



MEDICAL BOARD OF CALIFORNIA

QUARTERLY BOARD MEETING



**Interim Board Meeting
February 26, 2016**

Meeting Minutes

TELECONFERENCE

Medical Board of California
Hearing Room
2005 Evergreen Street
Sacramento, CA 95815

Additional Various Locations:

Arrowhead Regional, Medical Center, 400 North Pepper Avenue, Room #3M308-5, Colton, CA; 12750 Center Court Drive, South, Ste. 750, Cerritos, CA; Attorney General's Office, 455 Golden Gate Avenue, 11th Floor, San Francisco, CA; Asm. Chad Mayes' District Office, 41608 Indian Trail Rd, Suite D-1, Rancho Mirage, CA; One Embarcadero Center, 30th Floor, San Francisco, CA; 600 N Garfield Ave. # 308, Monterey Park, CA; UCLA Family Health Center, 1920 Colorado Avenue, Room # 269, Santa Monica, CA; Saban Community Clinic, 8405 Beverly Blvd. Los Angeles, CA

February 26, 2016

MEETING MINUTES

Members Present:

David Serrano Sewell, President
Michelle Bholat, M.D.
Dev GnanaDev, M.D., Vice President
Randy Hawkins, M.D.
Kristina Lawson, J.D.
Ronald H. Lewis, M.D.
Gerrie Schipske, R.N.P., J.D.
Jamie Wright, J.D.
Barbara Yaroslavsky
Felix Yip, M.D.

Members Absent:

Michael Bishop, M.D.
Judge Katherine Feinstein (ret.)
Howard Krauss, M.D.
Sharon Levine, M.D.
Denise Pines

Staff Present:

Kimberly Kirchmeyer, Executive Director
 Letitia Robinson, Research Program Specialist
 Liz Rojas, Business Services Officer
 David Ruswinkle, Associate Governmental Program Analyst
 Jennifer Saucedo, Business Services Analyst
 Anita Scuri, Consultant
 Lisa Toof, Administrative Assistant II
 Kerrie Webb, Legal Counsel
 Curt Worden, Chief of Licensing

Members of the Audience:

Gloria Castro, Supervising Senior Assistant Attorney General, Attorney General's Office
 David Chriss, Chief, Division of Investigation, Department of Consumer Affairs
 Andrew Hegelein, Supervising Investigator II, Division of Investigation, Department of Consumer Affairs

Agenda Item 1 8:00 a.m. Call to Order/Roll Call

Mr. Serrano Sewell called the meeting of the Medical Board of California (Board) to order on February 26, 2016, at 8:10 am. A quorum was present and due notice was provided to all interested parties.

Agenda Item 2 Public Comments on Items not on the Agenda

No public comments were offered.

Agenda Item 3 Review and Consideration of Vertical Enforcement Report Pursuant to Government Code Section 12529.7

Dr. Yip, Chair of the Enforcement Committee, thanked all Members for being available to attend the meeting. He stated that this interim meeting is taking place because, unfortunately the data reports that were needed to complete the Vertical Enforcement (VE) report were not available prior to the January Board meeting. Dr. Yip noted that this report is required pursuant to Government Code Section 12529.7 and is due to the Legislature on March 1, 2016. He thanked Ms. Scuri, Ms. Robinson, and Ms. Kirchmeyer for their time and work on the report and also thanked Mr. Chriss, Ms. Nicholls and Ms. Rhine from the Department of Consumer Affairs (DCA) and Ms. Castro and Mr. Jones from the Attorney General's (AG's) Office for their assistance as their input was very helpful.

Dr. Yip pointed out that after discussion with the AG's Office, there were a few data markers that needed to be changed in the original report, so an amended version of the report was provided to all Members and placed on the Board's website. He noted that these edits only made changes to the graphs and added two footnotes.

Dr. Yip stated the law is not specific about what should be in the report. However, he noted this is the sixth report the Board has submitted regarding the VE model. Staff thought that it was

important to provide the same statistical reports that were provided in the previous report, with the addition of subsequent fiscal years.

Dr. Yip noted that staff decided to not include the breakdown by complaint category, but rather to provide an overall report. In addition, staff used the median processing times because staff felt it would provide a more accurate picture of the timeframes. This report provides a brief introduction and history of the VE Program, as well as costs of the Program. It also describes the improvements that have occurred since the last report in 2013. He noted these improvements can be found on page eight of the report. Dr. Yip stated lastly, the report contains four recommendations regarding the VE Program. He went over the four recommendations.

The first recommendation discussed the language of Government Code section 12529.6(b). The language states the investigator of the case is “under the direction but not supervision of the deputy attorney general.” Dr. Yip noted that after reviewing this language, it was determined it may interfere with the investigators and attorneys being a true team and the Board should recommend that a mechanism be found to more fully utilize the expertise brought to the team by both the investigator and the deputy attorney general (DAG).

The second recommendation would request that the same Government Code section be amended to allow Board staff, at its discretion, to consult with the AG’s Office on cases handled by Board’s non-sworn staff.

The third recommendation would remove a reference to the Medical Board from subdivision (e) in the same Government Code section to reflect the transition of the investigators from the Board to the DCA. Dr. Yip noted this section of law states the Board has to enhance the VE Program by increasing computer capabilities, by co-locating the investigators and attorneys, and by performing team building of both parties. However, with the transition of the investigators, the Board no longer oversees the individuals who are involved in the VE Program. Therefore this should be a requirement of those entities.

The last recommendation was for the DCA and AG’s Office to utilize the new joint manual and develop additional strategies and procedures to further improve the VE Program.

Dr. Yip stated he had reviewed and discussed this report with staff and agrees with its content. He noted he believes that, based upon the fact that this Program is now a collaboration with the other entities, it is important for these recommendations and the report to move forward. He then asked Ms. Scuri and Ms. Robinson to add any additional information and answer any questions. He stated he would then like to ask for a motion to approve the report.

Ms. Scuri noted there was a reference made in Government Code Section 12529.7, which requires the Board, in consultation with the Department of Justice (DOJ), and the DCA to report and make recommendations to the Governor and the Legislature on the Vertical Enforcement and Prosecution Model and requires the report be submitted on March 1, 2016. She stated the Board began creating the report in October 2015, when she was asked to assist staff with the preparation of the report due to her work on the VE joint protocol in 2014/2015. The goal was to develop a report that was neutral in tone and easy to read. She stated she personally worked with the Division of Investigation (DOI) and the AG’s Office. Ms. Scuri noted she had extensive discussions with Ms. Castro and

Mr. Jones to address some of their areas of concern and Board staff worked hard to make this as close as possible to a joint report by making several modifications and adjustments to address issues raised in particular by the AG's Office. Ms. Scuri started the consultation process at the beginning rather than wait until the end. She noted those who participated in this process were asked what they wanted to see in the report. Board staff then came up with a time line for receiving the statistical data by October 31, 2015, and circulated a draft report by December 1, 2015. She noted that although the data was requested on October 8, 2015, with several follow up inquiries, staff did not receive the data until the end of January due to technical difficulties with attempting to obtain the same data markers from two different data systems.

Ms. Scuri noted that while waiting for the data, in October, staff shared with the DOI and the AG's Office the proposed concept of the report to receive feedback on the report contents. Ms. Scuri stated several changes were based on that feedback. Ms. Scuri stated the discussion included suggestions from the AG's Office such as what items should be included in the report and explained why certain items should more appropriately be included in the next Sunset Review Report. She noted the basic narrative of the report was drafted, excluding the data and recommendations in November and that narrative was shared with other parties involved. She stated staff received input on the draft report from the AG's Office and DOI in both November 2015 and again in February 2016. A draft of the narrative, without the charts was provided in early January and the data was finally provided to the AG's Office and DOI on February 16, 2016.

Dr. GnanaDev stated he was fine with the recommendations but stated he had some concerns about the timelines in the report as they seemed to have gotten a bit better over the past few years, but as this year shows, the timelines are worsening again.

Dr. Bholat agreed with Dr. GnanaDev's statement with regard to the timelines and asked how often meetings with all parties are held and what metrics would be used to know that staff is on target.

Ms. Kirchmeyer stated that the metrics shown in the report will continue to be used in order to measure this pattern. She added the increase in the days over the past couple of years have been due to the vacancies in the investigative unit as well as the timeframes at the Office of Administrative Hearings (OAH). Ms. Kirchmeyer stated that staff will be reporting back to the Enforcement Committee and recommended using the same data markers shown in the report to show if progress is improving or not along with the performance measures.

Dr. Lewis stated that after looking at the graphs, he asked if the metrics are possibly being looked at periodically to assess progress.

Ms. Kirchmeyer stated that the metrics shown in the report will be used going forward, now that there are reports. She noted there are several items not included since only Vertical Enforcement is being looked at and if these numbers were to be run overall with all of the other case types, she felt that numbers would be a bit different because some of the easier cases have been pulled out, such as out-of-state cases. Ms. Kirchmeyer noted the out-of-state cases are easier to move through the upfront process, in most circumstances, but then they still have the same waiting time at the OAH. Ms. Kirchmeyer stated if those cases were to be put in, there would be a bit of a difference in numbers as far as the Board is concerned as compared to the more complex cases that go into the

Vertical Enforcement and Prosecution Model. Ms. Kirchmeyer stated reports can be run both ways, with everything and also breaking them out, which staff will do in the future for easier comparison.

Dr. Lewis then asked what the difference is between “from investigation initiated to accusation filed” and “from investigation completed to accusation filed.”

Ms. Kirchmeyer stated the time frame for “investigation initiated” is when the accusation first is assigned to both an investigator at the DOI, as well as being assigned to a Deputy Attorney General, all the way until the accusation is filed. The time frame from “investigation completed” is from when they believe the investigation is complete and ready for the accusation to be filed and referred to the AG’s Office for the final closure of investigation until the accusation is filed.

Ms. Yaroslavsky stated that through all of the past meetings, there has been an issue with receiving reports. This report in the packet looks like it is filled with information. She is asking how this information is now being able to be supplied, but could not be in the past.

Ms. Kirchmeyer stated that this information was not easy to get and/or was not available before, which is why the interim meeting had to take place. She stated that staff programmers had to write these reports manually and now that they are completed, they can be used in the future.

Dr. Yip stated he would like the reports supplied to the Enforcement Committee regularly, now that staff is able to do so.

Dr. Bholat asked who oversees the blue bar in the report, which is “investigation initiated to accusation filed” as opposed to the red bar, which is “investigation completed to accusation filed.” She also asked what is being done to make that significant delta closer.

Ms. Kirchmeyer stated the blue bar represents the DOI as well as the AG’s Office since there is the VE team that is working together during that time, all the way to the end. She noted the red bar represents the point where the investigation is complete and the AG takes over for the filing of the accusation.

Ms. Castro stated she and Mr. Jones reviewed the draft report including the recommendations regarding the VE program. She noted the agreed upon tasks in October 2015 between the AG’s Office, DCA and the Board were to communicate any issues in any areas needing improvement to enhance the usefulness of the VE in investigating Board complaints regarding patient care in the State of California. She noted that while the AG’s Office was consulted in the preparation of the Board’s draft report, some of their submitted input did not appear in the current draft and they were not given adequate time to review the produced statistics, so they will respond to the Board’s invitation to make recommendations to the legislature. Ms. Castro stated those recommendations and further comments will be forthcoming and will only be covered briefly at this meeting.

Ms. Castro then gave a presentation that provided background of the VE, context and legal perspectives. She then stated that the VE program should not be eliminated, and it should not be returned to the handoff model, as she believes it hurts consumers.

Ms. Castro stated the AG's Office's recommendation is that the VE program continue, that the six-month protocol be allowed to be practiced and that the HQIU leadership be allowed to work with HQE, which was just put into effect in July 2014.

Ms. Castro stated the Board needs to decide what it values most in this process, whether it be time and money, meaning being focused on how quickly the AG's Office gets thing done, or whether quality is of more importance. She noted once that decision is made, it needs to be made very clear to the them as part of the team.

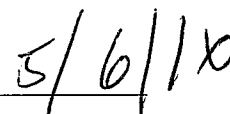
Mr. Chriss noted the HQIU was given the opportunity to provide input to the report, which they did, and after having reviewed the final draft report, he felt it is accurate and was prepared with data that was input into BreZE by DCA staff. He noted there have been improvements since the last report and they were detailed accurately in the report, one being the new protocol, and the new VE manual. Mr. Chriss stated there has been training provided to staff regarding the manual. He noted there are two joint training sessions on 805 investigations that will be provided in March 2016. He stated that, as Ms. Kirchmeyer had mentioned previously, the increasing computer capabilities in order to share case information is another improvement that has been made and is currently being used. He noted as far as parallel prosecution, HQIU is developing guidelines for this process. Mr. Chriss stated the draft guidelines had been sent to Ms. Kirchmeyer and Ms. Castro for review and input. He noted there will be a final draft soon.

Dr. Lewis made a motion to approve the Vertical Enforcement and Prosecution Report as written; s/Ms. Yaroslavsky. Motion carried unanimously.

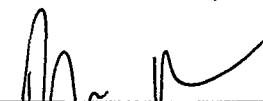
Mr. Serrano Sewell adjourned the meeting at 9:05 a.m.



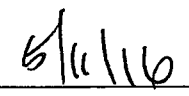
David Serrano Sewell, President



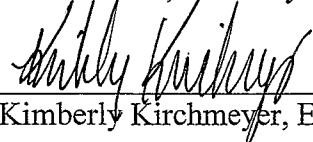
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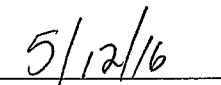
Denise Pines, Secretary



Date



Kimberly Kirchmeyer, Executive Director



Date

The full meeting can be viewed at www.mbc.ca.gov/Board/meetings/Index.html.