MEDICAL BOARD OF CALIFORNIA
Executive Office

Advisory Committee on Physician Responsibility in the Supervision of Affiliated Health Care Professionals

Sheraton Gateway Los Angeles
Gateway Ballroom
6101 West Century Blvd.
Los Angeles, CA 90045

April 29, 2010

MINUTES

Members of the Committee Present:
Mary Lynn Moran, M.D., Chair
Jack Bruner, M.D.
Beth Grivett, P.A.
Suzanne Kilmer, M.D.
Harrison Robbins, M.D.
Janet Salomonson, M.D.
Gerrie Schipske, R.N.P., J.D.

Members of the Committee Absent:
James Newman, M.D.
Paul Phinney, M.D.

Audience:
Fayne Boyd, MBC Licensing Manager
Hedy Chang, MBC Board Member, Secretary
Yvonne Chong, California Medical Association
Janie Cordray, MBC Research Director, Staff to the Committee
Kurt Heppler, DCA Legal Counsel to the Committee
Tim Madden, Randlett & Associates
Bret Michelin, California Medical Association
Deborah Pellegrini, MBC Chief of Licensing
Randal Pham, M.D., California Society of Facial Plastic Surgery
Kevin Schunke, MBC Licensing Manager
Anita Scuri, J.D., DCA Senior Legal Counsel
Rehan Sheikh, representing Farzana Sheikh
Jennifer Simoes, MBC Chief of Legislation
Kathryn Taylor, Licensing Manager
Cheryl Thompson, MBC Executive Assistant

Renee Threadgill, MBC Chief of Enforcement
Lee Ann West
Linda Whitney, MBC Executive Director
Barbara Yaroslavsky, MBC President

Agenda Item 1 Roll call
Dr. Moran requested Janie Cordray call the roll. Dr. Janet Salomonson, Ms. Gerrie Schipske, Dr. Jack Bruner, Ms. Beth Grivett, Dr. Suzanne Kilmer and Dr. Harrison Robbins were all present. Drs. James Newman and Paul Phinney, members of the committee, were absent.

Dr. Moran noted that Dr. Victor Narurkar, although appointed at the last meeting to serve as a member of the committee, had informed her that he would be unable to serve.

Agenda Item 2 Public Comment on items not on the agenda
Ms. Leanne West stated that part of the mission of the Medical Board is the objective enforcement of the Medical Practice Act. She stated that when disciplinary action is taken because of choreographed hoax victims teamed with special interest lobbyists and media ambush teams, there is no justice and no objective enforcement. When a revocation is pre-determined due to personal animus, the mission becomes a sham. Patient protection is harmed when the process is co-opted. She stated that she and her family were harmed because of vindictive enforcement taken by the Board. She introduced her children and stated that she and her children had been harmed for seven years due to actions of the Board.

Agenda Item 3 Approval of Minutes from the January 28, 2010 meeting
Dr. Moran directed the members' attention to the legislative history portion of the minutes, stating that it was a nice reminder of why the committee was formed and its overall purpose. She asked for a motion to approve the minutes. A motion was made, it was seconded, and the members voted to approve the minutes as drafted.

Agenda Item 4 Discussion on SB 1150 (Negrete McLeod)
Dr. Moran stated that since the committee last met in January, Senator Negrete McLeod, who has tirelessly worked on patient safety issues, introduced SB 1150. Dr. Moran asked Linda Whitney to present an overview of the bill to the members.

Ms. Whitney stated that as the members knew, the Advisory Committee was established at the request of Senator Negrete McLeod, based on language that was contained in a bill last year, vetoed by the Governor. The Senator has introduced the same language in SB 1150. Ms Whitney stated the Board has the authority to delve into the issues outlined in the Committee's mission statement, regardless of the success or failure of the legislation. In addition, the proposal contained in the bill only deals with a small portion of what the Committee is planning to accomplish.

Dr. Moran asked Ms. Whitney if the significance of the portion of the bill that dealt with advertising was to make violations of the law a crime. Ms. Whitney said that it did indeed address advertising, but that would not be under discussion by the Advisory Committee. The full Board would discuss and take a position on

the portion dealing with advertising. Ms. Whitney directed the members to their meeting materials on pages 47 through 50, as they contained the portions relevant to the Committee's discussions.

Agenda Item 5 Discussion and Consideration of Work Statement Defining the Goals and Work of the Committee and Timelines

Dr. Moran stated that the members needed to adopt a work statement and timelines for their work, and directed the members' attention to the draft work statement and timeline examples in their meeting materials

Dr. Moran stated that at the last meeting it was mentioned that the Committee should develop a fact sheet for consumers that would describe the different procedures, explaining that they were medical treatments, and describing who should be performing them. She asked that the writing of the fact sheet be added to the list of tasks on the work statement. Ms. Schipske noted that the fact sheet was also a part of the legislation. Dr. Robbins asked if this fact sheet would cover both invasive and non-invasive procedures. Dr. Moran responded that is would probably be more likely to address those procedures that might be mistaken for non-medical procedures such as lasers, injections, and so forth that are delegated, not those performed by physicians.

Dr. Kilmer noted that while the committee had started with addressing lasers and intense pulse light procedures, the bill also mentioned ultrasound and radiofrequency devices. She asked if the committee should be specific in their work statement. Dr. Moran stated that she preferred that they didn't specifically address lasers, but instead, focus on anything delegated to allied health professionals. Dr. Moran stated that while the Committee could reference the bill if it liked, the legislation did not impact the Committee's work. The Committee would move forward whether the bill was successful or not.
Ms. Grivett asked whether the Board or Committee had defined "allied health care professional," and whether or not it would include Medical Assistants. Ms. Cordray said that the allied health care professionals would have to be licensed to perform the delegated tasks, and therefore, unlicensed medical assistants would not be addressed by the committee's work. Ms. Grivett stated that the fact sheet should include who should be performing the procedures, and the members agreed that it would.

Kurt Heppler, DCA legal counsel directed the members' attention to the work statement, referring to the last paragraph where it stated "the goal of the committee is to determine what regulatory, legislative, or enforcement actions need to be taken to ensure patient safety." He asked that the sentenced be augmented at the end to include "and report those to the Board." The chair and members agreed.

Dr. Moran asked the members if there were any further thoughts about the work statement.

Dr. Moran asked the members to approve the written statement, amending it to include the "fact sheet" and Mr. Heppler's addition to the final sentence. It was moved, seconded and approved. There was no public comment.

Ms. Schipske stated that when the Board worked on the Fact Sheet , as well as other items addressed by SB 1150, the bill should be used as a reference. The language about the Fact Sheet is a good outline, including the development of questions for patients to ask their practitioners.

Dr. Moran stated that she would begin by outlining what she saw the logical sequence of the priority of issues, and then would ask the Committee to comment. She said she thought the Committee should begin with the delegation of procedures, which includes assessment of skills, then the delegation of decision making authority, including patient selection, followed by the availability of the physician for emergencies, and followed by informed consent.

Dr. Kilmer asked about what kind of doctor can supervise certain procedures, as an example, whether it had to be a cardiologist that supervised a procedure for cardiac patients, and so forth. Dr. Moran said that it is very well spelled out for Physician Assistants that the procedures delegated must be a part of the physician's specialty. It is not so well defined for the supervision of nurses. The law requires, however, that the physician perform an appropriate examination before delegating to an RN that is not a Nurse Practitioner. Dr. Moran stated that she would like to see regulations or legislation that would require that procedures delegated would have to be part of a physician's specialty practice.

Ms. Cordray stated that the doctrine is that physicians must be able to evaluate and guide those supervised, and therefore, while the doctor would not have to be a board-certified obstetrician to supervise nurses performing services in labor and delivery, the physician would have to have knowledge of the specialty in order to guide and evaluate the performance of the midwives. This doctrine holds true for all specialties, not just for cosmetic specialty practices. In addition, physicians must be able to assess and evaluate those supervised, in order to have a reasonable expectation that the person to whom he or she is delegating can competently perform the tasks.

Kurt Heppler directed the members' attention to page 52 in the meeting package, and asked Ms. Cordray if that document was a draft work schedule. Ms. Cordray responded that it was only an example, and that she would draft something later once she had an idea from the members' discussion as to their priorities.
Dr. Moran stated that she thought the work would fit under three categories:

1. Delegation
2. Availability
3. Assessment

Dr. Moran thought all of the points in the draft work statement could fit under these three categories, aside from the consumer fact sheet, which could be number 4.

Beth Grivit stated that it was her understanding that the committee's discussions would be left open to all practices, and yet the elements on the workplan are all leaning towards the cosmetic practices. Dr. Moran said that they wished to be mindful of all practices, but the main focus, due to the Senator's request and SB 1150, would be geared toward the cosmetic practices. Whatever they do, however, Dr. Moran stated that all decisions should be applicable to all practices.

Dr. Moran stated that she believed the Committee should be specific to cosmetic procedures when its appropriate, but be sensitive to implications to other types of practices.

Ms. Schipske stated that all of the points made in the work statement already are covered by current law for all specialty practices, and are not unique to cosmetic procedures. The problem appears to be a lack of

enforcement, not a lack of laws or regulations. She noted that on Craig's List and the nursing publications there are constantly advertisements for medical spas recruiting nurses. In her opinion, the Committee should be asking how the Board can enforce the law right now, particularly in recruitment and financial arrangements.

Dr. Moran stated that the Board only has jurisdiction over physicians, and she thinks that part of the problem may be physician ignorance of the law. Physicians must be made aware of the business prohibitions, that they must perform a good faith examination, and that they must actually supervise. One of the goals of the Committee should be to inform physicians about the law, and that the Board will be engaged in enforcement.

Ms. Schipske stated she hoped the Board would write to the Board of Registered Nursing about the need to educate their licensees, as well as enforcing the law. Nurses should be fully informed that some of the common practices are not legal, and that they need to ask certain questions of their supervising physicians.

Dr. Bruner asked that the issues be summarized. It was his impression that there are sufficient laws and regulations, but there needs to be enforcement. He would like to hear what can be done to step up enforcement of the current laws and regulations. Also, he'd like to see the Board inform its licensees of their responsibilities. Dr. Moran stated that was substantially the goal for the Committee. In addition, if there is not sufficient law or regulation, to seek further laws or promulgate new regulations.

Mr. Heppler asked that the Committee summarize their priorities to enable staff to draft a schedule and finalize the work statement. It was his understanding that the Committee was interested in covering issues that fell into the following four categories:

1. Delegation
2. Availability
3. Assessment
4. Fact Sheet

Dr. Moran asked the members if there was a consensus on these issues and their priorities.

Dr. Bruner asked about the fact sheet as it is defined in the legislation. The bill states that it is to educate the public on cosmetic procedures. He asked if the Board through the committee was going to explain all surgeries and procedures. Dr. Moran stated that they would only be dealing with those procedures that can be delegated to allied health professionals. Surgery, and more invasive procedures are not performed by allied health professionals, so they would not likely be addressing those. The Board will have to wait until the bill is finalized to know exactly what will be required.

Dr. Robbins asked if there is a definition of supervision. If the committee will be writing a definition, he would ask that they also define "on site" relating to supervision. Also, defining what "emergency" means and who must respond to what events. In addition, responsibility should be defined, whether it should be shared on ultimately rest on one person. All of these types of issues should be addressed. Dr. Moran stated that all of these subjects will be part of the Committee's discussion.

Dr. Robbins said that there should be a discussion of parameters or protocols for the responsibility of informed consent, and, if informed consent could be delegated.
Dr. Kilmer stated that in her work on committees covering similar issues, it often takes a great deal more time that is initially expected. She stated that she wanted to be part of these discussions, but that she will be out of the country in July. She asked that, if possible, she would like to serve on a working group or committee that would work on these issues. Dr. Moran said that she thought that most of the meetings would be 2 to 4 hours.

Ms. Cordray said that July would not be a good time to hold the meetings, as the Board meetings coincide with DCA's Boards' summit. Dr. Moran said that she thought that June would be the best time to meet, but that Dr. Kilmer would be unavailable June 11 through 26.

Dr. Kilmer stated that the discussion on availability will probably be the most difficult. In her experience, after much discussion, their committee settled on "on site" supervision as it was the only definition that was clear or enforceable.

Mr. Heppler stated that the Committee needed a motion to codify the Committee's decision. Dr. Moran asked for a motion to adopt the following:

- Hold a meeting between board meetings to discuss delegation, supervision and informed consent
- Coinciding with a Board meeting, schedule a meeting to discuss availability
- Coinciding with a Board meeting, hold a meeting to discuss the assessment of staff's skill and monitoring of performance
- Hold a meeting or meetings, either to coincide with a Board meeting or between meetings, to develop and adopt a consumer fact sheet.

Dr. Bruner made a motion to adopt, and Dr. Robbins seconded the motion. Dr. Moran asked for public comment but none was offered. The motion passed.

Agenda Item 6 Consideration of Recommendation to Defer Committee Action on Certified Registered Nurse Anesthetists Supervision Issue Until Litigation Is Resolved

Ms. Cordray stated that at the last meeting of the full Board, the members discussed the request of the California Society of Anesthesiologists and the California Medical Association. They requested the Board oppose the Governor's action to "opt-out" of the Medicare and Medicaid (Medical) requirement that Certified Registered Nurse Anesthetists (CRNAs) be supervised by physicians. At that meeting the Board decided to establish a special task force comprised of this committee and the Access to Care Committee to decide what should be done. The members were of the opinion that the Governor had made the decision to "opt-out" of the requirement for reasons of access to anesthesia services, and therefore, if they were to ask the Governor to reverse his decision, some solutions to the access problems would need to be offered.
Ms. Cordray stated that she had tried to set-up meetings with the Board members, but due to schedule availability and a Governor's order to restrain travel, no meeting was able to be scheduled. Subsequently, it was announced that on February 2, 2010, the California Society of Anesthesiologists and the California Medical Association filed suit against the Schwarzenegger administration in San Francisco. The suit seeks to require the Governor to rescind the Medicare opt-out of the physician supervision requirement for nurse anesthetists. (CSA/CMA vs. Schwarzenegger)

Ms. Cordray stated that because a suit has been filed against the administration, it appeared to be wise to allow the issue to be decided by the courts. It is staff's recommendation to the committee, and to the full Board, that all action on this issue be deferred until the suit is resolved.

Mr. Heppler asked Ms. Cordray to clarify the Board's decision in January. He asked if the members' action was prior to or after the lawsuit was filed. Ms. Cordray responded that the decision was made prior to the lawsuit. Mr. Heppler summarized for the members that while their opinion on this matter may not have changed, the staff was asking that the litigation be allowed to move forward first, before the Board takes any action.

Dr. Salomonson stated that she felt very strongly about requiring supervision of CRNAs, and would personally prefer that anesthesiologists be the supervisors. As previously discussed, physicians are not licensed by specialty. Because of that, the argument that there is an access to care problem does not make sense, as CRNAs would never be working without a physician. For that reason, she does not understand why the Board could not make the statement that CRNAs must be supervised by a physician. In her opinion, the litigation is a separate issue, more related to reimbursement, which is not under the Board's jurisdiction.

Ms. Schipske stated that, in practice, CRNAs are not supervised in many settings. It hinges on the definition of supervision, whether the protocols calls for on-site supervision or supervision by telephone, or other means. The reason that Medicare is allowing this is because it reflects what is actually happening in many settings. As with the issues related to cosmetic procedures, CRNA practice supervision is not well defined.

Dr. Moran asked for a motion from the Committee to recommend to the Board to defer action on the CRNA supervision issue until the lawsuit is resolved. It was moved, seconded. Dr. Moran asked for public comment.

Dr. Randal Pham, a trustee of CMA, and member of the American Board of Facial Plastic and Reconstructive Surgery, stated that the committee was established to look at issues relating to supervision. It is his opinion that it is the Medical Board that should decide on this issue. It was inappropriate for the Governor's office to act without the Board's contribution, and it will not be thoughtfully decided by the courts.

Dr. Robbins asked if Dr. Pham represented the California Society of Facial Plastic Surgery or the CMA. Dr. Pham stated that he was not representing either organization with his comments. Dr. Robbins asked Dr. Pham if he was asking the Board or Committee to file an amicus brief. Dr. Pham stated that he was only asking that the Board consider the issue.

Mr. Heppler said that the motion is only to delay discussion until the lawsuit is resolved. Dr. Brunner stated that while he agreed with the motion, he felt that the deliberations of the committee would ultimately address supervision issues, which will likely also be relevant to the CRNAs.

Anita Scuri, Senior DCA Legal Counsel, stated as the Board's attorney, she would recommend steering clear as it would not be in the Board's best interest to become involved in litigation in opposition to its own administration.

Mr. Heppler restated the motion: The committee recommends to the full Board that it not take action addressing the supervision of CRNAs until the litigation involving the Governor and the CAN and CSA is resolved. The motion passed.

Agenda Item 7 Public Comment
Dr. Pham asked that the Patient's Bill of Rights that he had submitted be discussed at a future meeting and asked that his organization be notified when that discussion will be scheduled so that they may attend.

Agenda Item 8 Adjournment
Dr. Moran adjourned the meeting at approximately 4:00 p.m.