



MEDICAL BOARD OF CALIFORNIA
Executive Office



Executive Committee

Agenda Item #2

**Hawthorne Suites
Huntington Room
321 Bercut Drive
Sacramento, CA**

June 18, 2007

MINUTES

Agenda Item 1 Call to Order/Roll Call

The Executive Committee of the Medical Board of California was called to order by the Chair, Dr. Fantozzi, at 2:03 p.m. Notice had been sent to interested parties.

Members Present:

Richard Fantozzi, M.D., President
Steve Alexander
Cesar Aristeiguieta, M.D.
Gary Gitnick, M.D.
Laurie C. Gregg, M.D.
Barbara Yaroslavsky

Members Absent:

Ronald L. Moy, M.D.

Agenda Item 2 Approval of the January 4, 2007 and March 29, 2007 Minutes

It was M/S/C to approve the minutes of the January 4, 2007, and March 29, 2007, meetings.

Ms. Scuri introduced two new attorneys in her office, Mr. Harry Gibbons and Ms. Dianne Dobbs.

Agenda Item 3 President's Report

Dr. Fantozzi announced Gerrie Schipski replaced Board Member James Bolton, M.D. She was appointed by Senate Rules to the Division of Licensing on June 13, 2007.

A. Communication from Interested Parties

Dr. Fantozzi reported the following communication with interested parties:

- Interview with the San Diego Union Tribune regarding telemedicine;
- Telephone conference with Dr. Neil Kaufmann, a pediatrician trained in public health and a professor at UCLA who has an organization in Los Angeles that delivers educational information for consumers via the Internet; and
- Discussions with representatives from the Center for Public Interest Law.

B. Committee Appointments

Ms. Schaeffer distributed an updated committee list, and Dr. Fantozzi requested the Board to review it and advise him of any edits.

Agenda Item 4 Executive Director's Report

A. Legislative Report on Vertical Enforcement

Dr. Fantozzi deferred discussion on Vertical Enforcement to Agenda Item 5.

Agenda Item 5 2007 Legislation

Ms. Whitney, Chief of Legislation stated there are three items that need action:

AB 253(Eng) Restructuring of the Medical Board of California. This bill reduces the board membership from 21 members to 19 members, keeping a physician member majority of one. This consolidates the Board's Division of Licensing and the Division of Medical Quality to one board. It gives the Executive Director authority to make the final decision on specified disciplinary actions that relate to default decisions and surrender of licenses.

Ms. Whitney provided a letter from the Department of Consumer Affairs (DCA), stating its request for an amendment to reduce the membership to 15 members. If the Executive Committee agrees with the reduction, the author would submit language to legislative counsel.

Ms. Whitney stated in order to reduce the membership to 15: two public member positions that expire June 1, 2010, would terminate January 1, 2008; two non-public member positions that expire June 1, 2008, would terminate August 1, 2008; two non-public members that expire June 1, 2011, would terminate January 1, 2008.

Mr. Alexander made a motion to support the amendments as submitted.

Ms. Laura Zuniga, Deputy Director of Legislation, DCA, explained the proposal to reduce the

membership to 15 members was for efficiency, not cost concerns. The DCA thought 15 members would be able to accomplish the work and a smaller number of members would make the Board more efficient.

Ms. Yaroslavsky suggested the board wait until after the reorganization and the workload is instituted to look at what the board can do to be more efficient.

Mr. Thornton explained the bill reduces the panel workload approximately one quarter by delegating to the Executive Director the ability to approve stipulations for surrender of license and default decisions.

It was M/S/C (5-1) to support the amendment requested by the DCA.

SB 761 (Ridley-Thomas)	Diversion Program. This is board-sponsored legislation to extend the sunset date for the Diversion Program to June 30, 2011, and establish the Diversion Advisory Council into law. The second part of the bill is to extend the Vertical Enforcement/Prosecution Model Pilot Program until June 30, 2011.
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Mr. Alexander gave a brief history of the Diversion Program over the past 27 years and discussed some of the recommendations of the Audit Report. He questioned if the Board can comply with those recommendations.

Mr. Cordiner, Chief Deputy State Auditor of the Bureau of State Audits and Ben Benlap, Supervisor-on-Site, introduced themselves to answer questions.

Mr. Alexander stated the board accepts the Audit Report and asked if the Audit was constructive notice that the Board is out of compliance.

Mr. Cordiner stated they found improvements, but there are still deficiencies, as outlined in the report. He noted the board is out of compliance with some things.

Dr. Pating a physician involved in addiction medicine stated his concern is that this disease is being treated differently than any other disease. There are physicians who are impaired for a variety of other reasons that could affect the safety of the public, but are not participating in this program. The board has no control over these groups of physicians because they are unaware of them.

Mr. Alexander stated he feels the program does not protect the public and is not designed to protect the public.

Julie D'Angelo Fellmeth, Center for Public Interest Law, stated the audit confirmed previous audits, including the Enforcement Monitor Report. Ms. Fellmeth does not believe it is possible for a board, structured as this one is, to oversee a program of this size and complexity.

Dr. Fantozzi noted that although there are 15 employees and a budget of 1.4 million, the reality is

there are over 100 people, and the budget is probably five to ten million. He asked if the board has the ability to comply with the auditors in a timely manner and continue to take new members or do a cease and desist on new people if the board proceeds to get this program back on track.

Dr Gitnick spoke in support of Diversion, but stated he believes the Board should not be running it.

Dr. Aristeiguieta stated despite the flaws of the program, the public is better protected today, and preferred to keep the program and improve those things that need to be improved.

Dr. Fantozzi stated the Board will work with the author regarding the results of the audit.

Mr. Alexander made a motion the board support Senator Ridley-Thomas's concerns about the board being in the rehabilitation and clinical services business and bring the program to a close. It was seconded by Dr. Gitnick.

Public comment was heard:

Sandra Bressler, California Medical Association (CMA) stated she does not support the board's recommendation to eliminate the diversion program and provided the following suggestions:

1. The Board should not use zero tolerance as a standard.
2. The Board needs to hire experts to run the Diversion Program with the board as an overseer of the program as in Enforcement.
3. The Board should elevate the position of Diversion Program Administrator and hire someone with skills to handle this program.

Dr. Fantozzi stated participants do not pay a fee to be in this program. He asked Ms. Bressler if she would support charging a fee for this program.

Ms. Bressler responded most of these doctors are not practicing medicine, not making money, are paying group facilitators, and paying for tests and treatment programs.

Dr. Fantozzi asked Ms. Bressler if she believes regulatory bodies such as our board are the appropriate vehicle to run a program like this

Ms. Bressler stated because the program is connected to the Medical Board some people are reluctant to enter as there might be a threat to their license. On the other hand, the participants in the program are highly motivated to do well.

Tina Minasian, patient advocate, discussed her experience being treated and injured by a doctor that was in the Diversion and failed. She supports abolishing the Diversion Program. She requested more information regarding settlements and diversion issues regarding the physicians be on the board's Web site.

Dr. Laurie Gregg, Chair of Diversion Committee, stated she believes the good outweighs the bad with respect to public protection. The board can have a zero tolerance policy but it may be too high of an expectation. The Diversion Committee has created a Matrix in response to each

one of the auditor's recommendations and they plan on continuing to implement them by the due dates listed.

Dr. Fantozzi asked Mr. Alexander to accept an amendment to the motion that the Diversion Program continue to operate and implement the matrix, and asked to have himself and Dr. Gregg authorized to meet with the author.

Discussion followed by several board members in clarification of both the amendment and original motion.

Mr. Alexander declined the amendment.

Mr. Thornton took a roll call on the motion and it failed.

Dr. Aristeiguieta presented a possible motion to implement the responses to the audit and to delegate to Drs. Gregg and Fantozzi the authority to work with the author's office on amendments to the bill that are consistent with the responses to the audit and to address the concerns of the author. Staff was directed to bring the recommendations back to the Executive Committee or the Full board for further action.

Mr. Thornton stated that staff intends to immediately take action necessary to protect the public.

Mr. Alexander stated he opposed this proposed motion,

Dr. Aristeiguieta recommended the staff immediately implement the new policy in number eight and numbers 11 through 13 in order to address Mr. Alexander's concerns.

Ms. Bressler, CMA commented that if physicians are not monitored, they are going to continue doing what they do without detection. She believes patients are not at massive risk with this program and thinks they would be if there was no program.

Dr. Aristeiguieta moved to implement the responses to the matrix and responses to items #8, and #11 through #13, should be implemented immediately. To delegate to Drs. Gregg and Fantozzi the authority to work with the author's office on amendments to the bill that are consistent with the responses to the matrix to address the concerns of the author and to bring the recommendations back to the Executive Committee or the Full board for further action.

It was M/S/C to support the motion. (4-2)

Dr. Fantozzi referred members back to SB 761, which has two components, Diversion and Vertical Enforcement.

Mr. Thornton stated the project is now called Vertical Enforcement instead of Vertical Prosecution, because most of the cases investigated do not result in administrative or criminal prosecution of a physician. He discussed the draft report to the legislature regarding Vertical

Enforcement. He stated some highlights of the report included: the average number of days to close case that did not result in any type of prosecution went from 145 days to 139 days; obtaining medical records from an average of 74 days to 35 days; obtaining physician interviews from 60 days to 40 days; expert opinions from 69 days to 36 days; completion of an investigation and filing an accusation from 241 days to 212 days; and most dramatically the average time to obtain an ISO from 91 days to 30 days.

In the draft report, the recommendations are to fully implement the pilot and transfer the Board's investigative staff to the Department of Justice. An alternative is to give the Board the authority to hire its own attorneys and implement Vertical Enforcement at the Medical Board.

Since this report is due July 1, 2007, Mr. Thornton recommended taking public comment on these recommendations, but delegate that authority to two members of this committee.

Ms. Fellmeth stated the Medical Board hiring its own attorneys is not a viable suggestion. The alternative should be to continue the pilot program or make it permanent, and create a new classification of investigators to enable the board to attract and retain experienced investigators.

The members approved the two-person committee will work with staff to make final edits to the report for the July 2007 board meeting.

Ms. Whitney introduced Bryce Docherty, legislative advocate for the California Academy of Physician Assistants to discuss the Physician Assistant legislation.

Mr. Docherty presented the proposal regarding increasing access to physician assistant services. The proposal has four specific provisions would: 1) eliminate the minimum 10% chart counter signature requirement; 2) standardize the formulary for a physician assistant to fill a drug order; 3) standardize the physician supervision requirement of two physician assistants to four physician assistants; and 4) clarify the Medi-Cal program.

Meeting adjourned into Closed Session.

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