



MEDICAL BOARD OF CALIFORNIA
Executive Office



Advisory Committee on Physician Responsibility in the Supervision of Affiliated Health Care Professionals

Embassy Suites, San Francisco Airport
150 Anza Boulevard
Burlingame, CA

January 28, 2010

MINUTES

Members of the Committee:

Mary Lynn Moran, M.D.
Janet Salomonson, M.D.
Gerrie Schipske, R.N.P., J.D.(absent)

Staff of Committee:

Janie Cordray

Audience:

Barb Johnston, Executive Director
Linda Whitney, Chief of Licensing
Renee Threadgill, Chief of Enforcement
Kevin Schunke, Manager, Licensing
Jack Bruner, M.D., California Society of Plastic Surgeons
Yvonne Choong, California Medical Association
Beth Grivett, P.A. California Academy of Physician Assistants
Tim Madden, Randlett and Associates

Those in attendance by telephone:

Harrison Robbins, M.D., California Academy of Cosmetic Surgeons
Robert Shumway, M.D. California Academy of Cosmetic Surgeons
John Valencia, Wilke, Fleury, Hoffelt, Gould & Birney, LLP

Agenda Items 1 & 2: Call to order & Introductions of Advisory Committee Members and Guests – Dr. Moran

Dr. Moran called the meeting to order at approximately 3:00 p.m. Dr. Janet Salomonson was present, but Ms. Schipske was unable to attend due to an emergency.

Dr. Moran introduced Dr. Jack Bruner, representing the California Society of Plastic Surgeons, and Beth Grivet, Physician Assistant, representing the California Academy of Physician Assistants.

Dr. Moran then asked for those in attendance by telephone to identify themselves. Those who responded were: Mr. John Valencia, of Wilke, Fleury, Hoffelt, Gold & Birney, Drs. Robert Shumway and Harrison Robins, representing the California Academy of Cosmetic Surgeons.

Agenda Item 3: Overview of the Mission and Goals of the Advisory Committee – Dr. Moran and Ms. Whitney

Dr. Moran explained that the advisory committee was established to examine physician supervision and availability for affiliated healing arts staff pursuant to a request made by Senator Negrete McLeod. The Committee will first study the current environment, including current, real world practice, as well as current laws and regulations, and look for solutions for any deficiencies in patient protection.

In developing the mission of this advisory committee, Dr. Moran asked that the committee members provide ideas and suggestions. She asked that they send any questions, suggestions or materials to Janie Cordray, who will be staffing the committee meetings, by February 15. She explained that due to limited time, there would be little substantial discussion on any subject at the meeting. The Committee would formally articulate and adopt its mission and goals at the next meeting.

Agenda Item 4: Nominees for Membership – Dr. Moran

Ms. Whitney handed out a revised listing of the nominees to participate on the advisory committee with the board members. Dr. Moran explained that they had tried to be inclusive and include those physicians and organizations who have shown an interest in past Board activities in this subject.

Dr. Moran asked for nominees not on the listing provided. Dr. Shumway asked if Dr. Harrison Robins could be included in the committee membership, who would represent the California Academy of Cosmetic Surgeons. Dr. Moran agreed.

Dr. Moran asked for a motion to accept the following list to recommend those individuals to the full board for appointment to the advisory committee. Once appointed by the full board, staff will coordinate with each of the nominees regarding travel reimbursements and the state requirements. There was a motion made and it passed.

Dr. Moran announced that the following would be proposed to the Board to serve on the Advisory Committee:

Jack Bruner, representing California Society of Plastic Surgeons
Beth Grivett, P.A. California Academy of Physician Assistants
Suzanne Kilmer, M.D., American Society for Dermatologic Surgery
Victor Narukar, M.D. California Society of Dermatology &
Dermatologic Surgery
James Newman, M.D., California Society of Facial Plastic Surgery
Paul Phinney, M.D., California Medical Association
Harrison Robbins, M.D., California Academy of Cosmetic Surgeons

Agenda Item 5: Legislative History: Ms. Cordray

Ms. Cordray explained that most of the people in attendance or on the phone had been working with the Board on issues of cosmetic medical practices since the mid 1990s when the Board entered the arena of regulating outpatient surgery. Since then, the Board has been working on many issues, the most recent, issues surrounding laser and IPL use.

In 2007, in order to comply with SB 1423 (Figueroa), the Board held three public forums with the Board of Registered Nursing on the safety of lasers and IPLs in cosmetic settings. What was learned at the forums would likely serve as the foundation for the work of the advisory committee.

Ms. Cordray directed the members' attention to the written materials that summarized the previous work of the Board. Due to time limits, she did not provide a thorough history of the Board's work. In summary, however, the Board concluded at the end of the public forums that the problems, including those of supervision, were not a result of a lack of laws and regulations, but a lack of enforcement.

In 2008 and 2009, a number of bills were introduced relating to cosmetic surgery and medical spas. Most were not successful.

- AB 2398 (Nakanishi; 2008): The bill was sponsored by the American Society for Dermatological Surgery, and sought to improve patient safety by making it tougher for corporate entities to practice medicine illegally in California. (This practice is illegal under current law, but it is often difficult to prove that physicians “knowingly” broke the law.) It would have authorized the revocation of the license of a physician who practices medicine with a business organization that offers to provide, or provides, outpatient elective cosmetic procedures, knowing that it is owned or operated in violation of the prohibition against the corporate practice of medicine. This bill failed to reach the floor.
- AB 252 (Carter; 2009): Initially, the bill was essentially a reintroduction of the 2008 Nakanishi bill (AB 2398). Again, this bill was sponsored by the American Society for Dermatological Surgery, and addressed violations of the corporate practice of medicine in the cosmetic medicine industry. It specified that non-physician entities owning cosmetic medicine practices providing medical treatments (laser hair removal, laser resurfacing, Botox and filler injections) were in violation of the corporate practice prohibition of B&P Code Section 2400. The bill would have made a violation of the corporate practice bar a felony for the artificial (non-medically owned) entities, and grounds for license revocation for physicians who knowingly worked or contracted with these entities. While the bill was successful in the Legislature, it was vetoed by the Governor.
- SB 674 (Negrete McLeod; 2009): Covered a variety of subjects, including advertising, outpatient setting accreditation, the wearing of name tags, and public information. The most relevant to the Committee’s discussions was the portion of the bill that addressed the supervision of laser and IPL device procedures. Specifically, it would have required the Board to adopt regulations regarding the appropriate level of physician availability for facilities using lasers or IPLs. While the bill was identified as an “author sponsored” bill, it was supported by the American Society of Dermatologic Surgery, the California Society of Dermatology and Dermatologic Surgery, the California Medical Association, and the California Society of Plastic Surgeons. Again, this bill was successful in the Legislature, but was vetoed by the Governor.

Ms. Cordray explained that while SB 674 (Negrete McLeod) was vetoed, under its current authority, the Board may examine the issues surrounding physician supervision and physicians' availability to those supervised. The Medical Board has regulatory authority over physicians, while the Nursing Board has regulatory authority over nurses. For that reason, the Committee will need to focus on physician responsibility.

Following the vetoing of SB 674, its author, Senator Negrete McLeod wrote to the Board. She asked that the Board consider conducting a review of the issues surrounding physician supervision and availability. She noted that no legislation was needed for the Board to conduct such a review. The establishment of the Advisory Committee is partially a response to the Senator's request.

Ms. Cordray explained that the Board may not legislate, but it has considerable authority to promulgate regulations. It further has the authority to enforce the law through actions against its licensees.

Agenda Item 6: Discussion of the work to be accomplished, as well as expectations and time lines of outcomes or products of the Committee's work – Dr. Moran

Dr. Moran said that the Committee will focus on the issue of physician availability per the Senator's request, but will work hard to not lose sight of the broader issues related to physician availability in other settings and the issue of supervision that may not have been addressed by current law, regulations, or enforcement.

Dr. Moran continued to explain that the expectations of the Committee would be to focus on patient protection through physician responsibility. While the Medical Board has jurisdiction over its physicians, the Nursing Board is the entity that has authority over nursing. For that reason, the Committee will focus on physician responsibility, and the law's expectations that relate to the responsibilities of doctors to provide quality care.

She said that it was the hope that the Committee would gather sufficient information to enable a consensus in order to make recommendations to the full Board. The recommendations may be to promulgate regulations, establish greater enforcement of the laws and regulations, or seek legislation to create safeguards by closing existing loopholes, or a combination of all three.

Dr. Moran explained that the Committee will take the time needed to do the work, but practically speaking, if legislation is sought, the committee must conclude its work in this calendar year so that it may be introduced in 2011. Similarly, if regulations are to be promulgated, the Committee's work should be concluded by the end of the year so that the rulemaking process could begin in 2011.

Agenda Item 7: 2010 meeting dates – Dr. Moran

Dr. Moran explained that the next meeting dates should be chosen, and a calendar was in the members' informational packet.

Dr. Moran explained that if meeting as a committee for only an hour, meetings may be scheduled to coincide with regularly scheduled board meetings. If it is determined that more time is needed for discussion and input from the public, such as a meeting of 3-4 hours, then the meeting should be

scheduled for another time. They could also consider meeting on a Wednesday afternoon prior to a regularly scheduled board meeting.

The next board meetings are:

- 4/29-30 in Los Angeles
- 7/29-30 in Sacramento (but that meeting is held in a consumer protection seminar week, thus Tuesday and Wednesday afternoon are already booked.)
- November 3-4 in Long Beach (which is a Wednesday/Thursday. If furloughs are discontinued the Committee could meet on Friday or Tuesday.)

Dr. Moran asked every member in attendance and on the telephone to check their calendars, and directed staff to e-mail everyone in the next week to determine the next meeting date.

Agenda Item 8: Public Comment on items not on the agenda

There were no comments from the public.

Agenda Item 9: Adjournment

Dr. Moran adjourned the meeting at approximately 3:30 p.m.