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Volume 3, No. 2

NEWSLETTER

June 1989

1989 Renewals

As many of you have unfortunately experienced, the Board imposed a late payment penalty on renewals postmarked after February 1, 1989. By law, *renewal fees are due on or before January 1 of each year*. Penalty fees were waived over the past few years as the Board was late in sending out renewal notices. The most recent renewal notices, however, were mailed in November 1988, which the Board felt was more than timely. Licenses not renewed by March 31, 1989 were suspended for nonrenewal. Assuming renewals go out in November again this year, the *late payment penalties for 1990 renewals will be imposed on renewals postmarked after December 31, 1989*. Licenses not renewed by January 31, 1990, will be suspended for non-renewal.

1989 Meeting Calendar

The 1989 meeting calendar has been revised to eliminate the June business meeting and to schedule an August business meeting. The revised schedule for the year is as follows:

January 18-20	July 19-21
February 22-24	August 16-18
March 22-24	September 21-23
April 12-14	October 25-27
May 24-26	December 6-9

As previously noted, items for meeting agendas must be received in the Board office in writing at least 20 working days prior to the meeting.

Dr. Nunnally Honored

The Board is delighted to report that its immediate past president, Richard M. Nunnally, M.D., Baton Rouge, was recently honored as the recipient of the 1989 John H. Clark, M.D. Leadership Award, presented by the Federation of State Medical Boards of the United States at its annual meeting in Chicago, on April 29.

Given in memorial to the 61st President of the Federation, the Clark Award recognized Dr. Nunnally for his "distinguished leadership in the field of medical licensure and discipline." A plaque commemorating the award bears the inscription: "His dedicated efforts at state and national levels have furthered the goals of the Federation of State Medical Boards and advanced the public good in the spirit of service exemplified by John H. Clark, M.D...." The Board joins the Federation in paying tribute to Dr. Nunnally for his invaluable contributions to medicine in service of the Federation, and of the Louisiana State Board of Medical Examiners

1988 in Review

Licensure. During 1988, the staff processed and the Board approved licensure or certification of applicants in the following categories:

Acupuncturists	0
Acupuncture Assistants	0
Athletic Trainers	9
Emergency Medical Technicians	
Paramedic	101
Intermediate	64
Lay Midwife Practitioners*	0
Occupational Therapists	57
Occupational Therapy Assistants	11
Osteopaths	
Licensed to Practice Osteopathy Only..	0
Licensed to Practice Medicine	9
Physician Assistants Class I	9
Physician Assistants Class II	6
Physicians†	
Preceptorships/Mini	
Residency Permits	11
Intern Registrations	99
Resident Permits	3
Visiting Physician Permits	10
Full License on Examination	450
Full License on Reciprocity	345
Podiatrists	2
Radiological Technologists	98
Respiratory Therapists	117
Respiratory Therapy Technicians	321
Respiratory Therapy	
18 Month Temporary Permits	155
24 Month Temporary Permits	84

The Board anticipates that at the conclusion of renewal processing for 1989, we will have a total current population of all categories of approximately 15,000. Of that number, approximately 13,000 are physicians. We have close to 8,200 physicians practicing in Louisiana and 4,800 out-of-state physicians who maintain current licensure in Louisiana. Since the Board began registering dispensing physicians in December 1987, 163 physicians have been registered.

Act 887 of 1988 amended the Medical Practice Act to provide for full licensure of individuals who have been actively engaged in the practice of medicine for a minimum of four years under an Institutional Temporary Permit. The Institutional Temporary Permit, which is no longer issued and has not been issued for several years, was primarily issued to medical graduates who did not meet the educational or training qualifications for full

* In December 1988, five lay midwife practitioner candidates sat for examination; four passed and one failed.

† Of the 795 full licenses issued to physicians, 701 were issued to U.S. or Canadian graduates and 94 issued to foreign medical graduates.

licensure in Louisiana, but who could pass the Board's licensure examination. The permit was generally issued for the purpose of accepting a position on the staff of a State institution. Of the 27 institutional permit holders eligible for transfer, 26 have been issued full, unrestricted licensure.

Letters

Patient Records. In the last issue of the *Newsletter*, we noted that one of the more common complaints against physicians is the failure or refusal by a physician to provide patients (or subsequent physicians) with copies of medical records. It was observed that R.S. 40:1299.96 directs a health care provider to provide patients, on request, with a copy of "any information related in any way to the patient which the health care provider has transmitted to any company, or any public or private agency, or any person." Since then, it has been brought to our attention by one of our readers—and confirmed by the Board's legal counsel—that federal regulations governing the confidentiality of medical records prepared by physicians for the Social Security Administration would override the state statute.

1990 Renewals. The last *Newsletter* advised that the Board was planning to implement a renewal fee reduction for physicians 70 years of age or over, or demonstrably disabled, who are willing to forego prescription privileges. What should have been noted was that the prescription restriction is intended to apply to controlled substances only.

Physician Authorization of Prescriptions for Medications by Optometrists

In response to a number of reported incidents of optometrists' dispensation or prescription of medications in association with physician ophthalmologists who had either provided pre-signed prescriptions or had otherwise authorized the optometrists' prescriptions without having examined the patients involved, on February 22, 1989, the Board issued a formal statement articulating its views on such optometrist/ophthalmologist relationships as well as its administrative enforcement position. The Board's advisory ruling was as follows:

[I]t is clearly illegal for an optometrist to diagnose or treat medical diseases or conditions of the eye or to prescribe, dispense, or administer any prescription medication other than "ocular diagnostic pharmaceutical agents."¹ In the express words of the

Optometry Act, "[t]he practice of optometry does not include the use of pharmaceutical agents, in the treatment of disease." La. Rev. Stat. § 37:1041(3). Thus, an optometrist who diagnoses a medical condition, such as glaucoma, and undertakes to use or prescribe medications to treat the disease, violates the Optometry Act in at least two respects, violations which constitute grounds for suspension or revocation of licensure, La. Rev. Stat. § 37:1061(15),² and for which an optometrist could be criminally prosecuted, La. Rev. Stat. § 37:1068.³ Such conduct equally constitutes the unlawful practice of medicine, subjecting the violator to injunction and criminal sanctions under the Medical Practice Act.⁴ It is a distinct violation—also subject to administrative or criminal sanction under the optometry law—for an optometrist to "[c]onspire with any other person to violate" any provision of the Optometry Act. La. Rev. Stat. § 37:1063(12).

It is equally certain that a physician who authorizes the filling of prescription medications for an optometrist, without having seen or examined the patient, violates the Medical Practice Act by "[k]nowingly performing [an] act which, in any way, assists an unlicensed person to practice medicine, [and] having professional connection with or lending [his] name to an illegal practitioner." La. Rev. Stat. § 37:1285(A)(18). Such conduct could also be deemed to constitute "[p]rofessional or medical incompetency" or "recurring medical practice which fails to satisfy the prevailing and usually accepted standards of medical practice in this state," La. Rev. Stat. § 37:1285(A)(12), (14), when it implicates the physician's issuance of a prescription or authorization for a toxic medication without having seen the patient and thus being unable to make the necessary medical judgment with respect to the indications and contraindications of the medication. In either case, the Board would have legal grounds to suspend or revoke the physician's license.

In summary, an optometrist engaged in the reported practices would be subject to administrative action by the Optometry Board, injunctive action by this Board and possibly state and federal criminal

LA. REV. STAT. ANN. § 37:1041(3) (emphasis supplied). The term "diagnostic pharmaceutical agent" is further definitionally restricted to

any chemical in solution, suspension, emulsion, or ointment base other than a narcotic which when applied topically to the eye, results in physiological changes which permit more efficient, or otherwise facilitate, examination of the external eye or its adnexa or the evaluation of vision, or which is necessary to determine normal physiological function as part of an examination regimen.

LA. REV. STAT. ANN. § 37:1041(4). An optometrist must, however, be specifically approved by the Louisiana State Board of Optometry Examiners to employ topical ocular diagnostic pharmaceutical agents. LA. REV. STAT. ANN. § 37:1067.

²The cited statutory section prohibits an optometrist from "[u]sing, prescribing, giving away, selling or offering for sale, or have in his possession any eye remedy, lotion, salve, or medicine of any kind or description, or practicing medicine or surgery for the use of carrying on the practice of optometry"

³Criminal prosecution under the cited statute would be as a misdemeanor. It should be noted, however, that an optometrist could also be subject to more serious criminal prosecution under Federal law governing prescription medications.

⁴See LA. REV. STAT. §§ 37:1271, 1286.

¹The Optometry Act, LA. REV. STAT. ANN. §§ 37:1041-1068 (West 1988), defines "optometry" as

that practice in which a person employs or applies any means other than surgery, for the measurement of the powers and testing the range of vision of the human eye, and determines its accommodative and refractive state, general scope of function, and the adaptation of frames and lenses, including contact lenses in all their phases, to overcome errors of refraction and restore as near as possible, normal human vision. The practice of optometry does not include the use of drugs or medications, except the use of topical ocular diagnostic pharmaceutical agents and then only by a licensed optometrist and in accordance with the provisions of this Chapter. The practice of optometry does not include the use of pharmaceutical agents in the treatment of disease.

prosecution. A physician so involved could and would be administratively prosecuted by the Board of Medical Examiners.

Anabolic Steroids

Act 362 of the 1988 regular legislative session, R.S. 40:1239, made it unlawful to furnish, sell or possess an anabolic steroid except upon the prescription of a licensed physician, dentist or veterinarian. A bill pending before the current legislative session, if enacted, would designate anabolic steroids as controlled substances.

The Board's appreciation of the literature and the opinions of the overwhelming majority of practicing physicians is that such drugs are inappropriate for use to enhance athletic performance. The Board has also observed growing concern within the athletic community, particularly among athletic trainers, with the use of steroids. The Board would welcome comments on the medically inappropriate use of anabolic steroids, particularly from those aware of adverse effects and those with information about the magnitude of the problem in this state.

Drugs Used in the Treatment of Obesity

The Board has undertaken a study to determine whether substantive regulations are warranted with respect to the use of various medication regimes in the treatment of obesity, such as weight control programs utilizing HCG, thyroid, and other medications as adjunctive therapy. Upon conclusion of its initial study, the Board intends to conduct a public hearing, to be scheduled during the late summer or early fall of this year.

At present the Board is soliciting comments or information which practitioners or the public may wish to submit concerning the subject, focusing particularly on the effectiveness or utility of and contraindications for the various medication regimes commonly promoted for and used in weight reduction programs. Persons wishing to submit comments, or to receive individual notice of the scheduling of public hearing on the issue, should direct their comments or request for notice to the Board office in writing.