MEDICAL BOARD OF CALIFORNIA
Executive Office

ENFORCEMENT COMMITTEE
Sheraton Gateway Los Angeles
Los Angeles, CA
April 29, 2010

MINUTES

Agenda Item 1: Call to Order
The Enforcement Committee of the Medical Board of California was called to order by the Chair, Reginald Low, M.D. A quorum was present and due notice having been mailed to all interested parties, the meeting was called to order at 10:00 a.m.

Members Present:
Reginald Low, M.D.
John Chin, M.D.
Sharon Levine, M.D.
Gerrie Schipske, R.N.P., J.D.

Members Absent:
None

Staff and Guest s Present:
Hilma Balaian, Kaiser Permanente
Susan Cady, Staff Service Manager II
Yvonne Choong, California Medical Association
Zennie Coughlin, Kaiser Permanente
Julie D'Angelo Fellmeth, Center for Public Interest Law
Karen Ehrlich, Midwifery Advisory Council
Stan Furmanski, M.D.
Kurt Heppler, Department of Consumer Affairs Staff Counsel
Ross Locke, MBC, Business Services
Kelly Maldanado, Legislative Analyst
Janet Salmonson, M.D., Board Member
Debbie Pellegrini, Chief of Licensing
Laura Sweet, Deputy Chief of Enforcement
Renee Threadgill, Chief of Enforcement

Agenda Item 2: Public Comments on Items not on the Agenda
Dr. Stan Furmanski stated that physicians sometimes are asked to go through the PACE program in San Diego. The Board has no budget for the PACE program; it does not cost the board money to send someone to PACE; the board can start or stop its participation with the PACE program at any time; it would not cost anything to stop sending physicians to PACE. Dr. Furmanski said the reason

why he is here is because when a doctor is sent to PACE, they have to pay a lot of money, sometimes twice. The Board says to pay PACE whatever they want. Dr. Furmanski said it costs $350.00 to fill out a one-page application. A physician is then asked to pay $6550.00, and what you get is four booklets, supposedly in the physician's specialty and one "CCS," which is not printed. Dr. Furmanski said it sounds pricey and expensive to him. He said there is a whistleblower who has come forward with information about the PACE program and has furnished the committee with a list of internal documents from PACE showing the actual costs for the booklets. Dr. Furmanski said he is going to turn over these materials. It shows that PACE pays $50.00, not $6000.00, for each booklet. It pays between $50.00 and $125.00 for booklets which end up costing the doctors thousands of dollars. If the doctors balk at paying the $6000.00 for Phase 1, they are told their license may be impaired if they don't "so-called complete the PACE program." Dr. Furmanski said if you manage to make it through Phase 1, there's Phase 2, which costs another $4000-$7000.00. In his specialty, it's another $7000.00; which is in addition to the $6000.00. Dr. Furmanski said the reason he is here is to present the whistleblower material. This is detailed material which has been withheld from the Board. It shows the costs are minimal. The books are ordered via mail. PACE does not create the questions or the booklets itself. They resort to using cheap, out-of-state, pre-printed booklets. This is proven with the invoices. The documents he has are the confidential contracts between PACE and the source of the booklets. Dr. Furmanski said there are hundreds of unhappy doctors. Dr. Furmanski requested that the committee place this on the July agenda to consider the wisdom of administratively not sending any more doctors to PACE until the legal aspects are shaken out. Dr. Furmanski reported that a class action claim has been filed with the claims board for more than one hundred doctors. The reason is that each doctor who goes through PACE may be able to file a claim that they did not received their $6500.00 worth. The board could buy the books for $50.00-$100.00. There is also a list of other allegations, including that PACE fails to complete training before they test , which is in violation of Business &Professions Code Section 2228.

Dr. Low expressed appreciation for Dr. Furmanski's comments and stated this would be added to the agenda for the next meeting.

There were no additional public comments.

Agenda Item 3: Overview and Discussion of the Function and Purpose of the Enforcement Committee

Dr. Low introduced the members of the committee: Dr. Chin, Dr. Levine, and Ms. Schipske. He also introduced staff members: Susan Cady, Laura Sweet and Renee Threadgill.

Dr. Low said the committee was formed at the request of the Chief of Enforcement, Renee Threadgill. The function of the committee is to be a resource to the enforcement program and to enhance the program, as we are always trying to make it better. In terms of being a resource, the committee can be an advisory body to the enforcement program. The committee can assist enforcement with the direction and focus of the program, and finally, the committee can be a valuable resource to the other board members and the public as to how the enforcement program works. Dr. Low commented that it is interesting how few physicians and lay people understand the whole process of the enforcement program.

Dr. Low asked other committee members for comment and input as to what the committee should be doing.

Dr. Chin agrees with the need to support Chief Threadgill and the enforcement program and is happy to be part of the committee. Dr. Levine said she agrees that for most of the profession and public, the work of enforcement, as a part of the Medical Board's mission, is really a black box. Anything that can be done to enhance understanding of the critical role the Medical Board plays in this, and how it relates to consumer protection, would be helpful.

There was no public comment.

Dr. Low requested prepare a written summary of the committee's vision and purpose for the July Medical Board meeting.

Agenda Item 4: Evolution of Expert Reviewer Training Program and Discussion of Future Enhancements

Laura Sweet, Deputy Chief of Enforcement gave a presentation about the expert reviewer program. Ms. Sweet described the program as being a critical component to the enforcement program since almost all cases relies on an expert opinion. Ms. Sweet outlined the changes the expert program has undergone the past 17 years. Changes include numerous revisions of the guidelines; varying the training presentations; reducing the minimum number of years of practice to become an expert and increasing the pay. From the enforcement program's perspective, Ms. Sweet stated the biggest enhancement has been the database staff utilizes to go on line to search for an expert.

Ms. Sweet explained that investigators are expected to gather all of the necessary information upon which an expert will rely to render an opinion. This is fact driven and case specific and can include unique forms of evidence. The expert is then asked to digest what can often be voluminous amounts of information and reduce it to a succinctly written opinion as to whether or not the standard of care has been breached.

Ms. Sweet said that common problems with opinions include the expert straying from the instructions they are provided; failing to listen to the audio recordings of interviews; and undertaking too cursory a review of the records. All of these can result in disastrous consequences if the case goes to a hearing. Experts understandably often struggle with the definition of a simple departure from the standard of care versus an extreme departure. Experts often prepare beautiful opinions, but at the time of having to testify, being inexperienced in this arena, are deemed less credible than the respondent's expert.

Ms. Sweet described attempted remedies to these problems: revision of the guidelines; requiring investigators to meet with new experts to deliver the guidelines and discuss expectations; and using district medical consultants to help remediate problem opinions.

Ms. Sweet stated that the face-to-face training is the most desirable way to convey expectations to experts and explain the process; however lack of staff resources has precluded this from being done consistently. Ms. Sweet said that staff has contemplated the feasibility of providing an expert with a

"trial" case, so their skill can be assessed prior to engaging him or her for a "real" case, but the board is not financially able to compensate for this. This would also burden already overextended staff. Ms. Sweet also suggested that ideally, there needs to be an additional training mechanism in place for experts who are going to testify. Few cases actually go to hearing, so it's not realistic to train all experts for the court room; however it is critical if an expert is going to have to testify.

Ms. Sweet asked for the committee's input in seeking a solution in getting experts trained to provide a quality produce in a timely manner so we are able to fulfill our mission of protecting the medical consumers of the State of California.

Dr. Low said it's clear that each component of the enforcement program is very important: the investigators, the Attorney General's office, as well as the experts. There can be no weak links. Dr. Low said there is a tremendous variability in each of the components, and it is his goal to reduce the variability amongst each. It is his thought that perhaps the face-to-face orientation of experts can be re-established. This would create a higher bar by requiring they attend programs that could be provided up and down the state. The training could take place at medical schools or hospitals, where there would be minimal charges and potentially some kind of interactive system for audience response. Core information that experts should know can be presented. Dr. Low said he believes this training could be imparted in less than a day. It should be required training, so we can develop consistency up and down the state as well as among disciplines. The expert reviewer program has a lot of opportunity for improvement. Dr. Low asked for the discussion to be summarized, as well as the public comments, and that we go forward and put this on the agenda for the next meeting.

There were no public comments.

Agenda Item 5: Update on Administrative Law Judge Decisions
Renee Threadgill, Chief of Enforcement, stated that Dr. Salmonson asked that this topic be reviewed. Ms. Threadgill said she is providing information to the enforcement committee regarding the board retaining authority to adopt or non-adopt the proposed disciplinary decisions rendered by an Administrative Law Judge (ALJ). There was concern at one time that legislation would eliminate the Board's role in overseeing the disciplinary decision process. While this issue has been discussed by Senate staff, this proposal has not been placed in legislation. This subject, in conjunction with restructure and the reduction of the number of board members, was discussed at several previous meetings of the board, including the full board, the Division of Medical Quality and Enforcement Committee Meetings. After deliberations on 2-1-07, members of the Board voted to support the retention of authority to adopt or non-adopt ALJ decisions. Restructure (combining the two divisions) and reduction of the number of board members was accomplished. In addition, the executive director was delegated the authority to adopt stipulated settlements for license surrenders and default decisions. Ms. Threadgill explained that all proposed decisions and stipulations still require adoption by the Board. There is currently no legislation pending to eliminate the Board's role in the disciplinary decision process, therefore no action is needed by the Board at this time.

There was no public comment.

Agenda Item 6: Discussion of Plan for Training of Board Members on Enforcement Programs and Processes

Susan Cady, Staff Services Manager II, stated staff had discussed the opportunity to provide Board Members with training that focused on the enforcement program and the variety of work performed by staff within the program. Ms. Cady said she prepared a list of training modules or topics that could be presented and referred members to their Agenda Item number 6. Ms. Cady said this list was not designed to be all-inclusive, but instead was developed to provide a starting point for the committee members and give them some idea of the range of topics that could be presented. Ms. Cady said she envisioned some segments could be presented as stand-alone topics and some could be grouped into multiple presentations.

Ms. Cady said the list is organized by order of priority. She recommends the training begin with a general overview of the entire enforcement program, with a brief description of all of the various units, which would include the staffing levels and areas of responsibility. Ms. Cady then wished to highlight the probation unit, which has undergone a significant reorganization within the last two years. The monitoring of physicians on probation has been transferred from peace officer investigators to non-sworn inspectors. Ms. Cady said she believes it is important to start with this unit, because they are responsible for taking the direction given by the board in the decisions on disciplinary cases and ensuring that the physicians are complying with the ordered terms and conditions.

Ms. Cady said there have been a couple of recent cases which have raised concerns about the effectiveness of some terms being ordered, such as a practice monitor. Difficulties have been identified with some physicians being able to comply with this term and she would like to promote a discussion on whether there are alternatives to this requirement or whether additional training may be needed for the physicians who have taken on the role of a practice monitor. Ms. Cady also wished to suggest a module on some of the other terms and conditions that can be somewhat problematic to define for the physician on probation or to ensure the physician is complying with the term.

Ms. Cady said after the probation unit, she suggests a number of modules that focus on the work performed in the Central Complaint Unit and by the field investigative staff. There are several modules that take a complaint from the beginning through field investigation, so members can get a better sense of the work involved in a single case that may or may not go on to formal discipline. Ms. Cady also suggested several modules that could focus on specific types of investigations, such as hospital discipline reports, unlicensed practice, physician impairment and medical marijuana that can be difficult or time consuming to complete.

Ms. Cady said she included several modules which focus on the work performed in the Discipline Coordination Unit (DCU). Members are probably familiar with DCU staff as they send proposed decisions to members to vote and staff the panel meetings, but Board members may not be familiar with the range of other duties they perform.

Ms. Cady concluded by reiterating the list was not exhaustive but to give an idea of the range of topics that could be presented. She solicited ideas for other training topics the members might find helpful or of interest.

Dr. Low said it's clear the enforcement program has done a very good job of trying to better educate everybody. These modules are evidence of trying to get there. Dr. Low said having modules doesn't ensure that people actually digest them well, and maybe some face-to-face meetings are necessary and important.

There was no public comment.

Dr. Low suggested we distill this down to something reasonable to undertake. Dr. Low suggested we need the same level of education for practice monitors that we do for experts. Dr. Low said for the next meeting, we could focus on one area, and try to beef up that area and implement something that is practical, up and down the state. Dr. Low asked how many practice monitors we have at any one time. Ms. Cady said she believes there are about 150 physicians on probation who require a practice monitor. Dr. Low suggested there could be a few meetings up and down the state to bring everybody on the same page, to make sure they understand the responsibilities and that they have the appropriate qualifications.

Dr. Chin asked if the modules were for people in the units or for the board members. Ms. Cady said the modules were designed for Board members and to facilitate discussions. Dr. Chin said he would be very interested in this and having a better understanding of what happens in the different units. He would value that education.

Dr. Low said maybe we need to relook at our Board member orientation program. Dr. Low said he thinks this is an important committee. It gives us a chance to review systems and make improvements.

There was no public comment.

Agenda Item 7: Agenda Items for July 29-30 Meeting in Sacramento
No additional items were identified for the next agenda other than those described above.

There being no further business, the meeting was adjourned at 10:32 a.m.