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State Medical Board of Ohio Response to Proposed 1-Bite Legislation  
February 3, 2016

Representative Grossman:

In response to draft legislation proposing changes to the “1-Bite” rule, the State Medical Board has the following concerns:

- The proposed legislation cedes the Board’s authority to determine standard of care to practice medicine. Under the proposed language, all impairment violations are reported to the contracting entity, not to the Board. The contracting entity makes the determination that the individual is eligible for the program, including the determination of whether the individual presents an imminent danger to the public or to the practitioner. The final determination of actual or potential patient harm cannot be established by anyone but the Medical Board. This determination is – fundamentally – the establishment of the standard of medical care, which is a responsibility that ultimately rests only with the State Medical Board.
- The proposed language provides immunity from liability for the contract entity. Effectively, this would tie the hands of the Medical Board, licensees, and the public from legal recourse should the contract entity not perform the duties of the contract. Worse, a rogue agent of the entity could perform any number of violations that endanger the public, and would be immune from legal action.
- The proposed language lacks detail regarding the contract entity and contracting process. It is unclear how the contract entity will be selected, and what the qualifications are for this entity that will be overseeing the monitoring of impaired practitioners. There is also a lack of detail as to what treatment program would be in place for the Medical Board’s other license types not included in this legislation (Massage Therapists, Acupuncturists, Genetic Counselors, etc). Finally, there is uncertainty as to what happens to the 1-Bite program if the Board is unable to reach a contract with a qualifying entity, or if there are no entities who can meet the standard of the legislation. There is also uncertainty regarding the selection process for multiple parties that meet the qualification requirements.
- The proposed language presents a number of concerns related to the selection of treatment providers for impaired licensees. The contract entity has the sole discretion as to the type of treatment and treatment provider for the individual. This framework raises questions about individuals’ rights to select or change providers as they see fit. Would exercising this choice preclude the individual from participation in the 1-Bite program and require reporting to the Medical Board? The Medical Board requires greater detail around the requirements for treatment (i.e. inpatient or outpatient) – and the treatment provider selection process – to address these concerns.
- The proposed legislation limits administration of the 1-Bite rule to a single contract entity, which raises concerns about the continuity of the program. If the contract entity encounters financial, operational, or other problems that limit or prohibit its ability to administer the program, there is no clear mechanism for the transfer of confidential participant information or administrative oversight to another entity. In a worst-case scenario, if the contract entity goes out of business, 1-Bite participants are left in a void; with no administrator to validate compliance with meeting and drug screening requirements, they may never receive full credit for completing the program. Perhaps even more alarming under this scenario, 1-Bite participants would be left without anyone

monitoring their progress, and their risk of relapse would increase significantly. A system with administrative redundancy is needed to avoid these situations.

The Medical Board appreciates the intent of the legislation to enhance the 1-Bite rule, and to increase participation by the Board's licensees who are in need of treatment for their addiction. As a counter-proposal to the legislation, the Medical Board proposes the following:

1. Maintain the 1-Bite rule as-is for the time being. This will allow licensees to continue to report confidentially to either a treatment provider or OPHP, who can continue to make their best effort to assess 1-Bite rule eligibility. The Medical Board is happy to discuss the anonymous circumstances of a licensee for whom eligibility is uncertain, and to provide guidance to OPHP and treatment providers for the final determination.
2. Convene a working group to address known gaps in the current 1-Bite rule:
  - a. The working group will first convene in Spring, 2016, and shall be tasked with the following:
    - i. Enhance treatment provider standards for 1-Bite rule participants.
    - ii. Ensure that approved treatment providers have staff that is qualified to administer the 1-Bite rule, and set appropriate standards and processes to maintain that qualification.
    - iii. Explore and define an appropriate number of Medical Board licensees that a 1-Bite treatment provider shall have in their treatment programs – or make arrangements with outside licensee recovery groups (e.g. Caduceus) – so that licensees can work their recovery with their peers.
    - iv. Ensure that treatment providers meet ongoing training requirements on the 1-Bite rule, and establish a process to remove 1-Bite treatment providers who cannot meet those requirements.
    - v. Develop enhanced screening tools for 1-Bite eligibility.
    - vi. Develop measurable quality assurance standards, and frequent standardized reports (See #3 below).
    - vii. Develop routine feedback mechanisms between treatment providers and the working group, with the goal of leveraging best practices.
    - viii. Submit regular progress reports to State legislators that detail the success of the efforts listed above, and provide a basis for them to reengage this issue should the need arise.
  - b. The working group shall consist of representatives from OSMA, OOA, AMCNO, OPHP, OAFP, Columbus Medical Association, the Ohio Psychiatric Physicians Association, the Ohio Foot & Ankle Medical Association, treatment providers, the State Medical Board, and others as determined by the 1-Bite interested parties group.
3. Develop improved, quarterly, **anonymous** reporting from treatment providers with the following information:
  - a. Management & treatment staff identification, and acknowledgement / mitigation plans for any senior staff changes.
  - b. An overview of total Medical Board licensees in their treatment program.
  - c. Individual licensee reports that track progress and identify issues or limitations of treatment standards.
4. Collaboration between OPHP, clinician associations, employers, and the State Medical Board to develop feedback mechanisms for licensees in treatment, and creation of new outreach tools to encourage greater participation in recovery programs:
  - a. Identify the critical factors that drive Ohio Medical Board licensees to seek treatment.
  - b. Develop shared outreach materials and activities that will help licensees seek treatment.

For the reasons provided at the beginning of this document, as well as others, the State Medical Board of Ohio does not support the draft language of the bill, nor does it desire to formally contract with a sole administrator of the 1-Bite rule. However, the Board understands the benefits of a more trusting, collaborative working relationship with OPHP, clinician associations, treatment providers, employers, and the legislature, to address this critical issue. It also recognizes the need for all parties to gain a more comprehensive understanding of the number of impaired Medical Board licensees, and the specific treatment requirements that are required for their recovery. The suggested alternatives above will provide a framework for the Board and the parties involved in this issue to reach our common goals. It is the Board's sincere hope that, over time, this approach will enhance the 1-Bite rule and encourage more licensees to seek treatment for their disease.

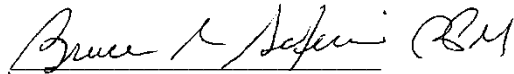
Respectfully,



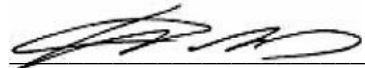
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