

STATE MEDICAL BOARD OF OHIO - POLICY STATEMENT

**PHYSICIAN STATEMENTS ON REIMBURSEMENT
OR BILLING DOCUMENTS**

September 10, 1997

Revised January 13, 1999

The Board has received a number of recent complaints involving the allegation that physicians have falsely reported their activity for the purpose of securing payment from third-party payors. The allegations surrounding these complaints generally involve the physician affixing his signature, or allowing her signature to be affixed, to a pre-printed insurance form, in a situation where the physician did not personally provide the services for which payment is being sought. The insurance forms on their face describe what the physician is certifying through the application of his signature. The Board is concerned that some of its licensees are not approaching the signing of such forms with an appropriate measure of care and solemnity.

The Board advises its licensees that it considers the certifications a physician makes on reimbursement or billing documents to be statements made in the course of practicing medicine. The scenario described above may implicate some or all of the following provisions of the Medical Practice Act:

Section 4731.22 (B) The board, pursuant to an adjudication under Chapter 119 of the Revised Code and by a vote of not fewer than six members, shall, to the extent permitted by law, limit, revoke, or suspend a certificate, refuse to register or refuse to reinstate an applicant, or reprimand or place on probation the holder of a certificate for one or more of the following reasons:

- (1) Permitting one's name or one's certificate of registration to be used by a person, group, or corporation when the individual concerned is not actually directing the treatment given;

- (5) Making a false, fraudulent, deceptive, or misleading statement in the solicitation of or advertising for patients; in relation to the practice of medicine and surgery, osteopathic medicine and surgery, podiatry, or a limited branch of medicine; or in securing or attempting to secure any certificate to practice or certificate of registration issued by the Board.

As used in this division, "false, fraudulent, deceptive, or misleading statement" means a statement that includes a misrepresentation of fact, is

likely to mislead or deceive because of a failure to disclose material facts, is intended or is likely to create false or unjustified expectations of favorable results, or includes representations or implications that in reasonable probability will cause an ordinarily prudent person to misunderstand or be deceived.

(6) A departure from, or the failure to conform to, minimal standards of care of similar practitioners under the same or similar circumstances, whether or not actual injury to a patient is established;

(8) The obtaining of, or attempting to obtain, money or anything of value by fraudulent misrepresentations in the course of practice;

(18) Subject to section 4731.226 of the Revised Code, violation of any provision of a code of ethics of the American medical association, the American osteopathic association, the American podiatric medical association, or any other national professional organizations, that the Board specifies by rule. The state medical board shall obtain and keep on file current copies of the codes of ethics of the various national professional organizations. The individual whose certificate is being suspended or revoked shall not be found to have violated any provision of a code of ethics of an organization not appropriate to the individual's profession.

For purposes of this division, a "provision of a code of ethics of a national professional organization" does not include any provision that would preclude the making of a report by a physician of an employee's use of a drug of abuse, or of a condition of an employee other than one involving the use of a drug of abuse, to the employer of the employee as described in division (B) of section 2305.33 of the Revised Code. Nothing in this division affects, or shall be construed as affecting, the immunity from civil liability conferred by that section upon a physician who makes either type of report in accordance with division (B) of that section. As used in this division, "employee," "employer," and "physician" have the same meanings as in section 2305.33 of the Revised Code.

When analyzing complaints of this type, the board will compare the actual activities of the physician to the certification made on the billing document. If the actual activities do not match the certification, there has been a Medical Practice Act violation. For example, if the certification made by the physician is that the physician has personally rendered the service or the service has been provided under the physician's direct supervision, when in fact the physician has had no or only slight patient contact, a

Medical Practice Act violation has occurred. Similarly, if a physician certifies that the rendition of a service was a medical necessity but the physician had no personal knowledge which would allow for such a certification, a Medical Practice Act violation has occurred.

Where a physician is confronted with a pre-printed billing form which asks for a certification not in accord with the physician's actual activities, the physician should either refuse to sign the certification or change the certification such that it does convey the physician's actual activities. Billing convenience does not justify the making of false statements in the course of practice or other violations of the Medical Practice Act.

The Board advises licensees that activity tantamount to selling one's signature is also a violation of the Medical Practice Act. For example, if a physician enters into a fee splitting arrangement with a non-physician whereby the physician agrees to sign billing documents for some portion of the reimbursement or fee collected and the physician has not had meaningful patient contact, a violation of the Medical Practice Act has occurred. Physicians must refrain from entering into arrangements whereby they secure a fee for services without having provided in some substantial sense the services to the patient.

In this statement, the Board does not announce a new policy but instead gives licensees specific instruction regarding their obligations under existing law.

This policy or position statement is only a guideline and should not be interpreted as being all inclusive or exclusive. The Board will review possible violations of the Medical Practices Act and/or rules promulgated hereunder on a case by case basis.

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