



MEDICAL BOARD OF CALIFORNIA
Executive Office



MEMORANDUM

Date: January 13, 2011

To: Members of the Education Committee

From: Jennifer Simoes, Chief of Legislation

Subject: Applying the Notice to Consumers Regulation to Correctional Facilities

Effective June 27, 2010, the notice to consumers regulation, mandated by Business and Professions Code Section 138, went into effect. This regulation requires physicians in California to inform their patients that they are licensed by the Medical Board of California, and include the Medical Board's contact information.

On June 25, 2010, the Medical Board (the Board) received a letter from the California Department of Corrections and Rehabilitation (CDCR) that stated its belief that the notice to consumers regulation should and does not apply to physicians working within CDCR institutions or Department of Juvenile Justice (DJJ) facilities and requested confirmation from the Board on this issue.

CDCR stated in its letter that the regulation should not be applicable to physicians working for CDCR for the following reasons: There are already numerous mechanisms in place to address medical concerns of inmates and youths, so the notice to consumers requirement is already in effect; inmates and youths do not have access to the internet and have limited telephone access, so the contact information in the required notice is ineffective; inmates and youths may see medical providers not licensed by the Board, which creates confusion; and as a result of the Federal class action case *Plata v. Schwarzenegger*, CDCR's medical providers and facilities are under the direct control of the Federal Receiver, not the Secretary of the CDCR.

A spokesperson came to the July 29, 2010 Committee meeting and asked, during public comment period for Items Not on the Agenda, that the Committee consider the letter and his comments (see minutes) and exempt CDCR from the regulations. At that time, CDCR was told that the notice to consumers regulation does apply to physicians working for CDCR, but that this issue would be considered again in the future. This issue has been placed on your agenda to consider this request from a sister agency.

Potential Recommendations to the Board from the Education Committee:

- Recommend to the Board that the notice to consumers regulation be modified to create an exemption for CDCR and DJJ facilities.
- Recommend that the Board not make any changes at this time.

STATE OF CALIFORNIA — DEPARTMENT OF CORRECTIONS AND REHABILITATION

ARNOLD SCHWARZENEGGER, GOVERNOR

OFFICE OF LEGAL AFFAIRS

Benjamin T. Rice
General Counsel
P.O. Box 942883
Sacramento, CA 94283-0001



June 25, 2010

Via U.S. Mail and facsimile to (916) 263-2387

Linda Whitney, Executive Director
The Medical Board of California
2005 Evergreen Street, Suite 1200
Sacramento, CA 95815

RE: Notice to Consumers

Dear Ms. Whitney:

I am writing to you on behalf of the California Department of Corrections and Rehabilitation (CDCR) regarding the application to physicians working for CDCR of the new Notice to Consumers requirement under Title 16, California Code of Regulations (C.C.R.), section 1355.4, effective June 27, 2010. Specifically, the regulation requires medical doctors to notify their patients they are licensed and regulated by the Medical Board of California (Board) and to provide the Board's phone number and website. The stated purpose of the new requirement, according to the Board's website, is "to inform consumers where to go for information or with a complaint about California medical doctors."

This new regulation does not appear applicable to physicians working for CDCR for several reasons. Medical care is limited to inmates in state prisons and youths in Department of Juvenile Justice (DJJ) facilities, a patient population with numerous internal, statutory and constitutional mechanisms through which they can address any medical concerns. In particular, inmates and youths have ready access to systems for filing appeals regarding any medical care issues relating to access and quality, as well as venues to file grievances for alleged medical staff misconduct or abuse. Additionally, federal class actions provide notice to the same population that they may seek relief by contacting the law firms representing the inmates in these suits. With these systems in place, the stated purpose of the new Notice to Consumers requirement is already in effect throughout our institutions.

Inmates and youths have limited telephone access and use and have no access to the internet. Consequently, providing these patients with the Board's phone number and website address would be ineffective. In addition, CDCR's clinical spaces are not assigned to specific providers. Inmates or youths may be seen by medical providers who are not licensed by the Board. Posting the notice would potentially create confusion among our consumer population.

Linda Whitney, Executive Director
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Finally, as a result of the Federal class action case *Plata v. Schwarzenegger*, CDCR's medical providers and medical facilities are under the direct control and supervision of a Federal Receiver, not the Secretary of CDCR.

For the reasons explained above, we do not believe that the new Notice to Consumers requirement in 16 C.C.R. § 1355.4 can or should apply to physicians working within CDCR institutions or DJJ facilities and would appreciate confirmation from the Board. We would also appreciate the opportunity to discuss our above-noted concerns with the Board, including our concerns with inmates' use of the Board's patient complaint processes. My contact information is listed below. I look forward to speaking with you.

Sincerely,



THOMAS L. GILEVICH
Assistant General Counsel
(916) 323-0268