MEDICAL BOARD OF CALIFORNIA
Executive Office

ENFORCEMENT COMMITTEE
Medical Board of California
Hearing Room
Sacramento, CA
July 29, 2010

MINUTES

Agenda Item 1 Call to Order/Roll Call
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.

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

Staff Present:
Richard Acosta, Licensing Analyst
Fayne Boyd, Licensing Manager
Susan Cady, Enforcement Manager
Ramona Carrasco, Enforcement Analyst
Hedy Chang, Board Member
Eric Esrailian, M.D., Board Member
Gary Gitnick, M.D., Board Member
Kurt Heppler, Legal Counsel
Breanne Humphreys, Licensing Manager
Teri Hunley, Business Services Manager
Scott Johnson, Information Systems Branch
Therese Kelly, Licensing Analyst
Ross Locke, Business Services Office
Natalie Lowe, Enforcement Analyst
Kelly Maldanado, Enforcement Analyst
Ian McGlone, Enforcement Analyst
Valerie Moore, Enforcement Manager
Pat Parks, Licensing Analyst
Regina Rao, Business Services Office
Letitia Robinson, Licensing Manager
Paulette Romero, Enforcement Manager
Janet Salomonson, M.D., Board Member

Anita Scuri, Department of Consumer Affairs, Supervising Legal Counsel
Jennifer Simoes, Chief of Legislation
Lynn Sterba, Licensing Analyst
Laura Sweet, Deputy Chief of Enforcement
Kathryn Taylor, Licensing Manager
Cheryl Thompson, Executive Assistant/Midwifery Program
Renee Threadgill, Chief of Enforcement
Linda Whitney, Executive Director
Crystal Williams, Licensing Analyst
Trish Winkler, Executive Assistant
Barbara Yaroslavsky, President of the Board

Members of the Audience:
Yvonne Choong, California Medical Association (CMA)
Zennie Coughlin, Kaiser Permanente
Julie D'Angelo Fellmeth, Center for Public Interest Law (CPIL)
Stan Furmanski, M.D., Member of the Public
David Gonzalez, Member of the Public
Brett Michelin, California Medical Association (CMA)
William Norcross, PACE Program
Carlos Ramirez, Senior Assistant Attorney General
Rehan Sheikh, Member of the Public

Agenda Item 2 Approval of Minutes
Dr. Levine moved to approve the minutes from the April 29, 2010 meeting; seconded; motion carried.

Agenda Item 3 Public Comments on Items not on the Agenda
Stan Furmanski, M.D., member of the public, provided a slide presentation including documentation which supported his concerns of the Physician Assessment and Clinical Education Program (PACE). Dr. Furmanski presented documents of a cost outcomes analysis on the PACE program. The analysis indicated that there is a high number of false positive outcomes; Dr. Furmanski's definition of a false positive outcome was a PACE failure which did not result in the revocation of a license. Dr. Furmanski opposes the use of PACE and asked the Board to look into other options for assessing physicians.

Dr. Furmanski also discussed a secret contract kept in the PACE files that detailed the cost of the booklets provided to PACE students and provided slides of documentation to support his findings. Per Dr. Furmanski, the "Secret Contract" indicates that the booklets can be obtained at a cost of $50 to $100 and recommends that the Board buy the booklets and sell to doctors at cost.

There were no additional public comments.

Agenda Item 4 Review/Approval of Enforcement Committee Vision Statement
Ms. Sweet presented to the Committee Members three prospective Vision Statements to be adopted for the Committee:

Vision Statement Option 1:
The vision of the Enforcement Committee is to supplement (or enhance) the Medical Board's mission of protecting health care consumers by action as an expert resource and advisory body to members of the Medical Board and its enforcement program, by identifying program improvement opportunities, and by educating board members and the public on enforcement processes.

Vision Statement Option 2:
The Enforcement Committee will act as an expert resource and advisory body to members of the Medical Board and its enforcement program by educating board members and the public on enforcement processes and by identifying program improvements in order to enhance protection of health care consumers.

Vision Statement Option 3:
In furtherance of the Medical Board's mission of protecting health care consumers and in the spirit of transparency, the vision of the enforcement committee is to act as an expert resource and advisory body for the enforcement program, to identify and implement program improvements, and to educate the public and other board members on how the enforcement program operates.

Per legal counsel, there did not appear to be any legal concerns, and after discussion by Committee Members, Vision Statement Option 2 was agreed upon.

There were no public comments.

Dr. Levine made a motion to recommend to the full Board that Vision Statement Option 2 be adopted on behalf of the Committee; s/Dr. Chin; motion carried.

Agenda Item 5 Progress Report of Expert Reviewer Training
Ms. Sweet provided an update of the Expert Reviewer Training indicating that with the assistance of Dr. Low, UC Davis Medical Center agreed to provide their state of the art training facilities for the Board's inaugural expert training, targeted for the spring of 2011. Per Ms. Sweet the facilities and equipment at UC Davis Medical Center are quite impressive and will allow for an interactive type of presentation. Sample cases are being sought for presentation purposes.

Dr. Low provided that in terms of history, the standardization of expert training throughout the state would make the expert process better and more consistent; this interactive training would allow all experts throughout the state to have the same training, getting everyone on the same page. Dr. Low felt that this training would go a long way to help the Board, as well as experts, to understand their roles.

There were no public comments.

Agenda Item 6 Presentation of an Overview of Enforcement Programs, Components and Processes
Ms. Cady and Ms. Sweet provided a presentation of the Enforcement Program indicating that one of the areas of interest identified by members was the development of training segments that focused on the Enforcement Program and the variety of work performed by staff within that program. This first segment in the series provided a general overview of the entire Enforcement Program and will be followed up with more detailed information of each unit and how they function.

Ms. Cady provided information for the units assigned to the Enforcement Operations Program. The Enforcement Program is Split into two main components under the overall direction of the Chief of Enforcement, Renee Threadgill. All sworn peace officer staff are assigned to the Investigative Services Program under the direction of Deputy Chief, Laura Sweet. All non-sworn personnel are assigned in the Enforcement Operations Program under the direction of Susan Cady, Staff Services Manager, II.
The Central Complaint Unit is primarily responsible for the triage of all new complaints filed with the Board. The unit consists of 24 professional and technical staff that are divided into two units based on the type of complaints that they specialize in, either Quality of Care or Physician Conduct. In addition to the triage function, the Complaint Unit also serves as the focal point for the hospital disciplinary reports (805's) that are received by the Board. Staff ensures that the reports are complete and posts information about either the termination or revocation of privileges to the physicians profile on the Medical Board's website. In addition, staff is responsible for providing copies of the 805 reports to authorized entities such as credentialing bodies when physicians have either applied for or are renewing their application for privileges. Finally, all Citations issued by the Board are issued out of the Complaint Unit regardless of where the referral originated: from the Complaint Unit, the District Office after an investigation, or from the Licensing Program.

The Discipline Coordination Unit is staffed with 11 professional and technical staff that are responsible for processing and serving all administrative documents associated with physician discipline. Because these actions are required by law to be available on the Board's website, one staff position is solely responsible for creating all of the public disclosure information posted to the physicians profile as well as reporting the actions taken to the National Practitioner Database. In addition, staff also insures that all public documents related to actions taken by the Board are posted to our website. Finally, the Discipline Coordination Unit is the focal point for receiving and tracking all monies ordered by the Board as part of a disciplinary action such as cost recovery or probation monitoring costs or the cost associated with psychiatric or medical evaluations.

The Probation Unit is essentially responsible for monitoring physicians once probation has been ordered and insuring that the terms and conditions outlined in the decision are complied with. The unit consists of 24 staff that are located throughout the state; each inspector is assigned approximately 25-30 physicians on probation to monitor. There is one staff position which is solely dedicated to coordinating all of the scheduling for the 120 physicians who have random biological fluid testing that has been ordered as a condition of their probation.

Ms. Sweet provided information for the units assigned to the Investigative Services Unit. There are approximately 100 sworn peace officers in the field responsible for performing the field work and investigating the cases after they have passed through the triage process of the Central Complaint Unit. There are 12 District Offices located throughout the state, each staffed with approximately 5-6

investigators, a supervisor, a few attorneys, and 1-3 medical consultants. Their duties are to assess complaints, gather evidence, and to prove or disprove a violation of law. Duties can include a variety of investigative techniques including serving search warrants, subpoenas, etc. For Quality of Care cases their duty is to gather enough evidence so that an expert is able to render an unbiased and objective opinion.

The Office of Standards and Training is located out of the headquarters of the Medical Board and is responsible for conducting background investigations of all Peace Officer hires, provide specialized training for all investigative staff, handle all cases involving internet prescribing, purchase equipment for the Enforcement Program, maintain policies and procedures, and manage the Expert Reviewer Program. The Operation Safe Medicine unit specializes in investigating the allegations of unlicensed practice of medicine and is able to take a pro-active approach to protecting the public from unlicensed individuals practicing medicine.

At the next meeting of the Enforcement Committee, Ms. Cady recommended that focus be made to the specific units of the Enforcement Program, specifically the Probation Unit. Ms. Cady felt that it was important to begin with this unit as they are responsible for taking the direction given by the Board in decisions on disciplinary cases and insuring that physicians are complying with the ordered terms and conditions. There are a number of cases that have raised concerns about the effectiveness of some of the terms being ordered, such as the Practice Monitor. Difficulties that physicians have in complying with this term have been identified and Ms. Cady 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.

The floor was then opened to Public Comment:

Rehan Sheikh, member of the public, expressed interest in the Board's discipline process, specifically what precautions are taken to insure that an 805 Report received from a hospital is completed without errors prior to issuing disciplinary action. Ms. Cady provided a brief overview of the process, indicating that when an 805 Report is received in the Complaint Unit, it is reviewed to ensure that all of the requested information has been provided on the form, and the report is then sent to an investigative office for a formal investigation.

Agenda Item 7 PACE update
In addition to Dr. Norcross' presentation, additional information was provided in the Agenda packet details, starting on Page 51, Item 7a.

Dr. William Norcross, Clinical Professor of Family Medicine at the UC San Diego School of Medicine provided a Physician Assessment and Clinical Education (PACE) program update including details of the implementation of the 2007 Audit recommendations. Dr. Norcross indicated that there are no formal associations with the Medical Board; PACE is not under contract by the Medical Board; and he is not an employee of the Medical Board.

Dr. Norcross stated that to date, PACE services have been provided to California State Department of Corrections, to several hospitals, to medical boards in and outside of California, insurance companies, and to physicians who are self-referred.

Dr. Norcross stated that PACE's primary objective is to protect patients. The PACE program started in 1996 and is built around the 6 core competencies that would be required for a physician to be competent, including medical knowledge, communications, professionalism, etc. There is a rational and objective nature for how PACE decides if physicians fail or not, however as there are physicians of different specialties and different practice types within each specialty, each determination is individualized. Physicians can fall into one of four categories: Pass, Pass with Minor Recommendations, Pass with Major Recommendations, and Fail. Fail means that the physician is currently unsafe to practice and the category is set at a very low bar. The fail rate is a little above 10%.

PACE is broken into 2 phases; Phase 1 is two days and is mostly testing. Booklets provided for this phase cannot be purchased privately as they are examinations created by the National Board of Medical Examiners (NBME), and must remain secure in order to protect the testing process. Phase 2 involves bringing the doctor back for five days and provides training in the appropriate settings based on specialties, including placing the doctor in the hospital, operative rooms, cath labs, etc. Doctors do not have patient responsibility. During this phase the doctor is assessed and trained.

The floor was then opened to committee members for discussion and questions. Dr. Chin asked Dr. Norcross to discuss the cost allocations and to provide a structure of how the money is spent. Dr. Norcross stated that PACE is 100% within the UCSD School of Medicine and although the cost looks expensive, the program is comparable to other assessment programs. Money goes back to the department for educational research, faculty fees, and to other departments. Faculty is paid comparable to what they would be making in private practice, and much of the fees are prorated.

Dr. Levine inquired if PACE provided a re-entry program. Dr. Norcross stated that PACE does not provide a re-entry program as this type of program would need to be able to provide hands on training. Regarding the audit, Dr. Norcross stated that it was a routine audit, PACE passed with flying colors, and all items have been addressed. All recommendations of the audit have been implemented.

Ms. Cady was then asked to provide a discussion regarding establishing the equivalency of programs. The manual of model disciplinary guidelines outlines the requirements for a clinical training or educational program and identifies that the program must include a 2 day assessment of the physicians physical and mental health, basic clinical and communication skills common to all clinicians, and medical knowledge, skill, and judgment pertaining to the physicians specialty or subspecialty, and a 40 hour program in the area of practice in which the physician was alleged to be deficient, which takes into account data obtained from the assessment and the accusation, and any other information the Board deems relevant. The Post Licensure Assessment Program is used by PACE as part of a clinical assessment for clinical competency; details of this program were included as an Agenda Packet Item 7d.

When evaluating clinical training or education programs to determine if they are comparable to PACE, a side by side comparison of the content of each program is performed. There are several programs throughout the country which use the Post Licensure Assessment System and include a requirement that physicians perform mock histories and physicals on patients. A number of programs include the cognitive function screening tests that are used by PACE as well, however the most common deficiencies that are seen in some of the other physician assessment programs are the lack of remediation or retraining components which are required by the Board's disciplinary guidelines. Another important component that

is looked into is whether the program will identify if the physician performs so poorly as to be considered not safe to practice, which is a critical element from the Board's perspective as the clinical assessment is used to determine if the physician is safe to practice.

The floor was then opened to Public Comment:
Julie D'Angelo Fellmeth, Center for Public Interest Law (CPIL), expressed that the Medical Board is very fortunate to have a program such as PACE at their access.

Stan Furmanski, M.D., Member of the Public, asked what the secret template was, which was referred to in the Medical Board of California Enforcement Program Monitor report provided by Ms. Fellmeth to the Medical Board in 2005.

Agenda Item 8 Agenda Items for November 3, 2010 Meeting in Long beach, CA
Dr. Low requested that the following items be included on the November 2010 agenda:

- Presentation of an Overview of Enforcement Programs, Components and Processes focusing on the Probation Unit
- Progress Report of Expert Reviewer Training

There were no public comments.

Agenda Item 9 Adjournment
There being no further business, the meeting was adjourned.