

North Carolina Medical Board
License Committee
March 2011

Thomas Hill, MD, Chair, Donald Jablonski, DO, Karen Gerancher, MD, Mr. John Lewis

Open Session

Old Business

1. Privileges Suspended Section of License Applications

Issue: Recently the Board reviewed a physician license application in which the physician had been fired by her group practice for cause and then “voluntarily resigned” from the hospital staff before any action was taken by the hospital (related to the same incident which caused the physician to be fired from her group practice). This physician did not list any “Privileges suspended”; essentially answering the question “No”. The Board has previously determined, for the purposes of this question, that a group practice or employer should properly be considered a “health care institution”. It is an organization that does “issue credentials” to physicians. Nevertheless, in order to clarify the intent of the *Privileges Suspended* question Dr. Kirby proposes the definitions of “Actions” and “Health Care Institutions” be amended to include specific reference to physician group practices or employers.

Privileges Suspended/Authority to Practice Interrupted

Have you ever had an action taken against you by a health care institution, including employers or group practices? If so, list each occurrence.

Actions include warnings, censures, discipline, admissions monitored, privileges limited, privileges suspended, or/revoked, remediation, probation, withdrawals/resignations of privileges, suspension or termination of employment or a resignation under threat of investigation or disciplinary action or denial of staff membership.

Health care institutions include hospitals, health maintenance organizations, or preferred provider organizations, any facility in which you trained, any group practice, or any other provider organizations that issue credentials to physicians.

Staff Recommendation: Accept proposed changes. (SSRC)

Committee Recommendation: Change question to read:

Privileges/Authority to Practice

Have you ever had an action taken against you by a health care institution, including employers or group practices? If so, list each occurrence.

Actions include:

- Warnings
- Censures
- Discipline

- Admissions monitored
- Privileges limited, suspended or revoked;
- Remediation
- Probation
- Withdrawals/resignations of privileges,
- Suspension or termination of employment or a resignation under threat of investigation or disciplinary action or denial of staff membership

Health care institutions include:

- Hospitals
- Health maintenance or preferred provider organizations
- Any facility in which you trained
- Any group practice
- Any other organization that issues credentials to physicians.

Tasked to Operations 1/28/2011

2. 21 NCAC 32B.1303(a)(14) & (15)

Issue: It has been noted that we have a latent ambiguity in our physician licensing rules on the 3-tries-per step (or level) and get a 75 issue. It is recommended that the rule be cleaned up to make it stronger and clearer, although no different in application.

Staff Recommendation: Amend the rule as outlined below.

Committee Recommendation: Amend the rule as outlined below.

21 NCAC 32B .1303 APPLICATION FOR PHYSICIAN LICENSE

(a) In order to obtain a Physician License, an applicant shall:

- (14) if applying on the basis of the USMLE, submit:
- (A) ~~a transcript from the FSMB showing a score of at least 75 on USMLE Step 1, both portions of Step 2 (clinical knowledge and clinical skills) and Step 3;~~
- (A) a transcript from the FSMB showing a two-digit score of at least 75 on USMLE Step 1, Step 2 clinical knowledge examination, and Step 3, as well as passage of the Step 2 clinical skills assessment;
- (B) proof that the applicant has passed each step within three attempts. However, the Board shall waive this requirement if the applicant has been certified or recertified by an ABMS, CCFP, FRCP, FRCS or AOA approved specialty board within the past 10 years.
- (15) if applying on the basis of COMLEX, submit:

- (A) ~~a transcript from the NBOME showing a score of at least 75 on COMLEX;~~
- (A) a transcript from the NBOME showing a two-digit score of at least 75 on COMLEX Level 1, Level 2 cognitive evaluation and Level 3, as well as proof of passage of the Level 2 performance evaluation;
- (B) proof that the applicant has passed COMLEX within three attempts. However, the Board shall waive this requirement if the applicant has been certified or recertified by an ABMS, CCFP, FRCP, FRCS or AOA approved specialty board within the past 10 years.

History note: Authority G.S. 90-8.1; 90-9.1; 90-9.2; 90-13.1; Eff. August 1, 2010.

Board Action: Amend 21 NCAC 32B.1303 (a)(14) (A) and (15) (A) as follows:

(a) In order to obtain a Physician License, an applicant shall:

- (14) if applying on the basis of the USMLE, submit:
 - (A) ~~a transcript from the FSMB showing a passing score of at least 75 on USMLE Step 1, both portions of Step 2 (clinical knowledge and clinical skills) and Step 3;~~
- (15) if applying on the basis of COMLEX, submit:
 - (A) a transcript from the NBOME showing a passing score of at least 75 on COMLEX Level 1, both portions of Level 2 (cognitive evaluation and performance evaluation) and Level 3;

Update: Tasked to Wanda 2/2/2011

3. Guidelines for Reporting Withdrawal and Denial of Applications to NPDB, HIPDB and FSMB

Issue: There has been discussion regarding exactly what license application “withdrawals and denials” should be reported to FSMB, NPDB and HIPDB. We have contacted all three entities and recently received guidance and direction regarding the reporting issues. See bookmarked copy of Mr. Balestrieri’s January 4, 2011 memorandum outlining the reporting guidelines.

Committee Recommendation: Continue discussion at May meeting following FSMB discussion at the Annual Meeting. Patrick to provide update.

Board Action: Table until May meeting.

4. Medical School Faculty License

Issue: There has been discussion about whether it is appropriate to have a time limitation on Medical School Faculty Licenses. The proposed rule implements an expiration date after three years. Dr. Kirby will address this issue and whether the three year expiration date is appropriate.

Proposed Rules:

21 NCAC 32 BB.0800 SCOPE OF PRACTICE UNDER MEDICAL SCHOOL FACULTY LIMITED LICENSE

A physician holding a Medical School Faculty Limited License may practice only within the confines of the medical school or its affiliates. "Affiliates" shall mean the primary medical school hospital(s) and clinic(s), as designated by the ACGME.

History Note: G.S. 90-12.3

21 NCAC 32BB .0801 APPLICATION FOR MEDICAL SCHOOL FACULTY LIMITED LICENSE

The Medical School Faculty License is limited to physicians who have expertise which can be used to help educate North Carolina medical students, post-graduate residents and fellows but who do not meet the requirements for Physician licensure.

(A) In order to obtain a Medical School Faculty License, an applicant shall:

1. submit a completed application, attesting under oath that the information on the application is true and complete, and authorizing the release to the Board of all information pertaining to the application;
2. submit the Board's form, signed by the Dean or his appointed representative, indicating that the applicant has received full-time appointment as either a lecturer, assistant professor, associate professor, or full professor at a medical school in the state of North Carolina.
3. submit documentation of a legal name change, if applicable;
4. submit a recent photograph, at least two inches by two inches, affixed to the oath, and attested by a notary public;
5. submit proof on the Board's Medical Education Certification form that the applicant has completed at least 130 weeks of medical education. The applicant's date of graduation from medical school shall be written in the designated space, and the school seal shall be stamped on the form; the dean or other official of the applicant's medical school shall sign this form, verifying the information;
6. supply a certified copy of applicant's birth certificate or a certified copy of a valid and unexpired US passport if the applicant was born in the United States. If the applicant does not possess proof of US citizenship, the applicant must provide information about applicant's immigration and work status which the Board will use to verify applicant's ability to work lawfully in the United States;
7. submit proof of satisfactory completion of at least one year of GME approved by ACGME, CFPC, RCPSC, or AOA; or evidence of other education, training or experience, determined by the Board to be equivalent;
- ~~7-8.~~ submit reports from all medical or osteopathic boards from which the applicant has ever held a medical or osteopathic license, indicating the status of the applicant's license and whether or not any action has been taken against the license;
- ~~8-9.~~ submit an AMA Physician Profile; and, if applicant is an osteopathic physician, submit an AOA Physician Profile;
- ~~9-10.~~ submit a NPDB report, HIPDB report, dated within 60 days of applicant's oath;
- ~~10-11.~~ submit a FSMB Board Action Data Bank report;
- ~~11-12.~~ submit two completed fingerprint record cards supplied by the Board;
- ~~12-13.~~ submit a signed consent form allowing a search of local, state, and national files to disclose any criminal record;

~~13.14.~~ provide two original references from persons with no family or marital relationship to the applicant. These letters must be:

- (a) from physicians who have observed the applicant's work in a clinical environment within the past three years;
- (b) on forms supplied by the Board;
- (c) dated within six months of the applicant's oath; and
- (d) bearing the original signature of the writer.

~~14.15.~~ pay to the Board a non-refundable fee of \$350.00, plus the cost of a criminal background check;

~~15.16.~~ upon request, supply any additional information the Board deems necessary to evaluate the applicant's competence and character.

- (B) All reports must be submitted directly to the Board from the primary source, when possible.
- (C) An applicant may be required to appear in person for an interview with the Board or its agent to evaluate the applicant's competence and character.
- (D) An application must be completed within one year of the date of the applicant's oath.
- (E) This license is valid for the shorter of three years or the duration of the holder's appointment to the academic staff of the school.
- (F) This rule shall apply prospectively.

History Note: G.S 90-12.3; 90-13.2

Committee Recommendation: Remove the 3 year time limit.

Board Action: Remove the 3 year time limit.

Update: Tasked to Wanda & Nancy – completed in-house.

6. Fines

Issue: There has been some discussion regarding implementation of fines. Additional information will be forthcoming following 1/13/11 conference call.

Staff Recommendation: Recommendation will be forthcoming.

Committee Recommendation: Staff will be coming forward with a recommendation to deal with administrative fines that will not be posted on the licensee information page as opposed to fines associated with public disciplinary actions which will be posted on the LI permanently.

Board Action: Table until March or May Board meeting.

For March Discussion: From Dr. Kirby

Recommendations for imposition of fines are prompted by physician neglect in complying with specific regulations related to their application for a North Carolina medical license. Physicians often claim their obligations in these matters are either ambiguous or uncertain. Physicians who interpret their obligations as ambiguous have a tendency to provide incorrect, misleading, or incomplete information. Review and investigating these matters consumes large amounts of

Board time. If significant sanctions (fines) for non-compliance or misinformation exist physicians may be likely interpret perceived ambiguities in favor of full disclosure.

- Fines, of any amount, imposed as a component of, or related to, other disciplinary actions will be public and published as a part of the Board's public disciplinary action and displayed along with the other components of the underlying disciplinary action. These fines will be displayed on the "LI page" under "Actions – Regulatory Board, Agency, & Health Care Institution - North Carolina Medical Board Public Actions".
- Discussion continues about what to do with:¹
 - Fines of less than \$500 imposed as the result of incorrect answers to initial license application questions, such as unreported medical school probation, prior misdemeanor arrests, etc. These include errors and omissions which would normal result in a license with letter of advisement or PLOC.
- Suggestions for reporting/publishing these fines include:
 - A. Tabular list of licensees' name, offense, and fine amount in a single issue of the Forum.
 - B. Tabular list of offense and fine amount (without identification of licensee) in single issue of Forum.
 - C. List of licensees name, offense, and fine amount in the minutes of the Board meeting for the month the fine is imposed.
 - D. Permanent notice of the fine (without amount) and offense on the licensee's LI page under a new tab called "Board Administrative Actions" (or some variant thereof).
 - E. Temporary insertion of the fine (without amount) and offense on the licensee's LI page under a new tab called "Board Administrative Actions" (or some variant thereof) for a period of 1 year (or other suitable time period).

¹ Fines of less than \$500 imposed the result of deficient CME, minor incorrect answers on license renewal, failure to update LI page, and other matters to be determined by the Board have also been discussed at length. It is my understanding this category of administrative or non-disciplinary fine **may** require new legislation or rules and that it might be imprudent to pursue this matter further at this time.

Choice "A" would avert accusations of "secret" fines by the Board, limit long term derogatory impact on licensees for relatively minor offenses, and still promote general deterrence for other licensees as it would be seen by other licensees. This general deterrence would be lacking with choices C, D, and E as other licensee are unlikely to read the Board minutes or randomly view licensees' LI page.

Recommendations:

1. The NCMB should begin with imposition of non-disciplinary fines² for clearly identifiable license application errors, omissions, or false information on an license application.

² Regarding concerns about fines (of less than \$500) being considered "non-disciplinary". Please note that NCGS §90 14, entitled "Disciplinary Authority" includes, in the same paragraph, provisions for both public letters of concern and fines. Public letters of concern are specifically designated "non-disciplinary". Fines of less than \$500 could be considered in a similar manner to PubLOC. Admittedly the \$500 limit is arbitrary, however it has generally been thought that fines above \$500 are less defensible as "non-disciplinary".

- a. Proposed Rule: CONSEQUENCES OF FAILURE TO PROVIDE ACCURATE AND COMPLETE ANSWERS ON AN APPLICATION FOR A LICENSE.
The Board shall fine a license applicant when he or she fails to provide accurate, forthright, and complete answers on an license application. The presumptive fine shall be \$500. However, the Board may reduce the fine based on the following mitigating factors: applicant promptly responded to Board inquiries regarding the matter; applicant corrected the application in a timely manner, economic hardship. The Board may increase the amount of the fine, not to exceed \$1,000 based on the following aggravating factors: applicant failed to respond to a Board inquiry within a reasonable time; applicant failed to correct the error(s) in a timely fashion; evidence of willful attempt to deceive, prior or multiple errors.
 2. A prominent warning should be added to the license application and renewal form.
 3. Reporting to either the NPDB or FSMB will be considered on an individual basis (as are all other NCMB decisions and actions). Fines and other monetary sanctions unaccompanied by other licensure action, such as revocation, suspension, censure, reprimand, probation, or surrender would not be reported to the NPDB (NPDB Handbook; Pg. E-25). For instance:
 - a. License application omissions were the applicants were fined, but otherwise issued a license with a PLOC, would not be reported to either the NPDB or the FSMB.
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New Business:

1. Medical School Faculty Limited Fee - Hemphill

Issue: The new rule on Medical School Faculty Limited Licenses was approved by the Rules Review Commission on February 17 and was supposed to go into effect March 1. Unfortunately, the rule is now in limbo. The problem is that the rule increases the application fee from \$150 (set in 1993) to \$350 (what we charge applicants for “regular” unlimited physician licenses.) Before the rule increasing the fee can take effect, it must go through the Joint Legislative Commission on Governmental Operations.

Staff Recommendation:

Options:

1. Request the fee increase. Because no one has been appointed to the Joint Commission, our request would go to the legislative leadership, Sen. Berger and Rep. Tillis. Legislative staff inform us that the Joint Commission is unlikely to be impaneled during the legislative session. If the Joint Commission doesn't meet, then the fee increase automatically becomes effective 90 days after filing, or early June. Or, if the Joint Commission does meet, we can go before the legislators and argue on behalf of the fee increase. I have attached a copy of the letter we might send to Sen. Berger and Rep. Tillis.
2. Move to amend the rule immediately, going back to the \$150 application fee. This would be easy, and we could have the rule in effect by August 1. There's not much economic impact either way.
3. We cannot do nothing. The entire rule is pending either Joint Commission approval or denial, or RRC amendment.