



February 19, 2013

Senator Curren Price
Chair, Committee on Business, Professions & Economic Development
Assembly Member Richard Gordon
Chair, Committee on Business, Professions & Consumer Protection

Dear Chairmen:

The California Medical Board has abandoned patient safety and physician discipline in California. Drug-using, drug-dealing and other dangerous doctors continue practicing while the Medical Board turns a blind eye or delays enforcement. Patients are dying needlessly as a result of this neglect.

In 1975 the medical lobby promised the California Legislature that, in return for severe restrictions on patients' legal rights to hold dangerous doctors accountable, a strong regulatory system under the Medical Board would protect patients against dangerous doctors. For nearly four decades it has failed in that duty.

The current system caters to the interests of physicians and their political might while refusing to answer patients' need for greater transparency and accountability. The best way to reform it is to finally allow the California Medical Board to sunset.

The case of Dr. Carlos Estiandan, as uncovered in the Los Angeles Times' recent shocking investigation, makes the case for the Medical Board's dissolution. Estiandan was a reckless prescriber whose prescriptions caused or contributed to the overdose deaths of eight patients. Those eight patients died while the Medical Board investigated his case.

As the Times reported, Estiandan collected more than \$1 million a year writing prescriptions for cash. The first complaint against Estiandan was submitted to the Medical Board in 2004 by one of his employees, who warned that: "Estiandan will give the patients anything they want." Bottles of pills and prescriptions written by Estiandan were found during multiple drug busts in more than one state. Law enforcement agencies investigated, and medical board investigators received another complaint from the girlfriend of an Estiandan patient who overdosed. Yet despite rapidly mounting evidence of illegal drug dealing and patient endangerment, it took the Medical Board more than four years to conclude its investigation and revoke Estiandan's prescription and medical licenses.

Sadly, Estiandan's story is one of many examples uncovered by the Los Angeles Times investigation of the Medical Board's inability to do its job and protect patient safety.

Dr. Nathan Kuemmerle, a former meth user who was convicted on federal criminal charges for drug dealing, will be treating patients within a year under an agreement announced by the Medical Board to give him his license back.

Just last week the Times reported that the Medical Board has belatedly opened an investigation into Dr. Van Vu, whose prescriptions were involved in 16 overdose deaths in just 6 years yet had never previously been investigated.

Sadly, the Medical Board's myopic failure to adequately prevent risks and discipline physicians is not new news. The Board has a long history of failing the public.

In 1990, the California Highway Patrol found that Board staff had destroyed complaints from the public, dismissed hundreds of serious cases, had physician reviewers who failed to recommend investigation in cases of a "clear departure from acceptable standards," and ignored reports of malpractice settlements and verdicts, taking disciplinary action in less than 1% of cases. In 2003, the Orange County Register exposed Dr. Israel Chambi, who had 35 malpractice lawsuits filed against him, including ten verdicts or settlements for \$3 million, and lost a hospital position after complaints by colleagues of unnecessary procedures. To this day, the Medical Board has taken no disciplinary action against Chambi. A 2011 analysis of the National Practitioner Data Bank by the nonprofit Public Citizen found that 710 California physicians had their privileges restricted in hospital or other settings. The Medical Board had taken not a single disciplinary action against them.

The Medical Board fails to identify dangerous practice patterns, like over-prescribing, that should trigger investigation. Once an investigation is begun it takes years to resolve, too long for patients who may be at imminent risk of harm. When prosecuted, an enforcement case can stagnate in five layers of review – two more appeals than OJ Simpson was entitled to. Having doctors judge doctors, as the physician majority on the Board allows, is a recipe for leniency, not justice.

The failure to proactively investigate problem doctors, the glacial pace of enforcement and the lack of public transparency and accountability demand a complete governance overhaul. The Joint Sunset Review Committee should allow the California Medical Board to sunset. You should then:

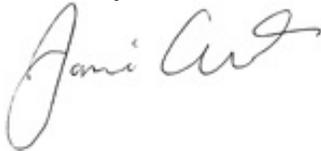
- 1) Replace it with a new, independent board with a majority of public members, not physicians.
- 2) Require deputy attorneys general in the central complaint unit to oversee complaint disposition.
- 3) Fully realize the vertical enforcement/prosecution structure by transferring all medical board investigators to the Health Quality Enforcement Unit at the Department of Justice.
- 4) Increase the number of investigators to restore all lost positions and keep pace with the increased number of physicians in California (the number of physicians

has increased 17% over the past decade with no corresponding increase in the number of investigators).

- 5) Remove enforcement decision authority from the Medical Board and make the Administrative Law Judge the final decider, aside from legal appeal, of an enforcement action.

Thank you for considering our views. We look forward to discussing these issues in greater detail at the sunset review hearing next month.

Sincerely,



Jamie Court



Carmen Balber