Department of Consumer Affairs

ACTION REPORT

BOARD OF MEDICAL QUALITY ASSURANCE

No. 27—January 1985

NEW COMPETENCY EXAM LAW TO TAKE EFFECT

On January 1, 1985, a new law will go into effect which allows the Board of Medical Quality Assurance to require a physician who is suspected of not being able to practice with safety to his patients to take and pass an oral competency examination (Sec. 2292, Business and Professions Code). The law states that the Board's Division of Medical Quality can order an examination if it finds that there is "reasonable cause" to doubt the physician's competence to practice. "Reasonable cause" is defined in the law as, (1) a single incident of gross negligence; (2) a pattern of inappropriate prescribing; (3) an act of incompetence or negligence causing death or serious bodily injury; or (4) a pattern of substandard care. Also, the physician has the opportunity to review and rebut the petition for the exam.

The preliminary process (including the petition and order compelling an exam) and the results of the exam, are not public. The fact that an exam was ordered would only become public if the physician were judged incompetent by four out of four examiners, and, based on that finding and whatever other evidence the Board had, an accusation against the physician's license was filed.

The new law which sets up this process, Senate Bill 109 (Watson), actually passed in the 1983 legislative session. Its implementation was delayed for one year by the terms of the law itself, in order to allow the Medical Board time to discuss "fine-tuning" of the law's provisions with representatives of organized medicine. This has been completed.

During legislative hearings on the bill, BMQA representatives stated that this competency examination process would give the Board an important investigative tool that would work to the benefit of both the public and the physician community at large. Because of the way the law reads, BMQA enforcement officials see the examination process being used in situations where there is disturbing evidence calling into doubt a physician's competence, but evidence which is not conclusive enough to lead to an accusation. In these cases, the competency examination can resolve the issue. Either the physician will fail the exam, thus providing the Board with sufficient evidence to bring an accusation, or the physician will be exonerated by the process, and be left with his or her reputation intact.

The examinations will be oral, and will follow current guidelines and procedures for oral examinations administered by the Board to physicians on probation, in addition to the requirements set forth in the law. According to Antony Gualtieri, M.D., BMQA's Chief Medical Consultant, this means, among other things, that the examination will be given in the area of practice of the physician who is taking the exam, and that the examiners themselves will be physicians specializing in the field in question, generally board-certified, and that the examiners will be practicing physicians who are actively seeing patients in the community.

Individual physicians and medical societies are urged to nominate potential physician examiners. The Board is always seeking dedicated, concerned physicians who are well thought of in their fields to serve as expert examiners. Interested physicians should contact Dr. Gualtieri or send him a current C.V. at the Board's Sacramento headquarters office.

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PHYSICIAN PEER COUNSELING TO BEGIN IN 1985

Senate Bill 1723, authored by Senator Barry Keene, was signed by Governor Deukmejian on September 30, 1984.

SB 1723 authorizes the Board of Medical Quality Assurance (BMQA), through its district Medical Quality Review Committees, to establish an education process to aid physicians who make mistakes in prescribing drugs. The process will be nondisciplinary and will be open to doctors whose errors were not motivated by profit and are correctible through education.

Effective January 1, 1985, Medical Quality Review Committees will have the authority to create physician peer counseling panels to review individual physicians, make recommendations for educational courses, restrict or modify drug prescribing where appropriate, and provide for a follow-up evaluation of rehabilitation. Ray Mallel, President of the Board, said, "This bill is part of the Board's overall objective to safeguard the public in the most efficient way possible. It avoids time-consuming and expensive formal disciplinary procedures when a supervised educational process would work just as well."

Not all misprescribing physicians will be referred to the counseling panels. The BMQA will target only those doctors who are cooperative and well-intentioned. The "script writing" physician who sells drugs for profit, the grossly negligent or incompetent prescriber, and the physician with a drug abuse problem will continue to face disciplinary hearings or be referred to the Board's Diversion Program for rehabilitation.

CONSULTANT'S CORNER

This space reviews interesting and significant cases which have crossed a BMOA medical consultant's desk, and have resulted in BMQA action against a physician. Names are not used, nor do we identify the physician under discussion.

Please direct all comments to: ANTONY C. GUALTIERI, M.D., Chief Medical Consultant, BMQA, 155 Bovet Road, Suite 660, San Mateo, CA 94402. (415) 573-3888.

In the hands of a knowledgeable physician, vasectomy is a stralghtforward, uncomplicated male sterilization procedure carried out in an office setting under local anesthesia. This case points out that no matter how simple a procedure may seem, if a doctor has no experience or knowledge with it, standards of practice dictate that the patient be referred to a qualified physician.

Vasectomy might be described in the following way. The patient is asked to lie flat on his back. With a rolling pressure between the thumb and index finger, the surgeon isolates the firm spaghetti-like vas deferens in the proximal portion of the scrotum on one side. While still holding the vas between the fingers, the doctor injects 1 to 2 cc's of local anesthetic in the overlying scrotum. Then, through a small scrotal incision, the vas is exposed. About one-half inch of this dense cord-like structure is removed. The cut ends are tied. The minimal bleeding is controlled and the scrotum is closed with one or two sutures. The procedure is repeated on the other side. Operating time runs about 20 to 30 minutes.

Sounds simple. However, to one incompetent physician from Southern California, and his unfortunate patient, this seemingly safe and benign procedure turned into a disastrous nightmare.

The BMQA accusation summed up the event. "Displaying gross ignorance of the anatomy of the male reproductive organs, respondent (physician) failed to cut the vas. Instead, he severed the urethra and caused extreme trauma to the corpora cavernosa surrounding the urethra and the tunica albuginea (the sheath-like covering of the testis). At no time did the respondent ligate the vas."

At the hearing, the doctor outlined his attempt to perform a vasectomy on the 34-year old male patient. Believing that access to the vas would be easier, the doctor began the procedure with the patient in the knee-chest position and made the incision on the posterior aspect of the scrotum. BMQA experts opined that this was an "unorthodox and inappropriate" technique for performing a vasectomy. After almost four hours of searching, probing, cutting and suturing, the doctor finally declared the procedure successfully terminated. The patient was sent home.

Post-operatively, the patient's penis and scrotum reacted violently with massive swelling, pain and ecchymosis. Gradually, the patient's lower abdomen became tense and distended. He discovered that, try as he might, he could not urinate, even when sitting in warm water. Later that night, in excruciating pain and discomfort, he sought help at a hospital emergency room. By this time it was evident that the patient had a distended urinary bladder with urethral obstruction, probably caused by the massive swelling of the penis and scrotum.

A consultant surgeon carried out an immediate cystotomy with placement of a suprapubic indwelling bladder catheter. Within the week it was noted that scrotal swelling was not the reason for the obstruction. The consultants found a defect of approximately one inch in the urethra with the cut ends retracted and ligated. The "vasectomy doctor" had mistaken the proximal penile urethra for the vas deferens.

Over a period of a year and a half, the patient underwent seven urethral reconstructive procedures to reestablish continuity of the urinary stream. Ironically, the patient still had his vasa intact, but he lost his ability to have an erection.

The Medical Quality Review Committee (MQRC) panel comprised of two physicians, one registered nurse and one lay person, heard several expert peer reviewers state that this doctor's treatment was "an extreme departure from the standard of conduct in the practice of medicine in California." The panel concluded that this doctor was grossly negligent and incompetent. Moreover, he had not only failed to recognize his own limitations, but had subjected this patient to unnecessary pain, suffering and disability. All things considered, the "vasectomy doctor" posed marked danger to the public.

The MQRC panel issued a proposed decision to revoke this physician's license outright. The decision was adopted by the Division of Medical Quality. This doctor's license to practice medicine in California came to an end.

To date this physician has not sought reinstatement of licensure.

Information for Patients Possibly Exposed to Agent Orange

This article is in response to recently signed legislation requiring the Board of Medical Quality Assurance to provide information through physicians to patients "on the Agent Orange and herbicide exposure health care and compensation services administered by the Veterans Administration and assistance provided by the department (of Veterans Affairs)."

"Agent Orange" is the common name for an herbicide composed primarily of trichlorophenoxy acetic acid ("2,4,5-T") and dichlorophenoxy acetic acid ("2,4-D"). One of the herbicides—"2,4,5-T"—was contaminated during manufacture with dioxin (tetrachlorodibenzo-p-dioxin, or "TCDD"). This herbicide, and several others were used extensively in Vietnam between March 1965 and June 1970 to defoliate areas believed to shelter opposing military forces.

An unknown number of military personnel and civilians serving in Vietnam may have been exposed to Agent Orange. There is no absolute evidence of the possible sequelae of such exposure, but numerous conditions have emerged in affected individuals which may eventually be shown to link to exposure. Conditions which are being examined for possible linkage include:

- Soft-tissue sarcoma
- Other malignancies including leukemia, lymphoma, melanoma, Hodgkin's disease, etc.
- Porphyria cutanea tarda
- Chloracne and other skin conditions including acne, alopecia, eczema, keloids and urticaria
- Paralysis, numbness and other symptoms of extremities
- Gastro-intestinal and gastric ulcer conditions
- EENT pathology
- Lung conditions
- Cardiovascular conditions
- Hypertension
- Non-specific conditions including nervousness, headache, fatigue, sexual dysfunction

The California Department of Veterans Affairs (CDVA) has been mandated to identify military personnel who suffered Agent Orange exposure, and to assist them in securing medical examinations and other services from the U.S. Veterans Administration. While the CDVA has contacted thousands of veterans regarding this program, a much larger number have not been reached. In addition, no federal or state agency has information about the identities or whereabouts of the thousands of civilian employees and volunteers who were in Vietnam during the period when Agent Orange was being used.

Physicians who treat veterans who may have been exposed are urged to refer them to the CDVA for medical referrals and other assistance. The CDVA also has publications available which may be provided as patient handouts. For information, contact:

Department of Veterans Affairs
Veterans Services
P.O. Box 1559
Sacramento, CA 95807
(916) 445-2334

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NEW BMQA APPOINTMENTS

Governor Deukmejian has recently appointed three new members to the Board of Medical Quality Assurance. Andrew Lucine, M.D. replaced Dr. Lockhart on the Division of Medical Quality, J. Alfred Rider, M.D. replaced Dr. Coffey on the Division of Licensing, and John M. Tsao, M.D. replaced Dr. Gordon on the Division of Allied Health Professions. These appointments fill three of the six vacancies that occurred in June when terms expired and will extend for a period of four years. Three public member vacancies remain.

Andrew Lucine, M.D.

Dr. Lucine received his B.A. from Haverford College in 1950 and his M.S. from the University of Pennsylvania in 1954. He is board certified in general surgery and has maintained a practice in San Jose since 1962. Dr. Lucine is a member of the American Medical Association, the California Medical Association, the Santa Clara County Medical Society, and is currently on the Joint Commission on Accreditation of Hospitals.

J. Alfred Rider, M.D., Ph.D.

Dr. Rider received both his M.D. and a Ph.D. in Pharmacology from the University of Chicago. In addition to numerous society memberships and appointments, Dr. Rider has been Director of the Gastrointestinal Research Laboratory at the Ralph K. Davies Medical Center in San Francisco since 1963, and he is currently an Assistant Clinical Professor in Internal Medicine at the University of California, Davis. Dr. Rider is no stranger to the Board of Medical Quality Assurance. He served as the Secretary-Treasurer of the Board of Medical Examiners, the predecessor to the BMQA, and on the newly-created BMQA itself, from 1974-76. Dr. Rider has practiced in San Francisco for some thirty years, specializing in internal medicine and gastroenterology.

John M. Tsao, M.D.

Dr. Tsao received his M.D. from the Creighton University School of Medicine, and is currently in the private practice of endocrinology in Torrance, California. Board-certified in both internal medicine and endocrinology, Dr. Tsao is an Associate Clinical Professor of Medicine at the University of Southern California. Dr. Tsao is currently a member of the Executive Board of District 9 of the Los Angeles County Medical Association. Dr. Tsao has experience as a member of the 11th District Medical Quality Review Committee in Los Angeles.

Unlicensed Health Occupations: Who is Practicing Illegally?

In October 1983, the *ACTION REPORT* carried an article on what medical assistants can do. Not too surprisingly, many people called or wrote to react to that article, or to ask for further information. Some of those calls and letters were about other unlicensed health occupations, such as surgical technicians, occupational therapists, orthopedic technicians and numerous other groups. Those inquiries prompt this article to discuss the broad question of unlicensed occupations.

Historically, the number of licensed health professions and occupations has grown very slowly. Nationwide, there are an average of only 14 licensed health occupations in each state. However, there has been an explosion of technical occupations since 1950. Some listings contain as many as 200 occupational titles. Very few of these occupations have legal recognition, either through licensure or legal definition of a title or scope of practice.

In California, only acupuncturists, research psychoanalysts and respiratory care practitioners have achieved licensure in the past ten years. Dietitians and occupational therapists have laws stating who can use those titles, and medical assistants have standards for training and scope of practice. This leaves dozens of occupations with questionable authority to engage in medical functions.

Perhaps the most widespread misconception in health care is that the license granted to a physician or a health facility provides umbrella protection or sanction for subordinates. In a 1961 decision (Magit vs Board of Medical Examiners) the California Supreme Court unanimously ruled that supervision by a licensed individual (in this case a physician) does NOT protect an unlicensed person from violating the law. The court further pointed out that a doctor who permits unlicensed employees to practice medicine is guilty of aiding and abetting unlawful conduct. There has been no change in the law since that decision.

What, then, is the unlicensed practice of medicine? For an answer to that it is necessary to look at several sections of the law. Section 2051 of the Business and Professions Code gives a partial definition: ". . . to use drugs or devices in or upon human beings and to sever or penetrate the tissues of human beings and to use ANY AND ALL OTHER METHODS in the treatment of diseases, injuries, deformities, and other physical and mental conditions." Further, Section 2052 states:

> Any person who practices or attempts to practice, or who advertises or holds himself or herself out as practicing any system or mode of treating the sick or afflicted in this state, or who diagnoses, treats, operates for, or prescribes for any ailment, blemish, deformity, disease, disfigurement, disorder, injury, or other physical or mental condition of any person, without having at the time of so

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DISCIPLINARY ACTIONS

April 1, 1984 to September 30, 1984
Physicians and Surgeons

ANDERSON, Horace A., M.D. (C-17884)—Tacoma, WA
2305 B&P Code
Washington license placed on inactive status by that state due to mental or physical condition concerning ability to practice safely. No appearance by respondent.
Revoked.
May 17, 1984

BOONE, John D., M.D. (G-2682)—Los Angeles
725 B&P Code
Stipulated Decision. Repeated acts of clearly excessive prescribing of controlled drugs.
Revoked, stayed, 5 years probation on terms and conditions.
August 13, 1984

BRADWAY, David W., M.D. (G-38935)—Clearfield, PA
2305 B&P Code
Disciplinary action by Ohio.
Revoked.
August 27, 1984

BRIGGS, Brian Earl, M.D. (C-19658)—Minot, North Dakota
2234, 2305 B&P Code
Minnesota license revoked by that state.
Revoked.
May 11, 1984

BULLOCK, Alban A., M.D. (A-29029)—Arleta
2234(b), (c), (d) B&P Code
Stipulated decision. Gross negligence and incompetence for inadequate histories, diagnoses and treatment plans for patients admitted to hospital.
Revoked, stayed, 5 years probation on terms and conditions.
August 2, 1984

CACERES-TORRES, Alvaro, M.D. (G-37733)—Delano
2234(a) B&P Code
Stipulated decision. Aided and abetted Physician's Assistant to practice medicine beyond the legal scope for a primary care PA.
Six month suspension, stayed, 4 years probation on terms and conditions, including 15 days actual suspension.
July 9, 1984

CANGELOSI, Joseph, M.D. (A-21393)—Villa Park
726, 2236 B&P Code
Misdemeanor conviction for battery, involving sexual molesting of 17 year old female patient.
Revoked, stayed, 7 years probation on terms and conditions.
April 30, 1984

CAPELL, Robert Donald, M.D. (G-30834)—Riverdale
2234(e), 2236, 2305, 2238 B&P Code; 11173(a), (b) H&S Code
Stipulated decision. South Carolina license revoked by that state as a result of a conviction involving forged prescription for Demerol. In California, obtained Demerol by deceit by falsely signing out Demerol for numerous patients who never received it.
Revoked, stayed, 7 years probation on terms and conditions.
July 9, 1984

CATALINO, Jerome, M.D. (A-18306)—Pacoima
2234(a), (b) B&P Code
Stipulated decision. Gross negligence and incompetence in post-operative care of cesarean-section patient with abdominal complications.
Revoked, stayed, 3 years probation on terms and conditions.
August 23, 1984

CLARK, Lee Norman, M.D. (A-12801)—Auburn
2234(a), (e) B&P Code
Operated an illegal drug lab to unlawfully manufacture Phenyl-2-Propanone (P2) and Methamphetamine. No appearance by respondent.
Revoked.
April 23, 1984

COIFMAN, Robert Evan, M.D. (G-40538)—Vineland, N.J.
2305 B&P Code
Stipulated decision. Minnesota license suspended by that state as a result of a conviction involving false billings to insurance company.
Revoked, stayed, 3 years probation on terms and conditions.
July 9, 1984

COTHAM, Charles, M.D. (A17603)—Yuba City
725, 2234(c), 2242(a) B&P Code
Stipulated decision. Clearly excessive prescribing; prescribing without a medical indication therefor; and repeated similar negligent acts.
Revoked, stayed, 10 years probation on terms and conditions, including 30 days actual suspension.
June 20, 1984

ENGRAHM, Robert B., M.D. (A-22340)—Colusa
2238 B&P Code; 11170 H&S Code
Violated statute regulating drugs by self-furnishing or administering Schedule IV controlled drugs to himself. Prior discipline.
180 days suspension, stayed, 3 years probation on terms and conditions, including 60 days actual suspension. This probation shall run concurrent with prior probation.
May 17, 1984

FLORIAN, Humberto A., M.D. (A-26087)—Santa Ana
2234(b) B&P Code
Stipulated decision. Gross negligence in failing to attend to two pregnant patients in labor.
Revoked, stayed, 10 years probation on terms and conditions.
May 28, 1984

GAYRON, Lionel, M.D. (G-6069)—Orange
2234(a), 2306 B&P Code
Stipulated decision. Practicing medicine at a time when his right to practice was suspended. Violation of probation of prior discipline.
Revoked.
August 14, 1984

GOEI, Gordon, M.D. (A-23054)—Los Angeles
2234(b), (d) B&P Code
Gross negligence and incompetence in the care and treatment of two obstetrical patients.
60 day suspension, stayed, 1 year probation on terms and conditions.
June 25, 1984

HANSEN, William Max, M.D. (C-16488)—Westminster
725, 2234(b), 2242 B&P Code; 11154, 11210 H&S Code
Stipulated decision. Repeatedly and excessively prescribed controlled drugs without good faith examination and medical indication, and without pathology.
Revoked, stayed, 7 years probation on terms and conditions.
June 20, 1984

HARVEY, Anne, M.D. (A-17421)—Charlotte, N.C.
490, 2236 B&P Code
Conviction for obtaining a controlled drug from a pharmacist by misrepresentation.
Revoked, stayed for 6 months with no right to practice until she passes an examination, and then stayed for 2 years on probationary conditions.
April 23, 1984

HOREWITZ, James S., M.D. (A-20337)—Berkeley
725, 2234(c), 2242, 2241, 2238 B&P Code; 11156 H&S Code
Stipulated decision. Clearly excessive prescribing; prescribing without a good faith prior examination and medical indication, and without a pathology; and prescribing to an addict.
Revoked, stayed, 5 years probation on terms and conditions.
April 16, 1984

HOYT, Dale, M.D. (A-18059)—Palo Cedro
822, 825 B&P Code
Stipulated decision. Ability to practice safely impaired by physical or mental illness.
Revoked, stayed, 5 years probation on terms and conditions.
August 30, 1984

ICONOMOPULOS, Byton, M.D. (A-30916)—Walnut Creek
2234(c), 2236 B&P Code
Stipulated Decision. Repeated similar negligent acts in rendering cardiac care and treatment to numerous patients. Conviction for placing a false bomb in a hospital and making a false report of a bomb to the police.
Revoked.
June 18, 1984

JAFFE, Martin, M.D. (A-23079)—LaPalma
725 B&P Code
Stipulated decision. Repeated acts of clearly excessive use of diagnostic procedures.
Revoked, stayed, 5 years probation on terms and conditions.
June 20, 1984

KARROUM, George M., M.D. (A-34648)—Culver City
2242, 2236, 2238 B&P Code; 11153(a), 11154 H&S Code
Prescribing without good faith prior examination and medical indication. Conviction for prescribing controlled drugs to person not under his care for a pathology or condition.
Revoked, stayed, 5 years probation on terms and conditions.
May 28, 1984

KERANEN, George Matthew, M.D. (C-22137)—Nevada City
725, 2241 B&P Code
Stipulated decision. Repeated acts of clearly excessive prescribing of Demerol to a patient; prescribing narcotic drug to an addict.
Revoked, stayed; 5 years probation on terms and conditions.
May 17, 1984

LANE, Zeph, M.D. (G-37887)—Visalia
2236, 2239, 2238 B&P Code; 11154, 11173(b) H&S Code
Conviction for unlawfully prescribing controlled drugs to himself, and in the name of his receptionist who was not under his treatment for a pathology or condition.
Revoked, stayed, 5 years probation on terms and conditions, including 60 days actual suspension.
August 9, 1984

MARKWOOD, Carl C., M.D. (G-3777)—Sacramento
2234(c) B&P Code
Stipulated decision. Repeated similar negligent acts in the diagnosis and treatment of alleged allergic conditions and nutritional deficiencies, involving the use of the intradermal symptom suppressant testing technique AKA provocative and neutralization technique and sublingual drop therapy AKA provocative technique.
Revoked, stayed, 5 years probation on terms and conditions.
May 23, 1984

MARTINEZ, Rey, M.D. (A-13126)—Burbank
2361(b), (d), 2399.5, 725 old B&P Code
Gross negligence and incompetence in anesthesiology practice. Also, in office practice, excessive prescribing, and prescribing without good faith prior examination and medical indication.
Revoked, stayed, 5 years probation on terms and conditions, including 90 days actual suspension.
June 14, 1984

(A recent re-adoption of a prior 1981 Board decision that was remanded by the court for re-evaluation.)

NAIFEH, Jerome G., M.D. (C-37560—Irving, Texas
2236 B&P Code
Stipulated decision. Conviction for grand theft involving billings to Medi-Cal and insurance companies.
Revoked, stayed, 5 years probation on terms and conditions, including 9 months actual suspension.
May 24, 1984

NORTHRUP, William F., M.D. (C-7845)—San Diego
Stipulated surrender of license. Accusation is dismissed.
September 1, 1984

OGNIBENE, Charles Pat, M.D. (A-35585)—Canoga Park
2234(b), (d), 2237, 2242 B&P Code
Prescribing dangerous drugs without good faith prior examination and medical indication; gross negligence and incompetence. Conviction for prescribing controlled drugs to a person not under his treatment for a pathology or condition.
Revoked, stayed, 5 years probation on terms and conditions, including 45 days actual suspension.
June 22, 1984

OTTO, Evan L., M.D. (C-18682)—San Diego
2234(b) B&P Code
Stipulated decision. Gross negligence in a surgical procedure to remove a tumor.
Revoked, stayed, 3 years probation on terms and conditions.
June 21, 1984

PERRY, William D., M.D. (A-22301)—Bakersfield
725, 2234, 2238, 2236, 2242 B&P Code; 11154 H&S Code
Stipulated decision. Prescribing controlled drugs without the existence of a medical condition or pathology; prescribing without a good faith prior examination and medical indication; excessive prescribing. Conviction for assault on peace officer.
Revoked, stayed, 7 years probation on terms and conditions.
May 4, 1984

PICKER, Robert Ian, M.D. (G-19505)—Berkeley
490, 2236, 2234(e) B&P Code
Stipulated decision. Filed false Medi-Cal claims. Convictions for grand theft and for failure to supply tax information.
Revoked, stayed, 5 years probation on terms and conditions, including 90 days actual suspension.
July 26, 1984

PRIAN, Gregory William, M.D. (C-39038)—Phoenix, Arizona
2305 B&P Code
Discipline by Arizona Board against his Arizona license for habitual use of Dexedrine.
Revoked, stayed, 7 years probation on terms and conditions.
September 6, 1984

PUNZALAN, Rodolfo V., M.D. (A-33873)—San Dimas
2234 B&P Code
Stipulated decision. Unprofessional conduct in failing to provide appropriate care to a hospitalized 2 year old patient.
Revoked, stayed, 5 years probation on terms and conditions.
May 24, 1984

RICKARD, Vernon D., M.D. (G-26114)—Sonora
2234(d) B&P Code
Stipulated decision. Incompetence in the testing and treatment of a child for purported allergies.
Revoked, stayed, 5 years probation on terms and conditions.
June 18, 1984

ROSOVE, Sherman P., M.D. (C-25993)—Hollywood
2234(b), (c) B&P Code
Stipulated Decision. Failed to see and attend to his hospitalized patient despite numerous calls from nursing staff, constituting gross negligence and continuing pattern of repeated negligence. Prior discipline.
Revoked, stayed, 5 years probation on terms and conditions.
September 13, 1984

SAFIAN, Nathan, M.D. (G-10962)—Pomona
2234(c) B&P Code
Stipulated decision. Repeated similar negligent acts in the care and management of patients.
Revoked, stayed, 5 years probation on terms and conditions, including 30 days actual suspension.
July 1, 1984

SANDERS, Marc Roger, M.D. (G-20063)—Fairfax
2236 B&P Code
Conviction in Alameda County for grand theft. Conviction in Siskiyou County for submitting a false claim.
No appearance by respondent.
Revoked.
August 7, 1984

SEWELL, Hobart H., M.D. (C-32936)—Carmichael
2234(b) B&P Code
Gross negligence in having sexual relations with two former female patients within a week after the end of psychotherapy.
Revoked, stayed, 5 years probation on terms and conditions, including 6 months actual suspension.
April 26, 1984

SLOAN, Ralph, M.D. (A-27283)—Sun Valley
725, 2242, 2234(b) B&P Code
Stipulated decision. Gross negligence in the excessive dispensing of amphetamines without a good faith prior examination and medical indication.
Revoked, stayed, 5 years probation on terms and conditions, including 30 days actual suspension.
August 7, 1984

SLOCUM, Wesley G., M.D. (C-23733)—Riverside
725, 2242 B&P Code
Stipulated decision. Excessive prescribing of controlled drugs without a good faith prior examination and medical indication.
Prior discipline.
Revoked, stayed, 10 years probation on terms and conditions, including one year actual suspension.
August 7, 1984

TURNER, Charles W., M.D. (C-10597)—Santa Ana
725, 2242, 2238, 2237 B&P Code; 11154, 11210 H&S Code
Repeatedly and excessively prescribed controlled drugs without good faith prior examination and medical indication. Conviction for prescribing a controlled drug to a person not under his care for a pathology or condition.
Revoked, stayed, 5 years probation on terms and conditions.
May 24, 1984

TULUMELLO, Joseph S., M.D. (G-24200)—Harper Woods, Michigan
820, 822 B&P Code
Ability to practice safely impaired by physical or mental illness.
Ordered to be placed in the Board's Diversion Program for impaired physicians.
June 18, 1984

URY, George, M.D. (C-6550)—National City
2234(c), 2261, 2236 B&P Code; 14107 W&I Code
Stipulated decision. Conviction of filing false claims with Medi-Cal.
Revoked, stayed, 7 years probation on terms and conditions.
May 24, 1984

VALERY, Harold C., M.D. (A-35020)—Seal Beach
2242, 2238 B&P Code; 11154 H&S Code
Conviction of prescribing a controlled drug to a person not under his treatment for a pathology or condition.
Revoked, stayed, 5 years probation on terms and conditions.
August 7, 1984

VASHISTHA, Krishan Kumar, M.D. (A-31642)—Canyon Country
490, 2236 B&P Code
Stipulated decision. Conviction of violating Penal Code section 647(a).
One year suspension, stayed, 5 years probation on terms and conditions.
August 7, 1984

WALKER, Robert M., M.D. (C-26254)—San Pedro
2305, 2236, 490 B&P Code
Stipulated decision. Michigan license suspended by that state for prescribing violations and for Medicaid fraud conviction.
Revoked, stayed, 5 years probation on terms and conditions, including 30 days suspension.
August 7, 1984

WOO, Francis J., M.D. (A-28139)—Fullerton
Stipulated decision. Voluntary surrender of license. Pending Accusation is dismissed.
April 24, 1984

Podiatrists

DAVIS, Charles, D.P.M. (E-1402)—San Diego
2238, 2239 B&P Code
Stipulated decision. Self administration of cocaine and Codeine.
Prior discipline.
Revoked, stayed, 5 years probation on terms and conditions.
July 2, 1984

WONG, John Barry, D.P.M. (E-1684)—Lompoc
490, 2236, 2305 B&P Code
Conviction for Medicare fraud. Another conviction for racketeering and mail fraud. Podiatric licenses revoked in New Jersey and Pennsylvania.
Revoked.
May 3, 1984

SPERLING, Jerome, D.P.M. (E-1815)—Huntington Park
2234 (c) B&P Code
Stipulated Decision. Non-existent or faulty record-keeping for podiatric services rendered to numerous Medi-Cal patients, constituting repeated similar negligent acts.
Revoked, stayed, 5 years probation on terms and conditions.
September 27, 1984

Doctors Who Flee BMQA to Practice in Other States

In the last issue of *ACTION REPORT*, "Consultant's Corner" reviewed a physician whose license to practice medicine was restricted by BMQA probationary conditions, but who moved to another state to practice unrestricted medicine. Many readers have asked what the California BMQA does to notify other state medical boards about such physicians who flee from discipline here to practice elsewhere.

Reports of BMQA disciplinary actions are sent to all fifty state medical boards. However, not all state boards act upon this information. Most states, of which California is one, have laws which permit their medical boards to take disciplinary action solely based on discipline taken by any other medical board. Nevertheless, there are some state boards which do not have such enabling legislation. These medical boards can take disciplinary action only when an incompetent or negligent physician commits such acts in that state.

Until there is national uniformity of prosecution, physicians continue to escape BMQA discipline to practice in "safe" states.

Podiatry Examining Committee Will Recover Enforcement Costs

Articles in the Action Report normally are limited to issues relating to medical practice. However, occasionally we will print articles that directly affect practitioners allied with medicine such as physician assistants, opticians, and podiatrists. Generally such articles will have some relevance or effect on physicians. We believe this is such an article since it deals with a trend in licensure which may eventually extend to other professions.

A recently passed law now permits the Podiatry Examining Committee to recover the costs of enforcement from podiatrists found guilty of violating the practice act. Senate Bill 1503, authored by Senator McCorquodale, provides for recovery of reasonable and actual costs of investigation and prosecution. Passage of this bill will assist in assuring that the Committee will not exhaust its funds in enforcement activities. The entire Committee budget is taken from licensure and renewal fees. When enforcement costs are unusually high, other Committee activities must be curtailed, or fees must be increased to cover the legal activities.

Prior to introduction of the McCorquodale bill, the Podiatry Examining Committee had investigated nine cases involving serious violations of the law. The office of the Attorney General estimated that ajudication of just those cases could cost well over $200,000. At the same time the Committee was holding back action on numerous other less serious infractions for lack of enforcement funds. A special budget augmentation was sought to cover the nine cases.

These were not unusually complex or costly cases. It is common for investigation and prosecution of a single podiatrist to cost over $30,000. This represents approximately 10 percent of the Committee's annual budget of $308,000. If the doctor appeals an adverse decision to the Superior Court, the cost to the Committee increases dramatically. Appeals also stretch out the legal process, and can lead to prosecution costs over several budget years, making it very difficult for the Committee to predict expenditures.

Savings in License Fees May Result From Law

If this law is viable, there will be reasonable cost recovery and eventual reduction of licensure fees. However, it is impossible to predict the amounts which eventually could be recovered. Also, because of the possibility of delays in hearings, and the right of disciplined podiatrists to appeal the decisions, the timing of recoveries cannot be predicted. Therefore, a license fee increase still will be needed to maintain the Committee's fiscal solvency for the immediate future.

The Committee believes that this legislation reflects its philosophy that doctors of podiatric medicine who are found guilty of public harm and/or dishonesty should be held morally and fiscally accountable. Licensees who practice responsibly and competently should not continue to be "fined" through higher fees to cover the cost of prosecuting their peers who violate the law. Overall, the Committee hopes this bill will assist in enhancing consumer protection and effective law enforcement by optomizing use of podiatry licensing fees.

The enactment of this legislation would not have been possible without the full support of the California Podiatric Medical Association and the efforts of Carol Sigmann, Executive Officer of the California Podiatry Examining Committee. Copies of the bill, Chapter 695, can be obtained by calling (916) 445-2645, or writing to the Legislative Bill Room, Room B-32, State Capitol, Sacramento, California 95814.

Cannabis Protocol Available for Open-Angle Glaucoma Patients

The Research Advisory Panel is sponsoring a statewide study mandated by the California Legislature (SB 1765; Presley) to provide compassionate access to cannabis, in the form of delta-9-tetrahydrocannabinol (THC) capsules and marijuana cigarettes, as a treatment of last resort for open-angle glaucoma patients who have not benefited from standard medical treatment modalities.

The therapeutic use of THC and marijuana is available for ophthalmologists' patients in accordance with a protocol designed by the Research Advisory Panel and its consultants and approved by the federal Food and Drug Administration (FDA). The use of cannabis is governed by strict FDA and Drug Enforcement Administration guidelines and policies.

Investigators

Only ophthalmologists who are eligible or certified with the American Board of Ophthalmology and who have agreed to follow the protocol by completing an application along with an FDA Investigator's Form 1573, will be eligible to participate as an investigator in the program.

Patient Eligibility

Patients must be 18 years of age or older and have a diagnosis of open-angle glaucoma as confirmed by gonioscopy. Patients must have received all appropriate medical treatments without satisfactory control of intraocular pressure (IOP) and must be approved by the Research Advisory Panel's Patient Qualification Review Board. Exclusion criteria are outlined in the protocol.

Protocol Summary

This study is an evaluation of the effect of oral THC on glaucoma control. If oral THC is not effective, patients may switch to using marijuana cigarettes. Oral THC or marijuana is given in addition to those conventional anti-glaucoma drugs that may have provided some lowering of IOP and on which the patient has been stabilized. When patients are given the initial dose of cannabis, they must be monitored for side effects in the physician's office for several hours. Each week the patient is evaluated for IOP control, cannabis side effects and other variables. The frequency of patient monitoring may be reduced to once a month when satisfactory IOP control is obtained.

Data Collection

A treatment evaluation form completed by the investigator and a patient questionnaire will need to be submitted at each monitoring phase as detailed in the protocol.

Designated Pharmacies

Supplies of THC capsules and marijuana cigarettes will be maintained by a limited number of pharmacies designated by the investigators. In locations where several ophthalmologists are enrolled, it may be requested that supplies for patients be maintained at only one area pharmacy.

Applications

Ophthalmologists interested in participating as an investigator in the Cannabis Therapeutic Program should write for an application and a copy of the protocol to:

Gary L. Rocchio, M.A.
Program Coordinator
Research Advisory Panel
6000 State Building
San Francisco, California 94102

ELECTION OF OFFICERS

New officers elected at the November Board meeting will officially take office January 1985.

Board

Lindy F. Kumagai, M.D., *President*
Miller Medearis, *Vice President*

Division of Medical Quality

Eugene J. Ellis, M.D., *President*
Rendel Levonian, M.D., *Vice President*
Miller Medearis, *Secretary*

Division of Licensing

Galal S. Gough, M.D., *President*
Maire McAuliffe, M.D., *Vice President*
James Magnall, M.D., *Secretary*

Division of Allied Health Professions

Charles Aronberg, M.D., *President*
Warren Mills, M.D., *Vice President*

DIVISION OF LICENSING

James Magnall, M.D., Division Secretary; Galal S. Gough, M.D., Division President; Lindy F. Kumagai, M.D., Board President; Maire McAuliffe, M.D., Division Vice President; Raymond H. Mallel, Past Board President.

EDUCATIONAL VIDEOTAPE—PHYSICIAN RESPONSIBILITY

The California Medical Association/Board of Medical Quality Assurance Joint Task Force on Physician Responsibility has produced an educational videotape which will help physicians recognize and deal with their colleagues' personal and or medical practice problems. A revised Physician Responsibility Guide is designed to help viewers solve the problems that are dramatized on the tape. At the conclusion, viewers will compare their own solutions with comments from a taped expert panel. The videotape may be used by hospital medical staffs, county or specialty medical societies, and other physician groups. It will be available in VHS, BETA, and ¾ inch. For distribution information, contact CMA's Division of Peer Review, 44 Gough Street, San Francisco 94103, or call (415) 863-5522, extension 342.

AGENT ORANGE

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There currently are no governmental programs available to assist civilians who may have been exposed to Agent Orange. However, over sixty studies are being conducted at present to establish whether Agent Orange is linked to any of the conditions listed above or others. One such study is being conducted by the Center For Disease Control in Atlanta, with an anticipated completion date of 1987. Physicians should remain informed on research in this area, and be alert to patients with ongoing conditions which may be linked. Complete histories and clinical findings during the course of a disease or condition may prove invaluable to patients and researchers in future years.

Urgicenters—Is Yours Breaking The Law?

Call them urgicenters, ambulatory care centers, or free-standing emergicenters—the extended-hour drop-in clinic for episodic care appears here to stay. More and more of these free-standing ambulatory care centers are being set up every day in California. Unfortunately, some of these urgicenters may be unwittingly breaking the law.

"There are two potential pitfalls to be aware of," says BMQA legal counsel Foone Louie, "the laws on corporate practice of medicine and the laws on fictitious name permits."

Corporate Practice of Medicine

Only physicians and medical corporations can legally practice medicine in California (along with certain other licensed health practitioners). In addition, only certain licensed health practitioners other than physicians can be shareholders in a medical corporation, and there are limits on their share of ownership.

Due to the complexity of the laws, Department of Consumer Affairs attorney Gregory Gorges recommends that any physician interested in an urgicenter consult an experienced attorney.

Fictitious Name Permits—A Widespread Problem

According to Mr. Louie there is widespread ignorance of the laws with respect to obtaining fictitious name permits from the Medical Board.

Everytime a physician wants to practice under a name other than his or her own, the law requires the physician to register that name with the BMQA and obtain a fictitious name permit. Furthermore, that name *must* contain the words "medical clinic" or "medical group".

How does this apply to the urgicenter? "It means that the medical corporation, individual physician or medical group which is actually responsible for patient care must have a fictitious name permit, and the name of that medical group or corporation must be included in all signage or advertising of the urgicenter," according to Mr. Gorges.

For example, let's say a lay corporation calling itself "FastAid, Inc." sets up a chain of "turn-key" FastAid facilities, which it then leases to different medical groups for actual patient care. In addition to the company's "FastAid" logo, each facility will have to have in its signs and advertising the fictitious name of the medical group or corporation actually responsible for patient care.

Why Register? How Do I Register?

"It's the law," says Mr. Louie. "The legislature enacted the fictitious name permit requirement so that the public will know who is really responsible for their care when they go to a clinic or medical office which does not have the physicians' names listed."

It is unprofessional conduct to practice under a fictitious name without a permit. BMQA's enforcement officials hope that more widespread publicity about the need to comply with this law will help avoid problems in the future.

Fictitious name permits are issued for two-year periods. They expire at the end of February in even-numbered years. Permit applications may be obtained by writing to: Fictitious Name Permits, Board of Medical Quality Assurance, 1430 Howe Avenue, Sacramento, CA 95825.

UNLICENSED HEALTH OCCUPATIONS

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> doing a valid, unrevoked or unsuspended certificate as [a physician] . . . or without being authorized to perform such act pursuant to . . . some other provision of law is guilty of a misdemeanor.

Basically, if you are not licensed to do it, then it probably is illegal. Now obviously, there are some things that can be done by unlicensed health occupations. In general, they are permitted to do most anything that does not involve direct patient contact. For example, setting up examination or treatment equipment, assisting licensed personnel by handing equipment, taking notes, and so on. There also are certain patient-contact activities that are not illegal. Examples include taking vital signs, assisting a patient in ambulating or transfers, collecting biological specimens (as long as no penetration of the tissues is involved) and performing simple non-invasive testing. Thus, performing an electrocardiogram or electroencephalogram is permitted if there is no tissue penetration.

Problems occur if the unlicensed person is providing a treatment, analyzing results of tests, advising patients about their conditions or treatment regimen, making assessments, or performing any kind of decision-making activities. There is no prohibition on a doctor consulting with an unlicensed person who has expertise in some technical area. However, the physician may not direct that person to provide the treatment the physician chooses, even if it is done under the physician's supervision. This was the major conclusion of the Magit ruling, and it still is the law.

One final comment: the place of employment does not affect the legality of unlicensed activities. Licensed health facilities such as hospitals, are not immune or exempt from the prohibitions on the unlicensed practice of medicine. We recognize that the practice of using unlicensed technicians to perform a wide variety of patient care is extremely widespread. The fact that it is being done does not make it legal. Hospitals and physicians alike need to realize that they are at risk if their employees are doing things that they are not licensed to do.

If you are in doubt if something is legal, please call the Board for guidance. Our number is (916) 920-6393.

DIVERSION PROGRAM PAMPHLET— A CLARIFICATION

BMQA's Diversion Program for Physicians is distributing an informational pamphlet. Under the title "Who Qualifies", the pamphlet states:

> **"Any California licensed physician living in the state and not on BMQA probation."**

Actually, any physician practicing medicine legally in California, including a first year resident, is eligible for the program, provided the person is not on probation.

In addition, the following should be added to the list of resource persons who can be contacted for information:

San Bernardino–Riverside Area—
Jane Maggelbee-Schultz
(818) 797-1124

Orange County Area—Jack Sanow
(714) 771-6037

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

Executive Office (916) 920-6393

Physicians and Surgeons:
- Applications & Examinations (916) 920-6411
- Chief Medical Consultant (916) 920-6393
- Complaints—Call nearest Regional Office:
  - Los Angeles (213) 412-6363
  - Sacramento (916) 920-6013
  - San Mateo (415) 573-3888
  - Santa Ana (714) 558-4452
- Continuing Education (916) 920-6943
- Disciplinary Information (916) 920-6343
- Fictitious Names (916) 920-6943
- Verification of Licenses (916) 920-6343

Allied Health Professions:
- Complaints (916) 920-6341
- Licensing:
  - Acupuncture (916) 924-2642
  - Hearing Aid Dispensers (916) 920-6377
  - Physical Therapy (916) 920-6373
  - Physician's Assistant (916) 924-2626
  - Podiatry (916) 920-6347
  - Psychology (916) 920-6383
  - Registered Dispensing Opticians (916) 924-2612
  - Respiratory Therapy (916) 924-2314
  - Speech Pathology/Audiology (916) 920-6388

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