



ACTION REPORT

BOARD OF MEDICAL QUALITY ASSURANCE

No. 32—May 1987

AN OPEN LETTER TO ALL CALIFORNIA PHYSICIANS

Dear Doctor:

AIDS is perhaps the most discussed medical phenomenon of this decade. As Surgeon General Everett Koop has reported, AIDS is a very serious public health hazard which will be increasing in severity and which will require a major response at all levels.

The Surgeon General has called for widespread public education on the prevention of AIDS. He has emphasized the need for everyone, not just high risk groups, to be educated on how to reduce the risk of exposure. It has become apparent in the past few years that almost no-one can be certain of avoiding exposure to this disease. In addition to the kinds of public education that can be developed for the general media, there is a need for primary care physicians to be prepared to educate and counsel their patients.

In addition, there is another educational need particularly pertinent to physicians.

THE BOARD OF MEDICAL QUALITY ASSURANCE HAS NOTED INCREASED ANECDOTAL EVIDENCE THAT MANY PRIMARY CARE PHYSICIANS ARE NOT ADEQUATELY INFORMED OR TRAINED IN HOW TO RECOGNIZE AIDS AND AIDS RELATED COMPLEX (ARC), PARTICULARLY IN THE EARLY STAGES, AND IN HOW TO TREAT THEIR VARIOUS OPPORTUNISTIC INFECTIONS.

We believe that all physicians, particularly primary care practitioners, owe it to themselves and their patients to become educated in the early recognition, differential diagnosis and treatment of AIDS. The odds are approaching certainty that any given primary care physician will encounter a patient with AIDS or ARC, or a positive antibody response, indicating exposure to the virus. You should ask yourself, "Would I recognize AIDS if I saw it in one of my patients?"

In most areas of California there now are AIDS hotlines listed in phone books. Both the CMA and the component county medical societies have created committees on AIDS or have developed other AIDS resources to assist physicians. Many hospitals and other local organizations also are offering CME courses, lectures and programs. In coming issues of the BMQA ACTION REPORT, we will be publishing additional information on resources available to you to increase your knowledge.

Finally, although in the first few years cases of AIDS were concentrated in two high-risk groups—IV drug users and homosexual men—it is now clearly a disease which can affect anyone. A possible diagnosis of AIDS should never be overlooked in a patient with suspicious symptoms in the belief that he or she is not "at risk". The diagnostic workup should follow the same careful procedures you would use for any other infectious disease.

Again, on behalf of the Board, I urge you in the strongest possible terms, to become knowledgeable about this disease. No patient should be given inadequate treatment because his or her doctor didn't know what to do. No person should be exposed needlessly to an essentially incurable disease for lack of education from his or her physician.

Sincerely,

Rendel Levonian, M.D.
PRESIDENT OF THE BOARD

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New Requirements Affect Reporting of Physician Discipline

In the last issue of *Action Report*, we described several recent law changes relating to the BMQA. One of these affects the requirement for health facilities to report physician disciplinary actions to the Board.

Section 805 of the Business and Professions Code requires hospitals and other health facilities to report the following inci-

dents to the licensing boards for physicians, podiatrists or psychologists (BMQA) or for dentists (Board of Dental Examiners) if such action was for any medical disciplinary cause or reason, including voluntary resignation to avoid discipline:

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DISCIPLINARY ACTIONS

August 1, 1986-December 31, 1986

Physicians and Surgeons

BATTLESON, Bruce K., M.D. (A-27978)—Bishop
2234(b) and (d) B&P Code
Stipulated decision. Gross negligence and incompetence in the management of a patient with cardiac problems. Revoked, stayed, 5 years probation on terms and conditions.
September 3, 1986

BRADSHAW, John W., M.D. (G-26168)—Willows
725, 2241, 2242, 2234(b), (c), (d), 2238 B&P Code; 11190 H&S Code
Stipulated decision. Excessive prescribing, prescribing controlled drugs to addicts, prescribing without good faith prior examination and medical indication, and failing to maintain drug records. Also, gross negligence, incompetence and repeated negligence in the handling of several obstetrical cases.
Revoked, stayed, 7 years probation on terms and conditions.
October 3, 1986

BROOKS, Robert N., M.D. (G-17161)—Los Angeles
726 D&P Code
Stipulated decision. Engaged in sex act with patient. One year suspension, stayed, 5 years probation on terms and conditions.
September 3, 1986

BROWN, Calvin R., M.D. (G-51355)—Salt Lake City, Utah
2305 B&P Code
Discipline by Utah Board for false Medicare claims.
Revoked. Default decision.
November 24, 1986

BUI, Rau Van, M.D. (A-35749)—San Jose
2236 B&P Code
Stipulated decision. Conviction for filing false Medi-Cal claims.
Revoked, stayed, 5 years probation on terms and conditions, including 3 months actual suspension.
December 8, 1986

DAVENPORT, Donald, M.D. (A-8882)—Corona del Mar
2237 B&P Code; 11153 H&S Code
Stipulated decision. Conviction for prescribing controlled drugs without medical indications.
Revoked, stayed, 5 years probation on terms and conditions.
September 26, 1986

DO, Hung Vu, M.D. (A-38460)—Fullerton
490, 2236, 2261, 2234(e) B&P Code
Stipulated decision. Conviction for filing false Medi-Cal claims.
Revoked, stayed, 5 years probation on terms and conditions.
August 28, 1986

DREW, Douglas E., M.D. (C-40839)—Des Moines, Iowa
2305 B&P Code
Discipline by Iowa Board for incompetence in the practice of medicine.
Revoked, stayed, 5 years probation on terms and conditions.
December 18, 1986

EWING, Douglas E., M.D. (G-20110)—Claremont
2234, 2234(e) B&P Code
Stipulated decision. Conviction for having sex with an underage girl.
Revoked, stayed, 5 years probation on terms and conditions, including one year actual suspension.
December 18, 1986

FLOWERS, John, M.D. (C-37121)—Torrance
2234(a), (e), 2306 B&P Code
Violated probationary terms of prior discipline, practiced while suspended, and made false statements in his petition for penalty reduction.
Revoked.
December 9, 1986

FUKUJI, Shigeto, M.D. (A-28586)—Rowland Heights
725, 2234(b), (c), (d) B&P Code
Stipulated decision. Gross negligence, repeated negligent acts, incompetence and repeated acts of clearly excessive administering of treatment, use of diagnostic procedures and facilities involving seven patients.
Revoked, stayed, 7 years probation on terms and conditions.
November 24, 1986

GREEN, Carl Leroy, M.D. (C-26550)—San Diego
726, 2234, 2234(b) B&P Code
Stipulated decision. Sexual transgressions with female patients constituting gross negligence in psychotherapy practice.
Revoked, stayed on conditions, 10 years probation on terms and conditions, including 1 year actual suspension.
October 20, 1986

HAMILTON, James A., M.D. (A-009470)—San Francisco
725, 2234(d) B&P Code
Stipulated decision. Excessive prescribing of high levels of Demerol to a chronic pain patient, and incompetent management.
Revoked, stayed, 3 years probation on terms and conditions.
September 25, 1986

HERSHBERG, Philip I., M.D. (G-20002)—Needham, Massachusetts
2305, 2236 B&P Code
Conviction for illegally distributing controlled substances. Discipline by Massachusetts Board for issuing prescriptions for controlled substances for other than a legitimate medical purpose.
Revoked, stayed, 5 years probation on terms and conditions.
September 27, 1986

HOLBROOK, Julius C., M.D. (A-14640)—Antioch
725, 2234(b), (c), (d), 2236, 2305 B&P Code
Stipulated decision. Conviction for violations of Uniform Controlled Substances Act. Discipline by South Carolina Board for improper usage of estrogenic substances. In California, gross negligence in the treatment of patients for non-ascertainable estrogen deficiencies.
Revoked, stayed, 7 years probation on terms and conditions, including actual suspension of 150 days.
October 15, 1986

HURVITZ, Seymour A., M.D. (G-003690)—Los Angeles
2234(b), (c), (d) B&P Code
Stipulated decision. Gross negligence, repeated negligent acts and incompetence in his inadequate evaluation and performance of vascular surgeries for what he calls vertebral basilar artery insufficiency of the brainstem. (These cases occurred *before* the effective date of a prior discipline for similar surgeries, making them cumulative in nature rather than probation violations.)
Revoked, stayed, 5 years probation to run concurrent with terms and conditions of prior decision.
September 15, 1986

JACOBS, Lawrence, M.D. (C-19856)—Cloverdale
2234(b) and (d) B&P Code
Stipulated decision. Gross negligence and incompetence in a surgical repair of a hernia in one case, and in the treatment of a forearm fracture in another case.
Revoked, stayed, 5 years probation on terms and conditions.
August 29, 1986

JOHNSTON, Denise, M.D. (G-44309)—Montebello
Failed to comply with probationary requirements of a prior discipline. Also, suffered a conviction for petty theft during probation.
Revoked.
August 28, 1986

KAPLAN, Steven L., M.D. (G-29764)—Nova Scotia, Canada
2305 B&P Code
Discipline by Nevada Board for violations of the Controlled Substances Act.
Revoked. Default decision.
October 24, 1986

KAY, Sherman A., M.D. (C-38191)—Franklin, Michigan
2305, 2236, 2234(e) B&P Code
Stipulated decision. Discipline by Michigan Board for a federal conviction involving a scheme to defraud the Medicare program.
Revoked.
November 24, 1986

LASKOWSKA, Irena A., M.D. (A-37576)—San Jose
2235 B&P Code
License was issued in error on the mistaken belief that partly completed medical rotations during the one year of internship required for licensure had been fully completed. No

fraud or dishonesty was involved.
Revoked, stayed, 5 years probation on terms and conditions, including an intensive clinical training program.
August 28, 1986

MARTINEZ, Anthony, M.D. (C-15205)—City of Commerce
2234(d), 2261, 2236 B&P Code
Stipulated decision. Conviction for making false certification of medical conditions to enable parties to obtain disability insurance benefits. Violated probation of prior discipline; practiced while under suspension.
Revoked.
November 24, 1986

MC CORMICK, Michael B., M.D. (G-46908)—Ventura
490, 2305, 2237, 2236 B&P Code
Discipline by Oklahoma Board for federal conviction involving unlawful prescriptions for Schedule II drugs.
Revoked, stayed, 5 years probation on terms and conditions.
September 11, 1986

MILLBURN, Lowell F., M.D. (G-018901)—Middletown, Ohio
2305 B&P Code
Probation ordered by Kentucky Board for mental disability related to alcoholism, now under control.
Revoked, stayed, 5 years probation on terms and conditions.
Default decision.
August 14, 1986

MOHR, Carolyn S., M.D. (A-32065)—Inglewood
490, 2236, 2234(e) B&P Code
Stipulated decision. Conviction for filing false Medi-Cal claims.
Revoked, stayed, 5 years probation on terms and conditions.
October 20, 1986

MOOREHEAD, Will E., M.D. (C-33088)—San Francisco
2234, 2236 B&P Code
Stipulated decision. Conviction for filing false Medi-Cal claims.
Revoked, stayed, 5 years probation on terms and conditions.
August 18, 1986

NGUYEN, Thi V., M.D. (A-36669)—Huntington Beach
810, 2234(e), 2236 B&P Code
Stipulated decision. Conviction for filing false Medi-Cal claims.
Revoked, stayed, 5 years probation on terms and conditions.
September 11, 1986

NGUYEN, Xuan Truong, M.D. (A-38352)—Garden Grove
490, 2261, 2234(e), 2236 B&P Code
Stipulated decision. Conviction for filing false Medi-Cal claims.
Revoked.
September 8, 1986

OHREN, Cato, M.D. (A-19537)—Poway
725, 2242, 2234(b), (d) B&P Code
Excessive prescribing of controlled substances without a good faith prior examination and medical indication, in a grossly negligent and incompetent manner.
Revoked. Default decision.
August 18, 1986

OKAWACHI, George S., M.D. (A-21500)—Upland
725, 2234(b), (c), (d) B&P Code
Stipulated decision. Gross negligence, repeated negligent acts, incompetence and repeated acts of clearly excessive administering of treatment, use of diagnostic procedures and facilities, involving nine patients.
Revoked, stayed, 7 years probation on terms and conditions.
December 15, 1986

ORR, William M., M.D. (C-34480)—Mishawaka, Indiana
822 B&P Code
Ability to practice safely, impaired by mental illness.
Revoked, stayed, 10 years probation on terms and conditions.
September 22, 1986

PATWARDHAN, Vinod C., M.D. (A-29318)—Montclair

Failed to comply with probationary orders of prior discipline under a claim of civil disobedience.
Revoked, stayed, 5 years probation as before. Add 6 months actual suspension.
August 14, 1986

PHAN, Tung Dong, M.D. (A-36944)—San Jose

2234, 2236 B&P Code
Stipulated decision. Conviction for filing false Medi-Cal claims.
Revoked, stayed, 5 years probation on terms and conditions, including 5½ months actual suspension.
November 24, 1986

PHILLIPS, Elliott R., M.D. (G-31876)—Los Angeles

490, 2236, 2234(e) B&P Code
Conviction for filing false Medi-Cal claims.
Revoked, stayed, 5 years probation on terms and conditions.
August 29, 1986

ROTHE, Ronald, M.D. (A-10416)—Banning

2234(b) B&P Code
Gross negligence in failing to order appropriate diagnostic measures for patient with symptoms of an acute illness.
30 days suspension, stayed, one year probation on terms and conditions.
October 9, 1986

SABOT, Theodore J., M.D. (G-08825)—Vacaville

2234(e), 2236 B&P Code
Conviction for filing false Medi-Cal claims.
Revoked.
September 10, 1986

SCHNEIDER, Norman B., M.D. (G-23391)—Bakersfield

490, 2234(e), 2305 B&P Code
Federal conviction in Florida for filing false Medicare claims, resulting in disciplines by Florida Board and Louisiana Board.
Revoked, stayed, 3 years probation on terms and conditions.
December 8, 1986

SHRIFT, Alan R., M.D. (G-007490)—La Mesa

2234(e) B&P Code
Sexual misconduct with female patients.
Revoked, stayed, 10 years probation on terms and conditions, including 180 days actual suspension.
December 24, 1986

SIMMONS, Marvin W., (C-12065)—Fresno

2234(e), 2236 B&P Code
Stipulated decision. Conviction for scheme to defraud the Bankruptcy Court and the Internal Revenue Service.
60 days suspension, stayed, 2 years probation on terms and conditions.
August 11, 1986

SPAR, Harvey R., M.D. (C-26588)—Stockton

490, 2236 B&P Code
Conviction for filing fraudulent Federal income tax returns. Prior discipline.
Revoked, stayed, 5 years probation on terms and conditions, including 30 days actual suspension.
October 7, 1986

STANZEL, Csilla, M.D. (A-30295)—Las Vegas, Nevada

820 B&P Code
Failed to comply with an order compelling psychiatric examination pursuant to the impairment statutes.
Revoked. Default decision.
August 11, 1986

STEVENS, Donald J., M.D. (G-2049)—Red Bank, New Jersey

2305 B&P Code
Discipline by New Jersey Board.
Revoked. Default decision.
August 11, 1986

STEVENSON, Melbourne H., M.D. (A-27912)—Palos Verdes Estates

490, 2236, 2234(e) B&P Code
Conviction for filing false Medi-Cal claims.
Revoked, stayed, 5 years probation on terms and conditions, including 90 days actual suspension.
October 6, 1986

TAYLOR, Stanley D., M.D. (G-40570)—San Bernardino

725, 2234(a), (b), (c), 2238, 2242, 4036 B&P Code
Violated numerous prescribing laws on controlled substances, particularly as to Schedule II drugs. Issued prescriptions excessively, in blank, in irrational combinations, and without

legitimate medical purpose, in his work as a salaried employee of a medical clinic owned and directed by a physician's assistant who was selling prescriptions for cash.
Revoked, stayed, 10 years probation on terms and conditions, including one year actual suspension.
December 10, 1986

THILL, Albert E., M.D. (A-13488)—Anaheim

2236, 2237 B&P Code
Stipulated decision. Conviction for issuing prescriptions for Schedule II controlled substances without a legitimate medical purpose.
Revoked, stayed, 5 years probation on terms and conditions, including 6 months actual suspension.
December 18, 1986

TORRES, Jose C., M.D. (G-34836)—Oakland

2238 B&P Code; 11170 H&S Code
Stipulated decision. Self use of controlled substance in violation of probation of prior decision.
Revoked, stayed, 5 years probation on terms and conditions.
October 20, 1986

VU, Uong Van, M.D. (A-35958)—San Diego

490, 2234(e), 2261, 2236 B&P Code
Stipulated decision. Conviction for filing false Medi-Cal claims.
Revoked, stayed, 5 years probation on terms and conditions.
November 5, 1986

WATCHERS, H. Milton, M.D. (A-18896)—Visalia

726 B&P Code
Stipulated decision. Sexual relations with patient.
Revoked, stayed, 7 years probation on terms and conditions.
August 18, 1986

WEBBER, James T., M.D. (G-29186)—San Diego

725, 2238, 2242, 2234(b) B&P Code; 11154, 11210 H&S Code
Prescribing without good faith prior examination, prescribing without medical indication, gross negligence in medical therapeutics, and excessive prescribing.
Revoked, stayed, 10 years probation on terms and conditions.
May 24, 1984 (Judicial Review completed)

ZIMMER, Alan E., M.D. (C-29568)—Lexington, Kentucky

2236, 2305 B&P Code
Discipline by Ohio Board for conviction of three felony counts related to income tax evasion.
Revoked.
September 11, 1986

Voluntary Surrenders of License Accepted While Charges Pending. Accusations Withdrawn

BAIRD, Clara Mae, M.D. (A-007666)—Chico

December 31, 1986

WINKLER, Heidi Ann, M.D. (A-39035)—San Leandro

August 18, 1986

Decisions After Requested Hearing by Applicants Applying for a Physician's License

KROSS, Marc C.—Woodbarne, New York

Applicant agreed at the hearing that a factual basis existed for denial of license.
Application for license is denied. Re-application may be made after waiting at least one year.
October 27, 1986

SALEM, Atiyeh A.—Cleveland, Ohio

480(c), 582, 583, 2234, 2261 B&P Code
Knowingly made false statements in his license application that he had no criminal convictions (not true) and that he had a valid M.D. diploma (the school revoked it for misrepresentation).
Application for license is denied. Default decision.
November 10, 1986

PODIATRISTS

KOCKINIS, Angelo, DPM (E-1106)—Sacramento

490, 2236, 2497 B&P Code
Stipulated decision. Conviction for sexual battery for the purpose of sexual gratification against a seriously disabled patient institutionalized for medical treatment. Similar misconduct with a second institutionalized disabled patient.
Revoked.
October 24, 1986

KOLKER, Lionel D., DPM (E-1590)—La Mesa

Stipulated decision. Voluntary surrender of podiatry license accepted while action pending. Accusation is dismissed.
September 2, 1986

SALEM, Atiyeh A., DPM (E-3169)—Cleveland, Ohio

2234(a), (e), (f), 2235, 2236, 2261 B&P Code
Obtained a podiatry license through a false application concealing two prior criminal convictions.
Revoked. Default decision.
November 21, 1986

NEW REQUIREMENTS

Continued from Page 1

- Denial of staff privileges;
- Removal from medical staff;
- Restriction of staff privileges for a cumulative total of 45 days in any calendar year.

Reports under Section 805 must be certified by the chief executive officer, and the chief of medical staff if such exists, and must be submitted to the appropriate agency within twenty working days of the action.

Senate Bill 1888, which took effect January 1, 1987, adds several provisions to this section. First, professional societies, medical specialty societies, health care service plans and medical care foundations now are required to make reports to the licensing boards, as above.

Second, all records, statements of charges, documents, medical charts or disciplinary proceeding may be inspected by the board in question. However, such documents shall be kept confidential by the board, and are not subject to discovery.

A third provision of SB 1888 amends the Civil Code. Section 43.97 now provides certain protections for those who file such reports. When a report is made pursuant to Section 805, "There shall be no monetary liability on the part of, and no cause of action for damages, other than economic or pecuniary damages, shall arise against a hospital for any action taken upon the recommendation of its medical staff, or against any other person or organization for any action taken, or restriction imposed, which is required to be reported pursuant to Section 805 . . ."

Again, this immunity applies only if the action is actually reported to the board. Also, "This section shall not apply to an action knowingly and intentionally taken for the purpose of injuring a person affected by the action, or infringing upon a person's rights."

For information or advice about a particular case or circumstance, you should consult private legal counsel. Copies of the law changes may be secured by contacting the legislative bill room at the state capitol, and requesting a copy of Chapter 1274, Statutes of 1986. The amended version of Section 805 also will be available in 1987 editions of the Business and Professions Code.

REFERRALS REQUIRING A DISCLOSURE STATEMENT

Suppose you have a small interest in a physical therapy clinic or a nursing home. Your patient needs some diathermy, or a few weeks postoperative nursing care. Can you refer the patient to your own facility; and, if so, what restrictions apply?

Generally, the answer is "yes, but . . .". If you have a significant beneficial interest in an organization, then before you refer to or bill on behalf of that organization you must disclose two things to the patient:

1. That you have a beneficial interest in the organization; and
2. That the patient is free to go to any other organization he or she chooses to receive the same services.

WHAT DOES THIS REQUIREMENT MEAN

Who is included in the pronoun "you"?

In this case, "you" includes yourself, your spouse, your parents and your spouse's parents, your children and their spouses. If any of those persons own part or all of a health care organization, then you, the licensed health care practitioner, must disclose this to your patients.

What is a significant beneficial interest?

- (A) 5% or more of the whole organization,
or
(B) \$5,000 or more, whichever is less.

Thus, if you invest \$3,000 in Needles Clinical Lab, and that equals 6% of the organization, you must tell your patient. Likewise, if 2% of Happy Hours Home is \$8,000, you must disclose this. However, if you own 3% of Victorville Visiting Nurses, and your share equals \$4,000, you are off the hook.

There are a couple of important exceptions to this law. If your sole interest is ownership of a building where an organization leases space at prevailing rates on a straight lease agreement, no disclosure is required. Also, ownership of publically traded stock is exempt.

What is meant by an organization?

This term applies to any individual, entity, facility, clinic or other provider of health care services. Here, again, there are exceptions. Prepaid health plans licensed by the Department of Health Services are exempt.

How is this disclosure to be made to patients?

There are two choices: You may post a "conspicuous disclosure statement" in an area which is likely to be seen by all patients who use the facility. If you are part of a large organization, one such sign may be posted in a central area such as a registration area, to satisfy this requirement for the entire organization. The second option is to provide each patient a written disclosure at the time a referral is made.

Are there other requirements?

Yes. Beginning July 1, 1987, a third-party payer may request information about organizations in which you have an interest as described above. You must provide the information, but each third-party payer can make such a request only once each year.

Finally, this law does not override other laws restricting ownership of one provider by another. Examples include non-physician ownership of a medical corporation, or optometrist ownership of a dispensing optician firm, both of which are prohibited.

Copies of this law, as amended in 1986, are available from the Legislative Bill Room, State Capitol, Sacramento, CA 95814. Ask for Chapter 881, Statutes of 1986. The amended version of Section 654.2 also should be available in 1987 editions of the Business and Professions Code.

COMING NEXT ISSUE

A Primer for Physicians on Treatment Strategies for AIDS

**BOARD OF MEDICAL QUALITY ASSURANCE
1430 HOWE AVENUE
SACRAMENTO, CA 95825**

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