ISSUES and ANSWERS

Oklahoma State Board of
Medical Licensure & Supervision

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"Why be unhappy when with just a little more effort, you can be miserable?"
– Robert Zumwalt, MD OU'53

by Gerald C. Zumwalt, MD
Board Secretary

In a recent issue of that grey, old lady of American Journalism, "The National Geographic Magazine", they published a 19-page article on Hip-Hop, a musical (?) form with no melodies and lyrics, referring to females as "hos" and glorifying rape, murder and other types of violence. Perhaps next that journal will have a cover story on XXX movies as a version of visual expression.

This seems to be a prime example of the general and ubiquitous debasement of American culture. Back in April, CBS Sunday Morning featured a dog who painted canvases by scratching and biting a paint-covered square. The results were indistinguishable from paintings now hanging in modern art museums (and let us just ignore the chocolate nude Jesus statue). Even in the '30s, Cole Porter decried writers using four letters words.

"...we may need to ponder whether doctors have contributed to this rush to vulgarity."

But before we mount our lofty professional pristine peaks of medical practice and cast down thunderbolts of scorn on Eminem, Don Imus and Jessie Jackson, we may need to ponder whether doctors have contributed to this rush to vulgarity.

Several years ago this newsletter decried the tendency of doctors, nurses, custodians and half the people seen at Wal-Mart to dress in the same scrubs ["Tank tops and Flip Flops", Sept. 2003]. Four-in-hand ties may harbor germs but they did signify that the doctor thought enough of his patients that he would attempt to appear formal. And besides, as all pediatricians know, bow ties were safe from grabbing fingers and doctor-directed streams of urine.

We don't have to go back to the likes of William Osler to find edifying examples of doctoral dignity. Can any OU grad imagine Robert Bird running a newspaper ad boldly offering to remove navel hair (and it didn't mean Admiral Elmo Zumwalt's allowed chin whiskers) for only $25? Would George Garrison have offered a choice of silicon or saline implants ("Pay your money and make your choice") and thrown in a chocolate bunny if done by Easter?

When did the desire for more income outweigh the honor of being allowed to care for a peer's spouse, children or grandchildren and destroy "Professional courtesy"? Robert Anspaugh delivered untold numbers of medical students' offspring with grace, humor, and dignity. My wife still gets tears when she recalls his concern during her first nausea-filled pregnancy.

I am fully cognizant that the clock cannot be turned back (except for "fall back" from daylight savings time in October). Change is inevitable. But I don't have to like it and I can assert that not all change is advancement.

Immigration Act Impacts All Licensing Agencies

by Lyle Kelsey, Executive Director

The controversial House Bill 1804 Oklahoma Taxpayer Protection Act (OTPA), more commonly referred to as the Immigration Act, became effective on November 1st and there is a great deal of confusion over the enforcement aspects. The Oklahoma Attorney General's Office has communicated with all state agencies that a state license awarded to any person must have a signed and sworn affidavit affirming his/her right to be in the United States. As repugnant as that may seem to licensed professionals who were born in this country or have obtained their legal citizenship or at minimum are in America on a recognized legal status, the law seems clear that confirmation and verification of that fact needs to be documented.

We realize that the law is controversial and may change this year; however, as of November 1st, 2007, this is current law. Therefore, the Oklahoma Board of Medical Licensure and Supervision is required to receive an affidavit from each licensee for their file. U.S. Citizens will be required to provide the form one time. Legal Aliens will be required to provide the form each year at the time of their license renewal. The Oklahoma Medical Board will have to verify legal alien's status with the Department of Homeland Security as well. We know that this is a major interruption in your practice, but we ask you to comply so it will not have to impact adversely the status of your license. If you have any questions, please contact the Medical Board Office 405-848-6841 – press 0 and the operator will refer you to someone who can help you.

The new law allows the agency to look for expedient ways to accomplish this task in the future. The Medical Board is discussing the possibility of meeting this requirement for verification of legal alien status at the time of license renewal to be done on-line. As soon as we receive the approval, we will initiate the steps. Until then, the submission of a paper affidavit will have to be the process.

For a complete copy of HB1804, go to the Board's web site at www.okmedicalboard.org.

Affadavit Verifying Legal Status

The *Affidavit Verifying Lawful Presence in the United States* is available on the web site at www.okmedicalboard.org. All licensees will be required to submit the form.

In/On A Dock

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

Sailors stand on a dock before boarding their boat. Defendants stand in a dock to hear their sentence before going to prison. According to "A Word for the Wise" (KCSC FM 90.1, 5 a.m.), although spelled and pronounced the same, the words have vastly different origins.

This agency frequently receives complaints from the public on healthcare professionals' actions that they perceive as unprofessional. Yelling, cursing, being rude, inattentive and sarcastic, pushing products for personal profits, and even using first names or familiarities for older patients are some examples.

The Medical Practice Act (Title 59 O.S., Section 509) and the Oklahoma Administrative Code (435:10-7-4) set out legal Unprofessional Conduct. If you haven't read these two documents, it behooves you to do so promptly.

The OSBMLS disciplines licensees based on violations of the list of Unprofessional Conduct. The public, by and large, makes no differentiation between Unprofessional Conduct and conducting oneself unprofessionally. Many license holders perceive the Board as being onerously dictatorial. The public all too often sees the Board as wielders of white wash brushes.

An obvious answer to satisfy both the public and the practitioners is to have all members of health professions obey the law and conduct themselves in a gracious and dignified manner.

But then I also hope that some day our athletic representatives of our two noble state universities will know the difference in use of "saw" and "seen" and eschew the expression "you know".

A Word from the President

Eric Frische, MD, President of the Board

For most Oklahoma medical professionals, the Oklahoma Board of Medical Licensure and Supervision is not large in their lives. After initial licensing, yearly renewal is about all ninety-five percent of us know of Board activities. Oh yes, and the Board also deals with doctors who get into trouble but that is actually a very small percentage of our some 9000-license holders. Having served on the board for nearly two terms, I can attest to the fact that no one comes to our meetings to see what goes on unless they are somehow summoned. Our newsletter probably goes unread into the trash by many, if not most. I would hope that I am wrong about this, but I would bet I am not.

Medicine, and in particular how medicine is practiced in the United States, is perhaps on the verge of revolutionary change. It probably will be the most important domestic issue in the election this year. As physicians and medical professionals we are charged to put our patient's well being above all else. Therefore we should have some input into the process of change, but the politicians and the drug and insurance companies, who will have lots of ideas of their own, are not likely to seek us out for our opinions. We will need to speak up intelligently and forcefully or we will be ignored.

So what does this have to do with licensing and the Board? I would say plenty. Though much of our work is disciplinary, we are in the unique position of formulating and writing rules, which govern medical practice, which must be approved by the governor. Often, we are the ones who go to court to defend the current laws. We work closely with the Federation of State Medical Boards where much of medical licensing policy is developed. The Board frequently encounters scope of practice and other issues and while we are charged to protect the interests of the public, we welcome responsible input from practicing professionals in the state.

So read the newsletter, attend a meeting, learn about us and let us hear from you. It is in everyone's best interest for you to know us better.

Trouble Brewing in Medical Spas

by Lyle Kelsey, Executive Director

Now that we have your attention, every medical board in the country is wrestling with "why a medical spa should be operated any differently than a medical office". Some doctors feel that medical spas are commercial ventures with many elective (non-insurance) procedures being offered and with little if any risks associated with them. Other doctors strongly disagree, indicating that if a doctor is needed to "market" the services, then the spa is by definition a medical office and therefore should be accountable for patient safety, proper examinations and supervision. Once again history repeats itself, doctors want involvement, supervisory control and related proceeds; yet, in actuality, they are involved less, exert less supervisory control and still want to realize proceeds. That may seem harsh and unrealistic. But why are "scope of practice and patient safety issues" so much in the forefront of healthcare today?

Patients having medical services, whether elective or not, in a medical office, spa or a private home, ought to expect the very same considerations of safety, professional training, proper setting, appropriate examinations, charting and follow-up care.

Though medical spa mistakes are rare and adverse reactions often are anticipated and treated, the level of services are still medical in nature and require a physician (MD or DO) to be involved. Many of the substances and services used in a medical spa require a physician to purchase, order and/or at a minimum supervise the delivery.

The Oklahoma State Medical Association and the Oklahoma State Board of Medical Licensure & Supervision have organized a multi-specialty task force to discuss this topic and develop guidelines. The task force has met several times and started out with strong differing opinions; however, at the last meeting the group did embrace that the establishment of a doctor patient relationship is foremost, which would require at a minimum a first exam by a doctor. The recommendations on level of training, delegation and supervision of other professionals actually providing the service are being considered. The task force intends to have some guidelines for dissemination during the first quarter of 2008. In the meantime, don't let someone else use your medical license unless you know the risks and are involved in the practice.

Thoughts on a Recent Board Meeting

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

Two matters were discussed at a Board meeting earlier this year that concern all physicians in Oklahoma. Both were on applicants for licensure but are just as pertinent to all of us already licensed. The first was an out of state doctor who is an employee of a telemedicine firm.

This particular firm is named "Teledoc" but there are others with the same general scheme. The company registers patients who provide self-generated medical histories and information. Whenever the customers feel the need for treatment, they are placed in touch with a physician (within a short time span) via Internet or phone, and the physician gives advice or treatment (e.g., prescriptions) directly to the customers.

The application was denied, but any physician already licensed in Oklahoma could join such an arrangement without the Board being given notice. Policies (and pertinent law) have been published by the Medical Board concerning Telemedicine and Internet Prescribing. For any doctor seeking to participate in either activity, it is not recommended reading – it is mandatory.

Quote, "sufficient examination and establishment of a valid physician/patient relationship cannot take place without an initial face-to-face encounter with the patient." The policies then go on to list the minimum requirements. These policies may be obtained at our office or via the website. This does not prevent doctor-to-doctor consultation via tele-methods (e.g., radiology or pathology).

Stand warned, you may be recruited to engage in dangerous and illegal practice.

The other application involved a doctor who had lost his clinical ER privileges in another state due to patients and nurses complaints at his attempts at humor. Fellow employees felt his jokes ed over into sexual harassment. Patients were offended by the banter which often they only half heard. If you feel the need to be a stand up comic (Seinfeld certainly has gotten rich) then go perform at a comedy club. Sick, aching and disturbed patients are seeking succor, not rib tickling.

By the way, the doctor said he learned his lesson and got his license.

AAMC Releases State Workforce Data Book

The Association of American Medical Colleges' Center for Workforce Studies has released a new report examining the active physician supply in each state, current medical school enrollment, physicians in graduate medical education programs and in-state retention rates. The AAMC 2007 State Physician Workforce Data Book includes charts and tables showing data for all 50 states, in addition to national averages. The free report is available at: http://www.aamc.org/workforce/statedatabooknov2007.pdf.

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. To view the rule, visit http://www.deadiversion.usdoj.gov/fed_regs/rules/2007/fr1119.htm.

To supervise, or not to supervise: that is the question

by Lyle Kelsey, Executive Director

Over the years, the "arms length" supervision of specifically Physician Assistants has grown longer and longer, often with very satisfying results.

Doctors can even supervise PA's at considerable distance by telephone and a required on-site visit one half day a week. This relationship between the doctor and PA has been a tremendous positive step toward increased patient care.

However, there has been a trend over the last 10 years for healthcare entities (hospitals, large clinics, ER facilities) to hire the PA directly and then ask a doctor to be their supervisor. On the surface, there is no initial problem with this arrangement. But think for a minute, who is ultimately responsible for the PA's care? Is the physician or the entity responsible? You know the answer…the physician! That is why the physician should be very confident in the qualifications of and working relationship with the PA. Supervision can be very critical in medical situations and a clear understanding between the physician and the Physician Assistant of who is in charge can be paramount. When an entity can hire, pay and fire a PA, the lines of authority in medical matters can become blurry.

So the decision to supervise or not to supervise…is a question the doctor has to take seriously before signing on to become a supervising physician. The doctor should have a clear understanding of the expected roles and authority of the supervising doctor and physician assistant. The doctor's liability depends on it.

A summary of some of the PA rules relating to responsible supervision are listed in the inset to the right. Obviously, there are many more general rules in the PA law & rules concerning physician supervision. You are encouraged to go on-line and download the PA Rules at www. okmedicalboard.org under the "Physician Assistants" link or contact the medical board and request a mailed copy.

Physician Assistant Supervision 101

(Summarized from the PA Rules)

- Supervision implies that the physician regularly and routinely reviews, and is involved in the health care services delivered by the physician assistant.
- The supervising physician is responsible for the formulation or approval of all orders and protocols, which direct the PA.
- The physician regularly reviews the charts and care rendered by the PA
- The physician is available physically or through telephone for consultation, assistance with emergencies, or referrals.
- Remote setting: the supervising physician is on-site to provide medical care to patients a minimum of one-half day per week.
- New patients: it is assumed by the Board that the physician will be actively involved in the initial care of any new patient. When this is not possible (remote setting) the PA will be identified to the patient as a PA and shall schedule the physician to see the patient at the next visit.
- New patients seen by the PA and diagnosed with chronic or complex illness: the PA shall contact the supervising physician within 48 hours and determine the next step to be taken
- Hospital Setting: Initial workup of admitted patients by the PA is acceptable as long as the physician reviews and countersigns the workup, usually within 24 hours.

Did you know?

The Oklahoma Medical Board has rules and guidelines on

- Registering to dispense drugs and compounded medicines from the physician's office
- Sexual Misconduct
- Telemedicine
- Office Based Surgery, Other Invasive Procedures & Anesthesia Desiderata
- Internet Prescribing
- Use of Controlled Substances for the Treatment of Pain

These can be found on the Medical Board Website: www.okmedicalboard.org

Board Meeting November 2, 2007

The Board met in regularly scheduled meeting to consider licensing and disciplinary concerns.

Seven full medical licenses were issued after personal appearances. Two doctors were reinstated after having been retired for a relatively short period. Three applications were tabled when the applicants did not appear.

One MD was suspended indefinitely based on a competency evaluation and the failure to be able to get into a remedial training program. A Physician Assistant was suspended for a minimum of six months and will be on probation if the suspension then is lifted. The suspension was based on personal substance abuse. A Respiratory Care Practitioner was suspended for six months with probation to follow, after having been convicted of two counts of possession of an illegal substance.

One medical license was surrendered in lieu of prosecution for a felony conviction of insurance fraud and narcotic distribution in another state.

Details of actions taken are available on the Board's web site at www.okmedicalboard.org.

Meeting Dates for 2008

Thursday's at 9:00 am, continuing to Friday if necessary:

January 17th – 18th
March 13th – 14th
May 15th – 16th
June 27th
July 17th – 18th
September 18th – 19th
November 6th – 7th

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