

My name is Barbara Wood and I am here today to ^{give} support to Bill # 186, an act concerning the licensing investigation and disciplinary process for Physicians and Nurses.

The Connecticut Medical Examining Board depends on investigations and lawyers from the Department of Public Health to inquire into cases, complaints and work with only the evidence that is presented before them and quite frequently much less than is really known is considered.

This often leads to a consent order (similar to a plea bargain) or a full hearing before the board.

Many states have an independent medical board which is funded by a certain percentage of physicians' licensing fees. Currently, I believe this is not the case for Connecticut. Fully funded boards in other states conduct their own investigations, have their own lawyers, and see cases through the entire process.

From data taken from each state certain ^{disciplinary}

groups rank each states board basing their decisions on license revocation, surrenders, suspensions and probation issues. Connecticut's Medical Board has ranked among the worst in the nation for the past 10 years. An independent board, I feel, would serve the Connecticut residents and physicians best.

The problem with the current process appears to be between the DPH investigation and the boards decision the whole process comes apart.

In my particular case concerning my son it was the correct order which the physician agreed to not to ^{administer or dispense} prescribe prensophine (suboxin) to treat opioid addiction. My son was given suboxin prescriptions twice that I knew of by this doctor, yet in a 2 year period ^{alone} he was given over 10,000 opiate pills, 1600 morphine meds over 3000 somas plus numerous valium, lexapro, fentanyl patches, several prescriptions given only a few days apart and some on the same day.

(I would appreciate it if you would look at the packet I handed in) All of the medications I just spoke about were paid by Anthem. My son also had another insurance carrier through his former place of work (Dartmouth Hospital) which was never investigated but which also paid for prescriptions from this same doctor. Cash and Check were also another form of payment for the medications prescribed. I mentioned these other forms of payment to the investigators for my sons case and was told it didn't matter, there were 3 cases against this doctor. I asked about it going to a hearing and the attorney said they don't want it to get emotional as they were hoping for the consent order to be signed.

At the Connecticut Medical Board meeting on Nov. 15, 2011 one member of the panel asked if anyone died. The attorney answered no. Does someone have to die in order to stop such abuse. My son knows he is totally responsible for his addiction but some of the responsibility falls on the Professional who ordered these meds without monitoring the results.

I never had a chance to tell about the fear we had of an accident with the car, the complete collapse of his family, his children, wife and himself needing years of counseling with a psychiatrist. He has had his drivers license suspended for life, his employment terminated,

Since the case has come to a conclusion is there a follow up? who is responsible to monitor the probationary period for the doctors license. Are the stipulations & agreements stated in the disciplinary action being followed?

Input from those affected should be considered even though no one died.

Behind the board: How a flawed system jeopardizes patient safety

Debra Friedman, Staff Writer

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It is supposed to be a bubble.

A place where a group of doctors and public citizens meet to decide the fate of physicians who have broken the law, committed medical errors or violated professional ethics codes.

Only the evidence that is placed before them -- often far less than is actually known -- is to be considered. Opinions about the decisions they render are not to influence them.

But outrage over several recent cases and increasing criticism of the "antiquated" way the Connecticut Medical Examining Board operates is threatening to burst the bubble.

For years, outside critics have lashed out at the board, saying it is too lenient with doctors, and has allowed some physicians to keep their licenses after having committed egregious violations.

Critics have been equally harsh toward the Department of Public Health's investigatory and legal staff, which looks into claims against doctors, hands often-truncated findings to the board and recommends

resolutions.

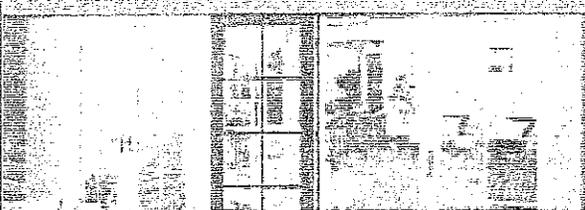
Patient advocates believe the board and DPH are failing to protect the public against the few bad apples who abuse their medical privileges.

Board members themselves -- past and present -- told Greenwich Time they believe the system is flawed.

Both DPH and Gov. Dannel P. Malloy's office have pledged to look at the problems. But little has ever been done to fix the system. And with state government in budgetary crisis, many doubt it will ever change.

UNSETTLING NUMBERS

The Connecticut Medical Examining Board is comprised of doctors and a few members of the public who are appointed by the governor and serve as volunteers. The 15-member board is dependent on investigators and lawyers from the DPH to probe cases and work the legal

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leading to either a consent order -- the equivalent of a plea bargain -- or a full evidentiary hearing before the board.

The Connecticut model is becoming a rarity in the country. Most states have independent medical boards funded by a percentage of physician licensing fees. Connecticut took in \$9 million in licensing fees in 2010, according to the DPH, but that money goes directly to the state's general fund. Currently, the medical board does not have a budget.

Fully funded boards in other states conduct their own investigations, have their own lawyers and see cases through the entire process.

These autonomous boards are seen as the ideal model by many state and national organizations, including the Public Citizen Health Care Research Group.

Each year, the Public Citizen group ranks each state's board by taking disciplinary data -- including license revocations, surrenders, suspensions and probations issued -- from the Federation of State Medical Boards and calculating the rate of serious actions per 1,000 physicians for each state. For the past 10 years, the Connecticut Medical Examining Board has ranked among the worst in the nation.

From 2003 to 2005, the board ranked 38th of the 50 states. In 2006, the board dropped to 42nd, falling further to 45th in 2007 and 47th in 2008 and 2009, according to the report. Top-ranking states have rates of about 6 percent to 7 percent of serious actions per 1,000 physicians. Connecticut's rate has hovered under 2 percent over the past few years, according to the study.

Although board members and officials from the DPH have disputed the data, arguing the study does not take into account alternate sanctions like fines and reprimands, patient advocates believe the rankings are alarming.

"We have been ranking so low in terms of the effectiveness of our medical board," said Jean Rexford, executive director of the Connecticut Center for Patient Safety. "Rather than having somebody say, 'Let's take a look at this and re-examine how we are doing business,' they seem to be pressing forward, doing the same thing and expecting better results."

The Connecticut State Medical Society, a group that represents doctors, agrees that certain changes could be beneficial to all parties.

"CSMS believes the creation of a self-sustainable, diverse, transparent and effective independent board would serve the best interest of Connecticut residents and physicians," medical society spokeswoman Audrey Honig Geragosian said.

Geragosian said members of the medical society believe giving the board full autonomy and funding are necessary for cases to have "thorough and complete review, providing accused physicians with due process while protecting Connecticut patients."

DPH statistics on the number of complaints filed against doctors and the number of actions taken support criticisms by patient advocates that the board is too lenient.

Between 2007 and 2009, the DPH says it received between 300 and 400 complaints per year. Those complaints stem from patients, or notification by state or federal agencies that a possible violation had occurred.

Of those complaints, 224 investigations were opened in 2007, 260 were started in 2008 and 214 were initiated in 2009.

Of those investigations, only 29 physicians received disciplinary actions in 2007, 37 in 2008 and 55 in 2009. Only three doctors had their licenses revoked between 2007 and 2009. Seven doctors had their licenses suspended. Eleven doctors voluntarily surrendered their licenses and 39 were ordered to pay fines, according to the statistics.

A SYSTEMIC FAILURE

Dr. Dennis G. O'Neill, a former medical board chairman and practicing pathologist, said the crux of the problem with the physician-disciplinary process is a system disconnect in which the DPH investigates a complaint against a doctor, and the board adjudicates it. In this system, board members often do not have access to much of the investigatory information before coming to a decision on a case.

"I think it is an antiquated model," said O'Neill, who retired from the board in 2008 after 12 years. "They (the DPH) just don't have the resources to police doctors as well as they probably should be monitoring them."

O'Neill said he believes nearly all board members would prefer to serve in an autonomous model.

"The board occasionally feels frustrated with the constraints of the process," O'Neill said. "We don't always get all the information that DPH may have in its investigation. ... I think, in general, the members of the board found that it was a less optimal situation when we didn't have control over the investigators."

That problem was evident during a May 17 board meeting in Hartford when a DPH lawyer presented members with a proposed consent order, but was unable to answer any questions they had about the case, which involved a doctor who was allegedly letting his assistants run the X-ray machine.

"I am reluctant to give a lot of details because of the respondent's due process rights," DPH staff attorney David Tilles told the board.

"This puts us in a very difficult situation," board member Dr. Douglas Fellows said. "If you can't give us the information, we can't do anything but sit here."

The board ultimately ended up rejecting the consent order, despite Tilles recommending they accept it.

Rexford said the back-door lawyering that surrounds the consent orders is a very troubling aspect of the process.

"The DPH loves to cross an investigation off their list, and that's a problem," Rexford said. "You might not get what the public needs if you have a consent decree." 

The only way the board gets access to all the evidence in a case is when a full hearing takes place, and a panel of several board members recommends a disciplinary action, called a memorandum of decision, that is then voted on by the full board. Doctors can also voluntarily surrender their license, or board members can order an emergency suspension.

Statistics from the DPH show the majority of cases before the board are resolved through consent orders. In 2008, there were 26 consent orders and six memorandums of decision. In 2009, there were 33 consent orders and three memorandums of decision. In 2010, there were 17 consent orders and seven memorandums of decision. So far this year, there have been eight consent orders and one memorandum of decision, according to the data.

Dr. Henry Jacobs, a current member of the board and practicing OB-GYN, said the board deals with consent orders frequently, and the process worries him.

"I think the model is flawed," Jacobs said. "Sometimes cases are three or four years old, and then they (DPH lawyers) bring them to us, and we have a consent order."

"We never really had access to the case and they've cut a deal with the lawyer for the respondent and present it to us to give it our blessing. We don't necessarily agree with it, but we are pressured to go with the flow." 

While Jacobs said he believes the lawyers and investigators for the DPH try hard, they are ultimately too underfunded to be effective.

"More cases get settled with consent orders, and then we get criticized for something we really had little to say about," Jacobs said. 

Funding is also an issue, both O'Neill and Jacobs said, as investigators are handling many cases at a time, and the experts used to review cases are working for free.

"It has always been a chronic problem that the DPH didn't have the financial wherewithal to bring in doctor's experts," O'Neill said.

"You get what you pay for," Jacobs added.

Despite the criticism launched by both current and former members of the board, Anne Doremus, the current chairwoman of the medical examining board, said she feels the public is being adequately protected.

"We have faith that the DPH is not trying to expedite the process," Doremus said of consent orders. "They are doing a thorough job. They are as concerned for what is at stake as the board is."

Doremus also said she found the DPH experts who consult on cases "credible" because they are volunteering their time to be part of an important process. In the end, Doremus said members have the final say.

"We do have the final decision," Doremus said. "If the board doesn't feel something isn't right, we don't accept the consent order."

Doremus said that every type of board model has problems, but despite her defense of the board she chairs, Doremus agreed that an independent model would be superior to the current one.

"From my perspective, the board would be much more comfortable if the investigatory material for the respondent was sent to the board and we collectively looked at the evidence," Doremus said. "That's what happens in other states."

THE NEED FOR CHANGE

As the number of discussions surrounding the effectiveness of the board grows, state officials seem to be getting the message.

William Gerrish, spokesman for the DPH, said in a statement last week that the DPH and the governor's office are going to take a look at the issue. 

"Protecting and promoting the health and safety of Connecticut residents is the top priority for the Department of Public Health and Governor Malloy," Gerrish said. "We are aware of concerns about the configuration of the Medical Examining Board, and looking at the board and its relationship to the department is one of Commissioner (Jewel) Mullen's top priorities. To that end, DPH will work with the Governor's Office to review those respective and complimentary roles of the department and medical board to ensure that the most effective actions are taken to protect the public from physicians who pose a threat to their patients."

Former state Sen. Andrew McDonald, now the general counsel to Malloy, said the governor's administration is open to proposals for a new approach.

"If there are proposals made by the board or other interested stakeholders about how to improve the operation of the board, the administration would be happy to consider those recommended procedures," McDonald said.

McDonald noted that the governor has made recent nominations to the board "in an effort to reconstitute some of its membership." However, any significant change would have to come through the legislative process, he said.

"The governor doesn't control the board or its operations," McDonald said. "They are independent."

Even with the acknowledgement that things do need to change, many are still skeptical anything will get done.

"The answer we always get is budget, budget, budget," said Jacobs, describing conversations he had with DPH officials about the issue.

"There is some self interest in these things, too. DPH jobs depend on having an investigative division. They are pretty well settled into those jobs and don't want an independent medical board with its own set of investigative nurses and lawyers."

Lawmakers also said now is not the time to talk about reforming the system because bills are not getting passed with large fiscal notes attached.

"I think a lot of people are concerned about the model that we have and are interested in looking at better models," said state Rep. Betsey Ritter, D-36th District, who chairs the Public Health Committee. "But so far, that has been stymied by the fiscal part."

Despite budgetary stumbling blocks, Ritter said lawmakers are preparing the groundwork to have a viable model for reform ready to go when "the time is right." Such reforms are unlikely to pass in a single legislative session, but Malloy's appointment last year of Commissioner Mullen — a former director in the Massachusetts Bureau of Community Health — may present a greater opening for change, she said.

"We have an opportunity now," Ritter said. "We have a new administration, and we have a new commissioner over at the Department of Public Health that has seen other models work."

Currently, there are a few bills in the mix that are seeking changes to the board. One bill, sponsored by the DPH, seeks to make it easier for the board to immediately sanction doctors with out-of-state violations. Gerrish said the department is also looking at requiring doctors convicted of sex offenses to disclose their status to patients.

Another bill, sponsored by state Rep. Andy Fleischmann, D-18th District, seeks to expedite the disciplinary process and add patient advocates and a criminal attorney to the board.

"It seems to me the public is best protected when there are a lot of different parties who are paying attention," Fleischmann said. "It is a tougher sell right now, but long term, I am optimistic we can get all of the reforms in place."

Doremus said making simple changes to the verbiage of state statutes governing the board to give them more freedom would go a long way.

"We are constrained, as is DPH, by statute," Doremus said. "We can work together to get that changed, and that wouldn't cost any money."

But Rexford said money should not stop officials from putting their heads together to try and troubleshoot the issues in order to protect the public.

"They could easily have a meeting, bring in some public consumers, people on the medical board, Representative Ritter, the Governor's Office, and sit down and say 'how can we do this better,'" Rexford said. "But we are in the land of steady habits, and I think DPH wants to keep control."

O'Neill agreed it would be a good idea to figure out a way to implement changes that he said he believes all board members would welcome. But after serving on the board for more than a decade, O'Neill said he doubted those reforms will happen.

"Well, realistically, I don't think it is ever going to change," O'Neill said. "It is a financial issue. The only thing that will get it to change is an outrageous scandal that embarrasses everybody and that makes it evident to everyone from DPH to the medical community to the public that we have to get more aggressive with doctors.

"And the only way to do that is with a different medical board model."

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