



# BME REPORT

SPRING AND SUMMER 2005

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## Inside:

*Pitfalls of Prescribing*

*New BME Website*

*October Board Meeting Dates Changed*



## MEDFORD NEUROSURGEON IS NEWEST BOARD MEMBER

**D**ouglas Kirkpatrick, MD, Medford, took the oath of office as the newest member of the Board of Medical Examiners at the Board's July 14 session.

### Dr. Kirkpatrick

Dr. Kirkpatrick was appointed by Governor Kulongoski to serve a three-year term ending Feb. 29, 2008. At that time, Dr. Kirkpatrick may be reappointed to a second and final three-year term.

Dr. Kirkpatrick provided neurosurgical services in Southern Oregon, at Rogue Valley and Providence Medford medical centers, from 1990 to 2003. He retired from fulltime practice at the Medford Neurological and Spine Clinic in 2003, but has retained an active medical license and volunteers at a community health center.

Dr. Kirkpatrick was in the full-time practice of neurosurgery in Utah from 1977 to 1990. He served as an adjunct professor in

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## GRAND LICENSE RENEWAL APPROACHING

### *Correct address information needed*

**T**he biennial license-renewal process will soon begin for Oregon's physicians (MD, DO), podiatrists and physician assistants.

Renewal forms will be sent to those licensees in late September. Licensees are reminded that BME staff must have correct mailing address information before forms are sent.

Licensees who are unsure as to whether the BME has their correct addresses on file are asked to contact the BME Licensing Department at (503) 229-5770, or toll-free in Oregon at 1-877-254-6263.

Podiatrists now have the same renewal schedule as MDs and DOs. The change in the podiatrist renewal period shortened the initial renewal period by six months, with a December 31, 2005 expiration date.

Podiatrists are required to complete just 37.5 hours of continuing medical education (CME) in the shortened renewal period, rather than the usual 50 hours. The 50-hour CME requirement

will again be effective during the 2006-07 license cycle.

The reduced two-year renewal fee of \$420 will be in effect in the upcoming renewal period. The reduced *Emeritus* license fee is \$50 per year.

### *Lapsed Licenses Set to Expire*

All lapsed licenses that have been lapsed four years or more will expire at 5 p.m. Pacific time on Wednesday, January 18, 2006. Persons whose lapsed licenses expire at that time will be required to apply for licensure as new applicants, and pay all required fees, if they wish to resume their Oregon practices.

It is illegal to practice medicine, podiatry and acupuncture, and to serve as a physician assistant, with a lapsed license. Practicing with a lapsed license also means practicing without malpractice insurance, as policies do not cover claims filed during periods in which licenses have lapsed. ■

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## From the Executive Director



### CAN WE DO BETTER?

By Kathleen Haley, J.D.  
Executive Director

On an icy Saturday morning in January, Board members slipped and slid into downtown Portland for an extremely worthwhile Board retreat. One Board member even sustained a few bumps and bruises in her effort to attend the retreat, which was to address professionalism and continuing competency among Oregon's healthcare providers.

The desire of the Board members to gather for the midwinter retreat is certainly one indicator of how seriously Board members take their mission of protecting the public by ensuring safe, quality health care. That mission, shared by the healthcare community, includes the unwritten stipulation that the community constantly strive for the next level of medical excellence.

The retreat, in which I participated with an outside facilitator, featured hours of robust discussion that set the tone for the Board's work in the near future. The Board discussed elements of professionalism, and of conduct unbecoming a physician. Board members also discussed a four-pronged approach to continuing competency, which will be reviewed with our stakeholders.

Based on these discussions, as well as input from staff and others, the Board this spring adopted a Statement of Philosophy on Professionalism. *Full Statement, page 3.*

### Outreach and Partnering in Pursuit of Excellence

The Board of Medical Examiners is continually assessing its efficacy, and working within the Federation of State Medical Boards (FSMB) to learn from colleagues all around the country. In March, Board member David Watt, MD and I attended an FSMB workshop, *Physician Accountability for Physician Competence*. This unique forum afforded medical board members and executives from national health care organizations the opportunity to share many new ideas toward improving patient safety. The group will reconvene in October.

Prescribing controlled substances for chronic and intractable pain is an important ongoing topic with the BME, as with all state medical boards. The FSMB this year provided workshops on pain management in several locations throughout the country. Four Board members attended workshops on the West Coast – Clifford Deveney, MD; Gary LeClair, MD; John Stiger, DO and Sheridan Thiringer, DO. They reported that their attendance at the workshops was very helpful, as a great deal of useful information was shared regarding regulatory and educational matters connected with pain management.

Two Board members serve on FSMB committees. Vice Chair David Grube, MD is a member of the Federation's Post-Licensure Assessment Program (PLAS) Committee. Dr. Watt this spring was appointed to the Federation's Bylaws Committee. These appointments are honors for the Board and Oregon, but more importantly, afford Board members the

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### Newest Board Member

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the nursing department at Brigham Young University, Provo, Utah, and as a clinical instructor in neurosurgery at the University of Utah School of Medicine in Salt Lake City. He joined the Medford neurological clinic in 1990.

He has served as a clinical neurosurgical instructor at Oregon Health and Science University (OHSU) since 1992.

Dr. Kirkpatrick earned his medical degree at Duke University in Durham, N.C. He served his internship and residencies, in both surgery and neurosurgery, at the University of California, Los Angeles (UCLA). He is a native of Ohio, and earned his bachelor's degree from Oberlin College in that state.

He has been certified by the American Board of Neurological Surgery for 25 years, has written a number of articles on the neuromuscular system and has made professional meeting presentations on neurosurgery in the United States and in Australia. Dr. Kirkpatrick has also lectured on bioethics to adults and youth, and has served as an academic counselor for pre-medicine students.

He is a past president of the Utah State Neurological Society, and has been a Fellow in the American College of Surgeons since 1977.

Dr. Kirkpatrick and his wife Terrie have six children, two of whom are physicians. ■

# PROFESSIONALISM: BME Statement of Philosophy

**Adopted by the Board of Medical Examiners  
May 5, 2005**

The mission of the Oregon Board of Medical Examiners is to protect the health, safety, and well being of Oregon citizens by regulating the practice of medicine in a manner that promotes quality care. It fulfills its mission by, among other activities, investigating and, if necessary, imposing disciplinary action upon physicians who do not uphold the standards of professionalism.

Professionalism comprises those attributes and behaviors that serve to maintain patients' interests above the physician's self-interest.

Professionalism means the continuing pursuit of excellence (*see definition below*), and includes the following qualities:

- **Altruism** is the essence of professionalism. Altruism refers to unselfish regard for and devotion to the welfare of others and is a key element of professionalism. Self-interest or the interests of other parties should not interfere with the care of one's patients and their families.
  - **Accountability and Responsibility** are required at many levels—individual patients, society and the profession. First, there must be accountability to one's patients and to their families. There must also be accountability to society for addressing the health needs of the public and to ensure that the public's needs are addressed.
- One must also be accountable to the profession to ensure that the ethical precepts of practice are upheld. Inherent in responsibility is reliability in completing assigned duties or fulfilling commitments. There must also be a willingness to accept responsibility for errors.
- **Duty: Acceptance of a Commitment to Service.** This commitment entails being available and responsive when "on call," accepting personal inconvenience in order to meet the needs of one's patients, enduring unavoidable risks to oneself when a patient's welfare is at stake, and advocating the best possible care regardless of the patient's ability to pay.
  - **Excellence** entails a conscientious effort to exceed ordinary expectations and to make a commitment to life-long learning. Commitment to excellence is an acknowledged goal for all physicians. A key to excellence is the pursuit of, and commitment to, providing the highest quality of health care through lifelong learning and education. One must seek to learn from errors and aspire to excellence through self-evaluation and acceptance of the critiques of others.
  - **Honesty and Integrity** are the consistent regard for the highest standards of behavior and the refusal to violate one's personal and professional codes. Honesty and

integrity imply being fair, being truthful, keeping one's word, meeting commitments, and being forthright in interactions with patients, peers and in all professional work, whether through documentation, personal communication, presentations, research, or other aspects of interaction. Honesty and integrity require awareness of situations that may result in conflict of interest or that result in personal gain at the expense of the best interest of the patient.

- **Respect for Others** is central to professionalism. This respect extends to all spheres of contact, including but not limited to patients, families, other physicians and professional colleagues. One must treat all persons with respect and regard for their individual worth and dignity. One must listen attentively and respond humanely to the concerns of patients and family members.

Appropriate empathy for and relief of pain, discomfort, and anxiety should be part of the daily practice of medicine. One must be fair and nondiscriminatory and be aware of emotional, personal, family, and cultural influences on patient well-being and patients' rights and choices of medical care. It is also a professional obligation to respect appropriate patient confidentiality.

## Signs of Unprofessionalism

It is sometimes by looking at what is unprofessional behavior, that the physician can obtain greater understanding of the meaning of professionalism. The Board has seen these signs of unprofessionalism:

- **Abuse of Power:** Physicians are generally accorded great respect by their patients. When used well, this power can accomplish enormous good. When abused, it causes the opposite. Examples of abuse of power are:
  - Crossing sexual boundaries.
  - Breaching confidentiality.
  - Proselytizing a point of view in order to change a patient's mind.
- **Arrogance:** For a physician, arrogance is an offensive display of superiority and self-importance, which prevents the establishment of empathetic relationships. Examples of arrogance are:
  - Failing to listen to others.
  - Abusing the social position of physicians.
  - Failing to make appropriate referrals.
  - Safeguarding physician interests above the patient.
- **Greed:** When money rather than patient care becomes the guiding force in a physician's practice. Examples of greed are:
  - Doing procedures that have no medical indication.
  - Billing fraud.
  - Not providing medical documentation for services.

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## **From the Executive Director** *(continued from page 2)*

opportunity to gain a national perspective and further enhance the Board's operations.

### **The BME Strives for Constant Process Improvement**

Within BME headquarters, the Board and staff constantly strive to find and implement new processes and procedures that will enhance patient safety in constantly-changing medical and social environments.

The BME's licensing process will soon include criminal background records checks of all applicants. Governor Kulongoski on June 29 signed House Bill (HB) 2059, allowing the BME to conduct such checks of applicants and licensees. The bill, which takes effect January 1, 2006, allows fingerprinting of applicants by law enforcement agencies in their home communities. The Oregon State Police (OSP) then conducts nationwide background checks of applicants, through the FBI's national criminal databank. HB 2059 requires fingerprint cards to be returned to the OSP and destroyed after checks are completed.

Oregon will become the 19<sup>th</sup> state to conduct national criminal record checks on prospective physicians, podiatrists, physician assistants and acupuncturists – 70 percent of whom come from out of state. The BME criminal record check program will provide Oregonians with an additional safeguard against dangerous health care.

The very prominent case of Dr. Jayant M. Patel underscores the importance of the BME licensing and disciplinary processes to medical excellence in Oregon. It also underscores the need to thoroughly check applicants' backgrounds with authorities in other jurisdictions.

The Board in 2000 disciplined Dr. Patel for negligent and unprofessional conduct, restricted his ability to perform surgery and reported these actions to three national databanks. When he applied for licensure in Australia, medical authorities there did not check his background in Oregon with the BME. Dr. Patel is now under investigation in Australia in connection with a number of patient deaths.

The Patel case comes as the BME conducts a thorough review of its licensing and disciplinary processes, which will be followed by an outside consultant's examination of Board disciplinary procedures. We believe that improvements can and will be made. Measures will be

taken to enhance the Board's ability to detect unfit practitioners and deny them the ability to practice in Oregon, while maintaining confidentiality and the integrity of due process.

Other important reviews are taking place this year. The Board's Health Professionals Program (HPP) is undergoing an audit of its operations, as well. The HPP audit is an important component of the agency's constant pursuit of excellence, just as the HPP itself is vital to public protection and the monitoring of healthcare providers struggling with addiction issues.

### **... Yes, We Can – and Will – Do Better!**

Though the weather outside was perilous, and they had just completed a grueling two-day quarterly meeting, Board members approached that January 15 retreat knowing the answer to the question, "Can we do better?"

One member, Frank Spokas, MD, was so certain of the answer that he unhesitatingly agreed to take part in the retreat ... though he was slated to retire from the Board in a few weeks, and was facing a long and hazardous drive home to Ontario.

The answer is "Yes!" ... the BME can do better. And knowing that as an unchanging truism, The Board, committee members and staff continually strive for excellence while diligently maintaining the BME's core strengths – licensing only qualified applicants, and thoroughly and fairly disciplining its licensees where evidence supports such action. ■



***“There will always be room for improvement. You’ll never achieve perfection, not in this life. That’s the way God made things. But if your goal is perfection, your best will constantly get better.”***

*– Ted Wilson, Linfield College  
basketball coach 1961-81*

## BOARD ACTIONS – January 15, 2005 to June 23, 2005

### **BERGIN, Patrick J., MD15838** **Eugene, Ore.**

The Board on February 3, 2005 issued a Final Order suspending the Licensee's medical license but staying the suspension, reprimanding him and imposing a \$2,000 fine and contested case hearing costs. The Order also prohibits the Licensee from using alcohol and controlled substances and mandates random urinalyses, and requires a multi-disciplinary evaluation within 30 days of the Order.

### **BURLESON, David O., MD15077** **Portland, Ore.**

The Board on May 5, 2005 approved an Interim Stipulated Order into which the Licensee had entered on April 18, 2005. Through the Order, the Licensee withdrew from practice pending completion of an investigation regarding his competency to safely and competently practice. Based on the Licensee's signing of the Interim Stipulated Order, the Board on April 19, 2005 rescinded an Order of Emergency Suspension it had approved on April 15, 2005.

### **CAMPBELL, Robert P., MD10884** **Portland, Ore.**

The Licensee on June 23, 2005 entered into an Interim Stipulated Order pending completion of a Board investigation. The terms of the Order are as follows: Participation in the Health Professionals Program (HPP); weekly group and individual therapy; adherence to all recommendations of therapists and providers; submission of quarterly reports to the Board by therapists and providers; use of a medically trained chaperone when treating female patients; maintenance of appropriate professional and personal boundaries; practice inspections without prior notice to ensure compliance with the Order.

### **DUBIN, David A., MD25083** **Portland, Ore.**

The Licensee on April 15, 2005 entered into a Stipulated Order with the Board, through which he surrendered his medical license. Through the Order, the Board also terminated the Licensee's Voluntary Limitation of April 14, 2004.

### **EKLUND, Gilbert W., MD07826** **Beaverton, Ore.**

The Licensee on February 25, 2005 entered into a Corrective Action Order with the Board. Through the Order, the Licensee agreed to have a Board-approved practice mentor who shall submit quarterly progress reports to the Board. In addition, the Licensee will submit a written educational plan to the Board before performing any invasive procedures on the breast.

### **ELLISON, Monty R., MD07648** **Albany, Ore.**

The Licensee on March 3, 2005 entered into a Stipulated Order with the Board. Through the Order, the Board allowed the Licensee to retire his Oregon medical license while under investigation. The Licensee will be allowed to reapply for licensure after a period of two (2) years, but must comply with various conditions regarding his ability to safely and competently to practice medicine before a license is issued.

### **ERDE, Karen M., MD10738** **Portland, Ore.**

The Licensee on April 15, 2005 entered into a Corrective Action Order with the Board. Through the Order, the Licensee agreed to enroll in a Board-approved mini-residency or other training. The Order also requires the Licensee to practice in a hospital or group setting under a Board-approved mentor. The Licensee may request termination of the Order 18 months or more after the approval date, if she has completed the terms of the Order.

**Board Actions** *(continued from page 5)***FREEMAN, Dale O. LAc; AC00213  
Sheridan, Ore.**

The Licensee on March 3, 2005 entered into a Stipulated Order, through which the Board reprimanded the Licensee and required him to obtain Continuing Medical Education (CME) in professional boundaries, charting, and patient communication. The Order also states that the Licensee must provide informed consent before providing treatment to and near sensitive areas of the body, including the female breasts and genitalia, and must have a chaperone present when treating the breast or genital areas. The Licensee must also offer chaperones to female patients older than 12 years in all other circumstances.

**HARDY, John H., MD18862  
Vandenberg Air Force Base, Calif.**

The Licensee on March 3, 2005 entered into an Interim Stipulated Order which limits his Oregon medical license to practice as a physician while on active duty as a commissioned officer in the U.S. Air Force, carrying out military related missions. The Licensee also agreed to provide the Board with a copy of any action taken by the military in regard to its current investigation of the Licensee.

**JOHNSON, Susan H., MD17446  
Portland, Ore.**

The Licensee on February 3, 2005 entered into a Corrective Action Order, through which she agreed to enroll in and complete the Physician Evaluation, Education and Renewal (PEER) program.

**MANUELE, Kenneth W., DO19106  
Brookings, Ore.**

The Licensee on April 15, 2005 entered into a Corrective Action Order, through which he agreed to continue treatment with a Board-approved psychiatrist. The psychiatrist is required to submit quarterly progress reports to the Board.

**MCCASKILL, Michael F., MD10666  
Medford, Ore.**

The Licensee on April 15, 2005 entered into a Corrective Action Order, through which he agreed to comply with the following terms: The Licensee may not treat Patient A, or allow a subordinate or employee other than a licensed physician to treat Patient A. The Licensee is also required to complete the Board's Appropriate Prescribing Workshop (APW), is required to keep appropriate records for all patients treated or prescribed medications, and is prohibited from prescribing medication for himself or members of his family. The Licensee also must have a primary care physician.

**MCDUFFIE, Richard W., MD09112  
Eugene, Ore.**

The Licensee on May 5, 2005 entered into an Interim Stipulated Order in which he agreed to withdraw from practice pending conclusion of the Board investigation. The Licensee also agreed to release information to the Board from various entities.

**MEHARRY, Leroy I., MD11421  
Umatilla, Ore.**

The Licensee on April 15, 2005 entered into a Stipulated Order with the Board. Through the Order, the Licensee was reprimanded, prohibited from prescribing medication for himself or members of his family, prohibited from treating family members and from working in any health care facility where any family member is employed. The Licensee is also prohibited from storing narcotic medications or any Schedule II or III controlled substances at any health care facility where he works, or at his residence.

**MISKO, John C., MD05892  
Portland, Ore.**

The Licensee on May 5, 2005 entered into a Stipulated Order with the Board, in which he agreed to retire his Oregon medical license while

## **Board Actions** *(continued from page 6)*

under investigation, and to never reapply for an Oregon medical license. On February 3, 2005, the Licensee had entered into an Interim Stipulated Order, through which he withdrew from the practice of medicine pending completion of the Board's investigation.

### **MITCHELL, Frederick L., MD21015 Newberg, Ore.**

The Licensee entered into an Interim Stipulated Order on March 3, 2005. Through the Order, the Licensee agreed to comply with certain terms while the Board conducts its investigation. The Licensee is required to provide a Material Risk Notice for patients he treats with narcotics for three (3) months or longer. He is required to comply with the Intractable Pain Law (ORS 677.470 to .485), and is prohibited from prescribing more than four (4) grams of acetaminophen per day to any patient. The Board will take final action regarding this case upon completion of its investigation.

### **MUMFORD, Dwight C., MD08485 Beaverton, Ore.**

The Board on May 5, 2005 approved an Interim Stipulated Order into which the Licensee had entered on April 26, 2005. Through the Order, the Licensee agreed to withdraw from practice pending the conclusion of the Board's investigation. Other terms of the Order: The Licensee must also abstain from the use of alcohol, complete residential drug and alcohol treatment, submit to random urinalyses and continue to receive psychiatric care. This Order is to remain in effect until the Board concludes its investigation into the Licensee's competency to practice.

### **NEITLING, Stanley J., MD13059 Tillamook, Ore.**

The Licensee on March 3, 2005 entered into a Stipulated Order with the Board, through which he was reprimanded and placed on five (5) years of probation, under the following terms: He must enroll

in the HPP, make quarterly reports to the Board and provide copies of the Order to any hospital or healthcare facility in which he has privileges.

### **PARENT, Jeffrey M., DO15942 Milwaukie, Ore.**

The Licensee on February 3, 2005 entered into a Stipulated Order with the Board, through which he was reprimanded and placed on probation for 10 years. Probationary terms include no solo practice or supervision of physician assistants (PA), a work week of no more than 20 hours, annual physical and neuropsychological examinations, treatment for chronic pain by a pre-approved pain specialist, quarterly reports from his primary care physician and quarterly Board interviews. The Licensee must also obtain CME in family practice, and must receive appropriate CME prior to treating patients for Attention Deficit Disorder (ADD). The Licensee may not allow staff to write prescriptions, and he may not prescribe himself medication.

### **REXIN, Douglas A., MD20317 Willamina, Ore.**

The Board on June 23, 2005 suspended the Licensee's license to practice, in response to notice from the Oregon Department of Justice's Child Support Division of Child, that the Licensee was delinquent in paying child support. The Board issued the Order of License Suspension as required by ORS 25.750-.785.

### **SMITH, Randall J., DO15715 Portland, Ore.**

The Board on April 15, 2005 issued a Final Order against the Licensee, revoking his medical license and imposing a \$5,000 fine.

### **TEPLICK, Stanley B., MD19317 Salem, Ore.**

The Licensee on March 3, 2005 entered into a Stipulated Order, in which the Board reprimanded him, suspended his license for a 30-day period to

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## Board Actions *(continued from page 7)*

begin within 60 days of the effective date of the Order and placed him on five (5) years' probation. Probationary terms include completion of CME courses in appropriate prescribing and professional boundaries, and making quarterly reports to the Board.

### **VANSICKLE, David G., MD07617** **Tualatin, Ore.**

The Licensee on April 15, 2005 entered into a Stipulated Order through which he retired his medical license while under Board investigation, which would be reopened at a future date if the Licensee decided to reapply for licensure. The Licensee on February 3, 2005 had entered into an Interim Stipulated Order, through which he had agreed to withdraw from practice until the conclusion of the Board's investigation.

### **WHANG, Edward K., MD10381** **Portland, Ore.**

The Licensee on May 5, 2005 entered into an Interim Stipulated Order with the Board, through which he agreed to stop taking new patients, use a chaperone when treating female patients, and

cease practicing by December 31, 2005. The Order will remain in effect until the Board completes its investigation.

### **WITKOPP, George F., MD10695** **West Linn, Ore.**

The Licensee on February 3, 2005 entered into an Interim Stipulated Order, through which he agreed to withdraw from practice until satisfactory completion of the terms of his October 25, 2004 Final Order.

### **ZAHORIAN, George T. III, MD10695** **Clifton, N.J.**

The Licensee on February 3, 2005 entered into a Stipulated Order placing him on probation for an indefinite period. Probationary terms include disqualification from dispensing privileges and a prohibition from prescribing anabolic steroids. The Licensee must have a practice mentor who shall review 10 percent of his charts on a quarterly basis, must submit to Board inspections of his practice and report to the Board for interviews on a quarterly basis. The Licensee also must pass the Special Purpose Examination (SPEX). ■



## Statement of Purpose

# BME REPORT

**The mission of the Oregon Board of Medical Examiners** is to protect the health, safety and well being of Oregon citizens by regulating the practice of medicine in a manner that promotes quality care.

**The BME Report is published** to help promote medical excellence by providing current information about laws and issues affecting medical licensure and practice in Oregon.

# OREGON ADMINISTRATIVE RULES

## OARS Reviewed and Adopted by the Board of Medical Examiners

The Board at its April 14-15, 2005 meeting reviewed the following Oregon Administrative Rules (OAR):

### ADOPTED RULES

#### Final Review by the Board

#### EMERGENCY MEDICAL TECHNICIANS (EMT)

**OAR 847-035-0030, Scope of Practice** – The rules changes update the EMT-Intermediate (I) scope of practice to correspond to the new EMT-I curriculum developed for the Oregon Department of Human Services (DHS) by several interest groups, which were composed of EMT instructors and EMT supervising physicians.

In another Division 035 rule change, the term “cuffed pharyngeal airway” replaces “dual lumen airway” in the EMT-Basic scope of practice.

#### PHYSICIAN ASSISTANTS (PA)

**OAR 847-50-0037, Supervision** – The new rule language allows PAs to practice at locations other than the primary or secondary practice locations without listing those sites in practice descriptions, if the PAs’ duties are the same as those listed in the practice description.

The new language also requires medical records for patients seen at these additional practice locations to be maintained at the additional practice sites or at the supervising physicians’ primary practice locations.

### PROPOSED RULES

#### First Reviews – April 2005

The Board discussed these rule proposals on First Review at its April 14-15, 2005 meeting.

#### ALL LICENSEES

**OAR 847-005-0005, Fees** – The proposed rule change would delete “in state” for Active license status and “out of state” for Inactive status, and would add to the fee schedule the following statuses: Active – Military/Public Health, Active – Teleradiology and Telemedicine.

**OAR 847-010-0100, Mandatory Pain Management Education** – The proposed new rules would require all BME licensees to obtain six hours of continuing medical education (CME) in pain management and/or treatment of terminally ill and dying patients.

Licensees would also be required to complete a one-hour pain management course specific to the state of Oregon, provided by the DHS Pain Management Program. The required CME must be obtained before Friday, January 2, 2009.

The proposed rules are written in accordance with Chapter 987 of Oregon Laws 2001, which the Legislature that year adopted as Senate Bill (SB) 885.

#### MDs/DOs

**OAR 847, Division 020, Basic Requirements for Licensure of a Foreign Medical School Graduate** – The proposed amendments to OAR 847-020-0130, 847-020-0160 and 847-020-0170 would change some basic licensure requirements for graduates of foreign medical schools.

The Board on First Review made several substantive changes in the proposed rule amendments. In OAR 847-020-0130 (2) (b), the Board added the phrase “in the country in which it (*the medical school*) is chartered” after the phrase “physical on-site attendance.”

In OAR 847-020-0160 (4), the Board deleted the phrase “who practice the same specialty” from proposed language regarding letters of recommendation.

In OAR 847-020-0170 (5), the Board deleted subsection (c), which had contained a requirement that applicants take and pass the Special Purpose Examination (SPEX) within 10 years of filing an application with the Board.

**OAR 847-020-0170, Written Examination, SPEX Examination and Personal Interview** – The proposed amendments make a few corrections to the rules, add a requirement for licensure of foreign medical graduates and require reference letters for physicians who have been in solo practice.

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**OARs** (continued from page 9)**EMTs**

**OAR 847-035-0030, Scope of Practice** – The proposed administrative rules change the airway language in the First Responder and EMT-Basic scope of practice, allow EMTs-Basic to obtain capillary blood specimens for blood glucose monitoring, and change “needle cricothyrotomy” to “percutaneous cricothyrotomy” in the EMT-Paramedic (P) scope of practice.

**Acupuncturists**

**OAR 847-070-0016, Qualifications; OAR 847-070-0019, Interview and Examination; OAR 847-070-0045, Inactive Registration, and Reactivation from Inactive to Active** – The proposed rule amendments update language regarding the National Certification for Acupuncture and Oriental Medicine (NCCAOM) examinations and certification, which have recently changed.

In addition, proposed new language describes the steps the Board may take to ensure that applicants remain competent to practice, if they have been out of practice for 12 months or longer. The same OAR language is proposed in regard to reactivation of licenses from Inactive to Active status.

**Podiatrists**

**OAR 847-080-0010, Requirements for Licensure; OAR 847-080-0018, Endorsement, Oral Examination, Competency Examination and Personal Interview** – The proposed amendments add the requirement that a podiatric applicant must have graduated from an accredited school or college of podiatric medicine.

Proposed new language also states the number of years within which applicants must pass all three parts of the National Board of Podiatric Medical Examiners (NBPME) examination, and describes a possible waiver if applicants have passed all three parts in more than seven years.

The proposed rules change also requires applicants to pass Part III of the NBPME examination within three attempts and failing that, to complete a year of Board-approved postgraduate training before attempting to pass Part III for the fourth and final time.

*The Board's mailing address is 1500 S.W. First Ave., Suite 620, Portland, OR 97201-5826. For more information on OARs, visit the BME Website at [www.oregon.gov/BME](http://www.oregon.gov/BME) ■*

**Professionalism: Statement of Philosophy** (continued from page 3)

- **Misrepresentation:** In the context of unprofessional behavior misrepresentation consists of lying (consciously telling an untruth) and fraud (conscious misrepresentation of material facts with the intent to mislead). Examples of misrepresentation are:
  - Misrepresenting educational history.
  - Not filling out licensing and other applications for renewal truthfully.
  - Faking research.
  - Inflating credentials.
  - Altering charts.
  - Giving expert testimony that is not truthful.
- **Impairment:** This occurs when a physician is no longer able to give the patient the needed proper care. Examples are:
  - Being under the influence of alcohol and/or drugs while on duty.
  - Having untreated physical or mental health problems.
  - Overworking, which may lead to the inability to concentrate.
- **Lack of Conscientiousness:** This occurs when a physician does not fulfill his/her responsibilities to patients, colleagues and society. Examples are:
  - Charting poorly.
  - Abandoning patients.
  - Not returning phone calls or pages.
  - Not responding appropriately or refusing referrals without a good reason.
  - Not providing patient records in a timely manner.
  - Supervising trainees inadequately.
  - Self-medicating without documentation.
  - Not keeping up with the skills and knowledge advances in the scope of practice.
- **Conflict of Interest:** When the physician puts his/her interests above that of the patient and society, it is a conflict of interest. Here are a few examples:
  - Ordering diagnostic procedures or treatment from businesses where the physician has an interest.
  - Receiving expensive gifts and/or money from drug dispensing companies, which causes undue influence. ■

## BME Announces New Website

The BME Website has a new look and a new location.

Visitors to the old BME Web address will find themselves redirected to [www.oregon.gov/BME](http://www.oregon.gov/BME), where they will see a new BME home page and site matching the required template for all state agency Websites.

BME staff have attempted to retain as many features of the old Website layout as possible, but some changes were necessary in order to conform to the rules of the new template. Staff emphasize that all information, forms and links available at the old Web address are available at the new site. The BME Website home page will soon be redesigned to make it easier to navigate.

The “redirect” Web page will be in operation indefinitely, so persons using the old BME Web address will continue to be automatically redirected to the new site. Frequent visitors to the BME Website are encouraged to update their contact information and “Favorites” tools on their computers. ■

## Board meeting dates changed for October

The Board of Medical Examiners’ fall quarterly meeting will take place Thursday and Friday, October 6-7, rather than the dates previously announced.

The meetings begin each day at 8 a.m.

The Board meets at the BME office in Suite 620 of Crown Plaza, 1500 S.W. First Ave., Suite 620, Portland.

## CALENDAR OF EVENTS 2005

### September

- 1 (Thu.) Investigative Committee, 8 a.m.
- 5 (Mon.) State Holiday (*BME Offices closed*)
- 8 (Thu.) Physician Assistant (PA) Committee, 9:30 a.m.
- 9 (Fri.) Emergency Medical Technician (EMT) Advisory Committee, 9 a.m.
- 14 (Wed.) Administrative Affairs Committee, 5 p.m.
- 16 (Fri.) Advisory Council on Podiatry, 2 p.m.
- 22 (Thu.) Investigative Committee, 8 a.m. (tentative)
- 23 (Fri.) Acupuncture Advisory Committee, 1 p.m.

### October

- 6 (Thu.) Board of Medical Examiners’ quarterly meeting, 8 a.m. – 5 p.m.
- 7 (Fri.) Board meeting continues, 8 a.m. to close of business

### November

- 3 (Thu.) Investigative Committee, 8 a.m.

All meetings are at the BME offices in Portland, unless otherwise indicated.

### FOR MORE INFORMATION

Go to the BME Website at [www.oregon.gov/BME](http://www.oregon.gov/BME); or Call the BME at (503) 229-5770, or call toll-free in Oregon at 1-877-254-6263. ■

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*It's the law! You must notify the BME within 30 days of changing your practice address or mailing address. To help ensure that you receive your license renewals and other important information on time, call the BME for an address change form, or print the form from [www.oregon.gov/BME/forms/shtml](http://www.oregon.gov/BME/forms/shtml).*

***BME Information at Your Fingertips!***

**[www.oregon.gov/BME](http://www.oregon.gov/BME)**

**GENERAL INFORMATION**

**Mon. - Fri., 8 a.m. to 5 p.m.**

**(503) 229-5770**

**or toll-free in Oregon, 1-877-254-6263**

**LICENSE VERIFICATION**

**Mon. - Fri., 1 to 4:30 p.m.**

**(503) 229-5027**



# Prescribing: Problems, pitfalls and perils

**By Philip Parshley, M.D.  
Medical Director,  
Board of Medical Examiners**

Prescribing medication is an essential task within a physician's practice. But the fast pace of scientific progress, societal problems of drug addiction and abuse, and a multi-level myriad of rules and regulations make it a problematic task as well.

## ***Multiple prescriptions and the Law***

Recently, there has been some confusion regarding prescriptions of Schedule II controlled substances, particularly with regard to federal regulations. The federal Controlled Substances Act (CSA) specifically prohibits refilling prescriptions for Schedule II drugs, but until recently it has been accepted that multiple Schedule II prescriptions may be written and dated on the same day with the additional written comment, "Do Not Fill Until xx/xx/xx (date)". By advancing the date by one month in sequence on these several prescriptions a healthcare provider, licensed to prescribe Schedule II medications, may provide a one month supply for several months in a row.

This technique was used for reliable individuals who were on stable doses and who were perhaps restricted by insurance rules that allowed only one month supply of medications at a time. The U.S. Drug Enforcement Administration (DEA) in an August 2004 "Frequently Asked Questions" document stated that this was acceptable.

However, in November 2004 the DEA published in the *Federal Register* a retraction of the previous acknowledgment of that process, and opened the way for public comment. This made the care of chronic pain patients more difficult and more expensive for both the public and healthcare providers. Because of many protests, public commentary was sought, but, after the DEA received many opinions against its November 2004 ruling, it reconfirmed its November action. This was based on the

overall rule that refills of Schedule II drugs are forbidden, and that permitting this alternative is “tantamount to writing a prescription authorizing refills of a Schedule II controlled substance.”

Federal authorities explained that such an action would conflict with a fundamental purpose of the federal statute – preventing diversion of controlled substances for unlawful purposes. Authorities have long felt that physicians who unlawfully dispense controlled substances often do so by writing multiple prescriptions for future use. This issue may not be over yet. Stay tuned for now but don’t use this technique.

It is well to note that in situations where federal laws or regulations conflict with state laws or regulations, the more stringent rule or rules are to be followed – particularly in regard to using, prescribing and administering controlled substances.

### ***Oregon requires CME for pain prescribing***

An Oregon state law which takes effect January 2, 2006 requires that certain licensees of the BME must complete continuing medical education (CME) in pain management. The BME is writing Oregon Administrative Rules (OAR) to require that all licensees complete mandatory CME in the subject of pain management and/or the treatment of terminally ill and dying patients.

The CME includes a one-hour pain management course specific to Oregon, provided by the Pain Management Commission in the Department of Human Services<sup>1</sup>, and six hours of CME in pain management and/or treatment of terminally ill and dying patients. Any combination of these subjects may be used.

Licensees holding the following types of licenses are not required to participate: lapsed licenses; telemedicine licenses; teleradiology licenses.

The 2001 Legislature adopted the new law, and health care professionals subject to these CME requirements have 24 months from the effective date (January 2, 2006) to complete the required coursework. The required CME must be completed after January 1, 2000 and before January 2, 2009. All licensees required to obtain this CME must have available documentation of completion, or face disciplinary action by the BME.

Other organizations offer pain management courses for Oregon providers seeking to comply with the six-hour CME requirement. The University of California, San Diego (UCSD) offers six-hour and 12-hour programs in pain management, designed to comply with California's pain management education law. The UCSD courses are available on DVD for \$150 (six hours) or \$200 (12 hours)<sup>2</sup>.

The American Medical Association (AMA) offers two free, three-hour courses as PDF downloadable files to all health care providers. The courses are in management of persistent non-malignant pain, cancer pain and end-of-life care.<sup>3</sup> The AMA has a 12-hour course available on line as well, the last six hours of which is included in the above downloadable programs.

Physician assistants are reminded that they must complete all required CME – including pain management – in order to qualify for Schedule II prescribing privileges.

### ***Chronic pain prescribing: Ongoing Issues***

Oregon law also requires attending physicians to provide, and patients to sign, Material Risk Notices (MRN) if controlled substances are prescribed and/or administered for chronic intractable pain. As stated in OAR 847-015-0030, the notices should include but not be limited to the following: diagnosis, controlled substance and/or group of

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<sup>1</sup> [www.oregon.gov/DHS/pain](http://www.oregon.gov/DHS/pain)

<sup>2</sup> [www.ab487.com/program/misc/splash.htm](http://www.ab487.com/program/misc/splash.htm)

<sup>3</sup> [www.ama-assn.org/ama/pub/category/13494.html](http://www.ama-assn.org/ama/pub/category/13494.html)

controlled substances to be used, anticipated therapeutic results, and alternatives to controlled substance therapy.

In addition, the MRN should inform patients of potential side effects of medication on various systems of the body, possible allergic reactions, impairment and addiction, interactions with other drugs and withdrawal precautions. The MRN also should contain patient-initiated, achievable goals of treatment other than simply control of pain. Progress in achieving these goals provides valuable measurement of the efficacy of the treatment program. Without positive results, the planned treatment should be re-evaluated.

An “approved” example of a Material Risk Notice is available on the Board’s Website, under “Forms.”<sup>4</sup>

When tracking prescribing of controlled substances, using more than one tracking method is recommended. Flow sheets, organized copies of prescription pads and some electronic records used in concert will help ensure thorough and accurate records of prescriptions for controlled substances used to treat pain.

All healthcare professionals should recognize “red flags” of controlled substance abuse – seeking and/or diverting drugs for unlawful and non-therapeutic purposes. In addition poor or nonexistent prescription tracking, prescribing or administering drugs to family members or self, inadequate security when drugs are kept at practice locations, are grounds for suspending, revoking or refusing to issue licenses, under ORS 677.190 (7), (24) and (25).

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<sup>4</sup> [www.oregon.gov/BME](http://www.oregon.gov/BME)