

NEWSLETTER

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In this issue of the *Newsletter* we provide timely updates on subjects that may affect your practice. For more information about all of these topics and more – visit our website at www.lsbme.la.gov and while you are visiting subscribe to the RSS feed to keep up with the News from the Board. Links to citations included herein may also be found on our website.

We welcome your feedback on the topics that are presented and recommendations regarding future topics as well as legislative and/or rule making efforts and board services. Please contact us at feedback@lsbme.la.gov.

From the Desk of the Executive Director

At this time of year, it is our custom to examine the changes and accomplishments of the previous year and to look forward as we make plans for future projects and develop new goals.



During 2013, the Board saw changes in membership and staffing. Dr. Marier retired after serving eight years as Executive Director. The Governor appointed two new members, Drs. Bart

Farris and Joseph Busby, Jr. to replace Drs. Lehrue Stevens and Kim Edward LeBlanc.

The Board issued 1,500 new licenses and processed 23,000 renewal applications. We reviewed 149 malpractice settlements and processed 1,023 complaints.

With the assistance of our advisory committees, the Board promulgated, or is in the process of promulgating rules regarding the practice of Polysomnography, Perfusionists, Occupational Therapists, and Athletic Trainers. In addition, changes were made to the Dispensing Rules, CDTM Rules and certain exemptions

in testing requirements for reciprocity applicants and out-of-state physician orders. In February 2013, the Board published a Statement of Position regarding the Use of Stem Cells.

Moving forward, the Board is committed to the improvement of our online services and the ease with which applicants can apply for and renew licenses. We are also in the process of redesigning our website for easier navigation by both our licensees and the public. We are developing online education courses on the Board's Rules for new applicants.

One of the biggest challenges facing medicine today is the rise of prescription drug abuse and misuse, and the resulting increase in injuries and death. The Board encourages all physicians to take advantage of practice resources such as the Prescription Monitoring Program, and to seek educational opportunities so that opiates (and other controlled substances) are prescribed for an appropriate indication, in a safe manner with appropriate monitoring of the patient.

As the delivery of health care is rapidly changing, and with the expectation of an increase in the numbers of patients receiving health care, the Board will be assisting other agencies to collect accurate information about physician workforce and shortage areas. Some of you may already have received an email request from us requesting your participation in an online survey from DHH. We encourage all of you to participate in these efforts. In the future, your renewal application may include a few additional questions towards this end.

Most importantly, this is the time of year to consider and commit to our most important mission, which is to protect the health and safety of the citizens of Louisiana. I look forward to the challenges that await us in the coming year.

Cecilia Mouton, MD

Board Appointments

As of March 2013 the Board has two new members, Joseph (Jay) Busby Jr., MD and Kenneth Barton Farris, MD. They will serve until January 2017, and are replacing outgoing members Lehrue Stevens, MD and Kim Edward LeBlanc, MD, PhD, whom the Board warmly thanks for their service to the medical community.

Dr. Busby is originally from Winnsboro, and received his MD from LSU in New Orleans. He completed a surgery residency at the University of Hawaii in Honolulu, and a Urology Residency at Ochsner in New Orleans. He resides in Winnsboro and Monroe, where he has practiced Urological Surgery since 1980. Dr. Busby is affiliated with various hospitals in Winnsboro and Monroe, most notably Monroe Surgical Hospital where he is a former Chief of Staff and Board member, and Franklin Medical Center, where he was Chief of Surgery for 25 years. He is a past president of the Louisiana State Medical Society, and has served on many of its committees. He currently serves on the Budget and Finance Committee as well as the Board of Directors of LAMPAC, the Society's political action committee.

Dr. Farris is a New Orleans native, and a Board Certified Pathologist. He received his medical degree and Master of Public Health from Tulane University in 1975, and completed his internship and Residency in Pathology at Charity Hospital in New Orleans in 1979. He is a Partner in the Delta Pathology Group and the Director of Pathology at West Jefferson Medical Center, and a Clinical Associate Professor of Pathology at both Tulane and LSU Schools of Medicine. Dr. Farris has a long history of public service in the medical field as a founding member of the Greater New Orleans Pathology Society, a delegate to the AMA House of Delegates, and various past roles with the Louisiana State Medical Society including Delegate, Board of Governors, Speaker and President.

In the News**In Office Lab Tests – Are all of your Tests “Waived”?**

The FDA is concerned that physician offices may be in violation of the Clinical Laboratory Improvements Amendments (CLIA), the legislation passed in 1988 that requires a certificate if laboratory tests that are not “waived” are being performed on site. Waived tests are those of sufficiently low complexity in their administration and interpretation that the requirement for a certificate is “waived” if they are used in a non-laboratory setting. In CLIA, waived tests are defined as simple laboratory examinations and procedures that are cleared by the Food and Drug Administration (FDA) for home use; employ methodologies that are so simple and accurate as to render the likelihood of erroneous results negligible; or pose no reasonable risk of harm to the patient if the test is performed incorrectly.

Physicians and office administrators are urged to look at the

FDA's webpage on Medical Devices, IVD Regulatory Assistance to make sure they are in compliance with CLIA.

www.fda.gov/medicaldevices/deviceregulationandguidance/ivdregulatoryassistance/ucm124202.htm

Free CME Available to Prescribers of Opioids for Chronic Pain

The FDA has recently mandated that manufacturers of extended release/long acting opioids such as Oxycontin provide comprehensive prescriber education in the safe use of these medications. The Federation of State Medical Boards (FSMB) in collaboration with Boston University School of Medicine and the Council of Medical Specialty Societies is co-sponsoring a 3-module web-based activity and 4 live conferences nationwide. The educational program is entitled *Safe and Competent Opioid Prescribing Education (SCOPE) of Pain* and is for physicians, nurse practitioners, physician assistants, registered nurses, nurses, dentists, and pharmacists. This FDA mandate is part of a Risk Evaluation and Mitigation Strategy (REMS) developed to reduce serious adverse outcomes that occur from the abuse, misuse and inappropriate prescribing of these analgesics. The course and accompanying text “*Responsible Opioid Prescribing*” includes up to 7.25 AMA PRA Category 1 credits free of charge. For further information on these educational opportunities, go to www.scopeofpain.com.

Prescription Monitoring Program Update

The Prescription Monitoring Program (PMP) of the Louisiana Board of Pharmacy is now in its fifth year and growing. This program tracks the controlled substances (CDS) prescription records of all patients and all authorized prescribers in the state. Use of the program continues to increase. The Louisiana PMP currently has 6,559 registered users, 4,009 of whom are prescribers. According to Pharmacy Board Assistant Executive Director and PMP Program Manager Joe Fontenot, “Since inception we have had more than 3.5 million queries and are averaging over 3600/day.” Currently only physicians and other authorized prescribers, pharmacists and state agencies are permitted to obtain logins to use the system. Legislation has been proposed to allow physicians to delegate the task of running PMP profiles to other members of their office staff. The Board of Pharmacy expects the legislation which would allow delegation to be completed by mid-2014.

The PMP is an important element in the state's fight against drug diversion. According to the Pharmacy Board the program is key in helping prescribers identify possible doctor shoppers. Enrollment in the program requires filling out a one page application, and a 10-15 minute online tutorial that can be accessed 24/7. The LSBME encourages all frequent prescribers of controlled substances to obtain access to this valuable information to protect themselves and their patients from the serious problem of drug diversion, abuse and misuse. Go to <http://www.pharmacy.la.gov> for information on program access.

Act 352 of the 2012 Legislature authorized the Board of Pharmacy to share program data with PMPs from other states. The Board has executed a Memorandum of Understanding with the National Association of Boards of Pharmacy (NABP), which operates the PMP-InterConnect. As of October 2013, that network hosted 17 states actively sharing prescription data, and it is anticipated that twenty states will participate by the

end of the calendar year. The Louisiana program is a participant in this data-sharing.

Online Rules Courses for New Applicants

Starting in 2014, the application process for certain types of licensure will include a brief online orientation course on the Board's Rules as they pertain to each profession. Applicants will be required to go online, register for the course, review the rules and related materials, and then take a brief quiz. After successful passage of the quiz, a certificate of completion will be sent to the Board and the applicant for their records. This project has been or will be developed in conjunction with the Advisory Committee for each health profession. These Board Orientation courses will be rolled out in stages throughout the year.

If it sounds too good to be true, it probably is...

Physicians are increasingly approached by various entities with business opportunities that may or may not be permissible under the Board's rules or even state or federal law (for specific information on this, please see the Board's Rules on Professional Conduct §7603, and §4201-4219 on Illegal Payments and Required Disclosures of Financial Interests). If the arrangement involves you receiving compensation or other incentives for doing very little other than referring your patients for health care related services, serving as an off-site "medical director," or perhaps issuing/approving prescriptions to a patient you have never seen, you may be running afoul of the law. The Board strongly suggests that before investing or agreeing to be a party to any venture that involves these types of arrangements, consider consulting with your own legal counsel or, at a minimum, contacting a member our staff. An ounce of prevention before entering into any arrangement that seems too good to be true could help you avoid a bothersome "cure" involving significant amounts of paperwork, time, and expense.

Electronic Cancer Reporting

Louisiana law requires that all health care providers report cases of cancer to the Louisiana Tumor Registry (LTR). An opportunity to simplify reporting while complying with the law and Meaningful Use Stage 2 requirements is available through Louisiana Health Information Exchange (LaHIE). More information about the state law (R.S. 40:1299.80 et seq.) and about contacting LAHIE is available at: <http://louisianatumorregistry.lsuhs.edu/lawrules.aspx>

Responsible Opioid Prescribing Education Courses – Grant Application

The Board is currently applying for an ER/LA Opioid Analgesics REMS (Risk Evaluation and Mitigation Strategy) grant from the Federation of State Medical Boards to provide education on the safe and effective prescribing of ER/LA opioids to prescribers.

The funds would enable the Board to provide four 3-hour REMS-compliant continuing education courses in Baton Rouge, Lafayette, New Orleans and Shreveport from June through December, 2014. The intended audiences for the courses are physicians who are registered with the DEA and eligible to prescribe schedule II and III drugs. AMA PRA Level 1 CME credits will be offered for course completion.

If you would like to receive details on the anticipated course offerings, please contact the Research and Education department at sallen@lsbme.la.gov

Breast Cancer Treatment Alternatives – It's the Law

In accordance with La. R.S. 40:1300.153, the Louisiana Department of Health and Hospitals is required to create written summary of the advantages, disadvantages, risks, and descriptions of the procedures regarding medically viable and efficacious alternative methods of treatment for breast cancer including surgical, radiological, or chemotherapeutic treatments or combinations thereof. The summary shall include a discussion of breast cancer reconstruction surgery, including but not limited to problems, benefits, and alternatives. The link to this brochure can be found on our website under Healthcare Resources on the left side of the homepage.

In accordance with La. R.S. 40:1300.154, this brochure shall be discussed with and given to every patient diagnosed with breast cancer prior to beginning treatment for any form of breast cancer, and the treating physician or surgeon shall note in the patient's chart the date and time of compliance. Failure to comply shall be considered unprofessional conduct and cause for the LSBME to take action as provided by La. R.S. 37:1285.

The LSBME strongly urges that physicians and surgeons who order breast imaging procedures, diagnose breast cancer, treat breast cancer patients or perform any type of breast cancer surgery or reconstructive surgery download the brochure and make ample copies for your office, imaging center or surgical center.

Legislation Passed in 2013

Physician Requirements for Abortions (June)

[Act 259 \(2013\)](#) amends and reenacts existing law relative to abortions. The Act provides for certain requirements which must be met by a physician who performs an abortion. The Act states that no person shall perform an abortion unless he/she is a physician licensed to practice medicine in this state and is currently enrolled in or has completed a residency in obstetrics and gynecology or family medicine. It further states that when any drug or chemical is used for the purpose of inducing an abortion, the physician who prescribed the drug or chemical shall be in the same room and in the physical presence of the pregnant woman when the drug or chemical is initially administered, dispensed, or otherwise provided to the pregnant woman. Any outpatient abortion facility that knowingly or negligently employs, contracts with, or provides any valuable consideration for the performance of an abortion in an outpatient abortion facility by any person who does not meet the requirements is subject to having his license denied, non-renewed, or revoked by the Department of Health and Hospitals.

Rules – Adopted and Promulgated in 2013

[Physician Practice; Dispensation of Medications](#) (April)

A Notice of Adoption and promulgation of amendments with respect to the physician practice; dispensation of medications was published in the April issue of the *Louisiana Register*. The amendments provide that a registrant may dispense up to a single seven day supply of a non-narcotic, non-anorectic Schedule V controlled substance for the purpose of assessing a therapeutic response when prescribed according to indications approved by the United States Food and Drug Administration and: 1) the medication is prepackaged by the original manufacturer; 2) the prepackaged medication is provided at no cost to a dispensing physician for dispensation to a patient at no cost to the patient; and 3) The dispensing physician submits all required information regarding each dispensation to the Louisiana State Board of Pharmacy in accordance with the Prescription Monitoring Program Act, R.S. 40:4001 et seq.

[Physician Practice; Exemption to Licensure; Out of State Physician Orders](#) (December)

A Notice of Adoption and promulgation of a new rule that a license to practice medicine in this state shall not be required for routine diagnostic testing ordered by an out-of-state physician for an established patient provided: 1) the physician-patient relationship was initiated by an in-person, face-to-face visit in a state other than Louisiana where the out-of-state physician is duly licensed to practice medicine; 2) the order can be verified by the health care facility or provider to which or to whom it is presented, and 3) the results of such testing are provided directly to the ordering out-of-state physician.

[Polysomnography; General, Licensure and Certification and Practice](#) (December)

A Notice of Adoption and promulgation of rules respecting the general regulation, licensure, certification and practice of polysomnographic technologists and technician was published in the December issue of the *Louisiana Register*. The rules furthermore set forth the fees and costs for issuance of initial licensure as well as the cost for processing the annual renewal application.

[Physician Practice; Qualifications for Medical Licensure by Reciprocity](#) (December)

A Notice of Adoption and promulgation of amendments governing qualifications for medical licensure by reciprocity was published in the December issue of the *Louisiana Register*. The amendment provides that an applicant who possesses all of the qualifications and requirements for licensure by reciprocity specified by §353.A, save for having taken and passed a written certification or recertification examination, SPEX or COMVEX-USA, as described in §353.A and §353.B within 10 years of the date of application, shall nonetheless be considered eligible for licensure by reciprocity if the applicant is certified by a specialty board recognized by the ABMS or AOA, has been primarily engaged in the practice of medicine in such specialty for the four years immediately preceding the submission of an application, and attests in a form prescribed by the board that applicant's practice in this state will be limited to the applicant's specialty.

[Physician Practice; Collaborative Drug Therapy Management](#) (December)

A Notice of Adoption and promulgation of amendments of the Board's rules governing collaborative drug therapy management was published in the December issue of the *Louisiana Register*. The rule amends §523 for the purpose of simplifying the recordkeeping and reducing the administrative burden for those pharmacists engaging in collaborative drug therapy management activities.

[Physician Practice; Dispensation of Medications](#) (December)

A Notice of Adoption and promulgation of amendment with respect to physician practice; dispensation of medications was published in the December issue of the *Louisiana Register*. The amendment provides that to be eligible for registration as a dispensing physician for all medication except controlled substances and drugs of concern, a physician shall, as of the date of the application: 1) Possess a current, unrestricted license to practice medicine duly issued by the board; 2) Have successfully completed a graduate medical education training program approved by the board; 3) Successfully complete on-line or other training offered by the board respecting its dispensing rules; and 4) Not be deemed ineligible for registration as a dispensing physician for any of the causes set forth in §6513.B-D of this Section.

[Occupational Therapy: Examination](#) (December)

A Notice of Adoption and promulgation of amendments of its rules governing the restriction and limitation on the number of examination attempts for occupational therapy licensure was published in the December issue of the *Louisiana Register*. The amendment provides that an applicant who fails the examination four times shall not thereafter be considered for licensure until successful completion of continuing education or additional training.

In the News

The Use of Telemedicine Technologies with Established Patients. In recent months, the Board has received inquiries from Louisiana licensed physicians engaged in the practice of medicine within this state who would like to use telemedicine technologies to communicate with patients who have been seen in their offices between regularly scheduled office visits but are unable to do so in strict compliance with the Board's Telemedicine Rules.¹ Because these communications typically take place when the patient is at home, a licensed health care provider is not present in the room with the patient to assist with the interaction.²

The Board recognizes that telemedicine technologies are rapidly advancing and continue to provide opportunities for improving the delivery and accessibility of quality healthcare to patients in this state. In an office practice particularly, telemedicine technologies can enhance medical care by facilitating communication between physicians and their patients as they monitor chronic conditions, assess responses to new medications or therapies, review and discuss the results of diagnostic studies or consultations, or provide health care information to clarify medical advice. In the Board's view, physician use of telemedicine technologies in this manner is wholly consistent with the manner that physicians have typically utilized telephone or email to follow-up with their established patients.

In consideration of the above, and in line with our on-going desire to facilitate the use of telemedicine technologies in the delivery of medical care, the Board wishes to advise physicians that the use of telemedicine technologies³ to communicate with established patients between regularly scheduled office visits will not, for purposes of enforcement, be considered *telemedicine* provided the following conditions are observed: (i) such interactions may only be used with an established patient (e.g., those with whom there has been a face-to-face office visit); (ii) the patient's medical record is available to the physician; (iii) such interactions would not be used to address any condition that would require a physical examination; (iv) the patient maintains the option of being seen by the physician if the patient or physician believes that the complaints warrant a face-to-face interaction and/or physical examination; and (v) such interactions shall not be used to prescribe controlled substances.

In due course, the Board plans to undertake a rule-making effort to amend its Telemedicine Rules consistent with this advice.

PT Dry Needling. The Board has recently received inquiries and complaints from physicians in this state concerning the appropriateness of physical therapists (PTs) performing *dry needling* on their patients. Some have advised that this procedure was performed without the referring physician's knowledge or direction and in one instance the physician reported that due to the patient's condition dry needling was contraindicated. The question has also been raised as to whether the referring physician could bear some liability in the event of a complication.

Given that dry needling is a form of "treatment" it must be preceded by a prescription or referral of a physician or other authorized provider.⁴ In our on-going discussions with the Louisiana Physical Therapy Board, and our consideration of this issue generally, it has become apparent that PTs believe that they are authorized to perform this procedure under a general order of a physician to "evaluate and treat."

In the Board's view, dry needling constitutes the practice of medicine and should only be performed by a physician or an acupuncturist's assistant. While the Board is considering how this issue might best be addressed, we take this opportunity to alert physicians that unless specifically excluded from a physical therapy referral, it is possible that dry needling may be performed on your patient. Therefore, if you do not intend to authorize dry needling on a patient for whom you prescribe physical therapy services, you will need to specifically exclude it from your referral.

¹LAC 46:XLV.7501-7521.

²As with the law, the Board's rules require that 'A licensed health care professional who can adequately and accurately assist with the requirements of §§7509 and 7511 of this Chapter shall be in the examination room with the patient at all times that the patient is receiving telemedicine services.' La. Rev. Stat. §37:1271B(2); LAC 46:XLV.7407B.

³The Board reminds physicians of their obligation to insure that all patient-physician interactions are conducted in a manner that is consistent with state and federal requirements governing patient privacy and security.

⁴La. Rev. Stat. §37:2418B.