MEDICAL BOARD OF CALIFORNIA
Executive Office

Long Beach Memorial Medical Center
Miller Children's Hospital
Long Beach, CA 90806

November 4-5, 2010

MINUTES

Due to timing for invited guests to provide their presentations, the agenda items below are listed in the order they were presented.

Thursday, November 4, 2010

Agenda Item 1 Call to Order/ Roll Call
Ms. Yaroslavsky called the meeting of the Medical Board of California (Board) to order on November 4, 2010 at 2:43 p.m. A quorum was present and notice had been sent to interested parties.

Members Present:
Barbara Yaroslavsky, President
Hedy Chang, Secretary
Frank V. Zerunyan, J.D., Vice President
Jorge Carreon, M.D.
John Chin, M.D.
Silvia Diego, M.D.
Shelton Duruisseau, Ph.D.
Eric Esrailian, M.D.
Mary Lynn Moran, M.D.
Janet Salomonson, M.D.
Gerrie Schipske, R.N.P., J.D.

Members Absent:
Sharon Levine, M.D.
Reginald Low, M.D.

Staff Present:
Fayne Boyd, Licensing Manager
Ken Buscarino, Enforcement Investigator
Susan Cady, Enforcement Program Manager
Dianna Gharibian, Inspector
Catherine Hayes, Probation Manager
Kurt Heppler, Legal Counsel
Breanne Humphreys, Licensing Manager

Teri Hunley, Business Services Manager
Arlene Krysinski, Enforcement Analyst
Rachel LaSota, Inspector
Ross Locke, Business Services Staff
Natalie Lowe, Enforcement Analyst
Armando Melendez, Business Services Staff
Valerie Moore, Enforcement Manager
Regina Rao, Business Services Staff
Kevin Schunke, Committee Manager
Anita Scuri, Department of Consumer Affairs, Supervising Legal Counsel
Jennifer Simoes, Chief of Legislation
Laura Sweet, Deputy Chief, Enforcement
Cheryl Thompson, Executive Assistant
Renee Threadgill, Chief of Enforcement
Linda Whitney, Executive Director
Curt Worden, Chief of Licensing

Members of the Audience:

Laura Alipoon, Loma Linda University
Hilma Balaian, Kaiser Permanente GME Office
Michele Benedict, Kaiser Northern California GME Office
Mary Con Tryba, Member of the Public
Julie D'Angelo Fellmuth, Center for Public Interest Law
Neil Desai, Arizona College of Osteopathic Medicine
Karen Ehrlich, L.M., Midwifery Advisory Council
Mary Elizarraras, UCI GME Office
Janis Fodran, RadNet, Inc.
Stan Furmanski, M.D., Member of the Public
Carolyn Ginno, California Medical Association
Beth Grivett, CAPA
Paul Hawkins, Hemet Radiology Medical Group
Jim Hay, California Medical Association
Dr. Will Kirby, Member of the Public
Arjun Maker, Arizona College of Osteopathic Medicine
Jack McGee, California Society for Repiratory Care
Joy Mobley, Member of the Public
Michele Monserratt-Ramos, Consumers Union Safe Patient Campaign
Margaret Montgomery, Kaiser Permanente
Elisa Nicholas, M.D., Miller Children's Hospital
Joseph Otonichar, Midwestern University
Erich Pollak, M.D., Medical Consultant
Carlos Ramirez, Office of the Attorney General
Katie Scholl, Center for Public Interest Law
Mark Serves, M.D., UC Davis
Rehan Sheikh, Member of the Public
Bob Siemer, Member of the Public
Monica Weisbrich, RN, ANA

Agenda Item 6 Enforcement Committee Update
Dr. Chin reported the Enforcement Committee met as a subcommittee on November 4, 2010. A presentation was made on the Probation Monitoring Program, including challenges within the practice monitor conditions. The Committee also heard information on the Controlled Substance Utilization Review and Evaluation System (CURES) enforcement. There were no action items from the meeting.

Agenda Item 2 Introduction and Swearing in of New Board Member
Ms. Yaroslavsky introduced and administered the Oath of Office to new Board Member, Dr. Silvia Diego, a physician and chief medical officer from the Central Valley who was appointed by the Governor on July 30, 2010.

Agenda Item 3 Public Comment on Items Not on the Agenda
Dr. Stan Furmanski addressed the Board regarding the Physician Assessment and Clinical Education program (PACE), noting, per Business and Professions Code (B&P) Section 2228, training must be completed before an assessment is given in a clinical training program. He stated that PACE gives the assessment *before* training has occurred, making it out of compliance with this section of law. He stated B&P Sections 2292, 2293, and 2294 must also be complied with. Dr. Furmanski referenced information provided by a "whistleblower" indicating PACE does not have assessment material for post-doctoral specialists and subspecialists, such as neuroradiologists, making it impossible to test in these areas. He claimed the tests PACE uses to assess these specialties are, therefore, inappropriate. He requested that the Board address these deficiencies.

Michele Monserratt-Ramos, Consumers Union, California Safe Patient Campaign, requested that the Board research, discuss and implement alternative methods for consumers to participate in Medical Board meetings. She requested that this be added as an agenda item for its next Los Angeles meeting. She expressed her appreciation for the webcasting of meetings, but would like to be able to participate via public comment, as well.

Agenda Item 4 Approval of Minutes from the July 30, 2010 Meeting
Dr. Moran moved to approve the minutes from the July 30, 2010 meeting; s/Esrailian; motion carried.

Agenda Item 5 Review of Selected Discipline Processes
Ms. Scuri reminded the Members, per B&P Code Section 2001.1, public protection is the Board's highest mandate. She provided an overview of the differences between license and discipline cases. In licensure cases, if the Board establishes grounds for denial by a preponderance of the evidence, more likely than not (the civil standard), the burden of proof to show fitness is on the applicant. In discipline cases, the burden is on the Board to show a violation or unprofessional conduct by clear and convincing evidence to a reasonable certainty. It only takes one Member vote to hold a license application, but two Member votes to hold a discipline case for discussion.

Mr. Heppler reviewed the purpose and use of the Disciplinary Guidelines, which are incorporated by reference in regulation and assist the panels when they deliberate on disciplinary matters. In

addition, the guidelines assist administrative law judges, deputy attorney generals and defense counsels in matters involving administrative discipline to promote consistency, certainty and fairness. The guidelines also establish expectations of what a respondent may face if charged and found to have violated certain provisions of the Medical Practice Act or attendant terms and regulations. Ms. Scuri noted that if a decision or stipulation deviates from the Disciplinary Guidelines, the administrative law judge or deputy attorney general should explain the reason for the deviation.

Members with questions about stipulated decisions should contact enforcement staff. Questions about proposed decisions from an administrative law judge should be directed to the staff counsel assigned to their panel.

Once Members have voted on decisions or a stipulation, they cannot decide at a later date to hold the decision. Delayed voting by Members can impact public protection (in discipline cases) or access to care (in licensure cases). Members are asked to notify staff if they will be unavailable for voting due to access issues.

Mr. Heppler concluded by reviewing out of state discipline. These are reciprocal actions that occur when a licensee has had action taken by another licensing jurisdiction; the Board then follows with its own action if the offense would be a basis for discipline in California. If the matter were to go to hearing, the underlying basis is not re-litigated or reinvestigated. The Board attempts to institute parallel discipline to the other licensing jurisdiction.

Dr. Moran asked about differences in the appeal process for licensure and discipline cases. Ms. Scuri offered to provide additional information on the differences to her. Mr. Heppler noted that an applicant who is denied a license based on qualifications may request a court hearing without delay.

Rehan Sheikh, member of the public, questioned why, when the basis for an accusation and statement of issues is often the same for both licensure and discipline cases (e.g., incompetence, unprofessional conduct), the burden of proof lies with the applicant and not the Board in licensure cases. Mr. Heppler noted the basis for a statement of issues can be found in B&P Code Sections 480 and 2221 of the Medical Practice Act.

Agenda Item 7 Wellness Committee Update

Dr. Duruisseau reported the Wellness Committee heard a presentation on Kaiser Permanente's Get Fit Program and discussed best practices. At the conclusion of the Committee meeting, an Interested Parties Workgroup discussion, led by Dr. Laurie Gregg, took place. The Workgroup agreed to pursue further discussion of best practices and a review of successful programs through additional interested parties meetings.

Agenda Item 8 Licensing Committee Update

Dr. Salomonson reported the Licensing Committee received an update on application processing times and progress on the Business Process Re-engineering Report recommendations by Curt Worden, Chief of Licensing. Fayne Boyd, Licensing Manager, provided updates on streamlining the application process, updates to the Board's website related to applicants, and a study of the

Post Graduate Training Authorization Letter process. Breanne Humphreys, Licensing Manager, delivered an update on the implementation of new management reports and the development of the Policies and Procedures Manual. Mr. Schunke reviewed proposed alternatives to traditional US and IMG medical education. A subcommittee is being formed and an interested parties meeting is planned to further explore alternatives to traditional training. Dr. Diego and Dr. Carreon will serve on this subcommittee.

Agenda Item 9 Physician Responsibility in the Supervision of Affiliated Health Care Professionals Advisory Committee Update and Consideration of Committee Recommendations

Dr. Moran reported the Committee met on October 20, 2010 in Sacramento. Mr. Heppler provided an overview of the relevant laws and regulations within the Medical Practice Act regarding what constitutes the practice of medicine, the unlicensed practice of medicine and the corporate practice of medicine. Representatives from the Board of Registered Nursing and the Physician Assistant Committee also participated in the meeting to address specific scope of practice questions regarding midlevel practitioners and the relative oversight of physicians. A date has not yet been set for the next Committee meeting.

The Committee passed the following motion for the Board's consideration:
The Board should consider in its outreach program, including board newsletter articles and other actions, informing physicians of their responsibilities regarding supervision and delegation issues regarding affiliated healing arts professionals and educating the public about basic laws in this area. Dr. Moran made a motion for the Board to adopt the Committee's recommendation; s/ Salomonson.

During public comment, Dr. Will Kirby, member of the public, voiced his support for the motion and requested that a Doctor of Osteopathic Medicine be included on the Committee. Ms. Whitney noted that only those professionals who the Medical Board has jurisdiction over were included on the Committee, but she invited all nurses, nurse practitioners, osteopathic doctors, and others were invited to participate in the meetings.

Ms. Yaroslavsky called for the vote; motion carried.

Agenda Item 15 Presentation on and Tour of Miller Children's Hospital

Dr. Elisa Nicholas, Chief Executive Officer, provided an overview of the of The Children's Clinic, a dynamic system of non-profit community health centers in Long Beach dedicated to caring and advocating for underserved children and their families. Over 70,000 visits are provided per year. There a currently six centers, three of which are medical homes located on school sites; two of these locations also provide health care to families. In addition, one of the centers is located in a homeless center run by the City of Long Beach. The program is heavily involved in the promoting health within the community.

Ms. Yaroslavsky recessed the meeting until 9:00 a.m. Friday, November 5, 2010.

Dr. Lupe Padilla, Acting Medical Officer, conducted a tour of the Miller Children's Hospital for Board Members and attendees.

Friday, November 5, 2010

Agenda Item 16 Call to Order/ Roll Call
Ms. Yaroslavsky called the meeting of the Medical Board of California (Board) to order on November 5, 2010 at 9:03 a.m. A quorum was present and notice had been sent to interested parties.

Members Present:
Barbara Yaroslavsky, President
Hedy Chang, Secretary
Frank V. Zerunyan, J.D., Vice President
Jorge Carreon, M.D.
Silvia Diego, M.D.
Shelton Duruisseau, Ph.D.
Eric Esrailian, M.D.
Mary Lynn Moran, M.D.
Janet Salomonson, M.D.
Gerrie Schipske, R.N.P., J.D.

Members Absent:
John Chin, M.D.
Sharon Levine, M.D.
Reginald Low, M.D.

Staff Present:
Susan Cady, Enforcement Program Manager
Irene Bisson, Inspector
Maksim Degtyar, Enforcement Investigator
Catherine Hayes, Probation Manager
Kurt Heppler, Legal Counsel
Teri Hunley, Business Services Manager
Ross Locke, Business Services Staff
Natalie Lowe, Enforcement Analyst
Armando Melendez, Business Services Staff
Kathleen Nicholls, Supervising Investigator
Regina Rao, Business Services Staff
James Sandoval, Investigator
Sylvia Salcedo, Senior Investigator
Kevin Schunke, Committee Manager
Anita Scuri, Department of Consumer Affairs, Supervising Legal Counsel
Jennifer Simoes, Chief of Legislation
Laura Sweet, Deputy Chief, Enforcement
Cheryl Thompson, Executive Assistant
Renee Threadgill, Chief of Enforcement
Linda Whitney, Executive Director
Curt Worden, Chief of Licensing

Members of the Audience:

Ryan Alexander, Midwestern University
Hilma Balaian, Kaiser Permanente GME Office
Claudia Breglia, California Association of Midwives
Stephen E. Brown, Long Beach Memorial Medical Center
Kristen Brumleve, Midwestern University
Gina Castro, Long Beach Memorial Medical Center
Kathy Cavendar, Glendale Adventist Medical Center
Janice Sams Cespedes, RPA Society
Julie Christiansen, Pomona Valley Hospital
Marcelene Compton, Radiology Practitioner Assistant Society
Kelly Cook, Good Samaritan Hospital
Bruce Docherty, ASRT
Julie D'Angelo Fellmuth, Center for Public Interest Law
Stephanie Doan, Long Beach Memorial Medical Center
Karen Ehrlich, L.M., Midwifery Advisory Council
Ben Frank, Consultant
Stan Furmanski, M.D., Member of the Public
Beth Grivett, CAPA
Ali Hamadani, Midwestern University
Kimberly Kirchmeyer, Department of Consumer Affairs
Pega Mashayekhi, Midwestern University
Jesse Mejia, RPA Society
Pam Michael, Torrance Memorial Medical Center
Joy Mobley, Member of the Public
Don Monroe, Radiology Practitioner Assistant Society
M. Monserratt-Ramos, CU Safe Patient Campaign
Chris Mullin, Midwestern University
Dennis Nicholson, Pomona Valley Hospital
Thanh Nso, Midwestern University
Stephanie Nunez, RCB
Nancy Perri, Ross University
Tammy Pham, Midwestern University
Carlos Ramirez, Office of the Attorney General
Leonard Sclafani, American University of Antigua
Katie Scholl, Center for Public Interest Law
Herb Schultz, U.S. Dept. of Health and Human Services Region IX
Paul Selecky, CA Sleep Society
Rehan Sheikh, Member of the Public
Thomas C. Shepherd, Ross University
Stephanie Smith, Midwestern University
David Solomon, Midwestern University
Trish Stiger, Hoag Hospital
Marion Watson, Glendale Adventist Medical Center
Ronald Wender, M.D., Consultant
Qi Yu, Midwestern University

Agenda Item 17 Public Comment on Items Not on the Agenda
Dr. Stan Furmanski stated the PACE Program is unable to validly assess physicians in specialty or subspecialty areas due to a lack of content validation in the testing procedures and tools. In the absence of valid tests for the specialty, he claimed that inappropriate tests are used in assessing these physicians, particularly in the area of neuroradiology.

Agenda Item 10 Physician Assistant Committee Update
Ms. Yaroslavsky reported the Physician Assistant Committee (PAC) has not met since the Board's last meeting in July 2010. The PAC will meet on November 18, 2010 in Sacramento.

Agenda Item 11 Federation of State Medical Boards Update
Ms. Chang reported FSMB's improvements to the Federation Credentials Verification Service (FCVS) program have been completed and are currently in the testing phase. A telemedicine committee was recently formed to work on the development of a national telemedicine model. Maintenance of License (MOL) issues continue to be a priority for FSMB. Ms. Chang reported a committee has also been formed to examine the re-entry of physicians who have been out of practice but who desire to return to active practice. A Physician Impairment Committee has been created; Dr. Bolton and Dr. Fantozzi, former Board Members, both serve on this committee. Dr. Salomonson has agreed to participate in writing questions for the newest United States Medical Licensing Examination (USMLE).

Ms. Chang serves on the FSMB Foundation which undertakes various educational and scientific research projects. She has been involved in a project to explore the best ways to educate public members on medical boards' roles and functions, and a project that examines violent threats to state medical board members and staff. In addition, Ms. Chang is participating in a project to evaluate all state medical boards. This project is currently in the process of developing criteria for the evaluation.

Agenda Item 12 Nomination(s) to Federation of State Medical Boards
The FSMB is seeking nominations for a variety of items and positions, including its Board of Directors. These include resolutions to the Federation's House of Delegates, nominations for distinguished service, leadership awards, and nominations for associate members. With the exception of entertaining a nomination to the FSMB Board of Directors, Ms. Yaroslavsky recommended that the Board not pursue any of these at this time since there has not been an opportunity for discussion.

Dr. Salomonson nominated Ms. Chang to continue in her role on the Board of Directors; s/Esrailian; motion carried.

Agenda Item 13 Telemedicine Pilot Program Status Report
Mr. Schunke reported Dr. Nuovo presented a summary of the telemedicine pilot at the July 2010 meeting. He directed Members to page 101 in their packets for an overview of more recent activities and outreach efforts.

Agenda Item 14 Licensing Outreach Report
Outreach activities continue to be successfully received. Mr. Schunke thanked Ms. Yaroslavsky and other Members who have participated in some of the licensing outreach efforts throughout

the state. Outreach events were conducted for the first time at LAC + USC Teaching Hospital, Huntington Hospital in Pasadena, and Children's Hospital in Los Angeles. In addition, a first time licensing workshop is scheduled for Loma Linda Medical University. During 2010, Mr. Schunke has had direct contact or made group presentations to approximately 2,000 applicants.

In the next two weeks, the Board will be hosting two outreach meetings with Graduate Medical Education (GME) staff throughout California. Invitations have been sent to 200 GME directors and deans from California teaching hospitals. Additional outreach has been made to California Association of Physician Groups (CAPG), California Hospital Association (CHA), California Primary Care Association and California Medical Association (CMA).

Approximately 1,100 letters were sent out in November 2010 to the 200 GME directors and deans, as well as to 900 Program Directors in California asking for their cooperation in providing to the Board the names of individuals who will require licensure by July 1, 2011. Last year approximately 1,800 individuals were added to the Board's master matrix, which helps the Licensing Program successfully conduct workload planning and tracking.

Dr. Salomonson and Ms. Yaroslavsky thanked Mr. Schunke for his excellent outreach efforts and encouraged other Members to attending future licensing fairs and other outreach events as their schedules allow.

Agenda Item 23 Health Care Reform Presentation

Herb Schultz, recently appointed by President Obama to serve as Regional Director at the U.S. Department of Health and Human Services (HHS) Region IX, delivered a presentation on plans to implement the Patient Protection and Affordable Care Act. He stressed the many opportunities for collaboration and partnership with the Board in areas such as physician education and outreach, policy level discussions, troubleshooting, and potential grant opportunities. HHS would like to engage the Board and other state government, regional and local organizations in early discussions on the development of regulations. Mr. Schultz mentioned the possibility of co-hosting workshops throughout the state on key issues of mutual interest, assisting HHs and the Attorney General's Office in addressing medical fraud, and publicizing community based prevention events and health programs.

Ms. Chang asked about the projected 30% physician shortage that will result from the influx of newly insured individuals into the health care system as the Act is implemented. Mr. Schultz noted $500 million has been allotted the first year to strengthen the primary care system; over $168 million will go to programs for physician education training, loan repayment, the growth of the National Health Service Corp, and other programs. Additional investment will be made in developing nurse practitioners, physician assistants, school-based health centers, nurse-managed clinics and other provider options.

Mr. Schultz responded to questions and comments from Members on a variety of issues including successful models of coordinated and collaborative care, liability coverage issues that impede physician service, reimbursement issues, and opportunities for individual physicians to partner with larger programs or accountable care organizations.

Ms. Yaroslavsky expressed the Board's willingness to collaborate with HHS. She suggested a possible link on the Board's website to items that might be of interest to its licensees and best practices that HHS uncovers.

Agenda Item 18 REGULATIONS – PUBLIC HEARING

Ms. Yaroslavsky opened the public hearing on the proposed regulations to adopt Sections 1315.50, 1315.53, and 1315.55 of Title 16 of the California Code of Regulations as described in the notice published in the California Regulatory Notice Register and sent by mail to those on the Board's mailing list. For the record, Ms. Yaroslavsky stated the date was November 5, 2010; the hearing began at approximately 10:40 a.m.

The regulations would establish the procedures for the issuance of a limited physician's and surgeon's certificate to an applicant who is otherwise eligible for medical licensure in California but is unable to practice all aspects of medicine safely due to a disability, including the requirements for an independent clinical evaluation. In preparing the regulatory language, staff also considered current licensees who wish to go into this status due to a disability affecting their ability to practice some aspects of medicine safely. Parallel language also was prepared to ensure the limited practice license is consistent with the criteria for the current disability license.

No written comments were received by the October 25, 2010 deadline. No oral testimony was offered during the public hearing. Ms. Yaroslavsky closed the hearing.

Dr. Moran made a motion to adopt the proposed regulations; s/Chang; motion carried.

Agenda Item 19 REGULATIONS – PUBLIC HEARING

Ms. Yaroslavsky opened the public hearing on the proposed regulations to adopt Chapter 3.5, Articles 1 through 6, of Title 16 of the California Code of Regulations regarding the requirements for the registration and supervision of polysomnographic technologists, technicians, and trainees as described in the notice published in the California Regulatory Notice Register and sent by mail to those on the Board's mailing list. For the record, Ms. Yaroslavsky stated the date was November 5, 2010; the hearing began at approximately 10:50 a.m.

Among other things, this regulatory proposal sets the qualifications for certified polysomnographic technologists, including requiring those technologists to: be credentialed by a board-approved national accrediting agency; have graduated from a board-approved educational program; and, have passed a board-approved national certifying examination (with a specified exception for that examination requirement for a three-year period).

Seven written comments were received before the October 25, 2010 deadline and were provided to the Board Members for their review before the meeting.

Mr. Heppler noted that he and Ms. Scuri have reviewed the public comments and believe there are four revisions that appear warranted from a legal perspective.

During public comment, David Gonzales and Dr. Paul Selecky, California Sleep Society, provided additional written comments on the proposed regulations. They thanked the Board for their work on the regulations and expressed California Sleep Society's desire to continue to work with the Board on implementing SB 132.

Stephanie Nunez, California Respiratory Care Board (RCB), requested that Article 3, Section 1378.9 be eliminated. This section allows an applicant, in lieu of successful completion of the BRPT certification exam, to be "grandfathered" in by submitting a declaration from a physician that he/she has been practicing polysomnography safely for at least 5 years. The RCB requests that the certification examination be required for *all* applicants in order to establish competency. Further, the RCB requests that Article 4, Section 1378.13 be amended to allow only properly licensed physicians and respiratory care practitioners to provide supervision based on the propensity for respiratory-related emergencies to arise in a sleep lab.

Ms. Yaroslavsky closed the hearing.

Mr. Heppler noted the "grandfathering" provision in lieu of examination is already established in law. He proposed a 15-day notice to effect the legal clarification changes previously mentioned. Ms. Scuri stated the law requires regulations to be drafted within one year from the effective date, which was in October 2009.

Ms. Chang made a motion to authorize the Executive Director to adopt the regulations as modified at the expiration of the comment period if there are no adverse comments; s/Duruisseau; motion carried.

Agenda Item 20 REGULATIONS – PUBLIC HEARING

Ms. Yaroslavsky opened the public hearing on the proposed regulation to amend Section 1361 of Title 16 of the California Code of Regulations as described in the notice published in the California Regulatory Notice Register and sent by mail to those on the Board's mailing list. This proposal would amend the regulations that incorporate by reference the disciplinary guidelines entitled "Manual of Disciplinary Guidelines and Disciplinary Orders." These amendments are being made to reflect changes in law, clarify existing language, and make technical changes to reflect the current probationary environment. For the record, Ms. Yaroslavsky stated the date was November 5, 2010; the hearing began at approximately 11:00 a.m.

The Board received written comments from the California Medical Association prior to the November 1, 2010 deadline. A copy of this letter was provided to the Board Members for their review prior to this meeting.

Ms. Scuri noted a proposed change to Condition 33 of the Guidelines that deals with non-practice while on probation. The change would combine former Conditions 33 and 34, and clarify non-practice regardless of physician location. In addition, the change would allow time spent in an intensive training program not to be considered non-practice.

During public comment, Julie D'Angelo Fellmeth, CPIL, expressed concern that some of the Disciplinary Guidelines that deal with substance abusing physicians are not consistent with the Uniform Standards developed for all healing arts boards by the Substance Abuse Coordination Committee (convened by the Department of Consumer Affairs in 2009 as directed by SB 1441). Uniform Standard 10 requires a licensee to immediately cease practice upon a positive drug test result; the Board's proposed guidelines require the licensee to cease practice within 3 days of a positive test. Ms. Fellmeth stated this 3 day delay did not provide adequate public protection.

Uniform Standard 4 requires a substance abusing probationer to be tested 104 times during the first year of probation (twice a week). The Board's Disciplinary Guidelines previously required drug testing once a week; however, the specification for the required frequency of testing has been removed from the proposed guidelines. Ms. Fellmeth stated this was a concern. Proposed Disciplinary Guideline 11 requires substance abusing licensees to arrange for drug testing within 30 days of the decision placing them on probation. Ms. Fellmeth felt this 30 day delay does not provide adequate patient protection. She proposed that the drug testing arrangements be a precedent condition to returning to practice.

Kimberly Kirchmeyer, Department of Consumer Affairs, reported a subcommittee of the Substance Abuse Coordination Committee was formed to review the frequency of required drug testing. To date, a meeting of this subcommittee has not been scheduled. For now, the recommended frequency of 104 drug tests during the first year stands.

Ms. Whitney indicated at the April 2010 Substance Abuse Coordination Committee meeting, a number of the members were concerned with requiring 104 tests and expressed the need to review and validate this number. This remains an outstanding issue that has not yet been fully resolved.

Ms. Scuri recommended *not* including a specific number of required tests in the Disciplinary Guidelines at this time since the issue is not yet resolved. As written, the guidelines would allow the Board to test to comply with the Uniform Standard's specifications.

Ms. Kirchmeyer said the Department is asking all healing arts boards to come into compliance with the SB 1441 Uniform Standards.

Stan Furmanski, M.D., suggested, in order to protect a physician's ex post facto rights, the regulations specify that it is the Board's intent that no change in the guidelines or model orders be used to detrimentally affect any licensee who has an order or stipulation issued prior to the effective date. He also expressed the need for a grievance procedure to be included in the proposed regulations.

Ms. Scuri clarified that regulations are never applied retroactively.

Ms. Yaroslavsky closed the hearing. She suggested that the regulations be tabled until the January 2011 meeting to allow staff to resolve the conflicts with SB 1441 standards in order to receive approval from the Office of Administrative Law.

Dr. Duruisseau made a motion to table the regulations until the January 2011 meeting; s/Chang; motion carried.

Agenda Item 21 Board Member Communications with Interested Parties
No Members reported any communications.

During public comment, Leonard Sclafani, legal counsel for the American University of Antigua, expressed his concern that specific notice was not sent to the school with regard to the meeting agenda.

Ms. Yaroslavsky clarified that the agenda item dealing with international medical school recognition is only an update and no action is being considered. She suggested that the school and all other interested parties sign up for automatic updates from the Board's website.

Agenda Item 22 President's Report

Ms. Yaroslavsky participated in three monthly conference calls with the Department Director, his deputies, healing arts board presidents and executive directors. Updates were given on the budget, personnel, CPEI and an exemption request, drug testing by Maximus, meeting protocols, healthcare workforce statistics, and a roundtable discussion on best practices by boards. She attended the Midwifery Advisory Council meeting in August 2010, toured the Licensing Section at the Board's offices, and attended the Physician Responsibility Committee meeting on October 20, 2010 to hear presentations by the Nursing Board and Physician Assistant Committee. Ms. Yaroslavsky announced she had made some new committee assignments for Members.

Agenda Item 24 Executive Director's Report

A. Budget Overview

Ms. Whitney directed Members to the Analysis of Fund Condition of the Board located on page 199 in their packets. She noted FY 2010-11 is projected to have a 5.3 month balance in reserve at the end of the year; this is slightly higher than the 4 month reserve permitted by law. This amount may increase depending upon the outcome of labor union agreements with regard to the 3-day per month furlough program. In addition, there will be a 5% salary savings cap that will be incorporated. This could offset proposed augmentations that the Board is seeking in a spring 2011 finance letter from the new administration. She expressed disappointment that the previous augmentation requests did not go forward with the current administration. At this time, the Board is not seeking any reduction in the fund condition until more information about operating costs and changes to be made by the incoming administration is available.

The Board implemented a potential long term savings program by emailing the most recent newsletter to 96,900 licensees, thus reducing printing and postage costs by two-thirds. Approximately 1,100 emails were returned as undeliverable and 900 requests were received for printed versions of the newsletter. As the Board continues to pursue this "green" approach to communications, staff will survey major medical associations and groups to determine if this delivery method is satisfactory. In addition, for the January 2011 meeting, Members may elect to receive their Board materials via thumb drive.

B. Staffing Update

The Board's Public Information Officer, Candis Cohen, retired on October 29, 2010. Due to the hiring freeze, her position cannot be filled at this time. Jennifer Simoes, Chief of Legislation, will serve as the Acting Public Information Officer. Although job announcements are out for various vacancies, the hiring freeze only permits transfers within the Department of Consumer Affairs. This will make it difficult to fill any of the vacant positions. In addition, no promotions or new employee hires are permitted. Other agencies are not subject to the freeze, so it is possible that some staff may be lost to these agencies. In the meantime, current staff is working to cover vacant positions.

The Federation of State Medical Boards is currently holding its Attorney Workshop; however, due to the Board meeting, Ms. Scuri and Mr. Heppler are unable to attend. Attorneys from other Department healing arts boards are attending in their absence and will report back to the Board's legal counsel.

C. Strategic Plan: Consideration of 2011 Update

Ms. Whitney reported the Strategic Plan Subcommittee will meet in early January 2011 to discuss a time table for a revised strategic plan. She anticipates the plan will be ready by the end of 2011. The subcommittee is comprised of Ms. Yaroslavsky and Dr. Levine. The Department's SOLID division may provide assistance.

D. Confirm Board Meeting Dates and Locations for 2011

Ms. Whitney directed Members to the meeting dates and locations for 2011 located on page 207 of their packets. The originally scheduled April 2010 meeting has been moved to May 5-6, 2011 to avoid a conflict with the FSMB Annual Meeting.

E. On-going Board Evaluations

On-going Board evaluations will be discussed with the Strategic Plan Subcommittee and incorporated into the planning process. The Board's major sunset review will take place in 2013, thus, this review will be considered in the plan for on-going evaluations.

Agenda Item 25 Board Evaluation Presentation and Discussion

Mr. Zerunyan reported that he and Dr. Salomonson have met with Ben Frank, an independent consultant retained by the Board to conduct an evaluation of its programs and operations, and have reviewed the report. The full report and an executive summary of the report were sent to Members and were posted on-line. Mr. Frank presented his study's major findings. The majority of his comments focused on the Vertical Enforcement Program and the differences in implementation strategies and costs from region to region.

Mr. Frank recommended that some of the funding currently being spent on Vertical Enforcement be redirected in order to hire additional medical consultants and medical experts for the Enforcement Program. He noted that delays in the processing of investigations were often due to the unavailability of these professionals, a finding that is consistent with Enforcement Monitor's report from 5 years ago.

Mr. Zerunyan suggested that the Board Evaluation Subcommittee continue to review the report recommendations and work with the Attorney General's Office to examine various policies and efficiencies in order to develop concrete, workable strategies. Ms. Yaroslavsky concurred.

Carlos Ramirez, Attorney General's Office, Health Quality Enforcement Section, expressed his interest in working with the Board in implementing some of the recommendations contained in the report.

Ms. Kirchmeyer stated the Department is still reviewing the report and, as such, has no comments at this time. She indicated the Department will respond to the Board once their review has been completed.

Ms. Yaroslavsky directed the Evaluation Subcommittee to work with staff and the AG's Office in the development of recommendations for the Board to take action on.

During public comment, Ms. D'Angelo-Fellmeth offered her services as the Board works to refine the implementation of the Vertical Enforcement Program.

Agenda Item 26 Legislation

A. 2010 Legislation Wrap Up and Implementation

Ms. Simoes provided a brief overview of the legislative process. She then referred Members to the Legislative Packet for a listing of dead, vetoed, and chaptered bills.

Chaptered bills:

- **AB 583 (Hayashi) – Disclosure of Education and Office Hours**
  This bill requires physicians to communicate to their patients their license types, highest level of educational degree and board certification. For implementation, the Board staff proposes to include an article in the newsletter, notify and train staff, and add this item to the Cite and Fine Table via regulations.
- **AB 1767 (Hill) – Expert Reviewers & HPEF Sunset Extension**
  This Board-sponsored bill requires the Board to provide representation to a licensed physician who provides expert reviewer services to the Board. The bill also extends the sunset date for the two Board Members appointed to the Health Professions Education Foundation. For implementation, staff plans to add an article in the newsletter, notify and train Board staff, notify and work with HPEF staff, notify the AG's Office, and to inform expert reviewers and provide information during their training.
- **AB 2386 (Gilmore) – Armed Forces: Medical Personnel**
  The bill allows a hospital to enter into an agreement with the Armed Forces of the United States to authorize a physician and surgeon, physician assistant, or a registered nurse to provide medical care in a hospital under specified conditions. The Board took a neutral position on the bill. For implementation, staff proposes to include an article in the newsletter, notify and train Board staff, revise the existing military form and create a new form with added fields, and post the new form on the Board's website. In addition, staff will work with a military contact provided by author's office in order to provide outreach.
- **AB 2699 (Bass) – Healing Arts: Licensure Exemption**
  This bill exempts specified health care practitioners, who are licensed and certified in other states, from California state licensure for the purpose of providing voluntary health care services to uninsured and underinsured Californians on a short-term basis and in association with a sponsoring entity that complies with specified requirements. Practitioners would be required to register with the respective board in advance of these events.

  Since the last Board meeting, the bill was amended to apply to all healing arts licensees and to limit the sponsored events to 10 days (although there is no limit on the number of events that can take place in a year). The bill also now requires practitioners to provide a copy of his/her license in each state in which they are licensed, the license must be in good standing, and each board must prescribe a form for the individual to fill out and set

a fee in regulations for processing the request for authorization for practicing without a license. Each board must also specify the appropriate education and experience in regulations. The bill also includes a termination process and will sunset January 1, 2014.

The bill does have a fiscal impact on the Board. For implementation, the Board has submitted a legislative Budget Change Proposal (BCP) to DCA for the ½ position needed to accomplish the extra workload. At this time, it is not known if DCA has approved this BCP. In addition to including a newsletter article and notifying and training Board staff, staff resources to manage the program will need to be identified. Staff is working with DCA and other healing arts boards to discuss implementation strategies. DCA committed to drafting model regulations that the boards can use as a template for their regulations to ensure consistency. DCA also committed to being the responsible party to approve the sponsoring entities.

Dr. Salomonson suggested that the regulations should require participating physicians to post or notify consumers receiving care that complaints about the quality of care should be made to the Board. Liability insurance should also be verified.

Ms. Yaroslavsky suggested the regulations would also need to address the requirement to maintain records, make follow up care recommendations, and provide a mechanism for DCA to be made aware of complaints.

- **SB 294 (Negrete McLeod) – DCA: Regulatory Boards – Sunset Dates**
  This bill changes the sunset review date for the Board from 2013 to 2014. For implementation, staff proposed to add an article in the newsletter, notify Board staff, and prepare for performing a sunset evaluation report in late 2012 in anticipation of legislation in 2013.
- **SB 700 (Negrete McLeod) – Peer Review**
  This bill adds a definition of peer review, adds that the peer review minutes and reports may be obtained by the Board, and requires the Board to post a fact sheet on the internet that explains and provides information on 805 reporting. The Board took a support position on this bill. For implementation, staff proposes to include an article in the newsletter, notify and train Board staff, and develop and post the fact sheet on our website by January 1, 2010, and revise the 805.01 reporting process as necessary.
- **SB 1069 (Pavley) – Physician Assistants**
  The bill authorizes physician assistants (PAs) to perform physical examinations and order durable medical equipment. A previous provision allowing PAs to certify disability for the purposes of unemployment insurance eligibility was removed from the bill. For implementation, staff recommends including an article in the newsletter.
- **SB 1172 (Negrete McLeod) – Diversion Programs**
  This bill codifies many of the standards established by the Substance Abuse Uniform Standards Committee. It requires all healing arts boards under DCA to order a licensee to cease practice if the licensee tests positive for any substance prohibited under the terms of their probation or diversion program. The bill also allows healing arts boards to adopt regulations authorizing the board to order a licensee cease practice for major violations or in order to undergo a clinical diagnostic evaluation. For implementation, staff proposes to include an article in the newsletter, notify and train Board staff, and continue to work on developing regulations.

- **SB 1489 (B&P Committee) – Omnibus (Board sponsored)**
  This bill includes amendments that are technical in nature, including deleting and correcting obsolete references with regard to the Board's licensing exams, reinstating postgraduate training requirements for licensure, and clarifying provisions related to the reporting requirements for midwives. For implementation, staff proposes including an article in the newsletter and informing and training Board staff.

Vetoed Bills:

- **SB 933 (Fong) - Worker's Compensation: Utilization Review**
- **AB 2566 (Carter) – Cosmetic Surgery: Employment of Physicians**
- **SB 1410 (Cedillo) – Medicine: Licensure Examinations**

B. 2011 Legislative Proposals

Staff has identified the following proposals for 2011:

- Require physicians to cooperate/attend physician interviews with the Board and consider non-compliance unprofessional conduct. This will expedite the closure of cases and no longer require the Board to subpoena physicians who do not cooperate.

  Ms. Scuri noted this would not remove the requirement for a subpoena if records are requested. It does add another item that can be added to the accusation if the physician does not comply.

  Dr. Duruisseau made a motion to authorize staff to move forward with this proposal and seek legislation; the motion was seconded; motion carried.

- Authorize staff to seek legislation to automatically temporarily suspend a physician and surgeon's certificate when a physician is incarcerated after a misdemeanor conviction during the period of incarceration. This would prevent incarcerated physicians from treating or prescribing to patients, including other inmates. The authorization currently exists for felony convictions but staff would like to include misdemeanor convictions, as well.

  A motion was made to authorize staff to move forward with this proposal and seek legislation; s/Chan; motion carried.

- Omnibus – Authorize staff to develop proposed technical "fixes" to licensing laws (including midwifery) and place as many as possible in an omnibus bill. Changes must be non-controversial.

  Ms. Chang made a motion to authorize staff to move forward with an omnibus proposal and seek legislation; motion was seconded and carried.

The following proposals are drawn from recommendations made in the Board Evaluation Report:

- Per the Board Evaluation Report, authorize staff to seek legislation to amend the statutes governing Vertical Enforcement (VE) to clarify the Medical Board's sole authority to determine whether to continue an investigation. Per the report, this will promote efficiency in the Enforcement Program by clarifying the Board and AG's Offices roles.

Staff believes legislative clarification will most likely not make a practical difference and instead recommends revising the VE Manual which will allow the Board and AG to work together to implement VE.

Ms. Schipske made a motion to move forward with staff's recommendation to revise the VE Manual; the motion was seconded; motion carried.

- Per the Board Evaluation Report, authorize staff to seek legislation to amend current law to no longer require the Medical Board Investigators and HQES Attorneys to be permanently co-located. Co-location has been found to be impractical; repealing existing law would legislatively mirror current practice.

  Since co-location is not in existence in current practice, legislation is not needed. As an option, staff recommends that this language be included in an omnibus bill (if it is considered non-controversial).

  Ms. Schipske and other Members did not see this legislation as necessary; no action was taken.

- Per the Board Evaluation Report, authorize staff to seek legislation to amend current law to no longer require the Medical Board to invest in the Complaint Tracking System (CAS) to make it more compatible with HQES's ProLaw System. However, with the approval of DCA's BreEZe computer system, this legislative change is no longer needed. BreEZe will completely replace CAS and the Board's Application Tracking System. No action was taken.

C. 2011 Legislation - Other

Ms. Simoes asked Members if there was any other legislation they would like to propose.

Ms. Schipske asked, in light of the Governor's veto of AB 2566, if the medical spa issue would be revisited. She believed the issue needs to be addressed legislatively and a placeholder bill established.

Ms. Yaroslavsky stated it would be better to wait for the Advisory Committee on Physician Responsibility in the Supervision of Affiliated Health Care Professionals to develop recommendations.

Ms. Whitney indicated, in light of AB 2566 sponsors continuing interest in this legislation, it might be best to direct staff to work with the sponsors to develop placeholder legislation in case any recommendations or conclusions are reached.

Ms. Schipske suggested examining whether any of the medi-spa concerns could be addressed in regulation alongside the physician supervision of mid-level practitioners; this would eliminate the need to single out cosmetic procedures.

As the Legislature is currently in recess, Ms. Simoes is only aware of one legislative proposal of interest to the Board at this time. The proposal is jointly sponsored by the Radiology Practitioner

Assistant Society (RPAS) and the American Society of Radiologic Technologists (ASRT). The proposal would create the Radiologist Assistant Committee of the Medical Board, similar to the Physician Assistant Committee. The Radiologist Assistant Committee would license radiologist assistants. The licensing category would include two current mid-level radiology technician classifications: radiologist assistant and radiology practitioner assistant, which are both trained advanced technologists with separate educational backgrounds. Both technicians provide radiology services by assisting the radiologists with less invasive procedures, allowing the radiologist to focus on less routine patients and studies. The bill has not yet been introduced, so no action is necessary at this time.

Bryce Docherty, ASRT, Sal Martino, ASRT, Robert Thomas, M.D., California Radiological Society, and Marcelene Compton, RPAS, spoke on behalf of the proposed legislation and asked the Board for their support and guidance.

Agenda Item 27 Status of Regulatory Action

Ms. Yaroslavsky directed Members to page 223 of their packets for information on the Status of Pending Regulations.

Agenda Item 28 Update on Special Task Force on International Medical School Recognition

A. Status of Schools Being Reviewed

Dr. Esrailian directed Members to page 224 in their packets. As of November 1, 2010, the Board has 3 consultants to review medical school applications. Two to four additional consultants are being sought to review medical school applications, however the hiring freeze prohibits additional hiring or extension of current appointments terms at this time.

Ms. Chang noted the Educational Commission for Foreign Medical Graduates (ECFMG) has a new goal to certify international medical schools by the year 2020. She hoped this might relieve the Board of some of this work.

Ms. Whitney noted, upon hearing of their goal, the Board immediately contacted ECFMG and offered assistance.

Curt Worden, Chief of Licensing, reported the University of Silesia is currently being reviewed. Additional information was requested from the university which, the Board has been informed, is on its way. Additional information was also requested from the Medical University of Warsaw; it has informed the Board it is working on gathering this information for submission. Staff has transmitted information on the Universidad IberoAmericana to the medical consultant for review. Additional information requested from Technion-Israel Institute of Technology arrived at the Board today.

B. American University of Antigua

Mr. Worden reported the medical consultant has reviewed the information that was provided to the Board at the end of July 2010. The consultant requested additional clarifying information from the school on October 14, 2010. Staff has been working on the preliminary request for out

of country travel from the Governor's Office for the authorized site visit once the medical consultant determines the proper locations and times.

Mr. Sclafani expressed dissatisfaction over the delay in scheduling the site visit. He stated the response to the October 14, 2010 request for additional information has already been provided.

C. Discussion of Periodic Compliance Requirements

Dr. Esrailian stated CCR 1314.1 lays the foundation for the periodic compliance requirements for previously recognized international medical schools. Staff recommends that the Board delegate these duties to the Special Task Force on International Medical School Recognition with final recommendations on the reevaluations coming to the Board. A list of items the Task Force would need to consider is included in the October 27, 2010 staff memo to Board Members. These items include conducting a review of the current Self-Assessment Report for changes and to determine if there is a need for two different reports: one for initial evaluations and one for reevaluations. In addition, the Task Force will need to determine the order in which medical schools are to be reevaluated and to develop a new timeline for these reevaluations. Further, it will need to consider the costs associated with site visits for reevaluations and the difficulty in obtaining out of country travel authorizations. Ms. Yaroslavsky delegated these responsibilities to the Task Force.

Agenda Item 29 Consideration of Request for Recognition of Ross University Bahamas Campus

Dr. Mark Servis, UC Davis School of Medicine and medical consultant to the Board, reported the Board currently recognizes Ross University's main campus located in Dominica, West Indies. In January 2009, Ross opened a branch campus in the Bahamas to provide medical education for the third and fourth semesters of medical school. Dr. Servis and staff have reviewed the Ross Grand Bahama's application and determined that it meets the criteria pursuant to Section 1314.1 (a)(2) of Title 16 of the California code of Regulations. As such, they recommended that the Board approve Ross University's Freeport, Grand Bahama campus to provide medical school education for semesters 3 and 4 only at this time. He recommends retroactive recognition to January 2009.

Dr. Servis noted an unsolicited complaint was received from a student that made a number of allegations about the main campus program in Dominica. He and staff recommend site visits to Ross University's main campus, the Bahamas campus and several representative teaching hospitals in the United States where students receive clinical training as part of Ross University's reevaluation by the Board.

Ms. Chang made a motion to approve Ross University's Freeport, Grand Bahama campus to provide medical education for semesters 3 and 4 with retroactivity to its inception in January 2009; s/Duruisseau.

During public comment, Mr. Sclafani, AUA, expressed concern over conflict of interest issues for one of the medical consultants the Board used in conducting Caribbean medical school evaluations. In addition, he stated there are over 1,300 schools on the list of approved medical schools. Of these, the Board has reviewed and approved (via Self-Assessment Reports) only 14 schools, most without site visits. He felt it was wrong that the Board put schools that have already been reviewed through the reevaluation process when so many other schools have never received an initial review. He claimed staff added schools to the approved list based only on a

telephone conversation with the school's staff, without any review taking place. He felt the Board was unfairly singling out these 14 schools and needs to reexamine its policies.

Ms. Yaroslavsky called for the vote; motion carried (1 abstention).

Dr. Esrailian made a motion to conduct a site visit(s) to Ross University's main campus, the Bahama campus, and several representative teaching hospitals where student receive clinical training as part of Ross University' reevaluation by the Board; s/Salomonson; motion carried.

Agenda Item 30 Licensing Chief's Report

A. Licensing Program Update

Mr. Worden directed Members to page 234 of the packet for workload data for the first quarter of the fiscal year and briefly reviewed the results. He reported Special Faculty Permit meetings have been scheduled for March 24, 2011, June 16, 2011, and September 15, 2011; these meetings will take place only if there are applications for review. With the approval of Ross University's Grand Bahama campus, there are now 5 international medical school applications pending.

B. Application Review Process for Probationary Licenses

Mr. Worden reviewed the application process for probationary licenses. Staff must conduct a thorough review of each application to determine if an applicant meets the education, examination, and training required by statute and regulations. This review includes determining if the applicant failed to disclose required information. Substance abuse is usually self-disclosed by the applicant or indicated from a criminal conviction or other documentation received by the Board in its investigation. All these steps are taken to fulfill the Board's statutory requirement to protect the public.

Applications with identified concerns are submitted to management for a Senior Review Level 1 (SR1), a collaborative review by the licensing managers and Licensing Chief. If the SR1 determines that issuing a free and clear license is inappropriate, additional information and documentation is obtained and the application is sent to Senior Review Level 2 (SR2) which is conducted by Executive Management and legal staff. During this process, it is determined if a denial is warranted and if sufficient grounds exist to deny the application.

The SR2 determines whether an applicant's actions justify an outright denial or the offer of a stipulated agreement for a probationary license with appropriate terms and conditions. If a probationary license is offered, the applicant has 60 days to agree and return the signed stipulated agreement or request an Administrative Hearing. Signed stipulated agreements are reviewed and signed by the Licensing Chief and then forwarded to the Enforcement Program for processing and then sent to the Members for a vote. The burden of proof for licensing cases lies with the applicant, not the Board.

Mr. Worden concluded by requesting Members to vote in a timely manner, as most of the applicants require their license to continue in post graduate training or have pending employment offers.

During public comment, Mr. Sheikh noted when the Program Director signs the L3 Certificate of Post Graduate Training, he/she is certifying that the individual has successfully completed the training and acquired the skills and qualifications necessary to safely practice medicine. He questioned whether the Board has the authority to challenge the qualifications of a physician if the signed L3 form indicates the applicant is qualified and if the Board staff have the authority to require additional documentation from the post graduate training program.

Agenda Item 31 Midwifery Advisory Council Update

Karen Ehrlich, Chair, Midwifery Advisory Council (MAC), reported the MAC met on August 11, 2010 in Sacramento. She reported the physician supervision requirement for licensed midwives (LMs), which is essentially unavailable in California, prevents midwives from having the tools they need to adequately safeguard women and babies. She'd like to place the issue of supervision on the December MAC agenda to develop strategies for making this requirement work. She mentioned that no other state requires physician supervision of midwives.

Ms. Ehrlich indicated the data collected in the Licensed Midwife Annual Report (LMAR) is unreliable since it depends upon retrospective rather than prospective reporting and the verification of questionable data is not possible due to staffing and budget limitations. It might be possible to contract with other organizations that are collecting, validating and verifying prospective data from midwives throughout the country. This would also allow a comparison of California midwives with other states. She also noted that when a midwife reports a death in the LMAR, OSHPD (which hosts the LMAR on their website and collects the data) will no longer be able to validate this data. Ms. Ehrlich would like to expand the survey so that when a midwife reports a death she will then be asked to answer a whole new set of questions regarding the circumstances of the death. She reported that she and Faith Gibson, MAC Member, had developed a preliminary set of supplemental questions.

The Comprehensive Perinatal Services Program, which was established to serve low income pregnant women in California, does not have licensed midwives on the list of providers. She would like the MAC to discuss how to obtain CPSP authorization for licensed midwives.

Ms. Ehrlich was concerned that former Section 2514 of the Business and Professions, Code, which was a section of the enabling legislation for midwives authorizing educational standards, was sunsetted in 1998. She would like to discuss how to put this section back into law.

By law, at least half the seats on the MAC are to be midwives. When the MAC was established, the Board determined the categories of individuals who would comprise the other half (two obstetricians and a Member of the Board). Ms. Ehrlich stated the California midwives always envisioned at least one of the public member spots would be assigned to a parent who had been served by a midwife. She requested, should a public member seat open up, that the Board consider renaming the position and develop a selection process whereby a parent is placed on the MAC.

Ms. Erhlich reminded that Board that most LMs also hold the Certified Professional Midwife (CPM) credential, a national and sometimes international certification by the North American Registry of Midwives (NARM). The credential has been psychometrically designed and

continues to be constantly updated. In the recently passed Health Care Reform, CPMs are now on the authorized list for Medicaid reimbursement in free standing, licensed birth centers. Due to the supervision requirement, LMs do not have Medicaid availability in California.

Ms. Ehrlich asked the Board to include an article in its newsletter informing physicians that it is the Midwifery Standard of Care to refer women that have had a prior cesarean for medical care. However, the midwife's scope of practice stipulates that, if a woman refuses to be medicalized, the midwife may continue to provide care. Physicians need to know that performing VBACs is within a midwife's scope of practice and within a woman's right to choose.

Ms. Chang made a motion to allow MAC to place the issues of supervision, prospective versus retrospective reporting for the LMAR, CPSP authorization, B&P Section 2514, and barriers to care as an on-going agenda item on its agenda; s/Schipske; motion carried.

During public comment, Claudia Breglia, California Association of Midwives (CAM), provided information to Members on midwifery barriers to care. She noted that the physician supervision requirement is the major issue that needs to be addressed, as it creates a host of problems for midwives. Ms. Breglia reported that California has already made a move to incorporate collaborative care in addressing health care disparities in obstetrics. LMs, nurse midwives (NMs) and physicians have come together to create federally qualified health centers that provide community based prenatal care and family planning to low income women. The problem is LMs were never added to the list of providers of obstetric care for neither the CPSP nor the Family Planning Access Care and Treatment Program (Family PACT). LMs are designated Medi-Cal providers in section 51051 of Title 22 of the CCR and are covered to the extent that federal financial participation is available in section 14132.39 of the Welfare and Institutions Code. These clinics provide services within the LM's scope of practice and are also under physician supervision. However, since LMs have been left off the lists, LMs are being fired, even though, in many cases, they were instrumental in creating the clinics. The clinics' lawyers are telling the clinics not to hire LMs because they can't bill for their services and can't be reimbursed.

Similarly, Ms. Breglia stated the Affordable Care Act allows for the reimbursement of CPMs when working in state licensed birth centers. California birth center law requires accreditation by the American Association of Childbirth Centers which includes a physician medical director and strict practice guidelines in their accrediting requirements. California law requires that 2 people be present at all times when a woman is in the birth center in labor, and that one of those people be a CPM or physician. Until LMs are added to the list of authorized providers, LMs cannot be hired by licensed birth centers since they are not legally authorized to provide midwifery services within our scope of practice under the supervision of a licensed physician.

Agenda Item 32 Enforcement Chief's Report

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

Ms. Threadgill requested approval of 17 orders to restore licenses following satisfactory completion of probation and 3 orders for surrender of license during probation or administrative action .

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

B. Expert Utilization Report

Ms. Threadgill directed Members to page 237 of the packets for a chart reflecting the use of 556 experts by specialty during the past quarter. The number of experts in the Board's database has increased to 1,207 since the last quarter. The program received over 120 applications following the advertisement in the July 2010 newsletter. Staff is busy processing these applications and working to develop a training program for the expert reviewers. Ms. Sweet will provide information on the training program at the January 2011 meeting.

C. Enforcement Program Update

The Enforcement Program has a vacancy rate of approximately 10 percent for supervisors and 7 percent for investigators; this equates to an overall vacancy rate of approximately 7 percent. Staff conducted an informal inquiry of vacancy rates from 12 other state agencies and learned that rates varied from as low as 4 percent to as high as 56 percent. Ms. Threadgill reported the Enforcement Program normally recruits and hires from an open list of field investigator positions and a promotional list to fill the supervisor positions. Currently, as a result of the hiring freeze, they are only able to hire via transfers from within the Department and they cannot promote individuals to backfill supervisor positions. The authorized Consumer Protection Enforcement Initiative (CPEI) positions will not be filled due to the current hiring freeze. The pending retirement of several supervisors is an additional point of concern for the Enforcement Program.

In an effort to remove perceived obstacles in investigations and improve communications, the Enforcement Program management team and HQES held a meeting with Kaiser-South earlier this year. On September 20, 2010, a similar meeting was held with Kaiser-North. Both meetings were extremely productive; it is hoped the new resolutions that were reached will improve investigative timelines.

The Program continues to utilize the Aged Case Council to move forward cases that appear to be "stuck". Experience has shown that the mere identification of cases to be subject to the Council produces movement.

Ms. Threadgill reported a number of training projects are in process. The Mini Academy (investigator training) will be held over a period of three weeks in November, December and January. Board Members are invited to drop by during any of the sessions. The statewide Investigator Training Conference should be held in April 2011 in San Diego.

Agenda Item 25 Vertical Enforcement Program Report

Carlos Ramirez, Senior Assistant Attorney General, reported he met with Mr. Zerunyan, Ms. Whitney, and Ms. Threadgill on October 19, 2010 to discuss the findings from the Board Evaluation Report. One of the items discussed were the costs associated with Vertical Enforcement (VE). Mr. Zerunyan requested data, which has since been provided. Discussion will continue after the new administration is in place. Mr. Ramirez indicated that, although HQES disagreed with parts of the Report, there were sections that caused them to reevaluate how they conduct business statewide. Some measures have already been taken to address areas of concern. He will work with Ms. Threadgill to revise portions of the VE Manual to reflect best practices that are used throughout the state and to move toward more consistent implementation across regions.

Mr. Ramirez noted there are 22 Deputy Attorney Generals (DAGs) located at the Los Angeles Office with only 2 Supervising DAGs. He believes this supervisor to deputy ratio is too high and has received permission to hire an additional supervisor to lower the ratio.

Ms. Threadgill referred Members to page 245 of their packets for the VE statistics. She reported that several of the recommendations made in the Board Evaluation Report were already being implemented. These include video conferencing (which was temporarily halted but is hoped to be reinstated soon), re-submitting a request for a medical consultants, and on-going improvements to the Expert Reviewer Program.

Ms. Threadgill reported that she is continuing to work with Mr. Ramirez and the SDAGs. A conference call is scheduled next week to discuss improvements to default decision processing. Areas of concerns and best practices are being explored to reduce timelines.

Mr. Zerunyan thanked Mr. Ramirez and Ms. Threadgill for their openness and willingness to address identified issues.

Agenda Item 34 Update on Board's Mechanism for Impaired Physicians
This item was tabled until the January 2011 meeting.

Agenda Item 35 Department of Consumer Affairs Update

A. Budget / Hiring Freeze Update
Ms. Kirchmeyer reported that on August 31, 2010, the Department received a directive from the Governor's Office to cease the hiring of employees. The directive stated there may be limited circumstances where exceptions may be necessary, including the protection of mission critical functions. The exception approval process is very stringent and must go through the Department, the State and Consumer Services Agency (SCSA), and the Governor's Office. Only the most critical exemption requests are being approved. DCA has submitted several requests but, to date, only 5 exceptions have been approved; these were primarily exemptions for overtime and the hiring of limited staff for the Bureau for Private Post-Secondary Education which was recently re-established. The next exception request the Department will put forward will be for overtime for existing staff to perform CPEI functions since these recently authorized positions cannot be filled due to the hiring freeze.

Ms. Whitney stated it was her understanding that the overtime could only be requested for the "front end" of the enforcement process to cover the duties CPEI staff would have performed. Ms. Kirchmeyer recommended that overtime exemptions be requested for investigative staff as well in order to bring timelines down.

Ms. Yaroslavsky asked that Ms. Whitney be allowed to submit an overtime exception for the entire staff for a specific period of time.

As they receive information from the Department of Finance, the Department has communicated changes to the budget so the boards will know how these changes will affect their current budgets for FY 2010/11.

B. Consumer Protection Enforcement Initiative (CPEI)

The Department encourages the Board to continue to move forward with any regulations that will allow the Executive Director the ability to expedite the Board's investigation and prosecution processes as identified in the drafting of SB 1111. Although many of the recommended regulations were drawn from existing Medical Board regulations, there were 3 other regulations that the Board could move forward to implement. One of these involves requiring physician cooperation in Board interviews / conferences, which the Board has just put forward as proposed legislation. The other suggested regulations deal with the psychological or medical evaluation of an applicant and the failure to report an arrest to be considered unprofessional conduct (currently the Board only requires that licensees report felony or misdemeanor convictions or felony indictments, not arrests).

The Department is preparing the duty statements and other paperwork for the CPEI positions that the boards may use in order to be able to move quickly once the hiring freeze is lifted.

Ms. Kirchmeyer reported the collection of information on board performance measurements has begun. These include data on cycle times, volumes of complaints, costs, customer service, and probation monitoring. This information will be posted on both the Medical Board's website and the Department's website for the public's use. These reports should be posted by mid-November 2010. The time from complaint initiation to disciplinary action has been the information considered most important to the public.

C. Board Meeting Protocol

DCA Director Brian Stiger has been holding monthly phone conferences with board chairs and presidents and executive directors/officers. During one of the calls, there was discussion on protocols for board meetings. Board meeting protocols were developed by the Department's Deputy Director for Legal Affairs and are included in the packets on page 247.

D. BreEZe Update

Ms. Kirchmeyer reported the Department's project to replace the antiquated CAS and ATS systems for enforcement and licensing is on target and moving forward. The Department will provide a presentation to the Board on the new program at the January 2011 meeting. Two vendors were pre-qualified to bid for the project and have been meeting with staff and subject matter experts for the past three weeks to review the requirements for this system. The Request for Proposal will go out at the end of December 2010. The completed BreEZe system is expected to roll out in December 2012. This will be a business-driven project, rather than an IT-driven project. Three workgroups have been identified as necessary for the project: Forms Revision Workgroup, Data Conversion Workgroup, and Reports Workgroup. These workgroups will be drawn from the boards.

Ms. Kirchmeyer thanked the Board for webcasting the meeting and for including a speaker on Health Care Reform on its agenda.

Agenda Item 36 Agenda Items for January 27-28, 2011 Meeting in Burlingame, CA

The update on the Board's mechanism for impaired physicians, which was tabled until the January meeting, will be on the agenda. Disciplinary guidelines regulations will also appear on the agenda.

During public comment, Michele Monserratt-Ramos, Consumers Union, California Safe Patient Campaign, expressed her support for requiring licensees to report arrests to the Board in addition to convictions.

Agenda Item 37 Adjournment

There being no further business, Dr. Duruisseau made a motion to adjourn. The meeting was adjourned at 3:05 p.m.

Barbara Yaroslavsky, President

Hedy Chang, Secretary

Linda K. Whitney, Executive Director