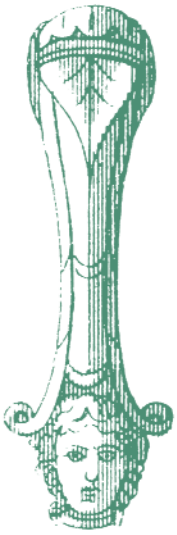

Public Members: The Voice of the Public

What distinguishes the "consumer perspective"… for consumer or citizen representatives serving on regulatory, advisory or planning bodies? The consumer perspective consists of a commitment to fundamental consumer rights and a dedication to participating responsibly and effectively as a consumer representative on a board or panel, truly representing the views of the user—the consumer.

These words were written by presidential consumer advisor Esther Peterson in 1981, and they still express the main rationale behind including nonphysician members on state medical boards. They undoubtedly enhance the credibility of boards with the general public. In fact, without this kind of consumer representation, all-physician boards can easily start to look like foxes watching the henhouse. More importantly, though, public members know what it's like to be on the outside looking in at the health care system. As a result, they can speak for the patient perspective in a way physicians really can't. In addition, they may bring to the table other valuable, nonmedical expertise. For example, an attorney may have a deep understanding of the legal process that most physicians simply don't have.

At times, this difference in perspective can change the whole course of a board discussion. Consider the following example from Joseph Leming, MD, immediate past president of the Virginia Board of Medicine. While the example is hypothetical, Leming says similar situations actually came up during his tenure:

> A gastroenterologist was diverting painkillers intended for patients having endoscopic procedures. This doctor was keeping half of the medication for himself and giving his patients the other half. At first, the physicians on the board felt that, although the doctor certainly had made a mistake, it wasn't a terrible one. The patients still got some medication, and no one saw them writhing in pain, although some had to be remedicated several times. However, the public members were considerably more aghast. They could imagine what it felt like to be a patient who put trust in a doctor, only to have it betrayed. Rather than seeing the medication cup as half full, in this case, they were more likely to see it as half empty.
>
> *"When we started talking, it was often the nondoctors who pulled the board back to this planet called Earth," says Leming.*

He was so impressed that he helped lobby the legislature to increase the number of public member slots in Virginia from 2 on a 17-member board to 4 on an 18-member board, a change that went into effect in June 2001. A handful of other boards recently have added more public members as well. For example, Colorado went from 2 to 4, while North Dakota went from 1 to 2. Still, public members are a minority voice. Only in California, Michigan, and Rhode Island do they make up more than one third of their boards. A few patient advocacy groups, such as Washington, D.C.-based Public Citizen, have called for that proportion to be raised to at least one half. So far, however, most states have stayed closer to the model proposed by the Federation of State Medical Boards, which suggests that public members comprise one fourth of a board's membership.

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HENS WATCHING THE HENHOUSE

The whole notion of consumer representatives on state medical boards goes back to the late 1960s, when boards started to come under increased public scrutiny. The perception at the time was that too many boards were using their powers to limit competition and restrict advertising, which raised costs and reduced consumers' access to information that would help them shop around for the best care at the lowest price. At the same time, boards were paying relatively little attention to the quality-of-care issues that were foremost in consumers' minds. By adding public members to boards, it was thought they could help address these problems by acting as both watchdogs and advocates for the public interest.

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Today, public members still strive to fulfill those twin responsibilities.

> *"On any board, the number one goal is to protect the public—and who better to do that than a public member?" says Jayne McElfresh, a private investigator from Phoenix who sits on the Arizona Board of Osteopathic Examiners in Medicine and Surgery.*

Sometimes, it just helps to have someone who sees things through the eyes of a patient. Take cases where the chief complaint boils down to rudeness or insensitivity by a physician's staff. The physicians on the board might conclude that the medical care was satisfactory. Nevertheless, the patient might still be smarting from a careless rebuff by a receptionist or nurse. In such cases, a nonphysician may find it easier to empathize with the patient's anger, fear, and confusion. McElfresh says one of her public-minded ideas has been to have an entire staff attend a board meeting, so the importance of sensitivity to a patient's feelings could be reinforced from the top down.

As this example illustrates, public members often can inject a much-needed dose of common sense into discussions that otherwise might never rise above medical technicalities. Of course, some disciplinary cases really do revolve around technical details. But even then, being naïve on health care issues actually can be a strength, says Dennis O'Neill, MD, chairman of the Connecticut Medical Examining Board.

> *"It forces a board to distill the medical issues before it into readily understood concepts that even a medically uninformed but intelligent layperson can understand," he says.*

In very technical cases, nonphysician members may indeed have to lean heavily on the knowledge of physician members and outside consultants. However, O'Neill points out that even physician members may need support for cases outside their specialty.

> *"I'm a pathologist," he says. "If someone is arguing a neurosurgery case, for example, my personal expertise will only take me so far. Granted, it will take me farther than a public member. But at some point, I, too, will need to rely on an expert in the field."*

Sometimes, it just helps to have someone who sees things through the eyes of a patient.

NO MEDICAL EXPERIENCE NECESSARY

All physician members have been to medical school and practiced as physicians. Public members, on the other hand, have a much broader range of educational backgrounds and work experience. As a result, they may have some unique skills and insights to contribute. Consider these comments of public members from varied professions:

Bob Leivers, Presbyterian minister, Colorado:

> *"I think they were looking for someone who could offer input from a spiritual perspective on ethical issues. Maybe someone who could make the board members stop and think, 'Are we being fair to this person and to the public?' We refer to it as looking at things with grace."*

Arne Rosencrantz, furniture store owner, Nevada:

> *"Physicians just don't see the same things as a business person, who is used to not only working with employees and staff, but also dealing with customers and public relations. One of the things we accomplished while I was on the board was to institute public service announcements telling people how they could find out information about their doctors."*

Thea Graves Pellman, accounting software company owner, New York:

> *"I think public members are a big asset when it comes to fraud cases. I took accounting in college, and I can read a bottom line. In these cases, physician members may even defer to public members who have some kind of business expertise."*

Most observers say there are more similarities than differences in the way public members and physician members tend to vote on disciplinary matters. That really isn't surprising, since both groups have the same overriding goal.

Jayne McElfresh, private investigator, Arizona:

> *"As a professional investigator, I know it's critical for the investigation process to be completely neutral, with no bias shown in the direction of either party. The same is true when you're investigating physicians who have had complaints filed against them."*

Cedric Rucker, college dean, Virginia:

> *"I learned very quickly—and I say this to my students in the classroom—that there's no such thing as a stupid question. If there's something I don't understand, I ask for an explanation."*

Howard Goodkind, retired publisher, Connecticut:

> *"I'm 77 years old. As a public member, I draw upon a lifetime of experience."*

One gauge of just how much these varied skills are valued is the fact that many public members assume leadership roles on their boards. Occasionally, public members have even been elected to serve as president.

"I was the first nonphysician president ever in this state," says Rosencrantz, whose term on the Nevada State Board of Medical Examiners ended in June 2001. "I always was pretty open about expressing myself. I think the physicians on the board listened to me and regarded my ideas as important."

SAME DESTINATION, DIFFERENT PATHS

We're all interested in making sure that individuals who are licensed by this board are doing what they're charged with doing in a manner that lives up to the oath they pledged to uphold and the expertise they're expected to possess.

Most observers say there are more similarities than differences in the way public members and physician members tend to vote on disciplinary matters. That really isn't surprising, since both groups have the same overriding goal.

> *"I think ultimately we all have the same concerns," says Rucker, who is now in his third year as a public member on the Virginia board. "We're all interested in making sure that individuals who are licensed by this board are doing what they're charged with doing in a manner that lives up to the oath they pledged to uphold and the expertise they're expected to possess."*

But while the final decision is often the same, the process of getting there may be quite different. Physician members tend to ask relatively narrow questions about clinical specifics. Public members, on the other hand, may focus on broader issues in the doctor-patient relationship.

As an example, Susan Miller, program administrator at the Colorado State Board of Medical Examiners, cites a recent case involving a woman who had suffered a miscarriage. The woman went to her doctor when she first started having light bleeding, and the doctor took all the right steps from a strictly medical viewpoint.

"However, what was missing was any grasp of what this woman was going through emotionally," says Miller.

Among other things, the woman, from a rural community, wound up being admitted to a Denver hospital, which only made her feel more frightened and abandoned. From the complaint letter, it was obvious that she was still quite distraught. When the board panel looked at the complaint, the physician members immediately honed in on the medical aspects and concluded that the doctor had acted appropriately. It was the public members who pointed out that while the medical care may have been fine, the doctor's communication and sensitivity were notably lacking.

"It wasn't a case that resulted in disciplinary action," says Miller. "However, in Colorado, we have the ability to send out confidential letters of concern, and the board sent a very detailed letter to this physician outlining its concerns about his failure to appreciate his patient's feelings."

The differences in perspective may show up not only in disciplinary matters, but also in licensing issues. One study, presented in preliminary form at the 1997 annual meeting of the American Political Science Association, found a link between the presence of public members on boards from 1986 to 1993 and the existence of licensing requirements with a strong educational component.

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"We argue that public members support licensing requirements that are clearly related to quality control and improvement," says Andreas Broscheid, Ph.D., the study's lead author, now a researcher at the Max Planck Institute for the Study of Societies in Germany. "On the other hand, they tend not to support requirements that are more likely to be simple market restrictions."

For example, the study found that boards with public members were less likely to require interviews.

"Interviews are a problematic means of quality control, since it's difficult to establish and monitor the criteria applied," he said.

He believes that public members are apt to prefer more reliable, objective criteria.

TALKING THE TALK, WALKING THE WALK

While public members can be highly effective advocates, fulfilling that role isn't always easy. Between the medical jargon and the legal procedures, the learning curve at the outset can be pretty intimidating.

"I have a history background," says Leivers, who has served on the Colorado board for a year-and-a-half. "At first, I was totally lost."

Between the medical jargon and the legal procedures, the learning curve at the outset can be pretty intimidating.

His solution was to take an 8-week, noncredit course in basic medical terminology and procedures at the University of Colorado. In addition, Leivers says the orientation provided by the board to new members was very helpful. The daylong session included presentations by representatives of several different organizations, including the attorney general's office and a local physician assessment program.

"By the end of the day, my brain was full, but I had a good overview of the process, and I left with a fat notebook to take home and study," says Leivers.

One resource that many boards find useful is the Citizen Advocacy Center (CAC) in Washington, D.C., a nonprofit training and support program for public members serving on all kinds of health care regulatory and advisory bodies. The program aims to maximize the effectiveness of public members through publications, training sessions, and national meetings. In 2001, public members from 27 states participated in CAC activities. In addition, any public member can call the program and get information about an issue he or she is facing at no charge.

None of the public members interviewed for this article felt that condescension on the part of physician members was a problem on their board. In fact, several lauded the physicians for their willingness to hear an outsider viewpoint. Truth be told, a bigger danger may be overidentification by the public members with the physicians they come to know as colleagues and friends.

> *"I call it suborning of the public member," says Pellman, who joined the New York State Board for Professional Medical Conduct in 1987 after a stint on the state pharmacy board. "It's easy to start thinking like the professionals. Before long, some public members are afraid to criticize or offer a suggestion that goes against the norm, because they're going to be having lunch with these guys."*

Truth be told, a bigger danger may be overidentification by the public members with the physicians they come to know as colleagues and friends.

Of course, that defeats the whole purpose of having nonprofessionals on the board. Pellman says public members must be independent thinkers who never lose sight of their unique mission.

PUBLIC SERVICE, PRIVATE INTERESTS

What other qualities should the ideal public member possess? A 1993 CAC survey of 79 public members on health licensing boards in 37 states addressed that very question. Fully 99% of these respondents rated communication skills as very important or important. Other highly rated characteristics included decision-making skills (94%), leadership ability (85%), and a record of public service (81%). In addition, almost two-thirds believed there should be a minimum educational requirement for public members, with most of those taking the position that at least some college should be required.

To this list, Miller would add intelligence.

> *"When you're dealing with such an intellectually gifted profession, you need to have public members who can keep up."*

McElfresh would add passion:

> *"You have to really care about the issues and be willing to speak up for what you believe."*

Rucker singles out responsibility:

> *"You need to take your position seriously, because you're dealing with the health and general welfare of the citizens in your state."*

And Leivers says public members must be prepared to work hard:

> *"It might help to be a speed reader," he says, with tongue only partly in cheek.*

In fact, time is a crucial consideration, with public members estimating they spend 10 to 40 hours or more per month on reading, going to meetings, and dealing with other board matters.

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Finally, public members must, by definition, come from outside the medical profession. The states vary in how they construe this requirement, however. Colorado law merely states that public members must hail from "the public at large" and "have no financial or professional association with the medical profession." Nevada law, in contrast, specifies that public members must be individuals who "have resided in this state for at least 5 years," "are not licensed in any state to practice any healing art," "are not actively engaged in the administration of any facility for the dependent…, medical facility or medical

school," and "do not have a pecuniary interest in any matter pertaining to the healing arts, except as a patient or potential patient." The wording is a balancing act aimed at including qualified candidates while excluding people who have obvious conflicts of interest or who are so closely allied with the medical profession as to be nearly indistinguishable from physician members.

WANTED: EFFECTIVE PUBLIC MEMBERS

The problem remains of where to find such paragons of financially disinterested public-mindedness. The difficulty is attested to by a number of public member slots around the country that are unfilled. It also is evidenced by the appointments that didn't work out. Throughout the years, most public members have been conscientious, but some have been lax about participating in training, doing the necessary reading, or even showing up for meetings. Others have made a valiant effort, but have simply been overwhelmed by the physicians on their board or the medical and legal complexities of their task. To avoid such failures, it helps to identify individuals who have not only the right set of skills and qualifications, but also a past track record of honoring commitments. Prior experience on another board is an added bonus, since it may indicate that the person has already learned how to get things accomplished in a board situation, deal with the press, and work with the legislature. Voluntary health organizations and other community groups often can suggest promising candidates.

The payoff is a better-rounded board that more accurately represents the views of the public it aims to protect.

> *"To me, public members truly are the voice of the public," says O'Neill. "I view their role as absolutely crucial."*