MEDICAL BOARD STAFF REPORT

DATE REPORT ISSUED:	October 6, 2014
ATTENTION:	Members, Enforcement Committee
SUBJECT:	Pain Management Expert Reviewer Policy
STAFF CONTACT:	Kimberly Kirchmeyer, Executive Director and Jane Zack Simon, Supervising Deputy Attorney General (SDAG)

REQUESTED ACTION:

After review and consideration of the information, make a motion to change the Medical Board of California's (Board) pain management expert reviewer policy to use one expert reviewer board certified in pain management rather than two expert reviewers.

BACKGROUND:

In 2002, the Board established a policy on the review of cases involving pain management issues. That policy stated for these types of cases the Board would require at least two experts reviewers, one board certified in pain management, and one physician board certified in the same specialty as the physician under investigation. Since the requirement for physicians to obtain continuing medical education has been in effect since January 1, 2002, the Board and the Attorney General's Office do not believe this policy should still be required. The background and further information on this policy is found in the attached document by SDAG Jane Zack Simon (Attachment A).

Attachment A

KAMALA D. HARRIS
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DEPARTMENT OF JUSTICE

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October 6, 2014

Kimberly Kirchmeyer
Executive Director
Medical Board of California
2005 Evergreen Street, Suite 1200
Sacramento, CA 95815

Re: Expert Witnesses for Pain Prescribing Cases

Dear Ms. Kirchmeyer:

As you know, the Medical Board currently has an investigative policy unique to cases involving prescribing for treatment of pain. We would like to initiate a discussion regarding the advisability of continuing with that policy.

For more than two decades, the medical profession has grappled with the issue of prescribing for the treatment of pain. This area of medicine has undergone a number of changes, and continues to evolve. As understanding of the role of narcotics in the treatment of pain continues to develop, the Medical Board of California has sought to provide guidance to physicians involved in the treatment of pain.

The Medical Board established its first Guidelines for pain prescribing in 1994. Over the years, the Board has revised and adapted its Guidelines to reflect current medical thinking in this area of medicine. A constant byproduct of the emergence of prescribing to treat pain has been the struggle to balance the acknowledged and laudable interest in adequately treating pain with the danger of inappropriate and unsafe prescription of dangerous and potent drugs. On the one hand, physicians are encouraged to adequately treat pain, and on the other hand, they must be mindful not to over-treat, over-prescribe or prescribe to patients who are not bona fide pain patients. The Medical Board's consistent message has been that physicians should treat and prescribe for pain, but must do so in accordance with the accepted standard of practice.

In the early 2000s, prescribing to treat pain became a hot-button issue. The Medical Board was involved in protracted discussions and deliberations about how to deal with the conundrum posed by this area of medicine. In 2002, the Legislature statutorily required all physicians to complete educational courses in the area of pain management and the treatment of terminally ill and dying patients. The Board's Prescribing Guidelines were updated in 2003. This issue was not

unique to California; in 2004, the Federation of State Medical Boards adopted its first Model Policy On the Use of Controlled Substances in the Treatment of Pain, Guidelines which were essentially the same as those adopted by the Medical Board of California.

The message to physicians was that they should adequately prescribe to treat pain, while at the same time making sure that the prescribing was medically appropriate and safe to patients. Not surprisingly, given the evolving and sometimes controversial nature of this area of medicine, many physicians feared that they would be subject to discipline for good faith efforts to effectively treat pain.

It was in this context that the Medical Board established its Policy entitled " Investigation Prescribing of Controlled Substances for Pain" ("Policy"). The Policy, which continues to exist today, established a procedure under which investigations involving pain management require review by at least two expert witnesses. One of the experts must be a pain management specialist, while the other must be in the same specialty as the physician under investigation. The thinking was that during the transition period, when all physicians were learning about pain management, those who were not pain management specialists should not be judged exclusively by specialists.

We believe that it would be appropriate for the Board to reassess and revise the Policy. The Policy requiring the use of two experts in different specialty areas has created a number of problems in investigations and trial of pain management cases. First, the additional time and expense incurred in obtaining two expert reviews results in significant investigative delay. Moreover, this is the only type of case in which the investigation uses experts from two different disciplines. In most cases, it is difficult or impossible to reconcile the two reports and perspectives, and to determine precisely whether the prescribing in question is appropriate and within acceptable standards.

At this point, the two-expert Policy has been in effect for more than 10 years. We believe that the Policy has satisfied its purpose, and has outlived its usefulness. All physicians have completed their required education in the area of pain management. Pain management has become a well-established medical specialty, training is widely available to physicians, and the Medical Board's Guidelines have been widely disseminated. There is no longer a need to treat the investigation of pain cases differently from other cases. For example, an investigation of an obstetrician/gynecologist who performs cosmetic surgery is reviewed by an expert in cosmetic surgery; a dermatologist who provides psychiatric treatment to a patient is reviewed by an expert in psychiatry. Physicians who elect to prescribe to pain patients should be held to the standard of practice governing pain medicine.

For these reasons, this Office recommends that the Policy be revised to eliminate the two expert requirement and, like all other cases, require only that pain management cases be reviewed by experts in that specialty.

Sincerely,

JANE ZACK SIMON
Supervising Deputy Attorney General

For KAMALA D. HARRIS
Attorney General

JZS:

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