



# Oklahoma State Board of Medical Licensure and Supervision



## *Practitioner Diversion & Awareness Conference*

Lyle Kelsey, MBA, CMBE



# Relevant Disclosure and Resolution

Under Accreditation Council for Continuing Medical Education guidelines disclosure must be made regarding relevant financial relationships with commercial interests within the last 12 months.

**Lyle R. Kelsey, MBA, CMBE**

*"I have no relevant financial relationships or affiliations with commercial interests to disclose."*



# Oklahoma Board of Medical Licensure and Supervision



## CONTINUING MEDICAL EDUCATION

- ✧ **Continuing Medical Education:** Licensees will be required to complete one (1) hour of CME annually in pain management or opioid use and addiction as a condition of annual medical license renewal.
- ✧ Exception: If licensee does NOT have a current OBN/DEA Permit



# Learning Objectives



Upon completion of this session, participants will improve their competence and performance by being able to:

1. Learn the make up of the Oklahoma Medical Board and its legislative mandate: Protect the Public;
2. Learn the basic guidelines of CDS prescribing in Oklahoma circa. 2013 [Pre SB 1446];
3. Identify the impact of the elements of SB 1446 on the medical practice of opioid prescribing;
4. Describe the role of the Oklahoma Medical Board in identifying physician diversion;
5. Summarize the resources provided by the Oklahoma Medical Board for medical doctors on safe opioid prescribing practice.



# 5 CME Questions



1. Only the Public members of the Board are appointed by the governor?
2. SB 1446 requires all physicians to complete a 1 hour CME on opioid prescribing & no exceptions?
3. All physicians shall query the PMP on initial patient visit and then every 90 day there after?
4. Prescribing Opioids, Benzodiazepines and Carisoprodol is the standard first line of pain management in 2019?
5. Hospitals are required to report cases of physician unprofessional conduct *ex. drug diversion* to the Oklahoma Medical Board?



# Oklahoma State Board of Medical Licensure and Supervision



Est. 1923

*“Protecting the Public  
while Serving the Professional ”*

*A State agency charged by the Oklahoma Legislature  
to:*

- A) Assure that applicants for a medical license meet the qualifications and requirements specified in the medical practice act.**
- B) Protect the public (patients) by investigating complaints of unprofessional conduct.**



# The Medical Board



## ▮ Composition and duties of the Board

- **9 members: 7 MD's & 2 public members**
- **Appointed by the Governor**
- **7 year terms @ no compensation**
- **Meet 7 times a year (1-3 days) (Thursday – Saturday)**
- **Final authority on all issues of licensure and discipline**
  - **Board en banc serves as Judge and Jury in all disciplinary hearings.**
  - **Board en banc or by circularization decides on the issuance of all licenses. (except: Board Secretary can issue PGY 1 training licenses)**
- **Determine Board policy, rules and law.**



# The Agency



Billy Stout, MD, Board Secretary

Eric Frische, MD, Medical Advisor

Lyle Kelsey, MBA, CAE, Executive Director

Reji Varghese, Deputy Director

(Non-voting members of the Board)

## 24 - Support Staff

Executive Department

Legal Department

Licensing Department

Investigations Department

Business Office





# The Agency



- ~ **State agency** (Governed by sections of the MPA & APC)
  - **Sunset review at intervals set by the legislature**
  - **Under the purview of the legislature and Governor**
- ~ **Open meetings**
  - **Public posting of meeting dates & agenda** (website & agency)
  - **Anyone allowed to attend** (general public, press, media, etc.)
- ~ **Open records**
  - **Any formal actions of the Board**
  - **Exception: investigative files & complaints (confidential)**
- ~ **Non-appropriated** (operates on 90% of the license fees collected)
  - **Agency pays the General Revenue Fund 10% of annual gross revenues**
  - **Subject to all state budgeting, purchasing & auditing rules**

# Oklahoma State Board of Medical Licensure and Supervision

## Statistics on all Medical Board Actions

January 2007 - January 31, 2018

<b>Complaints</b>	<b>2007</b>	<b>2008</b>	<b>2009</b>	<b>2010</b>	<b>2011</b>	<b>2012</b>	<b>2013</b>	<b>2014</b>	<b>2015</b>	<b>2016</b>	<b>2017</b>	<b>Total</b>	<b>Avg.</b>
<b>Received:</b>	584	543	563	508	461	508	719	758	710	770	743	<b>6,935</b>	<b>630</b>
<b>Referred to Other Agencies:</b>	71	66	54	49	36	23	81	73	96	122	93	<b>775</b>	<b>70</b>
<b>Opened Investigation:</b>	201	220	240	235	228	190	224	201	165	165	152	<b>2,242</b>	<b>204</b>
<b>Closed w/ Disposition:</b>	247	316	398	364	349	360	292	110	6	1	1	<b>2,444</b>	<b>222</b>
<b>Citations:</b>	30	28	32	30	41	26	45	20	9	13	11	<b>286</b>	<b>26</b>
<b>Non-Public Letters of Concern:</b>	<b>(confidential)</b>												
<b>LOC w/ Appearance:</b>	20	18	25	27	23	22	32	15	18	17	18	<b>237</b>	<b>22</b>
<b>LOC w/ No Appearance:</b>	13	10	18	7	24	5	4	4	5	6	2	<b>99</b>	<b>9</b>



Oklahoma State Board of  
Medical licensure and Supervision  
SB 1446 November 1, 2018



**1 hour of CME in opioid use or addiction each year preceding renewal of a license, w/ valid OBN & DEA**

## **The Legal definitions**

- ~ "Acute pain"
- ~ **"Chronic pain"**
- ~ "Initial prescription"
- ~ **"Patient-provider agreement" & Pain agreement**
- ~ "Serious illness"
- ~ **"Surgical procedure"**
- ~ Guidelines on Prescribing Opioids

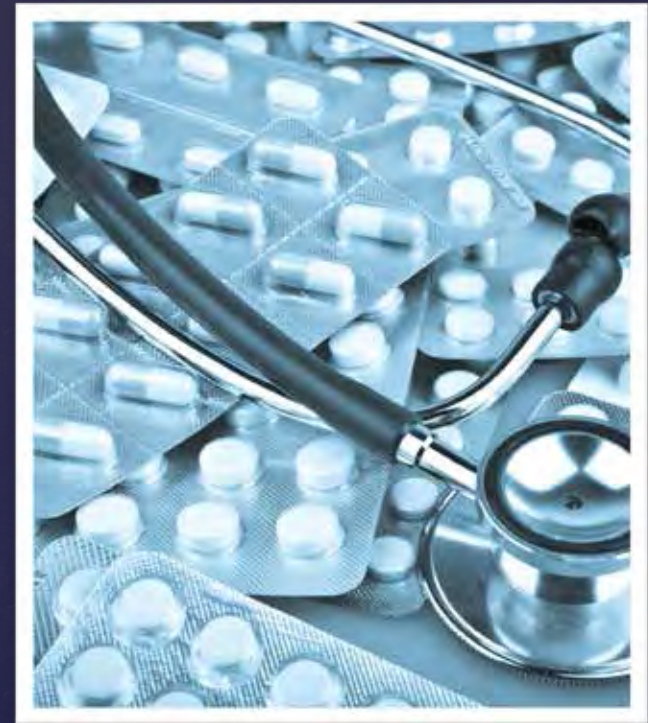


# Oklahoma State Board of Medical Licensure and Supervision SB 1446 November 1, 2018



Initial Opioid Prescription w/new patient:

- Lowest effective dose
- No more than a **7 day** supply
- Thorough physical medical exam
- **Informed consent**
- Specific treatment plan
- Check **PMP**
- Special attention for under 18
- Special attention for pregnant patients
- Limit to lowest safe dose and **7 days**





# Oklahoma State Board of Medical Licensure and Supervision SB 1446 November 1, 2018



- After Initial 7 day Rx, a second 7 day Rx can be prescribed if medically necessary & Safe.
- When a patient has been prescribed an Opiate for **3 months**, the law requires in addition to the previous items, a Pain Management Agreement **shall** be entered into and **reviewed** a minimum every **90 days** for chronic pain treatment.
- Exclusions:** patients who are currently in active treatment for cancer, receiving hospice care from a licensed hospice or palliative care, or is a resident of a long-term care facility.





# Acute Pain – OBNDD Rule

## Subsequent Prescription

An individual practitioner may issue one (1) subsequent prescription for an immediate-release opioid drug in Schedule II in a quantity not to exceed 7 days if the following conditions are met:

1.

The subsequent prescription is due to a major surgical procedure and/or “confined to home” status as defined in 42 U.S.C. 1395n(a).

2.

The practitioner provides the subsequent prescription on the same day as the initial prescription.



# Acute Pain – OBNDD Rule

**3.**

The practitioner provides written instruction on the subsequent prescription indicating the earliest date on which the prescription may be filled (i.e., “do not fill until” date); and

**4.**

The subsequent prescription is dispensed no more than five (5) days after the “do not fill until” date indicated on the prescription.



# Oklahoma State Board of Medical licensure and Supervision SB 1446 November 1, 2018



## Medical Record Requirements:

- ⌘ Any provider authorized to prescribe opioids **shall** adopt and **maintain a written policy or policies** that **include execution of a written agreement** to engage in an **informed consent process** between the prescribing provider and qualifying opioid therapy patient.
  
- ⌘ For the purposes of this section, "**qualifying opioid therapy patient**" **means:**
  - 1. A patient requiring opioid treatment for more than three (3) months;
  - 2. A patient who is prescribed benzodiazepines and opioids together; or
  - 3. A patient who is prescribed a dose of opioids that exceeds one hundred (100) morphine milligram equivalent doses.





Oklahoma State Board of  
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SB 1446 November 1, 2018



## Regulatory Discipline:

- Not checking the **PMP** on the **Initial Rx** & **180 days**
- Prescribing, dispensing or administering controlled substances or narcotic drugs without medical need in accordance with **pertinent licensing board standards:**
  - Use of controlled substances for the management of chronic pain – Rule 435:10-7-11.
  - Oklahoma Interventional Pain Management and Treatment Act - Title 59-650
  - CDC & Oklahoma Guidelines
- Prescribing, dispensing or administering opioid drugs in excess of the maximum dosage authorized under **Section 5** of this act. [**100 Morphine Milligram Equivalent**]

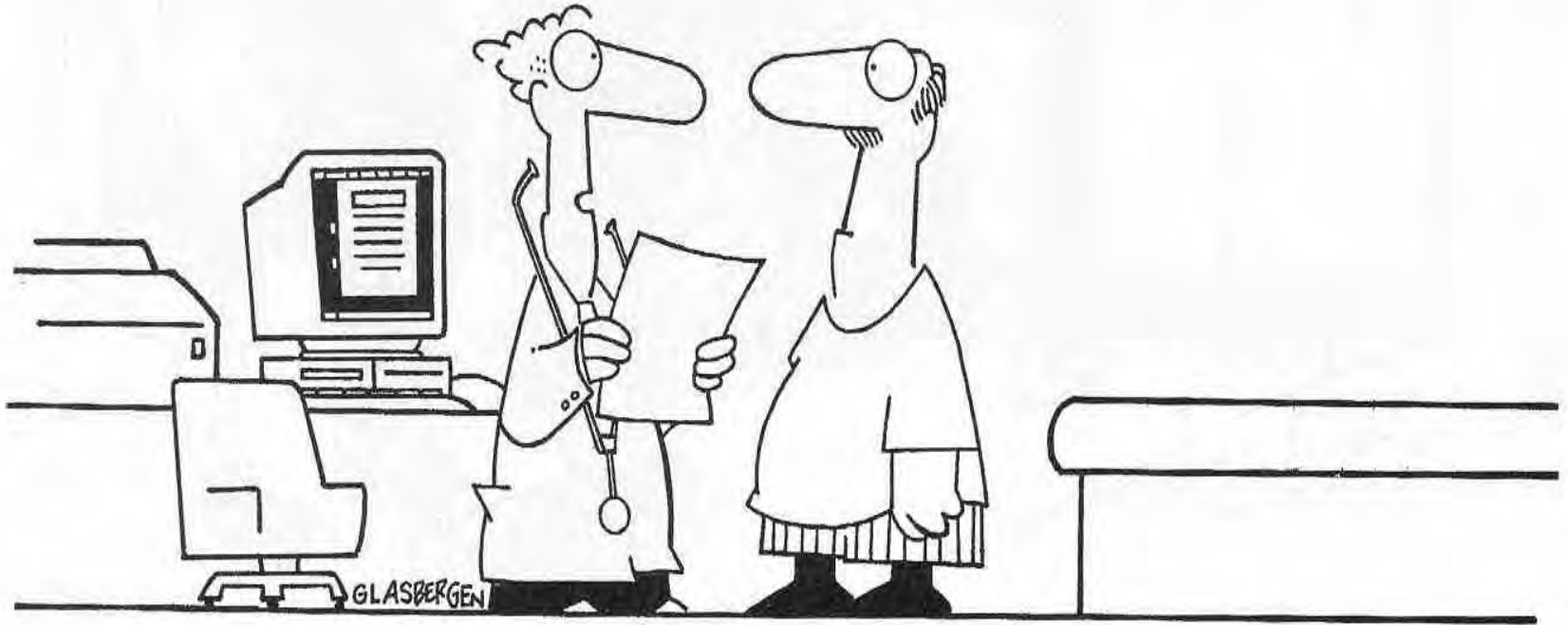


# Oklahoma State Board of Medical licensure and Supervision SB 1446 November 1, 2018



▣ According to National Counsel of State Legislatures' tracking, 32 states had enacted legislation with some type of limit, guidance or requirement related to opioid prescribing by early April 2018.

# Law or Ethics?



“The law says I’m supposed to inform you of everything that is wrong with you...but my heart tells me you don’t want to know!”



# Informed Consent and Discussion of Risks



Prior to issuing initial and third prescriptions, a practitioner must discuss with the patient or patient's legal representative:

- Risks of addiction and overdose and dangers of mixing drugs with alcohol and other drugs;
- The reasons why the prescription is necessary;
- Alternative treatments that may be available; and
- Risks associated with the use of the drugs being prescribed, specifically, that they are highly addictive, even when taken as prescribed and dependency can occur.

☒ Must document in the record that the discussion occurred.

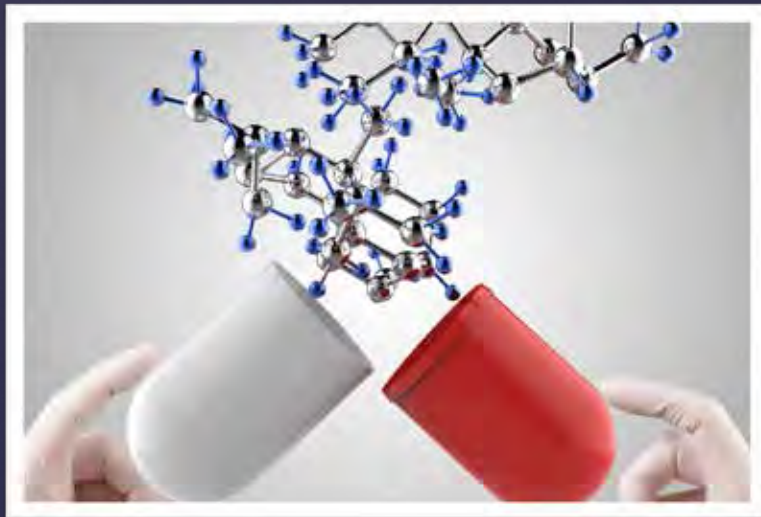


# Pain Management Agreement



- Practitioner shall enter into a Patient-Provider Agreement [Pain Management Agreement] with a patient:
- At the time of the issuance of the 3<sup>rd</sup> prescription for opioid or Schedule II drug;
  - If the patient requires more than 3 months of pain management;
  - If patient is prescribed benzodiazepines and opioids together;
  - If patient requires more than 100 MMEs;
  - If patient is pregnant;
  - If the patient is under 18, with the parent or legal guardian.

# E-Prescribing Statute



13 States have passed bills requiring that Schedule II drugs be prescribed electronically.



Oklahoma passed such a bill at the end of the 2018 session, but it will not take effect until January 1, 2020.

Already discussions about extensions due to implementation costs

# E-prescribing Exceptions



**Veterinarian**



Practitioner with power  
outage

A practitioner, other  
than pharmacist, who  
dispenses to patient

Practitioner who  
orders from in-  
house pharmacy  
of hospital, long-  
term care or  
prison

Provider who writes  
prescription to be filled  
on federal property

**A practitioner that has  
received a waiver**



# Opioid Prescribing



- ~ Chronic pain is highly complex
- ~ Opioids alone are often inadequate
  - o 25-50% improvement in pain scales
- ~ Opioid therapy can be highly beneficial in select patients who demonstrate compliance and function
- ~ Often the only remaining option for some patients
- ~ Nationwide reduction of opioid prescriptions from peak in 2010
- ~ Oklahoma has had roughly 20% reduction in opioids





# National Issues



- ~ CMS actions with a “hard stop” at 90 MME’s in 2019?
- ~ DEA reducing manufacturing of opioids 25% in 2017 and a further 20% in 2018 and more in 2019
- ~ Pharmacy chains and insurance payors with varying policies
- ~ Numerous states capping at <90-100 MME’s
- ~ Numerous laws regarding initial prescriptions
- ~ Increased investigations of providers and pharmacies



# Opioid Deaths



- ~ Major reason for CDC, national and state legislative involvement
- ~ 72,000 overdose deaths in 2017
- ~ Significant escalation in illicit opioids
- ~ Diversion: most deaths are from “non-prescribed” opioids
- ~ Lethal combinations especially with benzodiazepines
- ~ Illegal opioids outpacing prescribed opioids
- ~ Without question the number one reason for governmental intrusion



# CDC Enhanced Opioid Overdose Surveillance 2017



- ~ 11 states participated including Oklahoma
- ~ 59% of deaths due to illicit opioids
- ~ 18.5% combined prescription and illicit opioids
- ~ 18% positive for only prescription opioids
  - o 50% of these deaths also positive for benzodiazepine
  - o “Findings indicate that illicit opioids were a major driver of deaths... and were detected in approximately three of four deaths”

# United States v. Ferris, Dossey, and Isbell

June 20, 2018 a federal grand jury returned a 103-count indictment against **James Ferris, M.D.**, 44, **Katherine Dossey**, 49, and **Sherry Isbell**, 48. All three defendants are charged with drug distribution and Medicare fraud. According to the indictment, Isbell owned a company in Wellston, Oklahoma, called Physicians At Home, which employed Dr. Ferris and several physician assistants and nurse practitioners.

The grand jury alleges that from September 1 to December 9, 2015, **Dr. Ferris signed stacks of blank Physicians At Home and MOMAC prescription pads** and gave them to Dossey... **According to the indictment, Dossey completed and filled approximately 1,711 prescriptions for Schedule II controlled substances by using blank prescription pads that Dr. Ferris had signed.**

All three defendants are charged with 62 counts of distributing Schedule II controlled substances—hydrocodone, fentanyl, and similar opioids—outside the usual course of professional medical practice. They are also charged with 41 counts of Medicare fraud for billing Medicare for invalid prescriptions.

If convicted of distributing controlled substances illegally, each defendant would face imprisonment up to twenty years and a fine of up to \$1,000,000, plus not less than three years of supervised release. Each count of Medicare fraud could result in a sentence of up to ten years, a fine of up to \$250,000, and up to three years of supervised release.

This case is the result of an investigation by the Drug Enforcement Administration; the Department of Health and Human Services, Office of Inspector General; the FBI; the Oklahoma Bureau of Narcotics and Dangerous Drugs; the Oklahoma Pharmacy Board; and the Oklahoma Medical Board. Assistant U.S. Attorney Amanda Green is prosecuting the case.

BREAKING: Ex-Insys Execs  
Found Guilty In RICO Opioid  
Bribe Scheme May 2, 2019

After weeks of near-silence, a Boston jury delivered a strong statement by convicting wealthy Insys Therapeutics Inc. founder John Kapoor and four other executives Thursday in a closely-watched racketeering trial, during which prosecutors accused the Insys higher-ups of a scheme to bribe doctors to prescribe a powerful opioid.



# Aversion to Diversion



- The Oklahoma Medical Board is a complaint driven agency
- Most cases of over prescribing to patients or diversion seldom generate a complaint.
  - Patient receives the drugs whether directly or sharing with prescriber
  - Family or friend files complaint against the prescriber - Over Rx or Rx sharing
  - Federal and/or state agency contacts medical board investigator – OBN & DEA
  - Occasionally, news outlets or public watch dog organizations contact us.
  - Physicians have to report any unprofessional conduct of another physician  
[Drug abuse, drug diversion, over Rx of CDS, Sexual Misconduct, etc.]
  - Hospitals are not legally required to report to the Medical Board just NPDB
- Anonymous or rumor mill information is investigated but obviously has some limitations and legal ramifications.
- Drug Dispensing Physicians [office pharmacy] have raised the level of diversion concerns... although most do not dispense CDS. [temptation is a strong rival]
- Oklahoma Health Professional Program also intercedes with diversion physicians, self prescribing and direct family CDS prescribing.

# Medical Board Investigation

- ▮ Ability to Subpoena Medical Records
- ▮ Interview Doctor & Staff
- ▮ Pharmacy & PMP Information
- ▮ Police Records
- ▮ NPDB Information
- ▮ Medical Examiner Reports
- ▮ Outside Medical Expert Opinion
- ▮ Voluntary Assessment of Skills, Addiction, Cognitive Function, Behavioral Issues

# Range of Board Disciplinary Actions

- ~ **Revocation (with or without the right to re-apply)**
- ~ **Suspension**
- ~ **Probation: 1-5 years to Indefinite**
- ~ **Stipulations, limitations, restrictions on practice**
- ~ **Censure**
- ~ **Reprimand**
- ~ **A period of free public or charity service**
- ~ **Satisfactory completion of an educational program**
- ~ **Administrative Fine: up to \$5,000 per proven allegation**
- ~ ***Case could be dismissed***



# Oklahoma Board of Medical Licensure and Supervision

**Website:** [HTTP://WWW.OKMEDICAL BOARD.ORG](http://www.okmedicalboard.org)

Under “**PAIN GUIDELINES**” tab

**NEW OPIOID LAW: What physicians need to know**

**Resources:**

[SB 1446 \[Actual Law\]](#)

[2017 Opioid Prescribing Guidelines \[Oklahoma developed\]](#)

[Pocket Guide: Tapering](#)

[Non-opioid Treatments](#)

[Assessing Benefits and Harms of Opioid Therapy](#)

[Calculating Total Daily Dose of Opioids for Safer Dosage \[MME\]](#)

[Clinical Reminders for Prescribing Opioid](#)

[An Opioid Fact Sheet for Patients](#)

**CME programs: [listed]**

# 5 CME Questions Answers



1. Only the Public members of the Board are appointed by the governor? **NO, All members are appointed by governor**
2. SB 1446 requires all physicians to complete a 1 hour CME on opioid prescribing & no exceptions? **NO, Physicians w/o OBN & DEA Permits are exempted**
3. All physicians shall query the PMP on initial patient visit and then every 180 day there after? **Yes**
4. Prescribing Opioids, Benzodiazepines and Carisoprodol is the standard first line of pain management in 2019? **NO, outdated treatment and very dangerous**
5. Hospitals are required by law to report cases of physician unprofessional conduct *ex. drug diversion* to the Oklahoma Medical Board? **NO, Rule but no law**