

MEDICAL BOARD STAFF REPORT

DATE REPORT ISSUED: January 12, 2015
ATTENTION: Members, Enforcement Committee
SUBJECT: Marijuana Task Force Update and Recommendations
TASK FORCE MEMBERS: Dr. Bishop and Dr. Lewis
STAFF CONTACT: Kimberly Kirchmeyer, Executive Director

REQUESTED ACTION:

After review and consideration of the information, make a motion to approve the three recommendations of the Marijuana Task Force and direct staff to take necessary action to implement the recommendations.

BACKGROUND:

At the October 2014 Enforcement Committee and Quarterly Board Meetings, the Members voted to make certain amendments to the Board's 2004 statement on marijuana recommendations for medicinal purposes. The amendments pertained to the following:

- 1) changing the term "medical marijuana" to "marijuana for medical purposes" or just "marijuana";
- 2) changing one of the consideration points that stated the first examination must be in-person, to that it must be an appropriate prior examination, as stated in the Business and Professions Code, and meet the standard of care;
- 3) making a few clarifications to the section on consent and record keeping; and
- 4) changing the wording to show that marijuana is not a medication.

Although the changes were approved, the discussion at both meetings concerning eliminating the point for an in-person examination brought forward a lot of concerns from the Members regarding the use of telehealth for the first examination to recommend marijuana. Therefore, at the Board Meeting, President Serrano Sewell requested the establishment of a Marijuana Task Force under the Enforcement Committee to discuss this issue. Dr. Lewis and Dr. Bishop were appointed to the Marijuana Task Force.

On December 12, 2014, the Marijuana Task Force met to discuss the statement on marijuana and the issue of telehealth for the initial examination. Prior to the meeting, Drs. Lewis and Bishop received and reviewed the laws regarding prescribing and telehealth, the Board's precedential decision regarding the Compassionate Use Act (*In the Matter of the Accusation Against Tod H. Mikuriya, M.D., Case No. 12-1999-98783*), and two new legislative bills that were introduced on December 1, 2014, regarding marijuana, Assembly Bill (AB) 26 and AB 34.

RECOMMENDATIONS:

At the meeting, the Task Force Members and staff discussed and considered all of these documents. Based upon the discussion, the Task Force makes the following recommendations to the Enforcement Committee:

- 1) The Task Force determined that pursuant to the telehealth law, the initial examination may be performed via telehealth, however, the standard of care must be followed as do

the requirements in Business and Professions Code Section 2290.5 (the telehealth law). Therefore, the Task Force is making a recommendation to amend the statement on marijuana to indicate these requirements. Specifically, in the section on important points to consider when recommending marijuana for medical purposes, the Task Force recommends the following additional statement (in underline and bold):

6. The initial examination for the condition for which medical marijuana is being recommended must be an appropriate prior examination and meet the standard of care. **Telehealth, in compliance with Business and Professions Code Section 2290.5, is a tool in the practice of medicine and does not change the standard of care.**
- 2) The Task Force also thought, particularly in light of the precedential decision, that Business and Professions Code Section 2242 should be amended to include a recommendation for marijuana. Currently, this section states in part:

2242. (a) Prescribing, dispensing, or furnishing dangerous drugs as defined in Section 4022 without an appropriate prior examination and a medical indication, constitutes unprofessional conduct...

In the *Mikuriya* decision, the Administrative Law Judge found that the standard for prescribing cannot be distinguished from the standard of practice, which proscribes recommending any other treatment without examination or medical work-up and the standard of practice is no different for “recommending” or “approving” marijuana than it is for prescribing any other medication. However, this case went to a Superior Court who stated that a recommendation is not a prescription. Therefore, the Task Force considered recommending a modification to Section 2242. However, after discussion, it was determined that AB 26 currently has language that will make this change, thus the recommendation is to have staff continue to meet with the author’s office to be sure they are aware of how important this amendment is, and to monitor this bill through the process. Should this legislation not move through this year, then the recommendation would be to put this amendment forward as a legislative proposal for 2016.

- 3) The Task Force recommends watching both AB 26 and AB 34. AB 26 changes the law to require an in-person examination for any recommendation for marijuana. If this legislation were to pass, staff would then amend the statement to comply with the new statutory requirements.