

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

The Westin San Diego
400 W. Broadway
San Diego, CA 92101

Thursday, October 29, 2015
3:00 pm – 4:00 pm

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 3:40 p.m.

Members Present:

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

Members Absent:

None

Other Board Members Present:

Michael Bishop, M.D.
Dev GnanaDev, M.D.
Randy Hawkins, M.D.
Ronald Lewis, M.D.
Gerrie Schipske, J.D., R.N.P.

Staff Present:

Liz Amaral, Deputy Director
Christina Delp, Chief of Enforcement
Dianne Dobbs, Legal Counsel, Department of Consumer Affairs
Cassandra Hockenson, Public Information Officer II
Kimberly Kirchmeyer, Executive Director
Regina Rao, Associate Government Program Analyst
Letitia Robinson, Research Specialist II
Elizabeth Rojas, Business Services Office
Paulette Romero, Staff Services Manager II
Lisa Toof, Administrative Assistant II
Kerrie Webb, Staff Counsel

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Curt Worden, Chief of Licensing

Members of the Audience:

Gloria Castro, Department of Justice, Deputy Attorney General

Yvonne Choong, California Medical Association

Genevieve Clavreul

Zennie Coughlin, Kaiser Permanente

Julie D'Angelo Fellmeth, Center for Public Interest Law

Hamid Delavar, Midwestern University

Veverly Edwards, Consumers Union Safe Patient Project

Bridget Gramme, Center for Public Interest Law

Abraham Harn, Midwestern University

Marian Hollingsworth, Consumers Union Safe Patient Project

Anthony Jackson, M.D., NAACP, Black American Political Association of California

Karen Miotto, M.D., University of California, Los Angeles

Michelle Monserrat-Ramos, Consumers Union Safe Patient Project

Kerry Parker, California Society of Addiction Medicine

Dwayne Rogers, Physician Assistant Group

Arnold Savage, M.D., Black American Political Association of California

Danielle Sullivan, Center for Public Interest Law

Tracy Zemansky, Physician Assistance Group

Agenda Item 2 Public Comments on Items not on the Agenda

Dr. Gill stated he would like to see the Board look further into how hospital executives and administrators are trying to push the non-medical agendas to drive medical policies and practices by creating ill relationships between the professional ambitions and the absence of modern ambitions and linking the economic comparatives to the professional sense of trust.

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

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

Agenda Item 4 Presentation and Discussion on Utilization Review and Possible Action on Recommendations

Ms. Webb gave a brief overview of Utilization Review (UR) in the context of workers compensation and managed care. This overview included discussion on the Board's historical position on UR; the complaint and investigation process relating to UR; the statutes and regulations impeding investigations relating to UR complaints; and suggestions for changes to the law and outreach.

Dr. Krauss agreed with Ms. Webb's suggestions for legislation on this issue. He also asked if statistics were available on how many complaints the Board has received regarding UR in past years, what the findings were, and how many of those complaints could not be adequately investigated because the UR reviewers were not licensed in California.

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Ms. Webb stated that she does not have the exact number, but the number is very small. Ms. Webb also stated, that there are a number of complaint cases that cannot move forward since staff do not know who the reviewing physician is or whether the physician is within California.

Ms. Yaroslavsky suggested finding a way to do better outreach to those entities that need to know about this issue. She recommended putting the PowerPoint information into a newsletter article.

Ms. Clavreul stated she is appalled by the Workers Compensation system. She stated that most of the Workers Compensation doctors are incompetent in regard to long term treatment and that their denial rate is high.

Ms. Choong stated the California Medical Association (CMA) appreciates the Board's attention to what they feel is an under-enforced area in the practice of medicine. She agreed that more transparency is needed with regard to physicians who are actually conducting the reviews and that the Medical Directors should be made aware that the Board can take action against them.

Dr. Gill noted that unless the UR people are asked to get a California license, he does not see much happening in this area.

Dr. Krauss made a motion to recommend to the full Board, that the Board support legislative changes to require utilization review and independent medical review physicians be licensed in California, have similar Board Certification and/or training as the treating physician and identify himself/herself in the report; s/Ms. Yaroslavsky. Motion carried unanimously.

Ms. Webb stated this is not legislation the Board would sponsor, however, there are efforts periodically to do this, and with that, the Board would take a support position on those bills.

Agenda Item 5 Update on Demographic Study

Ms. Robinson reminded the Committee that she had provided information on ethnic background data for complaints, investigations, and discipline at the October 2014 meeting. At that meeting, Members requested that staff analyze the data and provide a more detailed, in-depth review. Ms. Robinson stated that in January 2015, staff met with the California Research Bureau (CRB), to discuss a study on disciplinary action demographics. At the January meeting the Board approved a motion to enter into a Memorandum of Understanding (MOU) with the CRB. She noted that in July, staff met with the CRB to solicit input on the MOU, which was executed on July 29, 2015. In early August, staff again met with the CRB to discuss the data needed to conduct the study. Board staff provided CRB with the data needed, which included disciplinary action records from fiscal year 2003/2004 through 2012/2013.

Ms. Robinson noted that she followed up with the CRB on October 1, 2015, to get a status of the study. CRB stated they were doing a thorough review of the data provided and that once the review was completed, they would develop a research plan, outline a work schedule, and then begin conducting interviews with outside stakeholders. CRB recently requested additional data and the Board's Information Technology staff is working on providing this data to them. Ms. Robinson stated

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she will continue to monitor CRB's progress on this study and will provide additional updates at future committee meetings.

Ms. Yaroslavsky requested another update at the next Enforcement Committee meeting.

Agenda Item 6 Enforcement Program Update

Ms. Delp stated that the Enforcement Program continues to fill vacant positions within the various units of the program. In the July 2015 Enforcement Summary, it was reported that the Central Complaint Unit had five vacancies. She noted that four of those vacancies had been filled and those employees have begun working. In regard to the fifth vacancy, the top candidate is progressing through the hiring process and should begin working shortly. Ms. Delp stated the Central Investigation Office (CIO) filled its remaining Special Investigator, non-sworn position, and that person is scheduled to report to work on November 2, 2015. She stated that in the Probation Unit, the Northern California Inspector I position was filled and the employee reported to work in September. Ms. Delp then noted that interviews had been completed to fill one Inspector I position in the LA Metro area and one Associate Governmental Program Analyst in northern California. She noted that the Discipline Coordination Unit (DCU) is fully staffed.

Ms. Delp stated that currently, the Central Complaint Unit (CCU) is taking 15 days to initiate a complaint, however, staff is working together to reduce the time frame to 10 days in ensure compliance with Business and Profession Code section 129. In addition, analysts are continuing their efforts to reduce the number of days to process a complaint, which is a difficult goal to achieve, however, with the recently hired staff, significant strides are being made to achieve the goal. Management is confident this goal will be met, once training of new staff is completed.

Ms. Delp stated that effective August 31, 2015, the Board received authority to, once again, issue citations containing orders of abatement and fines to physicians for violating the statutes mentioned in California Code of Regulations section 1364.11.

Ms. Delp noted that the Special Investigators in CIO are each carrying a case load of approximately 35-40 cases, however, this will decrease with the addition of the new staff person that will begin working in November. Since the last summary report in July 2015, the unit has closed 58 cases and transmitted six cases to the Attorney General's (AG) Office. Three of those cases were for convictions, two were for petitions for reinstatement and one was a medical malpractice case. She stated staff in the DCU continue to focus their efforts on restoring public disciplinary documents to the Board's website to ensure compliance with Assembly Bill (AB) 1886. She noted that staff has been offered overtime to finish this project and management has developed a daily schedule for all staff to work on this project in hopes of completing it by December 31, 2015. Board staff will also be looking to hire temporary help to finalize the project.

In the Probation Unit, inspectors in each office have begun to see Orders that contain the new disciplinary guideline language contained in the recently implemented Uniform Standards for Substance Abusing Licensees, which took effect July 1, 2015. Ms. Delp stated that the inspector, supervisors and managers will meet on November 4, 2015 to discuss and develop a comprehensive training plan for the Inspectors focusing on subjects that will enhance their skills in monitoring

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probationers. She stated that she has been reviewing the Probation Operations Manual, conducting case reviews, and reviewing current policies and procedures to see where improvements can be made in the Enforcement Program.

Ms. Delp then noted that an issue had been raised by the AG's Office regarding the use of the same investigator who works a complaint both criminally and administratively. The AG's Office has asked the Division of Investigation (DOI) to develop a parallel policy for these types of investigations. During the month of November, the Board will reach out to the Health Quality Investigation Unit (HQIU) and the AG's Office to address this concern with the goal of reaching an agreement that works best for all agencies. In addition, a process will need to be established with HQIU where the Board is able to monitor the complaints deemed to be criminal investigations, as this oversight will ensure these complaints are being processed timely. These discussions have already begun with the HQIU's new Deputy Chief.

Ms. Delp stated in regard to the Vertical Enforcement (VE) Legislative report, on October 7, 2015, she and staff met with Deputy Director Gomez, Senior Assistant Attorney General Castro, Supervising Deputy Attorney General Terry Jones, and retired Department of Consumer Affairs (DCA) Attorney Anita Scuri to discuss the highlights and challenges of the VE process. Ms. Delp announced that Ms. Scuri will be assisting Board staff in writing the mandated report that is due to the legislature in March 2016. This report will communicate the effectiveness of the process and areas where improvement is needed to enhance the usefulness of VE in investigating Board complaints. The intent is to have two Board Members work with staff once the report is drafted to provide feedback regarding the content. A draft report is expected to be completed the first part of January 2016. The goal is to provide the draft report to the Board at the January 2016 meeting; however, this is dependent on the ability to run the necessary reports to be able to complete the draft. If needed, a special meeting may be held in February for the Board to review the report.

Ms. Delp then noted a "cloud" had been developed to share case information electronically via a secured system and the system will be utilized by staff within the Enforcement's DCU, CIO and the Probation Units, as well as HQIU and the AG's Office. This system will permit the timely receipt of case information and will reduce operating costs for all three agencies. A meeting is scheduled for November 3, 2015, with the AG's Office and HQIU to discuss the implementation of this process.

Agenda Item 7 Update Regarding Meeting with the Office of Administrative Hearings

Ms. Kirchmeyer spoke about the October 16, 2015 meeting she and Ms. Delp had with Director and Chief Administrative Law Judge (ALJ) Zachary Morazzini, Deputy Director Melissa Crowell, and Presiding ALJ Alan Alvord from the Office of Administrative Hearings (OAH). She stated that the topics of discussion were the Board's new regulations pertaining to the Uniform Standards for Substance Abusing Licensees, how the language and each condition cannot be deviated from with regard to Administrative orders it makes pursuant to the regulations, the length of time to set hearings, and lastly the establishment of training for the ALJs.

Ms. Delp stated that beginning next month, she will be working with Judge Alvord to schedule training with the ALJs. Trainings will be held on the last Friday of the month or during a lunch time period. Training topics will be, but are not limited to, impairment and how it impacts the practice of

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medicine, medical record keeping standards and expectations, emergency room procedures, prescribing practices and expectations, systems of the body, treating comorbid patients, medical terminology and medical errors, fitness for duty evaluations for physicians alleged to have a mental illness or physical disability, and substance abuse laws.

Ms. Kirchmeyer added that there have been problems finding individuals that can provide the training to OAH and that members of the Board may be asked for assistance with identifying speakers in the future.

Dr. Yip asked if the OAH training will be held at different sites in California.

Ms. Kirchmeyer commented that OAH has video conference capabilities to provide training throughout the state.

Agenda Item 8 Update Regarding Expert Reviewer Training

Ms. Delp stated that staff is reviewing and updating the expert reviewer guidelines in preparation of the upcoming expert reviewer training class, which is scheduled for March 2016 in Southern California. Ms. Delp said that she has contacted previous presenters to determine their interest in being a presenter again and she is in the process of securing a location and continuing education credits for taking the class. In addition to setting up the training, a recruitment plan to expand the number of experts with specific specialty fields of medicine has been developed. The recruitment plan will include inserting an article in the Board's Newsletter that stresses the purpose and importance of utilizing experts; a revision of the Board's recruitment letter to encourage participation in the program; and creating a brochure to accompany the recruitment letter that will highlight the benefits, expectations and compensation for services regarding the program. Also, testimonial videos from existing experts are being considered to enhance the Board's expert reviewer webpage, so prospective expert reviewers can hear firsthand from those currently participating in the program. Staff will also be reaching out to physician groups and organizations to do a presentation on the expert reviewer program. The specific fields of medicine where the recruitment efforts will be focused are provided in the Utilization Quarterly Expert Reviewer Report, which was included in the Board packet. Lastly, Ms. Delp stated the expert reviewer database called MEDEX is expected to get a new overhaul. Program staff will be recording elements needed to enhance the antiquated database and will be working with staff from the Information Systems Branch (ISB) to make the system user friendly for staff, investigators, and medical consultants to search for qualified experts to assist with complaint investigations.

Agenda Item 9 Update Regarding Psychotropic Medications being Prescribed to Children in Foster Care

Ms. Delp said the Board will be meeting with another pediatric psychiatrist to determine if the psychiatrist is interested in reviewing the data the Board received from the Department of Health Care Services (DHCS) and Department of Social Services (DSS). Ms. Delp also stated that it has been challenging to find an expert who is able to opine on the data that has been provided, mainly because the data seems to lack the substance needed to determine if there is

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inappropriate prescribing of psychotropic medications to children in foster care. The Board will meet with the potential consultant on November 9, 2015. This physician currently works for the UC Davis Health Care System and specializes in child and adolescent psychiatry, forensic psychiatry, and psychiatry. On October 12, 2015, Ms. Kirchmeyer, Ms. Simoes, and Ms. Delp met with executives from the DHCS and DSS to give them an update regarding the Board's analysis of the data they provided per the data use agreement. The Board's staff explained that the data may not be sufficient to make a decision as to appropriate prescribing and that the Board is still seeking a physician to review the data. In addition, it was explained that the Board may need to obtain additional information and it might be identified as necessary by the medical consultant in order to make a finding. Also at the meeting, the agencies and the Board developed a notification process whereby individuals in the healthcare delivery system for foster care children can directly contact Ms. Delp or Ms. Romero if they believe a physician is inappropriately prescribing medication to children in foster care. In turn, Ms. Romero or Ms. Delp will contact the DSS to obtain all de-identified patient information for the foster child for that prescriber. The de-identified patient information will be sent to a Board medical consultant who will determine which patients the Board will need to obtain patient records for, if any. Board staff will then work with DSS to obtain the patient records through a court order, so the Board can proceed with an investigation.

Agenda Item 10 Future Agenda Items

No items provided.

Agenda Item 11 Adjournment

There being no further business, the meeting was adjourned at 4:30 p.m.

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