Board of Medical Examiners

TO: Chairman Bruce Tutvedt and the Economic Affairs Interim Committee
FROM: Montana Board of Medical Examiners
DATE: August 20, 2013
RE: BOME Professional Assistance Program

As the committee no doubt is aware, MCA 37-3-203 (2) requires the Board of Medical Examiners to establish a medical assistance program for its licensees:

> **37-3-203. Powers and duties.**
> (2) (a) The board shall establish a medical assistance program to assist and rehabilitate licensees who are subject to the jurisdiction of the board and who are found to be physically or mentally impaired by habitual intemperance or the excessive use of addictive drugs, alcohol, or any other drug or substance or by mental illness or chronic physical illness.

The Board takes this responsibility seriously. In fact, the Board began addressing the need for an assistance program for physicians in 1985, two years before the Legislature approved the original statutory language of MCA 37-3-203(2). Then, in 1989, the BOME joined with the Board of Dentistry to encourage the formation of a private, non-profit corporation known as the Montana Professional Assistance Program (MPAP.) The two boards then entered into a contractual relationship with MPAP and have maintained that relationship ever since. The Boards of Nursing and Pharmacy contract with another independent entity for the Nursing Assistance program (NAP) and the Montana Assistance Program (MAP.)

The Board has followed the Legislature's mandate to evaluate MPAP's performance. In 2009, the BOME independently commissioned a performance audit of MPAP by Dr. Lynn Hankes, and in response to the requirements of HB 25 passed by the Legislature in 2011, Dr. Gary Carr recently conducted a new external audit of MPAP and the two other programs that serve the Board of Nursing and the Board of Pharmacy. Both audits, performed by these nationally recognized experts, validate the BOME's use of, and support for, MPAP as its provider of professional assistance. Of note, the main criticism of both of these audits was that this program is underfunded and understaffed.

With that as preface, the BOME now comes before this committee to discuss a change to the professional assistance programs. The Board is deeply disappointed at decisions made over the past year by Department of Labor and Industry management—without the Board's knowledge or consent—to remove funding for all three external assistance programs from the FY 2014 and 2015 Executive Budget This move was ostensibly done to save money; the BOME had approved additional funding from our licensee fees for an additional clinician for the program and this had caught the attention of someone in the Department. To replace those programs, DLI requested authority to create a 3-person, Department-managed, professional assistance program. That decision, unbeknownst to any of the professional boards, made its way into the Legislature's main appropriations bill (HB 2) and, ultimately, into the budget.

The BOME was not informed of these facts until July 19, when acting Business Standards Division Administrator Adam deYong appeared before the Board and explained the situation. While the Board wishes to commend Mr. deYong for his forthrightness in bringing this subject forward, its members

remain disappointed and disturbed that they were not made aware of the Department's decision-making, either during the Executive Planning Process or the Legislature's deliberation of HB 2. A similar explanation has been presented to the Boards of Nursing and Pharmacy.

The Board believes there are three main reasons to maintain our current model of contracting with an independent entity:

1. **The budget as adopted in HB2 is grossly inadequate**
    a. This budget for an in-house program for FY 2015 is only $204, 000. This is to provide services for all four professional boards that are currently serviced by three programs.
    b. The budget does not account for liability insurance, lab testing, and 24 hour crisis intervention.
    c. The current MPAP budget alone is ~ $308,000 of which ~$226,000 comes from the state grant from both medical and dental boards – all of which comes from licensee fees, none from the general fund. The BOME licensing fees have not needed adjustment because of this funding.
    d. The MPAP budget is < 50% of what most state programs cost. MPAP averages 35 new referrals per year and monitors an additional 50 individuals with a working staff of 2. The average state program nationally receives 34 new referrals per year and monitors 138 with a staff of 5.
    e. Most state regulatory agencies contribute ~ $25/licensee/year. The total number of licensees regulated by the BOME, MBD, BON, BOP is 38,000. Using this appropriation, the funding for a program to cover all these would cost $950,000! The total amount of state funding for the current programs is $401,000, which equates to $10.50/licensee/year.
2. **Separation between the professional assistance program and the licensing entity is crucial to success**
    a. Licensees need to be assured of confidentiality and will have more trust in a program that is not directly connected to the licensing board and its power to impose discipline. Professionals who seek treatment must feel comfortable to provide full disclosure of their problem. Early enrollment in a program may prevent a participant from becoming impaired or harming patients.
    b. Currently ~ 60% of MPAP participants entered the program on their own or after referral from a colleague. We fear this number would be much less if the program was not independent. These participants are reported to the Board only as a code number but if they are found to breach their MPAP contract, MPAP immediately notifies the Board for appropriate action to ensure patient safety.
    c. The Federation of State Medical Boards and the Federation of State Physician Health Programs both strongly recommend that such programs should be a separate entity – preferably a 501c(3) organization - linked to the regulatory agency by contract.
    d. A Department-managed program will be subject to various pressures within the Executive branch, including changes of leadership and priorities, budget constraints, etc.
    e. Failure to capture at risk individuals has many costs
        i. Harm to patients and the public we are tasked to protect
        ii. Loss of skilled professionals who could have been treated and returned to the workplace safely
        iii. Expensive lawsuits
3. **MPAP has a 24 year track record of excellence that exceeds national standards**
    a. Nationally recognized for its excellence; one of 16 state programs included in recent and ongoing studies.

b. MPAP's rehabilitation rate shows that after 5 years of evaluation, treatment and monitoring, 90% of participants were able to continue practice. The national average is 78%.
c. MPAP has the support of the Montana Medical Association, the Montana Hospital Association...An Association of Montana Health Care Providers, and the Montana Association of Medical Staff Services.
d. Two independent performance audits by national experts, done in 2009 and 2013, both gave MPAP excellent marks. Their main suggestions were similar – that the program was underfunded and needed additional staff in order to do educational outreach and to meet future needs.

The bottom line is that Montana's professional assistance programs provide excellent service to its licensees, safety for its citizens, and do so at a most reasonable cost. Again, the professional boards exist to protect the citizens of Montana against unqualified and unprofessional medical providers and its professional assistance programs play a large role in that mission.

In closing, the Board wants to relate what steps we have taken to protect our current programs. Recently, representatives from the Board of Medical Examiners, the Board of Nursing and other interested parties met with the Commissioner of the Department of Labor and Industry and voiced our concerns. It is hoped that the decision to eliminate contracted professional services from the FY 2015 budget can be reversed and that open dialogue and transparency within the Department and its boards can be maintained. Commissioner Bucy has said that she will work to make that happen. We ask that the Committee support us in this effort and prevent future changes that may jeopardize the programs that protect the citizens of Montana.