



Governor Brian Schweitzer

Montana

Department of Labor and Industry

Business Standards Division

STATEMENT OF PHYSICIAN PRESCRIBING FOR SELF OR MEMBERS OF THE PHYSICIAN'S IMMEDIATE FAMILY

The Montana Board of Medical Examiners has been asked on numerous occasions whether it is illegal or unethical for a Montana physician to prescribe medications (whether controlled substances or uncontrolled legend drugs) for the physician's own use, or for the use of an immediate family member. To clarify the Board's position on this issue, the Board offers the following observations.

There is no existing statute or rule, which specifically prohibits a physician from prescribing legend or controlled substances for members of the physician's immediate family or the physician's use, regardless of circumstances.¹ The Board of Medical Examiners does however, inquire into some cases where a physician is prescribing for him- or herself, or close family members. There are several reasons for this:

- (1) Prescribing of controlled substances for a family member may be indicative of diversion to the physician's own use, in support of an addictive disorder. Such cases may be referred to the confidential Montana Professional Assistance Program, or may result in a formal, public disciplinary proceedings involving probation, suspension or revocation of the physician's medical license.
- (2) In other confidential investigations, the Board has found that physician's objectivity is not at its best when prescribing for self or a close family member, and errors of judgment are made. In at least one case of prescribing for a family member, the physician was evaluated, undertook a rehabilitation program, and entered into a contract with the Montana Professional Assistance Program, while the physician's spouse underwent chemical dependency treatment. The Board would contend that close family members deserve the same objectivity and good medical judgment that the physician would extend to other members of the public. Accordingly, when a physician prescribes for a close family member, there may be grounds, under the Medical Practice Act for disciplinary action based on "failure to meet standard of care"² or "conduct likely to harm the public."³ The Board is sensitive to those possibilities, especially when the physician is prescribing controlled substances on a long-term basis.

¹ One section of Montana Code Annotated defines "unprofessional conduct" as "conduct that does not meet the generally accepted standards of practice." Mont. Code Ann. Section 37-1-316. Arguably, prescribing for oneself or a close family member does not meet the generally accepted standards of practice, and is therefore unprofessional conduct which may subject the physician to license discipline.

² Mont. Code Ann., Section 37-1-316(18)

³ ". . . [The following is unprofessional conduct . . . : (3) Conduct likely to . . . harm the public; . . . " Administrative rules of Montana, 24.156.625(c)

- (3) Consider also the physician who begins prescribing for a family member for a condition outside the physician's own specialty, as a favor – a temporary stop-gap intended to tide the patient over until the patient's primary physician was available. The temporary prescribing stretches into long-term prescribing of controlled substances, without the physician ever performing an appropriate workup on the patient's illness, or preparing appropriate medical records.⁴ When the Drug Enforcement Agency demands the physician produce the medical record required for controlled substance prescriptions, the physician is unable to do so. He or she has no effective defense against allegations of both "records violations" and "failing to meet the generally accepted standards of care." Without appropriate documentation of one's medical reasoning and management in a particular case, a physician is at significant disadvantage when the adverse expert witness testifies to a jury or licensing board, "If it wasn't charted, it wasn't done."⁵

The harm to the patient who may become physically or psychologically dependent on the controlled substances – while the underlying condition is ignored – is obvious; that is where the Board of Medical Examiners, with its obligation to protect the public,⁶ enters the picture.

To answer some specific questions:

- Q. Does the Board of Medical examiners question or investigate prescriptions for a family member, or self prescribed medication. What questions does the Board ask?
- A. Among the questions that could be asked are: Is this physician diverting to his or her own use? Is the treatment well-reasoned and well-documented? Is there a chemical dependency problem here, either in the physician or the family member? Is the physician's judgment objective and unaffected by the familial relationship? If so, will it remain so if the patient's illness progresses? Have appropriate referrals been made? Have other alternatives been tried?
- Q. "Is it illegal or illicit for me to be prescribing controlled substances for my spouse?"
- A. No, not under current Montana law.⁷ Counter questions the physician should consider, however, include: " Even though it is not illegal, is it wise?" "Is it possible the risks to the patient and the physician outweigh the benefits.
- Q. "Is it somehow better for a physician's family member to have to go to another physician, and pay co-payments to get the same drugs?"
- A. The Board of Medical Examiners position is, "In general, 'yes' for the reasons set forth above.

⁴ The decision to treat a family member should include careful evaluation of the complexity and chronicity of the patient's problem: How much and how long will the physician have to prescribe the controlled substances or other prescription medication? Certainly the use of scheduled substances lends itself to a high degree of complexity and abuse.

⁵ See also the Board's position paper on the use of chronic opioids for chronic pain, March 15, 1996. The Medical Board has encountered such cases as this. Sometimes the physician is required to completely surrender his or her DEA or Board, or both, for a probationary period.

⁶ Montana Code Annotated Sections 37-3-101 and 37-3-202

⁷ However, see footnote 1 above.

- Q. What if a physician asked a colleague to prescribe the same drugs without seeing the family member and just take the physician's word for the necessity and appropriateness of the prescription?"
- A. The Board of Medical Examiners would not find that acceptable.⁸ Although there are may be circumstances where the treating physician does not actually see the patient (e.g., the Saturday night prescription of amoxicillin for otitis media, by the physician taking call), the Board's position is that, in general, standard of care requires a physician to establish a direct relationship with the patient the physician is treating, and to document the physician's medical findings and decisions in appropriate medical records.

In conclusion, the Board of Medical Examiners would encourage Montana-licensed physicians to consider carefully the legal and medical disadvantages of prescribing for self or immediate family members. If after due consideration, the physician elects to issue such prescription, the Board would urge the physician to protect both himself or herself, and the family member, with appropriate medical records supporting the prescriptions.

This statement reflects the Board's understanding of the laws and rules on this subject, and does not purport to be a law, rule or regulation in itself.

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Montana Board of Medical Examiners

⁸ See statutory and regulatory definitions of "unprofessional conduct," which includes by numerous kinds of fraud. Mont. Code Ann. Section 37-1-316, and Adm. Rules of Mont., Rule 24.156.625.