It's Legal, But It Can Be Risky

Railway

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Giving a staff member a flu shot or writing your spouse a prescription for pain medication may not seem like a big deal. But if you fail to maintain a medical record for the employee, or if your spouse gets hooked on a controlled substance, you could be in hot water.

Texas Medical Board (TMB) Executive Director Mari Robinson, JD, says it's not illegal for physicians to treat family members, friends, and employees, but doing so poses risks.

'When physicians treat anyone they have a close, personal relationship with, the danger comes when they find it impossible to maintain an objective grip on the relationship. When treating friends, family members, or employees, physicians must treat them like any other patient by taking an adequate history and a proper medical assessment and maintaining complete medical records,' she said.

The Texas Medical Association Board of Councilors provides similar advice: 'One of the physician's primary duties is to alleviate suffering. Thus, it is ethical to treat family and friends. As with all patients, in the course of treating friends and family, a medical record should be maintained; however, in urgent or episodic situations, generating a medical record may not be practical or possible.'

TMB prohibits physicians from prescribing controlled substances to themselves, family members, or others with whom they have a close personal relationship unless there is an 'immediate need.'

Ms. Robinson says physicians can prescribe controlled substances for up to 72 hours in emergencies.

'It's a violation of the Texas Medical Practice Act to prescribe controlled substances outside the immediate need 72-hour period,' she said.

[Chapter 190 of TMB rules](https://www.texmed.mobi/Template.aspx?id=22563) features applicable violation guidelines.
The story of David James Jacoby, MD, an emergency medicine physician at Westlake Medical Center in Austin, is an extreme and tragic example of what can happen when a physician crosses professional margins and loses objectivity.

TMB immediately suspended his medical license in May after a disciplinary panel determined he 'posed a continuing threat to the public welfare due to his lack of competence, impaired status, or failure to care adequately for his patients.'

On Dec. 19, 2010, Dr. Jacoby's son, Brandon, was found dead at home. An autopsy showed he died from multiple drug toxicity. The Travis County Medical Examiner's Office found evidence of antiseizure and antianxiety medications, a muscle relaxer, a pain killer, and other drugs in his body. Investigators discovered 49 pill bottles under the 24-year-old's bed, 'all prescribed to different people by a Dr. D. Jacoby,' according to the medical examiner's report.

The TMB disciplinary panel found that between 2009 and 2010 Dr. Jacoby prescribed multiple controlled substances to a family member and to several of his son’s friends for nonmedical purposes, with the understanding that he and his son would receive a portion of the pills prescribed. According to TMB, pharmacy records showed that after his son's death, Dr. Jacoby continued to prescribe hydrocodone and carisoprodol to several of the same people.

The suspension remains in effect until further action by the medical board. TMB says it will schedule a temporary suspension hearing as soon as possible, unless Dr. Jacoby waives the hearing. At press time, there had been no criminal charges filed against Dr. Jacoby in his son's accidental overdose.

Follow the Rules

Ms. Robinson says many of the disciplinary orders the board levies pertaining to physician treatment of employees or family members involve nontherapeutic prescribing and medical records violations. Recent TMB news releases are rife with examples.

In June, TMB disciplined Vernon F. Williams, MD, for prescribing controlled substances to two employees and a close family member without indication of an immediate need and without maintaining adequate medical records. TMB requires the physician to pass within one year and within three attempts the Medical Jurisprudence Examination; to complete 10 hours of continuing medical education in medical record-keeping and 20 hours in bariatric medicine and related pharmacology within one year; and to pay an administrative penalty of $2,000 within 60 days.

In April, the board disciplined Margarita A. Muniz, MD, for nontherapeutic prescribing, failure to meet the standard of care, inappropriately prescribing dangerous drugs to oneself and family members, failure to follow guidelines for the prescription of pain medications, and becoming financially or personally involved with a patient in an inappropriate manner. TMB requires her to complete within one year the professional boundaries course offered by the University of California San Diego Physician Assessment and Clinical Education (PACE) program; to complete within one year 12 hours of CME, including four hours in ethics and eight hours in medical record-keeping;
to pass within one year the Medical Jurisprudence Examination within three attempts; to refrain from treating her immediate family; and to pay an administrative penalty of $5,000 within 60 days.

Ms. Robinson says penalties for these violations vary depending on their severity. The board may require physicians to retake and pass the Medical Jurisprudence Examination, complete continuing medical education in medical record-keeping, pay fines of $500 to $5,000 per incident, complete the professional boundaries course offered by the University of California San Diego PACE program, and/or refrain from treating immediate family.

In the most egregious cases, the board can suspend and even revoke a physician's license.

The Texas Medical Liability Trust suggests physicians consider the following before making the decision to treat family members, employees, or friends:

- Would treating family, friends, and staff conflict with your professional standards of care? Examples would be treating without completing a physical examination or without diagnostic testing.
- Can you be objective when treating this person as a patient?
- Does your family, friend, or employee need specialized medical care that you cannot provide?
- Consider Health Insurance Portability and Accountability Act (HIPAA) privacy issues and protect your medical records.

Austin attorney Michael Sharp, JD, specializes in administrative and health law and serves on TMB's Disciplinary Stakeholder Group, which reviews and provides feedback to the board as it develops and revises disciplinary rules and policies. He says physicians must adhere to TMB medical records rules for all patients, including family members and employees.

He encourages physicians to review TMB's rules regarding contents of medical records. Chapter 165.1 says adequate medical records should document each patient encounter and include:

- The reason for the encounter and relevant history, physical examination findings, and prior diagnostic test results;
- An assessment, clinical impression, or diagnosis;
- A plan for care (including discharge plan if appropriate); and
- The date and legible identity of the observer.

Should physicians decide to treat employees, friends, and family members, Mr. Sharp advises they outline the policy in the practice's employee handbook.

'Physicians can stipulate in the policy and procedure guide whether they'll treat acute or chronic health problems for employees and family members, as well as guidelines for confidentiality of medical records,' he said.
Ethical Considerations

A number of medical organizations have examined the matter of physician treatment of family members, friends, and employees.

The TMA Board of Councilors opinion includes a note informing physicians that the legal requirements for treatment of family members and friends and for keeping medical records exceed the Board of Councilors' ethics opinion. Physicians should consult TMB rule 190.8(1)(M) for more information. They also should talk to their attorney for legal advice on the matter.

Jesse Moss Jr., MD, chair of the Board of Councilors and a San Antonio otolaryngologist, says medical schools teach students they shouldn't treat their family members.

'That black-and-white policy doesn't make sense in private practice, particularly in a small town in isolated Texas,' he said. 'If those physicians can't treat their family members, friends, or employees, they may have to drive 50 or more miles to seek medical care elsewhere.'

Dr. Moss says physicians need to make sure they keep complete medical records for all family members, friends, and employees they treat.

'Physicians can run into problems if they treat family members or employees and don't keep a record of it,' he said.

The American Medical Association has also weighed in on the topic. Opinion 8.19 in AMA's Code of Medical Ethics pertains to physician self-treatment or treatment of immediate family members. The opinion says in general, physicians shouldn't treat themselves or their immediate family members for the following reasons:

- Professional objectivity may be compromised.
- Physicians' personal feelings may unduly influence their professional medical judgment, thereby interfering with the care being delivered.
- Physicians may fail to probe sensitive areas when taking the medical history or may fail to perform intimate parts of the physical examination.
- Patients may feel uncomfortable disclosing sensitive information or undergoing an intimate examination when the physician is an immediate family member.
- Physicians may be inclined to treat problems that are beyond their expertise or training.
- Family members may be reluctant to state their preference for another physician or decline a recommendation for fear of offending the physician.
- Physicians may feel obligated to provide care to immediate family members even if they feel uncomfortable providing care.

The AMA ethics opinion addresses self-treatment or treatment of immediate family members in emergency settings or isolated settings in which no other qualified physician is available. 'Physicians should not hesitate to treat themselves or family members until another physician becomes available. In addition, while physicians should not serve as a primary or regular care provider for immediate family members, there are situations in which routine care is acceptable for short-term, minor problems,' the opinion states. The
opinion stresses that except in emergencies, physicians shouldn't write controlled substance prescriptions for themselves or their immediate family members.

The American College of Physicians' Ethics Manual also features a position on care of the physician's family, friends, and employees that advises physicians not to treat themselves, close friends, or family members. The college cautions physicians to be careful about assuming the care of closely associated employees.

The American College of Physicians says in these situations physicians may not take an adequate patient history or physical examination and could lack professional objectivity due to the physician's emotional proximity to the patient.

'If a physician does treat a close friend, family member, or employee out of necessity, the patient should be transferred to another physician as soon as it is practical. Otherwise, requests for care on the part of employees, family members, or friends should be resolved by assisting them in obtaining appropriate care,' the position states.

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