MEDICAL BOARD STAFF REPORT

DATE REPORT ISSUED:	October 15, 2007
ATTENTION:	Division of Medical Quality
DEPARTMENT:	Enforcement Program
SUBJECT:	MBC Expert Reviewer Program
STAFF CONTACT:	Renee Threadgill

REQUESTED ACTION: Board considers establishing some means to publicly acknowledge the public service contributions of the physician expert reviewers.

STAFF RECOMMENDATION:
Staff recommends that the Board consider establishing some means to publicly acknowledge the public service contributions of the physician experts. One suggestion could be an acrylic plaque recognizing their contribution that the experts can display in their offices.

EXECUTIVE SUMMARY:
At the July meeting of the Division of Medical Quality, Members asked staff for information about the recruitment and retention of the physicians for the medical expert reviewer program. Medical expert reviewers provide the opinions upon which a determination is made whether to close an investigation or seek disciplinary action against the licensee. The Board's stated goal in developing the current program was to "create a systematic, objective and efficient approach to the qualifications, appointment, training, oversight, evaluation and functions of the physicians who constitute the Board's medical resources." The program is accessible to all staff through the Board's Intranet. Investigators can search by name or specialty and have immediate access to the expert's CV, all of the cases the expert has reviewed, and all of the evaluations.

Most experts only review one case a year, with a rare few performing more than three and policy recommends that no expert should review more than three cases a year, except in extraordinary circumstances. Once an expert reviews their third case in one year, their profile on the database is flagged. Investigators must then justify and seek approval from the Deputy Enforcement Chief in order to utilize that expert again

Recruitment strategies include Advertisement in MBC quarterly newsletter and on MBC website, advertisement in CMA Newsletter, current experts and MBC Members recruit, MBC Staff outreach to hospital staffs and administrators, specialty societies and medical associations and also speaking engagements at medical facilities, associations and specialty society meetings.

FISCAL CONSIDERATIONS:
The costs for the first year to provide an individual plaque for each of the 1066 current expert reviewers is estimated to be $106,600 as each plaque costs approximately $100. The average number of new reviewers each year is about 100 and the ongoing costs would be related to the actual number of new participants times the costs of each plaque.

PREVIOUS MBC AND/OR COMMITTEE ACTION:
At the last MBC meeting in July 2007, the Members approved an increase in compensation for expert reviewers form $100/hour to $150/hour.

ATTACHMENT A

Medical Expert Reviewer Program

BACKGROUND AND DISCUSSION

Medical expert reviewers provide the opinions upon which a determination is made whether to close an investigation or seek disciplinary action against the licensee. Prior to 1995, district medical consultants who were employed in each district office recruited local physicians to render opinions and testify at disciplinary hearings. There was no centralized, formal system for investigators or deputy attorneys general to access experts. In addition, there were no formally adopted standards for the qualifications of the experts or their utilization.

In 1993, then-Governor Pete Wilson convened a summit to address a number of criticisms directed toward the Medical Board of California (hereinafter referred to as Board) and its disciplinary system. Consequently, a great number of improvements were made in both the handling of complaints and the disciplinary process. Senator Robert Presley authored SB 916 (Chap. 1267; Stats. of 1993), which added Business & Professions Code Section 2332(a) and authorized the Board to establish a panel of experts. This was the genesis what is now the Board's medical expert reviewer program. On July 29, 1994, the medical expert reviewer program was implemented. The Board's stated goal in developing the program was to "create a systematic, objective and efficient approach to the qualifications, appointment, training, oversight, evaluation and functions of the physicians who constitute the Board's medical resources." The program addressed the minimum qualifications of experts, their appointment, training, evaluations, and how they would be assigned.

Minimum qualifications:

- Board certification by an ABMS Board or an "emerging" specialty, sub-specialty or equivalent qualifications under special circumstances;
- License in good standing, with no prior discipline, no current accusation pending, no complaints "closed with merit";
- Minimum of 5 years of practice in the area of specialty;
- Active practice, defined as at least 80 hours a month in direct patient care or clinical activity or teaching, with at least 40 hours in direct patient care (under special circumstances, this requirement could be waived); and
- Peer review experience recommended, but not required.

Appointment:

- Appointed by the Division of Medical Quality to a 2-year term, after meeting qualifications, successfully completing training and signing a written agreement to serve and testify as needed in any case in which a written opinion was provided (under special circumstances, this requirement could be waived);

- May be reappointed to subsequent terms after positive evaluation if they continue to meet minimum qualifications; and
- Appointment agreement included the obligation to testify or complete testimony on cases pending at the time of term expiration.

Training:

- Minimum 8 hours of training;
- Training faculty: Supervising Investigator, Deputy Attorney General (DAG), and District Medical Consultant;
- Training to utilize statewide, standardized course outline and;
- Retraining required every 4 years.

Oversight and Evaluation:

- Written standards established by DMQ to address performance, including completeness of reports, clarity, objectivity, timeliness, capability as a witness, among other factors;
- Statewide database of all appointed experts maintained by Board enforcement staff; and
- Oversight Committee: two members of the DMQ (minimum 1 physician) and representatives from the AG's Health Quality Enforcement Section, District Medical Consultant, and Enforcement management staff that performs initial and reappointment evaluations.

Assignment to Cases:

- Made by district medical consultant from the statewide panel of appointed experts;
- Board certification or area of practice to match that of respondent's specialty or area of practice under review;
- One expert per case in non-quality of care cases, except when necessary;
- Expert must not have, or appear to have, any conflict of interest which could be construed as economically competitive or have any professional, personal or financial association which could be construed as undue influence on independent judgment; and
- Quality of care cases to be reviewed at a meeting with the investigator, supervising DAG or DAG assigned to the case, and the district medical consultant prior to referral to the AG for the filing of an Accusation. Expert must be available to participate in the meeting after the written opinion is filed, and must also be available for meetings to conduct a retrospective analysis of cases that are unsuccessful.

The Current Program:

The program, since its inception, has undergone a number of improvements and changes. After the first notice was published in the *Action Report* in January 1995, over 400 physicians applied, with over 300 qualifying for appointment. The

program has grown to its current size and composition of 1,066 experts in 48 specialties and sub-specialties.

Improvements, Changes and Challenges of the Program:

As with most programs, adjustments are continually being made as a result of problems or challenges experienced. The following are some examples: Database of Experts:

When the program began, headquarters analytical staff prepared a database which was periodically printed and distributed to investigative staff. When investigators wanted to hire an expert, they would ask headquarters about previous cases reviewed and asked to see the evaluations of their work. Often, databases were outdated and contained names of persons who were no longer available. All of this took time and was not user-friendly.

In 2000 a database was specifically designed for the program that is accessible to all staff through the Board's Intranet. Investigators can search by name or specialty and have immediate access to CVs of the experts, all of the cases the expert has reviewed, and all of the evaluations.

Background checks:

In 2004, the Board utilized an expert reviewer who had an action pending at a hospital, which brought into question the validity of his expertise. The Board was unaware of the pending action at the time the expert was selected. To prevent future problems, Case Review and Professional Competency Examination Checklists were revised to ensure that experts were asked about any pending actions, or any other matter that, in the future, could be used to challenge their expertise.

Evaluations:

Evaluations of the experts are vital to enforcement and AG staff. While the investigators and DAGs have always evaluated experts' work, now there is an organized electronic repository for information about each expert's performance. Evaluations are completed by district medical consultants, investigators and DAGs. The evaluations are maintained in a database that is accessible to users on the Board's Intranet. Additionally, via the Intranet, investigators have immediate access to previously assigned cases, enabling investigators and their supervisors to evaluate what cases are best suited for an expert.

Training:

At the very beginning of the program, the Board required physicians to attend a training class taught by in-person faculty consisting of a medical consultant, an investigator or supervisor, and a Deputy Attorney General. As all practicing physicians are busy, scheduling training for more than one physician was extremely problematic. As no expert could be assigned a case for review until the training class requirement was fulfilled, the Board had willing experts unable to work. For

that reason, a training video was developed, and experts are now given a tape or DVD, and published guidelines to review. While this certainly has expedited the use of experts, the lack of interpersonal contact has its faults. To address this, investigators or district medical consultants, whenever possible, hand-deliver the first case assigned to the expert so that a relationship can be established and questions can be addressed. Staff is also in the process of drafting a Budget Change Proposal (BCP) to establish a full-time position devoted to training.

Utilization Report to the Division:

Prior to the implementation of the medical expert reviewer program, the Board heard concerns from various physician groups that the Board utilized only a few experts who provided only adverse opinions. While there was never any evidence to support those concerns, in order to demonstrate the fairness of the system, a report was developed that summarizes the use of experts. The report is provided to Board members and the data reveals that most experts only review one case a year, with a rare few performing more than three.
Moreover, staff adopted a policy that no expert should review more than three cases a year, except in extraordinary circumstances. Once an expert reviews their third case in one year, their profile on the database is flagged. Investigators must then justify and seek approval from the Deputy Enforcement Chief in order to utilize that expert again.

Surveys of Experts:

In order to maintain good working relations with the experts, staff sends a survey to every expert following the completion of a review. The survey poses 13 specific questions and asks for suggestions for program improvement. The results of these surveys, including all comments, are incorporated in a quarterly report to the DMQ members.

As members see in the quarterly report, most physicians are positive about their experience. The vast majority indicate that they are willing to accept more cases for review. Given that past reimbursement rate was only $75 an hour and raised to $100, which is not remotely competitive with expert compensation in the private sector, one can infer that most experts see their work for the Board as a form of public service. If physicians indicate that they are unwilling to review any more cases for the Board, the overwhelming reason cited is that they are too busy to take on any additional work.

Recruitment & Retention:

The Board has been proactive in efforts to recruit medical experts. Recruitment outreach is ongoing, especially to obtain experts in under-represented specialties. Our efforts include:

- Advertising in the *Medical Board of California Newsletter* and Website;
- Placing notices in medical and specialty association newsletters;
- Writing to and personally speaking with hospital staffs, including department

chairs, medical training program directors, specialty societies and other medical associations;
- Speaking engagements at medical facilities, associations, and specialty society meetings.

The majority of our most qualified experts are referred to us by other experts.

Future Improvements:

According to the Experts:
While the current system functions well, recommendations from the expert reviewers included:

- Raise the reimbursement rates;
- Pay reimbursement more quickly (it takes 4-6 weeks);
- Provide a form of recognition for reviewers

According to the Users:

In January 2007, staff established a working group of medical consultants, investigators, supervisors, and deputy attorneys general to brainstorm, review the effectiveness of past efforts, and make recommendations for improvements. Here are some of their observations and ideas:

- CMA published a "call for experts" in their newsletter, which resulted in 50 inquiries. Half were qualified. This should be continued periodically.
- The American Board of Neurosurgery reported in their newsletter that the Board needed experts. As a result, there were 3 inquiries, although none of them met the minimum requirements. Perhaps more notices would yield some qualified experts.
- The *Medical Board of California Newsletter* provides a steady stream of inquiries, some of which meet the requirements. It's recommended that the *Newsletter* have a notice in every issue.
- Letters were sent to selective faculty members in different specialties in teaching hospitals. There was a 15% response rate, and this effort should be continued.
- Letters were sent to individuals from directories of medical societies representing specialties for which there is a specific need. Although very time consuming, it has yielded some modest results. More staff would be needed if this were to be an ongoing effort.
- Raise the reimbursement rate.
- Provide some formal recognition (plaque/certificate) for their service.
- Pay experts for training time and reviewing the training materials (training is done by watching video and reading written materials). In addition, provide CME hours for the training program.
- Require experts to take a refresher course every four years, followed by a brief exam, and pay them for it.

- If there is reason to question an expert's objectivity, send them a "test" case to perform to determine if they have certain biases before sending them a real case.
- District medical consultants and assigned DAGs should prepare a list of questions for experts to answer in their report.
- Materials must be presented to experts in a binder, not rubber-banded or boxed, and should include a sample report.
- A short document outlining various legal definitions and other important information needed for the report to ensure that the major elements of the report are not overlooked.
- Provide feedback to the experts involved with the case, i.e. inform when accusations are filed, settlement, or a decision is rendered.
- Both positive and constructive feedback should be given.

Actions Taken:

Many of the above recommendations have already been implemented. Compensation has been raised, staff continues with outreach efforts, and greater communication is being pursued.

In order to improve the training of the experts, staff is requesting an additional position and resources to be dedicated solely to this function. Investigators and district medical consultants, whenever possible, are hand-delivering cases to first-time experts to establish a better working relationship with better communication. District medical consultants are being utilized to speak with experts when constructive feedback is necessary, and more flexibility, when possible, is given to experts in preparing their reports. Investigators are making every effort to inform experts of the outcome of cases they review. Additional materials are being developed to further explain the process and assist experts in preparing their reviews.

Other ideas were explored but are not possible to implement. As an example, providing CME credit for training was explored in 2006, and found to be impractical, as either legislation or accreditation would be required. The Board and its staff has no power or jurisdiction over the speed at which the experts are paid. The idea of providing public recognition or appreciation of expert reviewers should be more fully explored.

CONCLUSION

The medical expert reviewer program is one of the more critical and effective programs within the enforcement program. It is successful in providing investigative staff with qualified witnesses and has established a system to promote varied, objective and fair opinions. While it is always a challenge found in the healthcare system in general. Some specialties are under-represented on our panel, but no greater than that in the medical provider system.

MEDICAL BOARD STAFF REPORT

DATE REPORT ISSUED:	November 2, 2007
ATTENTION:	Division of Medical Quality Members
DEPARTMENT:	Medical Board of California (MBC)
SUBJECT:	Increase in Payment to Expert Reviewers
STAFF CONTACT:	Renee Threadgill

REQUESTED ACTION:
Division members approve justification provided in this document for staff's previous recommendation made at the July 2007 Division of Medical Quality meeting to increase the medical expert's hourly rate for case reviews from $100 to $150.

STAFF RECOMMENDATION:
Staff recommends that, based upon the figures that have been developed below in the Fiscal Considerations section, the Division continue to support an increase of $50 per hour at this time, rather than an increase of $100 or more.

EXECUTIVE SUMMARY:
In the past years there has been discussion regarding increasing the hourly rate for the expert reviewers used by the Board's Enforcement Unit. These experts review cases during an investigation and determine if the physician has departed from the standard of care. In addition, if the case proceeds to hearing, this expert also provides testimony. It has been a concern that the hourly rate for case review, set at $100, is too low based upon the significant work of the experts.

The Board's budget line item entitled "Evidence/Witness" has a set amount to be spent for the usage of expert reviewers (used during investigation and prosecution of the case) and the usage of the medical consultants that the Central Complaint Unit (CCU) uses for complaint triage. The Division Members, based upon comments made by the experts and staff, requested that staff review the hourly rate for experts in conjunction with the Board's budget, and determine if an increase could be made.

FISCAL CONSIDERATIONS:
In fiscal year (FY) 2006/2007, the Board's budget for "Evidence/Witness" was set at $1,557,983 and the Board spent $1,214,680. This left a balance of $343,303. To determine if an increase was possible and the amount of the increase, Board staff needed to determine how many hours were billed in that FY only for expert case review. Please see the attached report. Based upon this report, there were 6,736 hours billed for expert reviewers in FY 06/07 and 6,983 hours billed in FY 05/06. Board staff believed that in order to accurately determine the amount of an increase, it needed to average the hours used in the last two fiscal years and use that average for projections for FY 07/08. The average was 6,860 hours billed for expert case reviews for the last two fiscal years.

The Board's budget for "Evidence/Witness" for FY 07/08 is currently set at $1,676,318. (Board staff has made an assumption that all other spending for experts, e.g. travel, etc. and medical consultants in CCU will remain the same or similar. Therefore, the following shows that an increase of $50 per hour is the logical increase at this time:

FY 07/08 budget:	$1,676,318
FY 06/07 spending:	$1,214,680
FY 07/08 projected increase based upon $50 increase ($50 X 6860):	$343,000
FY 07/08 projected increase based upon $100 increase ($100 X 6860)	$686,000
Projected total spent in FY/07/08 w/ $50 dollar increase:	$1,557,680 (under budget)
Projected total spent in FY/07/08 w/ $100 dollar increase:	$1,900,680 (over budget by $224,362)

PREVIOUS MBC AND/OR COMMITTEE ACTION:

Board staff previously reviewed usage by experts in the past two fiscal years and determined the Board's budget could support an increase of $50 per hour for a total of $150 per hour for expert reviewers without requesting additional funding. At the last Division meeting in July 2007, the Members approved an increase of $50 per hour, but also requested additional information be provided to them to substantiate the increase of only $50.

PAYMENT TO EXPERT REVIEWERS

FISCAL YEAR **2005/2006**		
TOTAL HOURS	*RATE/HR*	*COMMENTS*
122	$75	Travel Time
6,983	$100	Case reviews; Conference w/ DAG, MC, Inv;Oral competency
223	$200	Testimony
372	$100 - $500	Mental/Physical Evaluations - usual/customary fee Total Expense = $89,895 (an average rate of $250/hr)
Other Expenses: $10,108 (experts' transcription/typing expenses, mileage, lodging, per diem, parking, transportation)		

FISCAL YEAR **2006/2007**		
TOTAL HOURS	RATE	COMMENTS
127	$75	Travel Time
6,736	$100	Case reviews; Conference w/ DAG, MC, Inv; Oral competency
296	$200	Testimony
308	$100 - $500	Mental/Physical Evaluations - usual/customary fee Total Expense = $80,164 (an average rate of $250/hr)
Other Expenses: $9,122. (experts' transcription/typing expenses, mileage, lodging, per diem, parking, transportation)		