Lessons From California's Discipline of a Popular Physician for Vaccination Exemptions Without Medical Cause

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In June 2018, the Medical Board of California (the "Board") placed an American Academy of Pediatrics fellow and leading vaccine skeptic, Robert "Dr. Bob" Sears, MD, on 35 months' probation for substandard care when writing a medical report exempting a 2-year-old boy from all childhood vaccinations.[1] The Board's action represents a novel and important development in how states protect the public's health from vaccine-preventable illnesses. It also reveals concerns about how families, in conjunction with accommodating physicians, could exploit weaknesses in vaccination exemption policies , even if, like California, a state only permits exemption on medical (as opposed to broader religious or philosophical) grounds.

The Sears Case

Sears is a popular and highly visible California pediatrician famous for inventing the "alternative vaccine schedule." In April 2014, Sears saw a two-year old for a check-up. The boy's mother told Sears that, following previous vaccinations, the boy was unable to defecate or urinate for twenty-four hours, and that the boy went limp "like a ragdoll." Sears wrote the boy a medical exemption from all future vaccinations, stating the boy's "kidney and intestine shut down" and the boy had a "severe encephalitis reaction" caused by his previous vaccinations. Based in part on Sears' clinical approach to assessing a patient's eligibility for a medical exemption, the Board's Executive Director brought a complaint against Sears, accusing him of gross negligence, repeated negligent acts in his care for a patient, and failure to maintain appropriate records.

In settling his case with the board, Sears agreed with the Board charges, stipulating the board "could establish a factual basis for the charges in the Accusation." Under the settlement agreement, Sears can continue practicing medicine, but will be required to take an ethics class,

40 hours of medical education courses a year, and be monitored by a fellow physician. He also must notify all hospital and medical facilities where he practices of the order, and is not allowed to supervise physician assistants or nurse practitioners.

Professional Responsibility and Disciplinary Board Activity

The Board, by taking disciplinary action against Sears on these grounds, is appropriately arguing that the acts taken while completing a medical exemption request constitute the practice of medicine, requiring that standards of care be upheld and evidence-based recommendations concerning immunizations be offered to patients. Recent Board activity indicates this will be an area of interest of California's professional regulators; in addition to the complaint launching the Sears investigation, more than 50 other Board complaints have been filed in the past three years against physicians accused of improperly writing exemptions. The Board has investigated and closed roughly half of these complaints without taking disciplinary action, while the others are still pending. Furthermore, the Board's activity in this area reinforces its role as protector of the public's health, as clinical decisions concerning medical exemption affect the interests of not only the patient family receiving the exemption, but also the broader community. While the Sears case involves an individual patient, unchecked physicians catering to exemption-seeking families via profligate exemption writing could foster pockets of community vulnerability to infectious diseases.

However, reliance on state medical boards to regulate medical exemption practices is not an ideal oversight or public health approach. First, medical boards have no authority to reverse exemptions granted on improper grounds. Second, licensure board actions are resource-intensive and lengthy – four years passed between Sears' initial clinical encounter and the Board

settlement. Third, while there are a number of ways to trigger a Board investigation, including complaints from aggrieved parents (as in custody cases), concerned colleagues, schools, or even anonymous tips, licensure and disciplinary boards often must rely upon patient (in these cases, parental) cooperation to gain access to the underlying medical records needed to support a claim. Consequently, identifying outlier behaviors would rely upon disgruntled patients coming forward with complaints. If exemption-seeking families and exemption-granting physicians agree that the ends (an exemption) justifies the means (a medically dubious exemption diagnosis), complaints would not be lodged and the possibility of an exemption hot spot forming within the physician's patient pool increases. This Board action may set a public example and serve as a deterrent against substandard exemption-related practices, but on its own it is not an efficient way to patrol the medical exemption process.

A Better Approach to Controlling Medical Exemption Practices

In addition to retroactively disciplining practitioners for delivering substandard care, states have an array of additional, more prevention-focused options for structuring and regulating medical and nonmedical vaccination exemption practices. [2] One way is to permit review of the exemption request on both technical (was the form correctly completed and submitted?) and substantive (does the clinician offer medically valid evidence upon which to base a medical exemption request?) grounds.

A law that does not grant the state the authority to review an exemption's substance is at increased risk both for relatively high exemption rates and for allowing exemptions based on specious grounds. California's law is limited in this way, as is Washington's, which not only has

a perfunctory medical exemption process, but also allows health professionals with robust histories of vaccine skepticism, such as naturopaths, to complete exemption certificates.

By contrast, West Virginia, another state only permitting medically-indicated exemptions to school vaccination requirements, employs a licensed physician as the State Immunization Officer to review medical exemption request forms both for completeness (was the form properly filled out?) *and* substance. A medical exemption request will only be approved if the Immunization Officer determines the submitted medical evidence of a contraindication is consistent with the most recent professional guidance.[3]

The lack of preventive, substantive medical exemption review appears to foster higher exemption request and approval rates. In California, use of the medical exemption tripled in the year following implementation of California's law barring non-medical exemptions, after 20 years of stable medical exemption requests.[4] In the 2016-17 school year, the proportion of West Virginia children with medical exemptions was 67% smaller than in California and 200% less than in Washington.[5]

Conclusion

The Board's action against Sears should give pause to physicians advertising or facilitating exemption fulfillment, as such activity may invite regulatory scrutiny related to that provider's history-taking and diagnostic processes. While it may not convince the supporters of Sears and anti-vaccination advocates to accept scientifically-grounded vaccination standards, and the process through which California regulates medical exemption requests may be improved, this action is an important, high-profile step taken to protect the public's health. Through this public rebuke, the Board is tightening and strengthening California's vaccination law.

To improve oversight of medical exemptions (as well as nonmedical exemptions), providers and professional associations should encourage states to strengthen their vaccine exemption laws by including preventive, substantive review processes similar to West Virginia's, empowering state public health authorities to not merely ensure that medical exemption forms are submitted appropriately, but also to assess application content and reject those that fail to state valid, evidence-based exemption grounds. Should a pattern of behavior be uncovered, such as a provider persistently submitting inappropriate exemption requests, referral by the health department to the medical board for investigation and discipline might then be appropriate.

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