



MEDICAL BOARD OF CALIFORNIA Executive Office



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

July 23, 2009

MINUTES

Agenda Item 1 Call to Order

The Education Committee of the Medical Board of California was called to order by Chair Barbara Yaroslavsky at 1:03 p.m. A quorum was present, and due notice had been mailed to all interested parties.

Members of the Committee Present:

Barbara Yaroslavsky, Chair
Hedy Chang
Mary Lynn Moran, M.D.
Janet Salomonson, M.D.

Members Absent:

Gerrie Schipske, R.N.P., J.D.

Board Members, Staff and Guests Present:

Robert McKim Bell, J.D., Office of the Attorney General
Fayne Boyd, Licensing Program
Kathi Burns, Manager, Enforcement Program
Susan Cady, Manager, Enforcement Program
Yvonne Choong, California Medical Association
Candis Cohen, Public Information Officer
Janie Cordray, Research Specialist
Zennie Coughlin, Kaiser Permanente
Julie D'Angelo Fellmeth, Center for Public Interest Law
Shelton Duruisseau, Ph.D., Board Member
Sean Eichelkraut, Information Systems Branch
Abbie French, Telemedicine Manager
Jeffrey Gray
Laurie Gregg, M.D., Member, Wellness Committee
Teri Hunley, Business Services Office
Diane Ingram, Manager, Information Systems Branch
Scott Johnson, Information Systems Branch
Barb Johnston, Executive Director

Kim Kirchmeyer, Deputy Director
Arlene Krysinski, Enforcement Program
Ross Locke, Business Services Office
Armando Melendez, Business Services Office
Jimmy Miranda, Administrative Services
Kelly Nelson, Legislative Analyst
William Norcross, M.D., PACE
Deborah Pellegrini, Chief of Licensing
Paulette Romero, Associate Analyst
Kevin Schunke, Regulation Coordinator
Anita Scuri, Senior Staff Counsel, DCA
Chris Searles, M.D., PACE
Kathryn Taylor, Manager, Enforcement Program
Cheryl Thompson, Executive Assistant
Renee Threadgill, Chief of Enforcement
Linda Whitney, Chief of Legislation
Peter Yellowlees, M.D., U.C. Davis

Agenda Item 2 Approval of the May 7, 2009 Minutes

It was M/S/C to approve the minutes of the May 7, 2009 meeting.

Agenda Item 3 Opening Remarks by the Chair – Ms. Yaroslavsky

Committee Chair Barbara Yaroslavsky explained why the Committee was meeting on the topic of sexual misconduct. Several recent news clips emailed to Board members by staff dealt with stories involving sexual misconduct by physicians against patients. Although the Board is used to seeing such cases, several members of the Committee were concerned because the cases were so close in time, and interested in exploring what the Committee might do to address the issue, since such conduct, while rare, is willful and at least some of it is preventable. The goal at this meeting is to see if the Committee might be able to decrease the incidents of this particular misconduct by educating both physicians and the public. She stated it was time to remind physicians of the laws prohibiting sexual relations with patients, and to educate the public, as well.

Ms. Yaroslavsky added that the Board in 1996 issued a policy statement denouncing sexual misconduct by physicians, which was included in the Board's newsletter and posted on its Web site, as are two other, related articles, one published in 2004 and one in 2006. Additionally, since 2002 sexual misconduct is a legislative mandated enforcement priority of the Board's, so continuing educational efforts by this Committee would be consistent with that directive.

Agenda Item 4 Discussion of education of the public and the medical profession regarding sexual misconduct, its avoidance, and the physician-patient relationship

Chris Searles, M.D., of UCSD and the Physician Assessment and Clinical Education (PACE) Program, designed and implemented the professional boundaries program for PACE. He noted that touch is not taught well in medical school, so physicians are in "uncharted waters." Some physicians will touch inappropriately, no matter who does what, but that is very rare. Patients should be empowered with knowledge without being scared. Ultimately, knowledgeable patients and physicians who communicate well and encourage patients to tell them when they are uncomfortable should be our goals. Physicians and patients must learn both appropriate personal and professional boundaries. Culture is also a factor in touch, which physicians must take into account.

Communication and touch should be taught better in medical school. Physicians need to be aware of touch protocols, including: pre-touch: Is this necessary? Why am I doing this? Is it clinically necessary? Should a colleague be doing this? For whose benefit is this touch? Am I communicating well with the patient? Is the patient comfortable? Minimize the touch and make it the same for each patient. Talk to the patient about the touch and thank them for their trust. Give patients the opportunity to ask questions. Then self-evaluate: how did I do? Was I respectful? Review the patient's response to touch, and change course, if necessary.

Dr. Searles also recommended empowering the patient as much as possible, including putting a sign in exam rooms asking patients to inform physicians if they are uncomfortable, and assuring them their comfort is the physician's highest priority. Giving an evaluation form to patients can help physicians learn a lot. In turn, doctors should teach patients as much as possible, as patients will feel more empowered by the knowledge and with context comes more safety for both patient and physician.

Robert McKim Bell, supervising deputy attorney general, Health Quality Enforcement Section, said the law is clear on the matter of sexual touching and involvements with patients, and it is available on the Medical Board's Web site, so he wished to provide instead some suggestions about how to help get the available information to those who need it. The materials on the Board's Web site are harder to access than they need to be, so Mr. Bell worked with the Board's Information Systems Branch staff to come up with ideas to guide the traffic better. The Board has about 35,000 first-time users every week, and the dominant interest is in the physician profile section of our Web site. The Board's newsletter also attracts much interest.

Mr. Bell proposed putting a portal to the Board's articles on sexual misconduct on its home page, as those articles presently receive very few "hits." Once clicked on, the "landing page" currently has three articles listed, each from previous Board newsletters. The Web site also has the Board of Psychology's booklet, "Professional Therapy Never Includes Sex," which he believes should be added to the list, as could a list of frequently asked questions. Links might also be provided to others' sites, such as the Board of Psychology, the California Medical Association, the American and California Psychiatric Associations, and other valuable resources. More text on a page creates a greater likelihood of being found by search engines such as "Google." Links also create a higher ranking in the search universe. These technical steps will draw vastly more visitors to the Board's site regarding sexual misconduct, and this information will be quantifiable by the Board's technical staff.

Dr. Moran asked how long after termination of therapy by non-psychotherapists is it appropriate to engage in a romantic relationship with a patient. Mr. Bell said case law holds that it depends on the intensity and the dependency of the relationship. There is no bright line. Dr. Searles said he defers to the law because there is no answer to the "timing test," but there are factors to be considered, such as the depth and nature of the relationship. At its onset, the relationship is not equal because of the power differential. Any personal relationship with a patient involves some risk, to be judged by one's peers.

Ms. Yaroslavsky asked for a motion to have staff come up with a plan to make it easier for consumers and physicians to find information about sexual misconduct in the physician-patient relationship, and to enhance the Board's Web site along the lines suggested by Mr. Bell. Ms. Chang so moved, which was seconded. Ms. Yaroslavsky asked for the involvement of the California Medical Association, since it has an excellent publication on relevant topics. The motion passed unanimously. Ms. Yaroslavsky expressed concern about the dearth of information given to medical students. Dr. Searles said ACGME should be contacted by the Board, since they "set the rules of the road for medical training." Dr. Moran moved to ask staff to evaluate existing materials for education on sexual boundaries in medical schools. Dr. Searles offered to share a curriculum on that topic. Ms. Chang seconded the motion. The motion passed unanimously. There was no public comment.

Agenda Item 5 Public Comment on Items not on the Agenda

None was offered.

Agenda Item 6 Agenda Items for Future Discussion

Dr. Moran wanted a similar meeting on education on medi-spas. Ms. Chang asked about a discussion of physicians' responsibility in prescribing. Dr. Solomonson asked for follow-up on the day's topic at the next Board meeting, including input from mental health care professionals since the laws are different with respect to their personal involvement with patients. Ms. Yaroslavsky asked for a report back from staff to the Committee.

There being no further comment, Ms. Yaroslavsky asked for a motion to adjourn. A motion was M/S/C.

Agenda Item 7 Adjournment

The meeting was adjourned at 2:14 p.m.