State of California
Medical Board of California
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Memorandum

Date: January 15, 2009

To: Members

From: Kimberly Kirchmeyer

Subject: November 2008 Report on Public Disclosure
Physician Misconduct and Public Disclosure Practices at the Medical Board of California

Based upon the recommendations of the Enforcement Monitor, Senate Bill (SB) 231 (Figueroa; Chap. 674, Stats. of 2005) added Business and Professions Code section 2026 effective January 1, 2006. This section of law required that a study, with recommendations, be conducted on the role of public disclosure in the public protection mandate of the Medical Board of California (Board) [the Little Hoover Commission was initially identified to perform the study, but the law was changed to direct the California Research Bureau (CRB) complete the study]. The CRB was to study whether the public is adequately informed about physician misconduct by the current laws and regulations providing disclosure and options for improving public access.

The report was completed in November 2008. The Executive Summary of the report is attached. The report made some observations and also provided several policy options. Based upon the research, the CRB's observations included:

- National data suggest that the volume of "Quality of Care" complaints received by the Board each year falls far short of the number of serious injuries Californians receive in hospitals each year due to negligent or incompetent care.
- Consumers likely would benefit from policy changes that would expand and lengthen public disclosure and Internet display of a variety of information about physicians' records, including malpractice payouts, Board enforcement actions, and Board citations and fines.
- Medical Boards in several other states, both large and small, provide considerably more accessible information about physicians on their Internet websites than does the Board.
- The Board has not emphasized analytical research strategies that could support its enforcement strategies.

The report discusses policy options for improving public access to information about physician misconduct. Although several of the options would require legislation, several of them could be implemented without legislation, if the Board believed the suggestions would assist the Board in its mandate. The options include:

1) Add a "public disclosure" component to the Medical Practice Act's list of the Board's responsibilities in section 2004.
Although public disclosure is not listed in section 2004, there are other sections in the Medical Practice Act that require public disclosure which the Board takes very seriously. The Board has an extensive outreach program and also works diligently to post all items on a physician's profile allowed by law. The addition of this item into statute seems unnecessary.

2) Standardize the Board's statutory disclosure requirements for all inquiries (Internet, in-person, in-writing), including requiring permanent disclosure of past disciplinary actions, citation/fine actions, administrative actions, and malpractice judgments, arbitration awards, and settlements.
The study appropriately indicated the laws regarding disclosure and access to records are inconsistent, and should be amended. Any change in the length of time actions are posted on the Board's website also would require a legislative change.

3) Direct the Board to expand and revise its Internet physician profiles to better conform to current law, e.g. displaying specialty board certification and postgraduate training information.
The Board's ISB is working on implementation of new physician profiles that will not only include board certification, but also will include items from the physician survey. In addition, Board staff are working on putting postgraduate training information on the website; however, this addition will take longer.

4) Direct the Board to investigate and provide summaries of those investigations to the public for each reported malpractice judgment, arbitration award, and settlement.
This suggestion would require a legislative change.

5) Direct the Board to study ways to enhance public outreach in order to better identify cases of potential misconduct.
The report suggested the Board audit physicians' or hospitals' records. The Board does not have the ability to review patient records without a release or a reason to subpoena the records, therefore this would require a legislative change, additional funding, and staff.

6) Direct the Board to require physicians to notify patients that complaints about care may be submitted to the Board
The Education Committee is putting forward a recommendation to seek a regulation requiring physicians to post a sign at each place of practice.

7) Direct the Board to expand information on its Internet physician profiles to include additional biographical data, including age, gender, and training.
This suggestion would require a legislative change and could be very controversial due to the information the Board is being requested to add, i.e. age and gender.

8) Direct the Board to provide on its Internet physician profiles links to evidence-based, physician-level performance information provided by external organizations, such as the California Physician Performance Initiative.
To add the information to the Board's physician profiles would require a legislative change; however, legislation would not be required for the Board to put on its website a link to the Initiative's Internet website.

9) Direct the Board to sponsor and publish research projects based on the contents of the Board's complaints, discipline, public disclosure, and licensing databases.
As approved by the Medical Error Task Force and the Board, Janie Cordray, Board Research Manager, is beginning a study into complaint history and disciplinary action. As staff time and funding permits, further research can be completed. To sponsor and publish research projects may require additional staff and funding.

10) Direct the Board and the Board of Registered Nursing to develop methods for sharing and publicizing information about supervisory relationships between physicians and nurse practitioners.
The report recommends tracking and posting the nurse practitioners and physician assistants under the physician's supervision. With the number of physicians in the state and the frequent changes occur in employment, this may be an unmanageable task without any significant benefit.

11) Encourage the Board to improve public access to and utility of Board-approved information, such as establishing a web log ("blog") to provide notices to disciplinary actions now distributed via an email notification service to subscribers.
The Board currently emails Board action notifications to any individual who requests to be on the Board's subscriber's list. The public documents are available via a name or license number search and the Board's Newsletter maintains a list of disciplinary actions taken in the last quarter. In addition, the Board currently has a Webmaster which responds to emails to the Board.

The report was also provided to the Legislature. At this time, it is unknown whether any legislation related to this report will be introduced. If legislation is introduced, the Board will be able to provide the author with its position.

Executive Summary

Oversight of the healthcare industry in California is complex, involving many agencies and licensing boards. Perhaps the most important of these is the Medical Board of California (MBC), which licenses and regulates the practice of medicine by some 125,000 physicians and surgeons in California. The Medical Board's highest policy priority, according to law, is to protect the public.[1]

This report seeks to clarify current Medical Board of California public disclosure practices and what is known about how those practices serve the goal of public protection. The report is mandated by SB 1438 (Figueroa), Chapter 223, Statutes of 2006 (codified at Business and Professions Code Section 2026), which instructs the California Research Bureau to

> *study the role of public disclosure in the public protection mandate of the [Medical Board of California]. The ensuing CRB report shall include, but not be limited to, considering whether the public is adequately informed about physician misconduct by the current laws and regulations providing for disclosure. The study shall present policy options for improving public access.*

Unfortunately, harm comes to many patients in the U.S. healthcare system. The National Academy of Science's Institute of Medicine stated in 2000 that between 44,000 and 98,000 Americans die each year from the consequences of adverse medical events – defined as "injuries caused by medical management," including negligent and incompetent care.[2] These figures imply that 10,000-20,000 deaths each year in California are attributable to adverse medical events.[3]

At stake is what difference MBC disclosure policies make to public safety and the quality of medical care of California. We address this question in three ways. First, we outline current law and MBC policies with respect to public disclosure. Second, we survey public disclosure "best practices" in use on other state medical board websites and the scholarly literature on medical errors.

Third, we undertake a statistical investigation of the relationship between certain, contested data elements – such as malpractice payout histories – and MBC disciplinary proceedings. The goal of the statistical analysis is to better identify risk factors the Medical Board and the public can employ in evaluating physicians.

The report makes several important points:

- **National data suggest that the volume of "Quality of Care" complaints received by the Board each year falls far short (by an order of magnitude) of the number of serious injuries Californians receive in hospitals each year due to *negligent or incompetent care.*[4]**

  Most peer-reviewed studies of medical errors and malpractice imply that the large

majority of patients who are harmed by healthcare provider negligence or incompetence fail to file formal complaints. While many medical errors are attributable to the actions or omissions of other professionals in the caregiver stream,[5] these studies suggest that most negligent and/or incompetent acts committed by physicians nationwide and California alike each year escape state medical board scrutiny.

We lack survey evidence specific to California about the degree to which the public is well-informed about the Medical Board's regulatory role. A 2006 national survey, however, found low levels of public knowledge about state medical boards.[6] Those findings suggest that enhanced public education and outreach activities are justified in support of the Board's public protection mandate.

- **Consumers likely would benefit from policy changes that would expand and lengthen public disclosure and Internet display of a variety of information about physicians' records, including malpractice payouts, MBC enforcement actions, and MBC citations and fines.**

  Public records generally are available in perpetuity to inquiring members of the public. Current disclosure laws and regulations limit the MBC's Internet display of various public record documents to ten years or less. We show statistically that disciplinary and citation/fine histories of *at least* ten years' length are useful for forecasting the likelihood of future disciplinary actions against a physician. Additionally, we show that malpractice payout histories (judgments, arbitration awards and settlements reported to the MBC, whether disclosed to the public or not) are *directly* predictive of future disciplinary actions for five years and indirectly predictive for a longer time period.

- **Medical Boards in several other states, both large and small, provide considerably more accessible information about physicians on their Internet websites than does the MBC.**

  The Board expects to roll out a new web service this fall that has the potential to greatly improve physician profile content and usability. At the time this report was written, the contents of the new physician profile displays had not been finalized. Our statistical model demonstrates that a number of biographical facts about physicians not currently displayed on the MBC's Internet physician profiles, such as gender, age, specialty board certification and graduate training are useful for predicting the odds a physician will face MBC enforcement actions in the future.

- **The MBC has not emphasized analytical research strategies that could support its enforcement strategies.**

  The MBC is required statutorily to report summary statistics on its annual case loads and performance but is not specifically required to conduct any statistical

analysis of its data. For several years prior to the 2003 budget cuts, the Board employed a Medical Director who contributed original research on the correlates of disciplinary action against licensed physicians. The Board possesses a wealth of data on licensed physicians that could be better used in support of the MBC's public protection mandate.

Finally, the report offers a series of policy options by which the Board could improve its capacity to fulfill its primary mission to protect the public. Table 1 on the following page presents those policy options in brief.

The remainder of this report is organized as follows. The second section provides background on the MBC and its current policies regarding public disclosure about physician behavior. In the third section, we review the empirical literature on public disclosure in the context of basic information economics theory as applied to the regulation of medical practice.

Fourth, we compare the MBC's practices to those of medical boards in other states. Fifth, we present and discuss a statistical model of one major aspect of disciplinary proceedings against physicians. The goal of the model is to validate and extend existing research findings on the biographical and historical factors that can be used to forecast the odds of future disciplinary proceedings against individual physicians. Finally, the report discusses in more detail the policy options (listed in Table 1) for improving public access to information about physician misconduct in California.

Table 1: Policy Options in Brief

1. Add a "public disclosure" component to the Medical Practice Act's list of the Medical Board of California's (MBC) responsibilities in Business and Professions Code Section 2004.
2. Standardize the MBC's statutory disclosure requirements across different outlets (e.g., Internet vs. in-person or in-writing requests), including requiring permanent disclosure of past disciplinary actions, citation/fine actions, administrative actions, and malpractice judgments, arbitration awards and settlements.
3. Direct the MBC to expand and revise its Internet physician profiles to better conform to *current law*, e.g. displaying specialty board certification and postgraduate training information.
4. Direct the MBC to investigate and *provide summaries* of those investigations to the public for each reported malpractice judgment, arbitration award and settlement.
5. Direct the MBC to study ways to enhance public outreach in order to better identify cases of potential physician misconduct.
6. Direct the MBC to require physicians to notify patients that complaints about care may be submitted to the Board.
7. Direct the MBC to expand information provided on its Internet physician profiles to include additional biographical data, including age, gender and training.
8. Direct the MBC to provide on its Internet physician profiles links to evidence-based, physician-level performance information provided by external organizations, such as the California Physician Performance Initiative.
9. Direct the MBC to sponsor and publish research projects based on the contents of the Board's complaints, discipline, public disclosure and licensing databases.
10. Direct the MBC and the California Board of Registered Nursing to develop methods for sharing and publicizing information about supervisory relationships between physicians and nurse practitioners.
11. Encourage the Board to improve public access to and utility of Board-provided information, such as establishing a web log ("blog") to provide notices of disciplinary actions now distributed via an email notification service to subscribers.

Source: CRB, 2008.