



MEDICAL BOARD OF CALIFORNIA Executive Office



Education and Wellness Committee Meeting

Four Points by Sheraton Sacramento
International Airport
Natomas Room
4900 Duckhorn Drive
Sacramento, CA 95815
916-263-9000 (directions only)

Thursday, January 29, 2015
1:00 p.m. – 2:00 p.m.

MINUTES

Agenda Item 1 Call to Order/Roll Call

The Education and Wellness Committee of the Medical Board of California (Board) was called to order by Chair Barbara Yaroslavsky at 1:00 p.m. A quorum was present, and due notice had been mailed to all interested parties.

Members of the Committee Present:

Barbara Yaroslavsky, Chair
Howard Krauss, M.D.
Denise Pines

Members of the Committee Not Present:

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

Other Members not on Committee Present:

Dev GnanaDev, M.D.
Sharon Levine, M.D.
Ronald Lewis, M.D.

Staff Present:

Liz Amaral, Deputy Director
Nichole Bowles, Staff Services Analyst
Erika Calderon, Associate Governmental Program Analyst
Ramona Carrasco, Staff Services Manager
Charlotte Clark, SISA
Dianne Dobbs, Legal Counsel, Department of Consumer Affairs
Rashya Henderson, Supervising Special Investigator I
Cassandra Hockenson, Public Affairs Manager
Nicole Kraemer, Manager
Kimberly Kirchmeyer, Executive Director

Ian McGlone, Associate Governmental Program Analyst
Armando Melendez, Business Services Officer
Destiny Pavlacka, Administrative Assistant
Dino Pierini, Business Services Officer
Regina Rao, Associate Governmental Program Analyst
Paulette Romero, Staff Services Manager II
Jennifer Simoes, Chief of Legislation
Kevin Schunke, Licensing Outreach Manager
Lisa Toof, Administrative Assistant
Kerrie Webb, Staff Counsel
Susan Wolbarst, Public Information Officer
Curt Worden, Chief of Licensing

Members of the Audience:

Lee Anderson, California Department of Corrections & Rehabilitation (CDCR)
Teresa Anderson, California Academy of Physician Assistants
Connie Broussard, Supervising Deputy Attorney General, Attorney General's Office
Gloria Castro, Senior Assistant Attorney General, Attorney General's Office
Yvonne Choong, California Medical Association
Genevieve Clavreul
Zennie Coughlin, Kaiser Permanente
Julie D'Angelo Fellmeth, Center for Public Interest Law
Karen Ehrlich, Licensed Midwife
Stephen Ellis, M.D.
Carolyne Evans, Deputy Attorney General, Attorney General's Office
Michael Gomez, Deputy Director, Department of Consumer Affairs
Marian Hollingsworth, Consumers Union
Sarah Huchel, Consultant, Senate Business, Professions and Economic Development Committee
Christine Lally, Deputy Director, Department of Consumer Affairs
Mark Loomis, Supervising Investigator, Health Quality Investigation Unit
Leslie Lopez, Business, Consumer Services, and Housing Agency
Michelle Monserrat-Ramos, Consumers Union
Robert Moya, Investigator, Health Quality Investigation Unit
Bryce Penney, Department of Consumer Affairs
Patrick Rogers, California State Library
Brian Sala, California State Library
Anita Scuri
Taryn Smith, Office of Senate Research
Laura Sweet, Deputy Chief of Enforcement, Health Quality Investigation Unit
Peggie Tarwater, Deputy Attorney General, attorney General's Office

Agenda Item 2 Public Comment on Items Not on the Agenda

No public comments were received

Agenda Item 3 Approval of Minutes from the July 24, 2014, Education and Wellness Committee Meeting

Dr. Krauss made a motion to approve the minutes from the July 24, 2014 meeting; Ms. Pines/seconded. Motion carried.

Agenda Item 4 Presentation on the Corporate Practice of Medicine

Mr. McGlone, Ms. Webb and Ms. Dobbs provided a presentation on the Corporate Practice of Medicine. Mr. McGlone gave some background on corporate practice of medicine and why it is banned. He stated that California Business and Professions Code Section 2052 prohibits any person from practicing medicine in this state without a valid certificate or license. Mr. McGlone stated California Business and Professions Code Section 2400 indicates that corporations and other artificial legal entities have no professional right, privileges, or powers to practice medicine or to get a license to practice nor are they able to engage in any of those activities that are prohibited by Section 2052. He stated a layperson cannot employ a physician except under certain circumstances.

Mr. McGlone noted that while corporations have no professional rights or powers under the Medical Practice Act, there are some very limited exceptions, such as physicians may practice in partnership with other physicians, which is considered a business entity. Also physicians may practice under a professional medical corporation that is properly formulated under California law.

He continued with Section 2401 of the California Business and Professions Code, which allows for certain clinics, narcotic treatment programs, and hospitals to charge for professional services and/or employ physicians. However, these artificial entities shall not interfere with, control, or otherwise direct the professional judgment of a physician and surgeon, which means physicians have to be in charge of their own practices and these individuals are accountable to the Medical Board of California (Board).

Mr. McGlone stated that some of the signs that an arrangement is not legal are if the physician does not have control over the patient records and if a management services company is telling a physician what kind of things should go into a record, or is giving support for a certain type of care, tests, or procedures. It is also a sign if the unlicensed individuals are telling physicians who they should hire and whether a certain provider should be fired. Physicians should be the ones making the decisions about equipment, testing, who gets hired and what kind of advertising is done. Mr. McGlone went on to say that just because a business or franchise agreement gets approved by the Department of Business Oversight, or is registered with the Secretary of State, does not mean a physician's involvement is legal.

Ms. Dobbs reiterated that even if the paperwork says all the right things, it is really important to focus on the actual practice, what is actually being done in the office and how the office practices are being carried out.

Mr. McGlone added that operating a practice as a limited liability company, a limited liability partnership or a general corporation is all prohibited. Management services organizations are limited to providing administrative services, not medical services, and they should not be arranging for the advertisement of the medical practice. In addition, physicians acting as medical directors for non-physician owned operations, like medi-spas, are illegal. It is the physician's responsibility to make sure that they are fully in control of the whole practice.

Mr. McGlone gave three points on how a physician can operate legally in a corporate structure. First, comply with the Moscone Knox Professional Corporations Act in setting up the corporation. Second, make sure that the makeup of the medical corporation is at least 51 percent physician-owned, and no more than 49 percent of other healthcare professions noted in Corporations Code Section 1341.5 can be a part of the medical corporation. Third, comply with all the requirements of sections 2285 and 2415 regarding a fictitious name permit.

Dr. Krauss stated that it would appear that the ban on corporate practice is intended to protect patients. He stated it was intended to assure that a patient's physician is not under any kind of coercive arrangement that might cause them to withhold care. He pointed out that physicians are still in other types of coercive arrangements, such as insurance companies who make decisions about medical necessity, what is covered and what is not covered, etc. Dr. Krauss asked if there are any case laws where these items have been looked at as potentially in violation of corporate practice.

Ms. Dobbs replied that she is not aware of anything that specifically addresses that issue. Physicians must be aware that it is their responsibility to fight for what is absolutely in a patient's best interest.

Ms. Webb commented that there are many appeal processes that have to be followed and the Department of Managed Healthcare gets involved in making these decisions, and that it is a different section of law when it comes to insurance coverage.

Dr. Krauss asked what the Board's experience has been regarding disciplinary action on this matter, how many complaints have been received and how many cases does the Board look at regarding the ban on corporate practice?

Ms. Webb stated that the California courts have been firm in supporting the ban on corporate practice in California and there are numerous cases. She added that specific statistics would have to be gathered by staff.

Ms. Yaroslavsky asked if there were opportunities where the Department of Corporations or Managed Healthcare are involved with the Board in disciplining or bringing attention to physicians for what is or is not appropriate behavior as far as the corporate practice of medicine goes.

Ms. Webb replied that occasionally the Department of Business Oversight seeks confirmation on agreements and sends them to the Board to look over, but that there are private corporate attorneys working on these agreements and making assurances to other agencies that everything is correct.

Ms. Yaroslavsky asked if the public should be made aware of companies that are doing this as well, and asked if there is a structure set up where the insurance company or the private business entity employing physicians is also being informed and disciplined.

Ms. Dobbs commented that there are civil and criminal consequences for unlicensed practice.

Ms. Webb added that the physician can be disciplined for unprofessional conduct for aiding and abetting, and the unlicensed people can be subject to fines for unlicensed practice and criminal penalties.

Ms. Kirchmeyer suggested that these slides would be very helpful and a great educational tool if placed on the

Board's website and sent to applicants when they apply for fictitious name permits.

Ms. Yaroslavsky suggested that this educational tool could also be used at the point when the applicants are filling out applications for their business licenses.

Ms. Kirchmeyer also suggested that the Board could give the information to the Department of Business Oversight, and have them hand out the information and, provide the same information to the counties that are handing out these applications to help the applicants.

Dr. Krauss stated that he assumes that the ban on the corporate practice has been a recent subject in the Board's Newsletter, and if not, perhaps it warrants an update.

Agenda Item 5 Public Affairs Office Strategic Plan Update

Ms. Hockenson presented the Public Affairs Office Strategic Plan update starting with the first goal which was to identify opportunities for placement of articles on mandatory reporting in the professional newsletter and other publications. She commented that in the summer Newsletter, the Board had an article from the Los Angeles Coroner on the need for physicians to sign death certificates. The Board also had an article on the importance of physicians reporting pesticide poisoning to the local health departments and the protocol to file a report. Board staff is completing an article for the coroners to include in their newsletter on the need for a coroner to report to the Board pursuant to Business and Professions Code Section 802.5.

Ms. Hockenson also stated that the Public Affairs Office published an article in the fall Newsletter on the Soldier's Project. A former board member, Linda Lucks, drew attention to this project, and staff wrote an article. It was also requested by the Board of Psychology to reproduce that article in their newsletter and on their website.

Ms. Yaroslavsky suggested that at the end of every year the Board should write an article reminding coroners to report and every year there should be an article reminding everyone about the corporate practice of medicine.

Ms. Hockenson concurred and continued with a list of presentations she participated in 2014.

- April 2014, staff discussed mandatory reporting requirements involving hospitals and physicians with the San Bernardino Sun and the LA Daily News.
- May 8, 2014, a presentation was provided to the California Association of Medical Staff Services in Sacramento addressing mandatory reporting requirements, specifically focusing on the Business and Professions Code Sections 805 and 805.01. Approximately one hundred individuals were in attendance.
- June 13, 2014, staff had a conference call with the staff from Public Citizen to discuss the peer review process and reporting requirements.
- August 1, 2014, a presentation was provided to the California Association of Medical Staff Services in Riverside addressing the Business and Professions Code Sections 805 and 805.01 reporting process.
- August 20, 2014, a presentation was given to the Rancho Los Amigos Rehabilitation Hospital on the reporting requirements of Business and Professions Code Section 805.
- November 7, 2014, a presentation was given to the Los Angeles County Department of Health Services Quality Improvement and Patient Safety Program on Business and Professions Code Sections 805 and 801.01.

Ms. Yaroslavsky asked if as a result of the presentations and discussions, if Ms. Hockenson was able to garner if there was any increase in articles or reports and if she was going to be able to track whether these visits or these presentations were able to result in increased output of Board information.

Ms. Hockenson commented that a lot of the presentations are done by enforcement investigators and continued with the fact that groups are addressed, laws explained, requirements explained, and organizations are told what they should be looking at and what they should expect. The feedbacks always positive, because when an organization asks to post the Boards presentation on their website, that is a sign that it has been valuable information for them, and they want to share it.

Ms. Hockenson pointed out the outreach calendar.

- January 12, presented a town hall meeting in Folsom, for consumers.
- January 23, attended a presentation with Assemblywoman Susan Bonilla in Walnut Creek, which was very successful and generated an article on Number 3 news. There were about 150 people in attendance. Ms. Hockenson also talked with Assemblywoman Bonilla about arranging a health fair or a health-related town hall, which her and her staff was very interested in pursuing.
- February 20, there will be a presentation at the town hall in Citrus Heights.
- March 4, Ms. Hockenson will be making a presentation to the consumer health class at California State University Sacramento.
- The Board is planning a prescription drug awareness campaign to coincide with March being prescription drug awareness month.
- The Board will be participating in a health fair and a 5K walk in San Ramon, related to the issue of prescription drug abuse awareness.

Ms. Hockenson stated that working together with other agencies and continuing to provide articles and information in the Newsletter regarding potential violations to assist physicians in understanding the laws and regulations is the goal. Ms. Hockenson also spoke about the summer Newsletter articles on recommending marijuana and things physicians should know; the article regarding the inadvertent, unlicensed practice of medicine by post-graduate training individuals; and the article on what to know about signing death certificates.

Ms. Hockenson continued talking about articles that were in the fall 2014 Newsletter including one entitled: "Do Not Panic. What you should expect if a complaint is filed against you." Also in the fall Newsletter, was an article on Physicians Orders for Life-Sustaining Treatment (POLST) from the Coalition of Compassionate Care of California. The winter Newsletter will have an article on fictitious name permits, in addition to part two of the "Do Not Panic" article, which will discuss what happens during the investigation and disciplinary process.

Ms. Hockenson stated that the Twitter account has been launched and the Board's Twitter handle is [@MedBoardofCA](https://twitter.com/MedBoardofCA). The first tweet was sent on January 14 announcing the release of the Annual Report. It was retweeted and picked up. The Board tweeted; inviting people to attend this meeting and it was picked up by the Ebola Group with 96,000 followers and retweeted. The Board also tweeted about Board Meetings, and that they are open to the public and that the meetings are live and can be watched on the Board's website.

Ms. Hockenson noted that the Board is working with DCA to establish webinar protocol and the necessary tools needed for successful webinars because they have examined opportunities for the Board to provide training to licensees via the Internet. The Board's new Public Information Officer will be focusing on identifying needed

webinars and training. Ms. Hockenson also stated that an editing room with software and the ability to record have been set up.

Ms. Hockenson stated that additional plans are in discussion for the work with the California Department of Public Health, the Dental Board, the Pharmacy Board, the Department of Education, and the California Department of Managed Healthcare regarding the statewide work group that seeks to curb prescription drug misuse and abuse. The Governor's Office has asked that the state come out with a united front and message with regards to the problem of prescription drug misuse and abuse.

Ms. Hockenson continued stating the Public Affairs Office is looking forward to cultivating relationships with various ethnic communities through their individual media outlets by providing information and education on the Board's roles and responsibilities. Town hall meetings are key to developing this outlet. In April 2014, Board staff, including a Spanish-speaking investigator, assisted Telemundo with a multi-part series on consumer protection for the Hispanic community. Also, there is a group in Citrus Heights of Afghani and Iraqi refugees and the Board is looking forward to reaching out to their community.

The Public Affairs Office will continue to engage in television and radio interviews promoting transparency and providing needed information as requested. Staff has been and continues to work with the San Jose Mercury News regarding an issue involving psychotropic drugs and foster kids. In addition, Department of Consumer Affairs, Division of Investigation is working closely with KPIX and CBS in the Bay Area regarding a news story focused on the investigative process.

Ms. Hockenson stated that there are three Public Service Announcements out regarding prescription drug awareness and she is still looking to get those broadcasted on network television. Also, the Board is working on a video to be placed on the Board's website explaining how to file a complaint, in addition to how to look up a physician.

Ms. Hockenson wanted to point out that providing presentations on the Board's roles and responsibilities in mandatory reporting requirements for hospitals and health systems is a priority. In June, 2014 and October, 2014, Board staff met with UC schools and UC regions representatives to discuss graduate medical education issues and overall application processing issues. Also, on November 6, Laura Sweet and Board Member Dr. Lewis gave a presentation entitled, "Discipline, Drugs, and Duties" to nurses and physicians in San Diego at the 2014 Multidisciplinary Correctional Healthcare Conference.

Ms. Hockenson stated that with a grant received from the Federation of State Medical Boards, the Board held a three-hour free Continuing Medical Education seminar course in Los Angeles at the Hilton LAX on safe prescribing, titled "Extended Release and Long-Acting Opiate Analgesic Risk Evaluation and Mitigation Strategy."

Ms. Monserrat-Ramos complimented Ms. Hockenson on launching the public Twitter account, but stated that the twitter handle is not easily locatable. Ms. Monserrat-Ramos recommended tweeting press releases released via e-mail alert so the public will know there is disciplinary action being taken against doctors who are putting California patients at risk, tweeting how the public can sign up for e-mail alerts regarding the work the Board is doing, tweeting at least three days in advance regarding Board Meetings and, if possible, attaching the agendas with instructions on how to participate via teleconference.

Agenda Item 6 Future Agenda Items

Dr. Krauss suggested that the Board approach the potential for a physician health program and suggested that staff gather information and report the spectrum of physician health programs that exist in other states.

Agenda Item 7 Adjournment

Ms. Yaroslavsky adjourned the meeting at 2:07 p.m.

The complete webcast can be viewed at: http://www.mbc.ca.gov/About_Us/Meetings/2015/