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DON'T WRITE R_x FOR TROUBLE

A continuing frustration for the Oklahoma State Board of Medical Licensure and Supervision (Medical Board) Department of Investigations and Compliance is that all too many well-meaning Oklahoma physicians and PAs find themselves in trouble for unwittingly violating state and federal laws regarding the writing of prescriptions. Most prescribing problems are avoidable.

So here's a quick primer on what physicians need to know before they write prescriptions. While much of the following information may seem elementary and simple common sense, the Medical Board Division of Investigations staff stresses that some Oklahoma doctors continue to make prescribing errors that could lead to Board action or even state and/or federal charges.

Basic Criteria for Writing a Prescription: Oklahoma physicians cannot write a prescription without a "sufficient examination and establishment of a valid physician/patient relationship." The Board stipulates that the physician/patient relationship cannot take place without an initial face-to-face encounter with the patient. During the initial encounter, physicians should verify that patients are who they claim to be and establish a diagnosis through accepted medical practices such as history and physical, mental status

exam and appropriate diagnosis and laboratory tests. Always, and under all circumstances, be sure to make the reason for the prescription a part of the patient's medical record.

The Oklahoma Bureau of Narcotics and Dangerous Drugs (OBNDD) Regulation 475.25-1-3 (B) states practitioners are required to keep readily retrievable records with respect to all Controlled Dangerous Substances (CDS) II-V which they prescribe, administer or dispense. Every time a prescription is issued, the chart documentation should list the drug, strength, direction for use, quantity, reason (e.g., pain, anxiety, muscle spasms) and number of refills allowed.

In addition, PAs can only prescribe to patients who are within their and their supervising physician's practice. No prescriptions should be written to friends and fellow workers without a valid physician/patient relationship and maintenance of a medical chart. Physicians and PAs are prohibited from writing prescriptions to self or specific family members. *OAC 435:10704 (26)*

Valid Prescription Requirements: A prescription for a controlled substance must be dated and signed on the date issued. The prescription must be written in ink, indelible pencil or typed on pads meeting Federal guidelines and manually signed by the practitioner on the date issued. A secretary or other medical professional may be designated by the practitioner to

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Prescription Monitoring Program Registration

Call the PMP Helpline:

1-877-627-2674

or online at:

pmp@obn.state.ok.us

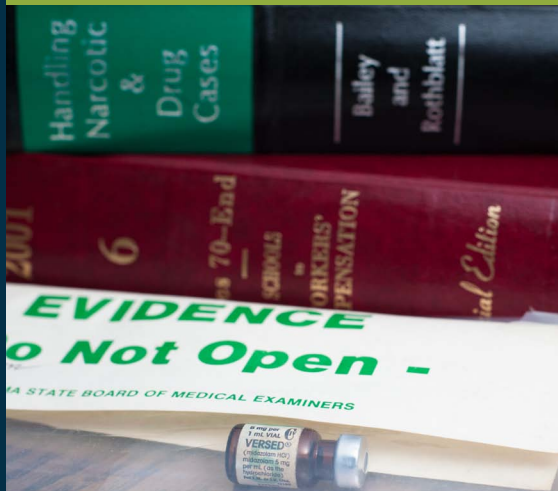
Sign All FAXed Prescriptions for Schedule III, IV, V Drugs

Oklahoma physicians must manually sign all FAXed prescriptions for Schedule III, IV and V medications. JPG images or other types of electronically produced signatures on FAXed prescriptions are not valid and may put dispensing pharmacists and their institutions at financial risk.

Section 1306.21, Requirement of Prescription, of the Federal Food, Drug and Cosmetic Act states a pharmacist may dispense a controlled substance listed in Schedule III, IV and V if received by FAX only if it is "a facsimile of a signed paper prescription transmitted by the practitioner or the practitioner's agent to the pharmacy."

While a pharmacist may dispense an oral prescription made by a practitioner and promptly reduced to writing by the pharmacist without the practitioner's signature and certain other electronically transmitted prescriptions, a FAXed prescription must be actually signed by the physician.

John A. Foust, Pharm. D., D.Ph., Executive Director of the Oklahoma State Board of Pharmacy, reports some pharmacists are frustrated by being "charged-back" for non-manually signed FAXed prescriptions filled without calling the physician to create a telephoned prescription. He said hospital outpatient pharmacies are also at risk.



prepare the prescription for his or her signature. The prescription must include the patient's full name and address, physician's full name, address and DEA number, drug name and strength, dosage form and quantity, and directions for use and number of refills if any are authorized. DEA has issued a letter stating that the prescriber must place the DEA number on the prescription. If the prescriber does not place the DEA number on the prescription, the pharmacist must call the physician and create a telephoned prescription. The pharmacist may not add the DEA number to the original prescription. If the physician is not contacted by telephone, insurance auditors will declare the prescription invalid and recover all payment for the prescription from the pharmacy.

Prescribing to Family Members: Except for a medical emergency when no other doctor is available, a physician may NOT prescribe a Controlled Dangerous Substance (CDS) to him or herself, or any family

member within the first two degrees of consanguinity, i.e., spouses, parents and children (first degree); and brothers, sisters, grandchildren and grandparents (second degree).

Physicians MAY prescribe CDS to third degree relatives (nieces, nephews, aunts, uncles, great grandchildren and great grandparents) and below as long as a valid physician/patient relationship exists.

**Never Sign a Blank
"A blank, signed prescription is not only illegal but the physician can never be sure for whom or what purpose it will be filled."**

Prescription: Federal law prohibits a physician from pre-signing prescriptions. Prescriptions must be signed by the practitioner on the date issued. A blank, signed prescription is not only illegal but the physician can never be sure for whom or what purpose it will be filled.

State and federal law enforcement officials take this law very seriously.

What physicians need to know about prescribing.

The top 10 suggestions from enforcement's point of view

In a worst case but real scenario, several years ago a Georgia physician pre-signed blank prescription sheets so that on the doctor's day off the office Nurse Practitioners could refill prescriptions for chronic pain patients. Federal agents raided the clinic and criminally prosecuted the physician. The physician lost his medical license, served seven months in a federal prison and was fined \$30,000.00. It was almost three years before the physician had his medical license reinstated and returned to practice.

Thirty Day Window for Schedule II Prescriptions: The Oklahoma Bureau of Narcotics and Dangerous Drugs (OBND) rules and regulations state that any prescription for Schedule II drugs becomes invalid thirty (30) days after it is issued. However, a physician who will be out of the office for an extended time may write a valid prescription for a Schedule II dated on the day of issue but stipulate on the prescription that it may not be filled until a future date within the

thirty day window, e.g., a prescription issued on March 1 is not to be filled until March 28.

Physician Supervised Midlevel Practitioners: Under physician supervision and within formularies, Physician Assistants (PA) and Nurse Practitioners (NP) may write prescriptions for Schedule III, Schedule IV and Schedule V medications. All prescriptions written by PAs or NPs must include the name and telephone number of the supervising physician.

PAs and NPs may not write outpatient prescriptions for Schedule II drugs under any circumstances.

Neither PAs nor NPs can dispense drugs but both can distribute samples.

PA and NP prescriptions for CDS III - V are limited to a thirty (30) day supply.

PAs may not issue orders that their supervising physicians are not allowed to prescribe.

PAs may write orders for Schedule IIs for on-site administration based on written protocols or direct verbal order of supervising physician.

Certified Registered Nurse Anesthetists (CRNA) may order and administer CDS II-V drugs but only during perioperative and/or periob-

stretical periods.

Monitor “Call-ins” Closely: State and federal regulations allow physicians to designate agent(s) to call in prescriptions to pharmacists for CDS III-V drugs “in order to make the prescription process more efficient.” The medical determination to prescribe the CDS can only be made by the practitioner, not the agent. The agent normally is an employee of the physician and may be a licensed medical professional or even a non-medical member of the office staff. “Call-in” prescriptions must meet all the criteria of a valid written prescription and must be noted in the patient’s medical record.

The physician is ultimately responsible and legally liable for all prescriptions called in under his or her name. Therefore, physicians should take great care in designating, instructing and monitoring the staff member(s) allowed to call in prescriptions. “Agency” has legal meaning so physicians are encouraged to have their office “agents” actually sign a document acknowledging their designation along with a brief description of their responsibility. The document should be kept on file in the office with copies distributed to the main pharmacies with which the physician deals. A sample copy of

such a document is available by asking Google for: “Written Authorization for an Agent Recommended-Sample Agency Agreement.” Physicians might want to notify pharmacies when the office “agent” no longer has the authority to call in prescriptions, especially if there is any concern that the agent might try to continue to call in prescriptions.

The easiest way to monitor your office’s “call-in” prescriptions is by regularly checking your prescribing profile on the Oklahoma Bureau of Narcotics and Dangerous Drugs Prescription Monitoring Program.

OBND Prescription Monitoring Program: The Oklahoma Bureau of Narcotics and Dangerous Drugs (OBND) Prescription Monitoring Program (PMP) is a national model for tracking CDS prescriptions in our state. Physicians can use the program to not only review their own prescribing but also to check the pharmaceutical histories of their patients, particularly those who may be suspected of being “doctor shoppers.”

Physicians access PMP data with their DEA number and a unique password. To register, call the PMP Helpline, 1-877-627-2674, or online at pmp@obn.state.ok.us. There is no charge for the service.

Practice location and address

Every licensed medical doctor needs to supply the Medical Board with a CURRENT practice address and a mailing address by law.

The doctor needs to provide the new information in writing or he/she may now update the information electronically on the website. The Medical Board staff does not have the authority to change a physician’s personal profile information on the Board’s database without a written authorization. This authorization is made much easier now that a doctor may email or fax



the information to the Medical Board office OR simply change the items by going through the website.

Look on the website (www.okmedicalboard.org), type in your last name and review your personal profile information. If any of it is incorrect, click on renew/update - type in your username and password and update your information right then.

It is easy, quick and it’s the law.

Incidentally, the Medical Board receives hundreds of visits daily to its website by people looking for a doctor. Make sure your information is correct.

O.S. Title 59 Section 500. Notice of practice location and address - Proof of licensure

Each person holding a license authorizing the practice of medicine and surgery in this state shall notify the State Board of Medical Licensure and Supervision, in writing, of such licensee’s current practice location and mailing address. Each licensee shall carry on his or her person at all times while engaged in such practice of medicine and surgery official verification of valid and effective licensure as may be issued by the Board. [Wallet card]

*OAC 435:10-1-4.

Definitions

“Physician/patient relationship” means a relationship established when a physician agrees by direct or indirect contact with a patient to diagnose or treat any condition, illness or disability presented by a patient to that physician, whether or not such a presenting complaint is considered a disease by the general medical community.

The physician/patient relationship shall include a medically appropriate, timely-scheduled, actual face-to-face encounter with the patient, subject to any supervisory responsibilities established elsewhere in these rules. The act of scheduling an appointment, whether by a physician or by a physician’s agent, for a future evaluation will not in and of itself be considered to establish a physician/patient relationship.

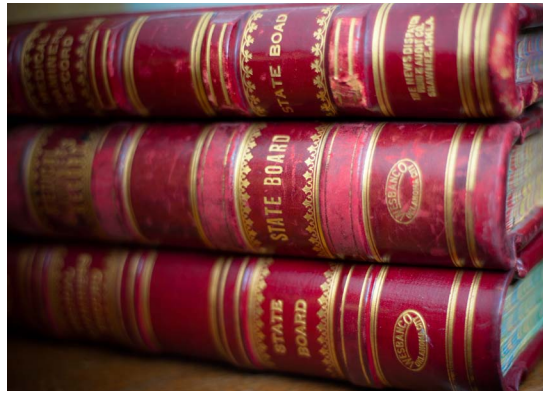
435:10 7 4.

Unprofessional conduct

The Board has the authority to revoke or take other disciplinary action against a licensee or certificate holder for unprofessional conduct. Pursuant to 59 O.S., 1991, Section 509, “Unprofessional Conduct” shall be considered to include...

(49) Failure to establish a physician/patient relationship prior to providing patient-specific medical services, care or treatment, except in a clearly emergent, life threatening situation.

****Complete management of a patient by Internet, e-mail, or other forms of electronic communications is inappropriate.**



“Once upon a time...” begins every good fairy tale I have ever read. So: “Once upon a time, physicians made house calls, used the telephone only to find out who needed them where and when, used the physical exam to make a diagnosis, and wrote a prescription that was intended only for the person they had just examined.” There was never a question about who was responsible for healthcare for the sick person: it was the physician who had just left the home.

Electronic communication has changed the physician-patient relationship in ways that make the historic patterns of care seem like they never existed, a fairy tale of a bygone age. Telemedicine is a newly-coined word that means many things to many people. To President Obama in the State of the Union Address, it is a new 5 year goal: Over 95% of the nation should have high-speed access to their physician for a “face-to-face online encounter” by the year 2016. To others, it means time and money saving communications across the miles, to extend the services of the limited number of practicing physicians in a way that

would provide everyone (poor and wealthy alike) the “care they deserve.” To others still, it means the opportunity to earn an income in hard times, especially for the primary care provider.

Telemedicine is currently approved for use by the Medical Licensure Board in the areas of radiology, pathology, ICU care (limited) and psychiatry. In each of these circumstances, archived data and the presence of a referring physician responsible for the consultation provide the necessary safety for patients in Oklahoma. Each of these subspecialties has developed sufficient clinical data to reassure the Board concerning both the utility and quality of the care provided.*

In no small measure, telemedicine creates conflicts with a number of quality assurance efforts now underway. The healthcare “home” movement, with one physician or practice providing coordinated care, faces fragmentation and information overload if telemedicine visits can occur with other physicians without recorded, easily accessible data. The absence of a physical examination,

The “Face-To-Face” Rule in Oklahoma:

Telemedicine and Patient Care after the Rule

by Curtis Harris, MD, JD

including a thoughtful history and review of systems that occurs in person, but less often online, threatens the quality of care. Physicians understand that the “Gestalt” of a person-to-person conversation is critical to understanding the needs of a patient, needs which might well include family members present in a room but absent from view in a video feed. Finally, the quality of the telecommunication itself becomes an issue: it is not enough to place a video camera on a laptop computer with a low resolution and low speed connection. A normal conversation with useful clinical observation cannot occur in such a setting. What is good for a business meeting with Power Point slides is not sufficient for the most complex human endeavor in the world...healthcare.

Stated in simple terms, it is unprofessional conduct to provide medical services to any person that is not a patient (with few exceptions), and such a relationship is established by an “actual face-to-face encounter.” This rule applies to any physician who provides direct medical care to any person in Oklahoma, but it

does not apply to a physician who provides consultative services to another physician (such as a radiologist or pathologist), or to mental health services as provided under Board Policy.**

This rule is in concert with Medicare Home Health Certification Requirements as well as Federal Law governing Internet prescribing.** The Rule does not change the current practice of telemedicine in Oklahoma, but it does make it certain that a physician must actually and physically contact any person who receives any direct service from that physician. The rule is also subject to the supervision requirements of Physician Assistants, Nurse Practitioners and all other licensed or skilled personnel under the physician's control. The Board is aware of practices that have occurred (and may

still be occurring) in nursing homes, hospice care, day-spas, and remote site clinics that do not satisfy the Rule. The general experience of the Board has involved prescribing violations using the internet (or more common communications, such as the telephone and fax) that have occurred at the encouragement of organizations who employ the physician for a either a monthly fee or fee-for-service. The physician has often received assurances from the organization that the service they require is "legal and ethical," when in fact it is not.

"A piece of advice: When in Doubt, Don't. Over and again, disaster has fallen on physicians who have ignored that advice."

A piece of advice: When in Doubt, Don't.

Over and again, disaster has fallen on physicians who have ignored that advice. A simple telephone call to the Board was all they needed to avoid the severe consequences they suffered. If you are in doubt about something you are now doing, call the Board. Ask. No investigation will be opened into your practice by the phone call, especially if you work to change any behavior that violates the Rule. Medical practice is no fairy tale.

*The Oklahoma Medical Licensure Board developed a policy statement in 2008 (Section XVI) concerning telemedicine, as it applies to mental health. See also Section XV "Policy Statement on Telemedicine." Limited programs of online consultation with ICU staff and physicians have been approved after public hearings.

**See also Board Policy "Internet Prescribing" [www.okmedicalboard.org/download/308/Prescribing+on+the+Internet.htm]

Volunteering in Oklahoma

New Law Protects Medical Volunteers at School Sporting Events

Physicians and certain other health care providers are now protected from liability when they volunteer their services during a secondary school athletic event. House Bill 1658, authored by Oklahoma State Representative Joe Dorman, D-Rush Springs, which went into effect on January 1, 2011, stipulates that "any physician or health care provider providing health care services in a voluntary capacity at a secondary school function in this state who renders or attempts to render care to an injured participant who is in need of immediate medical aid shall not be liable for damages as a result of any acts or omissions except for committing gross negligence or willful or wanton negligence in rendering the emergency care."

According to the law, volunteer capacity means "health care services provided without remuneration regardless of whether or not health care services are prearranged. Admission without cost to the secondary school event does not constitute remuneration."

"The new law will give medical volunteers protection under the Good Samaritan Act," according to Representative Dorman. "For this reason, I urge parents to ensure that a volunteer is on hand at their school sporting events to address any serious injury that might occur."

CME Offerings

The Oklahoma State Board of Medical Licensure and Supervision (OSBMLS) reminds Oklahoma Physicians of two continuing medical opportunities.

"Prescribing Opioids for Chronic Pain: Balancing Safety and Efficacy," a day-long CME program, will be held on June 4, 2011, at the Southern Hills Marriott in Tulsa.

This course will provide specific knowledge and skills associated with safe prescribing and will address areas of epidemiology, legal and regulatory issues, as well as clinical strategies for managing difficult patient situations.

CME credit (6.5 hours) are pending. Course sponsors include the Medical Board, Center for Substance Abuse Treatment, the Oklahoma Osteopathic Association and DO Board. The \$50.00 fee for the program includes all course materials and lunch.

For more information or to register, call OSBMLS' Kathy Plant, 405-962-1400, Ext. 122, or online at kplant@okmedicalboard.org.

The Medical Board in conjunction with the Oklahoma State Medical Association (OSMA) and Physician Liability Insurance Company (PLICO), will sponsor an **Alaska Medical/Legal Cruise seminar** from July 22-29, 2011. The cruise will offer 14 hours of CME and PLICO credit. Ports-of Call include Seattle, WA; Alaska Inside Passage; Juneau, Skagway and Tracy Arm Fjord, AK; and Victoria, British Columbia.

Physicians are encouraged to make reservations quickly as space is usually at a premium. For additional information or to reserve space, contact OSMA's Sandy Deeba, 405-601-9571, 1-800-522-9452; deeba@okmed.org; or Judy Rector, KHM Travel, 405-641-5395, rector120@aol.com.

OSBMLS Fall/Winter Board Meeting Actions

The Board met on Nov. 4, 2010, and Jan. 13, 2011, in Oklahoma City. Nine full medical licenses were issued after personal appearances by the physicians, including an agreement with one physician to limit practice to a specific specialty in an academic setting and another previously suspended physician to continue in a recovery program and not prescribe Controlled Dangerous Substances (CDS).

Two Physician Assistant (PA) licenses were granted with conditions. One PA must obtain counseling for overreacting to stress. Another PA, who had continued to practice after failing to renew the PA license, was reinstated with a letter of "no tolerance" for any future failure to renew.

Six physicians, two PAs, two Occupational Therapy Assistants and a Respiratory Care Therapist were disciplined.

One physician's license was reinstated under a two-year probation with the stipulation to attend an approved Boundary Course each year and undergo semi-annual polygraph tests on maintaining boundaries.

Another physician received a 3-month license suspension followed by a 5-year probation for boundary and substance abuse

issues. The physician must practice in an approved controlled environment and abstain from substance abuse, attend five 12-step meetings a week, including one with the Physician Health Program and undergo two polygraphs a year.

A 3rd physician was officially reprimanded and fined \$5,000.00 for failure to disclose problems in another state when originally applying for an Oklahoma medical license.

A 4th physician was suspended until another state restores the physician's license lost for prescribing CDS without medical need and failing to report that action on the Oklahoma renewal application.

A 5th physician was placed on five years probation for substance abuse, fined \$10,000.00, required to perform one hundred (100) hours of community service, and required to attend ninety (90) Twelve Step program meetings in ninety (90) days.

A 6th physician was suspended indefinitely for substance abuse and prescribing violations while already on probation. The physician must undergo substance abuse and psychiatric evaluations and complete any recommended treatment before returning to the Board.

One physician license was surrendered following a felony conviction for a narcotics violation.

One PA license was suspended indefinitely for multiple DUIs and other criminal activities and failure to report them on license renewal application. Another PA was ordered to obtain a sexual misconduct assessment and take an approved Boundary Course and return for the Board's March, 2011, meeting for possible further probationary actions.

One Occupational Therapy Assistant was issued a license under standard terms of agreement for alcohol abuse. Another Occupational Therapy Assistant was suspended for ninety (90) days and placed on one (1) year probation for billing for treatments not performed. This Occupational Therapy Assistant may work only under on-site supervision during the probation.

A Respiratory Care license was issued under an unusual permanent agreement pertaining to gambling addiction with legal consequences. The therapist must attend five Gamblers Anonymous meetings a week; designate a sponsor who will provide the Board with quarterly written reports; and obtain a reliable source to manage all finances.

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