MEDICAL BOARD OF CALIFORNIA

ENFORCEMENT COMMITTEE

Hilton LAX
Los Angeles Room
5711 W. Century Boulevard
Los Angeles, CA 90045
(310) 410-4000 (directions only)

Thursday, April 25, 2013

MINUTES

Agenda Item 1 Call to Order/Roll Call
The Enforcement Committee of the Medical Board of California was called to order by Dr. Reginald Low, Chair. With due notice having been mailed to all interested parties, the meeting was called to order at 1:30 p.m.

Members Present:
Reginald Low, M.D., Chair
Dev GnanaDev, M.D.
Sharon Levine, M.D.
Gerrie Schipske, R.N.P., J.D.
David Serrano Sewell, J.D.
Barbara Yaroslavsky

Staff Present:
Susan Cady, Enforcement Manager
Dianne Dobbs, Department of Consumer Affairs, Legal Counsel
Kurt Heppler, Staff Counsel
Kimberly Kirchmeyer, Deputy Director
Armando Melendez, Business Services Analyst
Regina Rao, Business Services Analyst
Renee Threadgill, Chief of Enforcement
Teresa Schaeffer, Enforcement Program Analyst
Kevin Schunke, Outreach Manager
Jennifer Simoes, Chief of Legislation
Laura Sweet, Deputy Chief of Enforcement
Lisa Toof, Administrative Assistant II
Rachel Wachholz-LaSota, Inspector III
Linda Whitney, Executive Director
Curt Worden, Chief of Licensing

Members of the Audience:
Hilma Balaian, Kaiser Permanente
Genevieve Clavreul

Yvonne Choong, California Medical Association
Zennie Coughlin, Kaiser Permanente
Karen Ehrlich, L.M., Midwifery Advisory Council
Julie D'Angelo Fellmeth, Center for Public Interest Law
Alicia Cole, Consumers Union Safe Patient Project
Jack French, Consumers Union Safe Patient Project
Marie Russell
Stephen J. Cattolica, CSPM & R; CNS
Lisa Girion, LA Times
Jill Silverman, IMQ

Agenda Item 2 Public Comments on Items not on the Agenda
Genevieve Clavreul asked that some action be taken by the Board regarding the issue of a nurse practitioner misrepresenting herself as a physician while treating her daughter.

Alicia Cole with the CA Safe Patient Project provided comment on the importance of disclosing malpractice judgments, settlements, and disciplinary history on the Board's Web site in order to allow the consumers of California to be better informed about the choices they make when they are trusting their lives and their livelihood to a physician.

Agenda Item 3 Approval of Minutes from January 31, 2013
Dr. GnanaDev made a motion to approve the minutes from the January 21, 2013 meeting; s/Mr. Serrano Sewell; motion carried.

Agenda Item 4 Update on Expert Reviewer Training
Ms. Sweet provided an update on the expert reviewer training that was held on February 9, 2013 in Irvine. She stated the training was well-attended, well-received. She also reported that a new process has been implemented which allows participants to receive additional CME credit, if they provide a sample expert opinion. This new process is yielding interesting information that will be used to enhance the next training which will take place in either October or November 2013 in San Diego.

Dr. Low commended Ms. Sweet and her team on putting together a phenomenal training.
Ms. Schipske thanked Dr. Low for recommending the Board provide this type of training.

Dr. Levine stated the training will potentially enable the Board to recruit more interested physicians into the expert reviewer program and it may also be used as a marketing tool for the Board in terms of encouraging greater participation in the program.

Agenda Item 5 Discussion and Consideration of Proposal to Increase Expert Reviewer Hourly Rate upon Completion of the Expert Reviewer Training Program
Ms. Sweet directed the Members' attention to pages 5-1 through 5-3 of their Board packet for information regarding a proposal to increase compensation for expert reviewers. Ms. Sweet provided a detailed report outlining the difficulty the Board has had in procuring experts, especially in neurosurgery cases, because of the low pay rates. Currently all experts are compensated at a rate of $150.00 per hour to review records and prepare a report, and at $200 per hour to testify. Staff

recommended that a budget augmentation be prepared that would call for experts who have successfully completed the 8 hours of training and have provided a satisfactory sample expert opinion, be compensated at a rate of $200.00 per hour for record review and report writing and $250.00 per hour for testifying for all specialties except for neurosurgery. In neurosurgery cases, staff recommended compensation be increased to $300.00 per hour for record review and report writing and $400.00 per hour for testimony. The Committee made a motion to bring this item to the full Board in order to direct staff to prepare a budget augmentation to increase expert reviewer pay according to the proposal.

Dr. Low made a motion to bring the recommendation forward to the full board; s/Dr. Levine; motion carried.

Agenda Item 6 Discussion on History of Efforts to Improve Retention by Enhancing the Investigator Classification and Consideration on Another Examination to Improve Retention

Ms. Threadgill directed the Members' attention to pages 6-1 through 6-5 of their Board packet for information regarding this item. Ms. Threadgill provided an outline of the historical efforts the Board has made to improve the retention of investigators. She stated it is remarkable how long the Board has been trying to get higher pay for investigators (commensurate with other state agencies) and how unsuccessful these attempts have been. Ms. Threadgill also reported on her most recent effort to ask the DCA to submit a request to the DPA for pay differentials for Training Officers, Range masters, Defensive Tactics Instructors and other formal training assignments. As of this date, this request remains unanswered.

Ms. Threadgill stated staff is recommending the Board seek training officer differentials for staff when engaged in training activities such as: field training officer, range master, defensive tactic instructor, and other formal training assignments; seek geographic pay differentials for living in high-cost areas such as Los Angeles; and work with the DCA to amend the specifications for the investigator classification series to expand the subject areas of the degrees accepted for admission to the examination.

Dr. Low asked for a motion to bring the recommendation to the full Board to direct staff to work with DCA to amend the specifications for the investigator classification series to expand the subject areas of the degrees accepted for admission to the examination and to request pay differentials.

Dr. GnanaDev made the motion to bring the recommendation to the full Board; s/Ms. Schipske. Motion carried.

Agenda Item 7 Discussion of Priorities Established in Business and Professions Code section 2220.05

Ms. Cady provided a power point presentation on the priorities established under Business and Professions Code Section 2220.05 noting that the law was established in 2003 and identifies priorities for the Board's investigative and prosecutorial resources.

Agenda Item 8 Discussion of Workers' Compensation Utilization Review Process; Investigation of Complaints

Ms. Cady and Mr. Heppler provided a brief overview of the Utilization Review Process and the Board's obligation to investigate complaints against physicians who participate in utilization review activities. Ms. Cady explained the Board receives a very small percentage of complaints regarding physicians who perform Utilization Review (UR). She stated that historically the Board declined to investigate this type of complaint if it was determined the physician had no direct involvement in the patient's care and treatment, and was only making a decision about whether the procedure or treatment would be covered as medically indicated or necessary. Staff suggested that the Board continue its established policy of performing a preliminary analysis of each new complaint. If the complaint involves a UR issue, Board staff should inform the complainant to pursue their appeal options.

Following a lengthy discussion by the Members, a motion was made to recommend to the full Board that it reaffirm that UR IS the practice of medicine and direct staff to develop guidelines and identify any legislative amendments that may be required in order for the Board to take action on cases when UR results in the practice of substandard medical care.

Public comment was provided for this agenda item.

Stephen Cattolica, California Society of Physical Medicine & Rehabilitation, provided public comment and stated that the problem facing the Board that needs to be addressed is the Board's jurisdiction over a license when a patient experiences any harm as a direct result of the licensee's denial of care. He requested the Board quickly and unequivocally reaffirm its jurisdiction over the medical decisions made by California licensed physicians and surgeons who conduct URs. He also requested that the committee recommend to the Board that it create a plan to direct enforcement staff to implement enforcement oversight over these decisions that have adverse effects over injured workers.

Ms. Yvonne Choong provided comments and stated the CMA would support Mr. Cattolica's request that UR is the practice of medicine and should be enforced as such.

Genevieve Clavreul spoke in support of the position that UR is the practice of medicine.

Julie D'Angelo Fellmeth, Center for Public Interest Law, provided comments in support of the position that UR is the practice of medicine. She stated the bottom line is the Board is the only body in California that has authorization over a physician's license and suggested that the Board identify how to get this information from other agencies such as Department of Industrial Relations.

Dr. GnanaDev made a motion to recommend to the full Board that it reaffirm that Utilization Review IS the practice of medicine and direct staff to develop guidelines and identify any legislative amendments that may be required in order for the Board to take action on cases when utilization review results in the practice of substandard medical care; s/Dr. Levine; motion carried.

Agenda Item 9 Establishment of a Task Force to Develop and Address Best Practices Related to Prescribing Controlled Substances to Relieve Pain and Examine MBC Guidelines

Dr. Low gave an update on the growing problem regarding the prescription drug overdose "epidemic" facing the Board. Dr. Low reported the Board co-sponsored the Pain Summit that was held last month in San Francisco that was hugely successful and included various presentations from a variety of experts relating to prescription drugs. Dr. Low explained that historically, the pendulum has swung back and forth on this issue. In the 1990s, it was thought that drug laws were too restrictive and therefore patients were being under-medicated and their pain was not being relieved. The legislature in answer to this concern, enacted new laws, one of which was Business and Professions Code Section 2241.5, known as the Intractable Pain Treatment Act. The Act states, in part, that no physician or surgeon shall be subject to disciplinary action for prescribing, dispensing or administering dangerous or prescription controlled substances when certain criteria are met. That criteria is generally encompassed in the Board's pain management guidelines. Dr. Low stated this is an issue that has been on opposite sides of the prescribing spectrum for years and it is time for the Board to look at how to address the problem to determine whether changes need to be made to the Board's investigations and policies to make certain they comport with the changing times.

Dr. Low suggested a task force be convened to further define the best practices as it relates to prescribing controlled substances and to revisit the pain management guidelines to see if there are additional guidelines that can be added (or removed) to address this very serious problem and ask for volunteers to work with staff.

Public comment was provided for this agenda item.

Ms. Choong thanked the Board for taking the initiative to establish this task force and stated that CMA would like to participate in the process. She continued with CMA has already developed a fairly substantial database of resources, academic journal articles and other resources on this area precisely looking at whether or not guidelines need to be developed. CMA is also developing a white paper this summer, that takes a look at best practices for physicians who are engaged in pain management and would like to share these resources with the Board.

Dr. Low suggested that more importantly the Board must include the primary care physicians that take care of the patients because many pain medicine physicians expect the primary care physicians to prescribe chronic pain medications.

Ms. Choong agreed that there is a problem trying to work out at what point the primary care physician refers to a specialist, particularly for physicians who rarely prescribe pain medications.

Genevieve Clavreul responded that she has been very involved in the issue of chronic pain and opiate use and that she has written two papers, one named The Great Opiate Debate of 2012 and one on chronic pain. She also stated that she was available to participate on the task force in any measure available.

Mr. Serrano-Sewell made a motion to establish a task force on prescribing and that it include interested parties; s/Schipske. Motion carried.

Members of the task force include: Ms. Yaroslavsky and Dr. Bishop.

Agenda Item 10 Discussion of MBC Efforts to Implement SB 1441 Uniform Standards

Ms. Cady presented a thorough historical review of the Model Disciplinary Guidelines and rulemaking process as it related to the implementation of the Uniform Standards set forth in Senate Bill 1441. Following the presentation a discussion by the Members ensued. Dr. Low asked for a motion for staff to institute rulemaking procedures in order to adopt the Uniform Standards set forth in SB 1441, and to direct legal counsel to draft a response regarding action taken by the Board.

Public comment was provided for this agenda item.

Alicia Cole of the Consumers Union Safe Patient Project thanked the Committee for supporting the Uniform Standards and urged the Committee to adopt them completely and immediately by coming into compliance with the requirements of SB 1441.

Julie D'Angelo Fellmeth, Center for Public Interest Law, recommended the Board adopt a regulation that says the following: In reaching a disciplinary decision involving a substance abusing licensee the Board shall comply with the Uniform Standards adopted by the substance abuse coordination committee in April 2011 which are hereby incorporated by reference.

Mr. Heppler respectfully suggested the Committee recommend to the full Board that the Board immediately commence the rulemaking process to adopt the Uniform Standards set forth in SB 1441 in regulation at the next Board meeting. The Committee may want to recommend the following language: "In any disciplinary decision involving a substance abusing licensee the following shall apply." This language would take out the discretionary authority of the Board.

Ms. Schipske made a motion that the Committee recommend to the full Board that it direct staff to begin the rulemaking process to implement SB 1441 Uniform Standards. In addition, that the Board direct Counsel to draft appropriate response reflecting the actions taken by the Committee; s/Mr. Serrano Sewell. Motion carried.

Agenda Item 11 Agenda Items for July 2013 Meeting

No agenda items were heard.

Agenda Item 12 Adjournment

There being no further business, the meeting was adjourned at 3:43 p.m.

The full meeting can be viewed at www.mbc.ca.gov/board/meetings/Index.html