

Primum

Newsletter of the Arizona Medical Board and the Arizona Regulatory Board of Physician Assistants

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Docs and Documents

By Douglas D. Lee, M.D., AMB Chair

In a previous Primum article, I said I planned to explore some existing statutes and regulations as they pertain to the regulation of medicine. The relevant sections of the Arizona Revised Statutes (A.R.S.) are in 32-1401. All statutes pertaining to physicians can be accessed from the Arizona Medical Board's Web site, www.azmd.gov. Start by hovering your cursor over "Statutes & Rules" in the menu on the left side of the homepage, and then clicking on "AZ Revised Statutes for MDs." This takes you to an index of the Medical Practice Act with hyperlinks.

In this issue I want to focus on two areas covered by "32-

1401." These items address a very frequent issue that comes before the Board: medical records. A.R.S. §32-1401(2) states: "Adequate records" means legible medical records containing, at a minimum, sufficient information to identify the patient, support the diagnosis, justify the treatment, accurately document the results, indicate advice and cautionary warnings provided to the patient and provide sufficient information for another practitioner to assume continuity of the patient's care at any point in the course of treatment. This is the "Standard." A.R.S. §32-1404 (27) (e) states that "Unprofessional conduct..." is: Failing or refusing to maintain

adequate records on a patient. These two sections of law define what may constitute unprofessional conduct.

For most physicians, the standard, as articulated would draw a "duh, how obvious" response, since this seems like first year medical school material. However, when we find ourselves fighting the clock in our busy practices, our documentation sometimes devolves into a one line note in the chart, or sometimes no note at all!

When the Board investigates a complaint, one of the initial steps is to request the medical record. Upon review, even in

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What I Have Learned in 12 Years on the PA Regulatory Board!

By Randy Danielson, Ph.D., P.A.-C

Being a member of the Arizona Regulatory Board of Physician Assistants (ARBoPA) is an experience like no other. Once named to the Board by the Governor, the primary responsibility of the appointee is to uphold the agency's duty to protect the public. While you bring the sum total of your experience as a physician assistant to the Board, your responsibility is to make the best decisions for the public. Having served a total of twelve years (non-consecutive) on the Board, I have learned a great deal about what it means to be a "regulator" and, more importantly, what it means to be a licensed Arizona PA. I would like to review what I have learned and then make a few

recommendations to my PA colleagues in the State.

A physician assistant learns early on that he or she has a responsibility to patients, society, other health professionals, as well as self. According to Hooker & Cawley, PAs "are expected to behave both legally and morally. They should understand the laws governing their practice. Likewise, they should understand the ethical responsibilities of being a health care professional."¹

There are four important areas on which I would like to focus: responsibility, supervision, scope of practice, and unprofessional conduct. For me, these are the areas of most

concern when assessing cases that come before the PA Board.

PA Responsibility

The criteria for initial licensure in Arizona include graduation from an accredited PA program and passage of the Physician Assistant National Certifying Examination (PANCE). The requirement for PA clinical practice in Arizona requires a relationship with a Supervising Physician (SP) formally documented through the Notice of Supervision (NOS) form. While it is clear that the supervising physician

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Docs and Documents, continued

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complex cases involving patients with multiple comorbidities, the medical record tends to be sparse and often misses many of the “bullet points” articulated in the statutes. Not only does this expose the physician to issues of medical liability, but also, from a regulatory standpoint, Board Staff has a difficult time getting a clear picture of the physician’s “side” of the complaint. More importantly, it may become an issue of unprofessional conduct if the charts don’t “...provide sufficient information for another practitioner to assume continuity of the patient’s care at any point in the course of treatment.”

Too often, especially in the surgical/consultation arena, operative reports/consults are not documented until some time (months!) after the event. This could affect

continuity of care by other providers. Furthermore, during an investigation of a complaint, questions regarding credibility of the physician may arise because of the lack of timeliness of the documentation.

This is not to suggest that our medical records need to be voluminous or verbose, but they should be concise and accurate enough so that if we were the physicians providing the “continuity” of care, we would have enough information to reasonably treat the patient.

The formats and platforms (paper, electronic, etc) for which one can use to document “adequate records” are many. Each has their advantages and disadvantages. Whichever ones we choose, we need to go full circle, back to those miserable medical school days, and remind ourselves of the basic medical

records we were taught to document. Remember: “...if it ain’t in writing, it don’t exist!”* - especially during any kind of review.

*quote from some old Navy Petty Officer (and other unnamed government types).

Dr. Lee is the Chair of the Arizona Medical Board and has an anesthesiology practice in Flagstaff. Earlier in his medical career, he was a U.S. Marine General Medical Officer on Okinawa, Japan.

This article reflects the views of the author.

Unless noted, it does not necessarily reflect the view of the Arizona Medical Board or any other member of the Arizona Medical Board.

What I Learned..., continued

(Continued from page 1)

“Assuming that others have taken care of the necessary paperwork with the Board has proven to be problematic on numerous occasions.”

must complete and sign this document and send it to the Board, it is extremely important that the PA be part of this process and make sure the Board approves the document prior to starting practice. In the last two years, two PAs received non-disciplinary Advisory Letters and three others received Letters of Reprimand for seeing patients without a Board-approved supervising physician or failing to notify the Board that the relationship with a supervising physician had been terminated. Assuming that others have taken care of the necessary paperwork with the Board has proven to be problematic on numerous occasions. You don’t want to make the mistake of starting clinical practice before

you receive approval from the PA Board.

Supervision

Arizona Revised Statutes require and define physician supervision as the ability of a licensed physician to exercise direction and control over the services of a PA. With the exception of a required weekly meeting for the purpose of discussing patient care, the level of supervision is left to the physician-PA team. How the Board interprets the laws regarding supervision is important to know, and PAs can find the recently adopted “Guidelines for PA Supervision” at the Board’s website, www.azpa.gov.

Supervision includes the continuous availability of direct communication, either in person or by radio, telephone or telecommunica-

tions, between the PA and the supervising physician; active and continuing overview of the PA’s services to support the physician assistant in the performance of his or her services; personal review by the supervising physician of the PA’s practice at least weekly or more frequently as necessary to ensure quality patient care, review of the charts and records created by the physician assistant on a regular basis to ensure quality patient care.

Scope of Practice

Arizona statutes and regulations define PA scope of practice as those activities for which the PA is appropriately trained that are appropriately delegated and supervised by the supervising physician. Due

What I Learned..., continued

to the increasing complexity and proliferation of medical services available today, ARBoPA continues to receive inquiries regarding a PA's scope of practice in the state of Arizona. All PAs, SPs, and the public should be aware of the following: A physician assistant may only provide those medical services which he or she is competent to perform, as determined by the supervising physician. These tasks must be consistent with the PA's education, training, and experience, and then be delegated by the supervising physician whose patients the PA cares for. A PA's scope of practice is determined by the supervising physician's scope of practice and by the clinical tasks delegated by the SP. The supervising physician has the ability to observe the PA's competency and performance and to ensure that the PA is performing tasks and procedures in the manner the SP prefers. The physician also is in the best position to assess the severity of patient problems seen in a particular setting. PAs cannot provide healthcare services that the SP does not perform. A PA who is supervised by a pediatrician, for example, does not see and treat adult patients.

In the past two years, three PAs have received Decrees of Censures for performing tasks their SPs did not delegate.

Unethical Conduct

The PA profession has revised its code of ethics several times since the profession began in the late 1960's.² Although the fundamental principles underlying the ethical care of patients have not changed, the societal framework in which these principles are applied has. Economic pressures of our health care system, social pressures of church and state, technological advances, and changing patient demographics continually transform the landscape in which PAs practice.

Each situation is unique. Individual PAs must use good judgment in a given situation while considering the preferences of the patient and the SP, clinical information, ethical concepts, and legal obligations.³ Arizona statutes are fairly clear in listing 28 acts that are considered unethical conduct for PAs.⁴ Six of the more common issues that come before the PA board as unprofessional conduct allegations are:

1. Violation of any federal or state law or rule which applies to the performance of health care tasks as a physician assistant;

2. Performing health care tasks which have not been delegated by the supervising physician;

3. Habitual intemperance in the use of alcohol or habitual substance abuse;

4. Failing or refusing to maintain adequate records on a patient;

5. Prescribing or dispensing controlled substances to members of the PA's immediate family; and

6. Prescribing or dispensing controlled substances or prescription-only drugs for which the PA is not approved or in excess of the amount authorized.

[Tables 1 & 2 below show disciplinary and non-disciplinary actions taken by the PA Board in the past two years.]

Dr. Randy Danielson, Professor and Dean of the Arizona School of Health Sciences, a School of A.T. Still University in Mesa, completed a dozen years on the ARBoPA at the August 19, 2009 meeting.

This article reflects the views of the author. Unless noted, it does not necessarily reflect the view of the Arizona Regulatory Board of Physician Assistants or any other member of the Board.

References:

- ¹ Hooker, RS, Cawley JF. Physician Assistants in American Medicine, 2nd Ed. New York: Churchill-Livingstone, 1997; 319
- ² Smith, M. Ethical issues in Ballweg, R., Stolberg, S., Sullivan, E., A Guide to clinical practice, W.B. Saunders Co., 1999, p92
- ³ Danielsen, R., Davis, A. Ethics and state regulation of PA practice, in Cassidy, B., Blessing, J., Ethics and professionalism: A guide for the physician assistant, F.A. Davis Co. 2008, pgs 175-185.
- ⁴ Arizona Revised Statutes, accessed at www.azpa.gov (Click on "Statutes & Rules," then "AZ Revised Statutes for PAs.)
- ⁵ Arizona State Association of Physician Assistants, accessed at www.asapa.org
- ⁶ Arizona Regulatory Board of Physician Assistants, accessed at <http://www.azpa.gov/>

(Tables are on Page 8.)

HHS Rules for Privacy Breaches



The U.S. Department of Health and Human Services has issued new rules required by the Health Information Technology for Economic and Clinical Health (HITECH) Act that mandate healthcare providers and other entities covered by HIPAA to notify consumers when someone breaches their health data.

The regulations state that providers who are HIPAA-covered entities must promptly let patients know when a security breach involving their records has occurred.

This is a tighter requirement than before because providers must

now inform HHS and the media when a breach affects more than 500 individuals. Most physicians in private practice routinely have 1,500 to 2,500 patients.

The new regulations were developed by the HHS Office for Civil Rights.

Accompanying them are new standards that apply to vendors who sell personal health records and other business entities not covered by HIPAA. These new standards described in greater detail on when information is considered “unsecure” and when the public must be notified.



New Federal Law Against Internet Prescribing



The Ryan Haight Online Pharmacy Consumer Protection Act of 2008 is the official title of a new federal law that is aimed at preventing the illegal distribution of controlled substances by means of the Internet. The law went into effect on April 13, 2009.

Important provisions of the Act and its implementing regulations include new definitions such as “online pharmacy” and “deliver, distribute, or dispense by means of the Internet”; a requirement of at least one in-person patient medical evaluation prior to issuance of a prescription; registration requirements for online pharmacies; Internet pharmacy Web site information disclosure requirements; and prescription reporting requirements

for online pharmacies.

In addition to the requirement of at least one in-person patient medical evaluation, the law also required a “valid prescription” for any controlled substance that will be dispensed by a pharmacy doing business via the Internet. Under both federal and Arizona law, a valid prescription means a prescription that is issued for a legitimate therapeutic purpose in the usual course of professional practice. The law also make it clear that the in-person medical evaluation *in and of itself* does not demonstrate that the prescription was issued for a legitimate medical purpose. Practitioners who violate this requirement may be criminally prose-

cuted under Title 21, United States Code, section 841(h)(1).

The Arizona Medical Board has consistently held that Internet Prescribing violates the Arizona Medical Practice Act, specifically A.R.S. § 31-1401(27)(ss). That part of the Arizona Revised Statutes defines unprofessional conduct as “Prescribing, dispensing or furnishing a prescription medication or a prescription-only device...to a person unless the licensee **first conducts a physical examination** of that person or has previously established a doctor-patient relationship.” This section does not prevent the legitimate practice of Telemedicine.



What is Telemedicine (or Telehealth)?

The use of electronic information and telecommunication technologies to support long-distance or remote clinical health care, patient and professional health-related education, public health and health administration. Telemedicine represents a valuable resource for delivering health-related services to remote, underserved areas, providing greater access to health care for consumers and health professionals.

PA Board Bids Farewell to 3 and Welcomes 2 New Members

The Arizona Regulatory Board of Physician Assistants saw the departure of three long-time Board Members during the first half of the 2009-2010 fiscal year.

James Meyer, M.D., had been appointed to his seat on the Board in August 2002 by then-Governor Jane Hull.



Dr. Meyer, an Associate Professor of Physician Assistant Studies at Midwestern University in Glendale, attended his last meeting as a Board Member on May 20, 2009.

Board Chair Joan Reynolds, M.M.S., P.A.-C, presented Dr. Meyer with a plaque at the August 19th meeting and thanked him for his service to the Board and the physician assistant community.



Popko, Reynolds, Danielsen

Sigmund G. Popko, J.D., and Randy D. Danielsen, Ph.D., P.A.-C, were both honored by the Board at its November 18th meeting.

Mr. Popko, a Clinical Professor of Law at Arizona State University, was first appointed to the Board as a Public Member to fill an unexpired term and then was reappointed to a four-year term in 2003 by then-Governor Janet Napolitano.

Dr. Danielsen is the Dean of the Arizona School of Health Sciences at A.T. Still University in Mesa. He also was named to finish out an unexpired term and then was reappointed in 2005 by Governor Napolitano. Dr. Danielsen had served an earlier four-year term, prior to 2001.

At the November 18th meeting, the PA Board welcomed its two newest members, Carole A Crevier and Geoffrey W. Hoffa, M.S., P.A.-C.



Ms. Crevier, a Public Member, is a retired business executive.

From 1995 to 1998, she served as a member of the Arizona Medical Board. She was elected Board

Secretary and chaired the Medical Board's Process Review Committee.

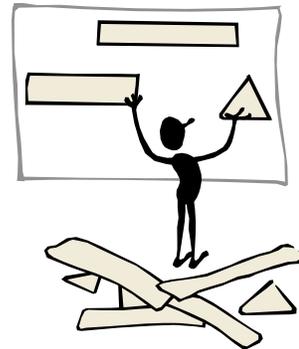
Before retiring, Ms. Crevier was involved in a number of management organizations. She has a Bachelor of Arts Degree in management and a Master of Arts in Organizational Management.

PA Hoffa has practiced in the Phoenix metropolitan area since 2001. He formed Hoffa Health Care which offers independent contracting clinical services.



He has a Bachelor of Science Degree in Zoology and a Master of Science in Physician Assistant Studies from the Arizona School of Health Sciences at A.T. Still University in Mesa.

ARBoPA Board Members are normally appointed for four year terms but may serve beyond that until a successor is appointed.



Number of Licensed Physicians

20,526



Number of Licensed PAs

1,873

Recent MB and ARBoPA Actions and Orders

The Arizona Medical Board and the Arizona Regulatory Board of Physician Assistants have legal authority to revoke, suspend, restrict, fine, reprimand or censure, require monitoring or additional education, or impose other remedial measures on the license of an allopathic physician (M.D.) or PA if the licensee has committed unprofessional conduct or is mentally or physically unable to safely engage in the practice of medicine.

State law also allows the Medical Board, at its discretion, to issue a non-disciplinary order for additional Continuing Medical Education courses.

The Boards have recently taken the following actions:

AMB

Robbi L. Borjeson, M.D.

(California—General Practice)

Arizona License No. 24093

Accepted Administrative Law Judge's Recommended Order for Revocation

Carlin G. Bartschi, M.D.

(Gilbert—Emergency Medicine)

Arizona License No. 9497

Accepted Administrative Law Judge's Recommended Order for Revocation

Kenneth J. Tolman, M.D.

(Pittsburgh—Diagnostic Radiology)

Arizona License No. 36900

Accepted Consent Agreement for Surrender of License.

Duan C. Copeland, M.D.

(Lakeside—Urology)

Arizona License No. 35699

Ordered Stayed Revocation

Robert C. Teague, M.D.

(Phoenix—Family Practice)

Arizona License No. 3925

Accepted Administrative Law Judge's Recommended Order for Revocation

Gary W. Hall, M.D.

(Florida—Ophthalmology)

Arizona License No. 12977

Accepted Consent Agreement for Surrender of License

Albert Szu Yun Yeh, M.D.

(Las Vegas—Anesthesiology)

Arizona License No. 32323

Accepted Consent Agreement for Surrender of License.

Fernando Cruzado, M.D.

(Kearny—Family Medicine)

Arizona License No. 30961

Decree of Censure and 10 years Probation.

Sam Hochane, M.D.

(Show Low—Internal Medicine)

Arizona License No. 32092

Decree of Censure, Practice Restriction, and 5 years Probation.

ARBoPA

Robert Mitchelson, P.A.

(Phoenix)

Arizona License No. 3097

Ordered Practice Restriction, 10 years Probation, and Stayed Revocation.

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Explanation of Terms

Revocation — Termination of a licensee's right to practice medicine or perform health care tasks in Arizona. A referral to a formal hearing is necessary.

Suspension — The Board may suspend a license for 12 months or less without a formal hearing. A suspension of more than 12 months may be issued after a formal hearing. A suspension may be used as a punishment to restrict financial gain.

Decree of Censure — Not defined in statute, but is identified as an "official action against the licensee..." A Decree of Censure may be issued by itself or in conjunction with terms of probation. A Decree of Censure may also include a requirement that restitution be paid to a patient.

Letter of Reprimand — A disciplinary order issued by the Board informing the licensee that his/her conduct violates state or federal law and may require the Board to monitor the license. It may be issued by itself or in conjunction with terms of probation.

Advisory Letter — Non-disciplinary letter that notifies a licensee that he/she has committed either a minor technical violation or that there is not enough evidence to take a disciplinary action.

Recent AMB Actions and Orders (continued)

(Continued from page 6)

Nicole F. Oprea, P.A.

(Scottsdale)

Arizona License No. 2627

Ordered Probationary License, Practice Restriction and 3 years Probation.

William J. Lipuma, P.A.

(Fort Mohave)

Arizona License No. 1843

Accepted Administrative Law Judge's Recommended Order for Revocation.

Jef B. Esquerra, P.A.

(Orem, Utah)

Arizona License #1971

Ordered Practice Restriction, Decree of Censure and 15 years Probation.

Jennifer L. Langley, P.A.

(Peoria)

Arizona License No. 2433

Accepted Administrative Law Judge's Recommended Order for Suspension.

AMB Stats

At its one-day meeting on August 5, 2009, the Arizona Medical Board approved:

- 2 Revocations
- 1 Stayed Revocation
- 1 Surrender of License
- 5 Decrees of Censure
- 7 Letters of Reprimand
- 39 Advisory Letters
- 3 Orders for Non-Disciplinary CME

- 1 Dismissal
- 9 ED Dismissals

At its one-day meeting on October 7, 2009, the Arizona Medical Board approved:

- 1 Revocation
- 2 Surrenders of License
- 1 Decree of Censure
- 4 Letters of Reprimand
- 1 Order for Restitution
- 21 Advisory Letters
- 1 Order for non-disciplinary CME
- 1 Dismissal
- 12 ED Dismissals
- 2 Cases Returned to Investigations

At its one-day meeting on December 2, 2009, the Arizona Medical Board approved:

- 2 Decrees of Censure
- 10 Letters of Reprimand
- 28 Advisory Letters
- 2 Orders for Non-Disciplinary CME
- 4 Dismissals
- 5 ED Dismissals

ARBoPA Stats

At its meeting on August 19, 2009, the Arizona Regulatory Board of Physician Assistants approved:

- 2 Disciplinary Probations and Practice Restrictions
- 1 Decree of Censure
- 2 Advisory Letters
- Denial of Rehearing/Review

At its meeting on November 18, 2009, the Arizona Regulatory Board of Physician Assistants approved:

- 1 Revocation
- 1 Suspension
- 1 Disciplinary Probation and Practice Restriction
- 1 Decree of Censure
- 1 Letter of Reprimand
- 1 Advisory Letter
- 2 Dismissals
- 1 Return to Investigations
- 1 License Denial



(Continued from Page 3)

Table 1. 2007-2009 ARBoPA Non-Disciplinary Actions

<i>Advisory Letter for:</i>	#
Quality of Care	8
Violation of Board Order	1
Failure to notify Board of termination of SP	1
Performing tasks not delegated by physician	1
Prescribing without conducting a physician examination	1
Failing to have an approved supervising physician	1
Performing tasks at an unapproved geographically separate location	1
Failure to properly fill out a prescription	1
Failure to submit a Notice of Supervision	1
Total	16

Table 2. 2007-2009 ARBoPA Disciplinary Actions

<i>Letter of Reprimand for:</i>	#
Quality of Care	4
Failure to submit a Notice of Supervision (NOS)	2
Performing tasks not delegated by physician	1
<i>Decree of Censure for:</i>	#
Multiple violations	4
Surrender of License	3
Summary Suspension	1
Referral to Formal Hearing	1
Total	16

Fifth Pathway Program Hits Deadend



The American Medical Association’s Council on Medical Education has discontinued the “Fifth Pathway” program. The AMA created the program in 1971 as a mechanism for eligibility to enter the first year of U.S. post-graduate training programs approved by the Accreditation Council for Graduate Medical Education, or ACGME.

In a brief statement, the Council says it will no longer support the program once the last Fifth Pathway class ends in December

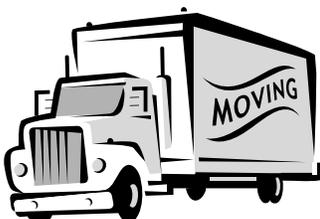
2009. The AMA will continue to maintain records of former graduates of the program, but as of July 1st, it stopped adding records of individuals completing a year of supervised clinical education at a medical school in the U.S. accredited by the Liaison Committee on Medical Education.

The “Fifth Pathway” got its name in 1971 due to the fact there were four other approved avenues to residency training in the United States: graduation from a U.S. medical school; certification

by the Educational Commission for Foreign Medical Graduates (ECFMG); full and unrestricted licensure by a U.S. licensing jurisdiction; and passing the Spanish language licensing examination in Puerto Rico.

Fifth Pathway students did not graduate from a foreign medical school. They left early and completed their final year of medical training in the United States. As a result, they received a “Certificate of Completion,” not a medical diploma, as their medical credential.

Do We Have Your Correct Addresses and Phone Numbers?



Once a physician or a physician assistant moves to a new office or residence location or changes phone numbers, the Arizona Medical Board and/or the Arizona Regulatory Board of Physician Assistants needs to update the information. It’s the law!

“The Board may assess the costs incurred by the Board in locating a licensee and in addition a penalty of not to exceed one hundred dollars against a license who fails to comply within 30 days from the date of change.”

Physicians—A.R.S. § 32-1435 (A)

and (B).

Physician Assistants—A.R.S. § 32-2527 (A) and (B).

Also, it is an act of unprofessional conduct not to inform the Board of an address change.

Business Name

Primary Business Address
Your Address Line 2

Phone: 555-555-5555
Fax: 555-555-5555
E-mail: someone@example.com

The Arizona Medical Board is committed to serving the public through the honest, fair, and judicious licensing and regulation of allopathic physicians (MDs). As it has in the past, the Arizona Medical Board will continue to gain public respect and trust by focusing on the issues that will shape positive healthcare environments.

As the utilization of physician extenders, such as physician assistants, continually increases, the Arizona Regulatory Board of Physician Assistants stays in touch with community needs and implements health care policy reforms to protect the public and provide guidance to its licensees. Within the last few years, the Board has systematically revised its laws and rules to stay abreast of healthcare trends.
