MEDICAL BOARD OF CALIFORNIA
Executive Office

Sheraton Suites San Diego
701 A Street
San Diego, CA

November 6-7, 2008

MINUTES

In order to remain consistent with the record, the agenda items presented in these minutes are listed in the order discussed at the November 6-7, 2008 meeting.

Agenda Item 1 Standard of Care Training

Due to scheduling constraints, the Standard of Care Training was postponed to the January 2009 Board meeting.

Agenda Item 2 Call to Order/ Roll Call

Dr. Fantozzi called the meeting of the Medical Board of California (Board) to order on November 6, 2008 at 4:05 p.m. A quorum was present and notice had been sent to interested parties.

Members Present:

Richard Fantozzi, M.D., President
Hedy Chang
John Chin, M.D.
Shelton Duruisseau, Ph.D.
Gary Gitnick, 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:
Reginald Low, M.D.

Staff Present:
Barbara Johnston, Executive Director
Kimberly Kirchmeyer, Deputy Director
Candis Cohen, Public Information Officer
Janie Cordray, Research Specialist
Randy Freitas, Business Services Office
Abbie French, Telemedicine and Special Projects Manager
Kurt Heppler, Staff Counsel
Armando Melendez, Business Services Office
Kelly Nelson, Legislative Analyst
Debbie Pellegrini, Chief of Licensing
Regina Rao, Business Services Office
Paulette Romero, Associate Analyst
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:
Elizabeth R. Becker, Inner Solutions for Success
Julie D'Angelo Fellmeth, Center for Public Interest Law
Meredith D'Angelo, Center for Public Interest Law
Tara Kittle, Blue Diamond Corporation
Patrick McKenna, Center for Public Interest Law
Brett Michelin, California Medical Association
Anthony Williams, California Medical Association

Agenda Item 4 Legislation

A. Status of Regulatory Action

Ms. Linda Whitney, Chief of Legislation, directed the Board Members to page 71 of their agenda packets to view the Status of Pending Regulations. Ms. Whitney added that the Continuing Medical Education Requirement regulations went to the Office of Administrative Law on October 30, 2008; staff expects to hear from their office by the end of November if there are any issues.

B. 2008 Legislation and Implementation

Ms. Whitney directed Board Members to the front page of the legislative packet listing all of the tracker bills.

Ms. Whitney began by referencing bills that are now dead:

AB 2398 (Nakanishi) – Cosmetic Surgery: employment of physicians
SB 1294 (Ducheny) – Employed Physicians: pilot project expansion
SB 1454 (Ridley-Thomas) – Advertising, OSM, Cosmetic Surgery Standards

Ms. Whitney indicated the following bills had been vetoed with the veto message from the Governor appearing in their legislative packets:
AB 214 (Fuentes) – Physician Health Program Act of 2008
AB 2543 (Berg) – Loan Repayment Program: geriatric work force
AB 2649 (Ma) – Medical Assistants: authorized services
AB 2968 (Carter) – Cosmetic Surgery: physical examination
AB 2969 (Lieber) – Workers' Compensation: medical treatment utilization reviews
SB 1394 (Lowenthal) – Lapse of Consciousness: reports to DMV
SB 1415 (Kuehl) – Patient Records: disclosure of retention period

Next, Ms. Whitney discussed vetoed bills which require Board action:

AB 547 (Ma) – Cap on Fees. This bill was a result of a fiscal audit by the Bureau of State Audits where it concluded that the Board had excess in its reserves and should pursue a reduction. The bill would have established a cap on the physician licensing fee. The Board had previously taken a "support if amended" position. Staff recommended that the Board seek legislation in 2009 to establish a cap on the licensing fee and allow a fund reserve of between 2 and 6 months. Barbara Yaroslavsky made a motion to accept staff's recommendation to seek legislation on a cap of licensing fees; seconded; motion carried.

AB 2442 (Nakanishi) – MBC: peer review proceedings. This was a Board sponsored bill which, in light of the sunset of the Medical Board's Diversion Program, would have repealed sections 821.5 and 821.6 in the Business and Professions Code (B&P Code) which require health entities to report physicians under investigation to the Diversion Program. A motion was made to authorize staff to include language to repeal B & P Code 821.5 and 821.6 in the Board's Omnibus bill for 2009; the motion was seconded and carried.

A second part of AB 2442 related to the transfer of $500,000 to the Health Professions Education Foundation for the Physician Loan Repayment Program. Two bills have recently passed which will provide permanent funding for the Loan Repayment Program at a minimum of two to four million dollars per year. Ms. Yaroslavsky made a motion to accept staff's recommendation that the Board not pursue legislation in 2009 regarding this issue; s/Gitnick; motion carried.

AB 2443 (Nakanishi) – MBC: physician well-being. This Board-sponsored bill would have required the Medical Board to establish a program to promote well-being of medical students, post-graduate trainees, and licensed physicians. The bill was referred to the Wellness Committee for discussion and a recommendation. Dr. Duruisseau, Chair of the Wellness Committee, noted the Committee membership was mainly volunteers and the resources to support the Committee are not being diverted from enforcement and other regulatory priorities.

The Wellness Committee recommended the Board sponsor this bill again in 2009. Laurie Gregg, M.D., a member of the Wellness Committee, volunteered to assemble additional information and statistics documenting the benefits of physician wellness. The Committee believes that it is within the charge of the Medical Board to address this issue in order to improve the health care that is delivered to consumers. Dr. Duruisseau made a motion to seek legislation for the physician well-being program; s/Yaroslavsky.

Mr. Zerunyan asked if anyone discussed with the Governor's office the reason behind the veto and the intention of the committee to resubmit the bill. Dr. Fantozzi indicated that given the budgetary environment at the time the bill was put forward, it was viewed as a cost issue and possibly negatively impacted the Board's other obligations.

Mr. Zerunyan felt the Governor's position was quite clear and it did not make sense to resubmit the same thing unless the Board had discussion with the Governor's office to ensure all parties are in agreement. Dr. Fantozzi suggested, should the Board vote to resubmit the bill, the language of the bill be revisited. He noted the medical schools and residency programs are already doing something to address physician wellness, and the Board must choose a target audience for the message. He asked if the Board was to resubmit the bill that the language be clarified and softened to avoid any ambiguity that might invite unnecessary disagreement or ambivalence.

Dr. Gitnick asked about the financial impact of the bill on the state's budget and where the funding comes from. Ms. Whitney responded that the bill clearly stated there would be no cost to the state since any costs would be absorbed. Dr. Duruisseau and Dr. Gregg have offered to work with Ms. Whitney in meeting with legislative or Governor's staff and consultants to see if language can be developed that will satisfy the administration so the Board may move forward on the wellness bill.

Public comment was heard from Julie D'Angelo Fellmeth, Center for Public Interest Law (CPIL), who mentioned that SB 1441 (Ridley-Thomas) begins by making a statement of legislative findings, which sets up the reason for the bill. She agrees with Mr. Zerunyan that good communication with the administration on the reason for the bill is essential, but she believes it would be beneficial to set forth the abstracts or citations of the studies that demonstrate the linkage between lack of physician wellness and poor patient care or harm in order to be included in the legislative analysis.

The motion to resubmit the Physician well being legislation carried.

SB 1526 (Perata) – Polysomnographic Technologists Registration. The Board previously had voted "neutral" on the bill. Although it was vetoed, the sponsor intends to resubmit this bill which certifies polysomnographic technologists. The Board did not have to take a position on the bill at this time.

SB 1779 (B&P Committee) – Healing Arts: Omnibus. This bill carried a variety of the Medical Board's proposals for "clean up" and technical amendments. Ms. Whitney asked for approval to move forward with the language in an Omnibus bill for the 2009 legislative session and to add the previously approved B&P Code Sections 821.5 and 821.6. M/S/C (Yaroslavsky, Chang).

Ms. Whitney directed Board members back to their legislative packets to review the implementation of those bills that were signed by the Governor:

AB 2439 (De La Torre) – Loan Repayment Program: mandatory fees. This bill assessed a $25 fee to all licensees and applicants, with the money being used for the Physician Loan Repayment Program. To make sure licensees are informed of this change, an article will appear in the Board's January newsletter, licensing forms are being revised, and frequently asked questions are being developed. Applicants whose paperwork is received at the Board after January 1, 2009 will be required to pay the $25 fee. Renewal notices that are mailed out after January 1, 2009 (April renewals) will include this new fee.

AB 2444 (Nakanishi) – MBC: PLR with Education. This Board-sponsored bill allows for public letters of reprimand to include an educational requirement. Physicians will be notified of the change in the Board's newsletter. Enforcement staff is developing the procedures for identifying which cases will have education and training requirements added.

AB 2445 (Nakanishi) – MBC: licensing PLR. This Board-sponsored bill allows the Licensing Program to issue public letters of reprimand. Again, notification of the change will be included in the Board's newsletter. Licensing staff is working on the process and criteria for determining which minor violations would apply.

AB 2482 (Maze) – Physician Assistant: continuing education. Dr. Low discussed the implementation of this bill during his update of the Physician Assistant Committee.

AB 2637 (Eng) – Dental Auxiliaries. This bill allows the Dental Board to issue a Dental Sedation Assistant Permit which requires certain levels of training and dentist oversight. The Board had a watch position on this bill.

AB 2747 (Berg) – End-of-Life Care. This bill requires when an attending physician diagnoses that a patient has a terminal illness the physician must provide the patient with an opportunity to receive information and counseling regarding legal end-of-life care options. This information will appear in the Board's newsletter and on the Board's website with appropriate links to make sure physicians have the appropriate information to provide to their patients.

SB 797 (Ridley-Thomas) – VE Extension. Discussion regarding this bill occurred during legislative proposals.

SB 963 (Ridley-Thomas) – Regulatory Boards: Operations. When first presented, the Board had many concerns about this bill which revised the entire sunset review process. In its final Form, the bill makes various changes to sunset review that do not specifically apply to the Board; all of the provisions the Board took issue with were removed.

SB 1379 (Ducheny) – Loan Repayment: permanent funding source. This bill provides permanent funding to the Physician Corp Loan Repayment Program from the Department of Managed Health Care via their fines and penalty assessments. Information will be provided in the Board's newsletter, and no other implementation on the part of the Board is required.

SB 1406 (Correa) – Optometry. The Board had taken an oppose position on this bill. The bill allows an optometrist to diagnose and treat diseases of the eye and prescribe lenses and devices. It also deals with glaucoma diagnosis and sets up a Glaucoma Diagnosis and Treatment Advisory Committee. The committee will recommend appropriate curriculum for case management of patients diagnosed with glaucoma. The committee will be composed of two optometrists certified to treat glaucoma, an optometrist who educates optometry students in glaucoma, and three physicians. Their report will be submitted to the Department of Consumer Affairs, Office of Exam Resources, by July 1, 2009. Staff will be tracking the submission of the report and its findings and will bring the information back to the Board.

SB 1441 (Ridley-Thomas) – Task Force: address standards for impaired professionals. Even though the Board does not have a substance abuse program, the Board will be involved in developing standards since all healing arts boards have been requested to participate in the task force.

SJR 19 (Ridley-Thomas) – Health Professionals: torture. This resolution requires the Board to notify its licensees via various notification channels that they should not be involved in torture or cruel or inhuman treatment of persons.

Dr. Gitnick returned to AB 2747 - End of Life Care, asking if the California Medical Association (CMA) had a position on the bill. Brett Michelin, CMA, stated CMA took a support position on the bill after significant amendments, in the belief the bill does not mandate any activity physicians practicing in this area do not already comply with.

Dr. Gitnick shared, in his view, it is appropriate for physicians and medical schools to teach and practice medicine, but he objects to the legislative practice of medicine. He is concerned if he, as a patient's physician, decides in his best judgment a patient or a patient's family might actually be harmed by providing information on legal end of life care options and chooses not to provide it, what consequences would befall him. Mr. Michelin clarified the information is only mandated to be provided upon request of the patient; most physicians would answer the patient's question and then give their professional judgment on what is the best course to pursue.

C. 2009 Legislation and Proposals

Ms. Whitney directed members to the last tab of their legislative packet to view the legislative proposals for 2009. The Board has already approved staff members moving forward with proposals dealing with certified medical records, development of initial limited license, and the use of "M.D" by residents. Staff is researching how other boards throughout the country deal with these issues. Once complete, meetings will be held with interested parties to help formulate the legislative language.

Item number 9 in the legislative packet relates to sunset review and the extension of the Board. The Board, or the regulatory function of the Board, is set to become inoperative on July 1, 2010 and will be repealed on July 1, 2011. SB 963 had the extension of the Board for another year while the legislature and administration determined how the sunset process would be reformed. Unfortunately, the final version of the bill did not specifically apply to the Medical Board and these dates still stand. The Senate Business and Professions Committee staff may include an extension in its 2009 bill to give the Medical Board an additional year before sunset. Ms. Yaroslavsky made a motion to give approval to staff continue to work with the Committee to determine how to proceed to ensure sunset is extended; the motion was seconded and carried.

Item number 10, the sunset of the pilot Vertical Enforcement Program must be addressed. A review of the program will be conducted with a July 1, 2009 due date. A place holder is necessary in case the Board decides to extend or change the pilot program. Ms. Yaroslavsky made a motion to direct staff to seek place holder legislation for the Vertical Enforcement Program or to incorporate the findings and recommendations for Vertical Enforcement into the sunset review legislation; motion was seconded and carried.

Item number 11 would require reporting at time of renewal of any criminal, civil, or disciplinary action. This proposal would require a physician to check off a box or make a comment on the renewal form.

Ms. Anita Scuri, Supervising Legal Counsel, stated it would be important to consider if failure to answer the proposed question on criminal, civil, or disciplinary activity would prohibit the renewal.

Dr. Fantozzi asked if there was also a potential bill being generated from the Department of Consumer Affairs (DCA) regarding this issue. Ms. Whitney responded if the DCA was working toward a legislative proposal for the entire department the Board would certainly want to join in on the legislation, however, she would need the Board's approval to agree to a particular proposal.

Ms. Schipske made a motion to direct staff to seek legislative authority to gather this information from each physician at time of renewal; the motion was seconded and carried.

Item number 12 would require all physicians who have an active license and have not submitted fingerprints to the Board to do so by January 1, 2012. Ms. Whitney indicated in staff's research

for this proposal, they found the Board had been asking physicians for fingerprints since at least June of 1968, although it wasn't a requirement for licensure until 1986. Thus, the estimated number of licensees this proposal would affect has been revised downward from 45,000 to between 11,000 and 15,000. The cost to do fingerprints is $51 per licensee; the cost of staff time and added Attorney General time in required cases would be $143,000 to the Medical Board. The anticipated Attorney General time is low because of the Board's statute of limitations.

Should the Board proceed with this proposal, the legislation could be coupled with legislation DCA might be considering. Ms. Schipske made a motion to direct staff to seek legislation to require all active physicians to be fingerprinted by their next renewal date. Dr. Gitnick seconded the motion.

Dr. Gitnick asked for the CMA's view of this legislative proposal. Brett Michelin, CMA, stated CMA did not have an official policy on this, however, he speculated they would argue that the benefit of requiring 11,000 physicians, most of whom have probably been in practice for many years, to be fingerprinted is not worth the time that would be required on the off-chance there might be one or two physicians who might have committed a recent offense. The odds are the mechanisms of the Board would have already captured this information.

Ms. Schipske mentioned the news article that appeared on the front page of the Los Angeles Times citing the failure of the Board of Registered Nursing (BRN) to require fingerprinting of registered nurses. Ms. Schipske understands the BRN is putting through emergency regulations to fingerprint all of its licensees and wondered why the Board could not do the same for physicians.

Ms. Whitney indicated if emergency regulations are approved then this model could be used for the Board. It would require that the Board absorb any of the costs ($143,000) and, if the Board chose to, also pay for the fingerprinting of these 11,000 to 15,000 physicians to gain greater compliance. All of this would have to go through a regulatory process and the additional cost would be $500,000 to $700,000 depending upon the number of physicians needing fingerprinting. Both options would be effective by January 1, 2010, although emergency regulations would allow the Board to implement this probably 6 months sooner.

Ms. Schipske asked if the DCA was moving forward to require fingerprinting on a consolidated basis, not just for nurses, but for all medical licensees. Ms. Whitney indicated DCA was putting forth a budget change proposal to cover the costs of doing this for many of the healing arts boards because most of them do not require fingerprinting; since the Board's costs for fingerprinting are so low, we may or may not be included in the DCA's proposal.

Dr. Salomonson asked for clarification on past fingerprinting requirements; Ms. Whitney stated while there was wide scale compliance with fingerprinting in the past, it was not an absolute requirement for licensure. The Board believed it was important for consumer protection to request fingerprint reports; they later discovered the Board needed the authority in legislation to require them.

Ms. Yaroslavsky asked if the fingerprints were housed somewhere where they were of no use to anyone. Ms. Whitney explained when doctors apply for a license, they are fingerprinted and the information is retained by the Department of Justice. The physician's fingerprint file is marked so that any subsequent fingerprinting for an arrest triggers a report to the Board.

The issue of whether the Board should absorb any or all of the costs of fingerprinting was discussed. Since new licensees currently pay the cost of fingerprinting, Dr. Fantozzi felt it was reasonable that the Board seek the authority to have the right to recover the cost from the physician being fingerprinted.

Dr. Gitnick questioned the need to seek emergency regulations. Dr. Fantozzi stated in the interest of being in concert with the DCA and in light of the concerns Ms. Schipske raised, the Board would be remiss if it did not pursue emergency regulations.

Ms. Schipske asked to amend the motion to request staff to pursue emergency regulations on fingerprinting if this proves appropriate; if this is not feasible, then to seek legislative authority. The motion was seconded and carried.

Ms. Whitney directed the members to Item 13 in their legislative packet, B&P 801.01 Reporting Revisions. This section of law continues to be confusing to a number of reporting entities. Meetings have been held with hospital legal staff to clarify and work out issues. Ms. Yaroslavsky made a motion to direct staff to continue to work with the appropriate legal staff to develop language that will clarify to the reporting entities what and when the information must be submitted to the Board under 801.01. Dr. Gitnick seconded and the motion carried.

Ms. Whitney provided information on two proposals the Board may wish to co-sponsor. The first proposal is for the Licensing /Accreditation of Outpatient Surgery Settings. A legal decision was made in the case of *Capen v. Shewry* that created an issue between licensing and accreditation of outpatient surgery settings. The Court's opinion stated physician owned and operated surgical clinics are to be regulated by the Board; surgical clinics operated by non-physicians are to be regulated by the Department of Public Health. Staff believes the parties will come together and work on legislation in 2009. Ms. Yaroslavsky made a motion to direct staff to work with the Administration and interested parties to resolve this issue. Dr. Fantozzi appointed Dr. Moran to work with staff on this issue. The motion was seconded and carried.

Lastly, the proposal regarding the extension of Board Members on the Health Professions Education Foundation (HPEF) was discussed. When the Board sponsored legislation to establish the California Physician Corps Program (Loan Repayment and Volunteer Program) with HPEF, two members of the Board were placed on the Foundation's Board. These provisions are repealed January 1, 2011. An evaluation is due January 1, 2010. Mr. Zerunyan made a motion to direct staff to work with HPEF as required in the evaluation and work to support the bill in 2010. The motion was seconded and carried.

Ms. Whitney opened the floor to any additional proposals the Board Members might have. Dr. Fantozzi asked if Ms. Whitney had communicated our 2009 proposals to the DCA. Ms. Whitney

indicated that DCA legislative staff was present at today's meeting, the proposals had been forwarded to the DCA, and an email had been subsequently sent regarding vetoed bills. The DCA is aware of proposals dealing with Certified Medical Records, Development of an Initial Limited License, Use of M.D. by Residents and the Omnibus and Sunset proposals.

Ms. Yaroslavsky requested legislation to clean up existing legislation on the $1000 per day fine on doctors for refusing to submit medical records. Ms. Scuri clarified that Ms. Yaroslavsky was referring to Business & Professions 2225.5 which is the section that creates one set of civil penalties for health care facilities and a different set of civil penalties for physicians who fail to produce medical records. A disparity exists between how much a hospital is fined and how much a doctor is fined and there is currently no cap or discretion in setting the fine for physicians. Mr. Zerunyan indicated the issues are two fold: the first issue is the amount set out in the statute does not comply with due process on the basis that it appears to be an arbitrary fine without any correlation to anything; the second issue relates to equal protection in that there are two different entities being treated differently in the same statute. Correcting these issues will allow this statute to be used by enforcement without it being challenged each time it comes up.

Ms. Yaroslavsky made a motion to direct staff to work on cleaning up B&P 2225.5; the motion was seconded and carried.

Agenda Item 5 Change in Effective Date of Fee Reduction Regulations

Ms. Whitney indicated this item was being brought back to the Board because adverse comments were received during the regulatory process regarding the change in the effective date of the reduction in fees. The original effective date on the regulations was November 1, 2008; the Board voted in July to amend this date to July 1, 2009. Opposition contends the elimination of the diversion program took effect on July 1, 2008 and any money collected thereafter violates the law, equaling an unfair revenue gain for the Board. A comprehensive timeline, included in the agenda packet, explained why the date was changed and the impact of any revisions in the regulatory file.

Ms. Yaroslavsky made a motion to adopt the regulation as amended and presented at the July 2008 meeting (the reduction in initial and renewal license fees be reduced by $22 with the effective date of July 1, 2009) and to direct staff to report back at the January 2009 meeting with a comprehensive analysis for refunding or providing a credit to those who paid the $22 between July 1, 2008 and June 30, 2009. A comprehensive discussion may take place in January and a determination can be made as to whether there is any desire to address the issue separate from this regulatory file. Ms. Schipske seconded the motion.

During public comment, Anthony Williams from the California Medical Association (CMA) explained CMA's concern was with the gap between the end of the diversion program and the effective date of the fee reduction; he expressed his opinion the Board seems to have devised an acceptable plan and CMA looks forward to working with the Board on the issue. The motion passed.

Agenda Item 6 Discussion on Board Member Administrative Procedure Manual

Members were referred to tab 6 in their Board packets and were provided with an additional copy of the updated Administrative Procedure Manual showing edits. A motion was made and seconded to approve the revised Board Member Administrative Procedure Manual.

Ms. Anita Scuri, DCA Legal Counsel, directed members to the General Rules of Conduct section on page 2 of the manual. Dr. Fantozzi stated Board policy is quite clear that Board members not communicate with defense counsel or interested parties on enforcement issues, but a question has arisen on whether Board Members can speak with advocacy groups or others on an individual basis. If individual members communicate with one group, all with the best of intentions and in the interest of education, other vested stakeholders do not have the same opportunity and are unaware of the conversation that took place. The concept of Bagley-Keene Open Meeting Act is that the Board's work be done in public. Dr. Fantozzi stated if any individual or group felt there was not enough time in the Board's meetings to convey their information to the Board Members, the information could be summarized and delivered to the Executive Office for the benefit of all the Board members, rather than just one or two members.

If the Board agrees with this perspective, then Dr. Fantozzi would like it to make it a Board policy. If the Board does not agree with this perspective, he suggests, as a regular item for future meetings, a disclosure agenda item where each member relays any relevant conversations with interested parties.

Ms. Schipske expressed her support of the disclosure policy since it allows the public to know anything being discussed with a Board Member must be publicly disclosed. Dr. Fantozzi clarified his position, stating if the Board had a policy that members not have these "out of turn" discussions, public disclosure would not be necessary.

Ms. Scuri clarified the edits were, in fact, an expansion of the prior rule of conduct where Board Members were only prohibited from speaking or acting for the Board without proper authorization; the updated policy prohibits speaking to interested parties.

Julie D'Angelo Fellmeth, Center for Public Interest Law, reminded the Board it is bound by the Bagley-Keene Open Meeting Act which requires the Board to meet and make decisions in public subject to public comment and scrutiny. Board business should be discussed in a public venue so all interested stakeholders can hear what each other has to say and are free to respond, correct errors, disagree, interact with and answer questions from the Board in a public setting. Board members should not engage in a lot of off-the-record or ex parte communications with interested stakeholders on matters of Board business. Ms. Fellmeth encouraged the Board Members to continue to follow the rules that have been followed in past years, avoiding having those kinds of communications. She encouraged the Board to strongly consider a disclosure requirement so that those communications could be put on the record and subject to discussion at a public Board meeting.

Brett Michelin, CMA, asked if the proposed modification meant members of the Board should not have conversations with stakeholders on any issue that is going to be before the Board; in the past, individual members have always been able to have such conversations. His preference is that members disclose any relevant information or conversations, rather than preventing the right to talk with any interested party all together.

Dr. Fantozzi called for a vote, reminding members that a motion and second had been made to adopt the modifications to the Board Administrative Procedure Manual. The motion unanimously carried.

Ms. Schipske made a motion to add an ex parte agenda item to future board meetings and to direct staff to report back to the Board at the January 2009 meeting on how other state boards deal with this issue and to provide a brief analysis of any legal or other implications. Rather than take a vote, Dr. Fantozzi decided to hold an agenda item on ex parte communication at the next Board meeting.

Ms. Chang commented because the Board currently has only one working Panel, members on that Panel are heavily burdened by the workload. Dr. Fantozzi stated the lack of new appointments to the Board was an issue. Ms. Kirchmeyer agreed the lack of appointments was a problem, but added the required split of physician and public members on each panel also created an issue. Rotating physicians on and off the panels would not work because of instances where decisions are held and continuity is important. Dr. Fantozzi directed staff to come back with alternatives for panel participation. Dr. Salomonson said the Board should do what it can to encourage additional appointments, not only for the sake of the workload, but also for the ability to provide diversity of opinions. Ms. Yaroslavsky stated an evaluation of the number of people who sit on the Board and whether this number was appropriate to complete the work of the Board should be conducted by June.

The meeting was adjourned at 6:12 p.m.

Agenda Item 8 Call to Order/ Roll Call

Dr. Fantozzi called the meeting of the Medical Board of California (Board) to order on November 7, 2008 at 9:05 a.m. A quorum was present and notice had been sent to interested parties.

Members Present:

Richard Fantozzi, M.D., President
Hedy Chang
John Chin, M.D.
Shelton Duruisseau, Ph.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.

Staff Present:

Barbara Johnston, Executive Director
Kimberly Kirchmeyer, Deputy Director
Fayne Boyd, Licensing Manager
Candis Cohen, Public Information Officer
Janie Cordray, Research Specialist
Randy Freitas, Business Services Office
Abbie French, Telemedicine and Special Projects Manager
Kurt Heppler, Staff Counsel
Armando Melendez, Business Services Office
Kelly Nelson, Legislative Analyst
Cindi Oseto, Licensing Analyst
Debbie Pellegrini, Chief of Licensing
Regina Rao, Business Services Office
Paulette Romero, Associate Analyst
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:

Elizabeth R. Becker, Inner Solutions for Success
Claudia Breglia, California Association of Midwives
R. Bregman, M.D., General Public
Jennifer Crowley, General Public
Frank Cuny, California Citizens for Health Freedom
Julie D'Angelo Fellmeth, Center for Public Interest Law
Meredith D'Angelo, Center for Public Interest Law
Karen Ehrlich, Midwifery Advisory Council
Andrea Ferroini, General Public
Faith Gibson, Midwifery Advisory Council
Elle Griswold, California Citizens for Health Freedom
Beth Grivett, California Academy of Physician Assistants
Donna Hooyen, General Public
John Humiston, M.D., California Citizens for Health Freedom
Victoria Inness-Brown, Mission Impossible International
Tara Kittle, Blue Diamond Corporation
Heather LeMaster, General Public
Nomer Lim, Manila (Philippines) City Council

Betty Martini, Mission Impossible International
Jason McGuire, California Association of Nurse Anesthetists
Patrick McKenna, Center for Public Interest Law
Brett Michelin, California Medical Association
Sarah Seiderman, Mission Impossible International
Taryn Smith, Senate Office of Research
Carrie Sparrevohn, California Association of Midwives
Brian Warren, Department of Consumer Affairs
Anthony Williams, California Medical Association
Judith Yates, Hospital Association

Agenda Item 3 Approval of Minutes from the July 25, 2008 meeting

Ms. Yaroslavsky made a motion to approve the minutes from the July 25, 2008 meeting; the motion was seconded and carried.

Agenda Item 12 Presentation of Physician Humanitarian Award

Dr. Fantozzi noted the Physician Recognition Committee was created several years ago by the Board to recognize the demonstration of excellence by an individual physician or groups of physicians who strive to improve access to health care for underserved populations. Dr. Margaret McCahill was chosen as the 2008 Physician Humanitarian Award recipient. Dr. McCahill is board certified in family medicine and psychiatry. She is the Health Sciences Clinical Professor of Family Medicine and Psychiatry at UCSD's School of Medicine; the founding director of UCSD's Combined Family Medicine and Psychiatry Program; and the medical director of the St. Vincent de Paul Village Family Health Center in San Diego.

Her innovative residency training program for physicians not only trains them for eligibility for board certification in both family medicine and psychiatry, but also provides a 5-year immersion in training and service to the homeless and other patients who live in poverty. The percentage of graduates of UCSD's traditional family medicine residency who choose to practice in an underserved area has increased by an average of 30% under her program.

Dr. McCahill partnered with Father Joe Carroll and Mathew Packard, Vice President of the St. Vincent de Paul Village, to create The San Diego Health & Faith Alliance, a nonprofit corporation, that brings together community service and faith-based organizations, practitioners from many disciplines, and institutions of higher learning to deliver high-quality, comprehensive health care free of charge to poor and disadvantaged patients. This led to the creation of a clinic in the City Heights area of San Diego that now serves about 1,000 patients annually, almost all of whom would otherwise have no other source of care. In 2006, the clinic's services were expanded to create "The Mobile Clinic," a 40-foot, cutting-edge primary care clinic on wheels that serves patients at various sites around San Diego County every week. The Mobile Clinic now serves an additional 1,300 underserved and working poor patients.

Dr. Fantozzi thanked and commended Dr. McCahill for her compassionate service and inspiration. Dr. McCahill came forward to receive her award and then thanked and briefly addressed the Board.

Agenda Item 9 Public Comment on Items Not on the Agenda

Sarah Seiderman, representing Mission Impossible International, addressed the Board regarding the food additive aspartame. Their organization's goal is to ban the use of aspartame, to educate the public on the adverse effects of ingesting aspartame, and train physicians to recognize adverse effects in order to properly diagnose the cause of their patients' symptoms. Ms. Seiderman suggested the Board research the evidence on aspartame and instruct physicians to query their patients on their use of any diet sodas and sweeteners and encourage them to stop all consumption of aspartame immediately.

Dr. Fantozzi thanked Ms. Seiderman for her comments, however, given the Board's mission and statutory requirements, suggested that her concerns might be better addressed through the legislature. Dr. Betty Martini, Mr. Nomer Lim, and Ms. Victoria Inness-Brown also spoke briefly on issues surrounding aspartame and its adverse effects.

Julie D'Angelo Fellmeth, Center for Public Interest Law, referenced the upcoming Board elections and thanked Dr. Fantozzi for his leadership as president of the Board for the past year and a half, especially in light of the many challenges the Board has faced.

Mr. Frank Cuny, California Citizens for Health Freedom, referenced Business &Professions Code 2500 and 2501 which deal with holistic treatment modalities and his organization's work with the Board to examine and recommend changes. He stated existing law makes cancer treatment very limited; with the many advances in the nutritional and holistic health, more options should be available to patients in the treatment of cancer. Mr. Cuny stated California was virtually the only state in the nation that makes it a criminal offense for licensed physicians to pursue alternative treatments through the use of nutritional and holistic approaches. He asked the Board to consider establishing a committee to revisit the issue.

Dr. John Humiston, California Citizens for Health Freedom, also addressed the Board regarding cancer treatment options, briefly sharing his experiences in treating patients searching for alternative cancer treatments in a Tijuana clinic. He asked the Board to hold hearings to field viable alternative treatment options, and, if necessary, to make any changes to Health and Safety Code that might stifle innovation.

Dr. Fantozzi thanked Dr. Humiston for his comments and suggested the proposed changes were more of a legislative agenda. He encouraged Dr. Humiston to pursue his concerns with the legislature.

Ellen Griswold, California Citizens for Health Freedom, shared her experience as a breast cancer survivor and her belief in health alternatives. She felt this issue was indeed within the Board's

sphere of influence, referencing the Board's previous committee to study alternative treatments for all diseases, with the exception of cancer. She shared Senator Ray Haynes told her a bill to change the Health and Safety Codes would be required in order to change the legality of alternative cancer treatments. She also asked the Board to re-form the committee to study alternatives on cancer treatment, asking, specifically, for Dr. Gitnick to chair such a committee.

Agenda Item 11 President's Report

Dr. Fantozzi stated that he has made several presentations on the behalf of the Board's goal to promote wellness for all California physicians at various meetings over the past few months. He presented at a group of malpractice carriers (Norcal) in San Francisco, a physician group in Portland, Oregon and also to the Citizen's Advocacy Group in Asheville, North Carolina. Dr. Fantozzi and Barbara Johnston, Executive Director, have also met with California Medical Association (CMA) and California Hospital Association (CHA) to discuss the Board's wellness concept with them.

Dr. Fantozzi reported that Ms. Johnston has been informing him about a series of meetings that the State and Consumer Services Agency has been having related to the Board's licensing processes and timelines.

A. Executive Committee Update

During the Executive Committee meeting on Thursday, November 6, 2008, the Committee conducted the annual executive director evaluation. Dr. Fantozzi reported the Committee unanimously reconfirmed Ms. Johnston as Executive Director and thanked her for her service.

B. DCA Summit and Statement

Dr. Fantozzi shared that the DCA has developed a "PACT Statement" which was distributed to the Board Members for their review. Dr. Fantozzi did not assume he had the authority to sign the PACT statement on behalf of the entire Board without their approval. Kurt Heppler, DCA Legal Counsel, referred members to some of the words and phrases in the document, sharing his concern that the language may not be consistent with the statutory scheme that envelopes the Board.

Ms. Schipske directed staff to communicate concerns from the Board to DCA so changes could be made in the language. Dr. Fantozzi asked for direction from the Board on whether to sign the document as is or to table the signing until the concerns over wording could be addressed. Ms. Yaroslavsky made a motion to delegate authority to staff to present, alter, and amend the document so it is consistent with the statutory scheme that envelopes the Board and then, once completed, authorize the President to sign the document on the Board's behalf. The motion was seconded and carried.

Agenda Item 13 Executive Director's Report

A. Budget Overview and Staffing Update

Ms. Johnston referred members to tab 13 in their packets for the Budget Report. Ms. Johnston reported the Board is continuing to go through the budget change proposal (BCP) process to reestablish Operation Safe Medicine (12 positions requested), to add positions to the Probation Unit (5 positions requested) and to implement the new IT case management system (2 positions plus funding for the project). In order to move the BCPs forward, the Board will be absorbing costs for the BCPs including $1.4 million in fiscal year (FY) 2009/2010 and $1.2 million in FY 2010/2011 for Operation Safe Medicine; $411,000 in FY 2009/2010 and $331,000 in FY 2010/2011 for probation; and $270,000 in FY 2009/2010 and $309,000 in FY 2010/2011 for the new CRIMS IT system (IT case management product). The Board will be given spending authority in FY 2011/2012 for Operation Safe Medicine and the CRIMS IT system, but will absorb probation ongoing.

With regard to staffing, Ms. Johnston reported the Board vacancy rate remains at 6%. She stated on August 1, 2008, the Governor issued an Executive Order which had significant effects on all programs as the Board was required to terminate all temporary and permanent-intermittent positions and to also suspend all contracts and overtime.

B. Update on Board Mandated Reports

Ms. Johnston reported the Peer Review (805 Reporting) study mandated by legislature will be presented later.

The Malpractice Study for Volunteer Physicians, also mandated by statute, is in process, with the report anticipated to be available for the January Board meeting.

The Public Disclosure Study, mandated by statute to determine if current laws provide sufficient information about physicians to the public, is being conducted by the California Research Bureau. Ms. Johnston stated she expects to be able to present this report at the January Board meeting.

The Investigator Compensation Study being done by Cooperative Personnel Services (CPS) has been in process, but the study was delayed due to the Executive Order. The report is expected to be ready for presentation at the January Board meeting.

Ms. Johnston reported the State and Consumer Services Agency has been reviewing the Board's licensing processes and timelines over the past few months. She stated the Board has provided information as they have requested. Ms. Pellegrini, Chief of Licensing, will discuss details of the reviews in her report. Ms. Johnston has asked Ms. Pellegrini to conduct a complete work flow and staffing analysis of the Board's licensing program to identify areas improvements can be made. Ms. Pellegrini has been working with licensing staff on this project since taking her

position with the Board in July. Ms. Johnston thanked Ms. Pellegrini for her exemplary efforts in conducting a thorough review of the licensing department's processes.

Agenda Item 14 Federation of State Medical Boards (FSMB) Report

Ms. Hedy Chang reported Dr. David Watt from FSMB was originally scheduled to make a presentation to the Board, but was unable to attend the meeting. Ms. Chang has received confirmation that other FSMB representatives will deliver a presentation at the January 2009 Board meeting. Ms. Chang shared that FSMB has several functions; it consists of the fifty state medical boards plus twenty osteopathic boards. FSMB owns the United States Medical Licensing Exam (USMLE) with the National Board of Medical Examiners and the Accreditation Council for Graduate Medical Education (ACGME). Because FSMB is a membership board, data is shared with all the boards on information such as license revocation and probation from other states. An annual conference is held where common issues facing state medical boards are discussed.

FSMB is currently involved in the issues surrounding telemedicine, with Barb Johnston serving on the Telemedicine Task Force. Maintenance of License (MOL) issues are also being addressed by FSMB. For the past two years, Dr. Moran has been working on a Committee to revamp the FSMB bylaws. Future issues that FSMB will address include scope of practice, medical spas, and unaffiliated pain clinics. Ms. Chang offered to bring other board issues, such as wellness, to the attention of FSMB.

Agenda Item 15 Peer Review Report Discussion

Ms. Kirchmeyer began by providing background on peer review. In 2005, SB 231 was signed requiring a comprehensive review of peer review. The study was requested by the legislature and needed to be provided to them by July 31, 2008. Ms. Kirchmeyer directed members to pages 110 -111 of their packets for a brief summary of the report, followed by a copy of the final Peer Review Report. The overall findings indicated the Peer Review Process had many issues that need to be addressed. Several recommendations were made in the report, with most of the recommendations requiring legislation to enact. The next step will most likely be a special hearing by the Senate Business and Professions Committee.

Staff is asking for a physician member of the Board, who is familiar with and has been involved in the peer review process, to work with staff to represent the Board at this special hearing. Dr. Fantozzi asked Dr. Low to serve in this capacity.

Julie D'Angelo Fellmeth, Center for Public Interest Law, shared the report was an outgrowth of the Enforcement Monitor Project (which resulted in SB 231) and a hearing eight years ago by the Senate Business and Professions Committee. The Committee was called by Senator Figueroa because the number of 805 reports coming into the Medical Board had been cut in half in the prior four or five years. If a particular facility restricts or revokes privileges of a physician, that

action, by itself, may not affect the ability of that physician to obtain or maintain privileges at any other facility. However, certain peer review actions, the restriction, suspension, or revocation of privileges that rises to a certain level, must be reported to the Board under section 805 of the Business and Professions Code to enable the Board to investigate the event that caused the restriction. These actions must also be reported to the National Practitioner Databank, a federally mandated data base that includes information on hospital and state medical board discipline, medical malpractice payouts on doctors and other health care providers.

Echoing Dr. Fantozzi and Ms. Kirchmeyer's statements, Ms. Fellmeth stressed the Board does not control or regulate the peer review process. Peer review bodies and the peer review process are required at hospitals as a condition of licensure by the California Department of Public Health (CDPH). Ms. Fellmeth stated the report is lacking in its analysis, specifically of CDPH's role in regulating peer review. The statute required the study's vendor to look not just at the Board's role, but also at CDPH's role in peer review.

Ms. Fellmeth stated the Board does not have any control over the peer review process, but stated that perhaps it should. Ms. Fellmeth said the report showed the peer review process and the reporting function were broken and all interested parties should collaborate to fix it. The Board is only one of those parties. She encouraged the Board to take an active role in the legislative hearing and in working with other stakeholders to improve the peer review reporting process.

If the peer review issue is considered by the Senate as anticipated, both Dr. Fantozzi and Ms. Fellmeth felt it would be useful for Dr. Low to be familiar with Section 821.5 of the Business and Professions Code in order to revisit its intent as compared to Section 805.

Dr. Gitnick shared there is much that goes on in hospitals and medical practices that never reaches the level of 805 or even peer review. Dr. Gitnick asked Ms. Fellmeth and the CMA to use their influence to do what they can to address these issues.

Brett Michelin, CMA, shared that peer review puts CMA in an interesting position since they often represent those who do peer review, are under review, or have been cleared by peer review. CMA does not have a staked out position in trying to sway the outcomes one way or another. Their concerns are fairness and preserving the physician's rights.

In CMA's review of the Lumetra report, they also recognized some problems, including the use of poor data indicators; the incidents of 805 reports should not be considered as a marker for quality review. Staff routinely take investigational action early on to prevent problems before they occur. Peer review should be done in an on-going basis with an emphasis on early detection of potential quality problems. He stated the Joint Commission has promulgated new rules on this issue.

Second, Mr. Michelin added there is limited empirical data on hospital participation in the study. The study's methodology focused almost exclusively on information obtained from surveys and document requests that were sensitive or broad and often confusing, and, therefore, yielded little information of value. Lumetra only visited six of the 366 hospitals, with the vast majority of

respondents declining to submit the documents that Lumetra admitted were very critical to determine whether or not peer review was being done effectively or efficiently.

Mr. Michelin further stated a lack of consideration for many hospital and environmental factors were involved, such as the declining number of physicians in active practice and the declining number of physicians seeking privileges at acute care hospitals. The Drake Commission, on January of 2007, required continuous and on-going evaluation of all medical staff members, as opposed to the re-credentialing process every two years. The increase in incidences of hospitals contracting with physicians and conditioning physician's medical staff privileges on employment contracting, often includes termination without cause. This leads to an absolute avoidance of peer review process, which CMA sees as a problem.

Mr. Michelin stated CMA is studying various ways to improve all aspects of peer review. He felt the Lumetra study did raise some good recommendations. CMA looks forward to the legislative hearing and will participate extensively.

Agenda Item 10 Election of Officers

Dr. Fantozzi asked for a motion authorizing the Board to have an additional vice president position. A motion was made and seconded. Dr. Fantozzi indicated if the motion passed, he and Ms. Johnston would look at a delegation of authorities and responsibilities for the positions. The motion carried.

Dr. Fantozzi called for nominations for the office of President. Dr. Salmonson nominated Dr. Fantozzi for the office of president; Mr. Zerunyan seconded the nomination. There being no other nominations. Dr. Gitnick moved to close the nominations. Ms. Schipske made a motion to call for the vote. Dr. Fantozzi was unanimously re-elected as President of the Board.

Dr. Fantozzi called for nominations for the office of First Vice President. Dr. Gitnick nominated Frank Zerunyan; Ms. Yaroslavsky seconded the nomination. There being no other nominations, Dr. Salomonson moved to close nominations. Dr. Fantozzi called for a vote. Mr. Zerunyan was unanimously elected as First Vice President.

Dr. Fantozzi next called for nominations for the office of Second Vice President. Ms. Schipske nominated Ms. Barbara Yaroslavsky; Dr. Low seconded the nomination. There being no other nominations, Dr. Chin moved to close the nominations. Dr. Fantozzi called for the vote. Ms. Yaroslavsky was unanimously elected as Second Vice President.

Dr. Fantozzi called for nominations for the office of Secretary. Dr. Gitnick nominated Hedy Chang; Dr. Moran seconded the motion. There being no other nomination, Mr. Zerunyan moved to close the nominations. Ms. Chang was unanimously re-elected as Secretary.

Agenda Item 16 Enforcement Chief's Report

B. Enforcement Program Update

Ms. Threadgill reported the current vacancy rate in the Enforcement Unit is less than 6% due to the outstanding efforts of staff in recruiting, selecting, completing backgrounds, and filling vacancies in an efficient manner. Unfortunately, the Board continues to experience the loss of investigators to agencies that pay more.

Due to the Executive Order, the Enforcement Unit was unable to use medical consultant services for almost three months, resulting in some consultants taking positions elsewhere; however, it is hoped the consultants will return upon completion of their current commitments. The lack of medical consultants during the case review and interview process delayed the investigative process and will result in lengthened timelines for cases. The loss of retired annuitant services to cover the workload during periods where vacant investigator positions existed also contributed to an increased time frame for the investigative process. In addition, the loss of contract services such as West Coast Medical Copy Service, Lexis Nexis, and Medtox caused delays and inefficient use of investigative resources that will result in increased timelines.

The productivity during the first quarter of this fiscal year (08/09) regressed due to the Executive Order and will have a significant impact on the overall time frame for the investigative and disciplinary process during this fiscal year.

Ms. Threadgill previously reported the Investigator Pay and Classification Study being conducted by Cooperative Personnel Services (CPS) was scheduled to be completed by the end of September. However, this contract was suspended as a result of the Executive Order and should be available in the January 2009 Board Meeting Agenda package.

Executive Staff and DCA legal counsel have completed adding suggested revisions to the Model Disciplinary Guidelines. Medical Board staff and Health Quality Enforcement (HQE) staff are now reviewing the revisions. Once their responses are incorporated, the draft document will be presented to the Board workgroup. It is anticipated a final draft will be included for the Board's approval in the January 2009 agenda package.

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

Ms. Yarolslavsky made a motion to approve the orders; s/ Schipske; motion carried.

C. Expert Reviewer Survey and Expert Utilization Report Updates

Ms. Threadgill directed members to pages 245-248 in their packets for information on the Expert Reviewer Survey and Utilization Report. She reported the Enforcement Unit continues to use the

information provided by the reviewers in the survey in order to improve various aspects of the program.

Ms. Threadgill reported a work group from the Medical Board and HQE have finished the first draft of revisions to the Expert Reviewer Guidelines and Expert Reviewer Instructions. Ms. Threadgill requested the appointment of two Board Members to review the final draft and make recommendations prior to the presentation of these documents at the January 2009 Board Meeting. Dr. Fantozzi appointed Ms. Schipske and Dr. Salomonson for this task.

Mr. Zerunyan commended the Enforcement Staff for their dedication and service. Referencing the suggestions made by expert reviewers on page 246 of the agenda packet, Mr. Zerunyan asked if and how these suggestions were being addressed, with an overall concern for the reduction in timelines. Ms. Yaroslavsky echoed Mr. Zerunyan's praise for staff and asked if investigative staff had ever been afforded the opportunity to provide input into changes that would make their work easier. Ms. Threadgill responded that staff has been providing input, along with the Attorney General's Office, in reviewing the guidelines.

Brett Michelin, CMA, reported he had spoken with Ms. Threadgill and CMA will try to assist in reaching out to some specialties and subspecialties where only a few reviewers exist in order to address reviewer shortages.

Agenda Item 17 Vertical Enforcement Update

Ms. Threadgill directed members to pages 252 – 254 of their agenda packets to the statistics from Vertical Enforcement (VE). Ms. Threadgill reported communication between the Board and the Attorney General's office has improved markedly. Staff continues to work vigilantly to reduce the timeline for investigations.

Ms. Threadgill reminded members a Vertical Enforcement pilot project report is due to be presented to the legislature July 1, 2009. Ms. Threadgill is seeking a contract with an outside vendor to conduct a comprehensive study of the Vertical Enforcement pilot program and prepare the report to the legislature.

Mr. Ramirez, Office of the Attorney General, reported the Executive Order also had an impact on the prosecution aspect of vertical enforcement, in that they were unable to proceed and take cases to hearing for approximately three months due to the inability of the Office of Administrative Hearings to secure court reporter services. This delay will be reflected in the statistics for next year. However, the Board was one of the first agencies to receive an exemption from the Executive Order which allowed hearings to resume. Mr. Zerunyan extended his appreciation to Mr. Ramirez and his staff for their efforts and effectiveness in getting things done under trying circumstances.

Mr. Zerunyan asked how many of the non-Vertical Enforcement cases were still in the system. Ms. Threadgill responded approximately eleven. Mr. Zerunyan was encouraged to hear this since

vertical enforcement is a more efficient system. He asked Ms. Threadgill to have the vendor also determine what it would take to reduce the overall prosecution timeline by 20% – 50%. He emphasized the need for ideas and suggestions, rather than focusing on the problems. Dr. Fantozzi expressed his support for Mr. Zerunyan's comments and referenced sixteen recommendations that were put forth and adopted at the July 2008 Board meeting to address this issue. He said some of the recommendations would take budgetary BCPs and some would require legislation.

Agenda Item 18 Licensing Chief's Report

A. Licensing Program Update

Ms. Pelligrini, Chief of Licensing, reported she has been evaluating the program's policies, procedures, and processes, and making changes to improve operations. Licensing staff now report monthly workload counts on all operations under the licensing program. These statistics are reported in the agenda packet on page 255.

She stated over the past months, the number of days to review an initial application has increased, as well as the number of applications that are awaiting final review for licensure. Several factors have contributed to this increase, most significantly the Governor's Executive Order, which eliminated staff overtime and the use of medical consultants, three employees in temporary positions were terminated, and vacant positions could not be filled. In addition, several applications were on hold due to in the inability to obtain information required from the National Practitioner's Databank. The Executive Order also effected other licensing operations; International Medical School review could not be completed as medical consultants could not be used. In addition, no special program site school visits were conducted as a result of the inability to use medical consultants. The Executive Order has been lifted and staff is working overtime to move back within regulatory processing time lines. Ms. Pellegrini felt she had made significant progress and looks forward to continuing her analysis and implementing improvements to the licensing program.

On September 17, 2008, Anne Marie Robledo, Licensing Analyst, Fayne Boyd, Licensing Manager, Kurt Heppler, Staff Counsel, and Ms. Pellegrini met with Leslie Lopez, Deputy Secretary and General Counsel, and Nicole Madani , Assistant Secretary for External Affairs, from the State and Consumer Services Agency to review licensing timelines. Ms. Pellegrini provided a detailed description of the review. Overall, licensing staff attempted to convey that for medical licensure in California, numerous documents are necessary and some of the processing time delays are due to delay between the applicant requesting the required documents and other agencies sending this information to the Board.

Mr. Zerunyan noted the Board's history of operating in a transparent manner and welcomed any type of inquiry or questions from the Department and any other entity.

Ms. Pellegrini reported on the progress of the new web-based Call Center, with the new system expected to be in place by early January. The system will allow both emails and phone calls to be received by the Call Center with numerous tracking capabilities which will allow greater efficiency.

B. International Medical School Regulation Revisions

At the July 2008 Board meeting, the Board requested staff review current regulations and identify needed amendments to implement before the Board re-evaluates international medical schools. Ms. Pellegrini directed members to page 256 of their packets for a summary of the steps staff planned to implement to revise these regulations and to present the proposed regulations at the May 2009 Board meeting, after holding an interested parties meeting to obtain stakeholder input. Ms. Pellegrini stated there was sufficient time to achieve the revision to the regulation by 2010, when the seven year re-evaluation will begin.

Dr. Fantozzi asked staff to look in the regulations to see if the international medical schools currently conduct, or should be required to conduct, criminal background checks on applicants to their schools.

C. Midwifery Advisory Council Report

Ms. Pellegrini and Ms. Faith Gibson, Chair of the Midwifery Advisory Council (MAC), reported on the meeting that was held on October 23, 2008 in Sacramento. Ms. Pellegrini reported licensed midwives, starting in 2007, were required by statute to report on their child birth services. The annual report summarizing their services was posted to the Board's website and mailed to the licensed midwives and Board members in October. For 2008, the Board will include a new cover page for midwives who did not provide services in 2008 in order to eliminate confusion that arose from the 2007 questionnaire. The 2008 questionnaire will also include suggestions made by the MAC, including the definition of service categories. An on-line version of the questionnaire is being developed and will be posted on the Board's website in January 2009. The MAC also approved the formation of a subcommittee to review the questionnaire and instructions in order to make recommendations for improvement at the MAC's next meeting in January 2009.

The MAC also discussed the lack of a remedial training program that could be a term and condition of probation in midwifery quality of care cases or for California midwives seeking licensing re-entry. At the January 2009 Board meeting, the Council will be seeking the Full Board's approval to proceed.

Ms. Gibson stated a synoptic report would be produced giving more useful information on specific totals on statistics such as the number of mothers and babies that were transferred to hospitals, whether those were urgent versus elective transfers, and so forth.
This information would be helpful to the Board, legislature, and the public.

Ms. Gibson shared the challenge facing the MAC is the lack of a retraining program or rehabilitation process for midwives who have been disciplined or are facing disciplinary action. The MAC has made some strides toward developing a solution, however, between July 2002 and the end of June 2007, there were a total of approximately 50 complaints against midwives, with only 4 resulting in some sort of disciplinary action taken. As an alternative, Ms. Gibson had previously suggested an expert reviewer/practice monitor role be created to determine what remedial education should be required. However, the issue of statutory authority has arisen. While the general nature of the code allows for latitude, the MAC would like more structure as it proceeds. Ms. Gibson suggested the MAC itself participate in the selection of individuals who could participate in the clinical and educational evaluation of licensees relative to a specific quality of care issue. She shared the National College of Midwifery has agreed to provide their curriculum on CD to the MAC.

During public comment, Karen Ehrlich asked for the issue of allowing licensed midwives to be authorized as providers of services under the Comprehensive Perinatal Services Program (CPSP) be included on the next MAC agenda.

Carrie Sparrevohn stated she has researched the statute and regulations on this issue and found them to be in conflict with each other. She supports allowing the MAC to develop recommendations on how to proceed, whether through legislation or regulation.

Dr. Fantozzi advised the MAC to involve Ms. Whitney in their discussion on this topic to determine if there is a legislative solution.

Agenda Item 19 **Action on Recommendations of Special Faculty Permit Review Committee**

Dr. Gitnick asked Ms. Scuri to address the action on the recommendation of the Special Faculty Permit Review Committee. Ms. Scuri indicated there were three applicants presented to the Committee. There were no issues with respect to one of the applicants, but an issue arose with the other two applicants in that they were going to be conducting their practice solely at Cedars-Sinai. The Committee had some concerns and asked for clarification as to the strength of the connection between UCLA and Cedars-Sinai. Mr. Heppler and Ms. Scuri worked with the attorneys for UCLA and Cedars-Sinai. They have amended their affiliation agreement to specifically address special faculty permit holders who are practicing at Cedars-Sinai and have agreed to include a very detailed verification statement, satisfying the Committee's concerns.

Ms. Chang made a motion to approve the Special Faculty Permit Review Committee's recommendations; s/Yaroslavsky; motion carried.

Agenda Item 20 California Physician Corps Program Update

Ms. Yaroslavsky reported the Health Professions Education Foundation (HPEF) is currently developing a strategic plan. The Board's bill allocating $500,000 to the Physician Loan

Repayment Program was, unfortunately, vetoed. However, starting January 1, a $25 surcharge on physician licenses will go toward the loan repayment program providing a permanent funding source for this worthwhile program.

Agenda Item 21 Education Committee Update

Ms. Yaroslavsky reported the Education Committee met on Thursday, November 6, 2009. A motion was passed to make a recommendation to the Medical Board that a regulation be adopted to require notification by licensees that they are licensed by the Medical Board of California and that the Education Committee will bring specific language to the next Board Meeting. The proposed language will include the details of what information must be disclosed and the location of any signage.

Ms. Schipske made a motion to approve the recommendations of the Education Committee; the motion was seconded and carried.

Agenda Item 22 Wellness Committee Update

Dr. Duruisseau reported the Wellness Committee met on Thursday, November 6, 2008, where they spoke about their on-going efforts to work with liability carriers. The Committee met with NorCal Mutual to discuss various approaches to partner with the Wellness Committee. One of the primary goals was to discuss financial incentives to reduce premiums for members who participate in wellness activities. Several meetings have taken place and will continue.

Dr. Fantozzi addressed the Committee and shared his recent experiences in making presentations on physician wellness to professional organizations. Dr. Fantozzi suggested, in an attempt to gain a better understanding of what resources are currently available, the Committee might want to undertake a preliminary survey of what wellness opportunities the 450 plus hospitals in California offer. The Wellness Committee voted to make a recommendation to the Full Board regarding the survey.

Ms. Chang stated the Board appeared to be at the forefront of this issue and thought there might be a major conference hosted by the Federation of State Medical Boards (FSMB) in May, with Dr. Fantozzi and Dr. Duruisseau hopefully being able to make presentations on this issue.

Ms. Yaroslavsky made a motion to approve the Wellness Committee's recommendation to undertake a survey of wellness opportunities in hospitals in California. The motion was seconded and carried.

Agenda Item 23 Physician Assistant Committee Update

Dr. Low reported the Governor signed the bill requiring continuing education as a condition of license renewal; fifty hours are required every two years. The first work group meeting was held last week to develop the continuing education guidelines.

The new law that becomes effective January 1, 2008 allows a physician assistant (PA) to administer, provide, or issue a drug order for schedule II through V without advance approval by his or her supervising physician and surgeon if the PA completes specified educational requirements and if allowed by the physician.

Physician Assistant licenses are now issued in plastic, similar to those issued by the Medical Board.

In order to better inform physician assistants about what the Physician Assistant Council does, the Physician Assistant Committee has been working with the Department of Consumer Affairs

to develop an on-line self-assessment jurisprudence exam which should be available in December.

The Physician Assistant Committee is in the midst of strategic planning, with the process expected to be completed in the first half of 2009.

An issue has surfaced over how long the Delegation of Services Agreement between a physician assistant and the institution or physician should be retained. A survey is being conducted to gather more data.

The next meeting of the Physician Assistant Committee is November 20, 2008.

Agenda Item 24 Medical Errors Task Force Update

Mr. Zerunyan reported at the November 6, 2008 meeting the Task Force heard presentation by Dr. John Keats of the California Patients Safety Action Coalition. This organization is developing patient safety programs utilizing the "just culture" model.

After staff presented an overview of past discussion and testimony, the members agreed the Board should continue to become more educated about new laws and programs that are addressing medical errors and patient safety, to assist the public and profession.

The Task Force made the following suggestions and recommendations to the Board:

First, staff will work with the Education Committee to develop informational materials to assist and inform the profession and consumers of medical errors issues. Second, staff will continue to work with patient safety programs and initiatives to identify avenues of shared benefit and assist

with sharing information about meritorious activities. Third, staff will explore the feasibility of conducting research projects to analyze complaint history. The Task Force thought it would be more beneficial for all presentations and recommendations to come before the full Board or before the Education and Wellness Committees. Therefore, the Task Force should be dissolved and its jurisdiction and focus returned to the full Board.

Dr. Fantozzi agreed with the Task Force's recommendations and thanked Mr. Zerunyan, the Task Force members and Ms. Janie Cordray, Research Specialist, for their work. Ms. Yaroslavsky made a motion to approve the Medical Errors Task Force's recommendation; the motion was seconded and carried.

Agenda Item 25 Agenda Items for January 2009 Meeting

Ms. Schipske asked if one of the quarterly Board meetings could be held in Long Beach for the convenience of some of the Southern California Board Members.

Ms. Schipske asked if the Board could have a presentation on the disposal of needles and syringes used at home, since they are no longer able to be disposed of in household trash.

Ms. Schipske also asked if the Board could have a presentation from Telosis, an organization in Berkeley that helps communities with smart prescription drug disposal. This program has been put together by the US Department of Fish and Game, The Pharmaceutical Research and Manufacturers of America (P*h*RMA), and this organization.

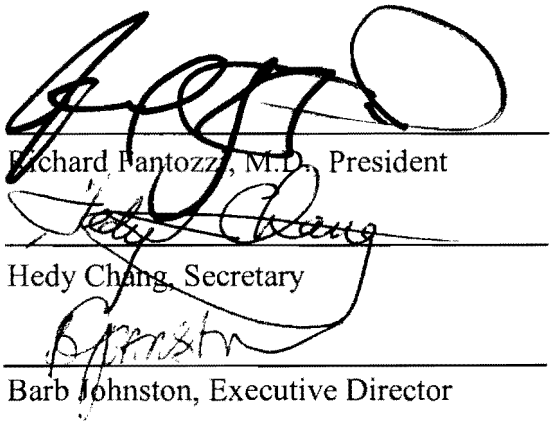
Ms. Scuri noted the California Integrated Waste Management Board is coming up with a model program addressing both sharps and prescription medicine disposal, suggesting it might be beneficial to invite them to speak on this topic, as well.

Dr. Fantozzi thanked Ms. Schipske and stated staff could look into whether such a presentation would be in front of the full Board or part of a lunch meeting for information purposes.

Dr. Fantozzi reminded members of the upcoming DCA Summit during the week of November 17, 2008, encouraging Board members to attend, if possible.

Action Item 26 Adjournment

There being no further business, it was m/Yaroslavsky, s/Chin, c/All to adjourn the meeting at 1:55 p.m.



Richard Pantozzi, M.D., President

Hedy Chang, Secretary

Barb Johnston, Executive Director