in answering of establishing a physician-patient relationship. When general medical advice turns to advice about an individual's health, or the health of a minor or dependent elder under the care of the person asking the question, your answer may make you legally responsible for any adverse outcome. If a "reasonable person" might believe you were giving them personal health information, you have probably established a physician-patient relationship. A well-written disclaimer attached to all communications will go a long way toward protecting against liability, if you stay within the limitations of the disclaimer.

Second, if protected health information (PHI) as defined by HIPAA privacy law is involved, you might inadvertently violate the federal statute. Any information volunteered by the questioner is not

protected, since the person asking the question made the information public. However, if you reproduce the information or embellish it from personal knowledge you might have about the individual asking the question, you may violate his or her privacy. This can be a minefield of liability without careful consideration of what you do or do not say.

Finally, if you intentionally or inadvertently establish a physician-patient relationship with someone living in another state, you might violate the criminal statute of that state by practicing medicine in that state without a license. Further, virtually every state (including Oklahoma) requires a face-to-face encounter to satisfy the standard of care requirement for medical licensure. Thus, even if that state did have a statute concerning Internet practice, you might violate quality of care standards in that state by not physically examining the patient before rendering

care.

One statement summarizes it all: If you intend to give medical advice to any individual using the Internet, check with an attorney who knows the law in Oklahoma (or any state in which you might give such advice), and always include a disclaimer. Remember, this area of medicine and law is evolving. Don't imagine you know what to do. Seek help.

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Website Offers Resources for Physicians Seeking to Re-enter Practice

A newly expanded website offers resources for physicians seeking to re-enter the workforce after an extended absence. Located at www.aap.org/reentry, the website is part of the Physician Re-entry into the Workforce Project, a national collaborative endeavor to examine the diverse issues encompassed under the rubric of "re-entry". The website was enhanced recently to include resources for individual physicians seeking re-entry information, as well as updates about the ongoing work of the Re-entry Project. Articles available on the site include:

- [Organized medicine tackles physician reentry issues](#)
- [Re-entry Problems: Returning to practice after a break not easy](#)
- [Re-entry Reading List](#)

New Board Members

The Governor recently appointed two new members to the Medical Board. Deborah Huff, MD (Oklahoma City) was appointed to replace Eric Frische, MD (Lawton) and J. Andy Sullivan, MD (Oklahoma City) was appointed to replace Dianne Gasbarra, MD (Oklahoma City).

Dr. Huff previously served on the Board from 1995 to 2001. She graduated from OU in 1984. She is a board certified obstetrician/gynecologist practicing in Oklahoma City.

Dr. Sullivan graduated from Washington University School of Medicine in St. Louis in 1969. He is a board certified orthopedic surgeon at the OU Health Sciences Center.

Board Meetings

May 15, 2008

The Board of Medical Licensure and Supervision met in regularly scheduled meeting for licensing and disciplinary matters. The Board issued four full medical licenses and one Physical Therapy license after personal appearances by the applicants.

One MD license was denied due to discipline for substance abuse in another state. One PT license was not issued until the applicant receives an acceptable current assessment for substance abuse.

Two medical licenses were reinstated under indefinite probation due to substance abuse. All standard terms were imposed plus job restrictions (locations and hours) and psychotherapy for one.

Two doctors had licenses suspended. One for 90 days followed by probation to include psychotherapy, Al-Anon attendance, courses in Boundary Violations and record keeping due to sexual misconduct with a patient and writing CDS without proof of medical necessity for another patient. The other probation is indefinite until the doctor obtains an evaluation at CPEP with results acceptable to the Board and does a course on CDS prescribing.

A respiratory therapist surrendered her license due to multiple fraudulent applications and ingestion of CDS without a prescription.

The license of a Physician Assistant was revoked for practicing medicine while suspended and substance abuse.

June 27, 2008

The Board of Medical Licensure and Supervision met in regularly scheduled meeting to consider licensing matter on June 27, 2008. Six full medical licenses were issued after personal appearances. One application was denied based on prior discipline in another state. Two applications were tabled until competency assessments could be completed due to the length of time since the last medical practice.

Fifteen training licenses were approved after personal appearance. One training license was given under standard terms for illegal use of controlled substances while in medical school.

One Physical Therapist license was issued with an agreement to attend one AA meeting and one counseling session per week. One Orthotic license was given under standard terms of Agreement plus three 12-step meetings per week.

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Legislative issues:

- The Oklahoma Legislature has asked the Oklahoma Medical Board to oversee the licensure and supervision of two new health professional groups. The legislators & Governor passed bills defining the “**Radiology Assistant Licensure Act**” and the **Oklahoma Anesthesiologist Assistant Act**”. Both outline requirements for applications for licensure and to practice their respective profession.
- The Oklahoma Legislature also passed a bill allowing **physician assistants** to order physical therapy services, as agreed upon by their supervising physician, without a co-signature of the supervising physician.
- The Legislature increased the penalties for **practicing medicine without a license** to an upper limit of \$10,000, and up to four years in jail. They also included the potential charge of medical battery if any patient harm took place.

CMS lifts NPI contingency plan

The Centers for Medicare & Medicaid Services (CMS) in a press release last Friday wanted to remind “Medicare providers and suppliers that beginning May 23, 2008, they are required to use only a National Provider Identifier (NPI) to identify health care providers in all Health Insurance Portability and Accountability Act (HIPAA) standard transactions used in the Medicare Fee-For-Service (FFS) program.”

The American Medical Association (AMA), along with other organizations that support physicians, urged the Bush Administration to extend the deadline another six months beyond the May 23 deadline to allow physician practices to use the NPI and the legacy ID numbers to ensure a smooth transition. The CMS press release stated that “over the past several years, CMS has conducted an aggressive outreach campaign to reach and inform Medicare FFS providers, suppliers, State Medicaid Agencies and others about the NPI requirements.”

Sex and the Single Doctor

by Gerald C. Zumwalt, MD

Most readers of the newsletter undoubtedly think we are obsessed with this subject. There have been numerous prior articles on the prohibition of a professional plus sexual relationship. There have been frequent Board hearings and imposition of discipline from the violation of the prohibited/illegal/unethical activity. Nevertheless, we continue to receive public complaints about such relationships, and more surprisingly, the doctor’s usual defense is, “I didn’t know it was improper.”

So, once more into the breach we leap with a giant flag inscribed “DO NOT HAVE SEX WITH A PATIENT!!!” And in a loud voice we exclaim, “Do not accept as a patient a person with whom you are in a sexual relationship.”

Like Kipling we rhyme, “East is East, and West is West, and never the twain shall meet...”

“Where in the World is ‘Doctor’ Carmen Sandiego?”

If you don’t keep the Medical Board informed of your current practice address patients can’t find you on the Medical Board website.

On average, over 1600 searches are done daily on the Board’s website by people looking for a ‘Doctor’. You or your staff can go to the website, www.okmedicalboard.org, and update your practice information anytime, not just when you renew your license. The website has a complete listing of every Oklahoma doctor on a searchable database. Make sure your information is current so potential or existing patients will know “Where in the World” you are.



Important CDS Notice:

In the last Medical Board newsletter, the new DEA rule on “**Issuance of Multiple Schedule II CDS Prescriptions**” was mentioned without any editorial comments. **To clarify for Oklahoma physicians:** Oklahoma Bureau of Narcotics Rule 475:30-1-4 (c) (2) states: **“A written prescription for a controlled dangerous substance in Schedule II becomes invalid thirty (30) days after the date of issuance, with day one (1) of the thirty (30) day period being the first day after date of issuance.”**

In Oklahoma, a physician can legally write a Schedule II script for any number of dosage units deemed medically appropriate by the physician. If a physician wants to limit the number of dosage units on a script for Schedule II and offer to write multiple scripts to the patient, then the physician can write only two (2) scripts, both dated on the same day, but with instructions to the pharmacist on the second script **“do not fill prior to date 29 days from now”**, in other words a 60-day supply. The Oklahoma OBNDD law does **not** allow for the DEA Ruling of three (3) Schedule II scripts dated the same day or a 90 day supply.

The pharmacists are held to the Oklahoma OBNDD law.

(Previous article)

DEA Publishes Final Rule on Multiple Prescriptions for Schedule II Controlled Substances

A Drug Enforcement Administration rule titled “Issuance of Multiple Prescriptions for Schedule II Controlled Substances,” will be effective Dec. 19, 2007. The rule amends the DEA’s regulations to allow practitioners to provide individual patients with multiple prescriptions for a specific Schedule II controlled substance, written on the same date, to be filled sequentially. The combined effect of such sequential multiple prescriptions is that it allows a patient to receive over time up to a 90-day supply of that controlled substance. The Controlled Substances Act does not permit the refilling of Schedule II controlled substances, requiring that a new prescription be issued for each quantity of the substance.

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