



STATE AND CONSUMER SERVICES AGENCY • ARNOLD SCHWARZENEGGER, GOVERNOR

MEDICAL BOARD OF CALIFORNIA – Diversion Program
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DIVERSION COMMITTEE

**Embassy Suites Hotel
Tiburon/Sausalito Room
250 Gateway Blvd.
South San Francisco, CA 94010**

July 26, 2007

Minutes

Agenda Item 1 Call to Order

Dr. Gregg called the meeting to order on July 26, 2007, at 5:13 p.m. A quorum was present and notice had been sent to all interested parties.

Members Present:

Laurie Gregg, M.D., Chair
Stephen Corday, M.D.
Shelton Duruisseau, Ph.D.
Janet Salomonson, M.D.

Members Absent:

Cesar Aristeiguieta, M.D.

Staff Present:

Frank Valine, Program Administrator, Diversion Program
Dave Thornton, Executive Director
Kimberly Kirchmeyer, Deputy Director
Rhonda Baldo, Staff Services Analyst, Diversion Program

Members of the Audience:

Julie D'Angelo Fellmeth, Center for Public Interest Law
Sandra Bressler, California Medical Association
Lee Snook, California Medical Association
David Pating, M.D., Chair, Diversion Advisory Council
Tara Kittle

Agenda Item 2 Approval of the April 26, 2007 Minutes

It was M/S/C (Gregg/Duruisseau) to approve the minutes with amendments.

In order to remain consistent with the record, the agenda items presented in these minutes are listed in the order discussed at the July 26, 2007, meeting.

Dr. Gregg reported the Medical Board's primary mission is consumer protection and as the regulatory agency charged with the licensing of physicians and surgeons and enforcement of the medical practice act, the Board determined it is inconsistent with the Board's public protection mission and policies to operate a Diversion Program within or as part of its consumer protection programs. She stated that at the Board Meeting held prior to this committee meeting the following motions were passed:

- The Diversion Program, as it is currently structured and operated, be sunseted as soon as practical, but no later than the June 30, 2008.
- Effective immediately, the Medical Board of California develop a transition plan to continue the Diversion Program on an interim basis until the sunset date.
- The President of the Board convene a Diversion Program summit seeking input from the Diversion Advisory Council, regulatory experts, professional organizations, health care and patient consumer groups, public interest groups and other appropriate stake holders and experts to determine the most appropriate policy and mechanism for filling the Board's consumer protection mission while addressing the issue of impaired licenses. The results of the summit will be reported to the Board, no later than June 2008, for action by the legislature, as necessary, based upon the findings and recommendations.
- At the summit, the recommendations be considered for the establishment of a new state agency or similar agency to provide diversion monitoring programs for all California license professionals.
- The President of the Board and Chair of the Diversion Committee work with the author of the legislation on behalf of the Board.

Based upon these motions, the Committee determined that discussion on certain agenda items would be tabled.

Agenda Item 3 Bureau of State Audits' Recommendation Matrix Review

No discussion occurred on this item.

Agenda Item 4 Diversion Program Policies and Procedures Manual Approval

Dr. Gregg reported that she reviewed the Policies and Procedures Manual to ensure that all the auditor's recommendations were included. Since the Diversion Program will continue to function, Dr. Gregg recommends approval of the Policies and Procedures Manual. Dr. Salomonson expressed concern about the statement in the manual, "not all positive urine tests are relapses." Ms. Kirchmeyer stated that some positive urine tests are for approved prescription drugs from Schedules II to V, such as Naltrexone. If the physician is on an approved drug from Schedule II to V he or she cannot practice but it is not considered a relapse. In addition, the physician can have a positive for alcohol, but if the EtG is negative, that would not count as a relapse. Dr. Gregg stated that the investigation into a relapse happens after the physician is pulled off work. The Diversion Evaluation Committee (DEC) will review and determine if the positive is a relapse. The physician is off work during this time.

Dr. Salomonson was also concerned the DEC uses its discretion in determining whether a positive drug screen or a self reported use of mood altering or prescription drugs is a relapse. Ms. Kirchmeyer stated that the DEC makes a recommendation while the Program Administrator makes the final determination.

Dr. Gregg also assured the Committee that if the DEC determined the positive was not a relapse, they must provide written documentation on their decision why it was not a relapse which will be included in the participant's file. The DEC will be held accountable.

Julie D'Angelo Fellmeth, Center for Public Interest Law, gave Dr. Gregg and Ms. Kirchmeyer a list of amendments. Ms. Fellmeth indicated that there are several places in the manual where the term, "the physician will be suspended from the practice of medicine." This language implies that a suspension order was issued by the Board, which would be posted on the Web site. She suggested the language read, "the physician will be asked to cease the practice of medicine." Dr. Gregg directed staff to incorporate the change. Mr. Heppler suggested an additional amendment in the Policies and Procedures Manual where the language indicates "the DEC is the ultimate authority" be revised to say "the Program Manager retains that ultimate authority."

It was M/S/C (Duruissau/Corday) to approve the Policies and Procedures Manual with these amendments.

Agenda Item 5 Diversion Advisory Council Update

Dr. Gregg suggested deferring the discussion on regulations with the exception of the proposed regulation on the competency examination and when the Diversion Program would order such an examination.

Dr. Pating, Chair of the Diversion Advisory Council (DAC), reported the DAC was instituted to provide expertise. He added the DAC looked at Enforcement Monitor items 5, 6 and 12 and came up with suggestions; however, due to the Board's earlier motions, Dr. Gregg has decided to defer them at this time. He gave an overview of the DAC meeting held on June 12, 2007 and July 10, 2007.

He stated the DAC had developed and was recommending language for when to order a competency examination that could be put into regulation. Dr. Gregg stated that with the Board's earlier decision, this suggestion from the DAC could be put into the Diversion Agreement, rather than move through the regulatory process.

It was M/S/C (Duruissau/Corday) to take the clinical competency language that was drafted and insert it into the Diversion Program Agreement signed by the Diversion Program and participating physician.

Agenda Items 6, 7 and 8

No discussion occurred on these items.

Agenda Item 9 Diversion Program Update

It was M/S/C (Gregg/Duruissau) to approve Dr. Chavez for reappointment.

Mr. Valine stated that there are new reporting forms for the worksite/hospital monitors. He also stated the case managers traveled throughout the state to meet with worksite/hospital monitors to explain their

role. All worksite/hospital monitors signed new Worksite Monitor Agreements and as of July 2, 2007, there are no worksite/hospital monitors with a conflict of interest. Dr. Gregg stated for working participants, if they have a relapse, the program should contact the participant's worksite monitor to ask how many days per month they saw the participant. She stated the Committee needs assurance that those participants who are working are doing so safely.

Agenda Item 10 Collection System Manager's Report

Due to the importance of the reporting of positive urines, Dr. Gregg suggested the reports continue to be included in the Collection Systems Managers report. Dr. Gregg would also like a report of any drug tests that were not performed on the randomly assigned date.

Agenda Item 11

No discussion occurred on this item.

Agenda Item 12 Agenda Items for November 2007 Meeting

Dr. Gregg requested staff focus on the new quarterly report and additional items added to the report.

Dr. Gregg also asked the DAC to be involved in the preliminary thoughts of the transition plan for the diversion participants.

Agenda Item 13 Public Comment

Tara Kittle, health care consumer, encouraged the Diversion Committee in transferring their resources to a new committee based on the expressed commitment to physician wellness. She also stated the Committee should find other ways to help support an environment conducive to practicing safe medicine.

Dr. Gregg directed staff to work on a transition plan and if necessary a special meeting of the Diversion Committee be held in September.

Agenda Item 13 Adjournment

Dr. Gregg adjourned the meeting at 6:06 p.m.