MEDICAL BOARD OF CALIFORNIA

ENFORCEMENT COMMITTEE MEETING

Courtyard by Marriott – Cal Expo
1782 Tribute Road
Sacramento, CA 95815

Thursday, January 21, 2016
(Approved at July 28, 2016 Enforcement Committee Meeting)
MINUTES

Agenda Item 1 Call to Order/Roll Call
The Enforcement Committee (Committee) of the Medical Board of California (Board) was called to order by Dr. Yip, Chair. With due notice having been mailed to all interested parties, the meeting was called to order at 12:45 p.m.

Members Present:
Felix Yip, M.D., Chair
Michelle Bholat, M.D.
Howard Krauss, M.D.
Barbara Yaroslavsky

Other Board Members Present:
Randy Hawkins, M.D.
Sharon Levine, M.D.
Ronald Lewis, M.D.

Staff Present:
Liz Amaral, Deputy Director
Robin Boyd, Staff Services Analyst
Elena Contreraz, Staff Services Analyst
Brian Curtis, Staff Services Manager I
Christina Delp, Chief of Enforcement
Dianne Dobbs, Legal Counsel, Department of Consumer Affairs
Dennis Frankenstein, Staff Services Analyst
Virginia Gerard, Associate Governmental Program Analyst
Dayna Hanson, Management Services Technician
Cassandra Hockenson, Public Information Officer II
Chris Jensen, Special Investigator
Kimberly Kirchmeyer, Executive Director
Nicole Kraemer, Staff Services Manager I
Regina Rao, Associate Government Program Analyst
Lois Ranftle, Office Technician
Letitia Robinson, Research Specialist II
Elizabeth Rojas, Staff Services Analyst
Reylina Ruiz, Staff Services Manager

Jennifer Saucedo, Staff Services Analyst
Anita Scuri, Retired Annuitant
Linda Serrano, Associate Governmental Program Analyst
Jennifer Simoes, Chief of Legislation
Lisa Toof, Administrative Assistant II
Kerrie Webb, Staff Counsel
Susan Wolbarst, Public Information Officer
Curt Worden, Chief of Licensing

Members of the Audience:
Aaron Barnett, Investigator, Health Quality Investigation Unit
Robert McKim Bell, Supervising Deputy Attorney General
Gloria Castro, Senior Assistant Attorney General, Department of Justice
Eric Cerlile, Kaiser Permanente
Yvonne Choong, California Medical Association
David Chriss, Chief of Enforcement, Division of Investigation
Zennie Coughlin, Kaiser Permanente
Cassie Davis, Staff Services Analyst
Karen Ehrlich, LM, Midwifery Advisory Council
Julie D'Angelo Fellmeth, Center for Public Interest Law
Rae Greulich, Consumers Union Safe Patient Project
Marian Hollingsworth, Consumers Union Safe Patient Project
Sarah Huchel, Consultant, Senate Business and Professions Committee
Terry Jones, Supervising Deputy Attorney General
Christine Lally, Deputy Director, Department of Consumer Affairs
Lisa McGiffert, Consumers Union Safe Patient Project
Tina Minasian, Consumers Union Safe Patient Project
Michelle Monserrat-Ramos, Consumers Union Safe Patient Project
Kathleen Nicholls, Deputy Chief, Health Quality Investigation Unity
Monica Peretto, Investigator, Health Quality Investigation Unit
Arnold Savage, M.D.
Danielle Sullivan, Center for Public Interest Law
Kim Tejada, Investigator, Health Quality Investigation Unit
Cesar Victoria, Department of Consumer Affairs

Agenda Item 2 Public Comments on Items not on the Agenda

No public comments.

Agenda Item 3 Approval of Minutes from October 29, 2015 Meeting

Ms. Yaroslavsky made a motion to approve the October 29, 2015 meeting minutes; s/Dr. Krauss. Motion carried unanimously.

Agenda Item 4 Enforcement Program Update

Ms. Delp spoke about the Expert Reviewer Training scheduled to be held on Saturday, March 19, 2016, at the UC San Diego School of Medicine. Ms. Delp shared the agenda, what would be addressed, and who would be present. She stated that the training would end with a review of a mock case and that attendees would be asked to provide a sample written opinion of a hypothetical case to determine if there was a departure from the standard of care. Ms. Delp advised that Board staff would review the opinions and provide feedback to the attendees. A "Save the Date" announcement regarding the training had been sent out via mail and email, and a formal invitation will be sent out soon. A second training is being considered for the summer in the Los Angeles area.

Agenda Item 5 Update on Demographic Study

Ms. Robinson provided an update on the study being conducted by the California Research Bureau (CRB) regarding the Board demographic study. The CRB met with interested parties from the Black American Political Association of California (BAPAC) and the Golden State Medical Association. The meeting covered items of concern, including the reason for the study. She stated that the CRB may need additional information from the Board and that the report will be released to the public. The report methodology will be finalized and presented to Dr. Krauss for review and approval. Ms. Robinson also stated that the CRB anticipated that it will take two months to finish its analysis and another two months to finalize the report. Updates will be provided accordingly.

Agenda Item 6 Update on the Vertical Enforcement Report

Ms. Robinson spoke about the implementation and goals of vertical enforcement (VE) and noted that the next report is due to the Legislature on March 1, 2016. She said that the data had been hard to get but the final report will be delivered to the Board at the end of February and that a special meeting will need to be held by teleconference.

Ms. Scuri stated that the focus of the report will consist of three primary areas: statistical data, improvements that have taken place since the last report in 2013, and recommendations for statutory changes. She also stated that they have been working with the Attorney General's office to finalize the report.

Agenda Item 7 Investigation and Vertical Enforcement Program Report

Mr. Chriss stated that his current goals are to fill vacancies; continue the staff retention project, which consists of salary increases and field training officer pay; continuing the strategic planning process; completing the combined Division of Investigation (DOI) policy training manual; and developing a division wide training plan. He stated that there are 26 vacant positions but there are 21 people in background for those positions. Interviews have been scheduled to fill the remaining positions.

Ms. Nicholls talked about how the cases for the Board are being prioritized and stated that Business and Professions Code section 2220.05 mandates what the Board's priorities are.

Priority cases are the ones that involve gross negligence, incompetence, or repeated negligent acts that involve death or serious bodily injury to one or more patients; cases that involve drug or alcohol abuse by a physician involving death or serious bodily injury to a patient; repeated acts of excessive prescribing or prescribing without a good faith exam; repeated acts of clearly excessive recommendations of cannabis to patients without a good faith exam; sexual misconduct with a patient; and practicing medicine while under the influence of drugs or alcohol. Investigative staff went through the entire case load and identified which cases are priority cases and which cases are lower priority. Ms. Nicholls stated thirty two hours a week are spent working on priority cases and one day a week is spent working lower priority cases, which are rotated weekly. She stated staff is very focused on protecting the public and keeping the priority system that has already been established.

Ms. Yaroslavsky asked if the Board will get regular reports regarding the goals and if the Board will be able to monitor them to know it is working.

Ms. Nicholls replied that staff will continue to produce such reports for the Board.

Ms. Yaroslavsky stated that she was concerned because more old cases were showing up.

Ms. Nicholls stated that many of the old cases have to do with staff vacancies and the prioritization of the cases, which means that some of the lower priority cases will be older.

Ms. Castro, talked about VE, stating that there are two issues that are adversely affecting the VE process: staffing investigative positions within the Health Quality Investigation Unit (HQIU) and HQIU's policy for handling administrative investigations as criminal investigations, which takes those matters out of the VE process. She continued saying that one solution to this problem is to assign a second investigator to investigate the administrative investigation. Regarding the parallel investigations Ms. Castro suggested that a conversation should occur between HQIU and the Board to make sure that the priorities match and what to do when they do not match.

Dr. Krauss asked if the expert panel system is adequate.

Ms. Castro said that limitations have a direct impact on what can be done to protect the public, that more training and outreach is needed, and that success depends on the experts.

Dr. Krauss asked if there is an adequate ongoing dialogue between Board staff and the Attorney General's (AG) office, regarding where the deficiencies or weaknesses are so that it can be improved.

Mr. Jones stated that the principal interaction is between HQIU and the medical consultants in the field concerning the selection of physicians as experts. Expanding the pool of experts needs to be at a higher priority, and maybe the Board can use its influence to ask members of the profession to step forward and engage in the expert review process.

Dr. Krauss asked if there is a mechanism in place that will identify where the greatest needs for experts is.

Mr. Jones stated that there is an evaluation that each Deputy Attorney General on a case should complete to provide feedback to the expert, and it is forwarded to the Board. He continued by saying that the real issue comes down to the credibility of the experts on both sides and the most credible expert is determined by a judge.

Ms. Kirchmeyer stated that there are two Associate Governmental Program Analysts in Southern California who are watching for those deficiencies and ads are being placed in the Newsletter regarding what specialties are needed. Recruitment will commence in the hospitals and at the universities after the expert training is complete. Ms. Kirchmeyer stated the Enforcement summary in the packet listed specialties that are needed.

Mr. Chriss stated that there was a meeting with the AG's office, the department, HQIU, and the Board to address the issues of administrative and criminal investigations. He stated that there are less than 100 criminal cases and that he has had ongoing discussions with the AG's office regarding working together to develop guidelines.

Ms. Castro said that it is extremely important for the experts to have the correct education and training, and that the training required needs to be put forth between all the agencies. She finished by saying that while the expert has great technical knowledge, he/she needs to understand the Medical Practice Act or laws.

Ms. Nicholls advised that representatives from all sides participate in expert reviewer training, which includes a medical consultant, a retired Administrative Law Judge, the AG's office, and HQIU, stating that the training is coming from all different aspects.

Dr. Yip spoke about attending the expert witness training two years ago and he will go through the syllabus and training before March with the staff.

Agenda Item 8 Presentation on the Probation Unit's Roles and Functions

Dr. Yip advised that he spent time with the probation unit staff, and spoke about the staff's passion and commitment they share with the Board to carry out the mission of public protection.

Ms. Delp shared the highlights of the organizational structure of the Probation Unit, identified the various positions within the unit, and explained the roles of the positions. She also explained the possible probation terms and conditions that can be imposed, discussed how probation staff monitors compliance with the terms and conditions, reviewed focused areas of improvement efforts within the unit. Ms. Delp continued with conditions found in the Manual Model of Disciplinary Orders and Guidelines stating that there are 23 optional conditions. Ms. Delp offered explanations on several conditions saying that the use of the optional conditions within the orders and stipulated agreements depends on the nature and circumstances of the particular case.

Ms. Delp stated in the Board's last sunset report, it stated that there were 306 positive drug tests. Thirty-three probation violations were reported and 34 petitions to revoke probation were filed. She noted there was a footnote in the sunset report that states the number of positive tests includes those where the licensee had an approved prescription for the substance, which does not constitute a violation of probation.

Ms. Yaroslavsky asked what would be an optimal time lapse between a violation of a condition of probation and when the Board takes some action.

Ms. Delp answered, all probation conditions have specific timelines, some are immediate, which means violations have action started within 24 to 48 hours.

Ms. Kirchmeyer stated that it depends on the violation and the language of the probationary order and explained that getting it set for hearing and completed could take six months to a year.

Ms. Kirchmeyer continued with how First Lab, which does all of the testing, is contacted once a positive test result comes back. They have a panel that they run the test against, then look to see if it is a true positive or an incidental exposure. Once that has been determined, the process of a cease practice order is considered.

Ms. Gerard stated that the lab looks for the threshold for the incidental exposure and the Board staff is setting up procedures so when that threshold is reached the Board can request a blood test to verify levels of specific substances.

Ms. D'Angelo Fellmeth, Center for Public Interest Law, thanked the Board for the detailed review of the Probation Program. She said that she was the public commenter who noted that during 2011-12 there were 306 positive tests yet only 30 petitions to revoke probation were recommended by the Board and filed by the AG's office. She suggested two things: first, it is a probation violation for a doctor not to report to the inspector that he or she has been prescribed a medication that might trigger a positive test and she said that is something that needs focus; second, she would suggest to the Board that actual positive tests should be separated from positive tests due to lawfully prescribed medication. She concluded by saying that she is concerned about the heavy caseloads and the fact that staff caseloads are almost double that of an HQIU investigator. She suggested taking another look at the staffing of the unit to determine whether additional probation inspectors are needed due to the crucial importance of this function.

Ms. Delp stated that those comments are valid and that steps are being taken to hire another manager and another biological fluid analyst. Staff is looking at the workload and assessing assignments, which will probably result in a recommendation for more inspectors.

Ms. Yaroslavsky asked if there is a way to view the outcomes, and said there needs to be some way of validating what is being done based on statistical data provided to the Board.

Ms. Delp said that same concept would be applied in the Complaint Unit, and not just probation. Management's vision is that those statistics will be provided, looking at all the programs.

Dr. Yip stated that more help is needed, but, the fortunate thing is that Board staff is committed and even with a caseload of 35-40 they really do a good job.

Agenda Item 9 Future Agenda

Ms. Yaroslavsky said that she would like to hear information about outreach opportunities for the medical expert reviewer program once the training is complete.

Dr. Yip said the Board was doing outreach before the training too.

Agenda Item 10 Adjournment

There being no further business, the meeting was adjourned at 2:17 p.m.

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