

NEWSLETTER

Vermont Board of Osteopathic Physicians & Surgeons

Secretary of State, Office of Professional Regulation

Topics in this newsletter include: Chairperson's Report; the new licensing system (eLicense), Online Renewals, Changes in Legislation (2009 and 2010); Prescriber Information, Reminders, Statistics, and more.

The Board of Osteopathic Physicians and Surgeons is a five member Board created by the Legislature whose members are appointed by the Governor to administer the laws for this profession in the State of Vermont. The Board's mission is public protection. The Board does this by: ensuring that applicants are qualified for licensure; setting standards for the profession by proposing statutes and adopting administrative rules; and, with the assistance of OPR staff, investigating complaints of unprofessional conduct, taking disciplinary action against licensees when necessary to protect the public.

Board Members

The members of the Vermont Board of Osteopathic Physicians & Surgeons and their term expiration dates are as follows:

Howard S. Jonas, D.O.,
Chairperson, Bridgewater
Corners, Vermont (12/11);
William Cove, D.O., Vice-Chair,
Waterbury, Vermont (12/13);
John M. Peterson, D.O.,
Montpelier, Vermont (12/13);

John Welch, Esq. (Public
Member), Rutland, Vermont
(12/09); and
Mary C. Mazzariello (Public
Member), Rutland, Vermont
(12/08).

Members are appointed by the Governor to a five-year term and are eligible to serve two terms. Persons who are interested in serving on the Board may contact our Office or the Governor's Office directly at 802-828-3333.

Introduction

The Vermont Board of Osteopathic Physicians & Surgeons is pleased to bring you its latest Newsletter. This Newsletter contains information about staff, statutory amendments, continuing education, statistics, and other issues pertaining to the profession.

Our Newsletter is an excellent source for informing our licensees of current and proposed changes in the profession.

The Board's duty is to protect the public health, safety and welfare.

The Board also has a quasi judicial role in which it serves as jury in cases of unprofessional conduct. The Board's roles are accomplished by establishing standards, licensing only qualified applicants, and ensuring compliance with the laws and rules.

Staff

Kristy Kemp is the Board's Administrative Assistant. Ms. Kemp may be reached at (802) 828-2373; Fax: (802) 828-2465; E-Mail: kkemp@sec.state.vt.us

The Board's Administrator is Carla Preston. You may reach Ms. Preston at (802) 828-2875; Fax: (802) 828-2465; or via E-mail at: cpreston@sec.state.vt.us.

The Director of the Office of Professional Regulation is Christopher D. Winters, Esq.

Larry S. Novins, Esq. serves as the Board's Counsel.

Our Web site is:

www.vtprofessionals.org

On this page you will find links to the laws governing this profession,

as well as resources for applicants, licensees, consumers and employers.

From the Chairman
Howard S. Jonas, D.O.

Fellow Physicians:

We experienced a decrease in the number of complaints brought before our Board for a short time, but have seen an increase over the last few months. Typically, an average of four new complaints are received each fiscal year. Two new complaints were received during the last fiscal year ending June 30, 2009.

Since July 1, 2008, 35 new licenses have been issued which reflects an increase. To date there are a total of 126 currently licensed Osteopathic Physicians in Vermont, of which 52 are in-state residents with 74 residing out-of-state. According to the statistics reported in our 2006 Newsletter, there were 106 D.O.'s licensed with 52 of them residing in Vermont. Eight licensees did not renew their Vermont license in September of 2008. For further details regarding the number of licenses issued each fiscal year, budgets, complaint statistics, etc. please visit our Web site and click on Annual Reports, <http://www.vtprofessionals.org/> Physicians who change their name and/or address must report that change to the Office within 30 days 3 V.S.A. § 129a (a)(14).

The Board has received several inquiries and complaints about patients who could not obtain their

medical records from a physician who has ceased practicing. Physicians who change address, plan to close a practice, retire, or leave the state are reminded that the law requires you to report any change of address to the Board within 30 days.

Vermont has no specific rules governing closing practices or terminating a physician patient relationship. There are many good resources available to assist you if you plan to end your practice. A simple Google search for how to close a medical practice revealed several good "closing checklists." The Board does not recommend any particular closing protocol, but recommends that you give this matter some thought well in advance of closing a practice.

Closing a practice can affect patients in many ways. Patients should be informed before a practice closes. They should be informed how and where they may obtain their records. For regulatory and other legal purposes Records must be retained for various periods of time (7 years per Board statutes, longer for other purposes). Failing to make records available promptly to a patient or their representative or a succeeding health care professional or institution upon written request and direction of the patient is grounds for disciplinary action. Failing to retain medical records for a period of seven years, or longer when other laws or agency rules require it, is also grounds for disciplinary action. Your

continuing medical education records should be maintained for at least four years however you may wish to retain them for a longer period of time to accommodate other jurisdictions' requirements where you are licensed.

Another area of complaint is when a physician feels obligated to discharge a patient. There are times when a physician feels he or she can no longer maintain the physician patient relationship. Ending the relationship is fraught with risk. Again, good documented communication with the patient is advised. The goal is to make sure that the patient is not abandoned.

As you may know, the oath we take recognizes a treatment relationship between a health care provider (HCP) and a patient which creates an implied contractual obligation of "continuing attention." This obligation prevents the HCP from unilaterally terminating the relationship without adequate notice for the patient to seek treatment elsewhere. Abandonment of an existing patient is grounds for disciplinary action. Our Board therefore strongly advises giving your patients reasonable notice to allow patients to make other arrangements.

If you elect to discharge a patient from your practice, we suggest you send the patient a "termination of care" letter. The letter should reiterate your efforts to help the patient and explain that

you are withdrawing as his/her physician. List the conditions for which he/she will need ongoing care and direct them to the local hospital or medical society/association for help in finding another physician and give them the appropriate contact information. You should also inform your patients that you will be available for 30 days to treat them in case of an emergency. One more thing: Include an authorization form with respect to release of their records for them to sign and return to you in the event they want you to send their records to their new physician.

We give this advice for patient protection, and to help avoid physician patient miscommunication, and to help you avoid complaints to the Board.

These are important considerations when leaving your practice in Vermont. I am bringing this to your attention so that you are clear about the implications when the big decision to terminate practicing in Vermont or to move to another part of the state or when you decide to give up your license entirely.

Feel free to contact the Board with any questions or concerns you may have.

Sincerely,
Howard S. Jonas, D.O.
Chairman

eLicense
from Director Chris Winters

I am pleased to give you an update

on a major project all of us at OPR have been involved with over the last few years. For well over a decade, we have struggled with our two existing electronic databases for licensing and discipline. As our business has grown, it has become increasingly apparent that these databases are inadequate for our changing needs. We continue to see rising numbers of licensees and disciplinary complaints, with very little in the way of increased staffing. We need to leverage new technology to help us do our jobs in a more efficient manner as we serve the public. Because of this, we have long been planning a replacement of our existing computer system with a new one called "eLicense."

eLicense is a highly customizable product that allows the client to configure its functions to reflect its business practices. So before we started configuring the new system, we went through a lengthy self-analysis of our business processes, including a step-by-step review of each and every license we offer, cross-checking it with the laws for that profession and the forms we currently use. We did this for nearly 400 license types! We've also reviewed all of the correspondence that leaves this office to build certain standard letters into the system with merge tags so that they can be automatically generated. We've produced about 50 letters so far, with many more to go. On the discipline side, we have configured "actions" into the system (each one being an electronic footprint of a step in the

case) so that the electronic record will be detailed and complete and anyone can know the status of a case at a glance.

The new system incorporates our two legacy databases into one, allowing for more complete information in one place about each licensee. Electronic checklists have reduced paper files and encouraged consistency. In eLicense, applicants are entered into the system as soon as they file an application, rather than when they are finally licensed. Any OPR employee from any desk can pull up a file on their computer desktop to answer questions about the applicant or licensee.

All of this has led to more reliable and accessible information, better accounting practices, and more timely deposits. Standard letters can be automatically generated from the system and attached to the electronic licensee file. More advanced reporting functions have allowed managers to glean detailed information about workloads, timelines, and the status of applications and cases. These reporting functions also translate into additional information available to the public through our website.

Other eLicense features include the ability for applicants to look up the status of their pending applications online, greatly reducing the number of phone calls to OPR. The general public can search for licensees by a variety of search criteria.

Online license renewals have been the latest phase of the project which saw a successful launch in March. You should expect your profession to renew online this cycle, saving both you and our office staff time and money.

As you might imagine, this ambitious undertaking, on top of our regular everyday workloads, was a real challenge. The beauty of eLicense is its adaptable nature. Every day we discover new ways to harness its power and improve upon what we do. Although it has been a long and painful journey to get to this point, it has been well worth it. Along the way, we have discovered many ways to improve our business processes. It has been a great team-building exercise and has helped us to think critically and innovate around our long-standing ways of doing things here at OPR.

The OPR staff deserves a large amount of the credit for the parts they played in making this a reality. They took on a rather large extra workload and embraced this difficult change. With a year of eLicense now under our belts, I am excited for what is in store for us next as we strive to uphold our reputation as a responsive and innovative state agency.

Online Renewals

As mentioned above, you will have the ability to renew your license online. You will be sent a notice with your User ID and Password. The Notice will arrive about the same time as this

Newsletter!

Please note that to renew you must certify that you are in compliance with continuing education requirements.

The Board of Osteopathic Physicians & Surgeons plans on verifying information stated by applicants for renewal through an audit process.

LASIK Inclusion

The Food and Drug Administration (FDA) is seeking to share information on LASIK (laser-assisted in-situ keratomileusis) procedures with the Board because of public comments regarding: potential under-reporting of severe problems such as halos, glare, night vision and dry eye post-LASIK; inadequate quality and availability of post-surgery patient follow-up; inappropriate guarantees and effectiveness claims made in advertisements by certain LASIK practitioners; inadequate practice of informed consent regarding likely side effects or the possibility of treatment; and inadequate screening processes and patient selection.

The Board encourages that physicians who refer patients for or perform LASIK, or answer questions from their patients regarding this procedure keep the above in mind and send relevant information on LASIK procedures to the Board so that it can be shared with the FDA. (Excerpt from July/August 2009 issue of

Newsline)

Pain Management Contracts

It has become the standard of care to have patients who are prescribed controlled medications for extended periods of time to sign a contract with the prescribing physician outlining the responsibilities of the patient to demonstrate compliance with their treatment. The contracts will sometimes explain the potential risks and expected benefits of the medication. These have mostly been used when prescribing opioid analgesics. There have been an increasing number of complaints to the Vermont Board of Osteopathic Physicians & Surgeons from patients of doctors who for various reasons have stopped prescribing controlled medications to them or have discharged them from the practice. The presence of an appropriate, signed contract in the medical record certainly speeds the investigative process and allows for a speedy resolution of the case, almost always in favor of the physician.

In recent years doctors have extended the use of contracts to other controlled medications, particularly buprenorphine (Suboxone, Subutex). At least some providers are simply having the patient sign a contract that was written for pain medicine with little or no editing. While this has not yet caused a problem for the physician in the specific cases brought before the Board, there does seem to be the potential for miscommunication, and thus

regulatory or civil action unfavorable to the prescriber. There are sample contracts available from professional organizations, specialty societies and pharmaceutical manufacturers that may be more specific to the type of medication being prescribed and/or to the clinical situation for which it is being given to your patient. It may also be worth your time to have your contract(s) reviewed by your legal advisor.

As always, clear communication with your patients and good documentation of the same can save the professional many headaches.

Tamper Resistant Prescription Pads

Prescribers, please note: As of January 1, 2010 all written Vermont prescriptions must be written on tamper resistance prescription pads.

The Rules are at the Pharmacy Board's section of the OPR web site, <http://vtprofessionals.org>

Vermont's Prescription Confidentiality Law Prescriber Data-Sharing Program

Title 18 V.S.A. Ch 91, § 4631 (c)(1) states, The department of health and the office of professional regulation, in consultation with the appropriate licensing boards, shall establish a prescriber data-sharing program to allow a prescriber to give consent for his or her identifying

information to be used for the purposes described under section (d) of this section. The department and office shall solicit the prescriber's consent on licensing applications or renewal forms and shall provide a prescriber a method for revoking his or her consent. The department and office may establish rules for this program. <http://www.leg.state.vt.us/statutes/fullsection.cfm?Title=18&Chapter=091&Section=04631>

The form mentioned to opt in to this program will be mailed with your notice about renewing online. The forms to opt in or to revoke consent are also available online at: <http://vtprofessionals.org/opr1/osteopaths/>

Statutory Amendments
The following statutes have been amended or added within the last few years.

Statutory Amendments effective July 1, 2008

Sec. 30. 26 V.S.A. § 1752(b) is amended to read:

(b) A person violating any of the provisions of subsection (a) of this section shall be imprisoned not more than one year or fined not more than \$5,000.00 nor less than \$500.00, or both subject to the penalties provided in subsection 127(c) of Title 3.

Statutory Amendments
Effective July 1, 2010

Sec. 16. 26 V.S.A. § 1831 is amended to read:

§ 1831. QUALIFICATIONS FOR LICENSURE

(a) To be eligible for licensure as an osteopathic physician, an applicant shall have attained the age of majority and shall provide evidence, acceptable to the board, that he or she has satisfactorily completed all of the following:

(1) A course of study in osteopathic education from an accredited school or college of osteopathic medicine as evidenced by a graduation certificate.
(2) ~~An~~ Documentation of no less than one year of an approved program as evidenced by a certificate of postgraduate training.

(b) In addition to the requirements of subsection (a) of this section, an applicant shall pass the ~~Vermont osteopathic licensure examination~~

Comprehensive Osteopathic Medical Licensing Examination – USA (COMLEX) or the United States Medical Licensing Examination (USMLE) or their successor or equivalent examinations approved by the board unless the applicant is exempt from all or a part of the examination under the provisions of section 1832 or 1832a of this title.

Sec. 17. 26 V.S.A. § 1832 is amended to read:

§ 1832. EXAMINATION
(a) The board or its designee shall administer examinations to applicants for licensure at least twice each year if applications are pending. Examinations shall be designed and implemented to ensure that all applicants are admitted to practice unless there is good reason to believe that

practice by a particular applicant would be inconsistent with the public health, safety, and welfare; they shall not be designed for the purpose of limiting the number of licensees.

~~(b) An applicant who has successfully completed the Federal Licensing Examination (FLEX) shall only be required to take and pass the osteopathic principles and practice portion of the Vermont osteopathic licensure examination.~~

Statutory Amendments to Title 3

Please note that there were changes made to Title 3, §§ 129a - 129b that affect all professions. Those changes may be viewed via our Web site at www.vtprofessionals.org.

Continuing Education

All persons licensed to practice osteopathic medicine in Vermont must complete a minimum of 30 hours of continuing medical education during the two-year renewal period and must report these hours to the Board at the time of license renewal. At least 40 percent of these hours (i.e., 12 hours) must be osteopathic medical education.

The continuing medical education requirement does not apply for the renewal period during which a person initially obtained licensure. It will begin with the first full two year renewal period.

"Continuing medical education" means the direct participation of a

licensed osteopathic physician in a structured educational or supervisory program directly related to competency in medicine or protection of patients from harm, or both. Continuing medical education hours are calculated in the following manner:

- (1) one contact hour equals one continuing medical education hour.
- (2) one hour spent in a workshop equals one continuing medical education hour.
- (3) one quarter college credit equals ten continuing medical education hours.
- (4) one semester college credit equals fifteen continuing medical education hours.

At the time of license renewal, each licensee must certify on the Board renewal form that he or she has complied with the continuing medical education requirements. The Board or the Board's designee may randomly audit licensees to ensure compliance. A licensee who is audited will be notified in writing by the Board or its designee and will be required to produce written documentation verifying successful completion of the 30 hours of continuing medical education during the two-year period at issue.

Reminders

- 1) It is your responsibility to report changes of name and/or address to this Office (See 3 V.S.A. § 129a (a)(14)). With your User ID and Password you may update your address online or send us a fax or E-mail with the information. You must provide

evidence of your name change (i.e., copy of marriage license, divorce decree, or other court documents) to the Office.

- 2) You must report within 30 days convictions, felonies, or other criminal offenses related to the profession (26 V.S.A. 129a (a) (11)).

Complaints (Worth Repeating)

What follows is a composite of some of the issues that may result in the filing of a complaint against a practitioner. Having a complaint filed against you can be extremely disruptive and upsetting. If a case alleges unprofessional conduct, as defined by the Board's laws and rules, the Office will order an investigation.

Although many complaints do not result in disciplinary action, they are still investigated. Many of those complaints that are closed might have been avoided altogether if the practitioner had better communicated with the patient. Many insurance carriers, and many states now ask if you are, or have ever been, the subject of an investigation.

If a complaint is filed and the Investigative Team finds unprofessional conduct, the Board may take disciplinary action after a hearing. We hope that you will read this carefully. It does not cover every possible scenario, but it may help you avoid common pitfalls that result in a complaint, and/or disciplinary action.

1) Poor communication. Be sure to communicate well with your clients, colleagues, and your employees.

2) Attitude. The Investigative Teams find that many cases are brought to the Office of Professional Regulation because the professional had an “attitude” that was flippant or perhaps condescending.

3) Unauthorized Practice. Working without proper registration or license to do so, or allowing unlicensed or unregistered persons to practice.

4) Failure to keep written medical records justifying the course of treatment of the patient, including, patient histories, examination results and test results. (See 26 V.S.A. § 1842 and 3 V.S.A. 129a for unprofessional conduct).

Disciplinary Actions

The Office of Professional Regulation issues Press Releases of all disciplinary actions taken during the month. The full text of decisions can be accessed for reading or printing from the OPR Web site noted below. The direct link to the search page is: <http://vtprofessionals.org/opr1/searchdiscipline.htm>

Disciplinary actions range from warnings, a finding of no unprofessional conduct with an administrative penalty, to revocation. The Board took action against three licensees since

September of 2006, the date of your last newsletter.

Web Site

The Board’s Web site, www.vtprofessionals.org is a great resource for information. There you may find the current statutes and rules. You may check the status of your application, look up a licensee, change your address, review disciplinary actions, etc. You will also find our updated applications and forms and important announcements such as the ability to renew online!

Lists of licensees may be downloaded from our Web site.

Statistics

For your information we currently have 12 Active Limited Osteopathic Physicians (8 Resident, 4 Non-Resident), and 126 Osteopathic Physicians (52 Resident; 74 Non-Resident).

Annual Report

The Office of Professional Regulation’s Annual Report is available online. It contains statistics for all professions regulated within the Secretary of State’s Office. The statistics include budgets, complaints, disciplinary actions, number of licenses issued, and so on.

Meetings

Please note that all of our meetings are public and we encourage you to attend. Meetings begin at 10:00 a.m. and are scheduled during the months of March, June and September. Please contact the Board for exact dates and times. Meeting dates are also posted on our Web site.

Other Web sites of interest are:

FSMB: www.fsmb.org

Vermont Medical Board:

<http://www.healthyvermonters.info/bmp/bmp.shtml>

Vermont Department of Health

<http://www.healthyvermonters.info/>

Contact us

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