F I S C A L I M P A C T R E P O R T

SPONSOR Jennings **ORIGINAL DATE** 2/01/2007 **LAST UPDATED** 3/09/2007 **HB**

SHORT TITLE Medical Licenses & Record Confidentiality **SB** 514/aSPAC/aSJC

ANALYST Moser

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY07	**FY08**		
NFI	NFI		

(Parenthesis ( ) Indicate Expenditure Decreases)

SOURCES OF INFORMATION
LFC Files

Responses Received From
New Mexico Medical Board (NMMB)

SUMMARY

Synopsis of SJC Amendment

Senate Judiciary Amendment to SB514 as amended strikes SPAC amendment #4. The changes within the amendment are technical corrections to language with no substantive differences.

Synopsis of SPAC Amendment

Senate Public Affairs Committee amendments to SB514 address the concerns expressed by the Medical Board by clarifying physician assistant supervision requirement, and adding language to the section on access to peer review records.

Synopsis of Original Bill

SB514 proposes to amend portions of the Medical Practice Act. The majority of the changes are small, clean-up corrections. However, there are also two new fees and three relatively major changes.

Physician Assistant Supervision

SB514 would amend Section 61-6-10 by removing language that prohibits any physician from supervising more than two physician assistants except under specific circumstances and with board authorization.

Emergency Suspension Powers

SB514 would add a new Section, 61-6-15.1, which would grant the Medical Board authority to issue emergency summary suspensions of licenses under certain conditions. Any licensee whose license is suspended is entitled to a hearing on the suspension within 15 days.

Peer Review Records

SB514 would amend Section 61-6-23 to allow the Medical Board access to peer review records via subpoena only, without requiring expensive and time-consuming court review.

Fees

SB514 would add an administrative reprocessing fee of no more than the current license application fee for those cases that require an applicant to re-submit a corrected application, or a licensee to re-submit a corrected renewal. The fee would be limited to those applications and renewals that include minor but significant errors, and would otherwise be subject to investigation and possible disciplinary action. The bill would also authorize the Medical Board to charge a fee for criminal background checks.

FISCAL IMPLICATIONS

SB514 would save the Medical Board and health care facilities around the state unnecessary legal and court costs related to disputed access to peer review records.

In addition, the bill should result in fewer requests from physician assistants to change their primary supervising physician. There is a fee of $25 for each such change, and Medical Board may experience a slight drop in revenues.

At the same time, SB514 would allow the Medical Board to recoup at least some of the costs of reprocessing certain applications and renewals. These cases often consume as much staff time as full investigations.

SIGNIFICANT ISSUES

During discussion with the SPAC the medical board indicates that questions arose about whether the term “insane” as used on page 13 of the bill is appropriate legal terminology. After consultation, the Medical Board finds that “mentally incompetent” is sufficient, and recommends that the words “or insane” be removed from the bill.

1. Physician Assistant Supervision

   The Medical Board states that removing the limitation of two physician assistants per supervising physician would be a welcome update to the Physician Assistant Act because it would better respond to the changing structure of health care organizations and facilities, and would facilitate increased access to physician assistants. Today’s physicians and physician assistants work more and more in complex organizations, rather than in small private practices,

and this change is pushing the supervisory relationship to be more fluid and responsive to meet the dynamics of organizational change.

The removal of the statutory limitation of two physician assistants per physician will allow organizations and providers to respond to change more quickly and efficiently.

The proposed change will also likely increase access to basic health care by expanding the physician assistant workforce, and possibly reducing some of the costs of that care through increased use of these healthcare extenders. This benefit should be seen not only within the larger health care organizations, but also among the segment of physicians in private practice, who would be able to hire additional physician assistants for their practices.

The Medical Board indicates that its board voted that this change needed to be balanced by language that reinforces the essential requirement that a physician assistant have a primary supervising physician, and mandates that supervisory relationships be approved by the Board. Physician assistants often have several secondary supervising physicians, but by statute and Medical Board rule the primary supervising physician is the individual ultimately responsible for the performance of the physician assistant. This language is included below under 'amendments.'

2. Emergency Summary Suspension

The proposed language in SB514 requires any licensee whose license is suspended is entitled to a hearing on the suspension within 15 days of making such a request, ensuring timely due process. Under current law the medical board indicates that it may only utilize an emergency suspension when the physician is under Board order or stipulation – i.e. if there is a violation of an existing Board agreement. No matter how egregious the perceived risk to public health, the Board may not suspend a license without first issuing a notice of contemplated action, then holding a hearing, and then having a Board vote. Unless the Board can convince the licensee not to practice during this time, he or she may continue to put patient health and safety at risk.

The Board indicates that it does anticipate utilizing this provision very often. However, there are generally perhaps one or two cases a year that might merit this action, and in those cases, a summary suspension may provide significant public protection. At least 25 other state medical boards have this authority.

3. Peer Review Records

The Medical Board indicates that the Medical Board, the Medical Society and the Hospital Association discussed this amendment extensively, and agreed on language allow the Medical Board the information necessary to perform its job, and protect the essential confidentiality of the peer review process.

The Board investigates all complaints that originate from a variety of sources, including receipt of a report of an action by a health care facility or plan. During the investigation, the Board seeks to obtain all pertinent information, so that the most appropriate decision can be reached in the case. When there has been a peer review conducted, the review, the reports of the expert(s) and the decisions made by the organization is clearly pertinent information.

The Board affirms that it does not conduct "fishing expeditions." Peer review records are not requested in the absence of an on-going investigation. Further, if the hospital takes an action against a physician, that action would be reported to the Board.

All records obtained via subpoena would be covered by the same confidentiality provided all Board investigative materials – confidential and not public records for the purposes of the Inspection of Public Records Act, pursuant to NMSA 61-6-34. The only possible manner that the records could become public would be via subpoena from an attorney or other entity; the Board would demand court review and argue for confidentiality in this situation, just as the original peer review organization would. To date, no confidential Board investigative records have been made public in this way.

Obviously, with the records the Board would learn the identity of reviewers. The Board may, as part of its investigation, communicate with the reviewers for additional information. But unless those individuals independently agree to be expert witnesses for the Board, their identity will remain confidential. The actual expert peer review reports would only be used if the expert who prepared the report independently agreed to be an expert for the Board. In that circumstance, the Board indicates that it would ask the expert for verbal testimony. If the expert reviewer does not want to be an expert for the Board, then his or her report would not be used by the Board in any legal action.

Medical Staff bylaws provide for due process at the facility; the Medical Practice Act and the Uniform Licensing Act provide for due process for all Board actions.

The Medical Practice Act provides that no person or legal entity providing information to the Board, whether as a report, complaint or testimony, shall be subject to civil damages or criminal prosecutions. See NMSA 61-6-34.

The Board states that it remains committed to encouraging licensees to seek voluntary treatment with MTP, and that policy will not change. Licensees who are voluntary participants in MTP are not reported to the Board unless they violate their contract in a manner that poses a direct and immediate threat to patient safety.

To date, the board has been successful in obtaining records in all but one of the cases that have been reviewed by the court. Compliance at the subpoena level would save the Board and review organizations the cost and the delay involved in going to court.

The Board states that it understands that the review organizations perform important functions to ensure patient safety, and is fully cognizant of how critical confidentiality is to all involved. Hospital and HMO review organizations protect the patients of that hospital or HMO. The Board's mandate is to protect the general public. While the physician works in the hospital or HMO environment, the Board and the facility share the oversight role. However, once the physician leaves the hospital or HMO, or cares for patients in any other environment, s/he is the Board's responsibility – and the Board must have all the information necessary to ensure continued patient safety.

The Medical Board recommends that Page 18, Line 3 be amended to read: "only after the review organization has taken action against a health care provider that is reportable to the board," rather than "health care provider that is licensed by the board." There are many ac-

tions that a review organization might take that are not reportable to the Medical Board, and the Board had no intention of including those actions in this amendment.

The Board agreed to additional language that would further limit and clearly define this process. That language, comprising letters C, D and E of the section, is included below under 'amendments.'

PERFORMANCE IMPLICATIONS

The Medical Board anticipates some increased efficiency because the staff resources necessary to conduct investigations that involve peer review records should diminish, and the number of physician assistants requesting changes in primary supervising physicians should decrease.

ADMINISTRATIVE IMPLICATIONS

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

TECHNICAL ISSUES

Page 14, line 18: The current statute reads, "No hospital, health care entity …" and the proposed amendment would change that to read "A hospital, health care entity …." This small but critical change is not correctly notated in the bill.

OTHER SUBSTANTIVE ISSUES

AMENDMENTS

61-6-10 amended language:

~~C. A licensed physician shall not supervise more than two physician assistants; except, where a physician is working in a health facility providing health service to the public primarily on a free or reduced fee basis, that is funded in whole or in part out of public funds or the funds of private charitable institutions or for good cause shown, the board may authorize a greater number upon a finding that the program provides adequate supervision of the physician assistants.~~

C. A physician assistant shall be supervised by a physician as approved by the board.

61-6-23 new language:

C. The Board shall give timely notice to the review organization producing peer review records if the peer review records are subpoenaed by any third party and the review organization shall be deemed to have standing as a third-party intervener to oppose such production in any action brought by other parties requesting the production of documents produced by the review organization.

D. The Board may not compel any person in their capacity as a peer review member or any expert who participates in a peer review process to participate in any Board investigation or action resulting from its receipt of the peer review documents

E. Only documents that are related to the review organization's action that was reportable to the Medical Board shall be required to be disclosed in response to the investigative subpoena.

GM/nt