

## Outline

- AAPM- ACMP Licensure History
- Why Licensure?
  - Protection of Public - MP's
  - Other methods
- Model Legislation
- Lessons learned this year

## AAPM Mission Statement

- The mission of the Association is to advance the practice of physics in medicine and biology by:
  - encouraging innovative research and development,
  - disseminating scientific and technical information,
  - fostering the education and professional development of medical physicists, and
  - promoting the highest quality medical services for patients.
- Approved by the AAPM Board of Directors - July 31, 1997

♦ <http://www.aapm.org/org/objectives.asp>

## PP - 2D\*: Licensure and The Medical Physicist's Role

- AAPM and the ACMP strongly support licensure for practitioners of Medical Physics.
- Licensure or formal registration for Medical Physicists is in the public interest.
- Currently, minimum training and education standards are not compulsory in all jurisdictions, allowing individuals to provide Medical Physics services without formal education/training.
- Physicians, health care administrators, regulators and the public have no clear guidelines for judging the qualifications or abilities of a Medical Physicist.
- Other than the civil courts, the public has no redress to deal with issues such as fraud, substance abuse, malpractice, or unethical behavior that negatively impact patient care and public safety.

## JMPLSC Charge

- Coordinate the efforts of the AAPM and the ACMP toward a common position and strategy in support of medical physics professional licensure.
- Develop recommended minimum standards for state licensure laws.
- Develop recommendations containing background information, suggested strategy, and a suggested Medical Physics Licensure Act and Rules, for use by medical physicists and others engaged in promoting the passage of a medical physics licensure law in a US state or commonwealth.
- Annually prepare a report, beginning in May 2007, describing the status of state licensure efforts and providing recommendations for the AAPM's and ACMP's continued roles in promoting licensure of medical physicists.

<h3 style="text-align: center;">Licensure</h3> <ul style="list-style-type: none"> <li>• Protects public from improper <i>practice</i></li> <li>• Protects the MP with <i>due process of law</i></li> <li>• Applies to all MP's:           <ul style="list-style-type: none"> <li>• Licensed Qualified Medical Physicists</li> <li>• Grandfathered licensed medical physicists</li> </ul> </li> <li>• Defines our profession legally</li> </ul>	<h3 style="text-align: center;">Board Certification</h3>
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## History of Licensure and AAPM

- On November 1, 1992, the Initial AAPM Policy Supporting Licensure (PP- 2A) was passed by the AAPM Board of Directors (BOD).
- In 2007 after careful consideration, the AAPM BOD approved the current licensure effort and committed funding.
- On July 31, 2008, the AAPM BOD reaffirmed the Policy Supporting Licensure (PP-2D).

## Examples of Others Defining the Profession of Medical Physics

- **2010 Physician Fee Schedule**
  - Section 135: **Centers for Medicare & Medicaid Services** deferred to Accrediting Organizations to establish personnel requirements as required by *Medicare Improvements for Patients and Providers Act of 2008 (MIPPA)*
  - ACR set the criteria for physicists without discussion with AAPM - with a weak alternate pathway that does not require board certification.

## California Pending Legislation

- Requires measurement of CT Doses
- Makes no statement of who is qualified to do this

What drives this?

Legislators pressure Regulators  
"What regulations make sure patients don't get hurt from radiation in our state?"

## Why Licensure?

- **To protect the public** we need to be able to strictly regulate who gets in, and who needs to be ushered out.
- **To protect ourselves**, we need to have the right of review and appeal that is a part of the guarantees attached to a license.

## Licensure

- For the near future, there will be Grandfathered people practicing, but
  - with additional controls to assure their **practice** is proper
- Licensure defines the profession of medical physics.
- Licensure is a process that benefits the entire profession for the future.

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## Licensure

- **Protects:**
  - The Public from improper practice of medical physics (Professional Misconduct).
  - The Medical physicist -with due process of law.
  - The Medical physicist jobs in a tightening fiscal healthcare requirement.
- The law applies to:
  - Licensed Qualified Medical Physicists
  - Grandfathered licensed medical physicists.

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## Professional Misconduct

- **Practicing the profession**
  - with negligence on more than one occasion;
  - with gross negligence on a particular occasion;
  - with incompetence on more than one occasion;
  - with gross incompetence;
  - while impaired by alcohol, drugs, ...
- Being a habitual abuser of alcohol, or being dependent on or a habitual user of narcotics,
- Permitting, aiding or abetting an unlicensed person to perform activities requiring a license;
- Practicing or offering to practice beyond the scope permitted by law, or accepting and performing professional responsibilities which the licensee knows or has reason to know that he or she is not competent to perform, **except in an emergency situation .....**

## Licensure vs. Registration

- A technical definition: a license is a government grant of specific legal rights and obligations to the licensee.
- It is simply a list.
- Confers no rights although it may impose certain obligations as a precondition to being on that list and as such, registration is not property protected by either state or federal Constitutional guarantees.
- Once a license has been granted, it cannot be restricted or taken away without notice and a hearing, with all the attendant legal rights and appeals.
- The burden of proof is on the registrant to prove its case if someone makes a claim against the individual.
- If the State proposes to take some action against a licensee, the burden of proof rests with the State.
- Since a license grants a right to do something, it ipso facto limits or prohibits the ability of others to do that same activity.

## Revocation/Suspension of Board Certification

- ABR can suspend or revoke a certificate or place a Diplomate or candidate on probation
  - All of the reasons except one have to do with falsification of information to the ABR such as the certificate was issued contrary to or in violation of any rule or regulation of the Corporation; substantial misstatement or omission of a material fact to the Corporation in an application or in any other information submitted to the Corporation; violation of the rules and regulations relating to the Written Qualifying, Oral and Maintenance of Certification Examinations engaging in any conduct that materially disrupts any examination or that could reasonably be interpreted as threatening or abusive toward any examinee, proctor or staff.

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## Revocation/Suspension of Certification

- **The sole exception is:**
  - In the event that a Diplomate's license to practice is suspended, revoked or restricted in any state in which the Diplomate practices, holds a license or has held a license, the Diplomate's board certification may be revoked or suspended.
- From ABR By-Laws (05/30/2008) - Article X: Revocation and Suspension

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## The JMPLSC Concludes that:

- State licensure, augmented with a regulatory approach (for states where licensure is impractical or impossible) and a National Qualified Medical Physicist registry, is the most effective strategy to achieve quality and safety in patient care.
- This is the best approach to assure that clinical medical physics is performed by QMPs and practiced within consistent minimum standards across the country.
- The benefits to our profession and to society are completely aligned in this regard.

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"The real question is whether we want to define our profession, or leave it to some other group to do that for us."

- David Lee Goff, Austin Texas 11/13/09

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## JMPLSC's Legislative Template

### Sections of the Document

1. Purpose and scope.
2. Definitions.
3. Definition of "practice of medical physics".
4. Use of the title "licensed medical physicist".
5. <State board> for medical physics.
6. Requirements and procedures for professional licensure.
7. Provisional license.
8. Exemptions.
9. Licensure without examination.
10. Continuing education requirements.
11. License term and renewal.
12. Enforcement.
13. Ethical Guidelines.
14. Separability.

## The Legislative Template Process



1. Task group created a draft document based on NY, TX and FL laws and experience  
April - October 2008
2. JMPLSC reviewed and refined the draft  
October 2008 - April 2009
3. Final document completed April 2009
4. The document will be modified for each state, as needed

### Section 2. Definitions.

1. "Clinical" - activities directly relating to the treatment or diagnosis of human ailments.
2. "Specialty" or "specialty area" - the following branch or branches of special competence within medical physics:

## Medical Physics



### (a) "Diagnostic radiological physics"

- diagnostic applications of x rays,
- gamma rays from sealed sources,
- ultrasonic radiation,
- radio frequency radiation and magnetic fields;
- the equipment associated with their production, use, measurement and evaluation;
- the quality of images resulting from their production and
- the use of medical health physics associated with this subfield;

### (b) "Medical health physics"

- safe use of x rays, gamma rays,
- electron and other charged particle beams of neutrons or radionuclides and of radiation from sealed radionuclide sources for both diagnostic and therapeutic purposes,
  - except with regard to the application of radiation to patients for diagnostic or therapeutic purposes
- and the instrumentation required to perform appropriate radiation surveys;

### (c) "Medical nuclear physics"

- therapeutic and diagnostic applications of radionuclides,
  - except those used in sealed sources for therapeutic purposes;
- the equipment associated with their production, use, measurement and evaluation;
- the quality of images resulting from their production and use and
- the medical health physics associated with this subfield

### (d) "Therapeutic radiological physics" or "radiation oncology physics"

- therapeutic applications of x-rays, gamma rays, electron and charged particle beams, neutrons and radiations from sealed radionuclide sources;
- the equipment associated with their production, use, measurement and evaluation; the quality of images resulting from their production and use;
- and the medical health physics associated with this subfield.

### 7. "General Supervision" -

- A procedure is performed under a Qualified Medical Physicist's (QMP) overall direction and control
  - but the QMP's presence is not required during the performance of the procedure.
- The training of the personnel who actually perform the procedure and the maintenance of the necessary equipment and supplies are the continuing responsibility of the QMP.

### 8. "Direct Supervision" -

- A Qualified Medical Physicist must exercise General Supervision and
  - be present in the facility and immediately available to furnish assistance and direction throughout the performance of the procedure
  - but is not required to be present in the room when the procedure is being performed.

### 9. "Personal Supervision" -

- A Qualified Medical Physicist must exercise General Supervision and be present in the room during the performance of the procedure.

## Section 3. Definition of "practice of medical physics".

1. "Practice of the profession of medical physics" - the use of principles and accepted protocols of physics to provide the quality, quantity, and placement of radiation during the performance of a radiological procedure.
2. A license to practice medical physics shall be issued with special competency in one or more specialty areas in which the licensee has satisfied the requirements of section 6 of this article.

3. The practice in any specialty by a person whose license is not issued with special competency for such specialty shall be deemed the unauthorized practice of the profession of medical physics.

4. Only a person licensed under this article shall practice the profession of medical physics.

## Section 5. <State Board> for medical physics.

- Appointed by the <agency> upon the recommendation of the commissioner
- Shall assist on matters of licensure and professional conduct in accordance with <provisions of existing physician licensure laws>.
- Assist the board for medicine solely in medical physics matters and shall also function as the state board for medical physics.
- The licensure requirements shall be waived for the initial <state board> appointees, provided that such appointees shall have received national certification in their specialty.
- Must meet at least twice a year to provide administrative review of the licensure program to include review of applications, continuing education requirements and enforcement actions.

## The <state board> shall consist of eight individuals:

- (a) 4 licensed medical physicists from each of the specialties:
  - (i) diagnostic radiological physics,
  - (ii) therapeutic radiological or radiation oncology physics,
  - (iii) medical nuclear physics, and
  - (iv) medical health physics;
- (b) 3 licensed physicians from each of the following specialties:
  - (i) diagnostic radiology,
  - (ii) radiation therapy or radiation oncology, and
  - (iii) nuclear medicine; and
- (c) A representative of the public at large.

## Section 6. Requirements and procedures.

1. Application.
2. Education. A graduate degree from an accredited college or university in accordance with state regulations.
  - i. completed such courses as defined by the <state board> to practice in the medical physics specialty in which the applicant has applied for a license;
3. Experience. Have experience in his or her medical physics specialty satisfactory to the board and in accordance with the state regulations; and
4. Board Certification. Receive and maintain board certification in his or her medical physics specialty satisfactory to the board; and

## 5. Fee.

- (a) Payment and distribution.
  - (i) The <state board> shall pay all fees collected under the provisions of this subtitle to the Comptroller of the <state>.
  - (ii) The Comptroller shall distribute all fees to the <state board> established under Section five in this article.
- (b) Use. The fees shall be used to cover the actual documented direct and indirect costs of fulfilling the statutory and regulatory duties of the <state board> as provided by the provisions of this subtitle.

## Section 7. Provisional Licenses.

### 1. Eligibility.

- (a) a person who fulfills all requirements for a licensed medical physicist except those relating to board certification or experience; or
- (b) a medical physics student enrolled in a graduate or post-graduate program approved by the <state board>; or
- (c) a person has been licensed or certified in good standing as a practitioner of one the subspecialties of medical physics for at least two years in another jurisdiction, including a foreign country, that has licensing or certification requirements substantially equivalent to the requirements of this article as determined by the <state board> and
  - (i) has passed a national or other examination recognized by the <state board> relating to the subspecialties of medical physics; and
  - (ii) is sponsored by a person licensed under this article with whom the provisional license holder will practice during the time the person holds a provisional license.

2. **Limit of practice.** An individual with a provisional license shall be authorized to practice medical physics only under the direct supervision of a licensed medical physicist and only in the sub-specialty of such licensed medical physicist;
3. **Duration.** A provisional license permit shall be valid for two years. It may be renewed at the discretion of the <state>;
4. **Fee.**
5. **Experience.** Medical physics experience obtained in this state to be credited towards the experience requirement for licensure must be obtained under a provisional license.

## Section 8. Exemptions. Nothing in this article shall be construed to:

1. **Affect, prevent or in any manner expand or limit the authority of any person otherwise authorized by law or regulation to practice any function of a medical physicist, or any department or agency authorized by law or regulation to regulate the use of radiation, nor**
2. **Prohibit the repair or calibration of any test equipment used by licensed medical physicists by any person otherwise allowed to do so under state or federal law, nor**

3. **Serve to limit radiologic and/or imaging technologists or any individual otherwise authorized by law or regulation from performing quality control measurements or obtaining quality control data under the supervision of a licensed medical physicist, nor**
4. **Serve to limit neither a service engineer in the repair of radiation producing equipment or an installation engineer in the installation of radiation producing equipment.**

## Section 9. Licensure without board certification.

- **Within <time frame determined by state> of the effective date of regulations implementing the provisions of this article,**
- **the <state board> may issue a license to practice medical physics within one or more specialties in this state, without board certification, to a person who meets the requirements for**
- **Application and experience...**

- **In addition**
  - **has earned a bachelor's, master's or doctoral degree from an accredited college or university**
    - ♦ **in the case of an earned bachelor's degree,**
      - **the completion of at least fifteen years of full-time work experience in the medical physics specialty for which application is made,**
    - ♦ **or, in the case of an earned master's or doctoral degree,**
      - **the completion of at least two years of full-time work experience in the seven years preceding the date of application in the medical physics specialty for which application is made and**
      - **the equivalent of one year or more of full-time work experience in the ten years preceding the date of application for each additional specialty for which application is made.**

## Section 12. Enforcement.

1. **In general. Subject to the hearing provisions of <appropriate state subtitle>, the <state board>, on the affirmative vote of a majority of the quorum, may**
  - **reprimand any licensee,**
  - **place any licensee on probation, or**
  - **suspend or revoke a license if the licensee:**

- (a) Fraudulently or deceptively obtains or attempts to obtain a license for the applicant or licensee or for another;
- (b) Fraudulently or deceptively uses a license;
- (c) Is guilty of:
  - (i) Immoral conduct in the practice of medical physics; or
  - (ii) Unprofessional conduct in the practice of medical physics;
- (d) Is professionally, physically, or mentally incompetent;

- (e) Habitually is intoxicated;
- (f) Is addicted to, or habitually abuses, any narcotic or controlled dangerous substance as defined in <state criminal law article>;
- (g) Provides professional services:
  - (i) While under the influence of alcohol; or
  - (ii) While using any narcotic or controlled dangerous substance, as defined in <state criminal law article> or other drug that is in excess of therapeutic amounts or without valid medical indication;

- (h) Promotes the sale of drugs, devices, appliances, or goods to a patient so as to exploit the patient for financial gain;
- (i) Willfully makes or files a false report or record in the practice of medical physics;
- (j) Willfully fails to file or record any medical report as required under law, willfully impedes or obstructs the filing or recording of the report, or induces another to fail to file or record the report;

And more bad stuff...

## The Michigan Experience

- Here's what transpired
- What did we learn?

## Michigan

- Bob Pizzutiello and Lynne Fairbent invited to speak on licensure at Great Lakes Chapter (GLC) meeting, Fall 2008
- JMPLSC drafts model bill, secures national lobbyist and selects MI among first 5 target states
- MI State Committee formed, Rob Smereka State Captain
- Lobbyists quickly secured Senator Bruce Patterson as sponsor and modified the template bill into the correct form for Michigan legislation.

- Great Lakes Chapter met in late February 2010 and again in late April to discuss the licensure initiative in Michigan and to review the draft legislation.
  - Bob Pizzutiello and Rob Smereka gave presentations at the February 2010 GLC meeting
  - Many concerns raised
  - In response to the GLC members, a BBS forum was opened for general comment on the licensure initiative in general, and to ask specific questions about the draft legislation

- After the two meetings of the GLC and by their request, the Michigan State Committee formulated a survey for the GLC membership, including those AAPM members in MI that are not a member of the GLC.
- The survey asked for respondents to:
  - identify their reasons to support or not support the concepts of licensure and registration
  - what they would prefer between licensure and registration and
  - how MI should proceed with the current draft bill/licensure initiative

### • Survey respondents:

- 418 - were invited to survey
- 167 (39% of invited) - completed the survey
- The majority of respondents are:
  - ♦ clinical physicists working for a single employer
  - ♦ in therapy physics
  - ♦ Board Certified

### Survey results

- Do you think medical physicists should be licensed?
  - 89 - Yes
  - 28 - No
  - 56 - Unsure
  - 16 - N/A
- Do you think medical physicists should be registered prior to practicing?
  - 50 - Yes
  - 50 - No
  - 67 - Unsure
  - 22 - N/A

### • Which would you prefer?

- 85 - Licensure
- 26 - Registration
- 47 - No preference
- 31 - N/A

### • How do you think we should proceed with the current draft bill for licensure?

- 50 - Proceed and submit bill within the current legislative session.
- 94 - Slow down the process to allow for additional time to educate the medical physics community and review other options.
- 23 - Withdraw AAPM/ACMP support for the bill
- 22 - N/A

### The Slow Down Option means:

- communicate to Senator Patterson that the AAPM membership would like to withdraw the bill for consideration this legislative session but will be prepared for introduction in the 2011 legislative session.
- The Michigan State Committee (with participation from the Great Lakes Chapter as warranted and in conjunction with the JMPLSC) will work to edit the current draft legislation into a Michigan-specific model bill.

- In the fall, the lobbyists will begin the process of securing a different sponsor, since Senator Patterson is not running for office again in November, once the legislation has been edited to the majority of the state members' satisfaction.

- Once the sponsor is secured, the Michigan model bill will be edited into correct format by the State Legislature to then be introduced, after State Committee review, most likely in January or February 2011.

## Lessons Learned

- Unlike TX, NY and FL
  - Much more effort from JMPLSC
  - Model bill better due to JMPLSC
  - Process moved very quickly
    - ◆ Insufficient communication, broad input
- Need more time and process

## Review

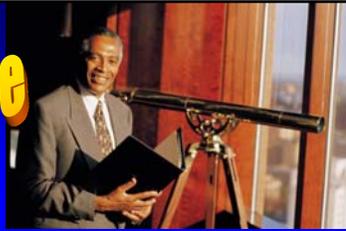
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- Lessons learned this year

## The Future



- AAPM/ACMP - JMPLSC pursuing Licensure in
  - MA
  - MI
  - OH
  - PA
- Modifying the template document to fit each state's situation

## The Future



- Increased communications to the membership in each of the target states
- Utilizing the Chapters as a communication vehicle
  - Each of the target states' Board representative is a member of the State Committee