Volume 1, No. 3

Welcome to E-merging Views

The third issue of our e-bulletin addresses important legal issues related to physician assessment and education. As always, talk back to your e-bulletin. We look forward to receiving and, subsequently, representing your thoughts and ideas. Visit our website at www.cpepdoc.org or contact us at (303) 750-7150 or cpep@cpepdoc.org

Iowa Supreme Court upholds Board ordered sanctions

A physician recently appealed a district court decision that upheld a directive by the Iowa Board of Medical Examiners. The Board ordered that the physician's license could be reinstated only after meeting certain competency-based conditions. The physician then challenged the power of the Board to impose competency-based conditions when it made no finding of incompetence in the original disciplinary proceeding. He argued that the absence of such a finding and the lack of any other factual support for such conditions rendered the Board's order an abuse of discretion. The physician contended that he did not agree to the imposition of competency-based conditions when he entered into a settlement agreement with the Board to resolve the disciplinary proceeding brought against him.

The initial settlement agreement included an admission to sexual misconduct, but contested allegations of professional incompetency. It further stated the Board made "no finding with respect to the allegations" of professional incompetency. The agreement stipulated that the physician's license would be indefinitely suspended, but that he could apply for reinstatement after satisfying specific requirements set out in the agreement. These requirements included the physician's submission to a comprehensive evaluation at the Center for Personalized Education for Physicians (CPEP) and to comply with any CPEP recommendations. Based on the CPEP findings and additional information, the Board proposed a reinstatement order that included five years of probation and specific educational activities.

The physician then sought legal redress related to the Board's requirement that he comply with the quality improvement plan as a condition of his probation. While the Iowa Supreme Court agreed that important legal questions were raised, they ultimately supported the Board's assertion that the conditions imposed on the physician's probationary reinstatement were appropriate and reasonable.

Creative approach facilitates NC Board use of competency assessments

The North Carolina Medical Board (NC Board) wanted to use CPEP assessment capabilities for physician competency evaluations, but faced a challenge. North Carolina statutes require that the Medical Board look exclusively to physicians with active North Carolina medical licenses to conduct competency and psychiatric evaluations.

The solution suggested by the Executive Director of the North Carolina Medical Board was that Martha Illige, M.D., CPEP's medical director, apply for state licensure on a no-fee basis. The NC Board granted a medical license to Dr. Illige in December of 2002, thereby facilitating the Board's use of CPEP to conduct competency assessments of North Carolina physicians.

CPEP Conducts 500th Physician Assessment.

These numbers indicate a growing body of knowledge and experience gained in an assessment process that, along with the CPEP educational intervention programs, represents one of the nation's preeminent models. Just as volume thresholds have a quality correlation with regard to performance of clinical procedures, they also carry a significant value in the process of physician assessment. In an even broader sense, however, the large numbers of physician assessments reflects the abilities of hospitals to improve patient safety and satisfaction and for State Medical Boards to fulfill their mission to the communities they serve.

Restrictions based on competency evaluations are consistent with legal precedent

Robert N. Spencer, Attorney at Law
Montgomery Little and McGrew
Englewood, Colorado

The Iowa Board of Medical Examiners (Iowa Board) case described in this issue of E-merging Views demonstrates how a State Medical Board can utilize a competency evaluation as support for a disciplinary remedy. The Iowa Board case suggests, at least in the state of Iowa, that the Iowa Board is entitled to rely upon the CPEP Assessment Report and recommendations even when the Board itself has not made specific findings of substandard practice.

From the standpoint of judicial precedence, the issue of whether a State Medical Board may impose a disciplinary requirement not directly supported by a finding of incompetence was addressed by the Colorado Court of Appeals a number of years ago in Horwitz v. Colorado State Board of Medical Examiners, 716 P.2d 131 (Colo. App. 1985). In that case, the Colorado Board conducted a full disciplinary hearing upon allegations that Dr. Horwitz, a podiatrist, was grossly negligent in his practice.

Following the disciplinary hearing, the hearing officer found that some, but not all, of the allegations of negligence had been proven. The Colorado Board subsequently imposed a number of educational requirements, including coursework in practice areas that had not been found to be deficient by the hearing officer. The Colorado Board also required general supervision of Dr. Horwitz' practice by a Board-appointed monitor. On appeal, the court held that some of the educational requirements (in surgery, anesthetics and aseptic technique) were not authorized because they were not supported by corresponding findings of substandard conduct. The court did, however, uphold the practice supervision requirement as consistent with the Colorado Board's broad discretion to address the deficiencies that had been found.

The Horwitz case is entirely consistent with the more recent Iowa case. Both reinforce the proposition that a State Medical Board must have some evidence in the record, either through hearing officer findings (Horwitz) or through the results of a competency evaluation (Iowa Board), to support disciplinary requirements designed to correct practice deficiencies. However, once that support is shown to exist, a State Medical Board has wide discretion to decide how to address the deficiencies found and meet its legal obligation to document the evidence needed for remedial action.

© CPEP 2003

CPEP assessment and expert testimony allowed in hearing

A Kentucky family physician voluntarily sought a CPEP evaluation after receiving an Emergency Order of Suspension on his license. When the subsequent assessment raised questions about his clinical competence, he challenged the admissibility of the report as evidence in a disciplinary hearing ordered by the Kentucky Board of Medical Licensure.

The hearing officer found that the CPEP report was, in fact, admissible under the business records exemption. The hearing officer further ruled that expert testimony deposed from the CPEP Medical Director was also admissible, and that she was entitled to rely upon other facts or data typically accessed by experts in the field.

Kentucky is now considering a requirement for an agreed order that would include admission of the report into evidence, but permit either party to arrange for testimony challenging any portion the report.

CPEP Calendar

The Patient Care Documentation Seminar
Tuesday, June 3, 2003
7:30 a.m. – 4:00 p.m.
Copic Companies
Denver, Colorado
Sponsored by CPEP, Copic Companies, and the Colorado Foundation for Medical Care

The Critical Role of Healthcare Communication . . . Physicians as Leaders
Monday, October 27, 2003
7:30 a.m. – 3:00 p.m.
Copic Companies
Denver, Colorado
Sponsored by CPEP, Copic Companies, and the Colorado Foundation for Medical Care

Next CPEP Documentation seminar scheduled for June

A capacity group of participants took part in the most recent session of the CPEP course, *The Patient Care Documentation Seminar: How to write yourself out of a lawsuit.* This interactive and highly valuable course is an important tool for helping physicians create medical records that are as accurate and seamless as possible, resulting in improved patient care and a reduced potential for medical errors. The next seminar will be held in Denver on June 3, 2003.