

MINUTES

COMMITTEE ON ETHICS AND MEDICAL-LEGAL AFFAIRS

March 1, 2010

Broadway Place West
1300 Godward Street Northeast
Suite 2500
Minneapolis, MN 55413

Members Present

Les Forgosh, M.D., Chair
Todd Brandt, M.D., (Vice-chair)
Rebecca Hafner-Fogarty, MD
Peter Kalina, MD
Renee Koronkowski, MD
John (Jack) Lane, M.D.
(attempted to participate via conference call)
June LaValleur, MD
Mary Pohl, M.D.
Edward Ratner, M.D.
Jeffery Scow MD (Medical Resident Section)
Mary Zatochill (Medical Student Section)

Members Absent

Mark Allen, MD
Brian Brost, M.D.
Norman Davies, M.D.
Ana Fernandez-Pokorny, M.D.
Keith Kaplan, MD
Elizabeth Nessel, M.D.
James Joyce, M.D.
James Young, M.D.

Guests Present

Kermit Fruechte, J.D. (MN Attorney General's Office)
Ruth Martinez (MN Board of Medical Practice)

Staff Present

Karolyn Stirewalt, J.D.

I. Call to Order and Introductions

The meeting of the MMA Ethics and Medical-Legal Affairs Committee was called to order at 6:00 p.m. by Les Forgosh, M.D., chair. New members were welcomed and introductions were held.

II. Committee Charge

Dr. Forgosh reviewed the Committee Charge for the benefit of the new members.

III. Approval of August 17, 2009 Minutes

The Committee reviewed and APPROVED the Minutes for the November 16, 2009 meeting. No changes were noted.

IV. Board of Medical Practice Presentation on the Complaint Process

Ruth Martinez, Complaint Review Unit Supervisor for the Minnesota Board of Medical Practice (BMP) provided a presentation on the BMP's complaint review process. Committee members were given an opportunity to ask questions following the presentation. Highlights of the discussion included:

- Of the approximately 19,000 physicians licensed in Minnesota, an average of only 850 complaints are filed against them each year, and the vast majority of those complaints are closed following the investigation without corrective action or discipline being taken.
- All complaints within the BMP's jurisdiction are investigated.
- The name of the complainant (person filing the complaint) can be released to the physician if the complainant signs a release form. It can also be released when/if the physician enters a hearing process and discovery ensues.
- Complaints can come from any source (patients, other health care workers, insurers, families, facilities, etc.).
- Actions can be taken against physicians for not reporting (example: a chemically-dependent peer).

V. Kermit Fruechte, J.D., Assistant Attorney General and legal counsel for the BMP Presentation on Physician Self-Referral and Disclosure Requirements

Pursuant to a committee member request at its November 16, 2009 meeting, Kermit Fruechte provided legal insight on Minn. Stat. §§ 147.091 (p)(3)¹ (the fee splitting statute); 144.6521, Subd. (3)(f)² (what constitutes "a financial or economic interest"); and Minn. Stat. § 144.6521³(proper disclosure requirements).

¹ The following conduct is prohibited and is grounds for disciplinary action: Fee splitting, including without limitation: referring a patient to any health care provider as defined in sections 144.291 to 144.298 in which the referring physician has a "financial or economic interest," as defined in section 144.6521, subdivision 3, unless the physician has disclosed the physician's financial or economic interest in accordance with section 144.6521."

² "Financial or economic interest" is defined as: "a direct or indirect: (1) equity or debt security issued by an entity, including, but not limited to, shares of stock in a corporation, membership in a limited liability company, beneficial interest in a trust, units or other interests in a partnership, bonds, debentures, notes or other equity interests or debt instruments, or any contractual arrangements; (2) membership, proprietary interest, or co-ownership with an individual, group, or organization to which patients, clients, or customers are referred to; or (3) employer-employee or independent contractor relationship, including, but not limited to, those that may occur in a limited partnership, profit-sharing arrangement, or other similar arrangement with any facility to which patients are referred, including any compensation between a facility and a health care provider, the group practice of which the provider is a member or employee or a related party with respect to any of them. (Minn. Stat. § 144.6521, Subd. (3)(f)).

³ A health care provider with a financial or economic interest in, or an employment or contractual arrangement that limits referral options with a hospital, outpatient surgical center or diagnostic imaging facility, or an affiliate of one of these entities, may refer a patient to that hospital, center, or facility, or an affiliate of one of these entities, if the health care provider discloses in writing to the patient, in advance of the referral, the existence of such an interest, employment, or arrangement

a. The written disclosure form must be printed in letters of at least 12-point boldface type and must read as follows:
"Your health care provider is referring you to a facility or service in which your health care provider has a financial or economic interest³."

b. In addition to the disclosure requirement, each health care provider who makes referrals to a hospital, outpatient surgical center or diagnostic imaging facility, or an affiliate of one of these entities in which the health care provider has a financial or economic interest, or has an employment or contractual arrangement with one of these entities that limits referral options, shall post a notice of this interest, employment, or arrangement in a patient reception area or waiting room or other conspicuous public location within the provider's facility.

Committee members were given an opportunity to ask questions following the presentation. Highlights of the discussion included:

- The laws were intended to protect against blatant fee-splitting arrangements.
- Many arrangements are legal provided that they are disclosed in accordance with the requirements of Minn. Stat. § 144.6521.
- The BMP has only ever received two complaints on this topic (it is not a big problem in Minnesota).
- Whether an arrangement is illegal or not is highly fact-specific.
- Committee members who are interested in exploring this topic further can contact the BMP in writing with specific questions which may be forwarded to the BMP Public Policy and Planning committee for discussion.
 - Dr. Ratner plans to submit an individual question about specific referral patterns of healthcare organizations that own hospitals and clinics and their potential requirement to report those practices. He would like the BMP and/or the MMA to publish the information once it becomes available.

VI. POLST (Provider Orders for Life Sustaining Treatment) Form Update

Dr. Ratner provided an update on the POLST form. He talked about the documents published by the MMA related to the form including an FAQ, and the Minnesota Medicine article that he and Dr. Vawter published discussing the history of the form and the MMA's involvement with it. He also stated that the next work group meeting will be held on March 24th at the MMA offices for anyone interested in participating.

VII. Resolution 202 – Apology Laws

Committee members began a discussion on Resolution 202, titled “Apology Laws⁴.” This resolution was referred to the Committee by the MMA Board of Trustees.

Committee members reviewed Minnesota rules of evidence on hearsay testimony, and other states' enactment of apology laws. Committee members stated that there were both benefits and drawbacks to enacting these laws and were interested in learning what Midwest Medical Insurance Company Group's (MMIC) opinion is on this topic and perhaps some payers' opinions on medical errors before making a recommendation to the MMA Board of Trustees.

VIII. Open Forum

Dr. Forgosh opened the floor to topics of interest to Committee Members. Dr. Hafner-Fogarty provided information on the Lyme-Disease bill that is moving through the legislature right now. Dr. Hafner-Fogarty is concerned that if this bill

⁴ Apology laws are intended to improve disclosure of physicians' medical errors to patients, and protect them from the use of such disclosure in subsequent malpractice litigation.

is passed, it will be a step toward the legislature telling physicians how to prescribe and will impact the BMP's regulatory authority over physician discipline.

Dr. Ratner would like to see conflict of interest forms distributed and turned in by members of the MMA Ethics and Medical-legal Affairs committee, in the same way as the Board of Trustees is required to do. Karolyn Stirewalt said she would look into that.

IX. Other Business

Dr. Forgosh announced that the remaining Committee meetings for 2010 will be held on the following dates: May 17, August 16 and November 15.

X. Adjourn

The meeting was adjourned at 8:00 p.m.

Submitted by,
Karolyn Stirewalt, J.D.