

MEDICAL BOARD STAFF REPORT

DATE REPORT ISSUED: January 14, 2009
 DEPARTMENT: Licensing Operations
 SUBJECT: Proposed Regulation Change – Modification to
 Continuing Medical Education (CME) Audit
 STAFF CONTACT: Deborah Pellegrini

REQUESTED ACTION:

Adopt the proposed modification to the Board's current regulatory language concerning the Continuing Medical Education (CME) Audit and set the matter for hearing in May 2009.

STAFF RECOMMENDATION:

Staff recommends that the Board amend the current CME regulatory language by (1) striking the word "once" and (2) adding language to state that a physician's failure to respond to the Board's audit inquiry and providing documentation of his or her compliance with the continuing education requirements within 45 days of receipt of the inquiry will constitute unprofessional conduct. Section 1338 (a) currently reads "the division shall audit **once** each year a random sample of physicians." Establishing that non-compliance with the audit inquiry constitutes unprofessional conduct creates a basis for the Board to issue citations when a physician fails to provide either a response to the audit or the necessary documentation.

(Note: Also contained are conforming changes in the regulatory language replacing "division" with "board.")

EXECUTIVE SUMMARY:

The workload associated with performing a CME audit once each year in one batch has proven to be unmanageable. This workload is spread out among staff in the Information Services Branch (ISB), the Licensing Program and the Enforcement Program. The staff in the Licensing Program perform the major portion of the workload. The Licensing Program has one full-time equivalent position to perform its portion of the audit. By striking the word "once" from the current regulation, the Board would be able to perform the audit in twelve equal batches throughout the year. This will make the workload manageable, predictable, and consistent.

In 2006, the CME audit was performed in one batch for the entire year. A random sample of one percent of licensed physicians and surgeons was selected and approximately 1,200 letters were sent by certified mail. ISB was responsible for generating the list as well as two copies of the letters to be sent to each of the 1,200 audited physicians and surgeons. Licensing Program staff sent and tracked the 1,200 letters through certified mail, reviewed each of the documents submitted and identified those who did not respond, among other tasks. In order to complete the audit, a large conference room was used exclusively by Licensing staff for several months to complete

these tasks. The large increase in workload of performing the CME audit once each year in one batch has proven to be unmanageable.

In December 2008, the Enforcement Program, ISB and the Licensing Program met to discuss the audit. All three entities agreed that performing the audit on a monthly basis would result in a more effective and manageable workload. By striking the word “once” from the current regulation, the Board would be able to perform the audit in twelve batches throughout the year. This would make the workload manageable, predictable and consistent and provide timely responses to licensees.

The Licensing staff will refer to the Enforcement Program those cases that involve physicians and surgeons selected for an audit who do not return the audit form with the requested documentation or failed to meet the required CME criteria. Existing law does not provide a mechanism for the Enforcement Program to take action when a response/documentation has not been received; this hinders the purpose of the audit. Therefore, staff recommends adding language that a physician’s failure to respond to the Board’s audit inquiry and provide documentation of his or her compliance with the continuing education requirements within 45 days of receipt of the inquiry will constitute unprofessional conduct. This addition to existing regulatory language creates a basis for the Board to issue a citation for this violation.

FISCAL CONSIDERATIONS:

There would be no additional cost associated with implementing the new policy resulting from this regulatory change. There will be some savings in overtime by conducting audits monthly.

PREVIOUS MBC AND/OR COMMITTEE ACTION:

None.