THE EXAMINER

A Newsletter of LLR's South Carolina Board of Medical Examiners • July 2001

Check Out Our Web Site's New Features

The Board's Web site address is www.llr.state.sc.us/pol/medical. By accessing our Web site, you may obtain information regarding the Medical Practice Act, Board members and staff, licensing requirements, disciplinary actions and procedures, Board meeting dates, Board policies, as well as other information about practicing medicine in South Carolina. Links are provided for emailing the Board or submitting a change of address.

Our newest addition is the Licensee Lookup feature, which enables anyone with Internet access to verify the standing of physicians, physician assistants, respiratory care practitioners or acupuncturists. In June, the Board had approximately 49,000 inquiries or "hits" to its verification screen.

Final Orders and other Board actions are now being placed on the Web site. By accessing the link on our homepage, copies of Final Orders issued by the Board beginning in February 2001, are now available. Within the next 12-18 months, the Board hopes to have the complete history of Final Orders and other actions taken on the Web site.



President's Note

Presented before the S.C.M.A. House of Delegates April 26, 2001



The Board of Medical Examiners has embarked upon an era of collaboration. The prevailing perception has been that this Board is an autonomous institution with nebulous objectives and capable of "Gestapo tactics." To the contrary, the mission is clear and succinct: to protect the public. There was a period in the past when allegations of outright nepotism would have been a fair assessment. There was no distinction in the public's eye between the function of the Board and the S.C.M.A.; "they were all out" to protect the profession. Recognizing the potential for attenuated effectiveness and diminished public confidence for this important regulatory body, the General Assembly expressed its concerns. The response was a pendulum swing that carried us too far apart. There developed an atmosphere of

isolationism, ironically to the public's loss. Issues important to the public that would have benefited from cooperation suffered because of redundant effort and, in some instances, frank polarity. Case and point, the pharmacists were lobbying for primary care privileges in the form of "collaborative practice." The act had been endorsed by the S.C.M.A. An 11th hour, aggressive response by the Board resulted in an appropriate practice act void of diagnostic privilege. There now exists a healthy collaboration that preserves the independence of the Board while facilitating the worthy efforts brought forth by the S.C.M.A. Such was the case with the recently developed "office based surgery guidelines." By combining the S.C.M.A. task force and the Medical Board subcommittee, we now have a policy document of greater quality and enforceability than either agency could have generated independently. There is currently an overt effort to preemptively reconcile important regulatory matters, avoiding self-defeating conflict at pivotal legislative hearings. The perception of unity is imperative, least competing interests drive a mitigating wedge. We must appreciate that the Board's statutory authority to license and discipline is an integral facet of the public's trust. Yes, the Board is an advocate for the public, not the profession. The two are not mutually exclusive however. With the emphasis on communication and collaboration, there is a symbiosis and synergy that the public deserves.... and should not fear.

Louis E. Costa, II, DMD, MD President, South Carolina Board of Medical Examiners

THE EXAMINER

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South Carolina Department of Labor, Licensing and Regulation

Board Members

President

Gubernatorial At-Large Member Louis E. Costa, II, D.M.D., M.D. Southeastern Facial Plastic Surgery 247 Calhoun Street Charleston, S.C. 29401 FIRST TERM: 5/9/95 - 12/31/98 SECOND TERM: 1/1/99 - 12/31/02

Vice President

3rd Congressional District Roger A. Ray, M.D. Anderson Area Medical Center 800 North Fant Street Anderson, S.C. 29621 FIRST TERM: 1/1/98 - 12/31/2001

Secretary

Osteopathic, Elected-At-Large Timothy J. Kowalski, D.O. William S. Hall Psychiatric Inst. P.O. Box 202, Cottage C Columbia, S.C. 29202 FIRST TERM: 1/1/97 - 12/31/00 SECOND TERM: 1/1/01 - 12/31/04

1st Congressional District Robert H. Bowles, M.D. Parkwood Orthopedic Clinic 1249 Savannah Hwy. Charleston, S.C. 29407

FIRST TERM: 1/1/00 - 12/31/03

2nd Congressional District

Satish M. Prabhu, M.D. Critical Health Systems 1410 Blanding Street #1 Columbia, S.C. 29201 FIRST TERM: 1/1/01 – 12/31/04

4th Congressional District James G. Wallace, M.D. Plastic Surgery Associates 24 Memorial Medical Drive Greenville, S.C. 29605 FIRST TERM: 1/1/94- 12/31/97 SECOND TERM: 1/1/98 – 12/31/01

5th Congressional District Norman B. Clinkscales, M.D. Tuomey Regional Medical Center 129 North Washington Street Sumter, S.C. 29150 FIRST TERM: 1/1/01 – 12/31/04 6th Congressional District Vera C. Hyman, M.D. P.O. Box 100559, Florence, S.C. 29501-0559 FIRST TERM: 1/1/96 - 12/31/99 SECOND TERM: 1/1/00 - 12/31/03

Elected-At-Large Member James D. Whitehead, Jr., M.D. 3 Coatbridge Lane, Lexington, S.C. 29072 FIRST TERM: 1/1/94 – 12/31/97 SECOND TERM: 1/1/98 - 12/31/2001

Gubernatorial Lay Member

Susan C. Reynolds c/o Alley Cat 2222 Augusta Street, Greenville, S.C. 29605 FIRST TERM: 5/9/00 - 6/30/02

Board Staff

The administrative staff of the board is composed of employees of the South Carolina Department of Labor, Licensing and Regulation. The staff may be reached at (803) 896-4500 or by e-mail: medboard@mail.llr.state.sc.us

Board Administrator John D. Volmer

Administrative Assistant to the Board Administrator Carole Chauvin

Assistant Administrator, Licensing Annette Disher

USMLE Exams and Limited Licenses Donna Howard

Physician Assistant Licensure Brenda Eason

Respiratory Care Licensure Brenda Eason

Acupuncturist Permits Annette Disher

Assistant Administrator, Compliance Karen Newton

Licensure Verifications Patt Browy

Assistant Administrator, Investigations Henry B. Morgan

No Mandate from Medical Board

There recently has been correspondence sent from Dr. Walter R. McLawhorn, Jr. using an edited letter to Dr. McLawhorn from the Medical Board administrator. in which he states that the Medical Board has mandated that South Carolina physicians must treat children insured under Medicaid coverage. There is no such mandate from the Medical Board. Under South Carolina law, physicians have the right to choose whom they will treat. Dr. McLawhorn misinterpreted the administrator's letter to him regarding children insured under Medicaid.

Our Mistake!

In our last issue of "The Examiner" we introduced a new Medical Board member, **Dr. Satish M. Prabhu** of Columbia. We neglected to note that Dr. Prabhu is board certified by the American Board of Anesthesiology (ABA), the ABA in Pain Management, and the American Board of Pain Management. Our apologies to Dr. Prabhu.

S.C. Board Of Medical Examiners 2001 Board Meeting Deadline Dates

Board Meeting Date	Agenda Closing Date
July 22 - 24	June 28
Oct. 22 - 24	Sept. 27

Determination of Medical Necessity and Unlicensed Practice

Approved at the February 5-7, 2001, Board Meeting

Notice

In accordance with S.C. Code Ann. Section 1-23-40 (1986), notice is hereby given that the State Board of Medical Examiners for South Carolina has adopted the following statement as guidance for physicians in the practice of medicine under the South Carolina Medical Practice Act and the Principles of Medical Ethics as adopted by the Board.

Determination of Medical Necessity; Unlicensed Practice

It is the position of the State Board of Medical Examiners for South Carolina that the act of determining medical necessity or appropriateness of proposed medical care, so as to affect the diagnosis or treatment of a patient located in South Carolina, is the practice of medicine, as defined by Section 40-47-40 of the 1976 Code of Laws of South Carolina, as amended, and must be made by a physician licensed to practice medicine in this state. Making determinations of medical necessity or appropriateness of medical care requires independent medical judgment that is reserved to physicians, especially determinations to deny, reduce or terminate health care services or to deny payment for a health care service because that service is not medically necessary. To engage in such determinations so as to affect the diagnosis or treatment of a patient in South Carolina requires a South Carolina medical license.

A person physically located in this or another jurisdiction who, through any medium, performs an act that is part of patient service initiated in this state so as to affect the diagnosis or treatment of a patient in South Carolina is engaged in the practice of medicine so as to require a South Carolina medical license. As in all physician-patient interactions, medical decisions must be in accordance with the prevailing and usually accepted standards of practice in South Carolina and documented in an adequate medical record which includes the rationale for the medical decision.

An individual or entity which makes the determination of medical necessity or appropriateness of any medical evaluation or care, so as to affect the diagnosis or treatment of a patient in South Carolina, and who does not possess a South Carolina medical license or other authorization to practice medicine in this state, may be engaged in the unauthorized practice of medicine in violation of the South Carolina Medical Practice Act. Participants in such misconduct are subject to further investigation and injunctive action by the Board. An individual who engages in the unauthorized practice of medicine in South Carolina without a license may also be referred for criminal prosecution and be fined not more than \$1,000 or imprisoned for a period of not more than two years, or both, in the discretion of the court for each offense, and when available, disciplinary action.

South Carolina physicians are encouraged to report to the Board, in writing, the unlicensed practice of medicine. To avoid a violation of the law regarding unlicensed practice, reviewers, insurers, medical directors and managed care gatekeepers should all be particularly conscientious in allowing physician providers to exercise independent medical judgment to the greatest extent possible.

S.C. Board Accepts FCVS Credential Verification

Beginning June 1, 2001, the Medical Board has agreed to accept the core credential verification information from the Federation Credentials Verification Service, a service offered by the Federation of State Medical Boards at no cost to the Board. An applicant for licensure may choose the FCVS program and pay a base application fee of \$250. Subsequent updated requests are \$50. This is in addition to South Carolina's application fee of \$510. This allows the applicant, through FCVS, to prepare one package of core credentials that can be sent to as many licensing boards as he/ she may request. It also allows Medical Board staff to apply staff time to other necessary projects.

The FCVS core verification includes 1) Physician Identity 2) Physician Medical Education 3) Physician Postgraduate Training 4) Physician Examination History. This establishes a lifetime permanent portfolio of primary-source verification credentials for the physician. Documentation can be used for licensure, hospital privileges, employment and professional memberships, and can be used throughout a physician's career. Turn around time averages 60 days from the date the application is received. Currently there are 48 Medical and Osteopathic Licensing Boards that accept the FCVS Physician Information Profile. Applicants may call 1-888-275-3287 or e-mail: fcvs@fsmb.org.

Final Orders and Other Actions • November 17, 2000, to Present

Respondent/Location	Action/Date	Findings of Fact/(Sanction)	
Korzep, Johanna M., M.D. Flatwoods, KY	Order of Temporary Suspension November 17, 2000	Surrendered her Kentucky medical license based upon addiction to alcohol, practicing while under the influence of alcohol and several alcohol related driving offenses. (License to practice medicine is temporarily suspended.)	
Name Unpublished	Consent Order November 26, 2000	Practiced respiratory care without a current license. (Private Reprimand, CME requirements and \$175 fine.)	
Sugar, Darryl M., M.D. Greenville, SC	Order of Temporary Suspension December 18, 2000	Obtaining drugs fraudulently for personal use. (License to practice medicine is temporarily suspended.)	
Bolt, William F., M.D. Anderson, SC	Order on Remand December 19, 2000	Did not provide competent medical service, as evidenced by his failure to adequately document medical findings and treatment. (<i>Public reprimand, \$10,000 fine and terms and conditions</i> on license.)	
Gatchell, Keith C., M.D. Clinton, SC	Order of Conditional Reinstatement December 27, 2000	Affirmed his commitment to a life of sobriety. (License to practice medicine is temporarily reinstated pending Final Order of the Board.)	
Ayers, Bobbie F., Jr., M.D. Charleston, SC	Order of Suspension January 10, 2001	Failed to pay \$10,000 fine required by Final Order dated June 29, 2000. (License temporarily suspended until such time as full compliance has been made.)	
Walls, Allan Christopher, M.D. Huntsville, AL	Order of Temporary Suspension January 25, 2001	Physician's drug addiction and drug abuse constitute a serious threat to the public health, safety, or welfare. (License temporarily suspended pending hearing and until further Order of the Board.)	
Name Unpublished	Consent Order January 22, 2001	Practiced medicine after limited license had expired. (Private Reprimand and \$250 fine.)	
Name Unpublished	Consent Order February 8, 2001	Practiced respiratory care without a current license. (Private Reprimand and \$200 fine.)	
Miller, Thomas R., RCP Myrtle Beach, SC	Order of Temporary Suspension February 16, 2001	Arrested for obtaining a controlled substance by fraud and possible addiction to drugs. <i>(License to practice respiratory car</i> <i>temporarily suspended pending further Order of the Board.)</i>	
Kirkland, Larry R., Jr., M.D. Greenville, SC	Order of Temporary Suspension February 16, 2001	Submitted a "cold" urine sample and refused to submit second sample when requested. Possible addiction to drugs. (License to practice medicine temporarily suspended pending further Order of the Board.)	
Name Unpublished	Final Order February 23, 2001	(Case dismissed.)	
Mlynarczyk, Francis A., M.D. Walterboro, SC	Final Order February 23, 2001	Did not provide competent medical service by failing to perform adequate work up, make relevant information available to his patient, and by failing to document discussion of alternatives to surgical therapy. (Public reprimand, \$4081.62 costs, and terms and conditions on license.)	
Browning, Gregory V., M.D. Florence, SC	Final Order March 2, 2001	Physician pled guilty to a crime involving moral turpitude or drugs; engaged in fraud or deception and has engaged in dishonorable, unethical or unprofessional conduct as evidenced by his guilty plea to a crime involving 21 counts of adulterating or misbranding prescription drugs. <i>(Public reprimand and \$1,000 fine and \$13.83 costs.)</i>	
Knoblach, William C., Jr., P.A. Charleston, SC	Final Order March 2, 2001	Physician assistant prescribed controlled substances in Schedules II through IV, performed work assignments, tasks or other activities which were not approved by the Board, and is	

Orders . . . Continued Page 5

Respondent/Location	Action/Date	Findings of Fact/(Sanction)
		guilty of dishonorable or unethical conduct that is likely to deceive or harm the public, as evidenced by his prescribing Schedule III and IV controlled substances to patients. <i>(Public reprimand, \$500 fine and \$56.45 costs.)</i>
Yates, Clifton, M.D. Orangeburg, SC	Final Order March 2, 2001	Physician has failed to deal honestly with patients and colleagues; failed to respect the law; engaged in dishonorable, unethical or unprofessional conduct that is likely to deceive, defraud or harm the public; has intentionally violated, directly or indirectly, the medical practice laws, as evidenced by his use and possession of illegal drugs; and as further evidenced by his being charged with Trafficking in Cocaine, Possession of Marijuana with Intent to Distribute, and Possession of Marijuana with Intent to Distribute in the Vicinity of a School. (<i>Public reprimand, \$10,000</i> fine, and terms and conditions on license.)
Name Unpublished	Consent Order March 15, 2001	Practiced medicine after license had expired. (Private Reprimand and \$370 fine.)
Marion, Robert Francis, Jr., M.D. Charleston, SC	Order of Temporary Suspension March 20, 2001	Charged with multiple counts of Criminal Sexual Conduct, Second Degree; Lewd Act Upon a Minor; Contributing to the Delinquency of a Minor; and Unlawful Carrying of a Firearm. (License to practice medicine temporarily suspended pending further Order of the Board.)
Kuhns, Gary F., M.D. Charleston, SC	Final Order March 27, 2001	Failed to provide competent medical service and is guilty of engaging in unprofessional conduct that is likely to harm the public by his prescribing controlled substances to 11 patients without valid documented medical justification or by not maintaining legible records for these patients, or both. (Public reprimand, \$10,581.40 fine and costs, and terms and conditions on license.)
Sugar, Darryl M., M.D. Greenville, SC	Order of Conditional Reinstatement May 1, 2001	Affirmed his commitment to a life of sobriety. (License temporarily reinstated pending Final Order of the Board.)
Name Unpublished	Consent Order May 3, 2001	Practiced respiratory care without a license. (Private Reprimand and \$25 fine.)
Donnan, Samuel B., RCP Blythewood, SC	Order of Temporary Suspension June 1, 2001	Respiratory Care Practitioner's abuse of alcohol constitutes a serious threat to the public health, safety or welfare. (License temporarily suspended pending hearing and until further Order of the Board.)
Name Unpublished	Consent Order June 5, 2001	Practiced respiratory care without a license. (Private Reprimand and \$150 fine.)
Name Unpublished	Final Order of Dismissal June 6, 2001	(Dismissed.)
Name Unpublished	Final Order of Dismissal June 6, 2001	(Dismissed.)
Name Unpublished	Final Order June 6, 2001	Failed to provide competent medical service by his failure to perform complete physical examinations before prescribing bariatric medications, failure to alter or modify treatment based on patient outcomes, failure to document goals or end-points of treatment; failure to document past medical histories, family histories or physical examinations; failure to document attempts to encourage patients to change lifestyles; and failure to document medical justification for use of bariatric medications, prescription of bariatric medications for long periods of time without seeing the patients for follow-up examinations. (<i>Private</i> <i>Reprimand, \$7,365.95 administrative costs, and terms and conditions</i> on license.)

This report is only a brief summary of these matters. It does not purport to be a complete account of the Board's findings. The Board's complete factual and legal conclusions are contained in its Orders. These are available pursuant to the Freedom of Information Act by writing to the Board at P.O. Box 11289, Columbia, SC 29211-1289. A research and copying fee will be charged for each request.

New Pharmacy Board Policy

Modified Policy Affects Prescription Signatures

In June 2000, the S.C. Board of Pharmacy modified Policy #66 to allow the use of computer generated electronic and replicated signatures on prescriptions for legend non-controlled medications, and addressed the electronic transfer of prescriptions.

Policy and Procedure #66

"Approval of the use of computer generated electronic signatures and replicated signatures on prescriptions for legend non-controls. The practitioner is responsible for the integrity of the prescription. The pharmacist must use his professional judgement in accepting, and may refuse or check with the practitioner if any doubt exists regarding the prescription's validity. The Board does not support or approve of electronic transfer of prescriptions other than facsimile. Rubber stamped signatures are not acceptable."

Pharmacy Board Notes Numerous Prescription Problems

The S.C. Board of Pharmacy has received numerous complaints and calls regarding illegible, incorrect, incomplete and incompatible prescriptions from physicians and is aware of communication problems between prescribers and pharmacists. The Board of Pharmacy reminds prescribers of §40-43-86(E) of the Pharmacy Practice Act, which outlines what a prescription drug order shall contain:

"A prescription drug order shall contain at a minimum, the:

- (1) full name and address of the patient;
- (2) name, address, telephone number and degree classification of the prescriber; license number, and Drug Enforcement Agency registration number of the prescribing practitioner where required by law;
- (3) date of issuance;
- (4) name, strength, dosage form, and quantity of drug prescribed;
- (5) directions for use;
- (6) number of refills authorized. No prescription marked 'PRN' or any other non-specified number of refills may be refilled more than two years beyond the date it was originally written. Nothing in this subsection abridges the right of a pharmacist to refuse to fill or refill a prescription; and
- (7) a written order signed by the prescriber, which shall bear the name of the patient, strength, and quantity of the drug or device prescribed; directions for use; date of issue; and, either rubber stamped. Typed, printed by hand, or typeset, the name, address, telephone number and degree classification of the prescriber, and, if a controlled substance is prescribed, the prescriber's federal registration number;

(8) only one drug and set of instructions for each blank, if pre-printed;"

Illegible handwriting, incorrect prescription formats and the lack of the above minimum required information are areas of concern. In order for pharmacists to accurately dispense medications, it is imperative that there be a joint effort between prescribers and pharmacists to address these problems. This joint effort will ultimately decrease the potential for prescription errors and better protect the health and welfare of the public.

LLR Maps Out Its Strategic Plan

When the South Carolina legislature created the Department of Labor, Licensing and Regulation (LLR) in 1994, one driving goal was to improve efficiency and the quality of service delivered by the 40 separate agencies that were merged to form the agency.

The legislature envisioned an agency that would promote efficiency and build accountability. With that in mind, LLR's staff has created a strategic plan for the agency. This plan is a roadmap to help the agency reach the ultimate goal of being the best state government agency in the United States by the year 2010.

Key points of the strategic plan include:

• Core purpose or mission – Making South Carolina a Better and Safer Place to Work and Live.

• Core values – Provide excellent service, act with integrity and treat people with respect.

• Key strategies – "Maximize Customer Satisfaction," "Maximize Employee Satisfaction" and "Use Resources Efficiently."

Several interim goals also were established:

• By 2001, be recognized in the Southeastern United States as a leading state government agency.

• By 2002, be recognized in the United States as a leading state government agency.

• By 2005, have specific performance measures in place to track progress toward being the best state government agency in the United States.

"These interim goals will keep us focused on the larger goal of being the best state government agency in the United States by 2010," LLR Director Rita M. McKinney said. "I like to think of these goals as short-term wins on the road to achieving excellence in public service."

New Laws Enacted in 2001

Regulation 81-110: Criteria for Physician Supervision of Nurses in Extended Role.

On April 10, 2001, Governor Jim Hodges signed into law this **amended** regulation. The amendment allows physicians with an unrestricted S.C. limited license for academics at the level of associate professor or above, at an approved school of medicine, to supervise a nurse in the extended role (nurse practitioner). The regulation previously allowed only physicians with permanent licensure to supervise nurse practitioners.

Regulation 81-28: Contact With Patients Before Prescribing.

On May 25, 2001, this **new** regulation of the Medical Practice Act was published in the "State Register" and became law. It is referred to as the Internet Prescribing Regulation. It

was previously published as the Medical Board's Policy Statement on Internet Prescribing. The regulation prohibits South Carolina physicians from prescribing drugs to an individual without first establishing a proper physician-patient relationship. This requires an informed medical judgment based on an appropriate history and physical, diagnosis and therapeutic plan, as well as, discussion with the patient and appropriate follow-up care. Prescribing drugs solely on answers to a set of questions provided via the Internet or via tollfree telephone is unprofessional.

The full text of the regulation is on the Medical Board's Web site.

South Carolina Anesthesiologist's Assistant Practice Act.

On May 29, 2001, Governor Jim Hodges signed into law Article 9, of

OSHA isn't a four letter word in South Carolina.

"I'll admit we were afraid of the punitive side of OSHA. But the S.C.OVP individuals quickly developed a teaching relationship with us. They have taught us a great deal, and they are welcome in our facility anytime."

> --Ed Patton, Plant Manager Richloom Home Fabrics Ware Shoals

One on-the-job injury in South Carolina is one too many. That is why the S.C. Office of OSHA Voluntary Programs team is devoted to helping you make your worksite safe and healthy for all employees.

Let S.C. OVP help you. We have the right answers at the right price: free. Together, we can set up or strengthen your worksite safety and health program. That way, safety becomes a routine consideration for you and your employees – not a crisis-oriented response.

(803) 734-9599 www.scovp.state.sc.us



Chapter 47, Title 40, S.C. Code of Laws as amended, creating the South Carolina anesthesiologist's assistant Practice Act. This will allow anesthesiologist's assistants (AAs) who meet the qualifications set forth in the Act to apply for licensure in South Carolina. AAs may work only under the supervision of a licensed South Carolina anesthesiologist. The full text of the Act is published on the Board's Web site. You may also obtain a full text by accessing the South Carolina Statehouse Web site at www.scstatehouse.net and click on legislation, and obtain Bill 343.

Free All-In-One Poster Available

LLR and three other state agencies have joined together to publish an "All-In-One" poster containing the agencies' required employment notices.

The free poster features six previously separate posters: LLR's OSHA and Labor Law Abstract (Payment of Wages, Child Labor, Right-to-Work); S.C. Employment Security Commission's "Workers Pay No Part of the Cost for Job Insurance" (UCI 104) and "If You Become Unemployed" (UCI 105); the Workers' Compensation Commission's "Workers Comp Works for You"; and the Human Affairs Commission's "Equal Opportunity is the Law."

For a free copy of the poster, contact any of these four agencies: LLR, (803) 896-4380; S.C. Employment Security Commission, (803) 737-2474; S.C. Human Affairs Commission (803) 737-7800; or the S.C. Workers' Compensation Commission, (803) 737-5700.

July 2001



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In this issue of ... THE EXAMINER

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