

**MEDICAL BOARD OF CALIFORNIA****ENFORCEMENT COMMITTEE**

Doubletree by Hilton Hotel Torrance – South Bay
Salon A & B
21333 Hawthorne Blvd.
Torrance, CA 90503

May 3, 2012

MINUTES

Due to timing for invited guests to provide their presentations, the agenda items below are listed in the order they were presented.

Agenda Item 1 Call to Order / Roll Call

Dr. Low called the Enforcement Committee meeting to order on May 3, 2012, at 1:35 p.m. A quorum was present and notice had been sent to interested parties.

Members Present:

Janet Salomonson, M.D., Chair
Michael Bishop, M.D.
Jorge Carreon, M.D.
Hedy Chang
Silvia Diego, M.D.
Shelton Duruisseau, Ph.D.
Gerrie Schipske, R.N.P., J.D.

Staff Present:

Maksim Degtyar, Investigator
Dianne Dobbs, Department of Consumer Affairs, Legal Counsel
Tim Einer, Administrative Assistant
Kurt Heppler, Staff Counsel
Teri Hunley, Business Services Manager
Kimberly Kirchmeyer, Deputy Director
Natalie Lowe, Licensing Manager
Armando Melendez, Business Services Analyst
Regina Rao, Business Services Analyst
Anthony Salgado, Licensing Manager
Jaime Sandoval, Investigator
Kevin Schunke, Outreach Manager
Anita Scuri, Department of Consumer Affairs, Supervising Legal Counsel
Jennifer Simoes, Chief of Legislation
Linda Whitney, Executive Director
Dan Wood, Public Information Officer

Members of the Audience:

Sharon Allison, Kaiser LAMC
Teresa Anderson, California Academy of Physician Assistants
Hilma Balaian, Kaiser Permanente
Rebecca Bramble, AZCOM Midwestern
Genevieve Clavreul
Yvonne Choong, California Medical Association (CMA)
Zennie Coughlin, Kaiser Permanente
Conrad Del Rosario, San Francisco District Attorney's Office
Karen Ehrlich, L.M., Midwifery Advisory Council
Julie D'Angelo Fellmeth, Center for Public Interest Law (CPIL)
Jack French, Consumers Union CA Safe Patient Network
Joseph P. Furman, Furman Healthcare Law
Stan Furmanski, M.D.
Atoosa Hoisseni, AZCOM Midwestern
Marie Lord, AZCOM Midwestern
Ryan McAtee, AZCOM Midwestern
Michele Monserratt-Ramos, Consumers Union CA Safe Patient Network
Beshoy Nashed, AZCOM Midwestern
Carlos Ramirez, Senior Assistant AG, Office of the Attorney General
Loren Reed, Department of Consumer Affairs, Public Affairs Office
Robert Sachs, P.A., Chair, Physician Assistant Committee

Agenda Item 2 Public Comments on Items Not on the Agenda

Michele Monserratt-Ramos from the Consumers Union CA Safe Patient Network addressed the issue of the statute of limitations as it relates to the Board's website information. She stated that the information regarding the deadlines was confusing to patients and that this confusion resulted in complaints not being reviewed because they were considered untimely. She suggested the Board instruct its staff to work to develop improved ways to give patients better clarity about the statute of limitations timeframes.

Mike Grace, trial attorney with DOC Defenders and a certified professional in health care risk management, commented on disciplinary guidelines and the elimination of trial by ambush. Regarding the disciplinary guidelines, he had four specific suggestions that he thought would help bridge the divide between the Board and the risk management programs. 1) The Board should eliminate the over emphasis on probation under the model disciplinary guidelines. He stated that even though the model guidelines were recently modified, the five year probation for repeated acts of simple negligence and inadequate record keeping was problematic and not evidence based. He stated that the result of being on probation not only means risking loss of all malpractice coverage or having to pay a heightened premium, but also, possible loss of preferred provider contracts. Additionally, it may result in the inability under federal and state law to bill Medi-care or MediCal which can easily decimate a practice. 2) He mentioned that the focus and resources of the Enforcement Division and the Attorney General office be shifted away from single patient, simple negligence cases. Mr. Grace suggested that those first offences could routinely be treated as private letters of reprimand or the Board could impose an additional obligation on the physician to self report any patient care related complaints or claims to a lawyer. Let the failure to self report become the basis for further discipline so that repeat offenders could be captured. 3) Eliminate the routine use of gross negligence in accusations and institute instead, a plea of gross negligence only in cases that are an extreme departure from the standard of care. 4) Eliminate trial by ambush; institute a rule that would allow one deposition of

a medical expert per side and adopt the federal system that would require a true report containing the opinions and the basis for those opinions from defense counsel.

Dr. Furmanski commented on the use of an exam called the Microcog as part of probation by the Board, lucrative deals with third party vendors to administer the Microcog exam and these vendors doing human subject research with the physicians taking the Microcog exam. Dr. Furmanski's concerns are that the third party vendors are not accredited, there are no medical questions on the Microcog test and that the doctors that have been sent there to test have not been given the right to quit without penalty.

Agenda Item 3 Approval of Minutes from the February 2, 2012 Meeting

Dr. GnanaDev made a motion to approve the minutes from the February 2, 2012 meeting; s/Schipske; motion carried

Agenda Item 4 Presentation on Enforcement Core Concepts

Mr. Heppler provided a presentation on Enforcement Core Concepts where he discussed concepts that included statutes and regulations, due process, and consumer protection. Mr. Heppler also reviewed the Board's primary functions which are to license qualified applicants, carry out disciplinary action and promulgate regulations. Mr. Heppler also pointed out that the Board does not determine civil liability or award monetary damages.

This presentation is available on the Board's website, Enforcement Committee Agenda Item #4.

Public comment was provided for this agenda item.

Dr. Furmanski stated there should be some mechanism in place so that whistleblowers will feel comfortable in coming forward with their information without having to face the very people they are lodging the complaint against.

Agenda Item 5 Update on Expert Reviewer Training

Laura Sweet stated tremendous progress on has been made on the expert reviewers' training and that to date 108 experts provided RSVPs. The session with the investigators and the medical consultants on April 17th, was extremely successful and well received. The group was able to work out some technical glitches and other problems, which will allow staff to refine and make the expert training much more successful. Ms. Sweet gave the Committee members a sample of the new training equipment, and an opportunity to use it. The Committee watched a portion of the training video that was a reenactment of an expert reviewer testifying in court. Ms. Sweet stated that the video was an actual case and that the reviewer fell into a lot of traps which shows the necessity for the training.

Agenda Item 6 Update on Training for Administrative Law Judges

Dr. Low stated that the Board was approached by Presiding Administrative Law Judge (ALJ) Jonathan Lew who identified some areas where the ALJs could use some additional training. The Board has drafted an agenda and the training session is to be held on June 22, 2012 via video conference.

Agenda Item 7 Discussion of the VEP Evaluation Report

Dr. Low said that on April 2, 2012 the Board's report to the Legislature on the Vertical Enforcement and Prosecution Model was emailed and hand delivered to the Legislature, distributed to the Board members and posted on the Board's website with email notification to

the subscriber list. Dr. Low also stated that he reviewed and approved the report prior to distribution. The report is required by Government Code §12529.7; the report contains the actions by the Board to implement recommendations made by two reviewing entities to strengthen the Vertical Enforcement Prosecution Model. Some of the actions taken by the Board in conjunction with the Health Quality Enforcement Section (HQES) of the Department of Justice (DOJ) were (1) updating the vertical prosecution joint manual, (2) development of an eight hour training module for medical expert reviewers and (3) statewide training for the Board investigators and the HQES attorneys. The Board and the HQES had limited data and the Legislature approved the Board to provide only a narrative report at this time, and provide a full report with comprehensive data during the Board's sunset review process.

Agenda Item 8 Agenda Items for July 19-20, 2012 Meeting in the Sacramento Area

- Update on the expert reviewer training
- Update on the training for the Administrative Law Judges
- Update on the reconciliation of the statistics between the AG's Office and the Board

Public comment was provided for this agenda item.

Joseph Furman, defense attorney, made comments regarding what he referenced as trial by ambush, which is the frequent and sometimes belated amending of an accusation once a case is already in process.

Dr. Low recommended this item be placed on the next agenda for discussion.

Agenda Item 9 Adjournment

There being no further business, the meeting was adjourned at 2:31 p.m.