MEDICAL BOARD OF CALIFORNIA

ENFORCEMENT COMMITTEE

Sheraton San Diego Hotel and Marina
Fairbanks A & B Room – Bay Tower
1380 Harbor Island Drive
San Diego, CA 92101

Thursday, October 23, 2014
11:00 am – 12:30 pm

MINUTES

Agenda Item 1 Call to Order/Roll Call
The Enforcement Committee of the Medical Board of California (Board) was called to order by Dr. Lewis, Chair. With due notice having been mailed to all interested parties, the meeting was called to order at 11:00 a.m.

Members Present:
Ronald Lewis, M.D., Chair
Howard Krauss, M.D.
Elwood Lui
Gerrie Schipske, R.N.P., J.D.
David Serrano Sewell, J.D.
Barbara Yaroslavsky

Members Absent:
Felix Yip, M.D.

Staff Present:
Ramona Carrasco, Staff Services Manager I
Dianne Dobbs, Legal Counsel, Department of Consumer Affairs
Casandra Hockenson, Public Affairs Manager
Kimberly Kirchmeyer, Executive Director
Armando Melendez, Business Services Officer
Valerie Moore, Staff Services Manager I
Regina Rao, Associate Governmental Program Analyst
Letitia Robinson, Research Program Specialist II
Paulette Romero, Staff Services Manager II
Jennifer Simoes, Chief of Legislation
Lisa Toof, Administrative Assistant II
See Vang, Business Services Officer
Curt Worden, Chief of Licensing

Members of the Audience:
Mohammed Aly, Center for Public Interest Law
Michael Bishop, M.D., Board Member
Peter Boal, University California, San Diego, PACE
Gloria Castro, Supervising Assistant Attorney General, Attorney General's Office
Steve Cattolica, California Neurology Society
Yvonne Choong, California Medical Association
Laura Clifford, Employer's Fraud Task Force
Zennie Coughlin, Kaiser Permanente
Karen Ehrlich, L.M., Midwifery Advisory Council
Julie D'Angelo Fellmeth, Center for Public Interest Law
Laura Freedman, Legal Counsel, Department of Consumer Affairs
Dev GnanaDev, M.D., Board Member
Mike Gomez, Deputy Director, Department of Consumer Affairs
Bridget Gramme, Center for Public Interest Law
Anthony Jackson, M.D., Black American Political Association of California
Terry Jones, Supervising District Attorney General, Attorney General's Office
Sharon Levine, M.D., Board Member
Carole Moss, Consumers Union
Ty Moss, Consumers Union
Kathleen Nicholls, Supervising Investigator II, Health Quality Investigative Unit
Eric Ryan, Supervisor Investigator I, Health Quality Investigative Unit
Arnold R. Savage, Black American Political Association of California
Laura Sweet, Deputy Chief of Enforcement, Health Quality Investigative Unit
Renee Threadgill, Chief of Enforcement, Health Quality Investigative Unit
Jamie Wright, Esq., Board Member
Cesar Yuriar, Center for Public Interest Law
Jane Zack Simon, Supervising Deputy Attorney General, Attorney General's Office

Agenda Item 2 Public Comments on Items not on the Agenda

Dr. Lang, Vice Chairman, National Medical Association, commented on the disproportionate impact on the African-American medical community relating to longer, harsher penalties than their counterparts because of lack of appropriate legal representation.

Agenda Item 3 Approval of Minutes from May 1, 2014 meeting

Dr. Krauss made a motion to approve the minutes from the May 1, 2014 meeting; s/Ms. Yaroslavsky, motion carried.

Agenda Item 4 Discussion and Consideration of Pain Management Expert Reviewer Policy

Ms. Kirchmeyer introduced Ms. Zack Simon who provided the background and reasons for seeking the Committees approval to change the current policy for expert reviewers in pain management cases.

Ms. Zack Simon, Supervising Deputy Attorney General, spoke about the current policy for pain management cases which are reviewed by two different experts; an expert in the field of pain management and an expert in the field of the physician who is under investigation, noting that this policy was never intended to be permanent.

Ms. Kirchmeyer suggested that the change in policy be that the cases be reviewed by one expert and that the expert be in pain management.

Dr. Lewis asked for a motion to approve the change in the expert reviewer policy to require just one expert reviewer.

Ms. Yaroslavsky made a motion to change the Medical Board of California's pain management expert reviewer policy to use one expert reviewer board certified in pain management rather than two expert reviewers; s/Ms. Schipske.

Yvonne Choong, California Medical Association, discussed their concerns with the proposed change and suggested the Board try to make the two differences of opinion work rather than discarding one of the experts and perhaps the Board may want to consider opening up this issue to a stakeholder's meeting possibly making changes to other parts of the policy also.

Ms. Zack Simon stated that under the current policy two different experts are used in most cases, but if a pain specialist is being investigated, under the current policy they will be reviewed by one expert and that expert would be a pain specialist because that is their specialty. The change being requested in the policy is that all pain management cases be reviewed by a pain management expert only.

Dr. Krauss commented that since everyone is educated in pain management now, the process could be more efficient if a like specialist reviewed the case. Dr. Krauss also said that he would be reluctant to say that the one expert should be a pain management physician rather than a like specialist.

Dr. Lewis stated that pain is the fifth vital sign and that all physicians are responsible for assessing their patient's pain and pain control and that with this policy, the Board might be saying that patients need to seek a referral elsewhere for the pain management. Dr. Lewis also stated that the Board probably would not like to send the message that primary care physicians should not be taking care of chronic pain.

Ms. Yaroslavsky said she would like to remind this Committee and the Board Members that the reason for the intractable pain discussion years ago was because of the over and under

prescribing of medication. The Board must be sure that the standard of care does not change and that the expectation of anyone prescribing meets the good faith exam, medical record keeping, treatment plan, follow up, and reevaluation as part of the discussion.

Dr. Lewis stated there is a motion on the table to move to one expert instead of two experts in pain management.

Ms. Zack Simon suggested that there be one expert and not two experts in different specialties. One expert is better to use and make decisions. She added one expert in the same specialty would also work as they are speaking the same language. The cases could be managed a lot better.

Dr. Krauss suggested the motion be amended to require an expert in the same specialty and not in pain management.

Ms. Yaroslavsky amended her motion to change the pain management expert reviewer policy to require one expert reviewer in the like specialty, rather than an expert in pain management; s/ Dr. Krauss.

Motion carried.

Agenda Item 5 Discussion and Consideration of Proposed Amendments to the Statement on Marijuana

Ms. Kirchmeyer stated on May 7, 2004 the Board adopted a statement that clarified that the recommendation for marijuana by physicians in their medical practice will not have any effect against their physicians' license if they follow good medical practice. Board staff reviewed the current statement and believed that amendments need to be made to the statement, as some information is misleading and does not comport with the current law. The first series of edits pertain to the term "medical marijuana." She stated that although marijuana can be recommended for medical purposes, the term medical marijuana is misleading, as there is no difference between regular marijuana and marijuana used for medical purposes.

Ms. Kirchmeyer stated another issue with the statement is the assertion that the initial examination for the condition for which marijuana is being recommended must be in-person. This statement contradicts the Board's telehealth law. The initial examination must follow the standard of care and must provide for an appropriate prior examination. However, the law does not require this examination be in person, and could be via the telehealth system.

Ms. Kirchmeyer pointed the Members to staff's recommended changed on pages ENF 5-1 to ENF 5-3 in their Committee Packet.

Dr. Krauss said it occurred to him that after the Committee moves and accepts this modification that he would also like to see the Board take a position with a subsequent motion that would move to establish a Board policy requesting legislation that would require in person examinations for marijuana recommendations.

Ms. Kirchmeyer replied that Ms. Simoes under agenda item 21B would be talking about legislative proposals at the full Board meeting and recommended this item be discussed under the correct agenda item at the following day's meeting.

Dr. Levine, Board Member stated that there are other language issues that need to be amended. She suggested: 1) that on page ENF 5-2 under the first numerated list, item number three needed to have the term "informed consent" changed to "appropriate consent"; 2) in the paragraph following the first numerated list, the wording infers that marijuana is a medication and recommended deleting the words "any other;" and 3) on page ENF 5-3 the last sentence of the first paragraph (number 4) also infers marijuana is a medication and recommend changing the word "medication" to "treatment options."

Ms. Yaroslavsky stated that she would like to make sure that there is a good faith examination and maintenance of medical records. She recommended adding the words "and maintenance thereof" to item number 6 on page ENF 5-2 after the word "keeping".

Dr. Krauss moved approval of the statement with the language modification suggested by Dr. Levine and Ms. Yaroslavsky; s/ Ms. Yaroslavsky.

Motion carried.

Agenda Item 6 Presentation on Physician Assessment and Clinical Education (PACE)

Mr. Boal, University of California, San Diego, spoke about language updates to reflect the new proposed re-designed assessment, moving from a two-phase program to a one-phase program where the physician would complete the entire program at one time. PACE has determined that it can arrive at a physician's competency in a shorter period of time and individualize each assessment as much as possible so that it is customized to the physician's practice or intended return area of practice, while taking into consideration the reason for the discipline.

Mr. Boal stated that PACE would like to change their process, which would in turn require amendments to the Board's disciplinary guidelines. The disciplinary guidelines require the assessment to include components that touch on areas that led to the physician's discipline. However, some physicians are no longer practicing in that area and therefore, the assessment should not include those components. With the current disciplinary guidelines this is required. This change would be better for the Board because it will be easier to track physicians, the amount of time to complete the process will be reduced significantly, and the end result is that PACE will be able to tell the Board that the physician is competent or unsafe in a shorter period of time. There are three categories: pass, pass with recommendations, or fail.

Ms. Yaroslavsky asked if the cost will be reduced as well.

Mr. Boal stated that he was unsure about the cost but PACE's goal was to make the program as cost effective as possible. The evaluations are on a per physician basis, and they will use the components of the evaluation that are best for that individual which is how the price will be created.

Dr. Krauss asked if the program is used by other state boards.

Mr. Boal responded that there are a hand full of programs that do physician competency assessments in the United States. PACE receives about 50-60% of all its evaluations from the Board, another 20% from other state medical boards and 30% from hospitals, medical groups, attorneys and self-referrals.

Dr. Jackson, a 2008 PACE graduate, spoke about some of his concerns regarding the PACE program. Some of his concerns were the cost, $15,000 for a general practitioner, the exams being over 40 years old, and questions of general knowledge having no relevance. Lastly he stated he was concerned the Board was using PACE for DUIs that are overturned and being delinquent in your taxes, instead of what it was intended for, such as competency and quality care assessments.

Dr. Lewis, asked Mr. Boal to address Dr. Jackson's comments and conclude.

Mr. Boal commented that he is hopeful that this new arrangement will save money for the physicians. PACE's goal is to become more efficient in what it does, to take less time to determine competence, and decrease the amount of time physicians need to take out of their practices to participate.

Dr. Lang, National Medical Association, suggested that the cost for the PACE program be included in the fees paid for licensure.

Agenda Item 7 Presentation and Discussion on Utilization Review

Ms. Carrasco spoke about how the Board processes complaints involving physicians who conduct utilization reviews. She stated that Central Complaint Unit routinely refers these complaints to either the Department of Industrial Relations, the Division of Workers' Compensation or the Department of Insurance to address the patients' appeal of the decision by the physician performing a utilization review. Ms. Carrasco stated that because the Enforcement Committee felt it was appropriate for the Board to review complaints regarding utilization review, a change in protocol was implemented in May 2013. Staff is suggesting that the Board continue performing preliminary analysis of complaints involving utilization review with emphasis on those related to quality of care.

Ms. Schipske suggested the Board try again at some point to require that physicians in workers' compensation review be licensed in California. She stated they may need to make a recommendation to the legislature.

Steve Cattolica, Director of Government Relations for the California Neurology Society, the California Society of Physical Medicine and Rehabilitation and the California Society of Industrial Medicine and Surgery, spoke about injured workers who were actually harmed. Mr. Cattolica stated that he believes that the patients, physicians and some attorneys need to be

educated. It is not only the flawed process, which cannot be fixed, but the Board needs to be able to know when an injured worker has been harmed.

Agenda Item 8 Update of Transition of Staff to the Department of Consumer Affairs

Mr. Gomez, Deputy Director for the Division of Investigation, updated the Board on the transition of the Board investigators to the newly created Health Quality Investigations Unit (HQIU) of the Division of Investigation stating that at the end of this first quarter everything from budget to personnel has gone extremely smooth. Cars for supervising investigators for HQIU will be in at the end of the month. He also notified the Enforcement Committee of the new technology improvements coming to HQIU, as well as mobile access to CLETS data. HQIU is attempting to correct the enforcement report, as reports cannot run out of BreEZe right now. HQIU is trying to standardize those reports. Mr. Gomez stated that there is no major increase in case aging and that there is an effort in making sure that the cases do not become uncontrollable. Mr. Gomez spoke on updating the Vertical Enforcement (VE) manual. He stated they have had three meetings to date, have agreed upon agendas, and they have completed an initial draft of the first stages of the VE manual relating to the definition of VE under the Government Code. Mr. Gomez also added that there is a new component regarding the VE team as it relates to the medical consultants.

Ms. Kirchmeyer stated that reports from BreEZe might be completed by the end of the year.

Ms. Yaroslavsky asked Mr. Gomez if the reports will give him a better definition of the timelines and timeframes.
Mr. Gomez said yes they are great management tools, but, the issue is the spreadsheets are only good at the end of the month when they are compounded.

Ms. Kirchmeyer noted that everything is delayed because reports cannot be obtained from BreEZe.

Agenda Item 9 Disciplinary Action Demographics

Ms. Kirchmeyer explained the disciplinary action process in detail.

Ms. Robinson, presented a report regarding the ethnic background data being provided to determine whether there was racial disparities in disciplinary actions by the Board. Ms. Robinson stated after review of the data, the Board was able to gather there was no indication of disparant treatment based on the outcome of investigations, disciplines, or complaints.

Dr. Krauss commented that this is an issue that will never go away and will always need the Board's constant attention. He suggested that a probability analysis needs to be done, because when the discipline rate is higher than the complaint rate, one has to self-question.

Ms. Choong, CMA, encouraged the Board to continue this kind of analysis on complaints not just by ethnicity, but by geographic area and specialty, to target certain groups for further education.

Dr. Savage read a letter from the president of Black American Political Association of California (BAPAC) regarding the Board's disciplinary demographics and asked if the Board would voluntarily agree to participate in a study regarding disciplinary demographics under the auspices of the Office of Health Equity. BAPAC will ask the Department of Consumer Affairs (DCA) to also facilitate this study. Dr. Savage said that he would like to propose that the Board find a means to address the issue of how to reduce the investigators propensity to have an unconscious bias as to how they look at a given problem.

Dr. Jackson asked the Board to make a motion to see if they will voluntarily agree to participate in an objective study under the auspices of the Office of Health Equity, which was created specifically for these types of situations.

Dr. Krauss suggested that before a motion is made that Ms. Kirchmeyer investigate the suggestion and report back to the Board with more information being committed to following that particular pathway. Dr. Krauss' last comment was that these issues cannot be ignored and must be under constant surveillance.

Dr. Lewis, agreed with Dr. Krauss regarding the staff looking at this issue as a possible agenda item prior to making a motion.

Agenda Item 10 Future Agenda Items

Ms. Yaroslavsky suggested an update from DCA and Department of Justice (DOJ) about the Board's enforcement process. She would like to have some statistics, including comparing and contrasting the investigative timeframe over the past years.

Agenda Item 11 Adjournment

There being no further business, the meeting was adjourned at 1:20 p.m.

The full meeting can be viewed at http://www.mbc.ca.gov/About_Us/Meetings/2014/.