

**STATEMENT OF
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FEDERATION OF STATE MEDICAL BOARDS (FSMB)
BEFORE THE
SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS,
COMMITTEE ON VETERANS' AFFAIRS
UNITED STATES HOUSE OF REPRESENTATIVES**

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Good morning, Chairman Bergman, Ranking Member Kuster, and Members of the Committee. Thank you for this opportunity to discuss the important role that state medical boards play in the protection of the public and how, working together, we may be able to better protect our veterans and their families. I served 14 years in the U.S. Air Force Reserves as a flight surgeon and have more than a passing familiarity with issues related to the health care needs of military personnel and veterans. My statement today focuses on the Federation of State Medical Boards (FSMB) and how we, along with our 70 state medical and osteopathic member boards of the United States and its territories, are responsible for attesting that physicians, and in most states physician assistants, meet the qualifications necessary to safely practice medicine. I will then share some concerns raised by our member boards from several states and urge that the U.S. Department of Veterans Affairs improve its information sharing processes, especially in terms of alerting state licensing boards, in a timely fashion, of violations by a clinician in the treatment of a patient, or of the disciplinary actions taken by the VA against a clinician. Finally, I will address some legislative solutions introduced in the U.S. House of Representatives and U.S. Senate that will significantly help state medical boards protect patients, both within and outside of the VA system.

About the FSMB

The Federation of State Medical Boards (FSMB) represents the 70 state medical and osteopathic licensing and regulatory boards -- commonly referred to as state medical boards -- within the United States, its territories and the District of Columbia. The FSMB supports its member boards as they fulfill their statutory mandate of protecting the public's health, safety and welfare through the proper licensing, disciplining, and regulation of physicians and, in most jurisdictions, other health care professionals. The FSMB serves as the voice for our nation's state medical boards, supporting them through education, assessment, research and advocacy while providing services and initiatives that promote patient safety, quality health care and regulatory best practices.

About State Medical Boards

To protect the public from the unprofessional, improper and incompetent practice of medicine, each of the 50 states, the District of Columbia and the U.S. territories have enacted laws and regulations that govern the practice of medicine and outline the responsibility of state medical boards to regulate that practice. This guidance is commonly outlined in a state statute, usually

called a *Medical Practice Act*. Seventy state and territorial medical boards in the United States are currently authorized to regulate physicians.

All state medical boards issue licenses for the general practice of medicine. State licenses are undifferentiated, meaning physicians in the United States are not licensed based upon their particular medical or surgical specialty or practice focus, and certification in a medical specialty is not absolutely required in order to obtain a license to practice medicine. In many states, other health care professionals, such as physician assistants, are also licensed and regulated by medical boards in addition to physicians.

In addition to licensing physicians and other health care providers, state medical boards investigate complaints, discipline those who violate the law, conduct physician evaluations and facilitate the rehabilitation of physicians when appropriate. State medical boards also adopt policies and guidelines related to the practice of medicine that are designed to improve the overall quality of health care in the state.

The ongoing duty of a state medical board goes far beyond the licensing and re-registration of physicians. Boards also have the responsibility of determining when a physician's professional conduct or ability to practice medicine warrants modification, suspension or revocation of a license to practice medicine. Boards review and investigate complaints and/or reports received from patients, hospitals, other state medical boards, health professionals, government agencies and professional liability carriers about physicians who may be incompetent or acting unprofessionally, and take appropriate action against a physician's license if the person is found to have violated the law. State laws require that boards assure fairness and due process to any physician under investigation.

Medical boards devote much time and attention to overseeing the practice of medicine by physicians. When a board receives a complaint about a physician, the board has the power to investigate, hold hearings and impose discipline, including restriction of practice, suspension, probation or revocation of a physician's license, public reprimands and fines.

While the overwhelming majority of patient-physician interactions that occur each day in the United States are conducted in an appropriate and professional manner, state medical boards recognize that issues such as physician negligence, incompetence, substance abuse, fraud and sexual misconduct exist. These issues are taken very seriously by state medical boards, which in recent years have advocated for strengthened reporting requirements to ensure individuals or organizations who are aware of, or witness, inappropriate behavior come forward to report the problem. Physicians, hospitals, law enforcement agencies and consumers all can help reduce future issues by reporting inappropriate behavior.

To help address the issue of under-reporting, the Federation of State Medical Boards House of Delegates unanimously adopted new policy in 2016 that urges physicians, hospitals and health organizations, insurers and the public to be proactive in reporting instances of unprofessional behavior to medical boards whenever it is suspected. Consumers must feel safe and secure in any medical interaction, and they should always speak up if they suspect inappropriate behavior.

How State Medical Boards Share Information about Disciplined Physicians

All of the state medical boards engage in an ongoing, cooperative effort to share licensure and disciplinary information with one another by regularly contributing data to the FSMB's Physician Data Center (PDC) - a comprehensive data repository that contains information about the more than 950,000 actively licensed physicians in the United States, as well as board disciplinary actions dating back to the early 1960s.

State medical boards use the Physician Data Center in several ways. Boards query the Data Center when new physician applicants apply for medical licensure in a state to identify any prior disciplinary actions. The Data Center also proactively alerts boards if an applicant has been disciplined in another jurisdiction via its Disciplinary Alert Service within 24 hours after a disciplinary action has been reported to the Data Center. This valuable service helps prevent disciplined doctors from practicing undetected across state lines.

VA and FSMB Data Sharing Agreement

The VA currently utilizes two related services provided through the FSMB's Physician Data Center (PDC), and enjoys a positive working relationship with both the department's IT and operational leadership at the FSMB.

The first service, a disciplinary alert service, utilizes a file of VA health practitioners to cross-reference against any sanctions provided by state medical boards and other PDC reporting entities. In the event an order is received by the PDC against any of the individuals contained in the VA practitioner file, an alert is sent to the VA notifying them of the action taken against their practitioner by another regulatory agency. The VA currently has 58,175 names (as of 11/15/2017) in their monitoring file. This file and this service is based on VA needs and may fluctuate based on the number of practitioners within the monitoring program.

In 2017, there were 219 disciplinary alerts sent to the VA under this arrangement, which we believe has been ultimately helpful to the VA in protecting veterans and their families.

The second service, FSMB's PDC Query Service, is a transactional query performed at the request of each of the VA's medical credentialing centers (142 including 1 in Puerto Rico) for the purpose of obtaining full PDC Profile Reports about individual health care practitioners. This PDC Profile Report is a comprehensive document identifying any previously recorded disciplinary actions taken by PDC reporting agencies in addition to a medical licensure history and a listing of currently active licenses held by the physician.

In 2016, the VA queried 10,233 practitioners and in 2017 thus far, they have queried 8,345.

VA Numbers											
Total Physicians being monitored for VA Office of Safety and Risk Awareness:	58,175										
Calendar Year	2017 YTD	2016	2015	2014	2013	2012	2011	2010	2009	2008	2007
Number of alerts sent to VA from monitoring:	219	199	188	215	166	200	192	174	242	190	194
Calendar Year	2017 YTD	2016	2015	2014	2013	2012	2011	2010	2009	2008	2007
Total Queries by VA Offices:	8,345	10,233	11,378	11,635	10,811	12,426	12,780	14,471	16,873	23,963	9,213
Calendar Year	2017 YTD	2016	2015	2014	2013	2012	2011	2010	2009	2008	2007
Board orders sent to FSMB by VA	0	0	0	0	0	0	0	0	0	0	0

*Table of historical utilization for the FSMB/VA data sharing agreement.

Note: The VA and DOD are currently in the process of combining credentialing process workflows that is requiring extensive rework of their internal operations. The FSMB is assisting with testing the technical connections to its PDC program.

The VA and State Medical Boards – Notification, Communication, and Reporting

The FSMB applauds the noble mission and dedication of the VA in serving the nation’s veterans, and we believe strongly that veterans and their dependents deserve the same level of quality care and appropriate regulatory oversight and accountability that is available to the general public.

The FSMB read with concern the October 11, 2017 *USA Today* investigative story, *VA conceals shoddy care and health workers' mistakes*. The goal of improving communication between the VA and state medical boards continues to be one of the utmost importance to the FSMB and our membership. While we are very pleased that the VA, through our Physician Data Center, has had access to comprehensive licensure and disciplinary information about physicians who work for the VA, I am afraid there is room for improvement with regard to the sharing of detailed information from the VA to the state medical boards that would expediently and efficiently identify unsafe providers operating within the VA system. The dearth of timely information sharing with state medical boards is certainly not unique to the VA – hospitals, health systems, medical directors and physicians themselves should do a better job of sharing concerns about incompetent or unprofessional doctors – we note that the VA has specific policy in place requiring such sharing.

According to a Government Accountability Office (GAO) report issued this month, *VA Health Care: Improved Policies and Oversight Needed for Reviewing and Reporting Providers for Quality and Safety Concerns*, “VHA policy requires VAMC (VA Medical Center) directors to report providers—both current and former employees—when there are serious concerns about the providers’ clinical care to any SLB (state licensing board) where the providers hold an active medical license. Specifically, VHA policy requires VAMCs to report providers who so substantially failed to meet generally accepted standards of clinical practice as to raise reasonable concern for the safety of patients. According to VHA policy and guidance, the SLB reporting process should be initiated as soon as it appears that a provider’s behavior or clinical practice fails to meet accepted standards. VAMC officials are directed not to wait to report to SLBs until adverse privileging actions are taken because an SLB conducts its own investigation of the provider to determine whether licensure action is warranted. This reporting process

comprises five stages as established in VHA policy, and VHA policy states that the process should be completed in 100 days.”

In this report, the GAO “found that from October 2013 through March 2017, the five selected Department of Veterans Affairs (VA) medical centers (VAMCs) did not report most of the providers who should have been reported to the National Practitioner Data Bank (NPDB) or state licensing boards (SLB) in accordance with VHA policy. GAO found that:

- selected VAMCs did not report to the NPDB eight of nine providers who had adverse privileging actions taken against them or who resigned during an investigation related to professional competence or conduct, as required by VHA policy, and
- none of these nine providers had been reported to SLBs.”

In consultation with several state medical boards over the past few years, we have found confirmation of our concerns that the VA often does not always alert state medical boards in a timely fashion of violations, disciplinary actions, or suspected violations of the state’s *Medical Practice Act*. While the VHA Handbook speaks to certain notification requirements, in practice we have determined that the VA is often unable to adhere to these standards. It is important to note that each state’s VA facilities and their relationships with their state medical boards vary but there are enough concerns, too often in too many states, to warrant a comprehensive solution.

One state medical board shared with us that “When we are alerted and attempt to investigate, we find it extremely difficult to gain any information from them (the VA) even if we follow their exact procedure to gain such information. Material received is so heavily redacted it is of little usefulness.”

From several recent conversations with executive directors of state medical boards, it appears to be rare for a state medical board to receive “up front” information from the VA, and often this is well past the 100-day notification requirement. If any information is received, from what we have heard, it is often a vague notification which may or may not even have the name of the health care provider. Occasionally a state medical board may receive information through informal channels, but there typically is not a formal proactive information exchange as called for in VA policy. In some instances, a state medical board will send a request letter, and the VA facility will then provide what appears to be a portion of the disciplinary file on the provider. In one state, the board only receives a copy of the final hospital disciplinary action without any of the details. Another state board said that it usually learns of improper medical care at a VA facility only after a patient complaint has been filed with it.

Such identified gaps in communication between state medical boards and the VA is of significant concern to the FSMB, and we sincerely hope that we can all work together – the state medical boards, the VA, and Congress – to address this issue and overcome any perceived impediments. Improved sharing with state medical boards of detailed disciplinary information that expediently identifies unsafe providers will significantly help the boards protect patients, both within and outside of the VA system. Providers who have been deemed unqualified or unsafe to practice by the VA should not be allowed to practice outside of the VA, nor be able to conceal their disciplinary actions with discreet settlement arrangements. Proper notification of provider

disciplinary proceedings from the VA to the appropriate state medical board(s) and the National Practitioner Data Bank (NPDB) will help ensure that unsafe and dangerous physicians are not allowed to treat patients outside of the VA.

Federal Legislative and Regulatory Solutions

The FSMB commends the U.S. House of Representatives and the U.S. Senate for recognizing deficiencies in information sharing and moving swiftly to rectify them with legislative solutions.

The FSMB would like to take this opportunity to formally endorse *H.R. 4059, The Ethical Patient Care for Veterans Act of 2017*, introduced by House Committee on Veterans' Affairs Chairman Phil Roe, M.D. (R-TN-1), House Republican Conference Chair Cathy McMorris Rodgers (R-WA-5) and Congressman Bruce Poliquin (R-ME-2). This important legislation directs the Department of Veterans Affairs to ensure that each VA physician is informed of the duty to report any covered activity committed by another physician that the physician witnesses, or otherwise directly discovers, to the applicable state licensing authority within five days.

This month, the FSMB also endorsed *S. 2107, Department of Veterans Affairs Provider Accountability Act*, introduced by Senators Dean Heller (R-NV) and Joe Manchin (D-WV), which would require the Under Secretary of Health to report major adverse personnel actions involving health care employees to the National Practitioner Data Bank and to applicable state licensing boards.

In recent years, the FSMB has also endorsed *S. 1641, The Jason Simcakoski Memorial Opioid Act* and then *The Comprehensive Addiction and Recovery Act of 2016* (Public Law No: 114-198), specifically Sections 941 and 942.

Section 941 ensures that as part of the hiring process for each health care provider considered for a position at the Department of Veterans Affairs, the Secretary of Veterans Affairs shall require from the medical board of each State in which the health care provider has or had a medical license:

- (1) information on any violation of the requirements of the medical license of the health care provider during the 20-year period preceding the consideration of the health care provider by the Department; and
- (2) information on whether the health care provider has entered into any settlement agreement for a disciplinary charge relating to the practice of medicine by the health care provider.

Section 942 further requires that, with respect to each health care provider of the Department of Veterans Affairs who has violated a requirement of the medical license of the health care provider, the Secretary of Veterans Affairs shall provide to the medical board of each State in which the health care provider is licensed detailed information with respect to such violation, regardless of whether such board has formally requested such information.

Legislative approaches such as these, and others, will play a vital role in protecting the public, and providing state licensing boards with timely information that can be utilized to fulfill their regulatory duties.

The FSMB also offers its support for the four recommendations provided in the GAO report, including:

- The Under Secretary for Health should specify in VHA policy that reviews of providers' clinical care after concerns have been raised should be documented, including retrospective and comprehensive reviews. (Recommendation 1)
- The Under Secretary for Health should specify in VHA policy a timeliness requirement for initiating reviews of providers' clinical care after a concern has been raised. (Recommendation 2)
- The Under Secretary for Health should require VISN officials to oversee VAMC reviews of providers' clinical care after concerns have been raised, including retrospective and comprehensive reviews, and ensure that VISN officials are conducting such oversight with the required standardized audit tool. This oversight should include reviewing documentation in order to ensure that these reviews are documented appropriately and conducted in a timely manner. (Recommendation 3)
- The Under Secretary for Health should require VISN officials to establish a process for overseeing VAMCs to ensure that they are reporting providers to the NPDB and SLBs, and are reporting in a timely manner. (Recommendation 4)

The FSMB is pleased to learn that, in terms of Recommendation 4 specifically, that the "VHA will update the standardized audit tool used by the Veterans Integrated Service Networks (VISNs) so that it directs them to oversee reviews of providers' clinical care after concerns have been raised and to ensure timely reporting to the NPDB and SLBs. According to VA, the revised tool will also facilitate aggregate reporting by VISNs to identify trends and issues. VA estimates that it will complete these actions by October 2018."

Conclusion

Mr. Chairman, thank you for the opportunity to testify before the Committee today. The Federation of State Medical Boards (FSMB) welcomes the opportunity to work with the Committee on this important issue, and commends the Committee for its bipartisan leadership. I look forward to responding to any questions you and Members of the Committee may have.