

# LOUISIANA STATE BOARD OF MEDICAL EXAMINERS NEWSLETTER



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## The Medical Record

### Changing, Altering, and Destroying

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**A**lthough lawyers are frequently accused of being the primary cause of lawsuits, the medical record in many cases is the determining factor. Patients will ask an attorney to review the medical record when they have an adverse outcome or an unexpected complication. The lawyer searches the record for errors, omissions, or commissions. He or she is not necessarily looking for negligence but for items that may influence a judge or jury or make the physician's case easy to attack or difficult to defend. The defense attorney depends on these records to defend the physician. With good medical records, the lawyer can often have the case dismissed. The Louisiana State Board of Medical Examiners also has to rely on the medical record to make decisions.

Changes and alterations in the record are important items that the plaintiff attorney looks for in the pursuit of a malpractice claim.

► **What is the difference between making "changes" and making "alterations"?** In medical malpractice risk management jargon, there is a great difference. Changes are corrections made prior to any filing of a lawsuit. They are acceptable and may be helpful. Alterations are any corrections or additions to the medical record after a malpractice claim has been filed. They are completely unacceptable.

► **What is the correct way to change a statement in the record?** Simply, draw a single line through the wording you wish to change. Enter the new wording, date it, and initial it. Do not obliterate the previous wording. Do not black out, white out, cut out, or erase anything previously recorded. An addendum to the record may be made by adding the desired information and referring to the previous data you wish to correct or expand upon. Date and sign the addendum.

► **When can a correction be made?** A correction can be made at any time if it is beneficial to the care of the patient. However, corrections can never be made after a claim has been filed. It then becomes an alteration of the medical record.

► **Who alters medical records?** Most physicians who alter medical records have no fraudulent intentions. They are well-meaning physicians who want to clarify the content, making it more understandable to readers such as the judge, jury, or Board of Medical Examiners. Often, when the physi-

cian reviews the record, he or she realizes that others will be unable to decipher the meaning of the record. There are also physicians who may panic and alter their records based on feelings of anxiety. Either way, the alterations lead to dire consequences.

► **What are the consequences of altering the record?** Regardless of any circumstance, altering the record is the most damaging action a physician can take against his defense. A case that was defensible may suddenly become indefensible, causing all to be lost for the physician.

► **How should medical records be handled after a suit is filed?** Physicians should copy, sequester, and secure the original record. They should not add, delete, or change anything.

► **How long must medical records be kept?** Louisiana law requires office records to be kept for a minimum of six years from the date of the last treatment and graphic materials to be kept for at least three years. Hospitals retain records for at least ten years.

► **How should medical records be destroyed?** Medical records must be destroyed by shredding or incinerating.

Imagine yourself sitting in a court room. A ten-foot screen rolls down from the ceiling, and your medical record is projected onto that screen. Think about this scenario every time you or one of your office staff makes a new chart and when you make entries into the record. If you do, you may never need to change your records or make amendments, and you will likely never be tempted to alter one.

The medical record is your legal guardian. Take care of it so that it can take care of you.

### 1995 BOARD MEETINGS

The Board's meetings for the remainder of 1995 have been scheduled for the following dates:

March 1-3	August 23-25
April 5-7	September 20-22
May 24-26	October 25-27
June 21-23	December 6-8
July 19-21	

To be included on a meeting agenda, items must be received in the Board's office in writing at least 14 working days prior to the meeting.

# Board Notes

## Licensees Who Default on Student Loans

**U**nder the laws of most states, including Louisiana, individuals who default in the payment of federal or state educational loans are subject to exclusion from participation in Medicare and Medicaid programs and denial or suspension of medical licensure. The Board urges all licensees with outstanding student loans in default to make prompt arrangements for repayment to avoid such consequences.

## Self-Referral Rules in Effect

**M**ost physicians are, or should be, aware that, as of January 1, 1995, the Federal law commonly known as Stark II became effective. Subject to certain exceptions, Stark II generally prohibits physician referral of Medicare and Medicaid patients, for the provision of a wide variety of designated items and services, to entities in which the physician has a financial interest. While Stark II's reach extends only to items and services for which the Medicare or Medicaid programs provide reimbursement, physicians should also be aware that parallel Louisiana laws and Board regulations impose similar prohibitions on physician referrals without regard to the payor source. Board rules implementing two laws enacted in 1993 became effective on October 20, 1994, and prohibit making or receiving payments for referring or soliciting patients and require physicians to provide written disclosure to a patient prior to referring the patient to another health care provider in which the referring provider, or mem-

ber of the provider's immediate family, has a significant financial interest. Copies of the Board's rules and regulations, including a suggested form of written disclosure, may be obtained from the Board office.

## Rulings and Advisory Opinions

**F**ollowing are brief synopses of opinions and advices recently issued by the Board in response to requests for rulings and advisory opinions on medico-legal issues arising under the Medical Practice Act.

■ **Can a Physician Assistant sign for medication samples?** Under statutory law governing the certification and practice of physician assistants, and the rules and regulations of the Board, physician assistants may not lawfully sign for, and thereby take receipt of, samples of controlled substances or other prescription medications.

■ **Can an Registered Nurse take after-hour calls?** It would not be appropriate for an RN employee of a clinic to take after-hour calls for clinic physicians.

■ **Can a non-physician perform electromyographic testing?** The Board recently revisited its 1980 statement of opinion on this issue. After consultation with multiple sources, the Board again concluded that electromyographic testing should be performed only by a physician licensed to practice medicine.

■ **Can an unlicensed physician located in another state conduct psychotherapy and psychoanalysis via video telephone?** Under the Louisiana Medical Practice Act, professional services of this nature would constitute the practice of medicine which would require that the physician possess a license to practice medicine in Louisiana.