



January 31, 2019

Denise Pines, President  
Kimberly Kirchmeyer, Executive Director  
Medical Board of California  
2005 Evergreen St., Ste. 1200  
Sacramento, CA 95815

Dear Mss. Pines and Kirchmeyer:

The Medical Board of California's paramount priority is public protection. As public interest organizations that speak for voiceless and disenfranchised patients, the Center for Public Interest Law and Consumer Watchdog pull no punches when we believe the Medical Board is failing in this mission or placing patients in harm's way. An example of this is the Board's unfortunate decision to repeal the Vertical Enforcement program.

The Death Certificate Project to identify and reduce dangerous opioid overprescribing by physicians, a central cause of the opioid overdose epidemic, is not one of those cases. We applaud the Project's proactive approach to identifying and disciplining doctors who are contributing to the overdose crisis by overprescribing opioids and other highly addictive medications to California patients.

Deaths and injuries caused by physician-prescribed narcotics are undeniably a matter of significant concern to the public. Opioid deaths remain at record highs in California. 2,196 Californians died of opioid overdoses in 2017, an increase from the prior year. Most of those deaths were due to prescription opioids. While the proportion of overdoses attributable to illegal opioids has increased, patients are turning to these street drugs after first getting hooked on prescription opioids obtained legally or otherwise from a doctor. Safe physician prescribing remains key to reversing the overdose crisis.

Complaints from a patient or a family member are the primary source of the Board's information about physician misconduct. A proactive approach is uniquely necessary when it

comes to acting on dangerous prescribing by physicians. Common sense dictates that a drug-seeking patient addicted to pain medication is not going to complain to the Board that her doctor has been excessively prescribing that very medication to her. The Board needs other administrative sources for that information.

That need was made abundantly clear in the *Los Angeles Times'* 2012 investigative series, "Dying for Relief," that reviewed coroners' reports from four counties and demonstrated the connection between certain doctors and patient deaths from prescription drug overuse. The reports found that in nearly half of the cases where prescription drug overdose was listed as the cause of death, there was a nexus to a prescribing physician. The series also reported that more than 80 of the doctors whose names were listed on prescription bottles found at the home of, or on the body of, a person who died had been the prescribing physician for 3 or more dead patients – and in the case of one doctor, as many as 16 dead patients. You can find part one of that four-part series online here:

<http://graphics.latimes.com/prescription-drugs-part-one/>

In 2013, our organizations supported legislation to help identify doctors who, either willingly or through negligence, played a role in prescription drug abuse. The bill would have required coroners to report prescription overdose deaths to the Board. SB 62 passed the legislature with bipartisan support but was vetoed by then-governor Jerry Brown for lack of a funding source. The Death Certificate Project fulfills that bill's intent -- identifying doctors whose inappropriate prescribing is placing patients' lives at risk -- without the additional expense.

Investigating deaths caused by prescription drug overdoses is the most direct way to identify doctors whose excessive prescribing may otherwise fly under the radar indefinitely. It is outrageous to suggest, as have some opponents of the program, that the Board is out of bounds for investigating the medical care provided by potentially dangerous doctors. That is the Board's primary function.

The Board has already filed 50 accusations to sanction or revoke the licenses of doctors identified by the Project as having harmed and killed patients through patterns of negligence and excessive prescribing.

We understand additional accusations are underway, and that the Project has also flagged the records of additional doctors whose licenses were already under investigation or had been sanctioned by the Board. Thus, by any measure, the Project is successfully identifying problem doctors and protecting future patients from harm.

Every time the legislature or regulators seek to address the physician over-prescribing aspect of the opioid overdose crisis, physicians react in alarm. The California Medical Association has lobbied the legislature for years seeking to limit the Board's access to physicians' prescribing records in the Controlled Substance Utilization Review and Evaluation System (CURES) database, and unsuccessfully argued its case all the way to the California Supreme Court.

Physician objectors to the Death Certificate Project suggest that times have changed, and doctors should not be held responsible for excessive prescribing that happened more than a year or two in the past. That is an insult to the families of patients whose deaths are no less important for having occurred before 2016. The Board should ensure, as it has reported, that its medical experts are using prescribing guidelines appropriate to the time a patient received care to gauge a doctor's negligence. However, it has always been standard medical practice to examine a patient, ask their pain level, get their medical history, engage in appropriate follow-up, guard against dangerous drug interactions and watch out for signs of addiction or diversion when prescribing controlled substances. Doctors who depart from those standards of care must be held responsible. The vast majority of doctors, who do physical exams, get thorough histories, follow opioid prescribing guidelines and document their decision-making, have no reason to fear a Board investigation.

As with any initiative, we agree the Project could be improved. One of patients' major complaints about Board investigations is the glacial pace at which they are conducted. It makes sense that doctors want quick resolutions as well. We urge you to support reinstatement of the Vertical Enforcement program and add additional investigative staff in order to speed up all enforcement investigations. We also support the Board's effort to redraft letters seeking access to patients' medical records so they are not unnecessarily alarmed about the quality of their own care.

Too often, we find ourselves beseeching the Board to do a better job protecting patients. We are glad to say that, in this case, you listened. The Death Certificate Project fills a vital gap in physician oversight and will help the state curb the opioid overdose crisis by identifying dangerous prescribing and protecting future patients from harm.

Sincerely,

Bridget Fogarty Gramme, Esq.  
Center for Public Interest Law

Carmen Balber  
Consumer Watchdog

cc. Members of the Medical Board of California  
Christina Delp, Chief of Enforcement