

LOUISIANA STATE BOARD OF MEDICAL EXAMINERS NEWSLETTER



630 Camp Street
New Orleans, La. 70130
Post Office Box 30250
New Orleans, La. 70190-0250
Telephone: (504) 568-6820
Facsimile: (504) 568-5754

KIM EDWARD LEBLANC, M.D., Ph.D., Breaux Bridge, *President*
KWELI J. AMUSA, M.D., Slidell, *Vice-President*
MELVIN G. BOURGEOIS, M.D., Morgan City, *Secretary-Treasurer*
ELMO J. LABORDE, M.D., Lafayette
KEITH C. FERDINAND, M.D., New Orleans
TRENTON L. JAMES, II, M.D., Baton Rouge
LINDA GAGE-WHITE, M.D., Ph.D., MBA, Shreveport

Volume 16, Number 1

April 2004

Bioterrorism/Emergency Response

Statement of Position

A bioterrorism attack or some other national disaster has the capacity to wreak devastation on both the public and private sectors and in many instances renders elements of state government essentially non-operational. In such instances a rapid and effective response is of the utmost importance to the welfare of our citizens. The need for physicians to see patients and provide patient-specific orders and inoculations, as would occur in non-emergent times, must necessarily give way to a quicker system of vaccine delivery when faced with the challenge of inoculating the population of hospitals, neighborhoods or even entire cities. Accomplishing such enormous tasks would more than likely not be feasible with the existing number of physicians and other personnel currently licensed to practice in this state. Louisiana law recognizes the potential for these extraordinary circumstances by allowing individuals who are not licensed by the Board to provide assistance that in normal times would be considered the practice of medicine¹ (i.e., the determination of who, how and in which manner vaccines and other medications are to be administered, the administration of such vaccines and/or medications and responding to adverse reactions).

The Board wishes to announce its view that in the event of a bioterrorism attack or a similar national, regional or state emergency, when so declared by the President of the United States or the Governor of this state, the administration of vaccines and other medications needed to respond to an infectious disease or agent may, in the Board's view, be administered by *out-of-state non-Louisiana licensed physicians, any health care provider licensed by the Board and any other appropriately trained person* when such individuals are designated or permitted by and act under the protocol and/or standing orders of the President of the United States, the Secretary of the United States Department of Health and Human Services, the United States Office of Homeland Security, the Centers for Disease Control, the Governor of Louisiana or the Public Health Officer of this state. The Board will consider the above-described circumstances to constitute "the administration of first aid in cases of emergency," thereby relieving responders of the need to apply for or hold medical

licensure in this state.

¹In particular, the Louisiana Good Samaritan Law, La. R.S. 9:2793, provides a level of immunity from civil liability for individuals providing medical services in cases of emergency. Equally as significant, the Louisiana Medical Practice Act provides a specific exemption from licensure for "[T]he administration of first aid in cases of emergency," La. R.S. 37:1291(2).

Billing For Outpatient Anatomic Pathology Services

A number of measures impacting the Board, physicians and the practice of medicine in general were considered by the legislature during the 2003 session. One such bill is Act 718, R.S. 37:1742 (referred to herein as the "Law") which prohibits physicians and other health care professionals from billing or otherwise soliciting payment for outpatient anatomic pathology services. The Law, which was designed to strengthen Louisiana's existing prohibitions against fee splitting, kickbacks and other illegal payments involving pathology services, exempts from its application services performed personally by a physician or under his direct supervision and those rendered by a pathologist licensed to practice in Louisiana. The Law authorizes the Board to take action against any physician who violates its terms and relieves patients, third-party payors and others from any obligation to reimburse physicians for claims submitted in violation of its provisions. The Law is set forth below in its entirety:

ACT 718

R.S. §37:1742. Anatomic pathology services; billing; violations:

A. Except as set forth in Subsection B, no person licensed in the state to practice medicine, dentistry, optometry, podiatry, or chiropractic shall charge, bill, or otherwise solicit payment for outpatient anatomic pathology services unless the services were rendered personally by the licensed practitioner or under the licensed practitioner's direct supervision.

B. A person who is licensed in the state to practice medicine

and who is qualified as a specialist in pathology, or a professional legal entity of which such person is a shareholder, partner, or owner, may submit a bill for outpatient anatomic pathology services only to:

- (1) The patient directly.
- (2) The responsible insurer or other third-party payor.
- (3) The hospital, public health clinic, or nonprofit health clinic.
- (4) The referral laboratory or the primary laboratory.

C. The respective state licensing boards having jurisdiction over the practitioners enumerated above, in addition to all other authority granted by this title, may revoke, suspend, or deny renewal of the license of any practitioner who violates the provisions of this Section. In addition, no patient, insurer, third-party payor, hospital, public health clinic or nonprofit health clinic shall be required to reimburse the practitioners enumerated above for charges or claims submitted in violation of this Section.

D. The provisions of this Part shall not prohibit billing between laboratories for anatomic pathology services in instances where a sample or samples must be sent to another specialist.

GUIDANCE

Since the effective date of the Law (August 15 2003), the Board has received a number of inquiries requesting guidance and advice on what services it considers to be within the scope of outpatient *anatomic pathology* for purposes of exercising its disciplinary enforcement jurisdiction. Principally, if not solely, the inquiries have come from obstetrician-gynecologists who question whether the Board considers "cytopathology" or "cellular pathology" performed in connection with PAP smear testing included within the scope of "anatomic" pathology. While the Law does not define the term that we are called upon to enforce, *i.e. anatomic pathology*, and our view has evolved over the course of our deliberations, extended consideration of this matter over several meetings has led us to conclude that "anatomic pathology" encompasses "cytopathology."

In sum, the Board takes this opportunity to inform all physicians of the existence of Act 718, as well as of its intent to unhesitatingly enforce its prohibitions against physicians charging, billing or otherwise soliciting payment for outpatient anatomic pathology services unless such services are rendered personally by the physician or under his or her direct supervision. For purposes of exercising its disciplinary jurisdiction the Board considers the reach of the Law to encompass outpatient billing for PAP smear (cytopathology) testing.

Licensing Fees

As forecast in its July 2003 edition of this newsletter, the Board has amended its rules to increase the fees charged to physicians and other allied health care professionals it regulates, save for clinical laboratory personnel at the present time. While we understand that a fee increase is never welcomed news, it is important to understand that the Board is sustained by self-generated funds, mainly resulting from licensing fees, without

reliance on the state's general fund for operating expenses. In addition to physicians, the Board licenses ten categories of allied health care professionals, *i.e.*, acupuncturists and assistants, athletic trainers, midwives, clinical laboratory personnel, clinical exercise physiologists, private radiologic technicians, podiatrists, physician assistants, occupational therapists and assistants and respiratory therapists and assistants. Every few years a new category of allied health professionals is added to its jurisdiction.

Despite expansion in the scope and nature of its duties, the last fee increase for any category of licensees by the Board was nearly a decade ago (physicians and physician assistants). Due in large measure to an amendment to Louisiana's constitution requiring that any fee increase be approved by a two-thirds vote of both houses of the legislature, the other nine categories of health care professionals regulated by the Board have not been increased for *nearly two (2) decades*, with all but one of these professions enjoying the same fee now as when the category of license was initially created. To rectify the situation in 2003 the legislature authorized the Board to increase fees for physicians and all other categories of health care professionals that it licenses. For physicians the Board is authorized to charge up to \$350 for an initial license and \$300 for a renewal. For allied health care professions these figures are \$300 and \$200 respectively.

To place matters in perspective, before the fee increase only seven other states charged less than Louisiana for an initial medical license, while more than half (26) charged more than Louisiana for annual license renewal. Without a \$32 assessment for the physician's health program and continuing medical education, Louisiana's initial license fee was the lowest among the southern states of Alabama, Arkansas, Florida, Georgia, Mississippi and Texas; with it, only Alabama charged less, while two states charge nearly 4 times as much and another more than twice as much as Louisiana for an initial medical license.¹ The disparity in the fees charged by Louisiana and other states for the Board's other health care professionals was much the same as with physicians, with Louisiana's fees being among the lowest in the country.

Two or even one decade ago the Board had a handful of employees, a fraction of current licensees and a small leased office space. It now has approximately seventy employees, thousands of licensees, allied health care advisory committees for each licensee category, a continuing education department, a Physicians' Health Program for those suffering from substance abuse or psychiatric problems and a Physician Orientation Program. It also processes criminal records history information requests for all applicants, has a web site, a networked computer system and is faced with complex and ever-changing state and federal laws and regulations impacting the practice of medicine and its responsibilities and duties to the citizens of Louisiana. Yet, even with an increase to the maximum level authorized by law, an initial medical license in Louisiana would still be nearly half the average cost of the above noted southern states, while the cost of renewal would be approximately equal to such average. Similarly, the cost of allied health care professional licenses remains at a very reasonable level when compared to that charged by other states.

The Board will implement the new fee schedule for physicians and its allied health care professionals commencing on May 1, 2004. The new fee schedule for physicians is as follows:

The increase for an *Initial license* to practice medicine is \$150 (from \$100 to \$250 for applicants on the basis of examination, \$200 to \$350 for reciprocity applicants); for *annual renewal* the increase is also \$150 (from \$150 to \$300)²; for issuance/renewal of a *graduate medical education temporary permit* the increase is \$100/\$75 (from \$100 to \$200 for initial, \$25 to \$100 for renewal); for issuance/renewal of *visiting physician, short-term residency, institutional or temporary permits* the increase is \$50 (from \$50 to \$100); and for issuance of an *intern registration* the increase is \$25 (from \$25 to \$50).

¹Source, 2003 State Medical Licensure Guidelines: Information Manual for MD and DO Physicians in the United States of America, St. Barthelemy Press, LTD.

²The \$32 assessment imposed by law for designated services (\$25 for Physicians' Health Program (PHP); \$7 for continuing medical education (CME)) will continue to be an additional assessment to the renewal fees.

Meet the Board

Dr. Kweli Amusa received her undergraduate degree at University of Illinois at Champaign-Urbana and her medical degree from Washington University School of Medicine in St. Louis in 1978. She completed an internal medicine residency at Cook County Hospital in Chicago in 1981. Immediately afterwards, she accepted an attending position at Cook County Hospital in the Department of Medicine, Emergency Medicine Section. She was initially certified by the American Board of Internal Medicine and later by the American Board of Emergency Medicine. She is also a fellow in the American College of Emergency Physicians.

Dr. Amusa moved from Chicago to Slidell in 1985 and currently practices Emergency Medicine at Northshore Regional Medical Center in Slidell where she has been on staff since 1989. She became involved in the New Orleans chapter of the Louisiana Medical Association (the "LMA"), serving various elected



positions which include Vice-President, Secretary, Treasurer and Member at Large at both the local and state levels. She is currently Vice-President of LMA. She has received several President's Awards from the LMA for her service to the organization and to the community. She also serves in the House of Delegates for the National Medical Association and has done so for many years.

Dr. Amusa was appointed to the Board by Governor Mike Foster in April 2000. Over the course of the past four years she has willingly taken on a number of special assignments and served on numerous committees, including that which undertook the successful development and ultimate adoption by the Board of rules for integrative and complementary medicine. She has also been instrumental in the design of procedures aimed at shortening delays and expediting the resolution of disciplinary proceedings. During her tenure on the Board Dr. Amusa has served as Secretary-Treasurer and she is currently serving as Vice-President. Her advice and opinion are sought by the other members and her dedication and enthusiasm have been invaluable assets to the Board and the citizens of this state that it seeks to protect. We are fortunate for her service.

New Officers Elected

During its December 2003 meeting the Board selected new officers to serve for the succeeding two years: KIM EDWARD LeBLANC, M.D., Ph.D., a primary care sports medicine and family practitioner who serves as Director of Louisiana State University Medical Center's Family Practice Residency Program in Kenner, Lafayette and Lake Charles, was elected President; KWELI J. AMUSA, M.D., who practices emergency medicine in Slidell, was elected as the Board's Vice-President; and MELVIN G. BOURGEOIS, M.D., who practices occupational medicine in Morgan City, was elected as Secretary-Treasurer.

The election of new officers marked the end of the term of ELMO J. LABORDE, M.D., Lafayette, as President of the Board. The Board wishes to express its deep appreciation to Dr. Laborde for his outstanding service, capable leadership and the time, energy and commitment he devoted to serving the public and the profession in his role as President over the past two years.