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NEWSLETTER

News Editor: Penny Taylor, Administrator

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The Disruptive Physician

Each month the Board receives complaints regarding physician behavior. The Federation of State Medical Boards defines disruptive behavior in physicians as “aberrant behavior manifested through personal interaction with physicians, hospital personnel, health care professionals, patients, family members, or others, which interferes with patient care or could reasonably be expected to interfere with the process of delivering quality care.”

Examples the Federation gives of events showing a possible problem with disruptive behavior are as follows:

1. Profane or disrespectful language
2. Demeaning or intimidating behavior
3. Sexual comments or innuendo
4. Inappropriate touching, sexual or otherwise
5. Racial or ethnic jokes
6. Outbursts of rage or violent temper
7. Throwing instruments or charts or other objects
8. Inappropriately criticizing health care professionals in front of patients or other staff
9. Boundary violations with staff, patients, surrogates or key third parties
10. Comments that undermine a patient’s trust in a physician or hospital
11. Inappropriate chart notes
12. Unethical or dishonest behavior
13. Difficulty working collaboratively with others
14. Repeated failure to respond to calls
15. Inappropriate arguments with patients, family, staff and other physicians
16. Resistance to recommended corrective action
17. Poor hygiene, slovenliness

Some disruptive behaviors clearly violate the NH Medical Practice Act and will be disciplined. Often disruptive behavior is present because of underlying pathology such as (1) addiction (2) stress (3) psychiatric

disorders (e.g. bipolar disorder) or (4) personality disorders (e.g. narcissism). The Board urges physicians and hospitals to suggest psychiatric evaluation for those physicians who appear to show signs of being disruptive, as there are effective treatments. With treatment, there will be less workplace stress for the healthcare team, and medical errors are less likely to occur.

For more information on this topic, please refer to the Report of the Special Committee on Professional Conduct and Ethics, which is published by the Federation of State Medical Boards of the United States, Inc.

Pulmonary Embolism:

The Board of Medicine recently reviewed several complaints and writs regarding undiagnosed pulmonary embolism with subsequent death. The Board recognizes the difficulty of entertaining the diagnosis of this entity particularly when presentation is atypical. Suspicion for PE must be ever present when patients present with dyspnea, evidence of right heart strain, or chest pain especially with pleuritic symptoms. Pulmonary embolism is not uncommon, and may present with unusual symptoms or in atypical settings as in young patients. Phlebitis or PE may occur in any individual, regardless of age or lack of sentinel event, like trauma or surgery, especially in the setting of a recognized or unrecognized hypercoagulable state. With the availability of Oxygen Saturation monitors and CT scanning, suspicion of this entity should result in at least a screening study (inexpensive oximetry and/or EKG) and if indicated a definitive study (Chest CT). A recent NEJM study highlighted the risk of further thromboembolic events in any patient previously diagnosed with a venous thromboembolism. (NEJM: Volume 348:1425-1434, April 10, 2003, Number 15)

Health Insurance Portability and Accountability Act (HIPAA)

The Board of Medicine has received inquiries from doctors and other health care providers regarding whether their obligations under RSA 329 are affected by HIPAA. The short answer is that the Board of Medicine believes that HIPAA does **not exempt** health care providers from their obligations under State law to report information to the Board and to cooperate fully with Board investigations.

There are several provisions of HIPAA and the regulations that address disclosures permitted in accordance with State regulatory laws. Certain disclosures are permitted for purposes of abuse, neglect and domestic violence reporting, public health activities, judicial and administrative proceedings, and law enforcement. *See, e.g.*, 45 C.F.R. § 164.512(c), (e) and (f). There is a specific provision in the regulations that allows reporting to a State health oversight agency, such as the Board of Medicine. According to Section 164.512(d), a covered entity may disclose protected health information to a health oversight agency for oversight activities authorized by law, including audits; civil, administrative, or criminal investigations; inspections; **licensure or disciplinary actions**; civil, administrative, or criminal proceedings or actions; or other activities necessary for appropriate oversight of the health care system. *See* 45 C.F.R. § 164.512(d).

The Board of Medicine anticipates that all health care providers regulated by the Board will continue to comply fully with their obligations under State law even as they develop policies and procedures to meet the requirements of HIPAA. Any specific questions regarding your obligations under either RSA 329 or HIPAA should be directed to your legal advisor.

Internet Prescribing

The Board of Medicine is in the process of reviewing policies and rules from other states and the FSMB regarding internet prescribing. This is in anticipation of developing a policy for New Hampshire. If you are interested in participating in this process, please send a letter describing your interests and any related experience or expertise. This letter should be sent to Penny Taylor, NH Board of Medicine, 2 Industrial Park Drive, Concord, NH 03301.

DISCIPLINARY ACTIONS:

The following final disciplinary actions were taken by the Board from November, 2002 through June 30, 2003.

Jehangir S. Vazifdar, M.D. - Meredith, N.H.

11/13/02 – Settlement Agreement. Licensee's license to prescribe Schedule II drugs is restricted. Licensee is not restricted from prescribing Schedule III, IV and V drugs. Restriction in place until further order of the Board. Licensee shall take and successfully pass the NH Board of Pharmacy Jurisprudence Examination within 90 days of effective date of settlement agreement; within six months of the effective date of the settlement agreement, licensee shall attend and complete the Intensive Course in Controlled Substance Management at Case Western Reserve University in Cleveland, OH, or reasonable substitute approved by the Board. This course shall be in addition to any continuing education requirements for licensure.

Barbara Kolinsky, PA License #0041 - Berlin, NH

11/14/02 – Settlement Agreement on basis of relapse of substance abuse. The licensee is reprimanded. Licensee shall continue to participate in the Physician's Health Program, under supervision of Sally Garhart, M.D. or her successor, for a period of (5) years from the effective date of this settlement agreement. During this time the terms of licensee's PHP contract shall include, at a minimum, participation in support groups, psychotherapy or counseling, random urine and breath monitoring, monthly contact with PHP and clinical supervision and monitoring by a registered physician. She shall also maintain a record of her compliance with these terms to include dates and the name of the person(s) who can verify her compliance.

F. John Krolkowski, M.D. License #10211 - Wellesley, MA

11/14/02 – Voluntary Surrender of License. Voluntarily surrendered his license in lieu of pending reciprocal disciplinary charges.

David M. Freedman, M.D. License #6063 - Derry, NH

11/14/02 – Settlement Agreement. Licensee shall contact the Center for Personalized Education for Physicians within (20) days of the effective date of this settlement agreement, for an assessment. Assessment will determine whether licensee shall undergo an education intervention. Within 120 days licensee shall complete and sign the written assessment provided by CPEP and shall cause CPEP to send a final copy to the Board no later than (150) days from the effective date of this Order. If indicated, licensee shall undergo a CPEP intervention plan within (180) days of the effective date of this Order. If applicable, licensee shall cause CPEP to send a copy of the intervention plan to the Board no later than (220) days from the effective date of this Order. Licensee shall successfully complete the intervention activities set out in the intervention plan, including any final evaluation, within the time set out by CPEP, but in no event, more than (2) years from the effective date of this Order, unless otherwise indicated by CPEP.

Jonathan S. Weiss, M.D. License #7552 – Hampstead, NH

12/16/02 – Decision and Order. Professional misconduct regarding medical record keeping for (6) patients. Fine imposed in amount of \$400.00 for each patient medical record, for a total of \$2400.00. Fine to be paid within (60) days of the date of order.

Mark L. Timmerman, M.D. License #7663 – Merrimack, NH

1/17/03 – Settlement Agreement between the parties, the Board found Dr. Timmerman committed repeated negligence and displayed a pattern of behavior which fell below the expected level of competence in his care and treatment of one patient's hypertension and hyperthyroidism over the course of several years. Reprimand, 15 hours of continuing medical education in diagnosis and treatment of hypertension and hyperthyroidism; and administrative fine of \$500.00.

Gregory M. Lynch, M.D. License #8168 Derry, NH

3/24/03 - Integrated Settlement Agreement. Board voted to combine 3/21/01 "Settlement Agreement" and 3/18/02 "Order Amending Settlement Agreement".

Peter B. Hope, M.D. License #3573 - Moultonboro, NH

3/7/03 – Consent Decree. Sexual misconduct in the practice of medicine and non-sexual contact with a patient perceived as leading to sexual contact. Revocation. Prohibition of future application for medical licensure in New Hampshire or any other state. Establishment of system and process for lawful discharge of duties related to patient medical records.

Thomas L. Meyer, M.D. License #6953 Rochester, NH

3/28/03 – Order Removing Restrictions. Full and unrestricted license.

Jeffrey Haines, M.D. License #7541 Sunapee, NH

4/04/03 – Order Approving Psychiatrist in accordance with the April 9, 2001 Settlement Agreement.

4/16/03 – Board issued an Errata.

Matthew V. Hopkins, M. D. License #RT-770 Enfield, NH

5/8/03 - Order of Emergency Suspension and Notice of Hearing was issued. Allegations in support of order included: issuance of prescriptions to individuals for Adderall 20mg. knowing that the individuals were names of fictitious patients; accepting filled prescriptions issued to fictitious patients, thereby taking possession of the Schedule II controlled substance by fraud and or deceit: improperly dispensing Adderall to his spouse; and failing to submit only truthful and correct information to the Board. The Board has scheduled a hearing on May 15, 2003.

5/14/03- Order Granting Continuance of the Hearing until July 2, 2003. License shall remain suspended for 120 days from the date of the Order of Emergency Suspension, or until further order of the Board, whichever is sooner.

Harry K. Wisner, M. D. License # 11947 Hanover, NH

5/19/03 – Consent Order issued by the Board. Dr. Wisner agreed to and was granted a restricted license to practice medicine in New Hampshire with respect to the practice of surgery. Dr. Wisner shall practice only as an assistant in surgery and shall not be the primary surgeon in any surgical case.

Bertrand P. Cole, D.O. License # 9985 Stratham, NH

6/11/03 – By settlement agreement, Dr. Cole was reprimanded, administered a \$500 fine, and agreed to take a pharmacy jurisprudence examination. The Board found he had committed unprofessional conduct by prescribing narcotic drugs to two patients without recording that he had conducted an appropriate physical examination or obtained an appropriate history, by prescribing increasing amounts of narcotic drugs to the patients without recording the dosage in the medical records or documenting a rationale for the increase, by not enforcing the patients' pain contract, and by issuing prescriptions to the patients that exceeded his own documented dosage.

The Board has also issued 45 confidential letters of concern, pursuant to RSA 329:17, VII-a, from April 1, 2002 through December, 2002. These letters advise the licensee that while there is insufficient evidence to support disciplinary action, the Board believes the physician should modify or eliminate certain practices, and that continuation of the activities which led to the information being submitted to the Board may result in action against the licensee's license. These letters are not released to the public or any other licensing authority, except that the letters may be used as evidence in subsequent disciplinary proceedings by the Board. 103 Consumer Complaints and 127 Writs from the Courts were received during that time frame.

- The Board office has been called for requests of further details about certain disciplinary actions. All Orders are public documents and may be obtained by calling the Board office at (603) 271-1203. There is a fee of \$.25 per page for all Orders.