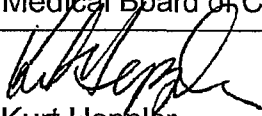




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MEMORANDUM

DATE	April 12, 2011
TO	Members, Enforcement Committee Medical Board of California
FROM	 Kurt Hepler Senior Staff Counsel
SUBJECT	Practice Monitors

This memorandum provides you with an update regarding the issue of practice monitors and the difficulties that disciplined licensees may be having in obtaining such monitors.

At the recent meeting of the Enforcement Committee (Committee), it was suggested that licensed physicians may be reluctant to serve as practice monitors because they fear a possible defamation lawsuit or other tort action (possibly interference with an employment relationship or interference with a prospective economic advantage) filed by the probationer. By way of example, it was suggested that if practice monitor B submitted a report regarding the substandard performance of disciplined physician A, A may sue B in retaliation for the report. This fear of litigation may chill the interest in participating as a monitor. It was suggested at the meeting that providing civil immunity to the monitors would ameliorate this problem.

Some background information may be helpful. Practice monitoring (and hence the need for a practice monitor) is a condition of probation, as established in the Medical Board of California's Disciplinary Guidelines. (See Cal. Code Regs., tit. 16, § 1361.) A practice monitor is not a 'stand over the shoulder' type of arrangement, as a practice monitor reviews charts, evaluates performance and prepares reports for submission to the Board. It is important to note that the Board must approve the monitor as well as the monitoring plan. Approximately 200 physicians currently require practice monitors.

The Committee instructed staff to review the issue. An analysis of data supplied by the Board's Probation Program does not readily support the contention that fear of legal exposure is a significant reason for non-participation. Reasons given for difficulty obtaining a monitor include costs (the probationer is obligated to pay for all monitoring costs), possible Health Insurance Portability and Accountability Act (HIPAA) violations, and problems finding a physician in the proper specialty. Avoidance of litigation was mentioned only sparingly as a reason not to participate.

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Nonetheless, out of an abundance of caution, the Probation Program is revising its monitoring forms to recommend that a practice monitor seek and execute a 'hold harmless' agreement with the disciplined physician regarding the preparation and submission of the necessary reports.

This issue will be periodically reviewed and emerging concerns will be reported to the Committee. However, at this time, legal staff believes no further action is warranted on the issue of civil immunity and practice monitors.