



MEDICAL BOARD OF CALIFORNIA



ENFORCEMENT COMMITTEE

Agenda Item 3

**Historic Mission Inn
3649 Mission Inn Avenue
5711 W. Century Boulevard
Riverside, CA 92501**

Wednesday, October 23, 2013

MINUTES

Agenda Item 1 Call to Order/Roll Call

The Enforcement Committee of the Medical Board of California was called to order by Dr. GnanaDev, Chair. With due notice having been mailed to all interested parties, the meeting was called to order at 4:10 p.m.

Members Present:

Dev GnanaDev, M.D., Chair
Sharon Levine, M.D.
David Serrano Sewell, J.D.
Barbara Yaroslavsky
Felix Yip, M.D.

Members Absent:

Gerrie Schipske, R.N.P., J.D.
Phillip Tagami

Staff Present:

Susan Cady, Staff Services Manager II
Dianne Dobbs, Legal Counsel, Department of Consumer Affairs
Kimberly Kirchmeyer, Interim Executive Director
Valerie Moore, Staff Services Manager I
Dino Pierini, Business Services Analyst
Regina Rao, Business Services Analyst
Marie Russell, M.D.
Kevin Schunke, Outreach Manager
Jennifer Simoes, Chief of Legislation
Laura Sweet, Deputy Chief of Enforcement
Renee Threadgill, Chief of Enforcement
Lisa Toof, Administrative Assistant II
See Vang, Business Services Analyst
Rachel Wachholz-LaSota, Inspector III
Kerrie Webb, Staff Counsel
Curt Worden, Chief of Licensing

Members of the Audience:

Gloria Castro, Senior Assistant Attorney General, Department of Justice

Yvonne Choong, California Medical Association

Zennie Coughlin, Kaiser Permanente

Julie D'Angelo Fellmeth, Center for Public Interest Law

Karen Ehrlich, L.M., Midwifery Advisory Council

Michael Gomez, Deputy Director, Department of Consumer Affairs

Awet Kidane, Chief Deputy Director, Department of Consumer Affairs

Agenda Item 2 Public Comments on Items not on the Agenda

No public comments were provided.

Agenda Item 3 Approval of Minutes from April 25, 2013 meeting

Ms. Yaroslavsky made a motion to approve the minutes from the April 25, 2013 meeting; s/Dr. Yip, motion carried.

Agenda Item 4 Update on Implementation Plans for the Transition of Staff Pursuant to SB 304

Ms. Kirchmeyer introduced the representatives from the Department of Consumer Affairs (DCA). Mr. Kidane, Chief Deputy Director at DCA, and Mr. Gomez, Deputy Director of the Division of Investigation and Enforcement Programs at DCA were both in attendance.

Ms. Kirchmeyer reviewed the plan on the transition of the Investigators to the newly formed unit entitled the Health Quality Investigation Unit (HQIU) within the DCA, Division of Investigation. She stated that documentation of administrative specifics will be provided at the February meeting.

Ms. Kirchmeyer asked the Board members to turn to tab 4, ENF 4-1. She pointed out the written analysis of the transition and stated the following information:

- The bill has changes that will move the Board's investigators, medical consultants and all support staff to a new unit (HQIU) within the DCA.
- It will take place no later than July 1, 2014.
- All civil service employees will retain their position status and rights as employees.
- The bill specifically states that the Board cannot be charged an hourly rate by the HQIU.
- The bill retains the vertical enforcement prosecution model (VE). VE transitions to the Division of Investigation to work with the Attorney General's office during the investigation process.

Ms. Kirchmeyer guided the Committee through the new enforcement process explaining in detail the changes that came with the passage of SB 304.

Mr. Kidane commented that it is the DCA's intent to make the changes in the processes and timelines without disrupting the current functions.

Mr. Gomez clarified for Ms. Yaroslavsky that employees will not be moved to the Division of Investigations field offices and that most people will have the same phone numbers. It is the reporting line that will change.

Mr. Kidane spoke about using the Medical Board's current statistics as recommended by the transition team to hold everyone accountable. Mr. Kidane also spoke on SB 304 saying that this law is not intended to disrupt or remove any services from the consumer. The DCA's transition committee members are in place to have as many eyes as possible looking at the transition, in order to identify any problems or challenges before they occur. This is simply two offices merging together for the best interest of the consumers.

Mr. Gomez spoke on the transition plan stating that DCA is not part of the VE model but is willing to embrace it and figure out how to make it work better. Mr. Gomez guided the Committee through the transition plan using charts and handouts.

Ms. Castro discussed what part the Health Quality Enforcement Section (HQES) plays in the transition. Ms. Castro suggested that HQES does more than make suggestions to the Board, they provide feedback and follow-up, they direct investigations to get them to the logical conclusion of closure, filing, or otherwise and throughout this process they participate in critical junctures of the cases, such as evaluating expert reports, choosing the experts and approving subpoenas. She stated that some of the results already obtained due to the VE model were HQES' ability to produce serious discipline and to close cases earlier brought against physicians that may be innocent. HQES has also focused on more serious cases bringing them to resolution and to the public's attention quicker, plus identifying interim suspensions. This has avoided withdrawals and dismissals of cases and has identified other resolutions that might include public letters of reprimand, citations and fines.

Ms. Kirchmeyer commented that SB 304 extended the time to file an accusation after an interim suspension order is issued from 15 days to 30 days, and explained how the extra time to file the accusation will be of assistance to the investigation.

Karen Ehrlich, licensed midwife and vice chair of the Midwifery Advisory Council, stated that she believes medical consultants have been asked to weigh in on professions where they do not necessarily have training or experience. Ms. Ehrlich stated she would like to see the team approach capitalized by making sure when there are cases against providers other than physicians that a representative of said profession be included in all levels of the deliberations when deciding if a case should be brought against a practitioner.

Agenda Item 5 Presentation Regarding Enforcement Program Accomplishments

Ms. Sweet highlighted the accomplishments of the enforcement program. She spoke about the impact from furloughs, vacancies and other challenges in investigations. She stated that the unique thing about the Medical Board is that the investigation unit handles the cases from beginning to end.

Dr. GnanaDev asked Ms. Sweet which changes in SB 304 will improve the enforcement process, such as timelines for interviews.

Ms. Sweet suggested there are opportunities to review some of these things and there are opportunities to tighten up some things in the manuals that the Enforcement Program shares with the Attorney General. Ms. Sweet suggested some items may not be resolved, and challenges such as subpoenas are going to continue to exist, just by the nature of the work.

Ms. Yaroslavsky thanked Ms. Sweet for the report saying that things may not be as bad as the media says. Ms. Yaroslavsky suggested that staff find a way to tell the Board's story, saying the public needs to know that the Board is paying attention, doing a better job and the results are in the details. She also encouraged the Committee to find a way to tell the story.

Dr. GnanaDev concurred with Ms. Yaroslavsky.

Dr. Yip asked if the expert training is still scheduled and who is the target audience.

Ms. Sweet stated the training is scheduled for November 2, 2013, at UC San Diego in the Met Building and everyone is invited to attend. The Medical Board experts are the target audience. Ms. Sweet went on to explain that the experts will complete sample opinions that will be graded and feedback will be provided. This will help generate a better product. The training is interactive and the experts are all assigned a clicker so they can participate and vote on different scenarios. The experts will be given ten continuing medical education (CME) credits.

Agenda Item 6 Discussion on Suggested Improvements to the Enforcement Program and Review of Member Survey Results

Dr. GnanaDev suggested deferring this agenda item to a future Committee meeting, after SB 304 has been established and implemented.

Agenda Item 7 Update on Operation Rx (Prescribing Strike Force)

Ms. Sweet noted that the prescribing strike force has been working exclusively on over prescribing investigations. Ms. Sweet said there is a unique aspect relating to these cases, which is the need to coordinate with other interested law enforcement agencies such as the Drug Enforcement Agency, the Department of Justice, the Office of the Inspector General, the Federal Bureau of Investigations and a variety of prosecuting agencies including the United States Attorney's office.

Ms. Sweet stated four physicians and one physician's assistant have been arrested or self-surrendered with criminal charges pending. Three search warrants have been executed, one of which resulted in the seizure of 250 boxes of evidence. Since its inception Operation Rx has conducted 15 undercover operations and has procured about 2000 physician prescriptions. Numerous search warrants are in the planning stages. Currently the unit has a case load of 27.

Agenda Item 8 Update on Expert Reviewer Training

Ms. Sweet noted the next training is scheduled for November 2, 2013 at UC San Diego and invited all to attend. Ms. Sweet also noted that ten hours of CME credit will be provided to the participants who attend the training and complete the sample expert opinion. Dr. GnanaDev encouraged the Committee Members to attend.

Agenda Item 9 Probation Monitoring Presentation

Ms. Cady reported background information regarding the Probation Monitoring Unit and how this program monitors the physicians' compliance with the terms and conditions ordered by the Board in its disciplinary orders. She presented a breakdown on how many physicians are on probation (561), how many are practicing while on probation (444), how many are not practicing or are out of state while on probation (117), and how they are all monitored. Ms. Cady explained the inspectors' duties from intake to quarterly updates and stated that most physicians on probation are ordered to take various educational courses and/or a PACE assessment. She answered various questions from the Committee Members regarding these areas.

Ms. Cady continued by stating that the goal set in statute is to rehabilitate and remediate physicians while ensuring adequate protection for the public and that the conditions identified in the disciplinary orders are designed to meet this goal. She continued stating the role of the Probation Unit is to give the physicians the tools and the information necessary to meet the conditions that have been ordered and to ensure adherence to the patient protection components. The inspectors are also charged with monitoring the physicians' practices.

Agenda Item 10 Agenda Items for February 2014 Meeting

- Update on Expert Reviewer Training
- Update on the Transition of Staff Pursuant to SB 304
- Update on Operation Rx (Prescribing Strike Force)

Agenda Item 11 Adjournment

There being no further business, the meeting was adjourned at 6:24 p.m.

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