

# ISSUES and ANSWERS

Oklahoma State Board  
of Medical Licensure  
and Supervision

Vol 16 No 1  
December 2005

## My Brother's Keeper

*By Gerald C. Zumwalt, MD  
Board Secretary/Medical Advisor*

The Oklahoma Administrative Code 435:10-7-4 "Unprofessional Conduct" lists 48 actions, which, if performed by an M.D., could result in disciplinary action. Number 43 is "Failure to report to the Board unprofessional conduct committed by another physician."

*"...few doctors in Oklahoma even know they have the legal responsibility to make such reports."*

Considering the extremely low number of complaints of possible unprofessional conduct we receive from doctors as compared to the number received from patients (and family members), pharmacists, and police, it is obvious there is often both a failure to act ethically and a violation of 435:10-7-4 (43).

During a recent hearing involving a physician failing to report another physician operating while chemically impaired, one Board member expressed the view that few doctors in Oklahoma even know they have the legal responsibility to make such reports.

Certainly, "no one likes a tattle tale." Most people find it easier to turn their backs and walk away than to become involved in correcting another's misconduct. A false sense of camaraderie and a lack of backbone can make cowards of us all.

An interesting sidelight of the hearing was that the local hospital chief of staff was an Osteopath who also failed to report the impairment of his peer. Note that the wording of 435:10-7-4(43) uses the term "physician" rather than "MD". It would be possible that the Medical Board could discipline an MD for failing to report unprofessional conduct of another MD, an Osteopath, or a chiropractor to their respective Boards. The opposite also could be true depending on how their practice acts and administrative codes are worded.

# Quality Improvement in Oklahoma Trauma Care

The Trauma Division of the Oklahoma State Department of Health continues to steadily move forward with trauma system development and improvement statewide. Oklahoma statutes at Title 63 § 2530.6 specify periodic reviews of trauma care and continuous quality improvement activities related to trauma care by a state Medical Audit Committee. In accordance with the statute, the Commissioner of Health appointed the members of the Medical Audit Committee (MAC) and the group began meeting regularly in November 2004. The Medical Audit Committee is composed of nine physicians from both rural and urban areas, representing trauma surgery, emergency medicine, orthopedics, oral-maxillofacial surgery, neurosurgery, pediatric critical care and general surgery. To date, the Medical Audit Committee has received and reviewed a number of cases and provided follow-up, education, and resolution. Additionally, each of the eight Regional Trauma Advisory Boards in Oklahoma is in the process of establishing a Regional Quality Improvement Committee to review trauma systems issues.

The statute provides that the meetings of the Medical Audit Committee and Regional Quality Improvement Committees, where patient care reviews are conducted, shall not be public meetings and shall not be subject to the provisions of the Oklahoma Open Meetings Act. Materials generated at such meetings shall also be protected and not subject to the Open Records Act or to disclosure by subpoena or otherwise (O.S. 63 § 1-2530.7).

## ? Who may refer a case to the Medical Audit Committee?

Referrals may be made by a physician, nurse, other health care provider, or member of the public

## ? What may be reported to the Medical Audit Committee?

Any situation involving care of a trauma patient, including patient transfer and referral issues, patient care issues, patient transport problems.

## ? What happens after I make a referral to the Medical Audit Committee?

Oklahoma State Department of Health (OSDH) staff will initiate an intake form to capture preliminary information and screen referred cases to determine if the case is to be reviewed by the Medical Audit Committee or by the Regional Quality Improvement Committee. OSDH staff will request appropriate records for evaluation. The case will then be referred to the appropriate Committee for review. Cases referred to the Medical Audit Committee will be sent to members for preliminary review and report to the full Medical Audit Committee (MAC). The MAC will make recommendations and address any identified concerns first through education, provision of information, and system design, as appropriate. If these efforts fail, an enforcement action may be required according to OSDH rules as provided for in the Oklahoma Administrative Code.

## ? Will I know the outcome of my report to the Medical Audit Committee?

You will be notified of receipt of your referral. However, the results of the review are confidential and will not be released to the individual making the referral or to the public.

## ? How do I make a referral?

Referrals may be made to the Medical Audit Committee by contacting:

Patrice Greenawalt, RN, MS, Director, Trauma Division  
Pam Broyles, RN, MPH, Trauma Systems Coordinator  
David Shenold, Regional Trauma Advisory Board Coordinator  
Oklahoma State Department of Health  
1000 N.E. 10<sup>th</sup> Room 1104, Oklahoma City, OK 73117-1299  
Toll free (you may leave a message) 1-800-814-8441  
Trauma Division: 405-271-2657

# Policy on the Use of Controlled Substances for the Treatment of Pain

The Oklahoma State Board of Medical Licensure and Supervision (Board) recognizes that principles of quality medical practice dictate that the people of the State of Oklahoma have access to appropriate and effective pain relief. The appropriate application of up-to-date knowledge and treatment modalities can serve to improve the quality of life for those patients who suffer from pain as well as to reduce the morbidity and costs associated with untreated or inappropriately treated pain. For the purposes of this policy, the inappropriate treatment of pain includes nontreatment, under treatment, over treatment and the continued use of ineffective treatments.

The diagnosis and treatment of pain is integral to the practice of medicine. The Board encourages physicians to view pain management as a part of quality medical practice for all patients with pain, acute or chronic, and it is especially urgent for patients who experience pain as a result of terminal illness. All physicians should become knowledgeable about assessing patients' pain and effective methods of pain treatment, as well as statutory requirements for prescribing controlled substances. Accordingly, this policy has been developed to clarify the Board's position on pain control, particularly as related to the use of controlled substances, to alleviate physician uncertainty and to encourage better pain management.

Inappropriate pain treatment may result from physicians' lack of knowledge about pain management. Fears of investigation or sanction by federal, state and local agencies may also result in inappropriate treatment of pain. Appropriate pain management is the treating physician's responsibility. As such, the Board will consider the inappropriate treatment of pain to be a departure from standards of practice and will investigate such allegations, recognizing that some types of pain cannot be completely relieved, and taking into account whether the treatment is appropriate for the diagnosis.

Earlier this year, the Board adopted its ***Policy on Use of Controlled Substances for the Treatment of Pain***. At the same time, changes were made to the rules in ***OAC 435:10-7-11. Use of controlled substances for the management of chronic pain***. This rule along with other rules of the Board are available on the web site at [www.okmedicalboard.org](http://www.okmedicalboard.org).

The Board recognizes controlled substances, including opioid analgesics, may be essential in the treatment of acute pain due to trauma or surgery and chronic pain, whether due to cancer or non-cancer origins. The Board will refer to current clinical practice guidelines and expert review in approaching cases involving management of pain. The medical management of pain should consider current clinical knowledge and scientific research and the use of pharmacologic and non-pharmacologic modalities according to the judgment of the physician. Pain should be assessed and treated promptly and

the quantity and frequency of doses should be adjusted according to the intensity, duration of the pain and treatment outcomes. Physicians should recognize that tolerance and physical dependence are normal consequences of sustained use of opioid analgesics and are not the same as addiction.

The Board is obligated under the laws of the State of Oklahoma to protect the public health and safety. The Board recognizes that the use of opioid analgesics for other than legitimate medical purposes pose a threat to the individual and society and that the inappropriate prescribing of controlled substances, including opioid analgesics, may lead to drug diversion and abuse by individuals who seek them for other than legitimate medical use. Accordingly, the Board expects that physicians incorporate safeguards into their practices to minimize the potential for the abuse and diversion of controlled substances.

Physicians should not fear disciplinary action from the Board for ordering, prescribing, dispensing or administering controlled substances, including opioid analgesics, for a legitimate medical purpose and in the course of professional practice. The Board will consider prescribing, ordering, dispensing or administering controlled substances for pain to be for a legitimate medical purpose if based on sound clinical judgment. All such prescribing must be based on clear documentation of unrelieved pain. To be within the usual course of

## Speaking of the Devil

By Gerald C. Zumwalt, MD  
Board Secretary/Medical Advisor

The Journal of the Oklahoma State Medical Association is running articles of its history by time periods. The Depression and World War II were covered a recent issue.

The question that arose from reading this story was, "How did Hitler contribute to medicine in Oklahoma?" Two people expelled from Germany and eventually settling in Oklahoma immediately spring to mind.

Ernest Lachman, MD was licensed in Oklahoma in 1938. His test for knee instability is still utilized throughout the country. Years of teaching Gross and Radiological Anatomy at OU Medical School enlightened students and inspired those of us who are height impaired. One does not have to be of great length to stand tall in our profession.

Walter Joel, MD was licensed in Oklahoma in 1954. By medical school legend, he had once been court physician to King Farouk of Egypt and in that capacity had had access to the chamber pots used nightly by guests in the palace. It was rumored that he had the world's largest collection of famous people's urine. This impressive museum of pee was never shared with students and we were left to guess as to its existence as well as guessing at the exact words Dr. Joel pronounced with one of Oklahoma's thickest German accents.

We will be happy to print any reminiscences other writers may have of those who fled Germany in the '30's and ended up practicing or teaching medicine in Oklahoma.

## Late Fees

The annual cost of renewing a medical license (\$150) has not increased since 1991. However, every year, the number of late fees paid by physicians who fail to renew on time continues to increase. The Board has issued very strict guidelines for failure to renew on time; an additional late fee of \$125 is assessed on the second day of the renewal month. There are no waivers and no refunds. The Board staff continues to look for ways to improve services to help physicians be timely, to save money and avoid other consequences. Here are a few examples:

- Inform the Medical Board of any change in mailing address. (Mail, Fax, Email or on-line through the Medical Board website)
- The Medical Board sends out, to the mailing address on file, a reminder post card 60 days prior to the renewal month and then another reminder card 30 days in advance.
- The renewal can be done up to 60 days in advance of the 1<sup>st</sup> day of the renewal month to give ample mailing time for the renewal to be received and processed.
- Physicians can renew on-line, pay with a credit card or electronic funds transfer and update with a new mailing address and other pertinent practice information all at the same time.

We constantly work to provide a fast, accurate and secure website for our licensees' protection and convenience. Many improvements have taken place due to individual physician input on the post-renewal survey.

---

## A New Service - E-mail Notices

In early 2006, the Medical Board will send out e-mail notices to all physicians who have an e-mail address on file, reminding them that their license is up for renewal. An e-mail alert will be sent out at 60 days, 30 days, and one (1) week prior to the renewal deadline. (Post card reminders will continue to be mailed at 60 and 30 days) A delinquent e-mail notice will also be sent the day after the renewal deadline indicating that the license is inactive, which will require the renewal process plus an additional late fee to activate the license.

Physicians and their staff can log onto [www.okmedicalboard.org](http://www.okmedicalboard.org) any time, day or night, to update personal and practice information including listing a current e-mail address. Contact the Board office for information about a special e-mail service for hospital, group or clinic practices that will help assure timely renewals.

The Oklahoma Medical Practice Act sets out rather severe penalties for practicing without a current (renewed) medical license (OS 59 Section 495b). An inactive license, even a few days, can create complications for professional liability coverage, hospital credentialing, as well as any Medicare and insurance payments made for medical services rendered during the time a license was inactive. It is critical that physicians make every effort to renew in advance to allow for any unforeseen problems that might happen.

Oklahoma State Board of  
Medical Licensure and Supervision  
P.O. Box 18256, Oklahoma City OK 73154

or

5104 North Francis, Suite C, Oklahoma City OK 73118

Phone: (405) 848-6841 Fax: (405) 848-8240  
Web Site: [www.okmedicalboard.org](http://www.okmedicalboard.org)



# Supervision Redux

by Gerald C. Zumwalt, MD.  
Board Secretary/Medical Advisor

The subject of fully and adequately fulfilling the requirements of being a supervising doctor for Physician Assistants (PAs) and Advance Practice Nurses (APRNs) with prescriptive authority has been addressed before in our newsletter (last article in October 2002). There have been several Oklahoma MDs disciplined for failure to perform the statutory duties as supervisors.

Nevertheless, it is widely reported that inadequate oversight still occurs. The assumption of this responsibility is not to be regarded lightly.

Title 59 O.S., Section 519.6 (B) (d) requires the supervising physician to be “on-site to provide medical care to patients a minimum of one-half (½) day per week.” Note that the language requires patient care as well as attendance.

Title 435:10-12-2 covers eligibility to supervise Advanced Practice Nurses with prescriptive authority and, among other wording, states the doctor shall be “fully qualified in the field of the APRN’s specialty” and “shall regularly and routinely review the prescriptive practices and patterns of the APRN.”

APRNs and PAs are essential contributors to the public health and welfare of the citizens of Oklahoma. They deserve our continued support. They do not deserve superficial, half-hearted and non-legal supervision. It’s your license that’s at risk.

---

## A Hard Day’s Work

By Gerald C. Zumwalt, MD  
Board Secretary/Medical Advisor

Volume 91, Number 2 of the Journal of Medical Licensure and Discipline, published by the Federation of State medical Boards, is devoted to the issue of practicing pain management. Several articles discuss multiple aspects of this type of practice but there is one overall principle emphasized. This type of practice is neither simple nor easy and requires formal training, alertness and dedication.

The articles address the higher doses of opioids currently available and the inherent dangers of this dosing. They give extensive and precise guidelines for evaluating and treating chronic pain patients as well as common mistakes practitioners make.

They point out (contrary to common thought) that “the medical risk of an American physician being disciplined by a state medical board for treating a real patient with opioids for a painful medical condition is virtually nonexistent.” The necessity for keeping accurate, complete records and utilizing therapies other than narcotics is emphasized.

Any doctors maintaining patients on chronic pain medications and management should obtain this volume (\$18, Journal of Medical Licensure and Discipline, P.O. Box 619850, Dallas, TX 75261-9850).

# Burn Baby Burn

By Gerald C. Zumwalt, MD  
Board Secretary/Medical Advisor

There have been two recent disciplinary cases heard by the Oklahoma State Board of Medical Licensure and Supervision concerning Oklahoma doctors aiding and abetting the unlicensed practice of medicine. Both circumstances involved the MDs purchasing laser hair removal machines, then setting the machines up in areas away from their medical offices and allowing non medical practitioners to operate the appliances. Both cases resulted in the doctors being suspended from the practice of medicine for an extended period and paying hefty fines.

The Medical Board years ago issued the opinion (later confirmed by an Oklahoma District Court Judge) that destruction of tissue by any form of method or energy does constitute the practice of medicine (see Title 59 O.S., section 492C 2 and 3a).

It is widely believed that there are other doctors (MD and DO) who have hair removal businesses set up in similar scenarios as the above referenced disciplinary cases. Obviously, there is no problem with these instruments being used in doctor’s offices where the operating personnel are under the control and supervision of the physician and the physician is examining the patients and establishing the plan of treatment.

The quoted episodes do serve as notice to practitioners that adequate and appropriate oversight of all therapeutic modalities needs to be followed.

---

### Controlled Substances, continued from page 3

professional practice, a physician-patient relationship must exist and the prescribing should be based on a diagnosis and documentation of unrelieved pain. Compliance with applicable state and/or federal law is required.

The Board will judge the validity of the physician's treatment of the patient based on available documentation, rather than solely on the quantity and duration of medication administration. The goal is to control the patient's pain while effectively addressing other aspects of the patient's functioning, including physical, psychological, social and work-related factors.

Allegations of inappropriate pain management will be evaluated on an individual basis. The Board will not take disciplinary action against a physician for deviating from this policy when contemporaneous medical records document reasonable cause for deviation. The physician's conduct will be evaluated to a great extent by the outcome of pain treatment, recognizing that some types of pain cannot be completely relieved, and by taking into account whether the drug used is appropriate for the diagnosis, as well as improvement in patient functioning and/or quality of life.

### Medical Records:

#### "Déjà vu all over again"

The charge for copying medical records for patients and/or their legal representative is \$1.00 for the first page and then \$.50 per subsequent page. The charge for x-rays or other photograph or image is limited to \$5.00 or actual cost, whichever is less. Your office may charge the patient for the actual cost of mailing the records but you are not allowed to charge an additional fee for searching, retrieving, reviewing and/or preparing the records.

**Note: You cannot refuse to give the patient a copy of their medical records pending payment of your medical bill or based on some other obligation.**

Most physicians do not charge patients to send their records to another physician. Records you have received from another physician (consultant or otherwise) on your patient become a part of your patient's chart and may be included with the requested records.

---

This publication, printed by Central Printing, is authorized by the Board of Medical Licensure and Supervision. 9345 copies have been prepared at a cost of \$1357.00. Copies have been deposited with the Publications Clearinghouse of the Oklahoma Department of Libraries.

PRESORTED STANDARD  
US POSTAGE  
PAID  
OKLAHOMA CITY, OKLA  
PERMIT NO. 1548

OKLAHOMA STATE BOARD OF  
MEDICAL LICENSURE AND SUPERVISION  
P.O. BOX 18256  
OKLAHOMA CITY, OK 73154-0256