

2015 Lyme Legislation

This past legislative session, the Maine Legislature enacted into law “An Act to Improve Access to Treatments for Lyme Disease.” That law, which amends the Board’s governing statute by adding a new section (32 M.R.S.A. § 3282-B “Lyme disease treatment”) took effect on October 15, 2015.

As originally drafted, the Lyme legislation would have prevented the Board from revoking, suspending or otherwise disciplining the license of any physician for prescribing, administering or dispensing long-term antibiotic therapy to a patient clinically diagnosed with acute, persistent or chronic Lyme disease if: (1) the clinical diagnosis and treatment plan were made pursuant to guidelines recommended by the C.D.C.; or (2) the physician used his/her “best judgment.”

During the legislative process, the definition of “Lyme Disease” was expanded to its final version which refers to U.S. Centers for Disease Control and Prevention (CDC) guidelines, and the restriction on the Board’s ability to revoke, suspend or discipline the license of a physician for prescribing long-term antibiotics to treat Lyme disease was eliminated. Under the new law, a physician may prescribe, administer or dispense long-term antibiotic therapy for a therapeutic purpose to eliminate infection or control symptoms upon making a clinical diagnosis of Lyme disease or where a patient displays symptoms consistent with Lyme disease. The new law requires that the physician document the clinical diagnosis and treatment plan in the patient’s medical record, and requires that the clinical diagnosis be based on medical history and physical examination and/or in conjunction with testing that provides supportive data for the clinical diagnosis. **Detailed information about the diagnosis and treatment of Lyme disease is available from the CDC at <http://www.cdc.gov/lyme/>.**

“Lyme disease” means:

- (1) The presence of signs or symptoms compatible with acute infection with *Borrelia burgdorferi*;
- (2) Late stage, persistent or chronic infection with *Borrelia burgdorferi*;
- (3) Complications related to an infection under subparagraph (1) or (2); or
- (4) The presence of signs or symptoms compatible with acute infection or late stage, persistent or chronic infection with other strains of *Borrelia* that are identified or recognized by the United States Department of Health and Human Services, Centers for Disease Control and Prevention as a cause of disease.

“Lyme disease” includes an infection that meets the surveillance criteria for Lyme disease established by the federal Centers for Disease Control and Prevention or a clinical diagnosis of Lyme disease that does not meet the surveillance criteria for Lyme disease set by the federal Centers for Disease Control and Prevention but presents other acute and chronic signs or symptoms of Lyme disease as determined by a patient’s treating physician.

Mandated Reporting of Suspected Child Abuse and Neglect

Call 1-800-452-1999

Maine law requires that physicians and physician assistants immediately report:

- When a child has been or is likely to be abused or neglected
- When a suspicious child death has occurred
- When a child under 6 months of age or otherwise non-ambulatory exhibits evidence of:
 - Fracture of a bone
 - Substantial or multiple bruises
 - Subdural hematoma
 - Burns
 - Poisoning
 - Injury resulting in substantial bleeding, soft tissue swelling or impairment of an organ

The report is required when the physician or physician assistant “knows or has reasonable

cause to suspect” child abuse or neglect has occurred or will occur or a suspicious child death has occurred.

“Abuse” includes emotional, physical and sexual abuse. Evidence of physical abuse includes:

- Bruising/lacerations
- Bite marks
- Burns
- Fractures
- Head trauma

General indicators of physical abuse include:

- Injury inconsistent with the explanation being offered
- Different or changing explanations for the injury

- Injury inconsistent with the developmental age of the child, e.g. fracture in non-ambulatory infant
- Child or caretaker states injury was inflicted

“Neglect” is failure to provide adequate food, clothing, shelter, supervision, or medical care when that failure causes or is likely to cause injury, including accidental injury or illness. It also includes failure to protect a child from harm resulting in abuse, emotional abuse, or sexual abuse.

For more information, and for training regarding mandatory reporting, please visit the following website:
<http://www.maine.gov/dhhs/ocfs/cps/>

The Board Welcomes Lynne Weinstein

The Board is pleased to introduce its newest public member, Lynne M. Weinstein. Lynne, who was appointed this summer and attended her first Board meeting in September, resides in Portland with her husband, Jess, and their beloved pup Leo. She is the mother of three grown daughters. She has been employed at RE/MAX By The Bay in Portland as an Office Manager for the past eleven years.



Lynne Weinstein

Although new to the Board, Lynne is familiar with the Board and the services it provides. "I have been a user of the Board's website since moving to Maine in 2004. It has been invaluable in helping me research and select health care professionals."

Lynne found the Board's call for public members on the website and quickly responded. "When I saw there was a need for a volunteer from the public sector, I looked into the position and realized this would provide me with an opportunity to contribute value and fairness by offering an informed public opinion during Board meetings and deliberations."

Lynne is enthusiastic about representing the public on a professional licensing board. "By volunteering my time to serve on the Board and contributing a public perspective, I will be helping assure Maine residents are able to receive the most competent and reliable medical care available."

The Board is made up of 6 physicians, 3 public members, and a physician assistant, all appointed by the Governor. Lynne has filled one of two public member vacancies on the Board. ■

In addition to the remaining public member vacancy, there is also a vacancy for a physician member. The Board is seeking a licensee with a surgical or anesthesia background. If you have questions, or would like to apply, please contact Dennis Smith at (207) 287-3605 or by e-mail at Dennis.E.Smith@maine.gov

The Board's Updated Web Presence

The Board's website www.maine.gov/md was redesigned in August. The new look is less cluttered and includes easy navigation tools.

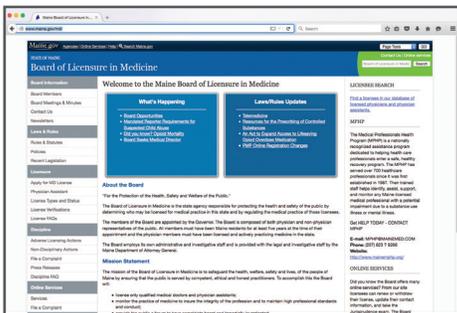
In addition to the new look, the site also contains new information and functions. The most obvious are the What's Happening and Laws/Rules

Updates boxes in the center of the homepage. What's Happening will contain up to date information on general Board news and hot topics the Board is working on. Laws/Rules Updates will contain legislative information while the legislature is in session and information about current and upcoming Board rules.

The site also contains updated versions of all MD applications under Apply for MD License. If you need to apply for a different type of license or need to renew your license using a paper application (we strongly recommend using our online renewal system available on the site) please make sure you download the new versions. Old versions will not be accepted.

Another new item on the website is the Jurisprudence Exam Study Guide. We heard your comments and concerns about the previous study materials and agreed they needed improvement. We have condensed and updated the information into an easy to read 17 page study guide. Even if you don't need to take the exam, we hope you will take some time to review the document. In the coming months the exam itself will also have a new look and more functionality for our licensees.

We want this site to be a useful tool for our licensees and the public, so please take a look at the site and send your feedback to tim.e.terranova@maine.gov We look forward to hearing from you. ■



Adverse Actions

AUSTIN, DAVID R., M.D. License # MD 12687 (4/14/15). The Board issued an Order of Immediate Suspension following receipt of information alleging that the licensee was terminated for arriving at his work site inebriated and unable to perform his duties. The licensee subsequently declined a recommendation to obtain substance abuse evaluation, treatment and monitoring. The Board voted to summarily suspend the license to practice medicine in Maine effective April 14, 2015.

CHRISTENSEN, MARC D., M.D. License # MD 162335 (4/14/15). On April 14, 2015, the Licensee entered into an Interim Consent Agreement with the Board and Office of Attorney General that resulted in the immediate suspension of his license to practice medicine in the State of Maine in lieu of summary suspension as a result of allegations that the licensee was charged with Operating Under the Influence while on-call. The interim suspension shall remain in effect until such time as the Board takes final action regarding the matter either by hearing and decision and order or by Consent Agreement.

KENDALL, KEVIN M., M.D. License # MD 14562 (05/15/2015). On or about April 8, 2015, the Board received information that the licensee is currently working for multiple employers, and that for at least one week in March, he exceeded the clinical hour limitation of the Consent Agreement as amended. In addition, the Board received important information from the licensee's work place monitor regarding recent work-place performance. The licensee and the Board agreed to amend the Consent Agreement dated February 12, 2013, as amended by the first amendment dated July 30, 2013, and as amended by second amendment dated March 27, 2014, as follows: 1) maximum of thirty-six (36) hours per week, including clinical, administrative, or any other type of work; 2) practice at one facility only; 3) reprimand for violating the clinical hour limitation.

RISSE, FRED D., M.D. License # MD 14652 (5/12/15). In lieu of further proceedings regarding complaints CR12-51, CR14-95, CR14-106 Dr. Risser and the Board agree that should the matter proceed to an adjudicatory hearing, the Board would have sufficient evidence to conclude that he engaged in unprofessional conduct by engaging in behavior that interferes with or is likely to interfere with the delivery of care. As discipline for this conduct, Dr. Risser agrees to accept, and the Board agrees to issue, the following discipline: 1) licensee's Maine medical practice shall be limited solely to male patients; 2) practice monitor; 3) warning; 4) costs. The licensee shall reimburse the Board four thousand three hundred forty-four dollars (\$4,344.00) as the actual costs for the investigation.

AUSTIN, DAVID R., M.D. License # MD 12687 (6/9/15). The parties entered into a consent agreement for surrender of license. The licensee agrees that if this matter were to proceed to a hearing the Board could find sufficient evidence to impose discipline on the licensee's license to practice medicine for misuse of alcohol, drugs or other substances that has resulted or may result in the licensee performing services in a manner that endangers the health or safety of patients. In order to resolve this matter without further proceedings, the licensee agrees to the IMMEDIATE SURRENDER of his Maine medical license.

Prescribing Controlled Drugs – A Continuing Issue

Physicians and physician assistants have a number of resources available to them that provide guidance and assistance for prescribing controlled drugs to patients. Unfortunately, despite the availability of these resources, the Board still receives complaints involving allegations of excessive prescribing, particularly opioids in combination with benzodiazepines. These complaints come from family members of patients, pharmacists, other healthcare providers, and even law enforcement. Some of the complaints involved patient deaths attributable to medication overdose. The following are resources for physicians and physician assistants who prescribe controlled drugs:

1. Board Rule Chapter 21

Use of Controlled Substances for Treatment of Pain – can be found at <http://www.maine.gov/md/laws-statutes/rules-statutes.html>. Adopted in 2010, this rule establishes effective guidelines for prescribing controlled drugs, including:

- Medical history and appropriate physical examination, to include an assessment of the pain, physical function, and substance abuse history
- Treatment plan and objectives
- Informed consent, including documentation of a discussion of the risks and benefits of the use of controlled substances in light of the patient's medical conditions
- Medical record keeping
- Periodic review and monitoring

2. Expanded 2014 edition of Responsible Opioid Prescribing: A Clinician's Guide

In 2014 the Federation of State Medical Boards (FSMB) Foundation published an updated and expanded edition of Responsible Opioid Prescribing: A Clinician's Guide. The updated guide includes key portions of the Substance Abuse and Mental Health Services Administration's (SAMHSA) new "Opioid Overdose Prevention Toolkit" – a booklet summarizing current clinical advice in sections directed to various audiences, including clinicians who prescribe opioid analgesics, patients who use these medications, first responders, overdose survivors and their families, and community members.

3. Prescription Monitoring Program (PMP)

Allows physicians and physician assistants to access and review prescriptions for controlled drugs issued to patients. ■

GERBER, LOWELL I., M.D. License # MD 17412 (6/9/15). The licensee's ability to practice medicine is suspended in the following specific ways: (1) he may not practice medicine on female patients without the presence of a female chaperone; and (2) he may not practice medicine in his home. The suspension is effective immediately upon issuance of this Order for a thirty (30) day period ending on July 9, 2015 pending further Board action at an adjudicatory hearing scheduled for July 7, 2015.

GERBER, LOWELL I., M.D. License # MD 17412 (7/7/15). On July 7, 2015, the Licensee entered into a Consent Agreement with the Board regarding Complaint No. 15-12, which involved the Licensee having a sexual relationship with a patient. As discipline, the Licensee agreed to: 1) a reprimand; 2) license suspension of thirty (30) days; 3) civil penalty; 4) license probation for five (5) years with conditions including: use of a chaperone; ethics and boundary course; practice inspection; practice monitor; psychological evaluation; and payment of investigative costs.

GIRARD, JOHN M., M.D. License # MD 17281 (7/7/15). The Board issued an Order of Immediate Suspension following receipt of information that the Licensee's ability to safely and competently practice medicine was impaired by diagnosed mental health conditions which resulted in his hospitalization. On the basis of its review of these materials, the Board concluded that the ability of the Licensee to practice as physician in the State of Maine constituted an immediate jeopardy to the health and safety of the public who might receive his medical services, and that it was necessary to immediately suspend his license in order to adequately respond to this risk. The Licensee's medical license was suspended effective 7/7/15 for a thirty (30) day period ending on August 6, 2015, at 11:59 p.m.

HARDING, LESLIE C., M.D. License # MD 9446 (7/7/15). On July 7, 2015, Dr. Harding entered into a Consent Agreement with the Board regarding Complaint No. 14-83, which involved the following issues: 1) his medical management of the patient; 2) his prescribing of controlled substances to the patient; 3) his inconsistent use of universal precautions and apparent lack of prescribing or treatment changes following unexpected results; 4) the conclusions of an independent outside reviewer, which indicated that he did not meet the standard of care in several aspects of his prescribing for the patient; and 5) his general prescribing practices. In lieu of further proceedings the licensee admitted that the facts constituted grounds for the Board to impose discipline as incompetence, unprofessional conduct, and violation of the Board's rule regarding prescribing of controlled substances. As discipline, the licensee agreed never to prescribe controlled substances under any circumstances unless authorized by the Board. If the licensee resumes the practice of medicine, he shall: 1) not practice in an independent setting; 2) be limited to practice in a skilled nursing facility, nursing facility, or multi-level long-term care facility, or in connection with a hospice program that maintains a current certification by Medicare; and 3) submit to the Board for its approval, a written plan describing how his prescribing will be monitored. In addition, the licensee will reimburse the Board actual costs for the investigation.



Maine State Board of Licensure in Medicine

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2015 Board Rule Making Initiatives

The Board is in the process of revising certain existing rules and enacting new ones. The following is a summary of the rules and what they do.

Chapter 2 – Joint Rule Regarding Physician Assistants

This rule will replace the existing rule regarding physician assistants with a joint rule with the Board of Osteopathic Licensure. The joint rule will allow a physician assistant to be licensed with either the Board of Licensure in Medicine or the Board of Osteopathic Licensure and render medical services under the supervision of either an allopathic or osteopathic physician. In addition the joint rule will create uniform standards for license, certificates of registration, controlled drug prescribing authority, plans of supervision, notifications, and continuing medical education. To date, both the medical and osteopathic boards have reviewed the draft rule. It will be reviewed by the Physician Assistant Advisory Committee, and then be shared with interested parties prior to being formally proposed. The Board hopes to have the joint rule in place by the beginning of the new year.

Chapter 5 – Collaborative Drug Therapy Management

This is a new joint rule being proposed by the Board of Licensure in Medicine and the Board of Pharmacy. The joint rule will establish definitions for qualifying conditions for collaborative drug therapy, the application process, the content of collaborative agreements, the content of treatment protocols, and record-keeping and notification requirements. The Board hopes to have the joint rule in place by the beginning of the new year.

Chapter X – Telemedicine

This is a new rule that is being drafted to establish standards for the practice of telemedicine by licensees of the Board of Licensure in Medicine. The new rule will include definitions for telemedicine and telemedicine technology, establish practice guidelines – including licensure, standards of care and professional ethics, scope of practice, the physician-patient relationship, medical history and assessment, informed consent, coordination of care, medical records, privacy and security, technology and equipment, and prescribing. ■

Check your e-mail for our Spring issue!

The newsletter is changing from its paper format to an electronic format. Starting with the Spring issue (February/March 2016) the newsletter will come straight to your inbox. The change is being made in an effort to provide easily accessible information directly to our licensees while significantly reducing the cost of distributing the newsletter. We look forward to seeing you online.

Call for Consultants

The Board depends on physicians in all fields of medicine to review cases occasionally. Consultants advise the Board as to whether the case in question meets the community standard of care, and they are compensated for their time. To learn more about being a consultant, email the Executive Director, Dennis E. Smith, at Dennis.Smith@maine.gov, or call 287-3605.