

MEDICAL BOARD STAFF REPORT

DATE REPORT ISSUED: July 12, 2019
ATTENTION: Members, Medical Board of California
SUBJECT: Proposed Changes to the Policy Regarding Utilization of
Expert Reviewers
FROM: Kimberly Kirchmeyer, Executive Director

REQUESTED ACTION:

After review and discussion, make a motion to remove the limitation on the number of times an expert reviewer may be used during a year.

BACKGROUND AND ANALYSIS:

The Medical Board of California (Board) established the Expert Reviewer Program in July 1994 as an impartial and professional means by which to support the investigation and enforcement functions of the Board. Specifically, medical experts assist the Board by providing expert reviews and opinions on Board cases and conducting professional competency, physical, and psychiatric examinations. The Expert Program has evolved since its inception and developed a set of guidelines that are used by experts, which have been revised several times, and established a training program that provides eight hours of intense training on the enforcement process, how to evaluate a case, what to expect when testifying, and other critical components of being an expert.

In 2005, after concerns were received from interested parties regarding over utilizing the same experts, a policy was implemented that limited the amount of cases an expert could review in a year. That policy stated that without express authorization from the Board, no expert could review more than five cases in a year, and in some years limited the number to three reviews per year. This policy remains in place today, and with limited exceptions, experts are not allowed to review more than five cases in a year.

In August 2010, a study of the Board was completed by Benjamin Frank LLC, Management Consultants. This study reviewed several aspects of the Board, including the Board's Expert Reviewer Program. One of the recommendations of that study, was that the Board eliminate the limitation on reutilization of expert reviewers. Specifically, the report stated that, "Under current Board policy, Medical Experts may not be used more than three (3) times per year. As with medical procedures, Medical Experts tend to become more qualified as they complete more reviews. However, under current policy, at the very point when the Medical Experts may become most qualified, and also faster and more effective, they must stop work until another year. As defense counsels are under no such restrictions, under the current system the Investigators and Prosecutors are severely handicapped."

Although the recommendations were discussed, the policy was not changed by the Subcommittee that reviewed the study. Therefore, the policy has remained in place until today. However, the reasoning behind the recommendation in the study remains. As experts learn more about the process of providing an expert opinion, and receive feedback, including the feedback and learning received by testifying at court, they become a more experienced

expert. In addition, the time to conduct a review is decreased, because they are not spending valuable time learning about their role and how to review the file and format their opinions.

Another problem with the limitation on experts is that in some specialized areas of practice it is difficult to find enough experts. Limiting the use of an expert to no more than five times per year contributes to this difficulty. This also slows down case processing as the Board must try to recruit another expert in that specialty field or go through the process of obtaining approval to utilize the expert over the limitation.

The expert reviewer conducts an objective review of the case. Significantly, several of the Board's current experts conduct reviews for both the Board and defense counsel. It is very important for the Board to have an expert who can provide an unbiased opinion that looks at the facts of the case and the evidence gathered, and determines whether the subject physician departed from the standard of care and violated the Medical Practice Act or other relevant law. This requirement would not change no matter how many times an expert reviews cases for the Board. Removing the arbitrary limit on the number of times the Board may use an expert in a year will improve the Board's access to experienced, well-qualified experts. If a respondent's counsel is concerned about how many times the Board has relied on a particular expert, then counsel can raise this during cross-examination at hearing.

STAFF RECOMMENDATION:

Staff recommends the Board repeal the limitation on the number of cases an expert may review in a year, thus assisting in the availability of well-qualified and trained experts who can provide opinions on the Board's cases. This will assist the Board in its mission of consumer protection.