

Spring 2017



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From the Board Chair: A Note on Professionalism

Maroulla S. Gleaton, M.D.

Professionalism is the foundation of the physician contract primarily with the patient, but also with his or her medical colleagues. This foundation demands the fiduciary duty of putting the interests of the patient above those of the physician, maintaining standards of competency and integrity, and providing expert advice to society on matters of health. Trust is essential to this contract -- the patients trust in the physician, and the public's trust in the profession. We must remember that the public comprises patients of our colleagues, which makes us partly responsible for their professionalism, too, if we are to maintain the public's trust. (In relation to this point, see the article below on how the MPHP can help.)

We in the medical field are bombarded as never before with complicated political, legal, bureaucratic, technological, ethical, and market forces, which makes it all the more critical that we strengthen our commitment and uncompromising adherence to professionalism. Moreover, there are wide variations in medical practice through which the general principle

of professionalism may be expressed in both complex and subtle ways. Some elements of this principle, however, remain constant across a variety of expressions.

First and fundamentally, there is the fiduciary duty of serving the interests of the patient while keeping self-interest in check. This is a combination of altruism and a commitment to obtaining meaningful informed consent as the basis for trust in the physician-patient relationship. Physicians must be honest with their patients and empower them to make meaningfully informed decisions about their treatments. It is of at least equal importance that we make efforts to inspire patients to assume the responsibility, no matter how difficult, of taking better care of their own health. Physicians should also work actively to eliminate discrimination in this process, whether based on race, gender, socioeconomic status, ethnicity, religion, or any other social category.

In addition to honest, unbiased communication and comprehensive informed consent, professionalism requires a commitment to maintaining competency and to lifelong learning. We all need to stay current with scientific knowledge, on-going research, technology, and refinements in clinical practice.

We also need to be mindful of patient confidentiality and sensitivity in communications with patients and their designated loved ones. Haven't we all experienced that it is usually the parents who require more time and effort while treating their children? Professionalism also requires adherence to appropriate personal relations and boundaries with patients, given the inherent vulnerabilities and dependency of patients on their physicians. Unfortunately, the Board of Licensure in Medicine, more often than it would wish, has to step in demanding further education and monitoring of certain licensees in this area.

All of us need to work to improve quality of care through candid communication and collaboration with colleagues. When colleagues call for assistance with patient care, all too often these days there is a hands off or not my problem attitude rather than an open availability to help the colleague care for the patient. As more physicians experience burnout, this problem is intensified.

Finally, we must maintain a constant vigilance to manage conflict of interest. Medical professionals and their organizations have many opportunities to compromise their professional responsibility by pursuing private gain or personal advantage. We have to recognize and disclose conflicts of interest that arise in the course of professional activities, consistently referring to our fiduciary duty of putting patients interests ahead of our own.

In these ever more demanding times in health care, physicians must reaffirm their dedication to professionalism, which extends from their personal commitment to the welfare of each of

their patients, to assisting their colleagues, and to the collective effort of improving the overall health of our society.

Timothy E. Terranova, Assistant Executive Director, has been honored as the 2016 State of Maine Governors Manager of the Year for the Department of Professional and Financial Regulation

Dennis E. Smith, Esq., Executive Director

On Wednesday December 21, 2016, at the Blaine House, Governor Paul R. LePage presented Mr. Terranova with the 2016 State of Maine Governors Manager of the Year award for the Department of Professional and Financial Regulation (PFR) in recognition of his outstanding service to the State of Maine. PFR Commissioner Anne L. Head selected Mr. Terranova for this award based upon the unanimous recommendation of the entire staff of the Board of Licensure in Medicine. Commissioner Heads recognition included the following quote submitted by one of the Boards staff:

Tims service to the state and his contribution to our team is admirable. Through patience, calm demeanor, respectfulness, integrity, and knowledge, he provides, and leads our team in providing, the highest level of customer service. His regard for our team, the public, and his dedication to our agency is inspirational.

During the last year, Mr. Terranova implemented the following improvements to the Boards operations:

- Updating and managing the Boards new website.
- Revising and updating the jurisprudence exam and moving it online to the Boards website and integrating it into the license application/renewal process.
- Revising all of the paper licensing applications and working on the Uniform Application with the FSMB.

- Facilitating the conversion of the Boards newsletter from paper to electronic so that it could be emailed to licensees, and so the staff could analyze what articles are of most interest to licensees.
- Assuming primary responsibility for all Board financial issues and implementing improvements.
- Working with the agency licensing management system (ALMS) to implement changes to the database system required by changes in the new joint physician assistant rule.
- Updating the online license renewal process, and making it possible for applicants to print their own licenses.
- Office remodeling, which included obtaining input from the Board staff in the plans and designs, coordinating with property management, DAFS (division of leased space), and the various contractors who planned and performed the remodeling. The result of this process is that all Board staff now have offices, which has had a very positive impact on morale and communication.
- Interviewing, hiring, equipping, and training new Board staff, including a new investigative secretary in the complaints section and a new medical director. Tim was also very involved in the training and orientation of the new staff, ensuring a smooth transition for them.
- Re-implementing weekly staff meetings. This led to better communication and relationships among staff, who uniformly describe Tim as someone they trust and respect.

Mr. Terranova is also a leader outside of his work with the Board, and shows his dedication to his community and family by:

- Coaching soccer.
- Being a coach and a district coordinator for Destination Imagination (for the past 8 years).
- Being the Chair of the Board of Trustees for his local library (and serving on the Board for 16 years).
- Teaching Sunday School.
- Hiking the Appalachian Trail with his daughter Emily.

The Board, Board staff, and the State of Maine are extremely fortunate to have the services of such a talented and dedicated public servant as Mr. Terranova.

How the Medical Professionals Health Program (MPHP) Helps

Lani Graham, M.D., MPH, Director
Maine Professionals Health Program

Medical practice in today's world sometimes seems more like an endurance contest than a satisfying profession. Practice satisfaction is at an all-time low and productivity requirements at an all-time high. Many medical professionals go through each day trying to pack in as much service as possible while at the same time suppressing any feelings of depression, anxiety, exhaustion, anger, or frustration. Your own sick child, a parent with Alzheimers, a troubled spouse are sometimes set aside while the life and death work of medicine goes on.

Patients may get sicker and die despite your efforts, but there appears to be no time to process that. You may experience a colleague behaving disrespectfully toward you or others. Or you yourself are saying and doing things that seem foreign to your values. A point may be reached where quitting medical practice or turning to the regular use of some mind-numbing substance appears to be the only solution. If you read this and think of yourself or another medical professional (physician, nurse, PA, pharmacist, dental professional) MPHP can be the first helping hand for you or your colleague.

We know that a number of this newsletter's readers are currently struggling with a substance use disorder, and we know that you have likely already tried (possibly many times) to "get it under control." However, despite your considerable intelligence, inner strength, and self-reliance, you've noticed that you always end up back in the same place. This is not your fault; you are dealing with an illness not a character flaw or a deficient lifestyle. And based on our considerable experience, we can state with certainty that this illness always gets worse -- not better -- until you confront it head on. The truth is, there is nothing unusual or shameful about your illness, and while you are not defined by the challenge you're facing, you are defined by how you deal with it.

So please -- don't wait until the inevitable professional, legal, and personal consequences force you to address the problem. We're here to help you break the vicious cycle, and **your self-referral will be kept in the strictest confidence**. With an 85-90% success rate, it is almost certain that we can help you get your life back on track before the negative consequences start piling up. It is this recovery success rate that makes being monitored by MPHP so personally worthwhile, and professionally wise in protecting your license.

MPHP is the only agency in the state that can support, monitor and advocate for medical professionals who must learn to live successfully with these poorly understood illnesses. Although MPHP gets much needed financial support from the Board, we are not under the direction of the Board and a significant number of the physicians who have sought assistance from the MPHP are unknown to the Board. Help offered may be as simple as finding a therapist who can provide confidential service and has experience working with medical professionals. Or, if needed, MPHP can help arrange for evaluation or treatment in an out of state hospital where the staff and services can be matched with the needs of the professional.

At this time, MPHP is ready to help those who may be suffering with burn-out as well as those who may have a substance use disorder (SUD). Unless MPHP has reason to believe that patient care is at risk, no reports to the Board are made. And if there is no need for on-going treatment or monitoring, the connection with MPHP may end in days or weeks.

When required, monitoring may be as brief as a few months or as long as five years. And if you are diagnosed with an SUD, being in MPHP as a voluntary participant can make the difference between simply getting well without any blemish on your record, or being subject to a Consent Agreement devised by the Board, which requires monitoring and reporting to the National Practitioner Data Bank.

The work we do is helping to improve and sometimes even save lives, but we need the assistance of all medical professionals to ensure that intervention takes place as early as possible after problems surface.

To learn more about the MPHP, please visit our website at www.mainemphp.org or call us at (207)623-9266.

How the Complaint Process Works

Licensees who have complaints filed against them frequently ask why the Board wastes its time investigating obviously frivolous complaints. While it is important to remember that most complaints are not frivolous to those making them, there is a very simple answer: the law requires the Board to review all complaints. M.R.S.A. 32 3282-A states, The board shall investigate a complaint, on its own motion or upon receipt of a written complaint filed with the board, regarding noncompliance with or violation of this chapter or any rules adopted by the board.

The Board understands that receiving notice of a complaint can be stressful and unsettling. It tries to make the process as simple and efficient as possible; however, if you have questions, please contact the Board office. Although staff cannot give you legal advice, or write your responses for you, they can answer questions about the process, summarized below.

Upon receipt of a complaint the Board has sixty (60) days to notify the licensee of the complaint. The complaint notice, which will arrive as restricted delivery certified mail, will include the complaint, a request for additional information, a *Guide to the Complaint Process*, and a thirty (30) day due date. It is important that you read the complaint and notice carefully. Try to answer all of the concerns in the complaint and make sure you provide all the requested information. If you cannot complete your response in time, let Board staff know as soon as possible. Staff may grant an extension when necessary.

The response you provide the Board will be shared with the complainant for rebuttal. This is important to remember. Your response should be professional and respectful. Once Board staff has gathered all the information (the complaint, response, rebuttal, records, and any other appropriate material), the Board will review the complaint file at its monthly meeting. The Board tries to review cases within four (4) weeks of receiving your response; however, depending on when your response is received, it may take a little longer.

You are welcome to attend the meeting and listen to the Board discuss the complaint file. While you are welcome to listen, you may not address the Board or interact with individual Board members. If you would like to attend the meeting, please let Board staff know at least two (2) weeks in advance.

Following its review of the file, the Board may dismiss the case, dismiss with a letter of guidance, order further investigation, order an informal conference, or order an adjudicatory hearing. You will be notified in writing of the outcome of the review. If your complaint is dismissed, please keep a copy of the dismissal letter in a safe place. The Board destroys dismissed complaint files and may not be able to provide you a copy of the dismissal letter should you need it in the future.

If the Board orders further investigation it will finish the investigation as quickly as possible, but it may take several months. If the Board orders an informal conference you may wish to consult an attorney. The attorney will not engage the Board during the conference, but could offer you support and advice. If the Board orders an adjudicatory hearing the Board strongly recommends you consult an attorney.

Except for an emergency regarding public safety, the Board cannot take an adverse action at the end of its initial review of a complaint. In order to take an adverse action the Board must hold an adjudicatory hearing or enter into a consent agreement with the licensee.

We are often asked how licensees can avoid getting complaints. Since many of the complaints reviewed by the Board involve some form of poor communication, a good way of lowering the risk of getting a complaint is through good listening, clear explanations, and respect. You may also find helpful information on the Boards website, www.maine.gov/md which lists adverse actions by year.

Adverse Actions

Clemetson, Charles, D., M.D., License# MD13808

Date: February 15, 2017

Action: Decision and Order Warning, partial costs of hearing up to \$1,000, and extension of probation for five (5) years with conditions including: prohibition on opening or operating a private medical practice; practice location approved by the Board and with at least one other psychiatrist approved by the Board; and a Board-approved practice monitor.

Basis: Non-compliance with previous Board Decision and Order and conditions of probation.

Peddie, Harry M., M.D., License# MD 5232

Date: February 14, 2017

Action: Summary Partial 30-Day License Suspension (Adjudicatory Hearing March 14, 2017).

Basis: Improperly obtaining controlled substances through a medical supply company for his own use; inconsistent explanations regarding his use and method of obtaining controlled substances; and failure to disclose to the Board during its investigation that his current medical practice included prescribing controlled substances. The continued ability to prescribe controlled substances represented an immediate jeopardy to the public.

Brewster, Steven, J., M.D., License# MD 20328

Date: February 14, 2017

Action: Consent Agreement Reprimand and \$500 civil penalty.

Basis: Violating Board rules requiring that physicians have a registered relationship with the physician assistants they supervise on file with the Board prior to allowing them to render any medical services.

Bote, Herbert O., M.D., License# MD14858

Date: January 10, 2017

Action: Consent Agreement - Compliance with the Alaska consent agreement, including the presence of a chaperone for all visits with female patients and a psychiatric evaluation by a Board approved provider prior to practicing medicine in the State of Maine or treating any

patients located in Maine.

Basis: Unprofessional conduct and discipline in another state (Alaska).

Tangney, Patrick J., M.D., License# MD13411

Date: December 13, 2016

Action: Consent Agreement - Censure and \$1,500 civil penalty.

Basis: Unprofessional conduct related to prescription errors.

Sabean, Joel A., M.D., License# MD9008

Date: December 13, 2016

Action: Consent Agreement - Probation for the sole purpose of winding down and closing his medical practice and transferring patient care. During the probation he is prohibited from accepting new patients and prescribing or dispensing controlled substances. In addition, upon being sentenced on any charge in a federal criminal case involving guilty verdicts on 5 counts of tax evasion, 52 counts of unlawful distribution of controlled substances, and 1 count of health care fraud, Dr. Sabean will immediately surrender his medical license.

Basis: Criminal convictions, unprofessional conduct, and the practice of fraud, deceit or misrepresentation in connection with a service rendered within the scope of the medical license.

Canham, Timothy P., P.A., License# PA550

Date: December 13, 2016

Action: Consent Agreement - Reprimand and \$500 civil penalty.

Basis: Violation of Board rules related to the failure to properly register and notify the Board of a change in his supervising physician.

Introduction to Staff

Elena Crowley, Licensing Specialist

Elena began working for the State of Maine in 2000. She was recently hired with the Board of Licensure as a licensing specialist. She is responsible for all aspects of licensing and renewals. Elena lives locally with her husband of 33 years. She has two children and four grandchildren. She enjoys spending time with her grandchildren, road trips, Nascar, and photography. Elena can be reached at Elena.I.Crowley@maine.gov and by phone 207-287-3782.

Opioid Issues

1. **Maine Overdose Deaths Up 40% in 2016.** According to the Maine Attorney Generals Office, 378 Mainers died from drug overdoses in 2016, an increase of 40% from 2015. According to the Attorney Generals Office, opiates, including Heroin and Fentanyl, caused 313 of the deaths.

2. **Reminder to check the Prescription Monitoring Program (PMP).** Effective January 1, 2017, all prescribers are required to check the PMP upon initial prescription of a benzodiazepine or an opioid medication and every 90 days for as long as that prescription is renewed.

3. **CME Required for All Prescribers of Opiates.** All persons who prescribe opiates are required to complete 3 hours of CME regarding prescription of opioid medication **by December 31, 2017** and then every 2 years thereafter as a condition of prescribing opioid medication. Licensees who complete 3 hours of AMA PRA Category 1 CME in this content specific area between April 19, 2016 and December 31, 2017, will be deemed to have satisfied this new CME requirement. In addition, DATA 2000 Waiver Training as described by the Substance Abuse and Mental Health Services Administration (SAMSHA) may be counted toward meeting the requirement of this law as long as the training is approved Category 1 Continuing Medical Education by the American Medical Association Council on Medical Education (AMA).

4. **Medication Assisted Treatment (MAT).** Physicians and physician assistants seeking to provide MAT (i.e., buprenorphine) to treat opioid addiction may apply for a DATA 2000 Waiver through the Substance Abuse Mental Health Service Administration (SAMSA). More information regarding the DATA 2000 Waiver can be found on SAMSAs website: <https://www.samhsa.gov/medication-assisted-treatment/buprenorphine-waiver-management>

Update on Controlled Substance Prescribing

Peg Duhamel, M.D., BOLIM Medical Director

PUBLIC Law Chapter 488, An Act to Prevent Opioid Abuse by Strengthening the Controlled substance Prescription Monitoring Program, has been in effect since July 29, 2016. On January 01, 2017, DHHS issued new emergency major substantive and routine technical rules (see Resources below) which took effect immediately, but were then opened for public comment and hearing, so there may be some changes and clarifications coming in the near future.

Highlights of the emergency rules that are important for physicians, physician assistants, and nurse practitioners are listed below. All clinicians are encouraged to read the full text of the emergency rules.

- New definitions have been added.
- Prescribers must put their DEA number on all controlled substance prescriptions.
- Prescribers must put an ICD-10 code on any opioid prescription that causes the patient to exceed the 100 MME aggregate daily dose limit.
- If an exemption to the 100 MME daily dose limit is being claimed, the applicable exemption code must be written on the prescription. Exemption codes A- G are found on pages 7-8 of the rule.
- Exemptions to the 100 MME aggregate daily dosing limit are listed on pages 12-13 of the rule. Added exemptions are for:
 - Medication-Assisted Treatment for substance use disorder for up to 12 months;
 - Pregnancy;
 - Patients undergoing an active taper of up to six months;
 - New onset or post-operative acute pain in a chronic pain patient. The seven-day limit for prescriptions applies.
- All prescribers are required to register as data requesters with the Maine PMP.
- In order to fulfill the requirement to check the PMP, specific information must be reviewed by prescribers. Details are on page 10 of the rule.
- Section 7, page 13 of the rule, gives details about who has access to the PMP information.
- Standards for immunity from liability for disclosure of information are established.

As of July 1, 2017, all controlled substance prescriptions must be sent electronically unless an exemption is granted. Applications for exemptions are expected to be available through DHHS in April 2017.

DHHS will be verifying and or auditing prescriber compliance with the opioid prescribing rules, and will in turn report licensees to the appropriate licensure board for review beginning March 1, 2017. DHHS will be imposing civil penalties for failure to comply with the law/rules beginning October 1, 2017.

Patients who are currently over the 100 MME daily dose limit, who do not meet criteria for exemption, must be tapered below 100 MME by July 1, 2017. Exemption G in the emergency rules is not intended to apply to patients whose prescriber postponed the start of tapering for too long. It is intended for patients who come from out of state on high doses of opioids, or who previously met criteria for exemption, but no longer do.

The Maine Medical Association (MMA) has submitted comments to DHHS on several of the emergency rules and is anticipating some changes or clarifications. The most significant of their proposals is for another exemption to the 100 MME dosing limit for failed taper. The exemption proposed by the MMA would be allowed when the prescriber documents the patient's functional decline during the taper, failed trials of alternative treatments, and appropriate compliance with opioid risk assessment monitoring. Prescribers should monitor the on-going DHHS rule making regarding this issue.

BOLIM, along with other Boards, is in the process of re-writing Chapter 21 Rules on Prescribing Controlled Substances for the Treatment of Chronic Pain. Licensees are encouraged to check the BOLIM website regularly for the announcement of a public comment period for the newly proposed rules. Please contact us with comments or questions during that open comment period.

New PMP Aware

By now everyone who prescribes controlled substances should be aware that the Maine PMP upgrade became available 12/20/16. All prescribers are required to register as data requesters at the new website (below). An archived podcast from Maine Quality Counts on how to use the new PMP is available at <http://www.podcastchart.com/podcasts/maine-quality-counts-podcast/episodes/get-to-know-the-new-pmp-an-orientation-to-maine-s-updated-prescription-monitoring-program>

Resources:

Emergency rules, 14-118 Chapter 11:

www.maine.gov/sos/cec/rules/14/118/118c011.docx

Chapter 488:

https://legislature.maine.gov/legis/bills/bills_127th/chapters/PUBLIC488.asp

Prescription Monitoring Program:

<https://maine.pmpaware.net/login>

MMA:

<https://www.mainemed.com/publications-resources/maine-medicine-newsletter>

Safe and Compassionate Tapering of Opioids and Alternative Treatments for Chronic Pain

Peg Duhamel, M.D., BOLIM Medical Director

Since PUBLIC Law Chapter 488 went into effect last summer, the Board has received complaints from patients that their doctor is reducing the dose of their opioid medication too quickly or doing so without discussing a plan. Patients are sometimes feeling stigmatized or disrespected.

Many patients may be reluctant to begin a taper due to fears of worsening pain, reduced physical function or withdrawal symptoms. Exploring a patient's anxieties in a non-judgmental way should help strengthen the therapeutic relationship and help patients have realistic expectations and better outcomes. The approach to, and the rate of the taper must be individualized to the patient and according to how they respond. Patients should be seen or contacted regularly during the taper.

Resources for how to taper opioids safely and compassionately are listed below. The Washington State Agency Medical Directors Group Interagency Guidelines on Prescribing Opioids for Pain also is an excellent source of information for most aspects of opioid prescribing.

The reduction of, or termination of opioid therapy should not mark the end of pain treatment or the doctor-patient relationship. Referrals can be considered for patients who have not fully explored the usual alternatives, such as physical therapy, chiropractic or osteopathic manipulation, pain clinic referrals for nerve blocks or steroid injections, spinal cord stimulation or nerve ablation. The use of non-opioid medications such as neuroleptics, tricyclics, SNRIs, topical lidocaine etc., or medical marijuana should be considered. Promising research in endomorphin analogs may provide more alternatives in the future.

Alternative treatments may also include, acupuncture, yoga, tai chi, mindfulness based stress reduction, massage and biofeedback. Instruction in yoga, tai chi and mbsr may be available on line for patients in remote areas or with limited financial resources.

Psychiatric referrals for cognitive behavioral therapy or acceptance and commitment therapy, as well as treatment for depression and anxiety may benefit many patients.

Psychiatric referrals for pain catastrophizers may be beneficial in dealing with current pain as well as helping to reduce the potential for future chronic pain. For more on alternative treatments see (<http://med.stanford.edu/news/all-news/one-to-one/2016/beth-darnall-on-opioid-free-pain-relief.html>).

During a taper, challenging patient behavior has led to abrupt discharge from some medical practices. Disruptive or aberrant behavior may help identify patients who may have an opioid use disorder. Efforts to preserve a therapeutic relationship by encouraging patients to participate in appropriate care from addiction specialists, behavioral health therapists, and/or office based medication assisted treatment with buprenorphine, is evidence based to improve outcomes.

Resources:

<http://www.agencymeddirectors.wa.gov/Files/2015AMDGOpioidGuideline.pdf> (see pages 36-41)

<https://www.mainequalitycounts.org/articles/142-1561/mat-and-compassionate-buprenorphine/2> (this is an archived webinar)

https://www.cdc.gov/drugoverdose/pdf/clinical_pocket_guide_tapering-a.pdf

License Renewal Survey

The Board of Medicine is teaming up with the Office of Rural Health and Primary Care to obtain additional workforce data from our licensees. Using a grant from the US Department of Health and Human Services, the Board and the Office of Rural Health are developing a short survey to be taken at the time of renewal. The survey will ask questions about where you work, how many hours you spend practicing clinical medicine, approximate time to schedule an appointment, and your MaineCare/Sliding Fee Scale caseload. The Board is using information already normally collected during the renewal process to keep the survey as short as possible.

The information received helps determine the amount of federal assistance each area in Maine receives. Currently, the surveys are mailed out by the Office of Rural Health. Those surveys not received back must be counted as practicing full time clinical medicine. This results in some areas receiving less assistance than they would otherwise qualify to receive. By making the survey a mandatory part of the renewal, both the Board and the Office of Rural Health expect significantly better data.

The Board expects to have the survey up and running in April.

License and Registration Reminders

Attention Physicians and Physician Assistants! Updating your contact information with the Board can save you time and money. Important Board documents (license renewal notifications, complaint notifications, electronic newsletters, licenses) are sent to the last address (mailing/email) you provide to the Board. Failure to update your contact information can result in your not receiving these important notifications, which may have an impact upon your license. You can review and update your contact information online anytime by visiting the Boards website: <http://www.maine.gov/md/online-services/services.html>.

Attention Physician Assistants! It is your responsibility to ensure that your license application and registration are properly filed with the Board and that you have both a license and registration prior to rendering any medical services in the State of Maine. Physician assistants who do not ensure that they have both a license and registration face possible disciplinary action and sanction by the Board. For information regarding physician assistant licensure and registration, visit the Boards website: <http://www.maine.gov/md/licensure/physician-assistants.html>.

Attention Physicians! Physicians who do not ensure that their physician assistants have both a license and registration also face possible disciplinary action and sanction by the Board.

Editor-in-Chief David Nyberg, Ph.D. Graphic Design Ann Casady