



MEDICAL BOARD OF CALIFORNIA



ENFORCEMENT COMMITTEE MEETING

Embassy Suites San Francisco Airport
250 Gateway Blvd.
South San Francisco, CA 94080

Thursday, July 28, 2016

MINUTES

Agenda Item 1 Call to Order/Roll Call

The Enforcement Committee (Committee) of the Medical Board of California (Board) was called to order by Dr. Yip, Chair. With due notice having been mailed to all interested parties, the meeting was called to order at 1:18 p.m.

Members Present:

Felix Yip, M.D., Chair
Michelle Bholat, M.D.
Howard Krauss, M.D.

Other Board Members Present:

Katherine Feinstein
Randy Hawkins, M.D.
Kristina Lawson
Ronald Lewis, M.D.
David Warmoth
Jamie Wright, J.D.

Staff Present:

Liz Amaral, Deputy Director
Christina Delp, Chief of Enforcement
Dianne Dobbs, Legal Counsel, Department of Consumer Affairs
Susan Houston, Staff Services Manager II
Kimberly Kirchmeyer, Executive Director
Regina Rao, Associate Government Program Analyst
Letitia Robinson, Research Specialist II
Elizabeth Rojas, Staff Services Analyst
Jennifer Saucedo, Staff Services Analyst
Jennifer Simoes, Chief of Legislation
Lisa Toof, Administrative Assistant II
Kerrie Webb, Staff Counsel
Curt Worden, Chief of Licensing

Members of the Audience:

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Jessica Bucher

Gloria Castro, Senior Assistant Attorney General, Department of Justice

Eric Cerlile, Kaiser Permanente

David Chriss, Chief of Enforcement, Division of Investigation, Department of Consumer Affairs

Genevieve Clavreul

Long Do, California Medical Association

Julie D'Angelo Fellmeth, Center for Public Interest Law

Lou Galiano, Videographer, Department of Consumer Affairs

Bridgette Gramme, Center for Public Interest Law

David R. Grube, M.D., Compassion and Choices

Christina Hildebrand, A Voice for Choice Advocacy

Ralph Hughes, Investigator, Health Quality Investigation Unit, Department of Consumer Affairs

Christine Lally, Deputy Director, Department of Consumer Affairs

Janice Miller

Carole Moss, Consumer's Union Safe Patient Project

Ty Moss, Consumer's Union Safe Patient Project

Kathleen Nicholls, Deputy Chief, Health Quality Investigation Unit, Department of Consumer Affairs

Vic Sandoval, Supervising Investigator, Health Quality Investigation Unit, Department of Consumer Affairs

Dr. Saputo

Jane Zack Simon, Supervising Deputy Attorney General, Department of Justice

Agenda Item 2 Public Comments on Items not on the Agenda

Mr. Moss, Consumer's Union Safe Patient Project, stated the Board's Executive Director tasked the Enforcement Committee to look into amending the Board's disciplinary guidelines regarding patient disclosure of probation status. He urged the Committee to recommend that the Board's disciplinary guidelines be amended to require that physicians on probation, for serious issues, inform their patients of their probationary status. The consumer should have the right to decide if they want to trust their care with that physician. He noted that current Board guidelines require that physicians notify hospitals, where they have privileges, as well as their medical malpractice insurers, so patients certainly should have to be notified, as well. Mr. Moss requested that patient notification requirements apply to physicians who are ordered on probation more than once. He recommended that the Board demonstrate the commitment to patient safety by amending the disciplinary guidelines to require as a standard condition, those physicians whose probation is associated with certain serious violations and practice restrictions be required, to disclose their probationary status and practice restrictions to patients.

Mr. Moss recommended that the Board develop a standard paragraph in plain language, that summarized the probation order. He stated the summary should cover the cause of the probation and include the accusations to which the physician stipulated, the length of probation, and a list of the practice restrictions placed on the physician.

Agenda Item 3 Approval of Minutes from January 21, 2016 Meeting

Dr. Krauss made a motion to approve the January 21, 2016 meeting minutes; s/Dr. Bholat. Motion carried unanimously.

Agenda Item 4 Enforcement Program Update, including personnel, expert reviewer program, statistics, and enforcement unit updates.

Ms. Delp stated the Board had tentatively scheduled its next two expert reviewer training events. They are scheduled to be held on October 8, 2016, at UC San Francisco and November 5, 2016, at UC Los Angeles. A “save the date” announcement went out to all existing experts in the program and the Board’s Information Services Branch (ISB) is working on creating an on-line registration feature to assist in registering for the training. She stated the agenda would focus on the expert program’s mission and expectations, legal considerations when opining on a case, an overview of different case scenarios, and segments on testifying, provided by an Administrative Law Judge (ALJ), a Deputy Attorney General (DAG), and a defense counsel. Ms. Delp noted the training would also include a segment providing an overview of the Board’s Central Complaint Unit’s (CCU) complaint handling process.

Ms. Delp stated the training with the Office of Administrative Hearing (OAH), would resume in the fall. She noted the trainings would be held in September, October, and November. The judges would be educated on emergency room procedures, co-morbid patients, and fitness for duty evaluations. At the conclusion of the November training, the Board would have provided six training sessions to the OAH, fulfilling a strategic plan objective to provide training to the judges. Ms. Delp noted that in 2017, a needs assessment would be conducted to determine what additional of training the judge’s may be interested in receiving, and based on that assessment, further trainings will take place.

Ms. Delp stated the CCU had decreased the number of days it takes to process a complaint from 162 days to 146 days. She noted that staff had been working hard to reduce this timeframe and working overtime. She stated management in the CCU continued to evaluate the way business is being conducted to find ways to streamline the process. She noted that by identifying more ways to be efficient, the processing timeframes would continue to decrease. Ms. Delp stated, at the October 2016 Board meeting, Enforcement Program Manager, Paulette Romero would be providing the Committee with a presentation on the CCU’s complaint handling process.

Ms. Delp continued stating the Complaint Investigation Office (CIO) continues to maintain a case load of approximately 55 cases per each non-sworn investigator. She stated management had also been evaluating the timeframes it takes for CIO to process its cases and have been shifting less complex duties to support staff, which would permit the investigators to focus on interviewing witnesses and subjects, initiating subpoenas to obtain medical records, and report writing. Ms. Delp stated the Attorney General’s (AG) Office continues to report that the work product produced by CIO is excellent. Ms. Delp personally thanked staff for their outstanding efforts.

Ms. Delp stated in the Probation Unit, management continues to review office policies and procedures to ensure optimal efficiency and consumer protection. She stated that with the changes made in the unit, she appreciated staff’s supportive attitude to the changes. She stated they continued to work diligently as a team and the improvements are paying off, as the Unit had increased the number of cease practice orders

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and referrals for petitions to revoke probation transmitted to the AG's Office during fiscal year 15/16, compared to fiscal year 14/15.

Ms. Delp noted that with the exception of the CIO, there were six vacant positions within the various sections of the Enforcement Program. She stated the efforts to fill vacancies continued with interviews being conducted, others were in the process of being scheduled, and some tentative job offers were made pending the results of background clearances. She stated the anticipated vacancies would be filled no later than September 30.

Agenda Item 5 Update on Demographic Study, including progress and timeline

Ms. Robinson provided an update to the study being conducted by the California Research Bureau (CRB) regarding the Board's demographic study. Ms. Robinson stated, at the January Board meeting, it was determined that the next step would be for the CRB to finalize the research design and methodology, which would be provided to Dr. Krauss for review and approval (as approved by the Board when requesting the report). Ms. Robinson stated she had not provided an update at the May Board meeting, however a written update had been provided in the Enforcement Program summary. She noted that the May update stated that on April 18, 2016, Dr. Krauss and Dr. Baker, from the Black American Political Association of California, as well as the Golden State Medical Society, had received the research plan for review. Ms. Robinson stated that Dr. Krauss had approved the plan and the plan is now near completion. It was expected to take approximately two months for the initial analysis and another two months to finalize the report. Ms. Robinson reminded the Board that the CRB provides non-partisan research services to the Governor's Office and their staff, to both houses of the Legislature, and to other elected state officials, free of charge, so the Board has not incurred any cost to conduct this study.

Ms. Robinson stated she and Ms. Kirchmeyer had met with Mr. Patrick Rogers, Senior Policy Analyst at the CRB, to discuss the progress of the study. She noted that the outcome of that meeting was the expectation that Mr. Rogers would be ready to present the study's findings at the Board's October meeting.

Dr. Krauss noted that he felt this is a very important study and hopes that upon receipt of the report, there would also be development of mechanisms for on-going analysis on a prospective basis, because unless the Board remains aware of any potential prejudice on Board actions, there is no guarantee that there would not be any.

Dr. Jackson thanked Ms. Robinson and Ms. Kirchmeyer for leading this important study. He very much appreciated the guidance and the Board's moving forward with this important issue.

Agenda Item 6 Presentation on the Expert Reviewer Program's Recruitment Plan

Ms. Delp provided a power point presentation on the recruitment efforts to the Committee. She stated that expert reviewers assist the Board by providing reviews and opinions on Board cases and conducting professional competency examinations, as well as medical and psychiatric evaluations.

Ms. Delp noted the current recruitment efforts include an ongoing ad in the Board Newsletter, inviting actively practicing physicians to apply to become an expert reviewer. She stated another place that the

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Board is using for recruitment is the Board's website. There are several different ways to find information about the expert program on the website. Lastly, recruitment efforts are made through the Board's current medical consultants and experts as they ask their colleagues to consider becoming an expert reviewer.

Ms. Delp noted that the current recruitment efforts are minimal, so she and her staff have developed a recruitment plan to bring more physicians into the program. Stage one of the new plan would include an update of the Board's website. A new link had been added to the Board's home page, which takes the user to the expert reviewer home page. The licensee tab has also been enhanced with a links directly to the expert reviewer home page. Ms. Delp stated that staff would be able to track analytics to see the benefits of these additions. She stated staff would continue to include notices in the Board Newsletter with the addition of quotes from current experts that explain why they became an expert, their experiences, and the benefits of being in the program. Staff will also solicit current experts to write articles for the Newsletter telling why they felt it was important to be involved in the program. Ms. Delp stated she would be requesting the Board President to draft an invitational letter to encourage participation in the program talking about the benefits and importance of the program in hopes to encourage physicians to join. The letter would be sent to department heads of medical schools to recruit faculty to become experts. This letter would also be sent out with the license renewals on a regular basis.

Ms. Delp stated that staff would also be creating a brochure providing important highlights of the expert reviewer program, to include the rolls of the experts, requirements to become an expert, and compensation information. This brochure would be used at recruitment conferences, and would also be sent out with license renewals on a regular basis. It would also be requested that specialty associations distribute the brochure to their members. Ms. Delp stated an estimated completion date of stage one to be Fall, 2016.

Ms. Delp continued with stage two of the recruitment plan, which she estimates to be completed by Spring, 2017. The first step of stage two would be an additional enhancement to the Board's Newsletter. She noted that staff would also be researching advertising in external newsletters and magazines with medical specialty boards and associations.

Ms. Delp noted another step in stage two is to have staff attend hospital staff meetings, specialty board meetings, CME activities, and special conferences to distribute materials, brochures and the Board President's letter.

Ms. Delp stated the final step is stage three, where staff would be enhancing, once again, the Board's website by adding several 1-3 minute videos hosted by the Board President, Executive Director and Executive staff, encouraging participation in the program.

Ms. Clavreul noted she is pleased with the new recruitment plan.

Agenda Item 7 Investigation and Vertical Enforcement Program Report

Mr. Chriss and Ms. Nicholls stated that at the last Board meeting it was reported that they had been conducting expeditious hiring panels throughout the State and had made improvements to streamline the background process to make it more efficient. Mr. Chriss stated, however, that it had been difficult to overcome the amount of time needed to hire sworn peace officers due to the psychological screening and medical portion of the process. Once that process is completed, if the

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candidate needs to attend an academy, it could take another six months before they are able to assist with the caseload. Mr. Chriss noted they currently have 27 vacancies, a 35% vacancy rate, with 14 candidates in background for the investigator positions. With the vacancies, he noted the caseload had risen for existing investigators. Mr. Chriss stated that in many areas of the State caseloads are over 40 cases per investigator. He stated, because of the caseloads, they had taken strong, mitigating steps to deal with the increased workload. He noted as of July 1, 2016, all new Board of Psychology and Osteopathic Medical Board cases were being investigated by the Investigation and Enforcement Unit (IEU) of the Division of Investigation (DOI). IEU will continue to receive cases from these two allied health boards on a temporary basis, until HQIU staffing levels return to normal. Mr. Chriss noted in addition, 61 existing cases had been transferred to IEU from HQIU. He stated they were in the process of hiring eight limited-term non-sworn special investigator positions that would be housed at the San Bernardino field office. These positions can be hired without the delays of background and the academy and can provide immediate relief by working the lower priority cases.

Mr. Chriss stated these positions are not permanent, but a good placeholder to obtain some immediate relief to complete cases while the sworn candidates are in background. He noted they are also hiring two limited-term special investigator assistant positions in the Sacramento and Pleasant Hill field offices. If this pilot program is successful, it would give HQIU the ability to gather the necessary data to justify budget change proposals (BCP) for new funding to permanently fill these important positions. Mr. Chriss stated that as the Members know, pay has always been a factor causing the investigators to leave the department. As mentioned in prior meetings, retention pay was pending in the collective bargaining process. He noted the new contract ratified by bargaining unit seven members in late June 2016, includes the provision that transfers the decision making authority to issue retention pay to the Department and CalHR. Based on this new provision, the department would put forward a retention pay proposal for HQIU investigators to CalHR and would work with CalHR through the process. Mr. Chriss stated he would keep the Board updated on this issue.

Mr. Chriss stated in February 2016, staff participated in a survey regarding vertical enforcement. One of the areas identified as needing modification, was the subject interview phase of the investigation. They had been working with the AG's Office and DCA's executive staff to make improvements in this area and would continue to make collaborative efforts to streamline the process. He noted they had been working on another joint training session with the AG's Office regarding subject interviews, which would be taking place later in the year.

Mr. Chriss commended the staff for the hard work and dedication as they give every day to protect consumers and that he is confident that the solutions he shared would help HQIU and maintain their ability to perform core functions while staff progress through the background process.

Dr. Krauss asked if there were any candidates in the academy that would be available soon to start working.

Ms. Nicholls stated there is one candidate that is currently in the academy and one other candidate that has been hired and would begin the academy in October.

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Dr. Krauss asked if there was anything the Members could do to assist HQIU in getting the retention pay approved.

Mr. Chriss stated he believed the statements and comments that had been made by the Board Members in the past in regards to this issue truly had an impact during the bargaining negotiations, and thanked the Members for their input on that issue.

Dr. Bholat asked Mr. Chriss what goal or decrease in the timeframes they hope to see by the next Committee meeting.

Mr. Chriss stated that with new staff coming on board, it would take time to get them trained, so he is hoping to be able to report at the next meeting that the timelines have improved or at least stabilized. He noted he felt it would take some time even beyond the next meeting to actually see the decreases in workload.

Ms. Nicholls added they have been focusing on prioritization as well, working on the most egregious cases to help protect the public. With that, some of the lower priority cases are aging more than they would like to see. Ms. Nicholls noted there had been a significant improvement with the interim suspension orders (ISO). In the year 14/15, there was 14 ISO issues and in the year 15/16, there were 36. She noted there was also a decrease in the length of time that it took to obtain an ISO by 150 days.

Agenda Item 8 Vertical Enforcement Program Update from the Health Quality Enforcement Section

Ms. Castro noted within the past two fiscal years, since the HQIU was created, HQE staff and the AG's Office had vertically enforced, on average, about 1500 investigations per year through their lead prosecutors and primary Deputy Attorney General (DAG) assigned to the office where the investigation is based. The DAGs spend an average of six hours, at \$170.00 per hour, or just \$1200.00 per case for each investigation worked per fiscal year. Important legal tasks are subpoena review, subject interview participation, expert review, case disposition review, and on-going advice and consultation. She stated in the selective cases that necessitate a personal appearance at a physician interview, the DAGs travel to the district office of that case. She noted most legal direction and communication between the DAGs and the district office is done via email or telephonic conversations, and often travel is required by staff to enforce subpoenas in civil court or to attend criminal bail hearings. She stated throughout the entire investigation, the focus, is on the case at hand and the patients who trusted the Board with their complaint. The focus is on achieving public protection and securing the evidence necessary to prosecute a violation.

Ms. Castro stated their ten lead prosecutors serve as in-house legal resources to medical consultants and investigators on all cases located in the office they serve. The lead prosecutors travel to these offices weekly and interact with investigative staff and monitor all investigations in those offices. The lead prosecutors identify statute of limitations, conflicts, and triage high priority cases. She stated they work hard to manage a very large investigative case load along with their own litigation case load, which can include federal cases, as well as training and advice to

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investigators. Their lead prosecutors take on assignments of petitions for mental examination, preservation of cease practice orders, and reacting in quick order to enjoin physicians from hurting patients. They act as resources to DAGs assigned to investigations in that office. During this period of time, the AG's legal staff directs investigations assigned to them. They manage a full litigation case load that is at all stages of filing, settlement hearing, post hearing, appeals, along with a long list of other legal tasks that may include appearing at reinstatement and probation termination hearings, statement of issues, citation and fine, and lawsuits, sometimes defending Board Members.

Ms. Castro noted the DAGs' work week is not a 40 hour work week. They have to work as long as it takes to complete a case. The HQE section at the AG's Office bills the Board by the hour, states what work was performed and includes a narrative attached to the bills. They do not receive a cost neutral yearly amount from the Board, which means they do not receive a lump sum to spend as they see fit. Every fiscal year, they return any unexpended legal funds to the Board. She noted of HQE legal services fund, investigations apprise about 20% of their total legal billings to the Board.

Ms. Castro stated in the last three fiscal years, the cost of the vertical enforcement (VE) program, had been an average of about 2.5 million dollars per fiscal year. She stated this small investment has paid dividends in public protection in both administrative disciplinary actions, in which they file strong accusations, obtain surrenders, revocations, and ISOs. They enforce subpoenas when physicians do not want to give medical records, and they create thoughtful settlements that rehabilitate physicians and achieve public protection and public safety. She stated VE protects good physicians by removing them from the cloud of suspicion in the investigation and also eliminating unfounded accusations against them. She stated the VE program has increased the quality of evidence reviewed by medical consultants and the Board's retained independent experts. She stated the VE program exists to protect the public and no other reason. The deputies that work in HQE have weathered all of the challenges presented in the past 11 years by never losing sight of what the law intends. She stated she felt very privileged to lead such fine prosecutors. HQE agrees with the mission and intent of the legislation establishing the VE program.

Ms. Castro stated they had started working on a subject training interview for investigators and had offered to take over some of HQIU's scheduling physician interviews to assist in their workload. They would use their legal analysts to do the scheduling.

Dr. Krauss stated how impressed he had been with the skill of the DAGs but also by their passion. He also asked Ms. Castro if she felt they had enough medical experts to assist in bringing cases forward.

Ms. Castro stated they have had the most difficulty in finding experts in obscure areas, such as pathology and dermatology.

Dr. Yip stated that it is not always the money the expert reviewers are most interested in, it is the respect. He noted when he approached the USC Dean's Office, they were excited about assisting the Board by sending out emails.

Agenda Item 9 Presentation on the Probation Unit Timeframes and Actions Taken for Violations of Probation

Ms. Delp and Ms. Houston gave a presentation overview on the probation unit timeframes and actions taken for violations of probation. This overview contained information regarding the terms and conditions in the disciplinary guidelines implementation of the uniform standards and actions taken when a violation occurs and timeframes for disciplinary action.

Dr. Krauss stated he would like to have additional information regarding the Board's self-assessment in terms of staff's performance. He asked if something goes wrong, is there is a mechanism in place to analyze that situation to determine what can be done to avoid it from happening again in the future. He would like Ms. Delp to look into creating an internal quality assurance program and bring those statistics back to the Board at a future meeting.

Ms. Delp stated the department had recently implemented performance measures related to probation and with that she is able to track metrics much closer now. She stated it is still too new to have statistics yet, but that she would bring numbers back to a future board meeting.

Dr. Bholat agreed with Dr. Krauss and would like to see those metrics be brought back to a future meeting.

Dr. Hawkins thanked Ms. Delp for putting together the presentation as he felt that it helped everyone with an idea of what the probation process involves and felt it was very valuable information.

Carole Moss asked if the new developments are going to be retroactive on existing probationary physicians or just from here going forward.

Ms. Delp stated if a physician is currently on probation, then these new changes would affect them.

Ms. Clauvreul asked the current number of people who violated probation.

Ms. Delp stated she did not have the exact number, but what is shown in the Board packet is that the Board had issued 14 cease practice orders so far in FY15/16 and transmitted 36 cases.

Agenda Item 10 Future Agenda Items

Dr. Krauss and Dr. Bholat requested a staff report and discussion on quality indicators for probation.

Agenda Item 11 Adjournment

There being no further business, the meeting was adjourned at 3:15 p.m.

The full meeting can be viewed at www.mbc.ca.gov/board/meetings/Index.html