



MEDICAL BOARD OF CALIFORNIA

EXECUTIVE OFFICE
1434 Howe Avenue, Suite 92
Sacramento, CA 95825-3236
(916) 263-2389 FAX (916) 263-2387
www.mbc.ca.gov



MEMBERS OF THE DIVISION

- Cesar A. Aristeiguieta, M.D.,
President*
- Barbara Yaroslavsky,
Vice President*
- Stephen R. Corday, M.D.,
Secretary*
- Steve Alexander*
- John Chin, M.D.*
- Dorene Dominguez*
- Shelton Duruisseau, Ph.D.*
- Reginald Low, M.D.*
- Mary L. Moran, M.D.*
- Ronald L. Moy, M.D.*
- Janet Salomonson, M.D.*
- Ronald H. Wender, M.D.*
- Frank V. Zerunyan*

**DIVISION OF MEDICAL QUALITY
QUARTERLY MEETING**

April 26 - 27, 2007

**Sacramento Convention Center
1400 "J" Street
Room 306 & 307
Sacramento, CA 95814**

*Action may be taken on any
items listed on the agenda*

AGENDA

ALL TIMES ARE APPROXIMATE AND SUBJECT TO CHANGE

PANEL A: Dr. Aristeiguieta, Chair, Mr. Alexander, Dr. Chin, Dr. Duruisseau, Ph.D., Dr. Low & Dr. Moran

ROOM 307

April 26, 2007

8:30 a.m. OPEN SESSION

CALL TO ORDER; ROLL CALL

***CLOSED SESSION**

- 1. Deliberation on disciplinary matters, including decisions and stipulations.

OPEN SESSION

Adjournment

The mission of the Medical Board of California is to protect healthcare consumers through the proper licensing and regulation of physicians and surgeons and certain allied healthcare professions and through the vigorous, objective enforcement of the Medical Practice Act.

PANEL B: Ms. Yaroslavsky, Chair, Dr. Corday, Dr. Moy, Dr. Salmonson, Dr. Wender & Mr. Zerunyan

ROOM 306

April 26, 2007

8:30 a.m. OPEN SESSION

CALL TO ORDER; ROLL CALL

***CLOSED SESSION**

2. Deliberation on disciplinary matters, including decisions and stipulations.

OPEN SESSION

Adjournment

**The Division and/or Panel of the Division will convene in Closed Session, as authorized by Government Code Section 11126(c)(3), to deliberate on disciplinary decisions and stipulations.*

*For additional information, call A. Renee Threadgill, Chief of Enforcement, at (916) 263-2389.
Listed times are approximate and may be changed at the discretion of the President/Chair.*

ROOM 307

Friday, April 27, 2007

8:00 a.m. OPEN SESSION

1. CALL TO ORDER; ROLL CALL
2. Approval of Orders Restoring License Following Successful Completion of Probation, Orders Issuing Public Letter of Reprimand, and Orders for License Surrender During Probation.
3. Approval of the February 2, 2007 Minutes
4. Legislation and Regulation Update (For Items A and B, refer to legislative packet and regulation matrix.)
 - A. 2007 Legislation
 - B. Status of Regulatory Action
5. Diversion Program Report (Valine)
 - A. Program Status
 - B. Diversion Advisory Council Appointments
 - C. DEC Member Appointment
6. Division Chief's Report (Threadgill)
 - A. Medical Expert Program Survey
 - B. Vertical Enforcement Update/Progress Report (Ramirez)
7. Discussion Regarding Review of Federal and California Appellate Decisions Pertaining to Medical Marijuana
8. Medical Errors Task Force Report (Dr. Aristeiguieta)
9. Oral Argument Task Force Report (Dr. Aristeiguieta/Zerunyan)
10. Election of Officers
11. Agenda Items for July 2007 Division Meeting
12. Public Comment on Items Not on the Agenda
13. Adjournment

Meetings of the Medical Board of California are open to the public except when specifically noticed otherwise in accordance with the Open Meetings Act. The audience will be given appropriate opportunities to comment on any issue presented in open session before the Board, but the President may apportion available time among those who wish to speak.

For additional information call (916) 263-2389.

NOTICE: *The meeting is accessible to the physically disabled. A person who needs disability-related accommodations or modifications in order to participate in the meeting shall make a request to the Board no later than five working days before the meeting by contacting Teresa Schaeffer at (916) 263-2389 or sending a written request to Ms. Schaeffer at the Medical Board of California, 1426 Howe Avenue, Suite 54, Sacramento, CA 95825. Requests for further information should be directed to the same address and telephone number.*



MEDICAL BOARD OF CALIFORNIA

EXECUTIVE OFFICE
1434 Howe Avenue, Suite 92
Sacramento, CA 95825-3236
(916) 263-2389 FAX (916) 263-2387
www.mbc.ca.gov



Agenda Item 3

DIVISION OF MEDICAL QUALITY

**Hilton Los Angeles Airport
Los Angeles, CA**

February 2, 2007

MINUTES

Agenda Item 1

A quorum was present and due notice having been granted to all interested parties, the meeting was called to order at 8:05 a.m. Members present included:

Members Present:

- Cesar A. Aristeiguieta, M.D., President
- Barbara Yaroslavsky, Vice President
- Stephen R. Corday, M.D., Secretary
- Steve Alexander
- John Chin, M.D.
- Shelton Duruisseau, Ph.D.
- Reginald L. ...
- Mary L. ...
- Ronald ...
- Frank ...

Members Absent:

- Dorene Deming
- Ronald L. Mey, M.D.
- Janet Salmonson, M.D.

Staff and Guests Present:

- David T. Thornton, Executive Director
- Renee Threadgill, Interim Chief of Enforcement
- Kurt Heppler, DCA Legal Counsel
- Don Chang, DCA Legal Counsel
- Carlos Ramirez, Senior Assistant Attorney General
- Thomas S. Lazar, Supervising Deputy Attorney General
- Candis Cohen, Public Information Officer

Linda Whitney, Chief of Legislation
Kevin Schunke, Regulation Coordinator
Kelly Nelson, Legislative Analyst
Paulette Romero, Associate Analyst
Janie Cordray, Research Program Manager
Frank Valine, Diversion Program Manager
Rhonda Baldo, Staff Services Analyst
Terri Dukes, Office Technician
Richard Prouty, Staff Services Manager
Valerie Moore, Associate Analyst
Teresa Schaeffer, Associate Analyst
Laura Sweet, Area Supervisor - L.A. Metro
Julie D'Angelo Fellmeth, Center for Public Interest Law
Mishaela Graves, Center for Public Interest Law
Sandra Bressler, California Medical Association
Brett Michelin, California Medical Association
James Hay, M.D.
Zennie Coughlin, Kaiser
Steve Hartzell
Sashia Kim, Consultant, Senate Office of Research
Judith Okun

Agenda Item 2 Approval of Orders

Approval of Orders Restoring License Following Completion of Probation

The Division reviewed and approved 12 Orders. Vote: 10-0

Approval of Orders Issuing Public Letters of Reprimand

The Division reviewed and approved 5 Orders. Vote 10-0

Approval of Orders for License Surrender During Probation/Administrative Action

There were no Orders submitted for review.

Agenda Item 3 Approval of Minutes

It was M/S (Aristeiguieta/Wender) to approve the Open Session minutes of the November 3, 2006 Division Meeting. Motion carried (10-0).

Agenda Item 4 Legislation and Pending Regulations

No report was given. Dr. Aristeiguieta stated the legislative report would be provided at the full board meeting.

Agenda Item 5 Diversion Program Report

Frank Valine, Diversion Program Administrator, gave a brief report of the Diversion Committee's meeting held on February 1, 2007.

It was M/S (Wender/Chin) to approve the appointments of two new DEC members. Motion carried unanimously.

It was M/S (Chin/Yaroslavsky) to approve the reappointments of four DEC members. Motion carried unanimously.

The audit of the Diversion Committee is ongoing and no major problems have been found.

The development of the Diversion Advisory Council was discussed. Dr. Wender pointed out there should be some safeguard regarding the advisory council to ensure the council understands and has a well-defined role as advisory and not control of the Diversion Committee. It was M/S (Wender/Alexander) to recommend adoption of the proposed legislation language for the Diversion Advisory Council to the Full board. Motion carried unanimously.

Agenda Item 6 Vertical Prosecution Update

Renee Threadgill, Chief of Enforcement, announced the Board and HQE have successfully developed a Vertical Prosecution manual.

Carlos Ramirez, Senior Assistant Attorney General, Thomas Lazar, Supervising Deputy Attorney General, and Laura Sweet, Area Supervisor, provided the details of the manual to the DMQ.

Julie D'Angelo Fellmeth, Center for Public Interest Law and former Enforcement Monitor, expressed concerns about the way Vertical Prosecution is being implemented and stated it is not entirely consistent with the statute and the intent. The transfer of the investigators to HQE did not occur and has resulted in HQE establishing a Lead Prosecutor to handle cases initially, instead of having the same prosecutor handle the case from complaint to closure. Ms. Fellmeth stated the transfer is to be reevaluated in the legislature this summer and, if adopted, it will enable the co-location of Medical Board investigators and HQE prosecutors working together at the same office facilities and will greatly facilitate Vertical Prosecution.

Carlos Ramirez, Senior Assistant Attorney General, reported on current efforts of HQE to fully implement Vertical Prosecution and eliminate the existing issues with co-location between the deputies and the investigators.

Mr. Alexander stated Mr. Thornton will meet with Attorney General Brown and discuss the importance of full statutory integration.

Agenda Item 6B Medical Expert Program – Survey

Ms. Threadgill reported a workgroup, which consists of representatives from HQE, MBC medical consultants and MBC Supervising Investigators, has been convened to improve the medical expert program and their recommendations are currently under review.

Agenda Item 6C Recruitment and Retention of Investigators

Ms. Threadgill stated meetings with DCA to establish a new investigator series classification are ongoing. MBC staff continues to gather data to support the new classification.

Agenda Item 6D Special Enforcement Priorities

Dave Thornton, Executive Director, discussed the proliferation of the medical marijuana dispensaries, the reports received from law enforcement agencies, current efforts to educate physicians about their roles in recommending medicinal marijuana to patients, and the action being considered against physicians who do not practice good medicine and recommend medicinal marijuana inappropriately. A review of SB1950 relative to over prescribing is being conducted.

Mr. Ramirez stated the AG's office is conducting a review of a recent Supreme Court's decision regarding medical marijuana and its impact on the Board's statement clarifying medical marijuana recommended by physicians.

Ms. Fellmeth added a case adopted by the DMQ in 2004 involving the discipline of a physician who recommended medical marijuana without following the rules of the Medical Practice Act is under review by an appellate court and, if upheld, can be used as a precedential decision.

It was M/S (Zerunyan/Yaroslavsky) for the DMQ to: 1) hear further information from the HQE regarding the current guidelines regarding the physician-recommendation of medical marijuana; 2) look at how the United States Supreme Court decision regarding medical marijuana may apply or may affect the model guidelines; and 3) hear further from staff regarding the consideration of the appellate decision as a precedent decision pending the outcome before moving on the issues of medical marijuana.

Agenda Item 7 Medical Errors Task Force Report

Dr. Aristeiguieta reported the Medical Errors Task Force will coordinate a meeting with the stakeholders of medicine in California, i.e., professional organizations, advocacy groups, general public, etc., to further identify medical errors and determine the best way to address this issue.

James Hay, M.D., Speaker of the House of CMA, stated CMA has a committee called Project Safe Care which has been looking at many aspects of medical errors for several years and they look forward to working with the Board on this issue.

Agenda Item 8 Agenda Items for April 2007 Division Meeting

- Medical Errors Task Force Update
- HQE's Review of the Board's Statement Regarding Physician-Recommended Medical Marijuana
- HQE's Review of the U.S. Supreme Court's Decision Regarding Medical Marijuana
- Proposed Precedential Decision Based on an Appellate Court's Ruling

Agenda Item 9 Public Comment

Judith Okun addressed the Board on three subjects and requested the following: 1) the Board develop a means for the public to air their grievances and to have further review when there is an unsatisfactory investigation undertaken by the AG's, investigators, or medical experts; 2) the Board's support of the no-cost Freedom of Information Act for L.A. County to allow public access to physicians' records; and 3) Letters of Reprimand be a part of the permanent record of all physicians.

Agenda Item 10 Adjournment

There being no further business, the meeting was adjourned at 9:45 a.m.

Cesar A. Aristeiguieta, M.D.
President

LEGISLATIVE PACKET

April 26-27, 2007
Sacramento, CA

for

EXECUTIVE COMMITTEE,
DIVISIONS,
AND
FULL BOARD
MEETINGS

**Medical Board of California
Tracker - Legislative Bill File
4/23/2007**

<u>BILL</u>	<u>AUTHOR</u>	<u>TITLE</u>	<u>STATUS</u>	<u>POSITION</u>	<u>VER. OF BILL POS. BASED</u>	<u>LAST AMENDED</u>	<u>LETTERS</u>
AB 253 Medical Board Legislative Analysis	Eng	MBC: Restructuring	Floor	Sponsor/Support	Amended	3/8/07	3/13/07
AB 329 Medical Board Legislative Analysis	Nakanishi	Chronic Diseases: Telemedicine	Approps.	ex com: Support	Amended	3/29/07	4/17/07
AB 555 Medical Board Legislative Analysis	Nakanishi	Electronic Medical Records	Insurance	ex com: Support concept	Introduced		
AB 1025 Medical Board Legislative Analysis	Bass	Professions: Denial of Licensure	B&P 4/24	ex com: Neutral w/amends	Amended	4/16/07	
AB 1073 Medical Board Legislative Analysis	Nava	Work. Comp.: CA lic. Physicians on Utilization Review	Insurance 4/25	ex com: Support	Introduced		
AB 1154 Medical Board Legislative Analysis	Leno	Diabetes: Pilot Program	Health 4/24	ex com: Refer to Access Care	Amended	4/10/07	
AB 1224 Medical Board Legislative Analysis	Hernandez	Telemedicine: Optometrists	Approps.	ex com: Refer to Access Care	Amended	4/10/07	
AB 1276 Medical Board Legislative Analysis	Karnette	Prescription Containers: Labels with Purpose	B&P 4/24	ex com: Support w/amends Rec: Support	Amended	4/17/07	4/9/07
AB 1436 Medical Board Legislative Analysis	Hernandez	Scope of Practice: Nurse Practitioners & Physician Assistants	B&P 4/24	Rec: Oppose	Amended	4/17/07	
AB 1444 Medical Board Legislative Analysis	Emmerson	Physical Therapists: Scope of Practice	B&P 4/24	Rec: Oppose	Amended	4/9/07	

**Medical Board of California
Tracker - Legislative Bill File
4/23/2007**

<u>BILL</u>	<u>AUTHOR</u>	<u>TITLE</u>	<u>STATUS</u>	<u>POSITION</u>	<u>VER. OF BILL POS. BASED</u>	<u>LAST AMENDED</u>	<u>LETTERS</u>
AB 1643	Niello	Supervision of Nurse Practitioners: more than four	B&P 4/24	ex com: Oppose unless amend	Introduced		
		Medical Board Legislative Analysis					
SB 102	Migden	Blood Transfusions: Brochure	B&P 4/23	ex com: Support if amend Rec: Support	Amended	4/12/07	
		Medical Board Legislative Analysis					
SB 472	Corbett	Prescription Drugs: Labeling Requirements & Panel	B&P 4/23	Rec: Support	Amended	4/16/07	
		Medical Board Legislative Analysis					
SB 478	Hollingsworth	Physicians: Loan Repayment	Rules	ex com: Refer to Access Care	Introduced		
		Medical Board Legislative Analysis					
SB 620	Correa	Anesthesia Permit for Physicians in Dental Offices	Floor	ex com: Support	Introduced		
		Medical Board Legislative Analysis					
SB 761	Ridley-Thomas	Diversion and Vertical Prosecution	App-Susp	Sponsor/Support	Amended	3/27/07	3/13/07
		Medical Board Legislative Analysis					
SB 764	Migden	MBC Reporting Licensee Information to OSHPD	Health 4/18	ex com: Support w/conditions	Amended	4/12/07	4/9/07
		Medical Board Legislative Analysis					
SB 767	Ridley-Thomas	Drug Overdose Treatment: Liability	Judiciary	ex com: Defer to full board Rec: Neutral	Amended	4/12/07	
		Medical Board Legislative Analysis					
SB 809	Ashburn	Expanding Scope of Practice for Nurse Practitioners	B&P	ex com: Oppose	Amended	3/26/07	
		Medical Board Legislative Analysis					
SB 907	Calderon	Compensation for Referrals	B&P	ex com: Oppose	Introduced		
		Medical Board Legislative Analysis					

**Medical Board of California
Tracker - Legislative Bill File
4/23/2007**

<u>BILL</u>	<u>AUTHOR</u>	<u>TITLE</u>	<u>STATUS</u>	<u>POSITION</u>	<u>VER. OF BILL POS. BASED</u>	<u>LAST AMENDED</u>	<u>LETTERS</u>
SB 993	Aanestad	Psychologists: Scope of Practice: prescribing	B&P 4/23	ex com: Oppose	Amended	4/18/07	
		Medical Board Legislative Analysis					
SB 1048	Comm. B,P&ED	Healing Arts: Omnibus	B&P 4/23	Rec: Support MBC Provisions	Introduced		
		Medical Board Legislative Analysis					

**Medical Board of California
2006 Tracker II - Legislative Bills
4/23/2007**

<u>BILL</u>	<u>AUTHOR</u>	<u>TITLE</u>	<u>STATUS</u>	<u>AMENDED</u>
AB 34	Portantino	Umbilical Cord Blood Collection Program	Approps. 4/18	04/10/07
AB 54	Dymally	Health Care Coverage: Acupuncture	Health	03/08/07
AB 64	Berg	Uniform Emergency Volunteer Health Practitioners Act	Health	04/10/07
AB 139	Bass	Vehicles: Schoolbus Drivers: Medical Examinations	Rules	
AB 158	Ma	Public Health	Health	04/10/07
AB 249	Eng	Licenses: Healing Arts: Settlement Agreements	Approps. 4/18	
AB 269	Eng	Dentists: License Renewal	Approps.	04/17/07
AB 272	Garcia	HIV Tests	Health	
AB 295	Lieu	State Agencies: Collection of Demographic Data	Approps.	03/22/07
AB 309	Tran	State Boards and Commissions: Salaries: Suspension	B&P	
AB 325	Nava	Peace Officers: Recruitment	App-Susp. 4/18	03/19/07
AB 374	Berg	California Compassionate Choices Act	App-Susp. 4/18	
AB 436	Salas	Medical Records	Health	04/09/07
AB 611	Nakanishi	Physician Assistants - Education Loan Program	Health	04/12/07
AB 632	Salas	Health Care Facilities: Whistleblower Protections	Approps.	04/17/07
AB 636	Levine	Acupuncture	B&P 5/8	03/27/07
AB 644	Dymally	Workers' Compensation: medical treatment utilization reiew	Insurance	04/09/07
AB 682	Berg	HIV/AIDS Testing	Approps.	03/27/07
AB 865	Davis	State Agencies: Live Customer Service	B&P	
AB 871	Davis	Hypertension and Diabetes	Introduced	
AB 961	Hernandez	Diabetes	Amended	04/18/07
AB 1009	Benoit	Fetal Pain Prevention	Health	
AB 1039	Parra	Medical Referral Services	Introduced	
AB 1044	Strickland	Optometrists: Regulation	Health	04/09/07
AB 1057	Beall	Electronic Personal Records Strategic Plan	Judiciary	04/24/07

**Medical Board of California
2006 Tracker II - Legislative Bills
4/23/2007**

<u>BILL</u>	<u>AUTHOR</u>	<u>TITLE</u>	<u>STATUS</u>	<u>AMENDED</u>
AB 1102	Nakanishi	Prescription Lenses: fitting of lenses	Introduced	
AB 1134	Dymally	Medical Enterprise Zones: Student Loans: Tax Credits	Health	04/16/07
AB 1178	Hernandez	Medical Information: Disclosures	Health 5/1	
AB 1198	Benoit	Law Enforcement Response Costs: Driving Under the Influence	Judiciary	
AB 1298	Jones	Personal Information: Disclosure	Health 4/24	
AB 1390	Huffman	Health Care Service Plans: Unfair Payment Patterns	Approps.	04/11/07
AB 1393	Leno	Public Records	GO/Jud. 4/18	
AB 1399	Richardson	Pharmacies: Prescription Labels	Health 4/24	
AB 1429	Evans	Human Papillomavirus Vaccination	Health	04/16/07
AB 1468	Garrick	Hospitals: Patient Data	Health 4/24	04/10/07
AB 1480	Mendoza	Physicians and Surgeons: Medical Board of CA	Introduced	
AB 1486	Calderon	Licensed Professional Counselors	B&P	
AB 1531	DeSaulnier	Vehicles: Disabled Parking	Trans. 4/23	04/12/07
AB 1555	Lieber	Health Care Services: Chronic Care Model	Approps.	
AB 1587	De La Torre	Personal Information: Pharmacy	Health 5/1	
SB 48	Perata	Health Care Coverage: Employers and Employees	Health 4/25	
SB 136	Cedillo	Acupuncture: Asian Massage	B&P 4/23	04/16/07
SB 284	Lowenthal	Athletic Trainers: Registration	B&P	
SB 320	Alquist	CA Health Care Information Infrastructure Program	Approps.	03/29/07
SB 356	Negrete McLeod	List of Reportable Diseases and Conditions	Health	04/17/07
SB 374	Harman	Military Service: Benefits	VA 4/24	04/16/07
SB 387	Alquist	Dentists: Death or Incapacity	Judiciary 4/24	04/09/07
SB 519	Comm. on Gov Org	Public Meetings: Special Meetings	GO 5/8	
SB 533	Yee	Health: Immunizations: Pneumococcus	Health 4/18	03/29/07
SB 557	Wiggins	Worker's Comp: Qualified Medical Evaluators: Audiologists	B&P 4/23	04/09/07
SB 615	Oropeza	Pharmacy Technicians: Scholarship & Loan Repayment Prog	B&P 4/23	04/16/07

**Medical Board of California
2006 Tracker II - Legislative Bills
4/23/2007**

<u>BILL</u>	<u>AUTHOR</u>	<u>TITLE</u>	<u>STATUS</u>	<u>AMENDED</u>
SB 618	Alquist	State Agencies: Electronic Records	GO 4/24	
SB 661	Maldonado	Healing Arts: Anatomic Pathology Services	B,P & ED	04/10/07
SB 676	Ridley-Thomas	Immunizations	Health 4/18	04/11/07
SB 721	Ashburn	State Agencies: Succession Plans	Approps. 4/23	
SB 731	Oropeza	Massage Therapy	B&P 4/23	04/19/07
SB 801	Ridley-Thomas	Chiropractors	B&P 4/23	4/16/07
SB 822	Aanestad	Immunity: Evaluation of Practitioner of Healing Arts	Rules	04/11/07
SB 824	Padilla	Department of Consumer Affairs: assumption of jurisdiction	Rules	04/16/07
SB 840	Kuehl	Single-Payer Health Care Coverage	Health 4/18	
SB 843	Calderon	Medical Information	Health 4/18	
SB 850	Maldonado	Birth Certificates: Stillborn Births	Health 4/18	
SB 962	Migden	Umbilical Cord Blood Collection Program	Health 4/18	04/19/07
SB 963	Ridley-Thomas	Regulatory Boards: Regulation	B&P 4/23	04/16/07
SB 971	McClintock	Government Reorganization: Realignment of Closure	GO	
SB 1014	Kuehl	Taxation: Single-Payer Health Care Coverage Tax	Health-4/18, RT 4/25	

**MEDICAL BOARD OF CALIFORNIA
Status of Pending Regulations**

Subject	Current Status	Date Approved by Division	Date Notice Published by OAL	Date of Public Hearing	Date of Final Adoption	Date to DCA for Review *	Date to OAL for Review **	Date to Sec. of State
Licensing Special Programs for Foreign Trained Physicians	At DCA	Text modified at hearing 2/2/07; no adverse comments received by close of public comment period (3/15/07), so adopted	12/8/06	2/2/07	2/2/07	4/6/07		
Licensing Special Programs for Foreign Trained Physicians-FEES	At DCA	No comments at public hearing 2/2/07, so adopted	12/8/06	2/2/07	2/2/07	4/6/07		
Non-substantive Changes (Clean-up)	Staff from all units to conduct full review of their regs and to suggest clean-up changes; by 5/11/07	Since non-substantive changes, Division will not need to approve						

* - DCA is allowed 30 calendar days for review

** - OAL is allowed 30 working days for review

Prepared by Kevin A. Schunke
Updated April 10, 2007
For questions, call (916) 263-2368

Agenda Item 4-B

**MEDICAL BOARD OF CALIFORNIA****PHYSICIAN'S DIVERSION PROGRAM**

1420 Howe Avenue, Suite 14
Sacramento, CA 95825-3236
Telephone: (916) 263-2600
Toll Free: 1-866-728-9907
www.mbc.ca.gov



Agenda Item 5-B

PROPOSED DIVERSION EVALUATION COMMITTEE MEMBERS**April 2007****Candidate 1 Steven Oppenheim, M.D.**

Dr. Oppenheim is currently certified as an HIV Medicine and Hospice and Palliative Care Physician. He is currently employed at the University of California, San Diego School of Medicine as an Associate Clinical Professor. He has served as a medical review officer for 12 years and has been on the Well Being Committee for over five years. He has also been involved in the recovery community for 20 years. He successfully completed the Medical Board of California Diversion Program in 1991.

Lee Snook, M.D.

***Medical Board of California
Diversion Advisory Council
(California Medical Association)
Nominee***

See Committee Packet for Curriculum Vitae

Barry Rosen, M.D.

*Medical Board of California
Diversion Advisory Council
(California Medical Association)
Nominee*

See Committee Packet for Curriculum Vitae

David Pating, M.D.

***Medical Board of California
Diversion Advisory Council
(California Society of Addiction Medicine)
Nominee***

See Committee Packet for Curriculum Vitae

Stephanie Shaner, M.D.

*Medical Board of California
Diversion Advisory Council
(California Society of Addiction Medicine)
Nominee*

See Committee Packet for Curriculum Vitae

Marvin Firestone, M.D., J.D.

*Medical Board of California
Diversion Advisory Council
(California Psychiatric Association)
Nominee*

See Committee Packet for Curriculum Vitae

Thomas Ciesla, M.D.

*Medical Board of California
Diversion Advisory Council
(California Psychiatric Association)
Nominee*

See Committee Packet for Curriculum Vitae

Bruce Kaldor, M.D.

*Medical Board of California
Diversion Advisory Council
(Diversion Evaluation Committee)
Nominee*

See Committee Packet for Curriculum Vitae

Shannon Chavez, M.D.

***Medical Board of California
Diversion Advisory Council
(Diversion Evaluation Committee)
Nominee***

See Committee Packet for Curriculum Vitae

Memorandum

To: Renée Threadgill, Chief of Enforcement
Medical Board of California

Date: April 2, 2007

From: Susan Goetzinger
Expert Reviewer Program

Agenda Item 6-A

Subject: Results of the Expert Survey Questionnaire

Questionnaires Sent this quarter (Jan-Mar 2007)	22
Feedback Received from the questionnaires sent this quarter	15 (68%)
Total Feedback Received for this quarter's report	20

Questions 1-8, *positive response*: Yes

Question 9, *positive response*: No

Questions 10-13, *positive response*: Yes

1	Were you provided sufficient information/evidence to allow you to render a medical opinion?	100 percent YES
2	Were you encouraged to render an unbiased opinion?	100 percent YES
3	Was the case directly related to your field of expertise?	100 percent YES
4	Were you given sufficient time to review the case?	100 percent YES
5	Did the training material provided to you (the Expert Reviewer Guidelines and videotape/DVD) give you adequate information to perform your case review?	95 percent YES 5 percent responded N/A
6	Were you given clear, concise, and easy to follow instructions throughout the process?	100 percent YES
7	Was the investigator and/or MBC staff readily available to answer questions or concerns about the case?	90 percent YES 10 percent responded N/A
8	Is the required written report adequate to cover all aspects of your opinion?	100 percent YES
9	Do you feel the MBC has requested your services more frequently than you would prefer?	85 percent NO 5 percent YES 10 percent responded N/A
10	Would you be willing to accept more MBC cases for review?	85 percent YES 10 percent NO 5 percent responded N/A
11	If you were required to testify, was the Deputy Attorney General readily available to answer questions and provide direction?	90 percent N/A 5 percent YES 5 percent did not respond/blank

12	Do you feel the reimbursement amount for case review is appropriate for the work you are required to perform?	40 percent YES 60 percent NO
13	Do you think that more physicians would be willing to become experts if the Board offered CME in addition to monetary compensation?	40 percent YES 55 percent NO 5 percent did not respond
<i>Level of satisfaction with overall experience performing case reviews for MBC</i>		65 percent HIGH 25 percent AVERAGE 10 percent did not respond

SUGGESTIONS FOR IMPROVEMENT TO THE PROGRAM

The review period should begin at 60 days rather than 30. More examples of Expert Reviewer reports would be helpful.
After an opinion is delivered on a case, I find it frustrating that there is no feedback. Was it a satisfactory opinion, how could it be improved, could we as experts do a better job. Maybe a critique from your medical doctors would be helpful.
Better reimbursement for time spent and expertise.
I am quite busy in my practice and do not have the time to review more cases for the Board.
Sample report - extremely helpful. I don't mind reviewing cases, but doing them along with a written report takes time.

COMMENTS REGARDING REIMBURSEMENTS/CME

The reimbursement is low, but I see this as a public support activity.
The hourly rate is too low. It realistically needs to be increased to \$200 per hour. It is not what physicians get paid for an hour work.
Most MDs doing this work have sufficient CMEs. An increase in hourly pay would be appreciated.
Increase compensation.
Higher and timely reimbursement. Reimbursement should be <u>appropriate to specialty and years of training</u> .

GENERAL COMMENTS

I can take only a few (one at a time).

I have more medical legal case than I can handle. I get \$500/hr for those cases. This is not my primary job so the time is limited. Your payments are very very low and slow

At times I felt it would be useful to have some basic secretarial help - reimbursement for this (occasional use) might be helpful. Reimburse for child care when meeting in person & supplemental child care necessary (pertains to prior case)

Investigator for this case (SM/Glendale) was great, helpful, available, patient, always prompt in returning my calls.

This was a complex case involving two separate doctors & reports. EC (Valencia investigator) was clear and helpful in explaining what the report + eval needed to cover. I was really happy to get this very unfortunate case. Reviewing the case and researching presentation of pediatric brain tumor has had a real positive impact on my clinical practice. Because of this case, I have diagnosed seizure in one girl with visual hallucinations! I am happy to take on as many psychiatry case reviews as you can send me. I really enjoy this kind of work!

All the materials given to me were well organized and sufficient data was given to me. I will be happy to review more cases. Investigator (EC/DBar) was a pleasure to work with.

All aspects of review went very smoothly.

The investigator and deputy attorney general who requested my assistance were helpful in giving me unbiased suggestions to render an opinion.

Please let me know if I can help in the future.

Convince doctors they are working on the side of the angels not getting themselves ____ (*illegible*) by doing the work of the ____ (*illegible*).

It's not the money - it is the fear of involvement.



455 GOLDEN GATE AVENUE, SUITE 11000
SAN FRANCISCO, CA 94102-7004

Public: (415) 703-5500
Telephone: (415) 703-5544
Facsimile: (415) 703-5480
E-mail: Janezack.simon@doj.ca.gov

April 6, 2007

Agenda Item 7

David T. Thornton
Executive Director
Medical Board of California
1426 Howe Avenue, Suite 54
Sacramento, CA 95825-3236

RE: Review of Federal and California Appellate
Decisions Pertaining to Medical Marijuana

Dear Mr. Thornton:

Pursuant to your request, we have reviewed the current state of the law pertaining to physicians and medical marijuana.

I.
Factual Background
Re Medical Board Policy Statement
On Medical Marijuana

In 1996, California voters passed Proposition 215, the Compassionate Use Act. That Act is codified at Health and Safety Code section 11362.5. Over the next few years, there was confusion among physicians about their role in recommending marijuana to patients. The Medical Board published several statements designed to assist physicians in understanding their role in discussing and recommending marijuana to patients.

In May 2004, the Medical Board of California issued a detailed policy statement setting forth the Board's position. In essence, the policy statement clarified that physicians do not violate the standard of practice when they recommend marijuana to patients, as long as that recommendation is based upon sound principles of medical practice. The policy states that physicians who recommend or approve marijuana for medical use should follow the same

standards “as any reasonable and prudent physician would follow when recommending or approving any other medication, including the following:

1. History and good faith examination of the patient.
2. Development of a treatment plan with objectives.
3. Provision of informed consent including discussion of side effects.
4. Periodic review of the treatment’s efficacy.
5. Consultation, as necessary.
6. Proper record keeping that supports the decision to recommend the use of medical marijuana.”

II. Analysis Of Federal And State Cases Regarding Medical Marijuana

Since the Medical Board issued its policy statement, several cases have been decided by the courts on the broader issue of medical marijuana. While there have been no California state court cases which discuss in any significant way the obligations of the physician in recommending or approving marijuana for medical use, some recent federal court cases have at least mentioned the role of the physician.

Before discussing the recent decisions, however, it is useful to go back to the Ninth Circuit’s decision in *Conant v. Walters* (2002) 309 F.3d 629. The *Conant* decision remains the pivotal case for defining the proper role of the physician. The Ninth Circuit concluded that California physicians have a First Amendment right to discuss and recommend the medical use of marijuana to patients, as long as that discussion and recommendation is made in the context of a bona fide physician-patient relationship and is based on sound medical judgment. The court described the role of the physician as that of a designated “gatekeeper” who bears the legal responsibility to make the determination whether the patient is seriously ill and that marijuana use will be limited to medical purposes. As the court observed at pg. 647:

“[D]octors are performing their normal function as doctors and, in so doing, are determining who is exempt from punishment under state law. If a doctor abuses this privilege by recommending marijuana without examining the patient, without conducting tests, without considering the patient’s medical history or without otherwise following standard medical procedures, he will run afoul of state as well as federal law. But doctors who recommend medical marijuana to patients after complying with accepted medical procedures are not acting as drug dealers; they are acting in their professional role in conformity with the standards of the state where they are licensed to practice medicine.”

No subsequent cases have altered this well-reasoned and common-sense description of the physician’s role and responsibility. In October, 2005, the United States Supreme Court issued its opinion in *Gonzales v. Raich* (2005) 545 U.S. 1. The Supreme Court decision essentially stands for the proposition that the federal government has the authority to regulate

David T. Thornton
April 5, 2007
Page 3

marijuana under the Controlled Substances Act, even where the marijuana use is legally permissible under California law and is purely "local." The Supreme Court did not question the right of physicians to discuss or recommend marijuana. To the extent the role of the physician was addressed, it was only in passing, and specifically notes:

"Moreover, the Medical Board of California has issued guidelines for physicians' cannabis recommendations, and it sanctions physicians who do not comply with the guidelines."
(*Gonzales v. Raich, supra*, Thomas J. dissenting.)

In a decision issued in March, 2007, *Raich v. Gonzales*, the Ninth Circuit considered Ms. Raich's case on remand from the Supreme Court. Again, this decision mentions the role of the physician only in passing. There is nothing in the opinion that in any way undermines or questions the Medical Board's policy statement, or the guidelines set forth in the *Conant* decision.

III.

Conclusion:

The Medical Board's Policy Re Medical Marijuana Is Not Impacted By Recent Case Law

Based upon the above review and analysis, there is no recent legal precedent which would require the Medical Board to revisit its previously issued policy statement on medical marijuana. We will continue to monitor new cases as they are issued by the courts, and will keep you advised of any new developments.

Sincerely,


JANE ZACK SIMON
LAWRENCE A. MERCER
Deputy Attorneys General

For EDMUND G. BROWN JR.
Attorney General

cc: Renee Threadgill, Chief of Enforcement
Carlos Ramirez, SAAG HQE
Jose R. Guerrero, SDAG