

Action Report

Medical Board of California

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IN THIS
ISSUE

New Omnibus
Reform Act
Becomes Law 3

Major Summit
on
Appropriate
Prescribing 4

Task Force on Medical
Quality Review 5

Three New Members
Appointed to Medical
Board 6

New Board Officers for
1994 7

Study on Enforcement
Priorities 8

Disciplinary Actions 9

Physician Reporting of
Spousal Abuse 13

Health Care Fraud 14

Regulation of Out-of-
Hospital Surgery Settings 15

INSERT:
MBC
GUIDE

An
"Organizational
Guide" to the
Medical Board
of California.

ON
PAGE 5

Reviewing
MBC's
Division of
Medical
Quality to
improve its use
of medical
consultants.

ON
PAGE 8

Developing a
new system of
priorities of
violations of
the Medical
Practice Act to
insure that
enforcement

sanctions fit the level of
violation.

1994

Medical Board of California
Meeting Dates/Locations
February 3-4 San Francisco
May 5-6 Sacramento
July 28-29 Los Angeles
November 3-4 San Diego

Preliminary Ruling on CMA vs. MEDICAL BOARD

Sacramento Superior Court Judge Ronald Robie "split" his decision on a major lawsuit by the California Medical Association against the Medical Board's new information disclosure policy (see "Action Report" Fall 1993, p. 5). On balance, however, five of the six new policy directives were upheld by the Judge. Only one — public disclosure of a case referral to the Attorney General — was preliminarily enjoined.

The Judge issued his ruling on December 2, after oral arguments the day before Thanksgiving. The ruling is "preliminary" and will now be set for a hearing in 2-3 months on the request by the CMA for a "permanent" injunction. In the meantime, new law, SB 916, which codifies the new policy, has taken effect (January 1). The Board has determined to proceed with regulations under SB 916, including information disclosure on cases referred to the AG, subject to any further action in the courts.

Board staff took immediate steps to confirm procedures covering the full range of the disclosure policy, but, at the same time, blocked further disclosure of cases referred to the AG — to comply with Judge Robie's order — until the hearing on the permanent injunction request and/or new regulations are adopted.

Filed on November 2, the suit is based on two theories:

(1) The new policy is an underground regulation that is illegal (i.e., formal regulations should have been passed first).

(2) The portion of the Board's new policy which allows disclosure when a case has been forwarded to the Attorney General (instead of the former policy which allowed disclosure only after a case had been signed as an "Accusation" after review by the AG) is a violation of the "due process" rights of a physician.

Responding for the Board, Executive Director Dixon Amett said the Judge's preliminary ruling on the procedural issue is correct because the Board's actions were:

- pursuant to full hearings by a Board Task Force at which representatives of the CMA testified, never once raising the issue of so-called "underground regulations,"
- pursuant to a full vote of the Board, and
- pursuant to the Board's discretionary authority to release information without the adoption of formal regulations.

(Cont. on page 2)

The Sacramento Bee
METRO
STATE

The Sacramento Bee Final • Friday, December 3, 1993 • *

Big victory for rights of patients

Disclose actions against doctors, judge orders

By Maria Camposoco
Bee Staff Writer

Californians have the right to know which doctors have been convicted of felonies or malpractice, a Sacramento Superior Court judge ruled Thursday in a victory for consumer advocates.

But in refusing to temporarily halt the state Medical Board's new disclosure policy, Judge Ronald Robie issued a preliminary injunction barring the release of information about complaints against doctors pending before the attorney general's office.

The case involved a lawsuit by the California Medical Association to stop the Medical Board from disclosing information about criminal or unethical practices of doctors.

The board's broad disclosure policy became effective Oct. 1, following a hiatus of more than a year.

THE MISSION OF THE MEDICAL BOARD OF CALIFORNIA

The mission of the Medical Board of California is to protect consumers through proper licensing of physicians and surgeons and certain allied health professions and through the vigorous, objective enforcement of the Medical Practice Act.

CMA vs. MEDICAL BOARD

(Cont. from page 1)

Responding to the "due process" argument, Arnett noted that 98 percent of all cases forwarded to the AG result in formal Accusations against the named physicians. Often it takes months, sometimes years, to bring a case to formal Accusation; the Board wants consumers to know about such cases while they are pending at the AG's Office

The Legislature added language to the Omnibus Medical Board Reform Act, SB 916, which specifically approved the Board's new information disclosure policy. SB 916 also required the adoption of regulations in order to bind successor boards and staff, but the bill did not preclude implementation of the policy as a matter of existing law.

Had the CMA prevailed or should the CMA succeed in overturning Judge Robie's preliminary ruling on the "underground regulation" allegation, their objections would mean that consumers would not be able to learn:

- the status of a physician's license, including if a TRO or ISO has been issued.
- that prior discipline had been imposed on a physician by the MBC or from another state.
- that a physician has been convicted of a felony.

- that a contested malpractice judgment over \$30,000 against a physician has been reported to the MBC.

For the time being, however, these disclosure policies remain in effect.

Arnett complained that the CMA did not choose to raise any objection to the implementation of the Board's new policy until well after several Task Force hearings, the full vote of the Board, the adoption by the Task Force of specific disclosure language, the extensive training of MBC staff, the approval of budget augmentations to carry out the policy, and the delay from September 1 to October 1 of the actual implementation date to provide for additional computer programming time.

At its quarterly meeting on November 4, 1993 in Sacramento, the full Board by vote reaffirmed its commitment to the new policy and its opposition to any kind of settlement with the CMA on the lawsuit.

The CMA's attempt to resolve their issues via lawsuit has generated media interest nationwide. Major articles/editorials have appeared in the Los Angeles Times, the Sacramento Bee, the Wall Street Journal, the Contra Costa Times, and the San Diego Union-Tribune. CNN's "Headline News" covered the court hearing.

• • The Sacramento Bee Final • Thursday, November 4, 1993 • A1

CAPITOL

Doctors' group challenges disclosure rule

Medical association sues to bar state from revealing complaints

By Robert D. Devlin
Des Staff Writer

The California Medical Association is suing to stop the state medical board from telling consumers about doctors who are felons, who lost malpractice cases or who were disciplined by the attorney general.

... and due-process rights under the state and U.S. constitutions.

The CMA also contends the new policy does not comply with state laws on administrative procedures.

A medical board official strongly defended the new disclosure policy Wednesday.

"We believe the lawsuit is arrogant and specious," board spokeswoman Candis Cohen said.

Under the new policy, people who ask the medical board about the license of a California doctor are told about any felony convictions, malpractice judgments over \$30,000 and any temporary orders to stop practicing medicine.

... that takes up to six years — or if a physician had been formally accused by the attorney general, which often did not happen until 18 months after the medical board completed its own investigation.

But CMA officials contend the new policy unfairly hurts doctors who have been referred by the medical board for a formal accusation. Besides disclosing referrals, the new policy also tells consumers the allegations in a board case against a doctor.

Susan Bressler, CMA director of scientific and educational activities, said Wednesday that cases lag in the backlog more than nine months that time the doctor

... against doctors who don't meet professional standards.

"They already have a way to protect patients immediately," the CMA official said.

But Cohen, the medical board spokeswoman, said 98 percent of referred cases result in formal accusations against the doctor. Of those cases, 90 to 96 percent result in disciplinary action, she said.

Under the previous disclosure policy, "sometimes we'd have a pretty substantial case against a doctor sitting in the Attorney General's Office, but we couldn't say anything that would have to tell a physician's record was clear," Cohen said.

... board spokeswoman also calls about cases the attorney general also read about formal charges have that the physician has been found guilty of

OPINION

Saturday, December 4, 1993

The Sacramento Bee

CMA vs. the right to know

Acting in a case brought by the California Medical Association, Sacramento Superior Court Judge Ronald Robie has issued a preliminary injunction barring the state medical board from telling consumers when it has forwarded a physician's malpractice case to the disciplinary action.

... board in the unveiling of vital information to the public health and we need to fight the full hearing, and Under new rule California Medical Board call board offices a convicted felon medical board, involving a judge whether the disciplinary action by the

... taining an interim license suspension take a week to 10 days, during which physician can continue to see patients during which the board — if the CMA sues — would be barred from telling

Monday, November 8, 1993

CMA attacks public

Group would keep files on bad doctors secret

The Medical Board of California, after decades of inaction, is finally doing its job in exposing bad doctors. Instead of giving the board the wholehearted support

wrongdoing by those it is supposed to keep an eye on. To its discredit, the CMA does not see things that way. It would like to return to the old system, where information was revealed to the public

Back in the dark?

Blocking disclosure of dangerous doctors

California long has been known for having one of the nation's most slipshod systems for disciplining problem doctors.

The state Medical Board's fecklessness was illustrated earlier this year when a report by outside plaintiffs disclosed that

FRIDAY, NOVEMBER 5, 1993

California Medical Group Sues to Block Release of Disciplinary Data on Doctors

By EDWARD FELSENFELT Staff Reporter of THE WALL STREET JOURNAL In a case pitting patients' rights against doctors' privacy, the California Medical Association has sued to block state officials from giving out information about physicians' records.

has its way, however, the public disclosure provisions could be struck down. That's when a California court judge

THE WALL STREET JOURNAL

"We're trying to help consumers make informed choices," says Candis Cohen, a spokeswoman for the board. "We believe that any [physicians privacy] right is outweighed by the public's right to know." The new medical board rules, which took effect Oct. 1, put California in the forefront of efforts by consumer groups and government officials to make information available to patients.

New Omnibus Reform Act Becomes Law



Senator Robert Presley

SB 916, authored by Senator Robert Presley (D-Riverside), became law January 1, the date all new laws enacted by the Legislature and signed by the Governor take effect. SB 916, the Omnibus Medical Board Reform Act, known colloquially as "Presley II," was signed into law in mid-October after 10 months of negotiations including representatives from the

Board, the Attorney General, the Department of Consumer Affairs, the California Medical Association and the Center for Public Interest Law (the measure's original sponsor).

When Governor Wilson signed the measure, his action capped a long journey from an internal investigative report and sharp media criticism of the Medical Board to enactment of a set of reforms now considered by some to be the most progressive in the nation (see "Action Report," Fall 1993).

Chief reforms of SB 916 were new enforcement sanctions on errant physicians including public letters of reprimand (to be used usually instead of formal Accusations) and new authority for disclosure of information to the inquiring public (such as conviction of a felony, prior discipline by the California Board, discipline by another state, malpractice judgments — not settlements or arbitration awards — over \$30,000), and a request to the Attorney General for discipline or prosecution. This authority, as policy earlier adopted by the Board, was the subject of a lawsuit brought by the California Medical Association in November (see article, page 1).

Also included in SB 916 are provisions to enforce access to medical records within 15 days (after which a fine of \$1,000-a-day ensues until records are provided) in all cases where the patient has signed an authorization or on a court order.

The biennial fee for licensure is raised in SB 916 from \$500 to \$600 primarily to pay for new attorneys in the Health Quality Enforcement Unit of the Office of the Attorney General. That Unit, formed by the earlier reforms in SB 2375 (1991), "Presley I," is the Board's attorneys, established solely to advance Medical Board cases.

The measure also authorizes the Board to develop a completely new system of medical quality review from complaint stages, through investigations and including the

use of expert witnesses in cases heard before administrative law judges or on appeal in superior court. The Board has established a task force to focus on this goal (see article, page 5).

Finally, SB 916 provides for the reorganization of the Board itself, the purpose of which is to emphasize the role of the Board in enforcement. The Board's Division of Medical Quality is almost doubled in membership, from seven to 12. The measure provides that the DMQ may divide itself into two panels of six members each so that what is expected to be a growing workload can be effectively, efficiently and fairly handled. At the same time the bill provides for the dissolution of the Division of Allied Health Professions which had been formed originally to oversee 14 related health care boards whose functions have become independent as a matter of practice.

At a recent hearing of a subcommittee of the State Senate Committee on Business and Professions, Senator Dan McCorquodale noted that the provisions of SB 916 had been so extensive that any further legislative changes of an omnibus nature should wait at least a year so that the changes in SB 916 had a chance to work.

NEW ASSIGNMENT: LICENSING MIDWIVES

With the enactment of SB 350 (Senator Lucy Killea, D-San Diego), the Medical Board will now license direct-entry midwives starting July 1 of this year.

In the most recent legislative session language was negotiated, primarily between Killea's supporters and representatives of the California Medical Association, to insure that midwives would have sufficient training and access to emergency medical care when needed.

The measure took effect January 1, thus providing a six-month period for regulations to be adopted (specifically required in the bill), an appropriate examination to be developed (using examples from other states) and procedures for administration to be in place so that licensing can begin on July 1. The Board will appoint a Committee on Allied Health Professions that will provide Board oversight.

Applicants for licensure as midwives will pay separate fees so that the licensing and enforcement process will not become a charge to the Medical Board. The adoption of regulations will be subject to public notice and testimony and will be conducted by the Board's Division of Licensing.

Major Summit on Appropriate Prescribing

by Jacquelin Trestrail, M.D.
President of the Board

The Wilson Administration has announced it will sponsor a major "Summit on Appropriate Prescribing and Pain Management," tentatively scheduled for March 10-11 in Los Angeles. The "Summit" was prompted by the concurrent efforts of the Medical Board, the Boards of Pharmacy and Registered Nursing, the California Medical Association, legislative leaders such as Senator Leroy Greene of Sacramento and Assemblyman Richard Polanco of Los Angeles and a variety of pain management experts.

The Medical Board's own Task Force on Appropriate Prescribing, after three hearings in various areas of California, rendered its final report to the Board on November 5. The Board adopted the Task Force's recommendations which emphasize continuing medical education courses and a variety of "outreach" methods to provide physicians and other health professionals with current information.

The Board's Task Force report describes three principle levels of subject-matter "outreach." The first, and most basic — perhaps the most useful to the greatest number of physicians — is teaching and publishing of an updated series of steps that physicians can follow when prescribing to insure that they avoid any potential for being the subject of investigation by either licensing or law enforcement agencies.

The next level of "outreach" amounts to a short introductory course/publication on current issues in "pain management" and almost a "primer" on up-to-date pharmacology.



Jacquelin Trestrail, M.D.

The most far-reaching level for those physician specialties with specific need is access to existing and improving courses in pain management and development of support services such as study results and recommendations, computer services with current data and referral services.

Concurrent with the Board's Task Force, the Board of Pharmacy sponsored a commission which evaluated the Justice Department's triplicate prescription system and other law enforcement issues. At the

same time the Legislature passed several measures ordering surveys and studies relating to pain management.

One such measure, sponsored by the California Medical Association, called for the creation of a statewide committee, much like the Board's Task Force but with a more inclusive membership. Ironically, the bill (AB 2155) had to be vetoed for reasons relating to the structure of the committee, but, at the same time, the Governor committed his Administration to a major initiative on this subject. The "Summit" is the first part of carrying out that commitment.

Physicians: Notice Regarding Cancer Brochures

Government maintains its reputation as a paragon of consistency. Effective January 1, 1994, you are required by state law to post a sign in your office which informs breast cancer patients that you must provide them with a written summary of their treatment options (California Health & Safety Code section 1704.5). Also effective January 1, 1994, you are similarly required to post a sign and urged to provide a written summary of options for patients with prostate cancer (California Health & Safety Code section 1704.7).

Members of the California Medical Association have been provided with suggested text for office signs (which must be in English, Spanish and Chinese):

BE INFORMED

If you are a patient being treated for any form of breast cancer, or prior to performance of a biopsy for breast cancer, your physician and surgeon is required to provide you a written summary of alternative efficacious methods of treatment, pursuant to Section 1704.5 of the California Health & Safety Code.

The information about methods of treatment was developed by the State Department of Health Services to inform patients of the advantages, disadvantages, risks, and descriptions of procedures.

BE INFORMED

If you are a patient being tested for any form of prostate cancer, or prior to performance of a biopsy for prostate cancer, your physician and surgeon is urged to provide you a written summary of alternative efficacious methods of treatment pursuant to section 1704.7 of the California Health & Safety Code.

The information about methods of treatment was developed by the State Department of Health Services to inform patients of the advantages, disadvantages, risks, and descriptions of procedures.

However, the specific written summaries which you are, by law, supposed to provide are not required to be available until January 1, 1995 (breast cancer) or until a date unspecified (prostate cancer).

To resolve this inconsistency, staff of the Medical Board started work on the summaries in November, collaborating with appropriate committees of advocates, and in consultation with the Department of Health Services. The free brochures will be featured as INSERTs in the April "Action Report" (breast cancer) and in the July "Action Report" (prostate cancer), along with ordering information.

Task Force on Medical Quality Review

Anticipating the passage of Board-sponsored provisions in SB 916, the Omnibus Medical Board Reform Act (now law as of Jan. 1), the Board at its meeting in late July created a Task Force on Medical Quality Review, under the chairmanship of Michael Weisman, M.D., President of the Board's Division of Medical Quality.

The Task Force was charged with crafting an entirely new system of the use of medical consultants, from complaint through the prosecution stages. The "charge" is contained in specific instructions in SB 916—a section of the measure which also dissolves the old Medical Quality Review Committees (MQRCs) which had been formed originally in 1975 as part of omnibus legislation at that time to address issues of medical malpractice.

The major emphasis of the Task Force to date has been to review the medical quality system in Florida — a system developed three years ago and in operation over a year — which relies entirely on physician volunteers who lend their expertise either as part of a permanent committee reviewing cases at the investigative stage or as part of three-person panels (including one non-physician) reviewing cases before they proceed to prosecution.

Florida officials boast that their system saves substantial costs while providing far more timely, efficient expertise from Board-certified physicians who are in active practice and whose services are available, with a modest training course, for the cost of per diem and travel. The Florida Medical Association participates in the system by suggesting names of physicians qualified and willing to serve on the committee or the panels. The selection of committee members or panelists, however, is done by the Florida Medical Board itself — a 12-member board appointed by the Governor.

Although the specific aim of the Task Force is to revamp medical quality review, the goal is to place expert review earlier in the enforcement process. This will allow the Board to identify quality of care cases that require a speedy review and adjudication as well as permit the Board to dismiss charges that have no foundation at an early stage.

The group will reexamine the entire system of medical review including contract/volunteer medical consultants used at the complaint and investigative levels; qualifications and role of current full-time medical consultants, now authorized at each of the Board's 12 regional offices; and qualifications and role of volunteers (both physician and non-physician) located geographically at the community level to provide counseling, community outreach and other duties representing the Board.

Task Force members, in addition to Chairman Weisman, include Board members Robert del Junco, M.D., Karen McElliott, Alan Shumacher, M.D., and Bruce Hasenkamp. Board President Jacquelin Trestrail, M.D. is an ex-officio member.

The Task Force is scheduled to present its report to the Division of Medical Quality at its meeting on February 4. The Division is scheduled to present its report to the full Board at its regular meeting the following day.

Thus far, the Task Force has held two hearings, including a presentation by officials from Florida. Two more are slated before presentation of the Task Force report — January 10 in San Diego from 4:30 p.m. to 7 p.m. and February 3 in San Francisco (on the evening preceding the regular February meeting of the Board) from 7:30 p.m. to 9 p.m. Staff options and recommendations will be presented at the January 10 meeting. Comment from the public and representatives of interested organizations is invited.

According to Chairman Weisman, "The work of the Task Force on Medical Quality may well be the most important reform of all the reforms adopted by the Board in the last year. Clearly, the credibility of the Board's enforcement program depends directly on the qualifications and expertise of the medical advice we receive."

"The work of the Task Force on Medical Quality may well be the most important reform of all the reforms adopted by the Board in the last year. Clearly, the credibility of the Board's enforcement program depends directly on the qualifications and expertise of the medical advice we receive."

Three New Members Appointed to Medical Board

Governor Wilson has appointed a new member to each of the Board's three divisions. The new members replace the three Board members who retired last Summer. Members do not receive a salary. These appointments require Senate confirmation.

Division of Medical Quality:

IRA LUBELL, M.D., 57, of Soquel

- Santa Cruz County Health Officer and Medical Director
- Earned his medical degree from the State University of New York in 1961.
- Professional affiliations: Chair of the California Medical Association's Scientific Advisory Panel of Preventive Medicine and Public Health; and the California Conference of Local Health Officers Disease Control and Epidemiology Committee.



New Board member Ira Lubell, M.D. (left) and new Board President Bruce Hasenkamp at the November 4 Board meeting in Sacramento.



New Board members are sworn into office (from left to right); Thomas A. Joas, M.D., Anabel Anderson Imbert, M.D., and Ira Lubell, M.D.

Division of Allied Health:

ANABEL ANDERSON IMBERT, M.D., 53, of Oakland

- Assistant Physician-in-Chief of the Kaiser Permanente Medical Group in Hayward

- Earned her medical degree from the University of Michigan Medical School in 1968.

- Professional affiliations: Member of the Alameda-Contra Costa County and California Medical Associations; the American College of



Anabel Anderson Imbert, M.D.

- Rheumatology; the Quality/Risk Management Committee at the Hayward and Fremont Kaiser facilities; the Medical Staff Quality Management Committee; and the Patient Care Services Quality Management Committee at the Hayward Kaiser Hospital.

Division of Licensing:

THOMAS A. JOAS, M.D., 58, of San Diego

- Anesthesiologist in San Diego
- Earned his medical degree from the University of Manitoba in Winnipeg.

- Professional affiliations: California and American Medical Associations; the San Diego, California and American Societies of Anesthesiologists; the San Diego Surgical Society; the Society for Ambulatory Anesthesia; and the American College of Anesthesiology Board of Governors.



Thomas A. Joas, M.D.

Hasenkamp, del Junco, Shumacher Lead 1994 Board

At its November meeting, the Medical Board elected new officers for 1994. The new leaders, who assumed their posts on January 1, are:

President: Bruce Hasenkamp, J.D.

Mr. Hasenkamp was appointed to the Division of Allied Health Professions in 1987 by Governor Deukmejian and reappointed in 1991 by Governor Wilson. In 1992 he was appointed to the Division of Licensing. He is executive director, Saint Francis Foundation. He holds a J.D. degree from Stanford, an A.B. from Dartmouth College, and served as assistant dean of the Stanford Law School for management and development.

He served under President Gerald Ford as director of White House Fellowships, and since 1981, has been a member of the President's Commission on White House Fellowships. He was Shaklee Corporation's first director of public affairs and executive vice president/general manager of the Hannaford Company public relations and public affairs consulting firm before becoming vice president, public affairs, of the Hospital Council of Northern and Central California, the position he held before becoming head of the Saint Francis Foundation in 1989.

Mr. Hasenkamp is active in Bay Area civic affairs and public service organizations, and is president of the Hillsborough School Board. He is the fifth non-physician and second attorney to serve as board president.

Vice president: Robert del Junco, M.D.

Dr. del Junco was appointed to the Division of Licensing in 1991 by Governor Wilson. He is also president of the Division of Licensing, which is responsible for setting medical education requirements and reviewing non-routine license application for physicians.

He received his bachelor's degree from the University of Southern California and his medical degree from the School of Medicine at the University Autonoumous de Guadalajara. He is a head and neck surgeon in private practice in the City of Orange and is assistant clinical professor of surgery at the University of California Irvine Medical Center.

His hospital affiliations include St. Joseph's Hospital and Children's Hospital in Orange and Western Medical Center in Anaheim.

Secretary: Alan E. Shumacher, M.D.

Dr. Shumacher was appointed to the Division of Licensing in 1992 by Governor Wilson. He received a B.S. from the University of South Dakota in 1955, and his M.D. from the University of Iowa in 1957.

He is board certified in Pediatrics and in Neonatal-Perinatal Medicine. He is Director Emeritus of the Division of Neonatology at Children's Hospital-San Diego where he previously served as Fellow of the American Academy of Pediatrics and a member of the American College of Physician Executives.

Dr. Shumacher is a past president of the San Diego Pediatric Society, and holds clinical appointments at both UCSD and SDSU. He is a member of the American Medical Association, the California Medical Association, and the San Diego County Medical Society.



Cathryne Bennett Warner Appointed to Board

Governor Pete Wilson announced the appointment of a new public member of the Board, Cathryne Bennett Warner of San Rafael. The appointment takes effect immediately.

Ms. Warner was appointed to replace Barbara Stemple, a public member from San Diego, who resigned to accept a new appointment by the Governor to the San Diego Fair Board. Ms. Stemple is Vice President of the Greater San Diego Chamber of Commerce.

Until recently, Ms. Warner served as Director of the Northern California Office of the Governor in San Francisco. She had served as Director of the same office during the latter two years that Governor Wilson was a U.S. Senator.

Ms. Warner is the newest member of the Division of Medical Quality. Concurrently, she will serve on the Division of Allied Health Professions until July 1 when that Division will expire by statute.

Study on Enforcement Priorities

Part of the reforms enacted by the Medical Board at its landmark meeting last May 7 was to order the development of a new system of priorities in categories of violations of the Medical Practice Act. The purpose of the now-completed study is to insure that enforcement sanctions fit the level of violation and to assist staff managers in allocating resources to meet the demands of investigating the most serious cases in priority. The study is scheduled for presentation to the Division of Medical Quality and the full Board at the regular Board meeting on February 4-5.

The study has been conducted under contract from the Board by Schubert & Associates, a health care and medical quality review consulting firm headquartered in Sacramento. Schubert & Associates was the firm that completed an earlier task for the Board in examining previously closed files to evaluate the proper handling of those files after an investigative report by the CHP on the Medical Board suggested that some cases had been closed prematurely. (That earlier study, known as Schubert I, concluded, after reviewing 327 files and reopening only 16, that cases had been closed properly.)

The new Schubert study, Schubert II, using actual disciplinary files over the past three years, ranks cases in major categories with the most egregious offenses being the highest priority to the least, almost technical offenses being the lowest ranking. The system assigns a numerical value to each offense so that multiple offenses (even those that may

seem unrelated, such as fraud and malprescribing) may be cumulated to result in a particular offender being placed in a higher priority than a single offense might warrant.

The general concept of the study called for the Schubert team to select 10 percent of all the disciplinary files of the past three years to act as the base for designing the priority system. Once the design was established, Schubert's group of statisticians computerized all the actual files and ran the remaining 90 percent against the design to verify the classifications. Adjustments to insure that the classifications and priorities reflected the actual experience were made.

The Schubert II report will be fully reviewed by the Division and the Board in public sessions so that the public and interested organizations may comment.

Some Board critics have argued in the media that the Board's investigative staff was out after "head counts;" other critics have said that the Board was going after only the "easy cases." Still some others say the Board staff doesn't discern between, as one commentator put it, "...a rape conviction and jaywalking."

Board Executive Officer Dixon Arnett labels such criticisms as "...usually self-serving." But, he says, "this study, publicly presented, debated and, potentially, adopted as policy by the Board, will silence the critics."

Cite-and-Fine Disciplinary Alternative Adopted By Board

At the Board's Medical Summit held in March 1993, many suggestions were made to strengthen MBC's Enforcement Program. Among them was the issuance of citations and fines, as an alternative to filing a formal Accusation. Two publicly noticed hearings have been held by the Board, and the proposed regulations were approved by its Division of Medical Quality (DMQ) on November 4, 1993.

"Cite-and-fine" is efficient and effective for lesser infractions, as contrasted to the lengthy and costly administrative Accusation and hearing process. At the same time, due process is preserved for physicians, who may appeal the citation and fine to the Board's chief or deputy chief of enforcement for an "informal conference," and may also request an administrative hearing.

Cite-and-fine will not be used on quality of care issues; it applies only to less serious violations of the Medical Practice Act (e.g., failure to sign a death certificate on time, failure to provide medical records to patients in a timely manner, or failure to report a change of address to the Board).

The amount that may be levied for citations will range between \$100-\$2,500. For the first nine months of the program, the fines will be determined on a case-by-case basis; after that time, the DMQ will schedule specific fines per violation.

The issuance of a citation-and-fine will be public record, but it will not be reported to the National Practitioners Data Bank because the DMQ does not vote on it. A citation-and/or-fine is not considered a disciplinary action, is not in lieu of formal discipline, and does not preclude the Board from taking other actions against a licensee.

The Board expects the regulations to be approved by the Office of Administrative Law and Secretary of State. If there are no complications, the regulations should become effective in early 1994. Those seeking copies of the draft regulations may write to: Candis Cohen, Medical Board of California, Public Information Office, 1426 Howe Avenue, Suite 54, Sacramento, CA 95825.

Disciplinary Actions: August 1, 1993 To October 31, 1993 DECISIONS: PHYSICIANS AND SURGEONS

AL-HAKEEM, Sultan A., M.D. (A-41587)

Santa Ana, CA

2236 B&P Code— Conviction for grand theft involving false medical bills to support fraudulent auto insurance claims by patients. Revoked, stayed, 5 years' probation on terms and conditions, including 30 days' actual suspension. October 9, 1993.

BUCKNER, JOHN W., M.D. (G-38796)

Coronado, CA

2234(b),(c),(d) B&P Code— Gross negligence, repeated negligent acts, incompetence in numerous cases in hospital setting, and while serving as on-call doctor. Revoked. Default. October 23, 1993.

CAPESTANY, Max A., M.D. (C-22888)

Pleasant Hill, CA

725, 2234, 2238, 2242, 4232, 4228 B&P Code— Stipulated Decision. Excessive prescribing and mismanagement of cases in weight control clinics owned and directed by Antonio Costantini, M.D. Revoked, stayed, 7 years' probation on terms and conditions, including 30 days' actual suspension. September 18, 1993.

COSTANTINI, ANTONIO V., M.D. (A-13724)

West Germany

725, 2234, 2238, 2242, 4228, 4232 B&P Code— Practice mismanagement at weight control clinics. Revoked. Default. October 3, 1993.

CHANDLER, James G., M.D. (A-18813)

Irvine, CA

2234(c) B&P Code— Stipulated Decision. Repeated negligent acts in treatment of two surgical patients in hospital at Grass Valley. Revoked, stayed, 5 years' probation on terms and conditions. October 8, 1993.

CHEN, Shen Eng, M.D. (A-32203)

Alhambra, CA

725, 2234(a),(b),(c),(d),(e), 2236, 2242 B&P Code— Stipulated Decision. Conviction for prescribing controlled substances without legitimate medical purpose. False records. Revoked, stayed, 5 years' probation on terms and conditions, including 90 days' actual suspension. October 9, 1993.

CHEUNG, Phillip W., M.D. (A-29929)

San Francisco, CA

2234 B&P Code— Stipulated Decision. False Medi-Cal claims. Revoked, stayed, 5 years' probation on terms and conditions, including 45 days' actual suspension. October 23, 1993.

CHASE, Gary A., M.D. (G-18665)

Santa Monica, CA

2234(b) B&P Code— Stipulated Decision. Gross negligence - sexual violations with psychotherapy patient. Revoked, stayed, 5 years' probation on terms and conditions, including 180 days' actual suspension. October 1, 1993.

DIN, John, M.D. (A-18979)

Sacramento, CA

2234(b) B&P Code— Stipulated Decision. Gross negligence - sexual abuse with OB-GYN patients. Revoked, stayed, 7 years' probation on terms and conditions, including 60 days' actual suspension. September 7, 1993.

ERDE, Allan, M.D. (G-8070)

Winter Haven, FL

2305 B&P Code— Disciplined by Florida Board for failing to diagnose and treat a missed abortion. California: Revoked. Default. August 20, 1993.

FOGEL, Timothy J., M.D. (A-15451)

Beulah, CO

2305 B&P Code— Disciplined by Colorado Board. California: Revoked. Default. August 20, 1993.

FRIEND, R. Claire, M.D. (G-16596)

Oakview, CA

2234(c) B&P Code— Stipulated Decision. Repeated negligent acts in diagnosis and prescribing questionable psychotropic drugs to psychiatric patients. Revoked, stayed, 5 years' probation on terms and conditions. October 18, 1993.

GABLEMAN, Charles Grover, M.D. (C-34878)

Laguna Hills, CA

725, 2234(b),(d) B & P Code— Stipulated Decision. Mismanagement of in-patient at hospital. Revoked, stayed, 7 years' probation on terms and conditions. October 18, 1993.

GOMEZ, Fabian Sebastian, M.D. (C-35886)

Montebello, CA

2240, 2239, 2234, 2238 B&P Code— Advanced stages of alcoholism. Treated patients while under the influence. Revoked. Default. September 3, 1993.

GRIER, Barnett, M.D. (A-23617)

Beverly Hills, CA

2234(e), 2238, 2234 B&P Code— Violated probation of prior discipline. Prescribing violations. False records. Dishonesty. Revoked. September 3, 1993.

GROSSI, Loretta L., M.D. (A-28974)

Lompoc, CA

725, 2236, 2238, 2234(b),(d) B&P Code— Stipulated Decision. Conviction for excessively prescribing steroids without medical indication. Also, gross negligence and incompetence in an OB-GYN case. Revoked, stayed, 5 years' probation on terms and conditions, including 90 days' actual suspension. September 7, 1993.

GUROVICH, Yuzef, M.D. (A-41072)

Los Angeles, CA

Stipulated Decision. Violated conditions of probation of prior discipline. Probation is continued with further conditions imposed. September 4, 1993.

JACOB, Said, M.D. (A-43666)

Diamond Bar, CA

2234(b), 2262 B&P Code— Stipulated Decision. Gross negligence in management of geriatric patient. False record. Revoked, stayed, 3 years' probation on terms and conditions. October 29, 1993.

KLEINER, Kenneth M., M.D. (G-44421)

Woodside, NY

2305 B&P Code— Disciplined by New York Board for making false material statements in hospital applications. California: Revoked, stayed, 2 years' probation on terms and conditions. October 3, 1993.

LIN, Jang Bor, M.D. (A-35329)

Visalia, CA

2234(b) B&P Code— Stipulated Decision. Gross negligence in attempted vaginal delivery of macrosomic fetus. (14 pounds. Stillborn.) Revoked, stayed, 5 years' probation on terms and conditions, including 30 days' actual suspension. October 7, 1993.

(Cont. on page 10)

Disciplinary Actions

(Cont. from page 9)

LUM, Jon Tek, M.D. (C-30095)

St. Louis, MO

2305 B&P Code— Disciplined by Missouri Board. California: Revoked. Default. October 14, 1993.

MARTIN, Jeffrey T., M.D. (C-41089)

Urayasu-Shi; Chiba-Ken, Japan

2305 B&P Code— Disciplined by North Carolina for false prescriptions for self use. California: Revoked. Default. October 22, 1993.

McCUIN, Jerome, M.D. (C-36270)

Carson, CA

2239, 2234(e), 2262 B&P Code— Cocaine abuse, false records in violation of federal probation for prior conviction for bank fraud scheme; and in violation of probation of prior board discipline. Revoked. September 17, 1993.

MONSOUR, James W., M.D. (C-28031)

Denver, CO

2305 B&P Code— Disciplined by Colorado Board for substandard practice in dispensing amphetamines for obesity. California: Revoked. Default. October 24, 1993.

NORDELL, Margaret C., M.D. (G-67597)

Danville, CA

2234(c) B&P Code— Stipulated Decision. Repeated negligent acts in misdiagnosing preeclampsia resulting in unnecessary induction of labor at term. Revoked, stayed, 5 years' probation on terms and conditions. August 2, 1993.

OLDHAM, Robert L., M.D. (G-22101)

Glendale, CA

726, 2234(b),(e) B&P Code— Stipulated Decision. Sexual misconduct with patient. Revoked, stayed, 5 years' probation with terms and conditions. October 7, 1993.

PANCOAST, Paul E., M.D. (G-56935)

Hanford, CA

2234(c),(d), 2305 B&P Code— Stipulated Decision. Mismanaged stab wound patient in emergency room of Hanford hospital. Also, disciplined by Ohio Board in 1990 for substance abuse. Revoked, stayed, 5 years' probation on terms and conditions. October 28, 1993.

PAYNE, Kenneth E., M.D. (A-21096)

Campbell, CA

820 B&P Code— Failed to comply with a lawful board order compelling a psychiatric exam, based on a petition indicating serious mental illness. Revoked. Default. October 27, 1993.

PICKENS, Rankin R., M.D. (A-29207)

Middleport, OH

2305 B&P Code— Disciplined by Ohio Board. California: Revoked. Default. October 27, 1993.

SALAZAR, Fausto A., M.D. (A-22223)

San Jose, CA

2234(e), 2262, 2263 B&P Code— Stipulated Decision. When patient was obligated to serve a one-year jail term, doctor prepared a false "Disability Statement" justifying medical leave of absence from work for one year, for presentation to employee's company. Revoked, stayed, 5 years' probation on terms and conditions. October 29, 1993.

SANTOS - PIZARRO, Priscilla, M.D. (A-25807)

San Diego, CA

2236, 2237, 2238 B&P Code— Stipulated Decision. Conviction for Medical fraud and for prescribing Fastin without a legitimate medical purpose. Revoked, stayed, 5 years' probation on terms and conditions, including 180 days' actual suspension. August 18, 1993.

SMITH, Edward J., M.D. (A-16547)

Byron, CA

Failed to comply with certain conditions of prior discipline. Continue probation upon amended terms and conditions. August 6, 1993.

SPRINGER, James W., M.D. (C-18207)

Porterville, CA

2239, 2236 B&P Code— Stipulated Decision. Multiple convictions for driving while under the influence of alcohol. Revoked, stayed, 5 years' probation on terms and conditions. September 24, 1993.

STANLEY, Rebecca L., M.D. (G-64149)

French Camp, CA

2234(b),(c),(d) B&P Code— Stipulated Decision. Mismanaged an abortion case. Revoked, stayed, 5 years' probation on terms and conditions. September 20, 1993.

SUROS, Juan B., M.D. (A-25032)

Chula Vista, CA

2236, 2234(e) B&P Code— Stipulated Decision. Conviction for grand larceny in taking 83 rare coins (value: \$1 million) from the American Numismatic Society. Revoked, stayed, 5 years' probation on terms and conditions. October 29, 1993.

TASHJIAN, James S., M.D. (C-31777)

Orlando, FL

2305 B&P Code— Disciplined by Pennsylvania Board for two Michigan criminal convictions for conspiracy to obtain money under false pretenses (with one conviction pending appeal). Revoked. Default. September 13, 1993.

TOWER, David C., M.D. (G-00902)

Berkeley, CA

2234(a),(c), 2242 B&P Code— Stipulated Decision. Repeated negligent acts in prescribing drugs, particularly antipsychotic drugs, without good faith prior examination. Revoked, stayed, 5 years' probation on terms and conditions. September 9, 1993.

TSAI, Wun-Yi, M.D. (A-34858)

San Jose, CA

2234(c) B&P Code— Stipulated Decision. Repeated negligent acts involving the delivery of a premature 5 pound, one ounce baby girl. Revoked, stayed, 3 years' probation on terms and conditions. October 29, 1993.

VAN EVERY, David, M.D. (G-6368)

Upland, CA

726, 2234(c),(d), 2242 B&P Code— Repeated negligent acts, incompetence, and sexual abuse with patient for PAP smear and breast exam. Revoked. Default. September 13, 1993.

VELUZ, Mario I., M.D. (C-40470)

Montclair, CA

2242, 2234(b),(d), 2262 B&P Code— Stipulated Decision. Dispensed diet pills (phentermanine hydrochloride) without medical indication. Falsified patient charts. Revoked, stayed, 5 years' probation on terms and conditions, including 60 days' actual suspension. August 18, 1993.

WILLIAMS, Ellsworth, M.D. (A-24406)

Ontario, CA

726, 2234(a),(d) B&P Code— Stipulated Decision. Sexual misconduct. Also, incompetent breast examination. Revoked, stayed, 5 years' probation on terms and conditions, including 45 days' actual suspension. September 22, 1993.

(Cont. on page 11)

Disciplinary Actions

(Cont. from page 10)

VOLUNTARY SURRENDER: PHYSICIANS AND SURGEONS

BRADLEY, Vincent, M.D. (G-21025)
Encinitas, CA
August 9, 1993.

LAPOLLA, Anthony, M.D. (C-17845)
Santa Barbara, CA
October 23, 1993.

PANMAI, Kralngsak, M.D. (C-42293)
Merced, CA
October 15, 1993.

YEN, William T., M.D. (A-25454)
Bakersfield, CA
October 27, 1993.

DECISIONS: ACUPUNCTURE

CHO, Bong Yoon, C.A. (AC-2862)
Los Angeles, CA
Failed to satisfy required condition of prior discipline.
Revoked. September 9, 1993.

JOO, Sang Yul, C.A. (AC-2895)
Garden Grove, CA
Failed to satisfy required condition of prior discipline.
Revoked. September 9, 1993.

LEE, Thomas Gin-Sing, C.A. (AC-2254)
Glendale, CA
490, 4955(d) B&P Code— Stipulated Decision. Conviction for Medi-Cal fraud. Revoked, stayed, 5 years' probation on terms and conditions, including 60 days' actual suspension. October 25, 1993.

YEUM, Jong Hoolu, C.A. (AC-2979)
Los Angeles, CA
Failed to satisfy required condition of prior discipline.
Revoked. September 9, 1993.

DECISIONS: HEARING AID DISPENSERS

BRENNAN, William G., HA (HA-2376)
Tarzana, CA
3401 B&P Code— Misleading advertisements regarding "Keen Ear."
Fraud in selling hearing aids. Revoked. Default. September 17, 1993.

DECISIONS: PHYSICAL THERAPIST

PARAOHAO, Carl F., P.T.A. (AT-2562)
San Francisco, CA
2660(d), 2661 B&P Code— Stipulated Decision. Conviction for sexual battery on physical therapy patients. Prior discipline. Revoked. September 16, 1993.

SHORTHOUSE, Michele, P.T.A. (AT-2002)
Portland, OR
Obtained license by making false application concealing numerous convictions. Revoked. September 18, 1993.

DECISION: PHYSICIAN ASSISTANT

CORE, Earle V. III, P.A. (PA-12438)
Los Altos, CA
2234(b),(c),(d), 3527(c),(d), 3502 B&P Code— Gross negligence, incompetence, and practicing without proper supervision. Revoked. Default. October 14, 1993.

DECISIONS: PODIATRY

DELVIN, David P., D.P.M. (E-358)
Los Angeles, CA
2234, 2238, 2242, 2261, 2052, 2236 B&P Code— Stipulated Decision. Conviction for forged prescription. Practiced outside the scope of podiatry by treating patient for OB-GYN problem. Revoked, stayed, 5 years' probation on terms and conditions, including 30 days' actual suspension. September 22, 1993.

ROSS, Harvey, D.P.M. (E-1296)
Los Angeles, CA
2052, 2472 B&P Code— Stipulated Decision. Practiced outside the scope of podiatry by performing an arthrocentesis and administering Celestone to a patient's knee on two occasions. Prior discipline. Revoked, stayed, 5 years' probation on terms and conditions, including 45 days' actual suspension. October 16, 1993.

TABB, William, D.P.M. (E-2478)
Anaheim, CA
2234, 2497 B&P Code— Stipulated Decision. Filed licensing application with Medical Board containing false records. Revoked, stayed, one year probation on terms and conditions. October 22, 1993.

DECISIONS: PSYCHOLOGISTS

DAVIS, George R., Ph.D. (PSY-2614)
Northridge, CA
2960(n),(i),(j) B&P Code— Stipulated Decision. Mental disorder. Sexual misconduct. Revoked. September 8, 1993.

LINDSETH, Paul A., Ph.D. (PSY-8845)
Sacramento, CA
2960(j) B&P Code— Stipulated Decision. Improper dual relationship. Gross negligence. Revoked, stayed, 5 years' probation on terms and conditions. September 9, 1993.

CONOLLEY, Edward S., Ph.D. (PSY-4689)
Sherman Oaks, CA
2960(j),(n) B&P Code— Stipulated Decision. Gross negligence. Illegal contract with intern to function as an independent contractor. Inadequate supervision. Revoked, stayed, 5 years' probation on terms and conditions. September 9, 1993.

CLEMENTINO, Antonio F., Ph.D. (PSY-4383)
Fairfax, CA
726, 2960(n) B&P Code— Stipulated Decision. Sexual relations with client. Revoked, stayed, 5 years' probation on terms and conditions, including 60 days' actual suspension. October 2, 1993.

BROWN, Robert A., Ph.D. (PSY-4397)
Encinitas, CA
2960(i),(j),(n) B&P Code— Sexual relations with a client. Revoked. October 7, 1993.

WOODRING, Thomas M., Ph.D. (PSY-6877)
Santa Barbara, CA
726, 729, 490, 2960(a), 2963 B&P Code— Stipulated Decision. Conviction under the new law, B&P 729, making it a crime for a psychotherapist to have sex with a patient. Revoked. October 7, 1993.

LAUNIER, Raymond, Ph.D. (PSY-10138)
Santa Cruz, CA
726, 2960(i),(j),(n) B&P Code— Sexual relations with clients. Revoked. October 12, 1993.

YOUNG, Taylor S., Ph.D. (PSY-6591)
Olympia, WA
2960.6 B&P Code— Disciplined by Alaska Board for sex with client. Revoked, stayed, 7 years' probation on terms and conditions. October 30, 1993.

(Cont. on page 12)

Disciplinary Actions
(Cont. from page 11)

DECISIONS: RESPIRATORY CARE PRACTITIONERS

BRUCE, David, RCP (RCP-15006)
Canoga Park, CA

Violated terms of probation of prior discipline. Revoked. Default. October 2, 1993.

GERAMI, Mehrdad, RCP (RCP-14035)

Laguna Niguel, CA

3750(b),(d),(j), 3750.5(b) B&P Code— Criminal conviction. Also, lied on license application. Revoked. Default. October 22, 1993.

JOURDAIN, Ronald, RCP (RCP-3431)

Anaheim, CA

3750(d), 3750.5(b),(c) B&P Code— Conviction for self use of a controlled substance. Revoked. Default. October 1, 1993

MELONSON, Joseph H., RCP (RCP-16402)

Las Vegas, NV

3750.5 B&P Code— Stipulated Decision. Prior conviction for possession of a controlled substance. 2 year probationary license granted. September 14, 1993.

NEWBOLD, Steven L., RCP (RCP-10730)

Lakewood, CA

3740 B&P Code— Stipulated Decision. Presented altered license to keep employment. Revoked, stayed, 3 years' probation on terms and conditions, including 5 days' actual suspension. October 20, 1993.

SMITH, Joan C., RCP 9 (RCP-16314)

Long Beach, CA

3733(b) B&P Code— Stipulated Decision. Concealed conviction of 1984 in license application. License issued with 3 years' probation on terms and conditions. August 1, 1993.

WHITE, Richard, RCP (RCP-8946)

Modesto, CA

3750(b) B&P Code— Procured license by fraud in concealing convictions in license application. Revoked. Default. October 2, 1993.

VOLUNTARY SURRENDER: PSYCHOLOGIST

MUNSINGER, Harry L., Ph.D. (PSY-5262)

San Antonio, TX

October 7, 1993.

EXPLANATION OF DISCIPLINARY LANGUAGE

1. **"Revoked"**— The license is canceled, voided, annulled, rescinded. The right to practice is ended.

2. **"Revoked - Default"**— After valid service of the Accusation (formal charges), the licensee fails to file the required response or fails to appear at the hearing. The license is forfeited through inaction.

3. **"Revoked, stayed, 5 years' probation on terms and conditions, including 60 days' suspension"**— "Stayed" means the revocation is postponed, put off. Professional practice may continue so long as the licensee complies with specified probationary terms and conditions, which, in this example, includes 60 days' actual suspension from practice. Violation of probation may result in the revocation that was postponed.

4. **"Suspension from practice"**— The licensee is benched and prohibited from practicing for a specific period of time.

5. **"Temporary Restraining Order"**— A TRO is issued by a Superior Court Judge to halt practice immediately. When issued by an Administrative Law Judge, it is called an ISO (Interim Suspension Order).

6. **"Probationary Terms and Conditions"**— Examples: Complete a clinical training program. Take educational courses in specified subjects. Take a course in Ethics. Pass an oral clinical exam. Abstain from alcohol and drugs. Undergo psychotherapy or medical treatment. Surrender

your DEA drug permit. Provide free services to a community facility.

7. **"Gross negligence"**— An extreme deviation from the standard of practice.

8. **"Incompetence"**— Lack of knowledge or skills in discharging professional obligations.

9. **"Stipulated Decision"**— A form of plea bargaining. The case is negotiated and settled prior to trial.

10. **"Voluntary Surrender"**— Resignation under a cloud. While charges are pending, the licensee turns in the license — subject to acceptance by the relevant Board.

11. **"Probationary License"**— A conditional license issued to an applicant on probationary terms and conditions. This is done when good cause exists for denial of the license application.

12. **"Effective date of Decision"**— Example: "July 8, 1993" at the bottom of the summary means the date the disciplinary decision goes into operation.

13. **"Judicial Review recently completed"**— The disciplinary decision was challenged through the court system—Superior Court, maybe Court of Appeal, maybe State Supreme Court—and the discipline was upheld. This notation explains, for example, why a case effective "June 10, 1990" is finally being reported for the first time three years later in 1993.

New Law Promotes Physician Reporting of Spousal Abuse

by Janie Cordray

Acting Manager, Licensing Program

One can't pick up a newspaper or magazine these days without encountering a story about the senseless death of a person, almost always a woman, who fell victim to domestic violence. It is a tremendous problem, with an estimated 12 million women in this country at risk of becoming physically abused by their current or former partners at some point in their lives. It has become such a large problem that it has been categorized by the American Medical Association as an epidemic.

Domestic violence is an unfortunate fact of life and an unfortunate part of many physicians' medical practice. Although physicians cannot solve the overall problem of domestic violence, physicians often are involved in treating its results and may be effective in intervening on behalf of a patient in some kind of preventative measure.

For these reasons the California Legislature passed and Governor Wilson signed AB 890 (Barbara Friedman D-North Hollywood). The law went into effect on January 1, 1994 and requires that curricula for medical students include the subject of spousal abuse, and requires the Medical Board to grant continuing medical education credit for courses on spousal abuse, detection and treatment. It also directs the Board to disseminate information about this subject to all licensed physicians.

For physicians who are concerned about this problem, the American Medical Association has published an excellent, brief booklet entitled "Diagnostic and Treatment Guidelines on Domestic Violence" (March 1992). Although small in size (19 pages), it is packed full of useful information for practicing physicians.

For readers skeptical about the scope of the problem, the statistics it quotes are sobering. According to the AMA, a conservative estimate of women who fall prey to domestic violence in this country each year totals two million; with 52 percent of the female murder victims in this country killed by a current or former partner.

The statistics cited from clinical studies in medical settings are even more disturbing. They estimate that battered women account for up to 35 percent of women seeking care in emergency departments, 23 percent of women seeking prenatal care, and 58 percent of rape victims over 30 years old. These statistics would certainly appear to validate the need for spousal abuse education of physicians who regularly treat women.

According to the AMA, domestic violence is sufficiently prevalent

to warrant routine screening of "all women patients in emergency, surgical, primary care, pediatric, prenatal, and mental health settings." Often women do not identify themselves as abused, and therefore it is necessary for physicians to ask very specific, direct questions of their patients whom they suspect are abuse victims. They further advise that the physician who suspects abuse should ask the victim about her safety before she leaves the medical setting, and plans should be discussed before she leaves. If safe to

do so, written instructions on how to get into a safe house or shelter should be given to the patient. Careful and thoughtful questions may draw out "red flags" that signal extremely dangerous circumstances, such as talk of suicide by the victimizer, which increases the risk of murder/suicide.

Thorough and complete documentation of the abuse is also important. The authorities and the patient may need it to prosecute the abuser, or at least obtain a restraining order. Discussions with the patient should be completely documented, not only for the patient's protection, but for the physician's as well.

Victims of abuse often feel so demoralized and ashamed that they are reluctant to confide with even their doctor, particularly if they feel they will not be taken seriously. It is therefore important that the physician seriously and sensitively asks the proper questions in order for intervention or treatment to be accomplished.

The AMA booklet gives some very common-sense advice to physicians on specific steps that can be taken to treat or intervene on behalf of their patients. It covers the many forms and types of abuse, traditional patient and physician prejudices, how to interview victimized patients, how to diagnose abuse and document it, and why patients are resistant to seek help and what intervention measures may be taken. It even has helpful advice on risk management, protective measures to avoid malpractice suits and how to document for and testify at criminal proceedings. The booklet also contains sources for reference materials and organizations that can assist physicians in directing their patients toward seeking help.

To receive a free copy of the AMA publication, physicians should write:

American Medical Association
Department of Mental Health
515 North State Street
Chicago, Illinois 60610.

Requestors should include \$1.50 for postage and handling.

"According to the AMA, a conservative estimate of women who fall prey to domestic violence in this country each year totals two million; with 52 percent of the female murder victims in this country killed by a current or former partner."

Health Care Fraud: Basic Indicators

by
Joan Jerzak

MBC Regional Supervisor (Torrance, Glendale, Woodland Hills, and Fraud Unit)

The challenges facing California's health care system are enormous. The 1990 census placed the population at 29.8 million, and the 1992 estimates are that it exceeds 31 million. More than six million Californians have no health insurance, and another four million receive care through the state's overburdened Medicaid system. To care for this population, California has approximately 76,000 physicians, or one physician for every 383 persons.

In this system of overlapping government and private insurance programs, there is much opportunity to commit fraud, and the state's workers compensation system has received nationwide publicity on this vulnerability.

Fraud and abuse encompass a wide range of improper billing practices that include misrepresenting or overcharging with respect to services delivered. Although both result in unnecessary costs to the insurer, fraud generally involves a willful act that results in an unauthorized benefit, whereas "abuse" involves actions that are inconsistent with acceptable business and medical practices. Commission of health care fraud may result in administrative and criminal action against the practitioner. Instances of fraud and abuse can be found in all segments of the health care industry.

The amount of fraud in California is staggering; however, this should not cause practitioners who engage in legitimate practices to become paranoid. Investigations disclose that these cases do not involve one or two simple "billing errors," but a pattern of activity which involves illegal gains of thousands and perhaps millions of dollars. Greed by a few practitioners has painted a very bleak picture of health care fraud in this state.

One of the hottest schemes which recently surfaced involves mobile laboratories which conduct unnecessary and sometimes fake tests on unsuspecting patients, while billing insurance companies or government programs for the costs. The most notorious case occurred in Southern California and was the brainchild of two brothers, Michael and David Smushkevich. Investigators claim that the Smushkeviches and their partners filed \$1 billion in false claims, of which they received approximately \$50 million in payments from government and private insurers. At its peak between 1986 and 1988, the operation involved 500 separate companies,

and employed hundreds of doctors, lab technicians, and billing clerks. Recently, criminal convictions were obtained on all 12 individuals in federal court.



Joan Jerzak

"Kickbacks" and "fee splitting" are terms often used to characterize inappropriate payments for patient referrals. Federal and state of California laws prohibit soliciting, receiving, offering, or paying anything of value in return for the referral of a health care item or service. Kickbacks usually are cash payments which a practitioner will pay to another source, such as an attorney or another practitioner, in return for a new paying patient. Physicians have been known to engage in "ping-ponging" or referring patients from one practitioner to another within the same facility.

Medical suppliers, pharmacies, laboratories and home health care agencies also engage in kickbacks by giving a percentage fee to the physician or the clinics who recommend their business to patients.

Upcoding occurs when health care providers bill for a more expensive service than the one they provide to a patient. Upcoding can also come in the form of generic substitutions, which happens when a claim is submitted for a more expensive drug, but the patient actually receives a less costly generic brand.

The unbundling scheme involves practitioners who will perform an operation on one day, but submit bills as if multiple surgical procedures were performed on different days. It occurs when a comprehensive laboratory test is billed as many separate tests, such as a multi-dose allergy shot that is billed as separate dosages. Often, a complex procedure is billed as several smaller, inclusive procedures. For example, practitioners may bill for one procedure, such as an abortion, and receive reimbursement for one "global" rate in insurance companies. To increase the amount paid by the carrier, these practitioners submit bills for the same abortion by listing the office visit, a pelvic exam, anesthesia, sutures and lab tests as separate procedures.

Reviewers of claims for insurance companies occasionally spot insurance fraud by practitioners who perform no services at all for the fees they collect. This is also referred to as "phantom billing." Pharmacists who fill unauthorized refills, and physicians who bill for x-rays or services not

(Cont. on page 15)

Legislative Action Due This Spring on Bill to Regulate Out-of-Hospital Surgery Settings

AB 595, authored by Assemblywoman Jacqueline Speier (D-South San Francisco), will provide the legislative authority to regulate for the first time in California out-of-hospital surgery settings. The measure, already heard once in the State Senate Committee on Health last year, was "put over" until the Committee's first hearing in 1994.

Just before the adjournment of the 1993 Legislature, Assemblywoman Speier, after extensive negotiations, added amendments designed to remove almost all opposition to the measure. The Committee, however, asked for additional time for its staff to analyze the amendments — more time than was left on the legislative calendar. Senator Diane Watson, Chair of the Committee, has promised an expedited hearing early in the new session.

AB 595 was originally sponsored by the Medical Board, based on the work of a Board committee headed by Camille Williams, M.D., and staffed by former Assistant Director Thomas Heerhartz. The Board established the committee to address major enforcement problems raised by doctor-operated "clinics" without any licensing or standards for levels of care, medical safety or even cleanliness. News organizations had dramatized glaring examples of inattention and bemoaned a lack of enforcement, declaring themselves outraged by such circumstances slipping through the regulatory cracks.

During the course of the 1993 legislative year, AB 595 went through several incarnations. At first, even though the measure was offered by the Medical Board, the assignment for regulation was given to the Department of Health Services. DHS signaled that it didn't believe it to be the appropriate agency and estimated a cost of regulation far greater than the Board. The amended version of the bill handed the responsibility back to the Board.

Also, the measure defines what type of physician-operated facility qualifies as an "out-of-hospital surgery setting" by detailing the level of anesthesiology used. Strict standards, particularly in the event of unforeseen emergencies, are then established in the bill and a licensing procedure is outlined whereby the Medical Board will authorize a limited number of accreditors (who must themselves pass a standards test and file a bid) to inspect and license.

Throughout 1993 organizations representing major specialties debated the provisions of the measure which would mean their inclusion or exclusion as a regulated setting. With the final set of amendments, however, Assemblywoman Speier settled differences with every group except dermatologists. At the final 1993 hearing of the Senate Committee on Health, the Medical Board, the California Medical Association and several specialty groups testified in favor of the bill.

Health Care Fraud (Cont. from page 14)

rendered are examples in this category. Similarly, cases have surfaced where practitioners have billed for unnecessary services. Cases have surfaced where heart patients underwent treadmill tests without being connected to the monitor; where diagnostic tests were ordered without any connection to the patient's condition; and where tests were conducted in minutes, when the proper testing requires hours to perform. Bold practitioners have also billed for tests that were incompatible with the patient's age or medical condition, such as performing pregnancy-related tests on a 60 year-old woman. Others have billed for removal of organs which had actually been removed years earlier.

Insurance scams are as varied and as complex as individual medical practices. There are some signs to suggest that a health care practice may not be practicing within acceptable standards. The following have been reported to fraud investigators as indications of possible fraudulent practices.

- Key medical equipment is not on the premises.
- An excessive amount of x-rays are ordered on every patient.

- Patient complaints are expanded beyond their initial assessment.
- Incoming patients are referred to an attorney or asked if they are represented by an attorney.
- Incoming patients are seen by office personnel who are not licensed.
- Patients report five-minute examinations.
- An unusually high number of persons are milling around in the office waiting room.
- Patients are told to sign blank insurance forms.
- Extensive laboratory tests are ordered.
- The name of the clinic changes often.
- Poor sanitary conditions.
- Language interpreters are on the premises.

The Medical Board of California is actively engaged in health care fraud investigations. Often joint investigations are conducted with federal, state and local law enforcement agencies. While many investigative cases are in the initial stages, criminal and administrative filings are expected to increase during the coming months.

Department of Consumer Affairs
Medical Board of California
1426 Howe Avenue
Sacramento, CA 95825-3236

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Alan E. Shumacher, M.D.
Jacquelin Trestrail, M.D.*
Cathryne Bennett Warner*

*Also members of the Division of Allied Health
Professions which expires by statute July 1, 1994.

Dixon Arnett, Executive Director

TOLL FREE COMPLAINT LINE:

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ACTION REPORT-JANUARY 1994

The Action Report is a quarterly publication of the Medical Board of California. For information or comments about its contents, please contact:
Candis Cohen, Editor, (916) 263-2389.

For additional copies of this report, please fax your company name, address, telephone number, and contact person to: Jennifer Bawden, Medical Board Support Services Unit, at (916) 263-2479, or mail your request to her at 1426 Howe Avenue, Suite 54, Sacramento, CA 95825.

Medical Board of California

1426 Howe Avenue, Suite 54, Sacramento, CA 95825 (916) 263-2389

January 1994

AN ORGANIZATIONAL GUIDE

The Medical Board licenses almost 103,000 physicians and surgeons and is responsible for enforcing all the provisions of the Medical Practice Act, yet the organization of the Board and staff is as straightforward as the Board's mission.

Under provisions of a new law (SB 916, enacted in 1993), the Board has two major divisions: Licensing and Medical Quality (enforcement). The Division of Allied Health Professions, created in 1975, will disband on July 1 (the Board will replace it with a permanent committee) as part of the Board's emphasis on enforcement.

Staff organization reflects exactly the structure of the Board:

*** The Licensing Program (Division of Licensing)**

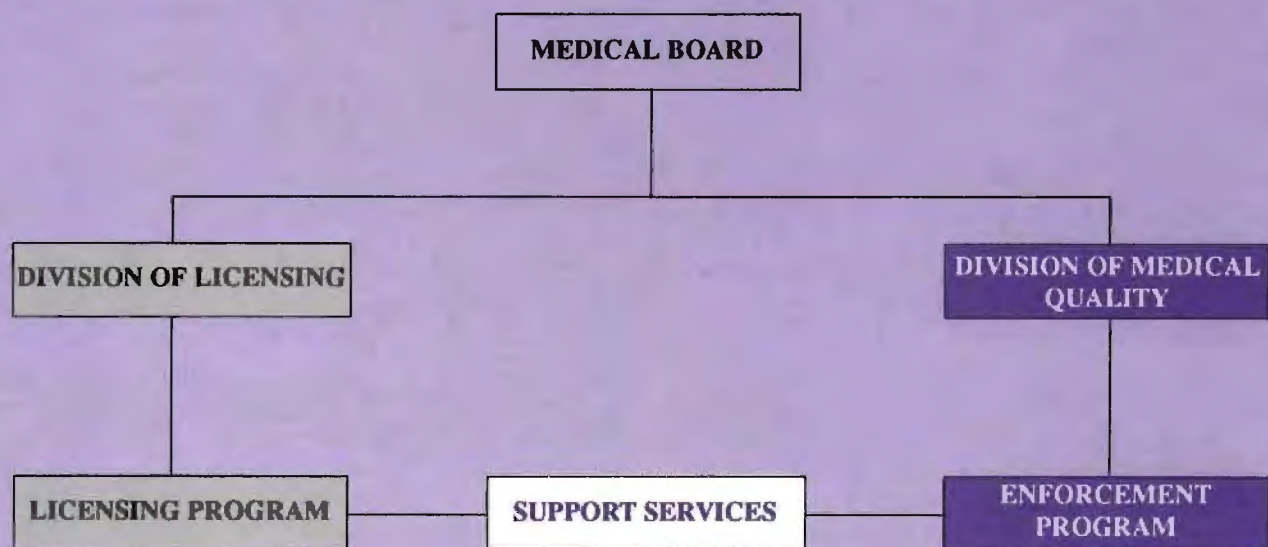
- Application Processing
- License Verifications
- Program Support, Exam Unit, Continuing Education

*** The Enforcement Program (Division of Medical Quality)**

- Field Operations (3 major areas, within which there are 12 regional offices and a Fraud Unit)
- Central Complaint Unit — Probation Surveillance — Discipline Coordination Unit — Diversion Program — Policy & Training

*** Support Section**

- Chief Medical Consultant — Staff Counsel
- Data Processing
- Allied Health Liaison — Legislation
- Support Staff (Budget, Personnel, Business Services)



MISSION STATEMENT OF THE MEDICAL BOARD OF CALIFORNIA

The mission of the Medical Board of California is to protect consumers through proper licensing of physicians and surgeons and certain allied health professions and through the vigorous, objective enforcement of the Medical Practice Act.

Physician Licensing Requirements

- A two year professional postsecondary education which includes the subjects of physics, chemistry and biology.
- A medical curriculum of 32 months of actual instruction which includes 72 weeks of clinical instructions in specific subjects as required by Business and Professions Code, Sections 2089 and 2089.5.
- A diploma or certificate documenting completion of all formal requirements of the medical school for graduation.
- Certification by the Educational Commission on Foreign Medical Graduates (ECFMG), if applicant graduated from a medical school not accredited in the United States.
- A passing score on one of the following examinations: the three part National Board of Medical Examiners (NBME) exam; components 1 and 2 of the Federation Licensing Examination (FLEX); those State Medical Board examinations passed prior to June 1969 and recognized to be equivalent; or parts I and II of the NBME taken as part of ECFMG certification, combined with FLEX Component 2.
- Certification of having successfully completed a minimum of 12 months of postgraduate training in an approved program in the United States or Canada. This training must include a minimum of four months of general medicine. This general medicine requirement may be satisfied by approved postgraduate training programs in family practice, internal medicine, surgery, pediatrics or obstetrics and gynecology.
- In order to become eligible to participate in approved postgraduate training in California, a graduate of a foreign medical school must pass Component 1 of the FLEX examination with a score of 75 percent or better, or pass parts I and II of the NBME taken as part of ECFMG certification.
- In addition to documenting completion of the above requirements, the following examinations may be required:
 - Oral and written examinations are required of graduates of foreign medical schools who have practiced medicine with an unrestricted license in other states or as a member of the active military or other federal program, and who took their last licensing exam more than four years ago. The Board is currently using the Special Purpose Examination (SPEX).
 - An oral examination is required of applicants whose Endorsement of Certification by the NBME is more than five years old.

Physician Licensing Requirements for Foreign Medical School Graduates

- A two year professional postsecondary education which includes the subjects of physics, chemistry and biology.
- A medical curriculum of 32 months of actual instruction which includes 72 weeks of clinical instructions in specific subjects as required by Business and Professions Code sections 2089 and 2089.5, which must be independently certified by the medical school.
- A diploma documenting completion of all formal requirements of the medical school for graduation.
- Certification by the Educational Commission on Foreign Medical Graduates (ECFMG).
- A passing score on one of the following examinations: components 1 and 2 of the Federation Licensing Examination (FLEX); those State Medical Board examinations passed prior to June 1969 and recognized to be equivalent; parts I and II of the NBME taken as part of ECFMG certification, combined with FLEX Component 2; or steps 1, 2, and 3 of the United States Medical Licensing Examination (USMLE).
- Certification of having successfully completed a minimum of 12 months of postgraduate training in an approved program in the United States or Canada. This training must include a minimum of four months of general medicine. This general medicine requirement may be satisfied by approved postgraduate training programs in family practice, internal medicine, surgery, pediatrics or obstetrics and gynecology.
- In order to become eligible to participate in approved postgraduate training in California, a graduate of a foreign medical school must pass Component 1 of the FLEX examination with a score of 75 percent or better, or pass parts I and II of the NBME taken as part of ECFMG certification.
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 - Oral and written examinations are required of graduates of foreign medical schools who have practiced medicine with an unrestricted license in other states or as a member of the active military or other federal program, and who took their last licensing exam more than four years ago. The Board is currently using the Special Purpose Examination (SPEX).
 - An oral examination for all graduates of foreign medical schools.

THE DIVISION OF LICENSING

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 Stewart Hsieh, J.D.
 Thomas A. Joas, M.D.
 C. Fredrick Milkie, M.D.

LICENSING PROGRAM
 Vacant SSM II

Verifications

Application Processing
 Vacant SSM I

Asst. Licensing Manager
 Janie Cordray SSM I

Program Support

Exam Unit

Continuing Education

Verifications

The Verifications Unit, which includes information disclosure to inquiring consumers, handled 201,768 telephone inquiries in 1992-93, 161,607 on-line access verifications and 100,944 written communications.

Application Processing

The Application Unit granted 3,772 new licenses in 1992-93 and reissued 55,678 licenses. A total of 102,891 licenses are in effect (76,367 in CA; 26,524 are out-of-state).

PHYSICIAN AND SURGEON VALID LICENSES BY COUNTY

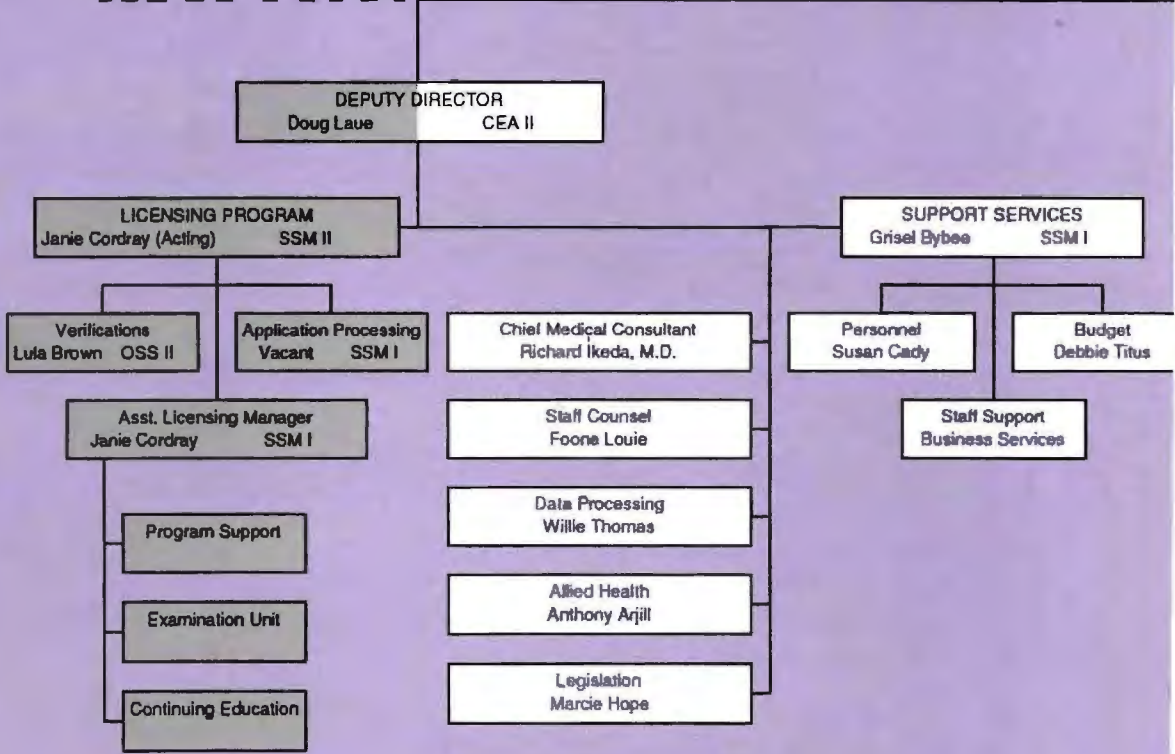
Alameda	3,359	Riverside	1,798
Alpine	1	Sacramento	2,783
Amador	53	San Benito	21
Butte	375	San Bernardino	2,701
Calaveras	30	San Diego	7,021
Colusa	10	San Francisco	4,449
Contra Costa	2,111	San Joaquin	756
Del Norte	31	San Luis Obispo	526
El Dorado	214	San Mateo	2,285
Fresno	1,355	Santa Barbara	959
Glenn	8	Santa Clara	4,283
Humboldt	258	Santa Cruz	488
Imperial	119	Shasta	323
Inyo	42	Sierra	3
Kern	797	Siskiyou	64
Kings	98	Solano	583
Lake	56	Sonoma	1,061
Lassen	35	Stanislaus	648
Los Angeles	23,628	Sutter	118
Madera	65	Tehama	44
Marin	1,420	Trinity	15
Mariposa	18	Tulare	400
Mendocino	181	Tuolumne	106
Merced	215	Ventura	1,313
Modoc	4	Yolo	457
Mono	21	Yuba	52
Monterey	651	California Total	
Napa	404	76,367	
Nevada	163	Out of State Total	
Orange	6,909	26,524	
Placer	455	Valid Licenses	
Plumas	24	102,891	

Program Support

In addition to research and analysis and continuing education certifications, the unit administered 444 FLEX exams, 103 SPEX exams and 1,197 oral exams.

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 TORRANCE
 WOODLAND HILLS

THE ENFORCEMENT PROGRAM

The Enforcement Program takes its direction from the Division of Medical Quality of the Board. The 12 members of the Division not only provide policy guidance to the Chief of Enforcement and his staff, but also act in a judicial role when deciding individual cases recommended by administrative law judges.

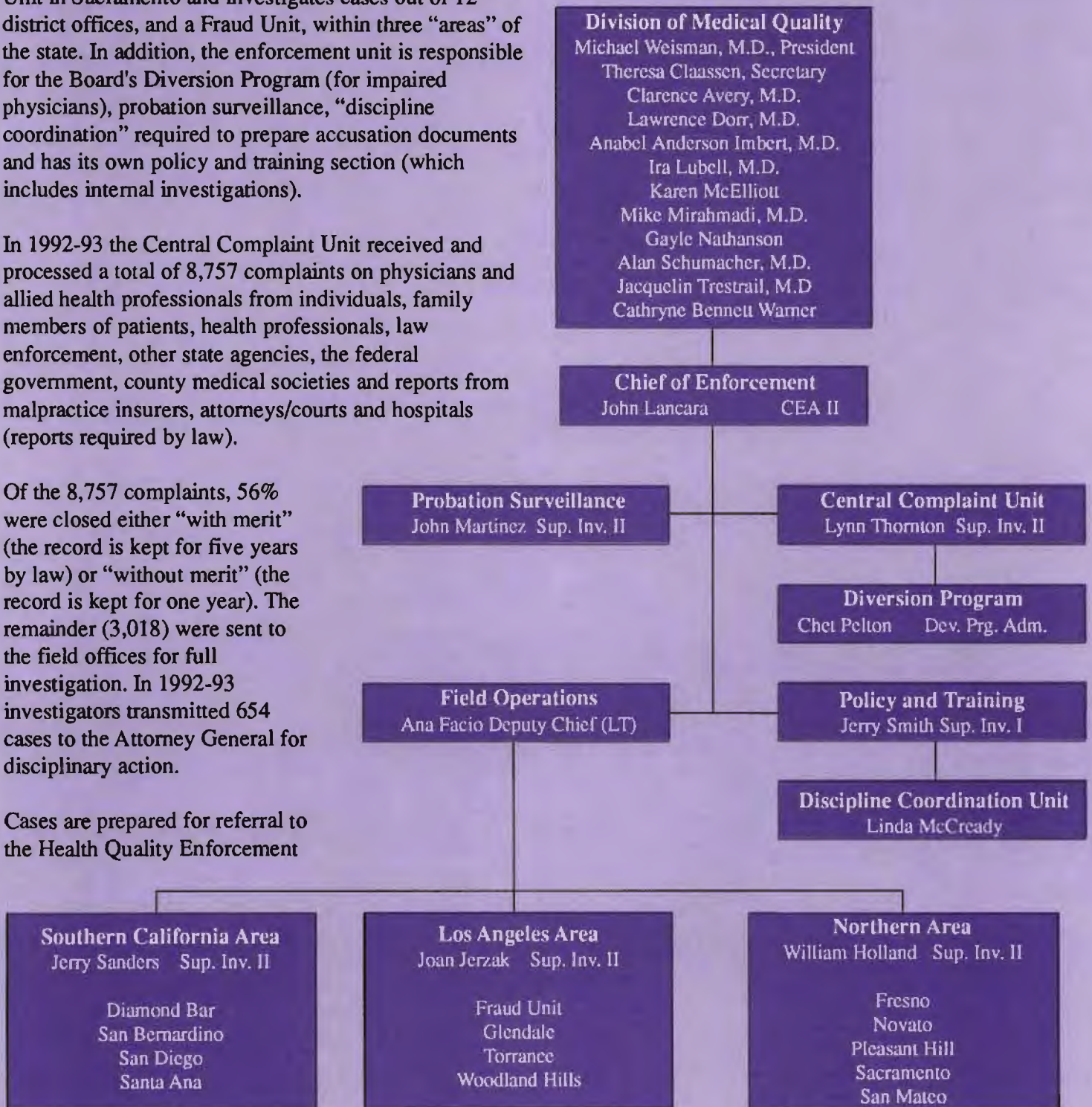
The enforcement staff operates the Central Complaint Unit in Sacramento and investigates cases out of 12 district offices, and a Fraud Unit, within three "areas" of the state. In addition, the enforcement unit is responsible for the Board's Diversion Program (for impaired physicians), probation surveillance, "discipline coordination" required to prepare accusation documents and has its own policy and training section (which includes internal investigations).

In 1992-93 the Central Complaint Unit received and processed a total of 8,757 complaints on physicians and allied health professionals from individuals, family members of patients, health professionals, law enforcement, other state agencies, the federal government, county medical societies and reports from malpractice insurers, attorneys/courts and hospitals (reports required by law).

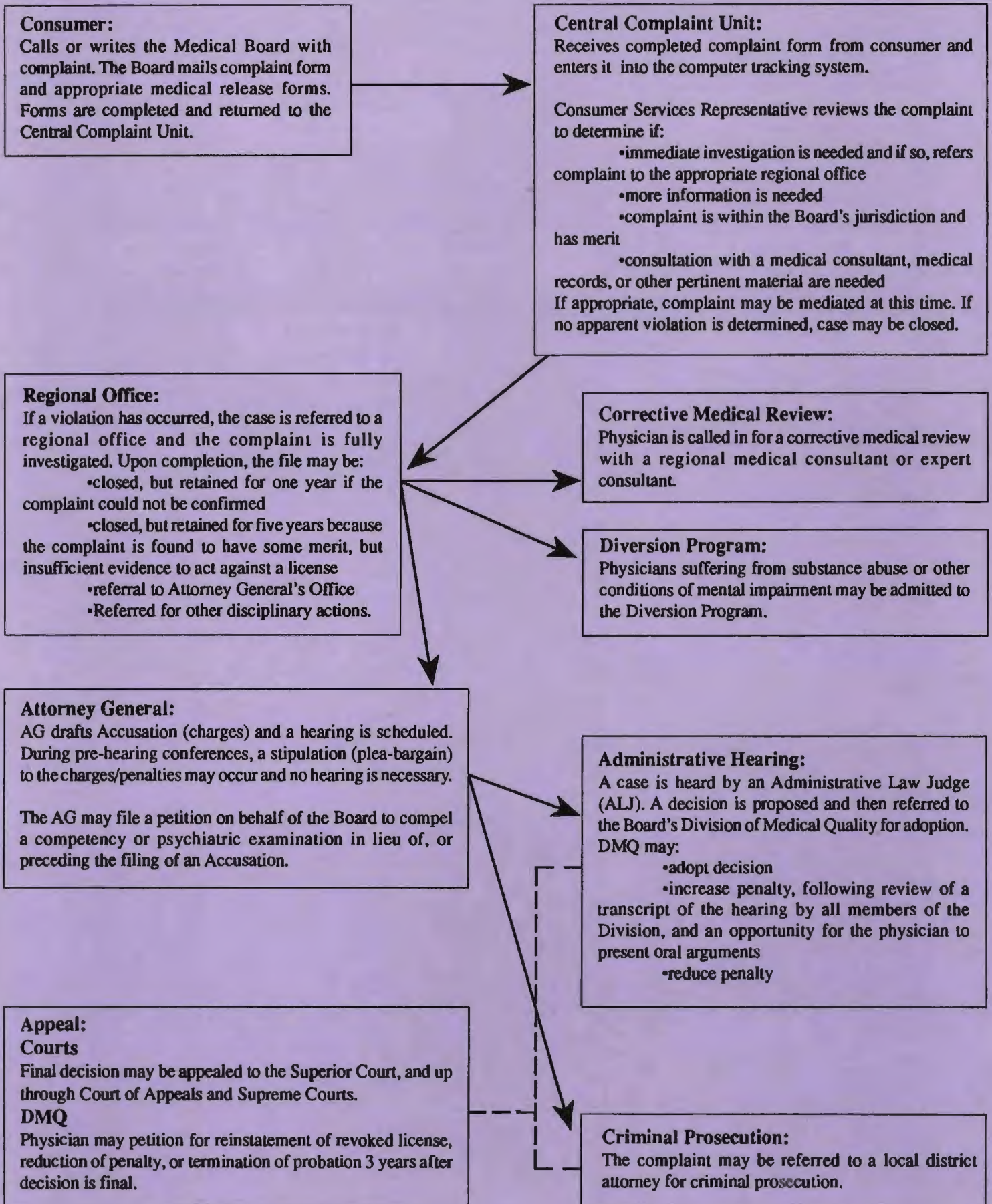
Of the 8,757 complaints, 56% were closed either "with merit" (the record is kept for five years by law) or "without merit" (the record is kept for one year). The remainder (3,018) were sent to the field offices for full investigation. In 1992-93 investigators transmitted 654 cases to the Attorney General for disciplinary action.

Cases are prepared for referral to the Health Quality Enforcement

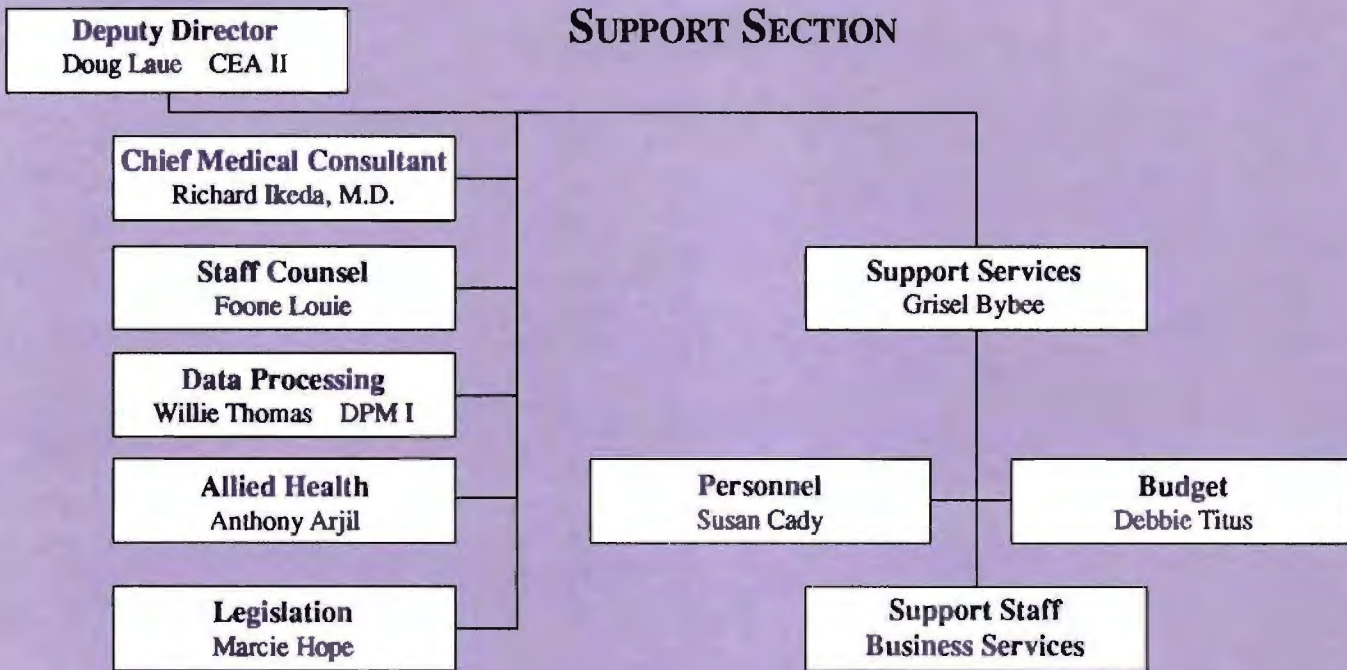
Section of the Office of the Attorney General, a staff of 44 attorneys who act only on Medical Board cases. Directed by Assistant Attorney General Al Korobkin, the HQES is divided into four regional offices (San Diego, Los Angeles, San Francisco, and Sacramento). In 1992-93 there were 476 accusations filed by the Attorney General. 149 cases reached final adjudication, including 34 interim suspension and temporary restraining orders.



THE ENFORCEMENT PROCESS



SUPPORT SECTION



Chief Medical Consultant

Provides technical advice to a team of regional consultants who, in turn, provide counsel to investigators. Provides medical advice to senior staff and Board.

Staff Counsel

Acts as counsel to the Division of Medical Quality in its quasi-judicial duties. Advises the Board/staff on case histories.

Data Processing

Provides DP support to both licensing and enforcement staffs. Provides liaison to Teale Data Center and Department of Consumer Affairs.

Allied Health

Provides liaison to 14 allied health professional boards. Has responsibility for developing and operating the new program for licensing direct-entry midwives (per SB 350, 1993).

Legislation

Provides technical support and advice to staff/Board on pending legislation affecting Board policy.

SUPPORT SERVICES

Budget

The Board's Budget Officer provides data and guidance on all budget matters, including preparation of the budget and budget change proposals.

Personnel

The Personnel Officer covers all matters relating to the authorized staff of 284, almost 100 of whom are peace officers.

Support Staff

All other administrative support, such as logistics for Board meetings and property management, is provided by this unit.

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