

July 20, 2009

Candis Cohen
Medical Board of California
2005 Evergreen Street, Suite 1200
Sacramento, CA 95815

Re: Section 1355.4 Notice to Consumers by Physicians– Support and Amend

Dear Ms. Cohen:

Consumers Union, the nonprofit publisher of *Consumer Reports*, is writing in support of the adoption of proposed Section 1355.4 in Article 1 of Chapter 2 of the Medical Board of California's regulations. The proposal mandates specific, simple language from physicians to notify consumers that they are licensed medical doctors who are regulated by the Medical Board of California (MBC), and provides the website address and toll-free phone number of the MBC. Consumers Union supports this regulation and, as described below, urges strengthening it to maximize public awareness.

Effective in 1999, Section 138 of the California Business and Professions Code mandates that all licensees of the Department of Consumer Affairs provide notice to consumers that they are licensed by the state. While other boards have fallen in line with this mandated duty, the MBC has failed to comply with the law. This is unacceptable. While a perceived conflict in statutory language between Business and Professions Code sections 138 and 680, both passed in 1998, has been cited as a reason for not proposing a regulation before now, these provisions have different goals. Section 680 requires that health professionals inform their clients that they are licensed and the status of the license, whereas Section 138 requires that physicians inform their patients that they are licensed *by the state*. The proposed regulation addresses the goal of Section 138. We are gratified that in proposing this regulation the MBC recognizes the importance of improving public notice by this simple requirement.

The MBC's highest statutory responsibility is to protect the public. See Bus. & Prof. Code § 2001.1; Medical Board of California, Strategic Plan 2008, 1; Brian R. Sala, California Research Bureau, CRB 08-015, Physician Misconduct and Public Disclosure Practices at the Medical Board of California 12 (2008) ["CRB Report"]. The MBC implements this duty primarily by investigating complaints. See Bus. & Prof. Code § 2220(a). The California Research Bureau (CRB) report cites former MBC President Dr. Richard Fantozzi as stating, "The Medical Board is complaint-driven; we do not show up at hospitals or physicians' offices absent complaint information brought to our attention." CRB Report at 13. Thus, patient awareness of the existence and disciplinary function of the MBC is integral to the Board performing its public protection duties.

Consumers Union

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A 2006 national survey found low levels of public knowledge about state medical boards. See CRB Report at 4 and 14. The CRB also noted that the number of complaints to the MBC about adverse events falls far short of expected filings based on the leading empirical research estimating the rate at which adverse events in medical care occur. Its conclusion: the data imply “the Medical Board’s current strategies for uncovering and disciplining physicians responsible for negligent care are not adequate to inform the public about physician misconduct.” CRB Report at 26.

If patients do not know that the MBC licenses their doctors and how to contact the agency, then valid complaints will not be filed or may be filed too late for the MBC to take action. The public’s role in helping the MBC identify problem doctors is essential; without patients’ knowledgeable participation, the MBC’s regulatory role is hindered, and public protection compromised. This is especially true in California since the regulatory approach is predicated primarily on reacting to the complaints filed, as opposed to initiating inspections or investigations.

In order to carry out its duties, it is critical that the MBC inform the public of its existence and be accessible to consumers in the event that assistance is needed. Proposed Section 1355.4 targets consumers at the point of service. The proposed regulation would require physicians to provide a notice to patients including the following statement:

“NOTICE TO CONSUMERS
Medical doctors are licensed and regulated by the Medical Board of California
(800) 633-2322
www.mbc.ca.gov”

The proposed regulation offers physicians three options for notifying patients:

1. Prominently posting the notice in an area visible to patients, in at least 48-point type;
2. Including the notice in a written statement that is signed by the patient and retained in the medical records as evidence that the patient understands the physician is licensed and regulated by the MBC;
3. Including the notice in 14-point type on a document given to a patient, such as discharge documents.

We urge you to strengthen this proposed regulation as follows:

1. Require physicians to post the information in a prominent place in their waiting areas AND provide the notice on a document given to the patient, rather than allowing physicians to choose one of three notice options. An exception could be made only for those physicians who do not have an office to comply by using only a notice given to the patient.

Requiring physicians to post a sign in the waiting area of their offices would be the most effective method of informing the public of the MBC’s existence and availability. Posting license notices is a standard, time honored, effective method recognized widely among professionals and consumers. Common sense, hand in hand with consumer interests, dictates that such a requirement take effect for the licensees of the MBC.

In addition, requiring that physicians also provide notice in a document given to patients will ensure that patients have access to the MBC’s contact information even after leaving a physician’s office or in the event that they did not see the posted sign.

2. In addition to requiring the language in the proposed regulation, the Board should require physicians to also include this statement in the notice: "Complaints about care may be submitted to the MBC." This requirement is in line with the CRB's suggestion to "[d]irect the Board to specifically require licensees to notify their patients about the Medical Board's responsibilities for licensing and discipline of medical doctors and affiliated healthcare providers." CRB Report at 53. Without this additional statement, the notice provides contact information, but does not clearly inform patients of the reasons why they may contact the MBC.

3. Require physicians to post the notice in English and in any other language regularly encountered by the physician and staff. Physicians can easily identify the most commonly used languages in their service area by referring to the Medi-Cal Managed Care Division's Threshold and Concentration Standard Languages data. See MMCD All Plan Letter 02003, June 7, 2002. The MBC should make available to physicians on its website translations of the notice in the 13 threshold languages. Physicians can use the translations for the languages most common in their areas.

The adoption of Section 1355.4 will make consumers better informed and will increase communication between consumers and the MBC, providing a warning system for the MBC to better effectuate its regulatory and consumer protection roles. The importance of safe medical care to all consumers cannot be overstated as such care can truly be a "matter of life or death." Certainly, patients putting their lives and those of their loved ones in the hands of a doctor deserve clear notice of the name of the licensing authority, their right to lodge a complaint with the MBC, and the contact information to do so.

For these reasons, Consumers Union is in support of Section 1355.4, and urges you to make the above-suggested changes.

Sincerely,



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