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ANATOMY OF A COMPLAINT

The basic mission of the Oklahoma State Board of Medical Licensure and Supervision is to promote the Health, Safety and Well-Being of the citizens (patients) of Oklahoma by requiring a high level of qualification, standards and continuing education for those who hold licenses regulated by the Board. The primary way the Board accomplishes this—and the one well known to all Oklahoma physicians—is by issuing medical licenses after a meticulous and comprehensive credentialing process.

For most Oklahoma licensees, initial credentialing and subsequent routine license renewal procedures are their only contact with the Board.

Some licensees, however, will become involved with the Board as it performs another of its mandated functions - to protect public health and safety by investigating complaints against individuals licensed by the Board.

Since the year 2000, the Board receives on average some 490 complaints a year. The vast majority of complaints are initiated by telephone. Each call is directed to a member of the Board's Department of Investigations and Compliance who discuss the complaint with the caller. Often the staff member must tell callers that their grievances are outside the legal and ethical jurisdiction of the Board. This information, along with allowing the callers

to have their say, can mitigate many complaints. Department of Investigation staffers explain to each caller that, if possible, they must submit their complaints in writing, preferably using the complaint form on the Board's website, if they wish to pursue matters further. Roughly half of the callers submit a written complaint, which is then officially logged in.

About 83% of complaints to the Board come from the public; 4.4% from physicians; 3.5% from state agencies; and the rest from law enforcement and courts, nurses, pharmacists, self-reporting, hospitals, newspapers, license renewal forms, the National Practitioner Data Bank, the Federation of Medical Boards' Data Bank, and Board staff.

The majority of complaints that result in open cases usually deal with quality of care issues, over-prescribing or prescribing without medical need, sexual misconduct, alcohol and/or substance abuse, billing fraud, and fraudulent license renewal.

When the Board receives a written complaint, the complaining party is sent written confirmation of receipt. The complaint is then referred to the Board's Complaint Review Committee for initial review. The Committee consists of the Board's Medical Advisor (a physician), Executive Director, Director of Investigations & Compliance, and Assistant Attorney General. If the Committee

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Filing a complaint

Call the Board's Dept. of
Investigation:

(405) 962-1400
1-800-381-4519

or online at:

investigations@okmedicalboard.org



BOUNDARIES:

Captain of the ship or just someone who can't say no?

BOUNDARY is the current term used to describe the point where a doctor/patient relationship can turn from being mutually satisfying and beneficial to inappropriate and even criminal.

Sexual misconduct and clinical interaction with friends, relatives, employees and business associates are boundary issues of greatest concern to the Medical Board's Department of Investigations and Compliance.

Physicians control all boundary situations by the very nature of the doctor/patient relationship. Physicians are clearly in the power position. Despite the frustrating encroachment of rules and regulations, physicians remain Captains of the Ship of Medicine. Their power drives the system but comes with ever increasing accountability.

Sexual Misconduct

It is **never** appropriate and always unprofessional conduct for a physician to be involved in a sexual, romantic or dating situation with a current patient. There are simply no excuses or exceptions.

According to the American Medical Association (AMA) Code of Medical Ethics: "Sexual contact that occurs concurrent with the patient-physician relationship constitutes sexual misconduct. Sexual or romantic interactions between physicians and patient may exploit the vulnerability of the patient. Sexual or romantic relationships between a

physician and a former patient may be unduly influenced by the previous physician-patient relationship. Sexual or romantic relationships with former patients are unethical if the physician uses or exploits trust, knowledge, emotions, or influence derived from

"When is it appropriate to begin a relationship with a former patient?"

the previous professional relationship."

It goes without saying that a physician must end the doctor-patient relationship before entering any kind of romantic or sexual relationship with a patient.

When is it appropriate to begin a relationship with a former patient? According to the rules of the Oklahoma Medical Board: "...a professional relationship may take months or years to end and in some cases may never be terminated for purposes of sexual contact. As long as there is a perceived doctor-patient relationship in the eyes of the patient, doctor or the Board, the physician is at risk for disciplinary action based on sexual misconduct. Consent by the patient shall be no defense. In view of the unique relationship between doctors and patients and of the patient's position of vulnerability and dependence, consent by the patient may be of little significance. It is the physician's responsibility to prevent and/or terminate any patient-initiated

sexual contact. Failure to do so places the physician, not the patient, at risk for disciplinary action based on sexual misconduct." So, if the relationship doesn't feel appropriate in all aspects, it probably isn't.

The AMA Code of Ethics also addresses sexual or romantic relationships between physicians and "**key third parties**": "Patients are often accompanied by third parties who play an integral role in the patient-physician relationship... The more deeply involved the individual is in the clinical encounter and in medical decision making, the more troubling sexual or romantic contact with the physician would be... Key third parties include, but are not limited to, spouses or partners, parents, guardians, and proxies... Physicians should refrain from sexual or romantic interactions with key third parties when it is based on the use or exploitation of trust, knowledge, influence, or emotions derived from the professional relationship."

Friend/Relative/Employee Interaction:

Most physicians enter the profession for altruistic and humane reasons. They want to help others and certainly their own relatives and friends. But long gone are the days when physicians could write prescriptions with impunity or treat relatives and friends in casual or informal settings. Doing medical favors for relatives, friends and employees can put physicians at risk.

(Physicians **cannot** write prescriptions for Controlled Dangerous Substances for immediate family, *i.e.*, spouses, parents, children, brothers, sisters and grandchildren; but they **may** for nieces, nephews, aunts, uncles, great grandchildren and great grandparents, as long as a valid physician/patient relationship exists.)

Writing prescriptions as favors or to be “nice” can cause unwanted problems and severe sanctions for Oklahoma doctors. At virtually every meeting of the Medical Board, a physician(s) must explain aberrant prescribing. Often the situations involve prescriptions written for family, friends or employees without examinations or establishment of records. Without records, physicians can easily fall into the trap of inappropriate or over prescribing, sometimes resulting in tragic

consequences for both physician and patient.

The Oklahoma Bureau of Narcotics and Dangerous Drugs (OBNDD) **Prescription Monitoring Program (PMP)** is the best tool for physicians to use to check their own prescribing activity and drug utilization by their patients. Oklahoma physicians are encouraged to consult PMP regularly. Physicians must register and receive a unique PIN to access the data. To register, call the PMP Helpline, 1-877-627-2674 or online at pmp@obn.state.ok.us.

While it is easier said than done, physicians should also say “No” to friends and employees seeking diagnoses or prescriptions without formal examinations. If you feel you must say “Yes,” check with PMP and then create a chart and make it a part of the patient’s medical record. □

Annual License Renewal Questionnaire Reminder

Oklahoma physicians must renew their licenses every year. While this annual process may be considered routine and sometimes delegated to staff by many busy physicians, the Medical Board’s Department of Investigations and Compliance encourages Oklahoma physicians to personally complete the form. According to Title 435:10-7-4 (8) of the Oklahoma Administrative Code, Unprofessional Conduct for which the Board may take disciplinary action, includes “Fraud or misrepresentation in applying for or procuring a medical license or in connection with applying for or procuring periodic re-registration of a medical license.” A mistake by staff is not considered a legitimate excuse for an incorrect renewal application.

The renewal application includes a series of “Yes/No” questions regarding possible adverse civil, criminal, medical/legal and other practice related actions that may have been taken against a physician since the last license renewal. Whatever happened before then should be on record already with the Board. For physicians with new Oklahoma medical licenses, the questions pertain to the time since the license was granted initially.

Since nuance is so much a part of today’s medical/legal environment, some physicians may feel compelled to seek advice of an attorney in answering the questions. Just as in the case of a staff member’s error, a lawyer’s incorrect recommendation is not a safeguard against possible disciplinary action.

Physicians should complete the renewal form themselves. If a physician is unsure how to answer a question, call the Department of Investigations, 405-962-1400. The call can be handled anonymously.

And remember, only answer “Yes” if it happened in the last “license year.” Otherwise, the answer is “No.” This will save the physician, office staff and the Board’s Department Investigations and Compliance the time and inconvenience of following up on “Yes” answers that are no longer pertinent.

I’m From The Medical Board And I’m Here To Help?

Once licensed, most physicians will have little or no direct contact with the Oklahoma Board of Medical Licensure and Supervision (Board) other than to renew their licenses annually. But in these litigious times of often unrealistic expectations, even the best physicians may be sued or become subjects of complaints.

So what’s a physician to do when he or she receives a letter or call from the Board about a complaint or hears the receptionist say “Doctor, there is an investigator here from the Medical Board”?

First of all, don’t panic. There are two sides to every story. The Board’s Complaint Committee instructs the Department of Investigations and Compliance staff to obtain all facts pertinent to a complaint. The Committee’s Medical Advisor is a physician and the investigative staff members are Registered Nurses and/or trained law enforcement personnel. Their roles are not adversarial. Their objective is to gather information. It is important for the physician and office staff to cooperate with the investigators to get your side of the story on the record.

While it is not necessary, physicians have the right to be represented by an attorney at any time during the investigative process.

Once the investigation is complete, the Board’s Complaint Committee determines if further action is necessary.



Anatomy of a Complaint, cont. from page 1

concludes the complaint is without merit, no action is taken. The Director of Investigations will write a letter to that effect to the complaining party. These cases do not become a part of a physician's public file but they are kept in a confidential investigative file unavailable to the public.

If a complaint appears to have merit, a case is opened and assigned to an Investigator, who is instructed to obtain specific information and is offered general recommendations on how to proceed with the investigation.

Physicians may retain legal counsel anytime during the investigative process.

The Board's investigative staff consists of three Registered Nurse Investigators (one with special expertise in psychiatry, another in OB/GYN) and three law enforcement officers.

The Board has subpoena power.

After the investigators gather information and compile evidence, their reports are sent to the Medical Advisor. The Medical Advisor will then decide if more information is needed and provide appropriate instruction to the investigators or schedule the report on the agenda of the next meeting of the Complaint Review Committee for discussion of possible adjudication.

The Committee has considerable discretion after reviewing cases. It can request additional information, close the case with no further action, or refer it externally to a state, county

or specialty society or some other entity. It can issue a Letter of Concern (LOC), sometimes requiring a meeting with the Medical Advisor. LOCs are confidential but do become a part of a physician's private investigative file. Licensees do not meet with the entire Board unless a formal Complaint is issued.

Finally, the Committee can refer the case to the Assistant Attorney General for issuance of a formal Complaint and Citation to appear before the entire Board. Once a formal Complaint and Citation is served, it is subject to the Open Records Act and is available to the public.

An appearance before the Board is a formal legal proceeding. Physicians, many represented by legal counsel, are sworn in, statements by physicians and/or attorneys are permitted, evidence is presented, witnesses and other experts may testify, and Board members may question them all.

After all due diligence and due process, the Board decides the case.

The Board may dismiss the case or order sanctions ranging from reprimands, continuing medical education, prescribing limitations, practice limitations, medical, psychiatric, boundary and/or substance abuse evaluations and potential treatment to monetary fines, probation, license suspension, license revocation or any combination.

The Board's investigators monitor all disciplined physicians to ensure they are in compliance with their sanctions. □

KEEPING PATIENTS HAPPY

About half of all complaints received by the Board fall outside the Board's jurisdiction and often have little or nothing to do with the actual practice of medicine. Many complaints involve the "business" of medicine and may be avoided if patients are happy with the service they receive both before and after they see the doctor. Keeping patients satisfied has never been more difficult than in this era of complex rules, regulations and insurance formulas.

Here are a few specific areas that cause patient dissatisfaction that usually can be easily prevented.

Medical Records

While physicians own original medical records, the information in them belongs to the patient. Physicians are required by law to provide copies of medical records to patients upon request, except for certain psychiatric cases. Physician offices may charge up to \$1.00 for the first page and \$0.50 for each additional page in the record. Medical offices cannot withhold copies of a patient's medical record for any reason, even if the patient has past due accounts with the office. If patients request copies of medical records, accommodate them in a timely fashion.

Dismissing a Patient

Physicians do not need a reason to dismiss patients from their practices. The dismissal should be in writing with the letter made part of the patient's medical record. If the patient is taking prescription medication, the physician should write a prescription for a 30 day supply of the medicine (except in certain pain management situations, particularly when the patient has violated his/her agreement.) Remember, patients are entitled to copies of their medical records.

Payment Issues

Physicians cannot withhold care from patients with past due accounts who already have scheduled appointments. However, physicians may subsequently dismiss these patients from their practices using the procedure outlined above. Physicians should always provide emergency care when necessary.

Vacation Coverage

If physicians will be out of the office and not seeing patients for an extended period of time for vacation, illness or other reasons, be sure to arrange back-up coverage for patients with another physician or leave instructions with office staff or on electronic answering devices referring patients to a local Emergency Room or AM/PM Clinic.

Oklahoma Medical Board Welcomes New Members Elects New Officers

Oklahoma Governor Mary Fallin has appointed three new members to the Oklahoma State Board of Medical Licensure and Supervision (Board). They are **J. William Kinsinger, MD**, Oklahoma City; **Hank Ross**, Chickasha; and **Charles E. (Chuck) Skillings**, Shawnee.

The Board consists of nine members appointed by the Oklahoma Governor, seven physicians and two public members. The physicians serve seven year terms. Public members serve concurrently with the governor who appointed them.



Dr. Kinsinger is a graduate of Westminster College, Fulton, MO, and the University Of Oklahoma College Of Medicine. He completed his anesthesiology residency

at the University of Arkansas. He is in private practice at Baptist Medical Center in Oklahoma City, specializing in obstetric anesthesiology. He is a past president of the Oklahoma Society of Anesthesiologists.



Mr. Ross is the mayor of Chickasha and chair and chief executive officer of Ross Home Health Care, a home health company

serving central and western Oklahoma and one of Chickasha's largest employers. A native of Chickasha, he earned a Bachelor of Science in business administration from Oklahoma State University and MBA from Oklahoma City University. Mr. Ross is a past diplomat of the American College of Healthcare Executives and board certified in healthcare administration. He is president of the Board of the Center of Family Love, a home serving the mentally retarded, a member of the Board of Advisors for the First National Bank of Oklahoma and past chair and current board member of the Chickasha Economic Development Council. He has served on the Chickasha City Council, City Planning Commission, and the boards of the Chickasha Chamber of Commerce and Chickasha School Foundation.



Mr. Skillings is president and chief executive officer of Unity Health Center. He joined Shawnee Medical Center in 1977, serving as Director of Emergency Medical Services for ten years and then Director of Medical Staff Development before eight years as the hospital's Senior Vice President/Chief Operating Of-

ficer. He was named President/CEO in 2000. Mr. Skillings is chair-elect of the Oklahoma Hospital Association, a member of Rotary, and Chair of the Board of the Shawnee Rescue Mission. He is a past member of the board of the Shawnee Chamber of Commerce and the Shawnee Development Foundation. He is an active supporter of the United Way of Shawnee.

J. Andy Sullivan, MD, pediatric orthopedic surgeon at the University of the Oklahoma College of Medicine in Oklahoma City, is the new president of the Board.

Deborah Huff, MD, OB/GYN in private practice in Oklahoma City, is the Board's new vice-president.

The terms of Dr. Sullivan and Dr. Huff expire in July 2012.

Other members of the board are: Jenny L. Boyer, MD,JD, Tulsa psychiatrist; Scott W. Meyers, MD, Tulsa dermatologist; Riaz Sirajuddin, MD, Oklahoma City interventional cardiologist; and G. David Casper, MD, Oklahoma City orthopedist and addiction medicine specialist.

OSBMLS WEBSITE IS NATIONAL MODEL

Last year nearly a quarter of a million people visited the Oklahoma State Board of Medical Licensure and Supervision's website (okmedicalboard.org). These individuals collectively logged onto the site nearly one million times, viewing over 6.5 million pages of information.

The site serves Oklahoma medical doctors by creating individual physician profiles and providing a safe repository for their application, credentialing, licensing and practice information. This data is updated three times daily. The site offers handy links to other websites like the Prescription Monitoring Program (PMP); medical/legal and political information pertinent to the practice of medicine; and board and committee meetings dates, agendas and minutes.

Oklahoma MDs may renew their licenses online as well. By this fall, new applicants for Oklahoma medical licenses will be able to initiate the process on line.



Oklahoma Physician Profiles: Each profile contains a complete history of a physician's education, license and practice experience. **Only the individual physician may access his or her profile by entering a medical license number and Personal Identification Number (PIN).**

To obtain a PIN, please call OSBMLS at 405-962-1400.

In addition to verified information regarding a physician's education and license history, the profile allows a doctor to list specialty and subspecialties, practice location(s), telephone and FAX numbers, e-mail addresses, office hours, insurances accepted and whether or not the physician is accepting new patients. Physicians who have never looked at their profiles are strongly encouraged to do so to be sure all information is current. Update profiles whenever any information changes.

JULY BOARD MEETING

The Oklahoma State Board of Medical Licensure and Supervision met on July 14, 2011 to consider licensing and disciplinary matters.

Two MD training licenses were issued after personal appearances by the applicants. One PA license was issued under standard terms of Agreement for alcohol abuse, which included the requirement that he attend three 12-step meetings per week. After being suspended and obtaining an assessment for sexual misconduct, one PA license was reinstated with probationary terms that included counseling and obtaining a practice monitor.

One MD license was suspended for three months after having re-

lapsed while on probation. The suspension will be followed by a five year term of probation with frequent drug testing.

Three disciplinary cases involved Physician Assistants. The first was reprimanded, fined \$2500 and required to take an approved prescribing course within one year for prescribing CDS to herself and a friend, and for failing to maintain medical records. One PA surrendered his license after making sexual advances to a patient. Upon assessment, he was found unfit to practice medicine with reasonable skill and safety. The third PA surrendered his license after having been caught offering to buy methamphetamine.

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