

SUMMARY PROCEEDINGS

PUBLIC MEMBER TRAINING

Williamsburg Virginia, October 2006

Editorial Note: At this special public member training session, a faculty of experts spoke briefly about five topics relevant to public member roles and responsibilities. There was time for group discussion after each presentation and again at the end of the session when the floor was opened to the discussion of other topics identified by attendees.

The Role of the Public Member – Discussion Leader: David Swankin, President and CEO, Citizen Advocacy Center

When CAC began in 1986, there were relatively few public members, typically one per board in most states (California being a notable exception). Today, it is more typical for medical boards (as an example) to have as many as a third public members. It is very different situation when there is only one public member compared to a healthy delegation of public members. Over the years, we have seen the debate shift from “Should we have a public member?” to “Should we have a *majority* of public members?”

Twenty years ago, public members’ primary concern was earning respect. At the time, many boards felt that their state legislature had foisted a public member on them for political reasons. Hardly anyone raises this issue today.

In 1994, CAC held a retreat, with funding from the Pew Health Professions Commission, and produced a report entitled, *Public Representation on Healthcare Regulatory, Governing, and Oversight Boards: Strategies for Success*. The report addressed three aspects of the public member role:

- What does it mean to *represent* the public interest?
- What does it mean to be *informed* about the public interest?
- What does it mean to be *accountable* to the public that one is appointed to represent?

An example of what I think it means to *represent* the public interest occurred about ten years ago when the Food and Drug Administration (FDA) held a public hearing related to recalls of medical devices, specifically pace makers. The law at that time required manufacturers who discover a defect in their pacemakers to notify the physician who implanted the device. The question before the FDA was whether to continue to notify physicians of defects, or to notify patients directly. Consumers who favored notifying their doctors argued that they wanted to receive this kind of news from a medical professional rather than a product manufacturer. Consumers who favored being notified

directly pointed out that by the time a defect became apparent, the implanting physician may no longer know how to contact the patient.

These consumers who took contrary positions on the question were able to speak only for themselves, not for the general public interest. Recognizing there was no universally applicable “right” answer, consumer representatives suggested that the FDA revise the rule to require that patients be asked to designate at the time the device is implanted how they would want to be informed if there were ever a recall. Public members are sure to find themselves in a similar position at least some of the time. You’ll rarely be armed with statistically significant survey data when you are asked to decide a question where it is not apparent what the public interest position is or should be. The solution lies in part in staying in touch with constituency groups, a topic that will be addressed by several speakers this afternoon.

What does it mean to be *accountable* to the public one is appointed to represent? A recent case in New Hampshire is illustrative. It involved a patient who complained in 2004 that her physician told her she was so obese that she might be attractive only to Black men, both an insult to her and a racially inappropriate comment. Earlier, this same doctor told another patient she was in such bad shape she might as well buy a pistol and shoot herself. The medical board charged the doctor with unprofessional conduct. A court of appeals overruled the board, reasoning that the doctor was merely exercising his right to free speech. The board was upset, but nevertheless voted not to appeal the case. The question I raise with you is this: If that happened at your board, would you vote to spend the money to appeal the court’s ruling to a higher court?

With that, let’s have some discussion of how you try to represent the public and how do you try to make sure your board is accountable to the public?

Discussion: *(Each paragraph below represents a comment from the audience or a faculty member.)*

The law of the state would affect my position *vis a vis* the New Hampshire case. In my state, the law is precise about what constitutes unprofessional practice.

But, the New Hampshire court ruled purely on constitutional grounds, not on regulatory precedent.

It seems to me this illustrates an even bigger issue, which is the difference between the public’s and the board’s perception of things and the legal perception of things. Most of us are advised by attorneys and many cases ultimately go through the courts, as this one did. It is a good illustration of that dichotomy. I would probably vote not to appeal on the grounds that limited resources could be spent in better ways. An alternative to appealing would be for the board to pass a resolution deploring this type of behavior.

I have a different opinion. I would pursue this case to the hilt. Saying that the doctor’s remarks are free speech protected by the constitution contradicts the truism that no one is

allowed to cry “Fire!” in a crowded theater. The doctor’s remarks endangered the patient’s health. I would see the case through and I would want to publicize the case and the board’s position.

There is little here on which we disagree. The only question is what is the best expenditure of resources to get the most bang for the buck.

Hardly any board has enough funding to do everything it would like to do. Your priorities as a public member may be different from another board member’s priorities. That doesn’t mean you are the good guy and they are the bad guy, but you may come to the table with a different view of what is more important.

We had a very similar case in my state and before we moved to suspend, we asked for more investigation. We wanted to confirm that there was a pervasive pattern of inappropriate behavior and the doctor was indeed a threat to the public health. We talked to him about getting reeducated and going through a compliance process before we moved to suspend. If I were on the board in New Hampshire, I definitely would have voted to appeal this case. When a professional who enjoys an element of trust tells a patient to get a gun and kill herself, this is not protecting the public interest. In all conscience, I could not have voted against an appeal.

Oftentimes when I am listening to cases, I try to approach it from the perspective that I am there – yes to represent the public – but fundamentally as a human being. I try to listen and make decisions based on whether the professional involved was serving the best interest of his or her patients. In the New Hampshire case, I would have voted to appeal because the doctor violated professional standards and showed an absence of respect for a fellow human being. Whether the board has the resources to pursue it is another question.

I see another aspect to this case. At my board’s meetings and hearings, there is often a member of the professional association present. I think it would be a good idea for consumer groups or coalitions in the state to attend board meetings and have input the way professional associations do.

Staying in Tune with Your Constituency -- Discussion Leader: Louis Rossiter, PhD., Research Professor and Director, Schroeder Center for Healthcare Policy, Thomas Jefferson Program in Public Policy, The College of William and Mary

I have been a board member and public representative for nearly 30 years: on a health planning council in the 1970ies and more recently on the Quality Improvement Organization in Virginia and an Agency for Healthcare Research and Quality National Advisory Council. I had a different kind of experience as Secretary of Health and Human Resources in Virginia, one of the largest secretariats in the state with more than 60 boards with public members.

I want to talk about three things based on my experience:

- Staying in tune with the needs and expectations of your constituency while knowing the responsibilities of your board and understanding how far you can impact the operation of that board,
- Being clear on who your constituents are,
- Knowing how to effectively communicate with your constituents and learn their needs and expectations.

First, what is the responsibility of your board? Are you responsible for advising on the future direction of the profession that you regulate? Do you establish policy and approve regulations? Or, do you merely investigate complaints? Understanding your role influences the level and type of outreach necessary to stay in tune with your constituents. You may spin your wheels if your board's responsibility doesn't go in the direction you think it does.

It is important to understand the legal basis and limits of your responsibility. For example, regulatory boards in Virginia fall under the legal framework of the Department of Health Professions. Each board also has its own statutorily mandated powers and duties, which may differ from those of other boards. In that case, the Administrative Code guides the process for dealing with licensees.

Second, who are your constituents? Perhaps – and this may be a controversial point – your constituency includes the governor who appointed you. You may have to reconcile your responsibility to the governor and his or her administration's policies that affect your board with your impressions and interpretations of your responsibility to the general public? Your constituency also includes the board itself and the professionals within that board. You need to have some understanding and appreciation for where they are coming from. Most important, your constituency includes the general public. In my mind, for most of the people sitting here, that means health care consumers.

You want to be active rather than passive in attempting to understand the needs and expectations of the general public. You may want to address questions to the public through letters to the editor or by speaking to community groups. If your board happens to wind up in the news, that might be the time for you to step forward and engage people in order to understand their concerns. There is a concept called "management by walking around." Perhaps constituent service is accomplished by walking around, not reading the morning paper and using your own gut feelings about things, but trying to engage people who may be affected by the issues you are dealing with, trying to understand what their concerns may be.

Finally, you should know *how* you know what your constituents are thinking, what they need, and what is in their best interests so you can be the most effective possible public advocate. It should be a thoughtful and deliberative process of engaging in dialogue and staying in tune. When your fellow board members ask, "How do you know that?" you should have the answer.

Discussion: *(Each paragraph below represents a comment from the audience or a faculty member.)*

When I suggested that my board of medicine should become more transparent and accessible, I was told this would make the doctors think that the board was encouraging people to find fault with doctors and file complaints. Given this, how can public members do the active listening, write the letters to the editor, and so on?

Public members should fight for making the public aware of boards, but it should be done in a polite, professional, respectful way. The attitude of the doctors you describe sounds a little paternalistic and you should fight back as a public member. Perhaps you won't get it the first time, but you may win eventually.

I'm a neophyte and need some clarification. Am I hearing the message that the role of the public member on issues of public health and safety differs from that of a provider member? My one-year experience on a nursing board is that everyone on the board is involved in protecting public safety.

CAC has tried very hard to not make the public members the moral and ethical "good guys" and make the professional members the "bad guys." But, there are some issues where public members and provider members are likely to differ. For example, CAC is committed to the notion that licensees should be required to demonstrate their current competence as a condition of relicensure. Most consumer groups say, of course a license should mean that a licensee is known to be currently competent. But, when such requirements are proposed, the first people to object are the professional associations because they perceive this as another test their members are going to have to pass. So, there is a definite difference between approaching this topic from a public protection point of view *versus* a protect-the-profession point of view.

I see two issues here. One is the role of the board. The other is public policy, which belongs in the legislative arena. Once something like continuing competence requirements are the law, the lobbying is over and the professional associations have to accept it.

I don't see any difference between my job as a public member of the board of nursing and that of the nurses on our board. I feel the professionals on my board listen to my opinion as much as they do the opinions of other nurses. I see things differently than they do on some issues, but that's why I'm there. My constituency, in my opinion, is everybody in my state. For the sake of citizens and visitors, we have to make sure we have competent people practicing in the health care professions. My board travels around the state for its meetings. At our last meeting, we had 60 or 70 nursing students at the middle day of our meeting. On the disciplinary day, we had 500 students in attendance. That is one way to communicate with a constituency, because they are future licensees and they need to know the laws and rules they will be governed by.

Not all public members have such good experiences. Members of the professions can be very conservative and protective. Furthermore, if the public member is exactly the same as the provider member, why do we need a public member at all?

I think our board has an issue because the doctors think we are brewing trouble, when in fact, the public doesn't know we are there. So, what do we do?

Scope of practice disputes are another example where public members and members of the profession come from different places. Examples include prescriptive rights for nurses and other professions, scope issues between ophthalmologists and opticians, and between dentists and dental hygienists. As a public member, you have no interest in the turf battle aspect. Instead, you have some obligation to try to weed out the turf issues from the health care safety and access issues surrounding scope of practice decisions.

A public member can ask questions, especially questions about what is in the best interest of the patient. Five or six years ago, Virginia was trying to put profiles of physicians on the internet. It was one thing for the General Assembly to pass the law and another for us to write the regulations determining exactly what was to be posted. In that example, physicians might have concerns about limiting information while the public member would advocate that the public has a right to know as much as possible.

My board adopted a mission statement expounding the vision and values of the board. As a public member, I was able to bring them along further than they would otherwise go.

As a staff member, I encourage public members to be active at the national level by, for example, attending the meetings of their board's national association, such as the Federation of State Medical Boards, the National Council of State Boards of Nursing, the National Association of Boards of Pharmacy, and so on. It is important for public members to participate in national dialogues where issues are addressed, often-times with only members of the profession present.

Helping Your Board Become More User-Friendly – Discussion Leader: Becky LeBuhn, Board Chair, Citizen Advocacy Center

What do we mean by *user*? We have already identified three constituencies of a board: the profession, opinion leaders and the legislature, and the general public. The general public is the primary focus of my remarks and probably your primary focus as public members. Hopefully, the public is also the primary focus of the provider members of your boards.

What do we mean by *friendly*? I think we mean that boards should be as transparent and accessible as possible, and also be service-oriented.

We have encountered many examples of user-friendliness over the years at CAC's public member meetings. In the area of general outreach and we have already talked about the

importance of letting the public know that boards exist, what their mission is, how to get in touch with them, and what kinds of issues are within the jurisdiction of a board – things they are empowered to take care of.

How do boards communicate this kind of information? Many boards have wonderful brochures that they distribute far and wide. We would recommend that they be distributed not only through community channels and through local newspapers, but also at the offices where the profession that is being regulated by the board actually practices.

You want your board identifiable in the phone book and you want it listed under a name that the public is likely to be able to find. You don't want it hidden in a department of regulatory affairs sub-listing, you want it under "nurses," "doctors," "pharmacists," etc., so the public is likely to find it.

Speakers' bureaus are another tool boards can use to get the message out. Years ago, I was a public member on the Board of Funeral Directors and Embalmers in the District of Columbia and I went out and talked to community groups to explain what the board was about. I always prefaced by remarks by saying I was speaking as the public member, and not speaking for the board.

The Web is an increasingly important way for boards to get information out to all constituency groups. CAC has reviewed many board Web sites to assess how user-friendly they are. We have reached some conclusions about the kinds of information the best boards put on their Web sites.

The better Web sites identify licensees by name, location, specialty, education, and other information that is relevant to consumers visiting your Web sites in search of a practitioner. You want to disclose information about disciplinary actions, as we have already said, and malpractice claims. At a session later in the meeting, we will tell you more about a survey CAC did seven or eight years ago and repeated this past year to find out when boards of medicine and nursing release information during the course of the disciplinary process, what information is made available, and in what form and what venue that information is made public.

Web sites can also have links to other sources of information for consumers. For example, boards in health care fields can have links to other quality information, such as the quality of care information about hospitals, nursing homes and other institutions that is now becoming available. Also, board Web sites can link to practitioner-specific information about experience with coronary bypass surgery and other serious, but common procedures, in those states that provide such information.

Some boards have a special consumer page. User-friendly sites have a frequently asked questions (FAQ) page, instructions for filing complaints, and even downloadable complaint forms, or an opportunity for people to register a complaint directly online. Biographies of board members and board staff are also things that are good to have on a comprehensive board Web site.

Useful navigation features include using plain English, having links that are readily comprehensible, a good search engine, a legible font size, and an appealing layout.

Beyond just providing information, I think user-friendly also involves providing service. Here is one example of what I mean: If we are to believe the statistics, the majority of consumer complaints registered at licensing boards do not fall within the jurisdiction of the board and therefore don't translate into an opportunity for board action. These may be complaints about money, about bedside manner, or some other matter the board can't do anything about. Do your boards refer these individuals to some other source of assistance? Or, do you let the complainant go home frustrated and disappointed in their government?

CAC has applauded those boards that provide an ombudsman service -- sometimes through a designated staff person -- which ensures that people who do complain are kept informed throughout the process about what is happening with their complaint and what to expect next. The point is to help complainants through the process so they are not left in the dark until however many months or years later the board takes a final action.

I will close by saying a couple of things about boards being friendly to their other constituencies in addition to the general public.

As far as the profession is concerned, we have seen examples in pharmacy and chiropractic where boards have published an analysis of the most frequent causes of disciplinary action as a "heads up" for licensees, alerting them to things their fellow professionals are doing that have gotten them in trouble with the board.

Nursing boards all have nursing practice specialists whom nurses can call with questions about their scope of practice and get an advisory opinion from the board. This strikes me as being a very helpful thing for the licensee and also a good form of public protection.

Holding licensing board meetings in various cities around the state seems a simple way of serving not only the public, but also members of the profession who want to learn what the board is doing by attending meetings and asking questions.

As far as the legislature and opinion-leaders are concerned, one obvious thing boards can do is to follow legislation and testify as a board, or as an individual. Once again, when I was a public member, I testified at regulatory hearings when the enabling legislation was being revised. I testified as the public member, not in behalf of the board, and I had some impact on how the legislation was written.

Also, in terms of influencing opinion leaders, we know that many boards are cautious about the media. Other boards have taken the position that they should befriend reporters and try to stimulate positive stories, rather than waiting for the attention-getting problem case.

With that, let me ask you how your boards try to be user-friendly and, in particular, whether you think there is a special role for public members in encouraging their boards to make this a top priority.

Discussion: *(Each paragraph below represents a comment from the audience or a faculty member.)*

Our board's executive director makes presentations regularly, especially at schools, to inform people exactly what the board of nursing is doing. Various members of the board have given talks at public forums about what the board does and how it protects the public. That has been good outreach. Also, we have many hits on our Website, calls to the department of regulation, and numerous complaints, which indicates that we don't have a problem in Florida with the public knowing of our existence. Also, the press attends every board function and we initiate media campaigns.

When our legislature wrote new regulations for nurses, dentists, doctors, and chiropractors, the phrase "quality assurance" was cool, so our boards are called the "such and such quality assurance commission" and no one knows what it is. I think it is a good point that we should be called "the nursing board," or the "dentistry board," and so on. We have a few meetings outside our state capital, but usually the people who show up are the same lobbyists who show up at the state capital, so we need to implement this concept better.

I would like to tell you about something I was inspired to do after attending one of the CAC meetings and networking with other public members. I asked someone to send me their board newsletter and was impressed to learn that that board requires that a notice be posted in all psychologists' offices telling the public how to reach the board, should they have a problem. I wrote to one of my state senators to say that I was impressed with this idea. I pointed out that our state's auto shops are required to post similar information regarding auto repairs and that, obviously, the same information should be readily accessible to the public when public health, safety and welfare is at stake. This senator liked the idea, but was committed to handling several other pieces of legislation and couldn't take on another. However, she referred me to other senators. When I told my board about this, I thought they might be miffed that I hadn't come to them first. I hadn't because I feared they would try to talk me out of it and I wouldn't have wanted to go against something they wanted. I needn't have worried because when I mentioned the idea of a mandatory notice, the board seemed to be impressed with the idea.

That is a good example of why we have public members. The idea of posting a notice at the place of practice is not something that a professional member would come up with. This subject really does illustrate the biases people bring to the table and it is one of the issues about which the public at large really needs somebody to advocate. We struggle to put more profiles on the Website but, at the end of the day, if the public does not know that the Website exists, it does no good.

How proactive should a board be in helping a complainant through the process? Not only triaging the complaint, but also recommending another source of assistance for complaints the board does not have the authority to handle? How easy or difficult is it for the average person who has a problem to work their way through the complaint process? Is it a friendly process? Is it unfriendly? Are 800 numbers answered by people, or multiple recordings? What is it like with your boards?

I'm a public member and I have called my board on several occasions only to get an answering machine and I just hang up. Or, the phone rings and rings with no answer. I have brought that up to my board because I think this is an important concern, not only for licensees, but also for the public. The board was a little defensive, but was amenable to correcting the problem. Try calling your board to test how the phone is answered.

I feel a great need to help the public become informed about the board, but this topic presents a myriad of issues. Oftentimes, complaints come in over which the board has no jurisdiction. While, we avoid "giving advice," we can refer complainants to the code. Our board has an excellent staff that keeps the board on task and within our jurisdiction.

Obviously, CAC has put together a lot of information about what makes an exemplary board. Have you ever put together a check-list boards can use to evaluate how well they are doing?

Yes, CAC has some checklists, including one specifically addressed to the user-friendliness of boards.

I think we have to be careful as citizen members of boards to make the *board* user-friendly, as opposed to assuming that responsibility all by ourselves as citizen advocates. By taking on the role of the advocate of the complainant, I think public members would risk imperiling their credibility – and with it, their persuasiveness -- with their boards. If complainants come to you as their personal advocate, you are going to impune some of that credibility. I think you need to confer with staff and if the board isn't handling complainants properly, the staff needs to be corrected and there needs to be proper oversight.

I'm glad you raised this point because it gives me the opportunity to clarify. I never intended to mean that the public member would be the sole advocate for a complainant or otherwise act independently, but that that the public member has an opportunity to steer their board – to raise these issues in front of the board – and say, "We as a board ought to be sure we behave in the most user-friendly way."

Interacting With the Profession You Regulate and the Professionals on Your Board -- Discussion Leader: Adele Hammerman, Public Member, Maryland Board of Examiners of Psychologists and Chair, Maryland Council of Boards and Member, Maryland Consumer Advocacy Group

I am in my second term on the psychology board. When I first attended a board meeting, I felt as many of you have probably felt, “I know I’m here to help the public and protect public welfare, but what is my role?” I found that after attending a couple of meetings, I found myself feeling like *agreeing* with whatever the members of the board had discussed and decided. I guess I wanted to be liked, since I was a newcomer. I wanted them to respect me because I was the consumer member.

Then I attended a CAC meeting and I came back with a completely different feeling about who I was, why I was there, and what I was going to do. I had a whole new sense of self-assurance and I knew that I should, and did see things differently than the licensees on my board. I am not a gadfly. I am not a rabble rouser. But, I see things as a *user* of services, not as a provider. I saw that I had room to perceive things differently and to let my voice be heard. I believe that I am respected by the rest of the board.

I brought back to the board many suggestions from CAC meetings. We have used the CAC evaluation tools and this led my board to agree to hold a meeting in different parts of the state. We are changing our newsletter completely to include a consumer outreach section and information about discipline actions. Not only should the licensees see this information as a red-flag, but it also shows that the board is doing its job. We are distributing our newsletters in public libraries and are thinking of other venues. We are putting out information that has never been published before. We are asking for information to come back to us – issues the public feels the board should address to help the public.

All of these ideas are being applied because I suggested them after having been to CAC meetings. I felt transformed from someone sitting there and trying to understand what was going on to someone who can truly contribute for the benefit of the public. Now, by taking our meetings to different areas in the state, I think we can publicize them and have professional schools encourage students to attend.

My board is a very ethical, competent, and effective. It’s just that they didn’t have anyone who came to them with these kinds of suggestions. In all fairness, I did make suggestions with an earlier chair on my board, and they fell on deaf ears. I was never blatantly refused, but I wasn’t *heard*. I didn’t give up, I would repeat suggestions, without being annoying, and eventually my ideas and suggestions were heard and my board is now acting on them. I feel absolutely thrilled about that.

There are two other organizations I want to mention. A part of Maryland’s 17 boards and commissions is a group called the Consumer Advocacy Group. The group enables public members to connect and communicate with one another. We meet regularly and talk about issues pertinent to consumers. It is not “us” and “they” at all, but we talk about things such as, “How do you get them to explain what acronyms mean?” We give that person confidence to ask. We go to senior centers, PTAs, and other places and give talks about what boards do.

The other organization is called the Council of Boards. Its role is to promote effective communication between boards, the department of health, the governor, the state legislature, and the general public and to advise on the allocation of shared resources and to facilitate interaction between the boards.

One of the most vital functions of your board is the disciplinary process. How would you go about learning more about the disciplinary process of your board?

Discussion: *(Each paragraph below represents a comment from the audience or a faculty member.)*

My suggestion is that new board members be given one-on-one training in every aspect of the board's work. For example, bring in prosecutors to talk about bringing cases. Then give refresher training to every board member each year.

We have excellent mandatory new board member training. It's a two or three day process that covers administration, discipline, etc. Then, within each board, seasoned board members mentor new members. So, they receive classroom training and actual hands-on practical training.

My board is planning a day-and-a-half retreat where we will go over some of the issues we have faced in the past few years. I think we will focus on the needs of the board, as opposed to the needs of staff.

Relations with Professional Associations – Discussion Leader: Stephen Heretick, Esq., Public Member, Virginia Board of Medicine

All of you were appointed because you had a relationship – or numerous relationships – that brought you to the attention of appointing authorities. Since everyone on a board has a series of existing relationships, that sets up the potential for conflict as we consider legislation or disciplinary cases,

Most of the time, conflict does not rise to a level that requires us to recuse ourselves. It sometimes happens that we are personally acquainted with people who come before the board. In fact, the very first case that came before the Virginia Board of Medicine after my appointment involved a physician who was a neighbor of mine. I went to the board council and the other members who were sitting on the panel with me and told them I knew the respondent as a neighbor. In deciding whether I needed to recuse myself, we asked these questions:

- Do you have a professional relationship with the respondent?
- Do you have a business relationship?
- Is the fact that you know the individual going to impair your ability to make a fully informed, fair decision in this case?

In that situation, I stayed on the panel.

In another situation, I was legal counsel to an individual who had an appeal before the state Alcoholic Beverage Control Board, three of whose members are good friends of mine. Nothing was said; I argued the case; they ruled against my client.

The point of this is that we do what we do on our boards *because* we have relationships. You cannot ever be reluctant to 1) recognize what these relationships are; 2) explore them to make sure they do not present a conflict; and, 3) consult with fellow board members when you think there might be an issue.

Whenever a board member goes to our executive director and says he or she does not want to sit on a case because of a working relationship or business relationship with the respondent, the board member is reassigned without resistance. The problem occurs when a board member does not request to be reassigned in a situation where there is a conflict. The people who recommended you for the position would be horrified to read in the paper that you sat on a case involving someone with whom you had a professional or business relationship.

The fallout would involve more than political embarrassment. It could raise legal problems. The Bar Association puts out clear rules of ethics for lawyers. Conflict of interest rules for members of government are codified in statutes or regulations. Ultimately, ethical guidelines are a matter of good common sense. Even if you think you can be fair in a case involving someone you know, consider whether an outsider could look at the situation and ask whether the outcome would be the same if a different person were making the decision. It's not worth taking the chance.

What we as citizen members of our respective boards bring to the table is character and impartiality. We did not receive the same education as the health care practitioners we work with on the board. We don't understand the intricacies and technicalities of their practice. We sit on these boards because we bring a different perspective, a different common sense, a different level of judgment. The one thing we cannot compromise the integrity that we, as citizen members, bring to the equation. We have to be forthright about the relationships we bring with us to the table. We cannot ever be reluctant to step back from the table when our integrity might be compromised

Discussion: *(Each paragraph below represents a comment from the audience or a faculty member.)*

As an executive director of a board, quite often I find some board members are too quick to ask to be recused from voting on issues because they don't want to make the decision. Under Florida's guidelines, unless there is a specific legal reason or basis to be recused, the governor appointed you to make a decision and vote. Our attorneys agree with this, so we don't have many recusals.

The situation is different in large states, such as California, than it is in smaller states where more people are acquainted with one another.

I had a situation at my board when I knew both the prosecutor and the defense attorney. I didn't feel that knowing them would interfere with my unbiased analysis of the facts. However, when they appeared in the room, I stated publicly for the record that I knew each of them. Both counsels concurred that this would not affect my decision-making. Afterwards, when I saw one of the attorneys socially, he told me I really shouldn't have participated in the case. I told him I didn't want to talk about it in a social setting. The respondent is now appealing the board's decision to take his license and I think the grounds will be that I should have recused myself. I don't feel knowing the two attorneys influenced me, but in retrospect, I probably should have declined to participate.

Attorneys who I deal with on other cases appear before the Virginia Board of Medicine. To me, sitting on a board disciplinary matter as a judge is not a conflict even though I might be going head to head with that attorney in a different context in another courtroom. That does not change my decision. My focus is on the licensee, not his attorney.

I'd like to talk about the situation where the citizen member is pressured to make decisions on cases. My first appointment as a citizen member was on the board of veterinary medicine where I served nine years, first as secretary and then as president of the board. We had a very prominent African American veterinarian who fell ill and allowed his groomer to perform intricate operations on patients. He was caught when the groomer performed a hysterectomy that later resulted in an infection. I was president of the board at the time. There were not a lot of African American veterinarians in the state at the time. We knew the case was coming up. I was called by members of the legislature who told me I needed to know what decision to make on the case because it involved a very prominent doctor and, besides, the patients were just animals. My decision in the case, I was told, could very well impact whether I would get another state-level appointment. Fortunately, we had a rule when I was president of the board that even if we disagreed in executive session, when we reported our decision publicly we would report it as unanimous.

We recently had a situation in which a state legislator who chairs the House health committee pressured people on the board to make a decision in a disciplinary hearing in favor of a respondent who is the legislator's personal physician and friend. As a former legislator, I find that unbelievably inappropriate behavior and I have asked that the board communicate the legislator's behavior to the governor and to other legislative leaders.

During my first year on the board, I learned early to walk the stairs to avoid riding the elevator with members of the profession who were trying to pressure me to vote a certain way. When this happened to me, I told the members of the profession that I had done my homework and could make a decision on my own. But, the encounter was intimidating, so I walk the steps now.

When I signed my oath of office, I agreed to carry out the board's mandate and rules, regardless of whether the governor, the legislature, or anyone else would like it. Am I

wrong that my job is to listen to a case as a consumer member and evaluate the facts based on my opinion, make my comments publicly, and vote my conscience? Isn't that my job?

Would anyone like to make the case that a board member has some obligation back to the appointing authority? In some states board members are appointed by the legislature and in some states, board members are elected. But, in most states, board members are appointed by the governor. Does anyone think there an obligation to the appointing authority?

I contend there is an obligation with regard to public policy matters, but not disciplinary cases, and certainly not being pressured by intervening officials over the phone or in elevators. But, the governor is part of your constituency and, as I said before, you should *know* how you *know* that you should have a different opinion than the governor. For example, there might be governors who feel strongly that disciplinary action should be published on the internet while members of the profession argue against that in the board room. Do you go against the governor's opinions about that policy? Most of the time, the governor is not going to have a known policy position, but when he or she does, you need to view that policy as part of your constituency. If you are going to go against it, you should know very well why.

In matters of discipline, you look at the evidence and go with what it says. In matters of policy, we need to look at our charge under the law.

There are those on our board who feel that an over-emphasis on this matter is used effectively by interveners, such as the secretary of the department of health, as preventative to keep us from going to either the governor or the legislature when we feel that a justifiable change needs to be made.

My board received a letter from a legislator asking that we look favorably upon someone who was coming before us for a disciplinary action. The attorney advised us not to respond. We talked a lot about it at our board meeting.

Policy matters are much more likely to arise when the board is performing its legislative functions, such as rulemaking or issuing policy statements. This is not to say that policy does not emerge out of cases.

I agree with you about policies, such as setting fees at a level that will support the board, but there is still a legal basis for the governor or the legislature setting fees. I agree that we work for the executive branch and need to follow its policies.

My board was asked to rule concerning the use of a particular medication for conscious sedation. We were heavily lobbied by legislators who all presented evidence that was remarkably the same. We did not respond, but when it came time to vote, we voted our consciences and did the right thing.

Policy is supposed to represent the greatest good for the greatest number, but inevitably when the executive branch is involved, the largest and most powerful lobbying groups try to influence the executive branch. So, the executive may not be looking at the greatest good for the greatest number, but rather at the wishes of the group that is paying the largest amount of money. The consumer interest is to look at the interests of the greatest number, not the most influential lobby.

Another observation on ethical considerations comes to mind in connection with Lester Crawford who was acting FDA Commissioner and apparently had stock that presented a conflict of interest. I recommend public members examine their own and their spouse's portfolios and make sure there are no holdings that would present a conflict.

Other Topics: *(Each paragraph below represents a comment from the audience or a faculty member.)*

In your opening comments, you talked about percentages of public member on boards. I would be interested in knowing whether public members here would agree that it is a positive thing for the majority of a board to be public members. I happen to believe there are two sides to this matter.

The trend is definitely toward increasing the percentage of public members. CAC's only policy statement on the subject, made several years ago, favors a sizeable delegation of public members, but we punted on whether that should mean a majority.

I disagree with the notion that public members should be in the majority. As a public member, I don't know all the legalities and all the technical terms, and whatnot.

I am not a public member of a licensing board, but I am a public member of an FDA advisory committee. In my experience, very little of what medical boards look at involves medical practice issues, as opposed to misbehavior, and drug or alcohol use, which do not involve medical practice do not require professional expertise. A majority of public members would be no different than a jury of peers – laypeople – sitting in a civil or criminal jury box, hearing very complicated issues and being asked by our judicial system to make a decision based on the evidence. I favor a majority of public members. Perhaps for certain complicated medical practice issues, the composition of the hearing board might be slightly different than for cases where medical practice issues are not involved.

I'm a new board member and so far, it appears we have mostly scope of practice cases. When or governor increased the number of public members to six, some of the longer-term public members were a little disappointed because the board had such a backlog of scope of practice cases that even our pro tem doctors were overwhelmed. They felt that increasing the number of public members to six on a 21-member board, was too much of an increase.

I recall the change of mind of a former executive director of the California Medical Board. For some time, he thought it was preferable to have a majority of professionals on the medical board, in part because he thought they were stricter in disciplinary cases. He changed his mind on the grounds that the board would have much more public credibility if it had a majority of public members.

Occupational and professional licensing is just about the only activity of government that is conducted through volunteer boards. Most regulation is accomplished by government agencies which are rarely led by members of the regulated profession. These agencies have plenty of money to buy whatever expertise they need. There is no constitutional reason why the health professions should be regulated by boards rather than government agencies, so I think it is a bogus issue to think that a board with a public member majority wouldn't know enough to do the job, because they can hire expertise as needed. The Canadian provinces, by law, make scope of practice decisions through boards composed entirely of public members. These boards have budgets to bring in the appropriate expertise.

Isn't there a conflict between our acting as prosecutor and jury in the same case?

It wasn't long ago when the same people ran the investigative panels, heard the case, and rendered a final decision. This is no longer the pattern because of a series of court rulings. Now, it is rare to have the same people serve on the probable cause panel and the decision-making panel, for example.

In my state, we perform legislative, judicial and executive functions. The state Supreme Court has come down hard on regulatory boards because of the complications of playing all three roles.

In support of having a majority of provider members on boards, I have found that it gives weight to a sanction to have members of the same profession voting to impose it. It helps the respondents to accept the sanctions.

This discussion is broader than just professional licensing boards. The question is, can the laity make complex decisions in a way that we are all comfortable with. My feeling that the medical board discipline process is a democratic process where the state, on behalf of its citizens has decided it is in the public interest to license and have a system in place to discipline licensees who violate the practice act. This is the public's business and I think it should be a public process. I don't see evidence that the process comes out badly in states where there are more public members rather than fewer.

Public members on my board defer to the professionals on standard of care issues. We don't have the resources to hire outside experts for every case. The licensees on the board provide an important public service at no cost.

The effectiveness of public members can be strengthened by having a network at the state level where public members can interact with one another across the health care boards.