

## Louisiana State Board of Medical Examiners

Physical Address: 1515 Poydras Street, New Orleans, LA 70112  
Mailing Address: Post Office Box 30250, New Orleans, LA 70190-0250  
Web site: <http://www.lsbme.la.gov>



March 15, 2011

**Robert Marier, MD**

Executive Director

Phone: (504) 568-6820 x 246

Direct Line: (504) 599-1539

Fax: (504) 568-5754

RE: Request for Advice; Prescribing  
Narcotics for Hospice Patients

---

During its February 2011 meeting the Louisiana State Board of Medical Examiners (the "Board") considered your inquiry as to whether or not a "Medical Director of a Hospice must see a hospice patient before prescribing narcotics?" The Board asked that I acknowledge your letter, apologize for the delay in responding, and relay its advice.

Initially, the Board is aware that hospice is a medically directed program that affords care in a variety of settings for terminally ill<sup>2</sup> patients, through an interdisciplinary team that assists in providing palliative and supportive care to meet the special needs experienced during the final stages of illness and during dying and bereavement. Louisiana law requires a hospice to be licensed by the Louisiana Department of Health and Hospitals ("DHH") and operate under certain minimum standards set forth in rules promulgated by the DHH. La. Rev. Stat. §40:2181-2190; La. Adm. C. 48:8201 *et. seq.*

Patients are admitted to hospice only upon the order of their attending physician. La. Adm. C. 48:8219C. In order to be eligible for hospice care an individual must have a certification of terminal illness and a plan of care which is established before services are provided. La. Adm. C. 48:8219A. Each hospice must have a Medical Director to review, coordinate and assume responsibility for the clinical management and medical care of all patients. Among other duties, the Medical Director assumes overall responsibility for the

---

<sup>2</sup>*Terminally ill* means a medical prognosis of limited expected survival, of approximately six months or less at the time of referral to a hospice, of an individual who is experiencing an illness for which therapeutic strategies directed toward cure and control of the disease alone are no longer appropriate. La. Adm. C. 48:8201A; La. Rev. Stat. §40:2182(7).

medical component of the hospice's patient care program and serves as a consultant with the patient's attending physician regarding pain and symptom control or as the attending physician if so designated. La. Adm. C. 48:8217I.

With this background, you should know that it has long been the Board's position that dispensing or prescribing controlled substances in the absence of a physician-patient relationship, based on a physician's prior examination of the patient, represents conduct that is inconsistent with the prevailing and usually accepted standards of care and may be indicative of professional or medical incompetency or other transgression of the Louisiana Medical Practice Act, La. Rev. Stat. §§37:1261-1292, providing a basis for administrative disciplinary action against a physician's medical license.<sup>3</sup>

A physician establishes a physician-patient relationship by conducting an appropriate examination of the patient and:

1. verifying that the person requesting the medication is in fact who he or she claims to be;
2. establishing a diagnosis through the use of accepted medical practices, *i.e.*, a patient history, mental status, examination, physical examination and appropriate diagnostic and laboratory testing;
3. discussing with the patient or his family or representatives the diagnosis, risks and benefits of various treatment options; and
4. insuring the availability for appropriate follow-up care.

As in all physician-patient interactions, the issuance of a prescription or order for medication must be documented in an adequate medical record, which includes the rationale for the medication prescribed.

As to your inquiry, the Board recognizes the benefits that hospice provides to the citizens of this state, understands that palliative care most often necessitates narcotics, and appreciates that an appropriate professional relationship is established between a hospice Medical Director and a recipient of hospice services. The minimum standards establishing this relationship are set forth in federal and state law and in rules promulgated by DHH. This relationship, the Board observes, embodies each of the elements that the Board insists exist in a physician-patient relationship but does not necessarily require an examination by a hospice Medical Director prior to prescribing narcotics.

In the Board's view, a proper professional relationship exists between a patient certified as having a terminal illness, who is enrolled in a hospice program which meets the requirements

---

<sup>3</sup>See La. Rev. Stat. §37:1285(A)(6),(12) and (14).

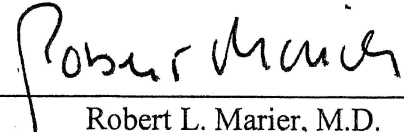
of 1-4 above,<sup>4</sup> and the Medical Director supporting the program. For purposes of this opinion the patient must be certified as having a terminal illness and the services must be delivered pursuant to the requirements of La. Adm. C. 48:8201 *et seq.* (Minimum Standards for Licensure of Hospice Agencies) and 42 CFR 418.22.

In announcing these views, it must be emphasized that our statement is a limited one. While the Board can envision no other setting in which it would maintain a similar view, in a hospice setting and only in a hospice setting as set forth above, it is the opinion of the Board that a Medical Director of a hospice need not necessarily see a hospice patient before prescribing narcotics.<sup>5</sup> In such instances, the Board will withhold administrative disciplinary action against a physician who prescribes narcotics to a terminally ill patient without conducting a prior examination.

We trust that the above is responsive to your inquiry.

Sincerely,

LOUISIANA STATE BOARD  
OF MEDICAL EXAMINERS



Robert L. Marier, M.D.  
*Executive Director*

---

<sup>4</sup>DHH rules also require hospices to maintain adequate records on each patient. *See*: La. Adm. C. 48:8233.

<sup>5</sup>We note that the Board's advice is limited to its jurisdictional authority to regulate and enforce the Act and is neither intended to nor could it be utilized to relieve a hospice Medical Director from complying with federal or state law or regulation governing the provision of hospice services. Should such laws or regulations require examination of a hospice patient by a hospice Medical Director prior to prescribing narcotics, this advice would not relieve the physician from compliance.