

INFORMATION BULLETIN:

MASSACHUSETTS BOARD OF REGISTRATION IN MEDICINE PROPOSED REGULATIONS (April 6, 2007)

The Massachusetts Board of Registration in Medicine (“BRM”) continues the process of revising its regulations governing the practice of medicine and acupuncture, a process it began more than a year ago. The BRM has received public comment on several sets of proposed regulations and has held two public hearings at its headquarters in Boston. On March 21, 2007, the BRM approved a new set of proposed regulations (the “Proposed Regulations”), which modify and replace its previous proposals, the most recent of which had been released at the end of December, 2006. This memorandum contains a summary of some of the changes included in the Proposed Regulations.¹

Disciplinary Proceedings for Physicians (Proposed New 243 C.M.R. 1.00):

- The regulations currently list 18 possible grounds for discipline by the BRM; the Proposed Regulations contain 27.
 - Many are vague, overbroad, and not specifically related to the practice of medicine (*e.g.*, “engaging in conduct that demonstrates a lack of good moral character”).
 - Those related to the practice of medicine include:
 - failing to comply with professional reporting obligations; and
 - failing to comply with “accepted research standards, ethics, and principles, or procedures,” or with governmental statutes, regulations, or policies regarding research.

The Practice of Medicine (Proposed New 243 C.M.R. 2.00):

- The Proposed Regulations increase the amount of post-graduate training required for full licensure: U.S. or Canadian medical graduates must have completed 2 years, and foreign medical graduates 3 years, of post-graduate medical training (up from 1 and 2 years, respectively, under the current regulations).
- The duration of a limited license remains 1 year. However, under the Proposed Regulations the BRM may issue a limited license for the duration of a trainee’s enrollment in an ACGME training program (for a maximum of six years) “when a specific and trainee-focused program of quality and safety exists as an integrated element of the sponsoring institution’s Patient Care Assessment Program, and said program provides documentation that it is in compliance with all the provisions of 243 C.M.R. 3.00 et seq.” [*COMMENT: The Proposed Regulation (and inclusion of a trainee-focused quality program in the Patient Care*

¹ The summary does not include revisions to the two sections governing the practice of acupuncture and disciplinary proceedings concerning acupuncturists.

Assessment Plan) could result in greater protections for resident evaluative materials under the Massachusetts medical peer review statute.]

Establishment of and Participation in Qualified Patient Care Assessment Programs (Proposed New 243 C.M.R. 3.00):

- The Proposed Regulations change the definition of “Patient Care Assessment Committee” to require that the “Director of Graduate Medical Education or equivalent” shall be a member of the committee in “a health care facility where graduate medical education is given or received.”
- The Proposed Regulations require that the Patient Care Assessment Plan be submitted every three years to the BRM and approved by the BRM to be a Qualified Patient Care Assessment Plan and that any proposed amendments to a Patient Care Assessment Plan be filed annually with the BRM concurrently with the facility’s annual report (in place of the current requirement that the plan be submitted to the BRM when adopted or amended).
- The Proposed Regulations contain a new section governing the credentialing of telemedicine providers.
- The Proposed Regulations would change the current two-year health care facility credentialing cycle to a three-year cycle.
- The Proposed Regulations change the credentialing obligations of health care facilities, as follows:
 - the licensee must provide consent to allow the facility to conduct a criminal background check;
 - as to a reappointment application, the facility must make reasonable inquiry to those facilities where the applicant has had employment, practice, association, or privileges in the past two years (down from three in the current regulations); such reasonable inquiry need only include a “written request,” as opposed to “up to three requests in writing,” under the current regulations;
 - added to the areas of “reasonable inquiry” is a request for an assessment of clinical skills, “including an analysis of available complication rates and other performance data”; and
 - health care facilities must have a process for granting disaster privileges.
- The Proposed Regulations explicitly allow health care facilities to make “reasonable inquiry” concerning a practitioner at other facilities where he or she has privileges at “any time during the three-year credentialing cycle.”
- The Proposed Regulations add a requirement that health care facilities with Graduate Medical Education programs develop and implement processes “to collect, investigate, analyze and trend patient outcome data in order to assure that medical residents are practicing in an environment that allows them to provide safe and competent care.”
- The Proposed Regulations change the patient care assessment program requirements for licensee office settings to require the licensee to file an occurrence report “with the health care facility where the licensee office setting or licensee has his primary affiliation” in circumstances where there is (1) an

unplanned transfer to a hospital, or (2) an unexpected occurrence from any procedure or treatment that requires sedation or anesthesia, and/or in which the known complications of the procedure may be “serious or life threatening.” The health care facility then must review the reported occurrence and file an occurrence report with the BRM. If the licensee has no medical staff affiliation with a health care facility, the Proposed Regulations require the report to be sent directly to the BRM. *[COMMENT: This is a change from the current regulations, which require licenses to report directly to the BRM].*

General Provisions (Proposed New 243 C.M.R. 6.00):

- The Proposed Regulations expand the definition of the practice of medicine to include: (1) the practice of telemedicine; (2) providing an independent medical examination or disability evaluation; and (3) using the designation Doctor, Doctor of Medicine, Doctor of Osteopathy, Physician, Surgeon, Dr., M.D., D.O., or any combination thereof, unless such designation additionally contains the description of another branch of the healing arts for which one holds a valid license in Massachusetts.

Data Repository (Proposed New 243 C.M.R. 7.00):

- The Proposed Regulations add a requirement that a health care facility file a report with the BRM in the case of “a suspension or termination of all privileges” within 48 hours “of the action taken by the health care facility, unless otherwise required by law.” An initial report may be made by telephone or facsimile within 48 hours, followed by a written report within 10 days.
- The Proposed Regulations shorten from 30 days to 10 the time period for health care facilities (1) to file initial reports of disciplinary action concerning licensees; and (2) to file a final report once a disciplinary action has been completed.
- The Proposed Regulations add a penalty for violation of reporting obligations: “upon finding a violation of this section, [the BRM shall] assess a fine not in excess of ten thousand dollars.”
- The Proposed Regulations include a statement that, while not reportable “disciplinary action,” an oral reprimand does not relieve an individual of peer reporting obligations under G.L. c. 112, § 5F.

We will continue to update you on the status of the BRM’s consideration of the Proposed Regulations. If you have any questions or issues you would like to discuss, please contact Vanessa Smith (413-272-6213) or Sandy Dibble (413-272-6246).