Action Report

Medical Board of California

January 1997 Vol. 60
A Quarterly Publication

IN THIS ISSUE

ON PAGE 5

Physicians, Proposition 215, and the Medical Board of California.

ON PAGE 6

Helping patients through a delay or denial of treatment by a managed care plan.

Medical Board of California Meeting Dates/Locations 1997

February 7-8	Los Angeles
May 9-10	Sacramento
July 25-26	San Francisco
October 31-November 1	San Diego

California Supreme Court Rules in Dal Cielo Case

On October 3, 1996 the Supreme Court of California ruled 7-0 on behalf of the Medical Board of California in the case of Arnett v. Dal Cielo (14Cal. 4th 4). The effect of this ruling is to support the authority of Medical Board investigators to access records maintained by hospital peer review committees when those records are reasonably presumed to be relevant to the board's consumer protection mandate. This authority was always believed to exist under section 805 et seq. of the Business and Professions Code, but had increasingly been challenged by hospital administrations. The ruling in Dal Cielo affirms the Medical Board's interpretation of its authority under the law. In the words of Thomas P. Reilly, the deputy attorney general who argued the case before the Supreme Court, "The court's unanimous ruling reflects its faith in the board and its ability to protect the public health and safety in an aggressive and responsible manner."

The Medical Board holds that the function of peer review is a very valuable part of the broader system to promote the safety and quality of medical care provided to patients. But the court recognized that it ultimately has limitations and should not become the sole vehicle of physician regulation. Physicians and hospitals, in their challenge to the Medical Board, have repeatedly stated the concern that the ruling in Dal Cielo would undermine the effectiveness of peer review because it would make physicians more cautious in their involvement with the process. The resulting reluctance to participate openly—sometimes called the "chilling effect"—would result in a less effective peer review process, with this unintended consequence resulting in more harm than good.

The Medical Board urges the physician community not to let this argument become self-fulfilling. There is no reason that the judicially confirmed responsibility for the board to use its appropriate investigative resources to protect California's patients should raise such widespread concern among participants in the peer review process. The vast majority of California physicians are excellent physicians, providing some of the world's finest medical care, and are proud of their professional calling. From this pool of dedicated professionals there has never been a lack of physicians willing to serve the medical community by serving on peer review committees and sharing their frank views of a colleague's practice abilities. They do this out of a commitment to quality health care and will not shy away from that commitment because the Medical Board makes occasional requests for records of a committee's peer review.

The so-called "chilling effect" would only be a concern if the Medical Board embarked on an irresponsible course in its use of those records. In fact, the newly endorsed authority of the Medical Board will need to be used only infrequently, when other sources fail to provide the information necessary to guarantee public safety. The recent history of the Medical Board is one of an agency which recognizes its responsibilities, both to quality oversight of the medical profession and to the consumers who use the services of that profession.

Dal Cielo confirms the view that medical quality and patient protection depend upon more than a single system of oversight. Patient education, peer review and the Medical Board are each important to the goal which we all share. Our continuing task is to assure that all of the systems of medical quality are used to complement one another. Placing them at odds will only lose sight of that goal.

New Laws Regulating Physician Conduct Effective January 1, 1997

Managed Care

AB 1663 (B. Friedman, Chapter 979) Requires health care service plans and disability plans to establish reasonable external review processes for coverage decisions regarding experimental or investigational procedures for patients who meet specified criteria.

AB 2649 (Thompson, Chapter 1014) Prohibits health care service plans and disability plans from contracting with physicians, physician groups or specified other health practitioners if the contract includes any incentive plan which provides specific payment as an inducement to deny, reduce, limit or delay services.

(Cont. on p. 4)

The mission of the Medical Board of California

The mission of the Medical Board of California is to protect consumers through proper licensing of physicians and surgeons and certain allied health professions and through the vigorous, objective enforcement of the Medical Practice Act.

1997: The Year Ahead

by

Alan E. Shumacher, M.D., 1996 President of the Board

I must confess in this, my last president's column, what a shock it is to realize that the year has passed so quickly. As with any term of office, it seems to expire just as you are becoming comfortable with the role. Nevertheless, I am happy with the continuing accomplishments which the Board achieved this year and am assured that it will realize even more in the future.

The Board continues to make progress toward improved consumer protection and its recognition of the physician's and patient's shared interests in quality medical care. Perhaps this is most clearly evidenced by the Board's continued effort to fight the restrictions which the managed care environment places on the physician's freedom to practice medicine, which in turn can put the patient at risk.

Alan E. Shumacher, M.D.

Recognizing this challenge to the delivery of quality medical care, the Medical Board of California adopted a policy statement clearly defining the physician's responsibility to the patient in this environment, and a strong statement of concern that the evolving managed care environment must not be permitted to replace qualified medical judgment with decisions made on economic grounds. The Board also sponsored legislation (SB 1952—Rosenthal) which would have required the medical directors of health care service plans to be California-licensed physicians and surgeons. While this legislation failed passage this year, I know that the Board will continue this effort in future years.

Just as important to medical care consumers, and the physicians who serve them, is that the Board maintain a strong, efficient and objective enforcement program. I am pleased to announce a major step taken to ensure the continued progress in that area. Beginning January 1, 1997 the Health Quality Enforcement Section (HQES) of the Office of the Attorney General and the Medical Board have begun a pilot program in five field offices which will see deputy attorneys general assigned to Medical Board district offices on a regular basis. This will enable the investigators and attorneys to work more closely together to improve the timeliness and quality of the work which each of us perform. As with any new endeavor, the Medical Board and the HQES will need to work out the details of operation, but I am certain that any of those details on which there is disagreement will be resolved in favor of utmost efficiency.

The HQES has been instrumental in providing the support which the MBC has required to achieve many of its goals in the past few years. The attorneys assigned to Medical Board cases in this office are among the finest available in this, or any other, state. With the HQES taking yet this additional step to help us strengthen the disciplinary process, we are bound to continue to see improvements.

Meantime, I remain committed to working with the Board, consumer advocates, and the physician community to keep California's Medical Board in the forefront among medical boards nationwide. We are continuing to improve our consumer outreach programs with the belief that patients should be as well-informed as possible in the sensitive and important area of health care. We have also revived our "Teams of Two" program which will see Medical Board members and staff going out to hospitals and county medical societies to explain our operations and respond to questions about how we operate.

So, once again, I look at the future of the Medical Board of California with unbridled hope and optimism. I believe that it has the opportunity and capacity to serve all of its constituents fairly and effectively. With the continuing leadership which the current board possesses, this public mandate will be realized well into the future.

A Member Resigns

I am sorry to inform you that Cathryne Bennett-Warner has resigned her position as a public representative on the Medical Board.

Having had the opportunity to work with Cathie for three years, I have come to deeply respect her efforts to bring an informed, consumer-choice viewpoint to our deliberations. This has been an invaluable perspective. I join other board members and staff in thanking Cathie for her considerable contribution to our work, and in wishing her well.

Court Rules Hospital Districts May Not Employ Physicians

A California appellate court has ruled that local health care districts (also called "local hospital districts") cannot legally employ physicians, but may only contract with physicians as independent contractors. The August 19, 1996 ruling by the Fourth Circuit Court of Appeal came in the case of Conrad, et al. v. Medical Board of California (1996) 48 Cal.App.4th 1038. The court found that local health care districts do not fall within any exception to the prohibition against the corporate practice of medicine. That prohibition provides that corporations and other artificial legal entities "shall have no professional rights, privileges, or powers" to practice medicine. (See B&P Code section 2400; see also "Who is Responsible For Medical Decisions? The Prohibition Against The Corporate Practice of Medicine," *Action Report*, October 1996.)

A local health care district is a public corporation that is legislatively authorized to build and operate a hospital as a business pursuant to the local hospital district law. It is not considered a public entity for purposes of applying the law regarding the ban on the corporate practice of medicine. Although a health care district has some governmental attributes, it is neither a municipality nor a constitutional entity, which status would exempt it from the proscriptions in B&P Code section 2400.

The controversy in the Conrad case centered around the district's assertion that it was allowed to employ physicians under H&S Code section 32129, a section of the Local Health Care District Law. Section 32129 provides that "Notwithstanding the provision of the Medical Practice Act (B&P Code section 2000 et seq.), the board of directors may contract with physicians and surgeons, health care provider groups, and nonprofit corporations for the rendering of professional health services on such basis as does not result in any profit or gain to the district from the services so rendered and as allows the board to ensure that fees and charges, if any, are reasonable, fair, and consistent with the basic commitment of the district to provide adequate health care to all residents within its boundaries."

In response to a query by a hospital district, in 1991 the Department of Consumer Affairs issued an opinion stating that section 32129 created an exception allowing the employment of physicians by hospital districts. However, after further review and consideration, in 1994 the department reversed its position and alerted counsel for the hospital district that hospital districts could not employ physicians. The Conrad case was brought to resolve the controversy over the intent of section 32129.

The appellate court agreed with the department's 1994 position that local health care districts are not permitted to employ physicians. In arriving at its decision, the court reviewed the entirety of the Local Health Care District Law, noting that the statutes delineating a district's authority and a district board's authority contain language stating that each is bound under section 2400. The court also observed that there is no section of the Local Health Care District Law which specifically states that a district may employ a physician. After a thorough review of applicable law and the legislative history to the challenged section, the Conrad court concluded that local health care districts cannot legally employ physicians.

Highlighting the duration of the controversy over this issue, the Conrad court quotes a 1938 opinion (People v. Pacific Health Corp.) regarding the prohibition. "The question raised...is whether the time has come, as indicated by the movement for health insurance and group medicine, to reverse the long-settled policy against corporate medical practice and declare it legal and proper....Public policy may change, and doubtless where statutes do not cover the field, the court may follow such changes, but the court must, in such a case, declare the public policy, the social view of people generally, and not merely its own private choice among hopelessly conflicting views of desirable reform of settled practices or principles in this field."

The Conrad case is an example of efforts to modify California's prohibition on the corporate practice of medicine in light of the changing health care delivery environment. The court's decision is significant in that it reaffirmed the corporate practice ban and stated that any changes to that doctrine need to come from the Legislature, not the courts.

The Medical Board, the agency responsible for enforcing the corporate practice ban, is often approached by physicians and their counsel regarding whether the ban is in effect and enforced. As affirmed by the Conrad case, the ban is still the public policy of this state and the Medical Board will continue to enforce the prohibition against the corporate practice of medicine.

Bernard S. Alpert, M.D. Appointed to Medical Board

On October 16, 1996, Governor Pete Wilson announced the appointment of Bernard S. Alpert, M.D. to the Medical Board of California's Division of Licensing. Dr. Alpert, 48, is the chief of the Department of Plastic Surgery at the Davies Medical Center and associate clinical professor of plastic surgery at the University of San Francisco.

Dr. Alpert serves on the board of directors for the San Francisco Medical Society and the Susan G. Komen Foundation, and on the board of advisors for the Georgetown University School of Language and Linguistics. He is a member of the American and the California Medical Associations, the American Society of Plastic and Reconstructive Surgeons, the American Association of Plastic Surgeons and the American Society of Aesthetic Plastic Surgery.

(Cont. from p. 1)

AB 3013 (Alby, Chapter 1089) Prohibits health care service plan contracts from containing so-called "gag clauses" which interfere with the ability of a physician to communicate freely with his or her patients regarding their health care options.

SB 1478 (Solis, Chapter 711) Provides that if a health care service plan contracts with another entity to pay claims for covered services, the requirements of the Knox-Keene Act relating to reimbursement of claims by the plan are not waived.

SB 1805 (Rosenthal, Chapter 1094) Prohibits health care service plans and certain disability insurers from preventing a health care provider from disclosing to his or her patient any information the provider determines is relevant to the patient's care.

SB 1847 (Russell, Chapter 260) Prohibits health care service plans or other entities from penalizing a physician for advocating on behalf of a patient, or for communicating information to a patient in the furtherance of medically appropriate health care.

Informed Consent

AB 2513 (Speier, Chapter 863) Requires written consent for assisted reproduction, in particular, for the donation of sperm, ova or embryos, and makes violators guilty of unprofessional conduct and vulnerable to disciplinary action against their license.

AB 2802 (Granlund, Chapter 890) Requires physicians treating patients with DMSO preparations to inform patients in writing that it has not been approved by the Food and Drug Administration.

SB 1555 (Hayden, Chapter 865) Makes unlawful the implantation of sperm, ova, or embryos without written consent.

Telemedicine

SB 1665 (Thompson, Chapter 864) Allows physician-to-physician consultation via telecommunication technology over state lines without requiring a California license, and makes clear that consultants are not to be responsible for patient care. In addition, it imposes several requirements for governing the delivery of health care services through telemedicine, and prevents payers from refusing to pay for services simply because they were rendered through telemedicine and there was no "face-to-face" contact with a patient.

SB 2098 (Kopp, Chapter 902) Authorizes the Medical Board to develop a telemedicine registration program for physicians not licensed by California but who wish to perform interstate practice via telecommunication technology. Any program developed must be placed in statute by future legislation before it may be implemented.

(Other provisions, not relating to telemedicine, are explained below, in "Other Significant Legislation.")

Other Significant Legislation

AB 753 (Morrow, Chapter 454) The law allows licensed physician assistants to assist podiatrists where the supervising physician and podiatrist practice in the same medical group.

AB 1974 (Friedman, B., Chapter 644) Requires peer review bodies to report to the Medical Board's Diversion Program within 15 days of initiating an investigation of a physician suffering from mental or physical illness sufficient to impair his or her ability to practice medicine safely.

Requires the Diversion Program to monitor the progress of a peer review body's investigation, and report to the Medical Board's chief of enforcement if it is determined that the progress of the investigation is not adequate to protect the public, as defined. Requires the Medical Board to investigate the basis of all peer review actions taken within 30 days of notification, to determine if a temporary restraining order or interim suspension order is necessary for public protection.

AB 2125 (Figueroa, Chapter 790) Makes performing "female genital mutilation," also known as "female circumcision" a crime. In addition, it requires the Departments of Health Services and Social Services to establish and implement appropriate preventative educational programs to communities most likely to perform this procedure.

AB 2588 (Morrow, Chapter 1035) Under certain conditions, allows doctors to directly charge for clinical laboratory services. The law further requires that before criminal charges are filed against a physician for a violation of this law, the Medical Board must have issued a reprimand for a first offense.

AB 3111 (Margett, Chapter 1030) Provides for a limited number of orthopedic physician assistants, only those who completed their education between 1971 and 1974, and who do not meet the requirements for licensure as physician assistants, to provide services to physicians practicing in orthopedics. Does not create a new licensing category.

AB 3171 (Martinez, Chapter 382) Requires the Division of Licensing to consider allowing credit for courses in end-of-life issues to meet the mandatory continuing medical education requirement for license renewal. (Courses in end-of-life issues accredited for "category one" credit are approved to meet the continuing education requirements.)

SB 668 (Polanco, Chapter 13) Contains three provisions: 1) allows optometrists to diagnose and treat certain eye conditions; 2) requires physicians to ensure that their patients are provided access to emergency medical care 24 hours a day; and 3) states that the failure to keep adequate medical records constitutes unprofessional conduct, and may result in license disciplinary action.

SB 1592 (Rosenthal, Chapter 411) Requires physicians who change any name publicly used to identify their practice

(Cont. on p. 5)

(Cont. from p. 4)
(fictitious name) to notify the board within 30 days. Also contains some provisions clarifying the procedures of the Medical Board in managing matters of the allied health professions.

SB 1738 (Wright, Chapter 158) Allows licensed registered nurse midwives to perform episiotomies in certain facilities under specific protocols.

SB 2098 (Kopp, Chapter 902) Clarifies the law requiring that employers of licensees notify the board of settlements or awards over $30,000 in malpractice cases on any claim or action alleging negligence, error, omission, or unauthorized practice for damages or death. (Also contains a provision relating to telemedicine practice, see section on "Telemedicine.")

Physicians, Proposition 215, and the Medical Board of California

With the passage of Proposition 215, authorizing the "medical use of marijuana," there has been a great deal of confusion concerning the role of physicians under this law. This is not surprising given the many agencies, at all levels of government, which are considering how they will enforce the sometimes-conflicting laws in view of Proposition 215. The Medical Board of California is among the agencies that are attempting to determine how the new law interacts with the Medical Practice Act and what physicians should expect from the board if they recommend marijuana for the treatment of patients.

While the status of marijuana as a Schedule I drug means that no objective standard exists for evaluating the medical rationale for its use, there are certain standards that always apply to a physician's practice that may be applied. In this area, the board would expect that any physician who recommends the use of marijuana by a patient should have arrived at that decision in accordance with accepted standards of medical responsibility; i.e., history and physical examination of the patient; development of a treatment plan with objectives; provision of informed consent, including discussion of side effects; periodic review of the treatment's efficacy and, of critical importance especially during this period of uncertainty, proper record keeping that supports the decision to recommend the use of marijuana.

With the presence of contradictory laws that now exist at the state and federal levels concerning marijuana, it will probably be necessary for the courts ultimately to sort out the conflicts that exist. Meanwhile, there are multiple agencies, besides the Medical Board of California and the Drug Enforcement Administration, which may become involved in this arena before standards can be established. The physician's best protection in this environment will be his or her ability to document the responsible actions taken for the patient, consistent with the stated intent of the law.

Storage of Drugs in Physicians' Offices

Section 4051.3 of the Business and Professions Code requires physicians who dispense drugs (dangerous drugs and controlled substances) to store those drugs in an "area which is secure." Section 1356.32 was added to Chapter 2, Division 13, of Title 16 of the California Code of Regulations to define an "area which is secure." The regulation takes effect January 1, 1997, and states, in part...."the phrase 'area which is secure' means a locked storage area within a physician's office. The area shall be secure at all times. The keys to the locked storage area shall be available only to staff authorized by the physician to have access thereto."

1997 Officers Elected

At the November 1996 meeting of the Medical Board of California and its divisions, elections of officers for the 1997 calendar year were held. Following is the slate of officers for the coming year.

President—Stewart Hsieh, J.D. Partner in the law firm of Frye and Hsieh in Los Angeles.

Vice president—Thomas Joas, M.D. Anesthesiologist in San Diego.

Secretary—Karen McElliott 1995 president of the Medical Board's Division of Medical Quality.

Division of Licensing

President—Raja Toke, M.D.

Vice president—William Friedman, M.D.

Secretary—Bruce H. Hasenkamp, J.D.

Division of Medical Quality

President—Anabel Anderson Imbert, M.D.

Vice president—Ira Lubell, M.D.

Voluntary Treatment of Patients in Mexico by Foreign Physicians

One of the great services provided by professionals in California is the exportation of their expertise. This is particularly true of physicians volunteering their treatment in under served areas in the United States and in foreign countries. Because of our close proximity, many missions are undertaken annually to remote areas in Mexico where advanced medical treatment might not otherwise be available.

When treating patients in Mexico, please recognize that Mexico has licensing requirements, as we do. Application for approval to practice is easy for California physicians—just send a letter to: Director General Direccion General de Regulacion de los Servicos de Salud, Av. Insurgentes Sur 1397-3er. Piso, Mexico, DF, Mexico 03920. Fax: 598 17 82. Include your name, California physician license number, and approximate dates you will be in Mexico. This will assist Mexican licensing authorities in meeting their mission to monitor health care provided within their borders.

Helping Your Patient Navigate A Managed Care Denial

As more physicians and patients are involved in various managed care plans, it becomes increasingly possible that one of your patients will be faced with the denial of a treatment or other medical service. While such situations are never easy, there are some resources available which can help:

- By law, every health care service plan must have a procedure in place for receiving and handling enrollee appeals and grievances. In most cases, the plan has 60 days to respond to the situation, but in urgent situations, this drops to five days.
- When your patient feels that a requested service was denied inappropriately, the first thing he or she should do is read the Evidence of Coverage booklet which plans are required to provide each enrollee. If the patient cannot find or never received one, they should be available from the employer, or by calling the health plan.
- The Evidence of Coverage booklet is required to describe the steps to take to initiate an appeal. While the appeal must come from the patient or responsible party, you or your staff can assist in preparing the appeal, by providing information concerning the treatment request.
- Under Business and Professions Code §2056, it is illegal for a plan to retaliate against a physician who acts as a patient advocate in such circumstances.
- The patient should be prepared to comply with any reasonable requirements contained in the appeal procedure, and to provide any information the plan requests, including record releases.
- If the health plan is unresponsive to the appeal, does not meet legal time limits, or does not offer a resolution satisfactory to the patient, he or she can request assistance from the Department of Corporations, which regulates health care service plans. The department has a toll-free telephone line for patients to call for help. If the problem is within the legal jurisdiction of the department, they will send the patient a form called a Request for Assistance. It is important for the patient to know that the Department of Corporations cannot intervene until the patient has gone through the appeal or grievance process set forth in the plan's Evidence of Coverage booklet. If the life or health of the patient would be jeopardized by delay, the department can take expedited action even if there has been no appeal directly to the plan.
- Some plans require enrollees to submit to binding arbitration of grievances. It is not necessary for the patient to complete that process before filing a Request for Assistance with the Department of Corporations. **The Department of Corporations' toll-free patient assistance line is: 1• 800 • 400 • 0815.**

Telehealth & Telemedicine Summit

The nonprofit California Telehealth/Telemedicine Coordination Project Planning Committee invites interested health care professionals to attend California's Summit on Telehealth and Telemedicine and to receive a copy of the report, "Telehealth & Telemedicine: Taking Distance Out Of Caring." Attendance is free of charge.

Telehealth & Telemedicine Summit
January 15, 1997 9 a.m.—1 p.m.
Tsakopoulos Library Galleria, Sacramento Public Library
828 I Street, Sacramento, CA 95814-2589

Please call (800) 230-2109 for more information.

Explanation of Disciplinary Language

1. **"Revoked"**— The license is canceled, voided, annulled, rescinded. The right to practice is ended.

2. **"Revoked - Default"**— After valid service of the Accusation (formal charges), the licensee fails to file the required response or fails to appear at the hearing. The license is forfeited through inaction.

3. **"Revoked, stayed, 5 years' probation on terms and conditions, including 60 days' suspension"**— "Stayed" means the revocation is postponed, put off. Professional practice may continue so long as the licensee complies with specified probationary terms and conditions, which, in this example, includes 60 days' actual suspension from practice. Violation of probation may result in the revocation that was postponed.

4. **"Suspension from practice"**— The licensee is prohibited from practicing for a specific period of time.

5. **"Temporary Restraining Order"**— A TRO is issued by a Superior Court Judge to halt practice immediately. When issued by an Administrative Law Judge, it is called an ISO (Interim Suspension Order).

6. **"Probationary Terms and Conditions"**— Examples: Complete a clinical training program. Take educational courses in specified subjects. Take a course in Ethics. Pass an oral clinical exam. Abstain from alcohol and drugs. Undergo psychotherapy or medical treatment. Surrender your DEA drug permit. Provide free services to a community facility.

7. **"Gross negligence"**— An extreme deviation from the standard of practice.

8. **"Incompetence"**— Lack of knowledge or skills in discharging professional obligations.

9. **"Stipulated Decision"**— A form of plea bargaining. The case is negotiated and settled prior to trial.

10. **"Surrender"**— Resignation under a cloud. While charges are pending, the licensee turns in the license—subject to acceptance by the relevant Board.

11. **"Probationary License"**— A conditional license issued to an applicant on probationary terms and conditions. This is done when good cause exists for denial of the license application.

12. **"Effective date of Decision"**— Example: "June 8, 1996" at the bottom of the summary means the date the disciplinary decision goes into operation.

13. **"Judicial Review recently completed"**— The disciplinary decision was challenged through the court system—Superior Court, maybe Court of Appeal, maybe State Supreme Court—and the discipline was upheld. This notation explains, for example, why a case effective "June 10, 1992" is finally being reported for the first time four years later in 1996.

14. **"Public Letter of Reprimand"**—A lesser form of discipline that can be negotiated for minor violations before the filing of formal charges (accusations). The licensee is disciplined in the form of a public letter.

DISCIPLINARY ACTIONS: AUGUST 1, 1996 TO OCTOBER 31, 1996

Physicians and Surgeons

ACKERMAN, NORMAN J., M.D. (G-6773)
Great Neck, NY
B&P Code §§141(a), 2234. Stipulated Decision. Disciplined by New York for sexual misconduct. Revoked, stayed, 5 years' probation with terms and conditions, 60 days' actual suspension. September 27, 1996

BARTSCHI, LARRY ROGER, M.D. (A-26150)
Chico, CA
B&P Code §§2234, 2238, 2239. Stipulated Decision. Asked a patient to pick up and deliver to him a prescription for Hycotuss Cough Syrup, a Schedule III Controlled Substance, for his own use. Public Letter of Reprimand. September 9, 1996

BOTWIN, ALLISON JAMES, M.D. (A-45202)
Palm Springs, CA
B&P Code §§2238, 2234. Stipulated Decision. Unlawful possession of marijuana and cocaine. Revoked, stayed, 4 years' probation with terms and conditions. September 23, 1996

BROWN, DUNCAN ROBERT, M.D. (C-43193)
Naperville, IL
B&P Code §2305. Stipulated Decision. Reprimand by Alberta, Canada for failing to provide a patient a copy of her chart and telling her it was destroyed. Public Letter of Reprimand. September 19, 1996

BROWN II, JONEL L., M.D. (C-24881) Atlanta, GA
B&P Code §§141, 2234, 2305. Disciplined by Texas for a conviction in Georgia, aggravated assault with a deadly weapon. Revoked. September 18, 1996

CADY, JR., LEE DE, M.D. (G-14507)
Encino, CA
B&P Code §§2234(a)(b)(c)(d)(e), 2273. Stipulated Decision. Disseminated public communications that were false and misleading, containing deceptive statements related to the cost of physical examinations, to induce patients to his office. Diagnosed and charted conditions that did not exist and billed for these services. Revoked, stayed, 3 years' probation with terms and conditions. October 21, 1996

CHRISTIE, WILLIAM JOSEPH, M.D. (A-26191)
Biloxi, MS
B&P Code §2234(b)(c)(e). Recommended cataract surgeries for 3 patients who did not need them. Revoked, stayed, 3 years' probation with terms and conditions. September 30, 1996

CLARKE, RANDOLPH J., M.D. (G-40037)
Pittsburg, CA
B&P Code §§725, 2234, 2234(b)(d), 2241, 2238, H&S Code §11190. Stipulated Decision. Inappropriately prescribed Vicodin and various benzodiazepines to 3 patients. Revoked, stayed, 3 years' probation with terms and conditions. September 13, 1996

DeFRIEZ, CURTIS B., M.D. (G-59725)
Salt Lake City, UT
B&P Code §§141(a), 2305. Disciplined by Utah for drug abuse. Revoked. October 7, 1996

DOLIN, MICHAEL GLEN, M.D. (G-28970)
Henderson, NC
B&P Code §§2234, 2305. Disciplined by New York for prescribing a controlled substance, Percocet, to an addict and failing to maintain adequate safeguards and security measures to protect prescription forms. Revoked. September 16, 1996

ERICKSON, CARL DAVID, M.D. (G-17636)
Carmel Valley, CA
B&P Code §§2234, 2234(e), 2236(a), 2237(a), 2238, 2239(a), 2242(a), 2261, H&S Code §§11170, 11173. Stipulated Decision. Knowingly made false statements and fraudulently obtained controlled substances for self-use. Revoked, stayed, 5 years' probation with terms and conditions. August 8, 1996

FARHADIAN, HOUSHANG, M.D. (A-31355)
Valencia, CA
B&P Code §2233. Inappropriate and unnecessary comments to a patient during an examination. Public Letter of Reprimand. October 24, 1996

FONG, JOHNNY Y., M.D. (A-26653) Fresno, CA
B&P Code §2234(b)(c)(d). Failed to adequately supervise his physician assistant in the performance of examinations and signed off on the physician assistant's examinations without seeing the patients. Public Letter of Reprimand. August 7, 1996

GIRGIS, NABIL T., M.D. (A-30914) Ukiah, CA
B&P Code §§2234, 2234(b). Stipulated Decision. Failed to adequately examine and treat an OB patient which resulted in her having a grand mal seizure, hospitalization and Cesarean delivery of a premature baby. Revoked, stayed, 3 years' probation with terms and conditions. August 23, 1996

GLADSTONE, SCOTT BRUCE, M.D. (G-60406)
Las Vegas, NV
B&P Code §§2236, 2305. Convicted of a criminal offense by Nevada for presenting false claims for professional

services to obtain money from the Nevada Medicaid Program. Revoked, stayed, 5 years' probation with terms and conditions. August 12, 1996

GOLDFARB, ARTHUR N., M.D. (A-19121) Lancaster, CA
B&P Code §§490, 2234(a)(e), 2236, 2238. Felony conviction for prescribing controlled substances without a legitimate medical purpose. Revoked, stayed, 5 years' probation with terms and conditions. September 12, 1996

GRAY, RICHARD M., M.D. (G-62758) Tampa, FL
B&P Code §§2234, 2305. Disciplined by Florida for performing surgery on wrong finger of patient. Public Letter of Reprimand. September 6, 1996

GRIER, JR., WILLIAM, M.D. (C-27781) Los Angeles, CA
B&P Code §§490, 2234, 2236, 2237(a). Misdemeanor criminal conviction for failing to maintain inventory of dangerous drugs. Revoked, stayed, 3 years' probation with terms and conditions. August 23, 1996

Help Your Colleague By Making A Confidential Referral

If you are concerned about a fellow physician who you feel is abusing alcohol or other drugs or is mentally ill, you can get assistance by asking the Medical Board's Diversion Program to intervene.

The intervention will be made by staff trained in chemical dependency counseling or by physicians who are recovering from alcohol and drug addiction. As part of the intervention, the physician will be encouraged to seek treatment and be given the option of entering the Diversion Program. Participation in Diversion does not affect the physician's license.

Physicians are not required by law to report a colleague to the Medical Board. However, the Physicians Code of Ethics requires physicians to report a peer who is impaired or has a behavioral problem that may adversely affect his or her patients or practice of medicine to a hospital well-being committee or hospital administrator, or to an external impaired physicians program such as the Diversion Program.

Your referral may save a physician's life and can help ensure that the public is being protected. All calls are confidential. Call (916) 263-2600.

Medical Board of California
Physician Diversion Program
1420 Howe Avenue, Suite 14
Sacramento, CA 95825

GROSS, ROBERT L., M.D. (G-38941) San Francisco, CA
B&P Code §§725, 2234, 2234(b)(c), 2238, 2242(a). Stipulated Decision. Prescribed controlled substances without medical indication and failed to keep adequate treatment and prescription records. Revoked, stayed, 3 years' probation with terms and conditions. August 8, 1996

HSU, SHU-DEAN, M.D. (A-33845) Visalia, CA
B&P Code §2234. Unprofessional conduct towards hospitalized patient. Public Letter of Reprimand. September 25, 1996

HSU, WEN-HSIEN, M.D. (A-36077) San Pablo, CA
B&P Code §2234(b)(d). Stipulated Decision. Failed to recognize and properly treat a pericardial tamponade. Revoked, stayed, 2 years' probation with terms and conditions. October 9, 1996

HUFNAGEL, V. GEORGES, M.D. (G-35472) Beverly Hills, CA
B&P Code §2234(a)(b)(d)(e). Negligence and incompetence in the care and treatment of patients, excessive use of diagnostic procedures, and dishonest billing practices. Revoked. September 3, 1996

JAKUBOWICZ, ISAAC, M.D. (A-33639) Los Angeles, CA
B&P Code §§2234(e), 2236(a), 490. Stipulated Decision. Dishonesty or corruption and conviction of a crime. Convicted in a federal criminal court of 3 felony counts of filing false income tax returns in violation of 26 U.S.C. 72061(1). Revoked, stayed, 3 years' probation with terms and conditions, 1 year actual suspension. September 30, 1996

JOHNSON, DAVID MITCHUM, M.D. (C-42463) Oakland, CA
B&P Code §§2234, 2234(e), 725, 2236, 2242, Penal Code §487. Stipulated Decision. Unprofessional conduct, dishonest billings, excessive treatment or prescribing, prescribing without a good faith prior examination and conviction of a crime. On May 5, 1994, entered a plea of guilty to 1 felony count of grand theft (487.1 PC) from the Medi-Cal Program. Revoked, stayed, 5 years' probation with terms and conditions. September 16, 1996

JONES, LINNEA J., M.D. (G-12945) Beachwood, OH
B&P Code §141(a). Stipulated Decision. Disciplined by Ohio due to alcohol dependence. Revoked, stayed, 3 years' probation with terms and conditions. August 16, 1996

JONES, RICHARD E., M.D. (G-4278) Los Altos, CA
B&P Code §§2234, 2234(e). Committed unethical and unprofessional acts in becoming involved in a patient's

financial affairs and the preparation of her will. Revoked. August 16, 1995

JOUVENAT, NEIL CLARK, M.D. (C-35838)
La Habra, CA
B&P Code §2234(b). Stipulated Decision. Gross negligence during the delivery of an infant. The fetal head did not readily descend. Persisted with a forceps delivery rather than a Cesarean section. The infant sustained traumatic forceps marks, a fractured clavicle and an attenuated spinal cord which left the infant paralyzed. Revoked, stayed, 3 years' probation with terms and conditions. October 10, 1996

KAMINSTEIN, PHILIP, M.D. (G-35592)
Rego Park, NY
B&P Code §§2234, 2305. Disciplined by New York for inappropriately prescribing drugs without a medical indication. Revoked. September 23, 1996

KARNS, ROBERT M., M.D. (G-7277)
Beverly Hills, CA
B&P Code §2242. Stipulated Decision. Prescribed dangerous drugs without justification and a good faith medical examination. Suspension, stayed, 1 year probation with terms and conditions. October 11, 1996

KHAN, FARHAT, M.D. (A-42057) Santa Ana, CA
B&P Code §§2234, 2234(b)(c)(e), 2261, 2262. Falsified and/or altered patients' medical records with fraudulent intent. Removed the wrong ovary from a patient. Performed an early amniocentesis to rule out neural tube defect without documenting any medical indication or providing genetic counseling for the patient. Revoked, stayed, 5 years' probation with terms and conditions. September 7, 1996

LAHIRI, SUNIL RANJAN, M.D. (A-26336)
Bakersfield, CA
Failed to comply with the probationary terms and conditions of prior discipline. Revoked. February 22, 1996

LEE, SHU-YING, M.D. (A-21852) Clovis, CA
B&P Code §§810, 650, 2261, 2234(e). Stipulated Decision. Committed acts of fraud or dishonesty by offering rebates for referrals and submitting false claims to insurance companies. Revoked, stayed, 5 years' probation with terms and conditions, 30 days' actual suspension. August 29, 1996

LEONARD, JAMES ROBERT, M.D. (C-37984)
Atlanta, GA
B&P Code §§2234, 2305. Stipulated Decision. Disciplined by Georgia for failing to disclose to 2 hospitals a March 12, 1982 disciplinary action taken against him for prescribing controlled substances without proper documentation in his office records. Public Reprimand. August 2, 1996

LEVINE, AARON D., M.D. (G-14512)
San Francisco, CA
B&P Code §§2238, 2239(a). Stipulated Decision. Unlawful use of marijuana. Public Reprimand. October 10, 1996

LILLO, JOSE ALBERTO, M.D. (A-36763)
Lake Forest, CA
B&P Code §2234, 2234(b)(c)(d). Unprofessional conduct, gross negligence, repeated negligent acts and incompetence in the care and treatment of a pregnant patient. Failed to admit the patient to a hospital for evaluation of heavy bleeding, for continuous fetal monitoring, for the performance of an ultrasound, for a biophysical profile including a sonogram for possible delivery of the baby, and/or for bed rest. Revoked. September 16, 1996

MARIANI, AURORA CUNANAN, M.D. (AKA: MACAPINLAC) (A-33918) Waianae, HI
B&P Code §§2234, 2305. Stipulated Decision. Disciplined by Hawaii for pre-signing 16 blank prescription forms which were completed for controlled substances by unlicensed physician's assistants. Public Reprimand. August 16, 1996

MAXWELL, MARY SUSAN, M.D. (G-56377)
Boulder, CO
B&P Code §§2305, 141(a), 2234. Disciplined by Colorado for substandard medical care and treatment of 1 patient during a hysteroscopic endometrial resection/ablation procedure. Public Letter of Reprimand. September 30, 1996

MITCHELL JR., THOMAS EVANS, M.D. (G-54207)
Pasadena, CA
B&P Code §141(a). Stipulated Decision. Disciplined by West Virginia. In or about 1992 and 1993 falsely billed patients and insurance carriers for services not rendered in the field of anesthesiology and/or pain management. Public Reprimand. October 9, 1996

MITREVSKI, PETAR JOVANOV, M.D. (A-24056)
Huntington Beach, CA
B&P Code §§2261, 2264, 2234(a)(e), 2286, 2415. Stipulated Decision. During 1988, 1991 and 1994, committed unprofessional conduct as he filed an application for a fictitious business name permit which contained false statements; tried to avoid sanctions in a civil lawsuit by filing a false declaration and aided and abetted the unlicensed practice of medicine. Revoked, stayed, 5 years' probation with terms and conditions, 30 days' actual suspension. October 21, 1996

PARSONS, DIANA JEAN, M.D. (G-34993)
Berkeley, CA
B&P Code §2234. Stipulated Decision. Failed to timely

recognize and treat abnormal signs and symptoms of a patient during the post-operative period, and failed to obtain surgical consultations. Six months' suspension, stayed, 2 years' probation with terms and conditions. August 28, 1996

POLLOCK, LAWRENCE, M.D. (G-10908)
Pico Rivera, CA
B&P Code §§2234(a)(b)(c)(d), 2261, 2262. Mismanaged the care and treatment of a patient due to prolonged or improperly treated infection which led to the patient's death. Created false medical records. Revoked. September 2, 1996

REIMAN, JOHN KARL, M.D. (G-10817) Reno, NV
B&P Code §2234(a)(b). Failed to comply with the probationary terms and conditions of prior discipline. Revoked. February 5, 1996

RILEY, ANTHONY BRUCE, M.D. (G-62098)
Oakdale, CA
B&P Code §§2234(e), 2239(a). Stipulated Decision. Self-use of drugs. Revoked, stayed, 5 years' probation with terms and conditions. September 9, 1996

SANKUS, ROBERT S., M.D. (G-8479) Stockton, CA
B&P Code §§2234(c), 2239. Self-use of alcohol and repeated negligent acts in OB/GYN practice. Revoked, stayed, 5 years' probation with terms and conditions, 30 days' actual suspension. September 16, 1996

SEIBERT, SUMNER S., M.D. (G-16830) Antioch, CA
B&P Code §2234. Stipulated Decision. Unprofessional conduct due to inappropriate conduct with a female patient. Revoked, stayed, 2 years' probation with terms and conditions. October 28, 1996

SEYDEL, FREDERICK KURTZ, M.D. (G-25341)
Petaluma, CA
B&P Code §§2234(a), 2238. Stipulated Decision. Arrested for possession of controlled substances. Occasional use of cocaine in personal life. Public Reprimand. May 21, 1996

SHELL, WILLIAM ELSON, M.D. (C-32361)
Beverly Hills, CA
B&P Code §§725, 2234(b), 2242(a). Excessively prescribed Dilaudid. Revoked, stayed, 3 years' probation with terms and conditions. August 7, 1996

SWERDLOFF, FRED, M.D. (G-44654) Los Angeles, CA
B&P Code §§490, 2236(a). Misdemeanor conviction for unfair trade practices. Revoked, stayed, 1 year probation with terms and conditions. October 17, 1996

TAPIA, EUGENE H., M.D. (C-39156) Miami Beach, FL
B&P Code §§2236(a), 2285, 2234(a)(e), 2286, 17200, 2400. Conviction for presenting a false or fraudulent insurance claim. Practiced under a false name without a fictitious name permit. Revoked. September 2, 1996

THISTLEWAITE, EDWARD A., M.D. (C-16942)
San Marino, CA
B&P Code §2234. Stipulated Decision. Slapped a 9 year-old patient while treating him for attention deficit syndrome. Public Reprimand. August 1, 1996

VALDEZ, MICHAEL SHAWN, M.D. (G-79406)
Loma Linda, CA
B&P Code §§2234, 2234(b), 2239, 2239(a), 2236(a), PC §242. Stipulated Decision. Conviction for battery. Unlawful use of amphetamines. Revoked, stayed, 5 years' probation with terms and conditions, 120 days' actual suspension. August 1, 1996

YASHAR, SHADPOUR, M.D. (A-39871)
Los Angeles, CA
B&P Code §§2234, 2236(a), 490. Conviction for conspiracy to commit insurance fraud. Revoked, stayed, 3 years' probation with terms and conditions, 20 days' actual suspension. October 15, 1996

DOCTORS OF PODIATRIC MEDICINE

LAMPELL, HARVEY JOEL, D.P.M. (E-1494)
Los Angeles, CA
B&P Code §§2234, 2261. Violated terms and conditions of prior discipline. Dishonesty in billing. Revoked. September 26, 1996

TA, QUOC-HUAN VAN, D.P.M. (E-3735)
San Francisco, CA
B&P Code §2234. Violation of previous probation. Revoked, stayed, 5 years' probation with terms and conditions, 90 days' actual suspension. August 29, 1996

WEINER, BARRY EVAN, D.P.M. (E-2459)
Sacramento, CA
B&P Code §§2234, 2234(b)(c)(d). Stipulated Decision. Rendered a variety of podiatric treatments to a patient which resulted in residual pain in the foot and ankle. Suspended, stayed, 3 years' probation with terms and conditions. September 1, 1996

PHYSICIAN ASSISTANTS

DAVIS, KAREN A. (PA-12439) Saugus, CA
B&P Code §§2234(e), 2239(a). Dishonesty in forging prescriber's signature to fill or refill prescriptions for personal use. Revoked, stayed, 5 years' probation with terms and conditions. September 9, 1996

KING, GRANT MARCUS (PA-11127)
Lake Forest, CA
B&P Code §§490, 3527(a), 3531. Stipulated Decision. Convicted of forging prescriptions to illegally obtain drugs. Driving under the influence, and hit-and-run driving. Revoked, stayed, 5 years' probation with terms and conditions. October 24, 1996

PARAPATIS, SANDRA KAY (PA-10578)
Amarillo, TX
B&P Code §§2234(e), 2238, 2239(a), 2261, 3527(a), 4390, H&S Code §§11150, 11152, 11153(a), 11170, 11173(a), 11350, 11377. Forged prescriptions for self-use of drugs. Revoked, stayed, 5 years' probation with terms and conditions. August 9, 1996

SENGAL, TOUMSKI G. (PA-12782)
Los Angeles, CA
B&P Code §§2238, 2239(a). Self-use of drugs. Revoked. October 24, 1996

SURRENDER OF LICENSE WHILE CHARGES PENDING

BALSAM, STEPHEN J., M.D. (G-15349)
New York, NY
September 23, 1996

BERMAN, LEONARD, M.D. (C-17051) Amherst, NY
August 28, 1996

BLACK, MURRAY L., M.D. (A-28862) Yakima, WA
August 27, 1997

BROWN, IAN STEVEN, M.D. (G-29640)
Beverly Hills, CA
August 15, 1996

CHRISTENSEN, WARREN T., M.D. (A-29019)
San Jose, CA
August 2, 1996

COHEN, NATHANIEL M., M.D. (G-1904) Tucson, AZ
August 30, 1996

FELDMAN, BENJAMIN J., M.D. (CFE-9503)
Long Beach, CA
September 23, 1996

HEATHER, LOREN W., M.D. (CFE-14470)
Orange, CA
August 23, 1996

KHOURY, NICHOLAS F., M.D. (G-28575) Sanger, CA
August 19, 1996

MCCORMICK JR., THOMAS E., M.D. (C-19594)
Calistoga, CA
October 31, 1996

NISSMAN, HARVEY LEONARD, M.D. (C-38126)
Virginia Beach, VA
October 31, 1996

OREMLAND, FRED D., M.D. (C-17004) Kentfield, CA
October 1, 1996

UHLEY, MILTON H., M.D. (C-10122)
Los Angeles, CA
September 26, 1996

VELEZ, DAVID, M.D. (G-38890) Marysville, CA
August 15, 1996

WATSON, STANDISH J., M.D. (AFE-11165)
Placerville, CA
September 11, 1996

YANKASAMMY, SAMUEL DALANNA, M.D. (C-38184)
Garden Grove, CA
August 22, 1996

Corrections

HILL, ROBERT DIXON, M.D. (G-13809)
Crewell, OR
In the July 1996 *Action Report,* we summarized the Hill penalty: "Revoked. Default." This was incorrect. In fact, Dr. Hill received a stayed revocation, with 5 years' probation on terms and conditions. We apologize for the error.

In the October 1996 *Action Report,* we inaccurately reported the basis of discipline for Irwin L. Lunianski, M.D. The correct description is as follows.

LUNIANSKI, IRWIN L. M.D., (G-14572)
Santa Barbara, CA
B&P Code §2234(b)(c)(d). Stipulated Decision. Deficiencies in maintaining records of a long-term patient. Public Letter of Reprimand. June 6, 1996

Note:

In addition to physicians and surgeons, the *Action Report* will only report disciplinary actions against doctors of podiatric medicine and physician assistants. Questions should be directed to the appropriate committee on the back page of this newsletter.

Department of Consumer Affairs
Medical Board of California
1426 Howe Avenue
Sacramento, CA 95825-3236

Business and Professions Code Section 2021(b) & (c) require physicians to inform the Medical Board in writing of any name or address change.

TOLL FREE COMPLAINT LINE: (800) MED-BD-CA ((800)633-2322)
(Non-complaint calls to this number cannot be transferred.)

Medical Board:	
Applications and Examinations	(916) 263-2499
Complaints	(800) 633-2322
Continuing Education	(916) 263-2645
Diversion Program	(916) 263-2600
Health Facility Discipline Reports	(916) 263-2382
Fictitious Name Permits	(916) 263-2384
License Renewals	(916) 263-2571
Expert Reviewer Program	(916) 263-2191
Verification of Licensure/ Consumer Information	**(916) 263-2382**
General Information	(916) 263-2466
Board of Podiatric Medicine	**(916) 263-2647**
Board of Psychology	**(916) 263-2699**
Affiliated Healing Arts Professions:	
Complaints	(800) 633-2322
Acupuncture	(916) 263-2680
Audiology	(916) 263-2666
Hearing Aid Dispensers	(916) 263-2288
Midwives	(916) 263-2393
Physical Therapy	(916) 263-2550
Physician Assistant	(916) 263-2670
Registered Dispensing Opticians	(916) 263-2634
Respiratory Care	(916) 263-2626
Speech Pathology	(916) 263-2666

ACTION REPORT-JANUARY 1997
Candis Cohen, Editor, (916) 263-2389.

For additional copies of this report, please fax your company name, address, telephone number, and contact person to: Yolanda Gonsolis. Medical Board Executive Office, at (916) 263-2387, or mail your request to her at 1426 Howe Avenue, Suite 54, Sacramento, CA 95825.