MEDICAL BOARD OF CALIFORNIA
Executive Office

AGENDA ITEM 3

San Francisco Embassy Suites
250 Gateway Blvd.
South San Francisco, CA

July 25, 2008

MINUTES

Agenda Item 1 Call to Order/ Roll Call

Dr. Fantozzi called the meeting of the Medical Board of California (Board) to order on July 25, 2008 at 9:00 a.m. A quorum was present and notice had been sent to interested parties.

Members Present:
Richard Fantozzi, M.D., President
Steve Alexander
Hedy Chang
John Chin, M.D.
Gary Gitnick, M.D.
Reginald Low, M.D.
Mary Lynn Moran, M.D.
Janet Salomonson, M.D.
Gerrie Schipske, R.N.P., J.D.
Barbara Yaroslavsky
Frank V. Zerunyan, J.D.

Members Absent:
Cesar Aristeiguieta, M.D.
Shelton Duruisseau, Ph.D.
Ronald H. Wender, M.D.

Staff Present:
Barbara Johnston, Executive Director
Kimberly Kirchmeyer, Deputy Director
Teri Bennett, Supervising Investigator
Fayne Boyd, Manager, Licensing Program
Kathi Burns, Manager, Licensing Program
Candis Cohen, Public Information Officer
Janie Cordray, Research Specialist

Kurt Heppler, Staff Legal Counsel
Armando Melendez, Business Services Office
Kelly Nelson, Legislative Analyst
Debbie Pellegrini, Chief of Licensing
Regina Rao, Business Services Office
Paulette Romero, Associate Analyst
Teresa Schaeffer, Executive Assistant
Kevin Schunke, Regulation Coordinator
Anita Scuri, Senior Legal Counsel, DCA Legal Office
Cheryl Thompson, Executive Assistant
Renee Threadgill, Chief of Enforcement
Linda Whitney, Chief of Legislation

Members of the Audience:

Yvonne Choong, California Medical Association
Frank Cuny, California Citizens for Health Freedom
Karen Ehrlich, Midwifery Advisory Council
Julie D'Angelo Fellmeth, Center for Public Interest Law
Faith Gibson, Midwifery Advisory Council
Jose Guerrero, Office of the Attorney General
Doreathea Johnson, Department of Consumer Affairs
Carrie Lopez, Department of Consumer Affairs
Frank Lucido, M.D., Medical Board Watch
Brett Michelin, California Medical Association
Carlos Ramirez, Office of the Attorney General
Anthony Williams, California Medical Association
Laura Zuniga, Department of Consumer Affairs

Agenda Item 2 Approval of minutes

Steve Alexander made a motion to approve the minutes from the April 25, 2008 meeting with amendments; motion carried.

Agenda Item 3 Public Comments on Items not on agenda

Dr. Frank Lucido, Medical Board Watch, indicated he has developed standards that will satisfy both law enforcement and medical concerns to pave the way for cannabis to become an over-the-counter medicine for individuals over 21 years of age. He directed members to his website for additional information.

Yvette Marquez, a third year neurosurgery resident at USC, requested a hearing or a thorough review of her application for a California medical license. Anita Scuri, Senior Legal Counsel relayed that she and Staff Counsel Kurt Heppler had spoken with Ms. Marquez and her attorney

and advised them that the remedy for her particular situation was to bring her case before the Superior Court since she is asking for an action that the Board has no authority to grant.

Agenda Item 4 President's Report

Dr. Fantozzi publicly recognized the following individuals:

- Teresa Schaeffer for her extensive service to the Board as Barb Johnston's Executive Assistant. Cheryl Thompson was introduced as her replacement.
- Dr. Duruisseau for his leadership on the Wellness Committee. He expressed his pleasure with the committee's progress.
- Ms. Chang for her election to the Board of the Federation of State Medical Boards (FSMB).
- Outgoing Board Members, Dr. Ronald Wender, Dr. Cesar Aristeiguieta, and Steve Alexander, for their commitment and valuable contributions to the Board.

Dr. Fantozzi reported on the following events:

- Dr. Fantozzi and Executive Director Barb Johnston met with Rosario Marin, Secretary of the State and Consumer Services Agency in June 2008 to discuss Medical Board issues, including the Board's process regarding legislation.
- He attended a California Patients Safety Action Coalition (CAPSAC) meeting with staff. CAPSAC's goal is to address medical errors through reporting and analysis and instituting a change in culture within the medical community when adverse events occur.
- A series of meetings have been convened by Regina Evans, Governor's office, regarding the enforcement process timelines.
- Dr. Fantozzi testified at the June 9, 2008 Senate Hearing on three Board sponsored bills and at the June 23, 2008 Senate Business & Professions Hearing on the Board sponsored Wellness Bill. All bills passed out of committee.
- Dr. Fantozzi and Barb Johnston attended the Federation of State Medical Boards meeting in May 2008. He fielded numerous inquiries on diversion and the Board's future plans in this area.

Dr. Fantozzi encouraged members to participate in scheduled Board dinners and luncheons to promote collegial dialog. He thanked Secretary Marin of the State and Consumer Services Agency, Carrie Lopez, Director of the Department of Consumer Affairs, and other DCA staff for joining the Board at the previous evening's dinner event.

Dr. Fantozzi asked members to submit recommendations for speakers for future board meeting presentations.

Dr. Fantozzi assigned Dr. Gitnick and Mr. Zerunyan to a "Guidelines for Licensing" task force to assist staff in preparing a document to use when making determinations on applicants.

Agenda Item 5 Executive Director's Report

A. Budget Overview and Staffing Update

Ms. Johnston directed the members' attention to page 88 of their Board packet for information on the budget. She noted that in the Governor's May Revise, the state sought $6 million from the Medical Board to be loaned to the General Fund which would be paid back without interest in FY 2010 – 2011. The Budget Change Proposals (BCPs) which were previously approved by the Board are currently under review by the Department of Consumer Affairs.

B. Proposed Meeting Dates for 2009

Ms. Johnston directed the members to page 101 of their packets for the proposed Board Meeting dates for 2009. She noted that the July 2009 meeting has been scheduled in Sacramento due to the cost of travel to staff should the state budget not yet be approved. It was m\Yaroslavsky and s\Schipske to approve the 2009 meeting dates; motion carried.

Ms. Johnston described the challenges with the phone system installation resulting from the March 2008 headquarters relocation. The 1-800 Call Center number is still not functioning, but has been optimistically projected to be in place by August. The delay has caused frustration to both staff and consumers.

Ms. Johnston provided an update on staffing. She introduced Deborah Pellegrini as the new Chief of Licensing. Ms. Johnston reported the Medical Board's vacancy rate has decreased as open positions have been filled. Ms. Threadgill has worked diligently to recruit new staff and to assure appropriate training for new Enforcement staff, bringing the vacancy rate from an anticipated 31% down to 6% for sworn enforcement officers.

Ms. Johnston provided an update on Board mandated reports:

- Study of peer review pursuant to B&P Code Section 805.2: The first draft was received on June 1, 2008. The Medical Board requested further development of the draft to meet legislation requirements. The final report is due July 31, 2008.
- Study of medical malpractice insurance for volunteers pursuant to B&P Code Section 2023: The contract was recently finalized and the study will begin August 1, 2008.
- Study of public disclosure pursuant to B&P Code Section 2026: The study, to determine if current laws provide sufficient information about medical doctors to the public, is being conducted by the California Research Bureau; the report is expected in August 2008.

A study of investigator compensation, being conducted by Cooperative Personnel Services (CPS), is in process with the report to be presented at the November 7, 2008 Board Meeting.

Ms. Johnston also commented on the series of meetings that have been convened by Regina Evans from the Governor's office regarding the enforcement process timelines. The Board has worked diligently to cooperate with the Department of Consumer Affairs and the

Governor's Office to provide the requested information. This data and the Medical Board's recommendations will be presented by Ms. Threadgill in her report to the Board.

Agenda Item 6 Department of Consumer Affairs November 2008 Summit

Ms. Carrie Lopez, Director, Department of Consumer Affairs (DCA), invited the Board's participation in the DCA's "Professionals Achieving Consumer Trust Summit" on November 18 – 21, 2008 in Los Angeles. The purpose of the summit is to lay the foundation for further cooperation and future collaboration between board members, consumer advocates, law enforcement and stakeholders in areas that impact consumers and licensees across the state. The summit will include DCA regulatory meetings, training sessions, and panel discussions. Dr. Fantozzi indicated that the Medical Board's meetings are scheduled a year in advance because of logistical and regulatory constraints, making it impractical to combine the previously scheduled November 6-7, 2008 Board and committee meetings with the DCA summit; however, he reported that the Pharmacy Board has invited the Medical Board to co-sponsor a roundtable discussion at the summit on e-prescribing. Dr. Fantozzi asked members to review their schedules and, if available, volunteer to participate in the roundtable discussion; he encouraged all members to participate in the summit event.

Agenda Item 7 Recognition of International Medical School Program

Ms. Pellegrini noted there were three international medical schools seeking recognition from the Board per regulation 1314.1 of Title 16 of the California Code of Regulations. The three medical schools operate alongside the government schools' pre-existing medical education programs. The Board's medical consultants reviewed the applications and recommend approval for all three schools.

A. Medical University of Lublin (English Program) – Lublin, Poland

Harold Simon, M.D., Ph.D., FACP, expert medical education consultant and professor at the UCSD School of Medicine, Division of International Health and Cross-Cultural Medicine, conducted a comprehensive evaluation of the university's Self-Assessment Report and supplemental responses and rendered his opinion that the Medical University of Lublin conforms to the regulations and statutes of the State of California pertaining to the issue of recognition of schools sponsored and under the authority of their national government. Dr. Simon expressed some caution and made additional recommendations with regard to the recognition of the Medical University's English Language program which were included in his report (page 113). Dr. Salomonson and Dr. Low expressed reservations about giving their approval without having Dr. Simon's concerns resolved. Dr. Simon reiterated that the school had met the statutory requirements allowing him to endorse the school's application for recognition at this time; however, if, following a site visit by the Board, insufficient conditions for recognition were identified, it would be appropriate to drop the recognition. With the Board's agreement, Dr.

Fantozzi suggested that Medical Board staff review existing regulations and make recommendations for the future with regard to this issue.

Mr. Alexander made a motion to approve the staff's recommendation to recognize the school, modified with stipulation that a report be returned to the Board within one year, based upon the recommendations that Dr. Simon outlined, and that a further determination be made at that time. Dr. Gitnick pointed out that the school had, indeed, met the requirements, and, therefore, their application should be approved. Dr. Fantozzi stated that the Board had previously voted to begin to review international schools on a re-review process consistent with LCME beginning in the 2008-2009 timeframe. Dr. Gitnick indicated that when the schools receive their approval, they should be notified that they will be re-visited, that the approval is time limited, and that there will be a re-review.

Ms. Scuri, Senior Legal Counsel, recommended that since LCME standards had probably changed in the past 5 years, it would be appropriate for the Board to reevaluate the written regulations and standards for recognizing medical schools, thereby addressing Dr. Simon's concerns and other problem areas. Starting in 2003, schools are required to submit documentation to show that they are in compliance every seven years; for schools that were previously approved, the seven years period started from the time the regulation took effect, hence, those re-evaluations have not yet taken place. She noted that it would be beneficial for the regulations to be modified before these schools began the re-evaluation process so that they would be held to whatever the new standards would be.

Mr. Alexander amended his motion to recommend recognition for the Medical University of Lublin (English Program) with full retroactivity to prior students and graduates; s/Yaroslavsky; the motion carried with Dr. Salomonson abstaining. Dr. Fantozzi asked staff to prepare for discussion of regulatory processes to determine if further meetings regarding changes to regulations are necessary.

B. Poznan University of Medical Sciences (English Program) – Poznan, Poland

Jim Nuovo, M.D., Professor and Associate Dean of Student Affairs and Graduate Medical Education at the UC Davis School of Medicine, agreed with Dr. Simon's assessment that additional vital information would be useful in making an adequate assessment in the recognition of medical schools.

Dr. Nuovo recommended full recognition of the school by the Board. It was m/Alexander, s/Yaroslavsky, c/All to approve the recommendation to grant recognition of the Poznan University of Medical Sciences (English Language) program with full retroactivity to prior students and graduates.

C. Latin American Medical School – Havana, Cuba

Dr. Nuovo recommended full approval of the Latin American Medical School with retroactivity for previous graduates. There was some discussion among members regarding possible

impediments to the Board taking the action to approve given the U.S.'s current relationship with the Cuban government; conducting a site visit was offered as a possible issue, but no other known problems were identified. Congressional representatives have conducted site visits, but Dr. Nuovo was not aware of any site visits done by medical personnel. Dr. Salomonson expressed reservations after having spoken with several Cuban physicians as to the actual facilities at the medical school; she expressed her preference that a site visit be conducted before she voted to approve. Ms. Scuri, Senior Legal Counsel, indicated that the Board does recognize the three governmental Cuban schools and that their graduates are eligible for licensure in California.

It was m/Yaroslavsky, s/Alexander, to approve the recommendation to grant recognition of the Latin American Medical School with full retroactivity to prior students and graduates; the motion carried with Dr. Salomonson and Mr. Zerunyan abstaining.

Agenda Item 8 Presentation on the Victims Compensation Program

Chip Skinner, Deputy Executive Officer of the California Victim Compensation Program (VCP), made a presentation to the Board on the work that VCP does to help pay the bills and expenses of victims of violent crimes. To date, VCP, which is part of the State and Consumer Services Agency, has paid more than $1.7 billion to crime victims, with funding coming from fees paid by offenders. Up to $70,000 in medical expenses are covered by the program, with medical claims comprising the largest percentage of paid claims. The VCP works directly with licensed health care providers to help them obtain compensation for providing their services to victims of violent crime when there is no other source of reimbursement available. Mr. Skinner requested that the Board help spread the word to licensees that the program is available to help. Since the victim, and not the health care provider, must apply to the program, physicians can encourage victims to visit their county's district attorney's office to be put into contact with the VCP. Additional information may be found at www.victimcompensation.ca.gov. The Medical Board's Education Committee would like to partner with VCP to help get the information out about the program, including a possible link on the Medical Board's website.

Agenda Item 9 Revision of Effective Date of Fee Reduction Regulations

Ms. Kimberly Kirchmeyer, Deputy Director, directed members to page 136 of the agenda packet referencing staff's recommendation to modify the proposed regulatory language changing the effective date for the reduction of license fees to July 1, 2009. Ms. Kirchmeyer asked the Board to put forth a motion to delegate authority to the Executive Officer to approve regulations to amend the effective date of fee reduction regulations from November 1, 2008 to July 1, 2009 after a 15-day notice if no negative comments were received. It was m/Yaroslavsky, s/Alexander to delegate the requested authority, as described above, to the Executive Director; the motion carried.

Agenda Item 10 Legislation

A. 2008 Legislation

Ms. Linda Whitney, Chief of Legislation, directed the members' attention to their legislative packet and provided an update on the 2008 legislation, beginning with Board sponsored bills:

- AB 2442 (Nakanishi) - Peer Review Proceedings (to repeal the reporting provisions related to the Diversion Program that sunset July 1, 2008). This bill also includes the proposal to allocate $500,000 from the Medical Board's fund to the Health Professions Education Foundation for the Physician Loan Repayment Program. The bill is currently in Senate Appropriations and will be heard in early August 2008 and is on suspense.
- AB2443 (Nakanishi) - Physician Well Being (codifying the work of the Board's Wellness Committee). The Board received a letter of opposition from the Department of Finance, indicating in its analysis that the bill would cost $100,000 to $200,000, even though the Medical Board has clearly specified it can be accomplished within existing resources.

  Ms. Whitney has met with the Senate Appropriations Staff to explain that any costs are minor and absorbable. There have been no "no" votes all the way through the Assembly and the first Policy Committee on this bill. AB2443 is set for hearing in early August 2008. Ms. Whitney indicated that she would be asking for assistance from Ms. Yaroslavsky and other committee members to make sure the bill gets out of committee.
- AB2444 (Nakanishi) - Public Letter of Reprimand with Educational Programs. This bill has been sent to the Governor for Signature.
- AB2445 (Nakanishi) - Public Letter of Reprimand for Initial Licensing. This bill has been sent to the Governor for Signature.
- SB 1779 - Healing Arts: Omnibus. Although not Board-sponsored, it is an omnibus bill that carries many of the technical changes that the Board has approved. It is on-track to move through the committees and go to the Governor for signature.

The Board authorized an additional legislative fix at the April 25, 2008 Board Meeting related to the certification of medical records upon the first request by the Board. This was deemed not technical and was not incorporated into any bill this year.

Ms. Whitney will begin meetings with various parties in the fall related to the disabled license concept that the Board has approved, along with a concept to develop either a training license or a change in how we deal with the term "doctor" or "M.D." for post-graduates. There was a legislative proposal that might have gone forward; however, Ms. Whitney asked the medical schools to step back from the proposal until the proper parties could be assembled to talk about the issue to ensure that the Board is satisfied with the results, circumventing the possibility of opposing legislation from a medical school.

Ms. Whitney referenced bills that are now dead:

- AB 1436 (Hernandez) -Nurse Practitioners
- AB 1944 (Swanson) - Authorizing District Hospitals to Employ Physicians (which the Board had taken an "Oppose" position on).

SJR 19 (Ridley-Thomas) - Torture: The Board has a "watch" on this bill which is currently on the Assembly floor.

The Board has already taken a position on the following amended bills; the bills have not changed in any way that would require the Board to change its position:

- AB 547 (Ma) - "Cap" on Fees. Support if amended. No action needed.
- AB 2482 (Maze) – Physician Assistants: Continuing Education. Support. No action needed.
- AB2649 (Ma) – Medical Assistants: Authorized Services. Neutral. No action needed.
- AB 2747 (Berg) – End-of-Life Care. Neutral. No action needed.
- AB 2968 (Carter) – Cosmetic Surgery: Physical Examination. Neutral. No action needed.
- AB 2969 (Lieber) – Worker's Compensation: Medical Treatment Utilization Reviews. Support. No action needed.
- SB 797 (Ridley-Thomas) – VE/P Extension. Support. No action needed.
- SB 1294 (Ducheny) – Employed Physicians: Pilot Project Expansion. Neutral. No action needed.
- SB 1379 (Ducheny) – Loan Repayment: Permanent Funding Source. Support. No action needed.
- SB 1394 (Lowenthal) – Lapses of Consciousness: Reports to DMV. Support. No action needed.
- SB 1415 (Kuehl) – Patient Records: Disclosure of Retention Period. Support. No action needed.
- SB 1441 (Ridley-Thomas) – Task Force: Address Standards for Impaired. Support, if amended. No action needed.
- SB 1454 (Ridley-Thomas) – Advertising, OSM, Cosmetic Surgery Standards. Support. No action needed.

AB 214 (Fuentes) Physician Health Program Act of 2008. Although the bill was not included in the agenda packets due to on-going revisions at the time of printing, a copy was provided to members prior to the Board meeting. The bill, sponsored by the California Medical Association (CMA), establishes an oversight body consisting of experts and appointed by the Director of the Department of Public Health. The body would set, review, and revise specific state-wide standards for providing substance abuse and mental illness assessment referral to treatment and the monitoring of physicians in recovery. The provider program would be audited; there would be rules and standards adopted. The cost of the program would be funded by licensing fees, approximately 2.5% of current licensing fees, which is equivalent to the $22 per licensing fee reduction adopted due to the sunset of the Diversion Program.

Anthony Williams, representing the CMA, provided further detail on AB 214. The bill is different from diversion in that it is proactive and focuses on prevention, targeting individuals who are at risk, rather than responding to situations after harm has occurred. Non-profit organizations who meet the requirements and standards set forth by the oversight body would be able to bid to provide monitoring and assessment services to physicians. However, treatment and bodily fluid testing would continue to be paid for by the physicians who are in the program. Dr. Fantozzi asked what would happen if an individual failed to adhere to the program guidelines or standards. Mr. Williams indicated that the program was voluntary and participation was confidential, however, if a physician failed to abide by the rules, regulations, and agreements within the program, then that individual would be determined to be a threat to patient safety and the Medical Board would be notified. As long as the physician abides by the program rules, their confidentiality would be secured.

Dr. Fantozzi stated while the Board supports the proposal in theory, he is requesting that a motion be made to oppose unless amended due to the deficiencies in the current legislative language, specifically with regard to the confidentiality component. Ms. Yaroslavsky urged the Board not to rush to judgment since there are currently other programs available to at-risk physicians. However, Mr. Williams of CMA noted that there is no data on the monitoring or standards of existing programs, and that confidentiality within these programs currently exists.

Public comment was made by Julie D'Angelo Fellmeth, Center for Public Interest Law, voicing her concerns with the bill, specifically in the areas of the governance and supervision of the program, the standards for the program, and the funding of the program. Ms. Yaroslavsky encouraged the CMA to bring all the constituents together to craft a more collaborative solution.

Dr. Gitnick noted, as a public agency, the Board cannot participate in anything that indirectly or directly "hides" information from the public. He stated the CMA's efforts were commendable and urged them to move forward with their legislation, but to do so in a manner independent of the Medical Board.

A motion was made by Mr. Alexander to oppose the legislation unless amended, s/Zerunyan, motion carried. Dr. Fantozzi stated he would appoint a work group to continue to work with Ms. Whitney, CMA, and other various parties to ensure the amended bill addresses the concerns of the Medical Board.

AB 2398 (Nakanishi) Cosmetic Surgery: employment of physicians. The bill has been amended significantly. The only remaining portion is a stronger enforcement authority regarding corporate practice violations related to cosmetic surgery settings. Senior Legal Counsel, Anita Scuri voiced a preference that the bill's language be amended to clarify that corporate practice prohibition still applies. A motion was made to support if amended to reflect Ms. Scuri's concern. It was m/Alexander, s/Yaroslavsky, c/All to support the bill if amended.

AB 2439 (De La Torre) Loan Repayment Program: mandatory fees. Based upon the Board's opposition, the author made the recommended amendment to reduce the mandatory fee from $50 to $25, an equivalent offset to the fee reduction from the sunset of the Diversion Program. The

provision requiring 15% of these funds be directed to applicants who would work in geriatric settings was not removed from the amended bill. A motion was made by Ms. Yaroslavsky to support if amended to delete the 15% requirement; s/Gitnick; motion carried.

AB2543 (Berg) Loan Repayment Program: geriatric workforce. Based on the Board's opposition, the author deleted the requirement that 15% of funds go to applicants in geriatric settings for the loan repayment program. The bill has been re-written to include service in geriatric settings as a factor in the assessment and evaluation of applications, instead of an absolute requirement. Ms. Yaroslavsky made a motion to support the bill; s/Gitnick; motion carried.

AB 2637 (Eng) Dental Auxiliaries. This bill is a re-write of the existing Dental Assistant Law, with the addition of new sections. The section that raised concerns to staff is a new permit that would allow the dental assistant to monitor a patient under sedation only in the presence of the dentist after a considerable amount of training. The American Society of Anesthesiologists has reviewed this provision and has taken a neutral position on the bill. Brett Michelin from CMA noted they have not yet taken a position on the bill. Mr. Alexander made a motion to take a "watch" position on the bill; s/Zerunyan, motion carried.

SB 963 (Ridley-Thomas) Regulatory Boards: Operations. This revised bill would no longer have a provision related to pro-bono work and also takes out provisions related to ex-parte communication reporting as a requirement, setting findings and declarations the responsibility of the Board. However, if the Board were reconstituted, then the list of provisions in the bill would, in fact, apply to the reconstituted Board. The bill also changes the requirement that a report be publicly heard by the Policy Committee; the report may now be accepted by the Committee without a hearing. The sunset date for the Medical Board is changed from 2011 to 2012 in the bill, and the Medical Board's comprehensive report to the Legislature to reconstitute the Board has a new deadline of March 1, 2010. Ms. Yaroslavsky made a motion to take a "watch" position on the bill; the motion was s/Alexander and carried.

Dr. Fantozzi asked the Board Member Procedure Manual, which addresses ex-parte communication, be distributed to all of the members and a copy placed in the back of the room.

Ms. Whitney will be working closely with Ms. Yaroslavsky who has been designated by the Board as the liaison for the Board to the legislature. Ms. Whitney will contact the Board members as needed to write letters, send emails, or make phone calls in support of Board sponsored bills.

SB 1406 (Correa) Optometry. The bill expands the scope of practice for optometrists, allowing them to diagnose and treat diseases of the eye. A motion was made by Ms. Yaroslavsky to oppose the bill unless amended to provide for a permit process similar in design to that which dentists must go through to perform cosmetic surgery; s/Schipske. Brett Michelin clarified the CMA's "oppose unless amended position on the bill". Concerns were expressed about the sufficiency of a permit process. Ms. Yaroslavsky amended her motion to "oppose"; the motion was seconded and carried.

SB 1526 (Perata) Polysomnographic Technologists Registration. The Board had previously taken a "watch" position on this bill, with Dr. Fantozzi working with the sponsor and author's staff to make changes. The bill would require the Board to register polysomnographic technologists who work in sleep centers. The bill was developed due to issues related to scope of practice as it relates to respiratory care and to require fingerprint clearance for the technologists.

The bill is set up to be cost neutral with the registration revenue covering the cost of the administration of the registration program and the individual technologist paying for the fingerprint reports. Ms. Yaroslavsky made a motion that the Board take a "neutral" position on the bill; seconded; motion carried.

C. Status of Regulatory Action

Ms. Whitney directed the Board members to the Status of Pending Regulations matrix on page 139 of their packets. There were no questions.

Agenda Item 11 Discussion of SB 376 Report to the Legislature (District Hospital Employment of Physicians Pilot Program)

Mr. Kevin Schunke, executive staff member, provided an update on SB 376, which authorized the Medical Board to start a pilot program which allows certain qualified district hospitals to employ physicians instead of using the traditional contracting route to bring their services into the hospital. One of the requirements of the bill is that the Medical Board submit a report to the legislature by October 1,

2008. Mr. Schunke referred the members to page 140 of their agenda packets to a draft copy of the report; staff asked for the appointment of one or two Board members to work with them to finalize the report before submission, with these members being authorized to act on behalf of the Board as a whole. Dr. Fantozzi appointed Dr. Duruisseau and Dr. Moran to work with staff on the SB 376 report.

Agenda Item 12 Enforcement Chief's Report

A. Approval of Orders Restoring License Following Satisfactory Completion of Probation, Order Issuing Public Letter of Reprimand, and Order for License Surrender During Probation

Ms. Yaroslavsky made a motion to approve orders restoring license following satisfactory completion of probation; orders issuing Public Letter of Reprimand, and orders for license surrender during probation; s/Schipske, motion carried.

Ms. Renee Threadgill, Chief of Enforcement, publicly acknowledged Enforcement staff present at the meeting.

B. Enforcement Program Update

Ms. Threadgill thanked her staff for their outstanding work in quickly completing background checks to expedite the hiring of investigators. Training for these new investigators has begun. Dr. Fantozzi congratulated and expressed his appreciation to Ms. Threadgill and her staff on reducing the anticipated vacancy rate as reported in the Executive Director's Update. She welcomed Kathi Burns as the new manager of the Discipline Coordination Unit. Ms. Threadgill also announced the promotion of Susan Cady to Staff Manager II, a position that was created as part of the reorganization of the Enforcement Program, responsible for overseeing the management of the Discipline Coordination, Complaint, and Probation Units.

Staff and legal counsel have met to begin review of the model disciplinary guidelines; some suggested revisions have been formulated. Once the revision process is completed, the guidelines will be presented to assigned Board members. Dr. Fantozzi indicated he would assign two Board members to assist staff with the model disciplinary guidelines.

The Investigator Pay and Classification Study has begun and is expected to be completed prior to the November 2008 Board meeting.

C. Expert Reviewer Survey Update

Ms. Threadgill directed members to page 150 of their packets to the results of the Expert Reviewer Survey. The Enforcement Program continues to receive positive feedback from the surveyed medical expert reviewers. The number of experts within each specialty continues to increase, although there are a few specialties that remain low. Mr. Zerunyan suggested questions 12 and 13 on the survey, which refer to the Deputy Attorney General's availability and responsiveness, be reframed to provide a more valid response, reducing the number of "not applicable" responses. Ms. Yaroslavsky asked if there was staff input about the interaction with expert reviewers. In reply, Ms. Threadgill stated that staff investigators are asked to evaluate each expert.

Dr. Low stated several of the Board members had some concerns about the Board's "experts", with some of the reviewers mistakenly believing that being part of the Expert Review Panel provides them with some special position or some insulation from future action against themselves. He expressed his concern over the quality of the experts retained for many of the cases the Board has reviewed, occasionally finding the reviewer was weak and off target, thus creating embarrassment to the Medical Board. Dr. Low would like a better way to select the expert reviewers. Ms. Threadgill indicated staff could look at the criteria and strengthen the minimum requirements for reviewers. She also stated the Board must be cautious about over-utilizing experts so these individuals do not become "hired guns" for the Medical Board. Mr. Carlos Ramirez, Senior Assistant Attorney General, indicated there is a process by which

deputies provide feedback following a hearing with regard to the testifying expert reviewer's qualifications and demeanor on the stand; however, this process does not occur prior to the hearing. Dr. Gitnick raised the related issue of matching the expert reviewer to the case, making sure that the expert selected is the most appropriate, which requires being able to ask the proper question of the expert before they are retained for a particular case.

Agenda Item 13 Vertical Enforcement Update

A. Vertical Enforcement Statistics

Ms. Threadgill distributed a handout detailing investigation and prosecution timeframes from 2005 through the second quarter of 2008 for the Medical Board. Mr. Ramirez distributed information on accusation timeframes for Health Quality Enforcement over the past two and half years.

B. Recommendation to Improve Disciplinary Process Timelines

Ms. Threadgill explained there have been on-going discussions between Enforcement and Mr. Ramirez on ways to decrease the timelines for investigation as well as for the entire enforcement process. Their recommendations and suggestions are noted beginning on page 157 of the agenda packet. With regard to the Office of Administrative Hearings (OAH) and the Attorney General's Office, Ms. Threadgill pointed out she and Mr. Ramirez will continue to meet regularly to reconcile their data. Approval was sought to meet with Ron Diedrich, Director of OAH, to discuss mandatory hearing setting conferences at the beginning of a case to help alleviate some of the disorganization that occurs later when there are scheduling conflicts. Additionally, approval was requested to ask Mr. Diedrich to assign Medical Board cases to the Medical Board impaneled administrative law judges. Dr. Fantozzi asked for a motion to support the staff's recommendations with the qualification that Ms. Threadgill check with OAH for their agreement with the deadline to hear cases within 120 days of receipt of the Request for Hearing. Mr. Zerunyan commended Ms. Threadgill and Mr. Ramirez on their efforts to decrease enforcement timelines and expressed his disappointment that the IT budget does not allow more timely improvements in IT capabilities which would allow increased communication between the Medical Board and the Attorney General's Office. Ms. Johnston stated the obstacle was not money, but rather time in working through the bureaucracy and that staff was also disappointed with the delay. It was m/Chang, s/Yaroslavsky, c/All to support staff recommendations for ways to decrease timeframes in the Medical Board enforcement process.

Agenda Item 14 Licensing Chief's Report

A. Licensing Program Update

Ms. Pellegrini directed the members to the Licensing Report on page 160 of their packets. Last fiscal year, over 6200 applications were received; a little over 4,800 licenses were issued, with over 1,600 issued just in the last quarter.

With the average number of days to issue a license still too long, Ms. Pellegrini's priorities are to analyze the licensing processes and find ways to improve the timeline, while ensuring the licensing program remains customer focused and attentive to the applicant's needs.

With regard to the Information Center, the number of calls increased during the fourth quarter due to the combining of the Licensing Customer Information Center with the Enforcement Call Center. There have been problems with the Call Center telephone system, preventing full functionality. Staff is working diligently to return all calls the same day they are received. An automated phone system should be in place within the next few months which should alleviate the problem. Ms. Yaroslavsky expressed the need for staff to have the proper tools to be able to do their jobs; she wanted to make sure that the Department of Consumer Affairs is aware of the problem and they work with staff to solve the phone issues. Ms. Kirchmeyer shared the Phone Center was supposed to be functional two weeks before the Medical Board moved to their current location on March 14, 2008. The Medical Board staff has been working diligently with DCA, who is aware of the phone problem, and with the vendor (Verizon) to resolve the issues. At this point, the Medical Board was told that the phone system concerns would not be solved until forty-five days from the date the Board signs off on changes. The possibility of securing a new vendor was raised, but would inevitably delay implementation even further.

D. Special Programs Update

Ms. Pellegrini has been working on reinstituting the Special Program site visits and reviewing policy and procedures with the Board's medical consultant, Dr. Nuovo. The first site visit with UC San Diego is scheduled for this Fall.

E. Midwifery Advisory Council Report

Faith Gibson, L.M., Chair of the Midwifery Advisory Council, reported at their June 19, 2008 meeting the Office of Statewide Health Planning and Development (OSHPD) gave the preliminary statistical data from the Licensed Midwife's Annual Report for 2007. Highlights of the report included:

- There are 196 active licensed midwives (LMs) in California in 2007;
- 61% of these LMs returned their annual report;
- 70% of those reported data and services rendered;
- 2061 clients were served by those midwives, delivering 1401 live births, including 104 out of state births (primarily in Nevada).

There was discussion at the meeting on how to improve the data for next year's report. Licensed midwives who did not complete the report will have a flag placed on their records indicating that they cannot renew their licenses. A reminder was sent out by the Board to those who had not submitted their report, asking them to send it in by July 15, 2008. OSHPD is currently consolidating that data.

The next Midwifery Advisory Council is scheduled for October 23, 2008. Dr. Fantozzi asked that the report be distributed to all members when it is completed.

Agenda Item 15 Special Faculty Permit Review Committee Appointment

Ms. Pellegrini reported UC Irvine's Vice Chancellor of Health Affairs has nominated F. Allen Hubbell, M.D. as their new representative for the Special Faculty Permit Review Committee, due to the retirement of Dr. Jeremy Tilles. Ms. Pellegrini asked the Board to approve this nomination. M/Schipske to appoint Dr. Hubbard to the committee, s/Yaroslavsky, motion carried.

Agenda Item 16 California Physician Corps Program Update

Ms. Yaroslavsky reported the Health Professions Education Foundation (HPEF) has been awarded a $2.5 million dollar grant over a period of two years from United Pacific Care; the funds will be used to assist loan repayments for doctors who serve in underserved communities. Dr. Gitnick, Dr. Fantozzi, Executive Director Barb Johnston, and Ms. Yaroslavsky serve as members of the HPEF board. Dr. Fantozzi indicated a strategic plan process would begin in August of 2008 to be completed by the end of the year. An executive director has been appointed and the HPEF board is moving forward in a positive direction.

Agenda Item 17 Education Committee Update

The Education Committee met on July 24, 2008 and heard presentations regarding wellness curriculum from representatives from Kaiser Permanente, Keck School of Medicine at USC and the California Medical Association. Ms. Yaroslavsky expressed her pleasure at the direction of events as they relate to wellness at the school level. The Board will continue to work with these organizations to improve wellness resources for students and physicians. Kevin Schunke of the Medical Board's Executive Office described his work in the development and implementation of outreach programs to assist potential applicants for medical licensure. He routinely represents the Board at new-resident orientation and provides one-on-one assistance at licensing fairs. Mr. Schunke's work helps promote a positive first impression of the Medical Board and provides valuable, practical assistance to applicants. Ms. Yaroslavsky thanked Mr. Schunke for his efforts. The Board's Information Officer, Ms. Candis Cohen, gave a presentation describing the many components of the Board's educational programs, including media outreach, the Board's newsletter and web site (which ranked in the top 10 nationally in 2006 among all State medical Board's web sites by "Public Citizen"), and staff participation in consumer and health-related fairs. As the Education Committee chair, Ms. Yaroslavsky expressed her confidence that the Board has an effective and comprehensive outreach program.

Agenda Item 18 Medical Errors Task Force Update

Mr. Zerunyan asked for a motion to approve the minutes from the April 24, 2008 Medical Errors Task Force meeting. A motion was made to approve, s/Schipske, c/All.

The Task Force heard a presentation from Dr. Elizabeth Banks, California Department of Public Health (CPPH), Licensing and Certification Branch, explaining how CPDH is implementing SB 1301 and SB 1312 (known as the Alquist Legislation) which passed in 2006 requiring additional event reporting from health care facilities and making citations and findings available to the public. Lori Rice, former Medical Board member and member of the 2006 Medications Error Panel established by SCR 49 also spoke, giving an overview of the Panel's work and urging members to engage in more public information activities. Ms. Janie Cordray, Research Specialist for the Medical Board, gave an overview of error initiatives. The Medical Errors Task Force will continue discussion to determine how to best serve as a conduit of information for licensees and consumers. Dr. Salomonson asked if the Task Force might consider being called "Patient Safety" instead of "Medical Errors" to more accurately reflect the broadness of the Task Force's focus and activities.

Agenda Item 19 Physician Assistant Committee Update

Dr. Low stated the Physician Assistant Committee sponsored AB 2482 requiring licensees to complete 50 hours of continuing education from a certified body every two years as a condition of license renewal. This was signed into law by the Governor on July 8, 2008.

AB 3 was a bill that allows physician assistants (PAs) to administer, provide, or issue a drug order for Schedule 2 through 5 controlled substances without advance approval by a supervising physician and surgeon if the PA completes specified educational requirements and if allowed by the supervising physicians.

A strategic planning session has been scheduled for the next Committee meeting; the last strategic plan was adopted in 2004.

The physician assistant license has always been a paper document, but a new plastic license has been created and is currently being piloted; the new plastic card should be rolled out in September.

The delegation of Standardized Procedures Agreement regulations have been filed with the Secretary of State and will take effect in early August 2008. The next meeting of the PA Committee is August 14, 2008.

Agenda Item 20 Wellness Committee Update

Dr. Chin reported the Wellness Committee met on July 24, 2008. Dr. Michael Williams of PRC International delivered a presentation on wellness and prevention at the meeting. The Wellness Committee has developed a page on the Medical Board's website with links to articles and other relevant information; he encouraged the Board members to visit the new webpage. The Committee has been asking malpractice carriers such as NORCAL to help with the goals of the Wellness Committee.

Agenda Item 21 Agenda Items for November 2008 Meeting

The Board has spoken with staff about having Ron Diedrich from the Office of Administrative Hearings come speak to the Board at a future meeting. Dr. Fantozzi repeated his request for members to make suggestions to Barb Johnston for speakers. He indicated he had received a request to have staff look at having presentations from the patient assistance programs and the State Office of Patient Advocates.

Mr. Zerunyan requested an item be added to a future agenda to discuss the public outreach of the Medical Board and how consumers are notified of the existence and function of the Board. Dr. Fantozzi asked staff to agendize the item either at the Education Committee level or at the full Board level, as appropriate.

Action Item 22 Adjournment

There being no further business, it was m/Yaroslavsky, s/Chin, c/All to adjourn the meeting at 12:55 p.m.

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Richard Fantozzi, M.D., President

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Hedy Chang, Secretary

_____
Barb Johnston, Executive Director