MEDICAL BOARD OF CALIFORNIA
Executive Office

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

May 6, 2011

MINUTES

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

Agenda Item 1 Call to Order/ Roll Call
Ms. Yaroslavsky called the meeting of the Medical Board of California (Board) to order on May 6, 2011 at 10:15 a.m. A quorum was present and notice had been sent to interested parties.

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

Members Absent:
John Chin, M.D.

Staff Present:
Larry Bennett, Enforcement Investigator
Magda Castro, Enforcement Investigator
Catherine Hayes, Probation Manager
Kurt Heppler, Legal Counsel
Teri Hunley, Business Services Manager
Ross Locke, Business Services Staff
Regina Rao, Business Services Staff
Anita Scuri, Department of Consumer Affairs, Supervising Legal Counsel
Jennifer Simoes, Chief of Legislation

Cheryl Thompson, Executive Assistant
Renee Threadgill, Chief of Enforcement
Linda Whitney, Executive Director
Curt Worden, Chief of Licensing

Members of the Audience:

Muzzafer Aslan, M.D., Member of the Public
Hilma Balaian, Kaiser Permanente
Yvonne Choong, California Medical Association (CMA)
Genevieve Clavreul, Member of the Public
Paul Costa, Department of Consumer Affairs
Long Do, CMA
Julie D'Angelo Fellmeth, Center for Public Interest Law
Karen Ehrlich, L.M., Midwifery Advisory Council
Dean Grafilo, CMA
Beth Grivett, California Academy of Physician Assistants
M. Hiltlke, Los Angeles Times
Tara Kittle, Member of the Public
Jason Lee, Member of the Public
Lucille Leong, M.D., City of Hope Cancer Center
John Marshall, Member of the Public
Stephen McDow, Orange County Medical Association
Cecilia Melendres, USC
Michele Monserratt-Ramos, Consumers Union Safe Patient Campaign
Robert Morgan, M.D., City of Hope
Paul Phinney, CMA
Lavonne Powell, Department of Consumer Affairs
Carlos Ramirez, Office of the Attorney General
Anna Robb-Rios, City of Hope
Rehan Sheikh, Member of the Public
Taryn Smith, Senator Office of Research
Peter Vakselis, Member of the Public
Kerry Weisel, Office of the Attorney General
Julie Zamoyski, UCLA
(Note: This list only identifies those who signed in at the meeting; staff was not available to record the names of all persons in attendance.)

Agenda Item 17 Presentation of Physician Humanitarian Awards

The Physician Humanitarian Award was created several years ago by the Board to recognize the demonstration of excellence by physicians who strive to improve access to health care for underserved populations. Ms. Yaroslavsky presented awards to this year's recipients: Dr. Richard Kammerman and Dr. Rodney Borger.

Dr. Kammerman is board certified in family medicine and is a past chair and current Clinical Professor of the UC Irvine Department of Family Medicine. Since the early 1960's, he has

served countless hours in leadership positions within the Orange County Medical Association and other professional associations, hospital organizations and community groups. Dr. Kammerman has greatly impacted the lives of the uninsured and underinsured in Orange County. His tireless work and commitment to the poor resulted in the launching of CalOptima, the county's Medicaid managed system of care. He oversaw the program's research and design and was instrumental in forging a partnership among the county government, private physicians, hospitals and community clinics that continues to exist today.

Dr. Borger is board certified in emergency medicine and is the Director of the emergency room at Arrowhead Medical Center in Colton, CA. He has repeatedly demonstrated his commitment to public health and safety through the development of innovations to improve the operation of emergency departments. In addition to serving on the California Department of Public Health Advisory Committee, Dr. Borger also was instrumental in forming the San Bernardino County Medical Reserves Corps, a specialized component of Citizen Corps, a national network of volunteers dedicated to ensuring hometown security. He has traveled to Africa to provide basic health care for the people of Botswana, and to Thailand to provide medical care for missionaries and aid workers in remote locations.

Ms. Yaroslavsky called the meeting into recess in order to hold the Enforcement Committee meeting.

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Ms. Yaroslavsky called the meeting back into session at 11:15 a.m.

CLOSED SESSION

Agenda Item 21 **Pursuant to Government Code Section 11126(e)(1), the Board met in closed session to confer with its legal counsel regarding the following litigation: *Soderling v. Medical Board of California, et al.*, Sacramento County Superior Court; Case Number 2008-800000044**

RETURN TO OPEN SESSION

Agenda Item 2 **Public Comment on Items not on the Agenda**

Tara Kittle provided a list of suggestions for improving the medical system that are drawn from personal experience. These include the ability to audiotape conversations with physicians in order to provide accountability, a statement of patient rights and responsibilities, and abolishing hospital administration boards and insurance company physicians who deny the treating physician's orders. She suggested that the Board establish a compensation committee to review the financial compensation structure for physicians in order to improve patient coutcomes. Ms. Kittle requested that this item be placed on the agenda for a future meeting.

John Marshall described his negative experience with an independent medical examiner that his insurance company sent him to for a medical disability evaluation. He stated that the denial for his claim was based on tests and examinations that were never conducted by the reporting

physician, an unlicensed technician was used to take X-rays, and the doctor illegally withheld his medical records. He stated the Medical Board did not investigate his complaint. Ms. Yaroslavsky stated it was her understanding that Mr. Marshall was in communication with staff regarding this issue.

Dr. Muzzafer Aslan addressed the Board regarding his petition to reinstate his physician's and surgeon's license. Mr. Heppler stated the Board no longer has jurisdiction over this matter and any future action would need to be addressed through the Superior Court of California.

Genevieve Clavreul requested clarification on the standard for doctors' written orders, stating she witnessed a doctor using the apothecary system; this created confusion for the nurses in calculating dosages. Mr. Heppler requested that Ms. Clavreul contact him directly with her concerns.

Agenda Item 23 Presentation / Discussion / Acceptance of the Proposed Written Guidance on the Transmission and Receipt of Electronic Controlled Substance Prescriptions

Ms. Whitney stated the proposed written guidance to pharmacies and prescribers on the transmission and receipt of electronic controlled substance prescriptions was developed pursuant to the Drug Enforcement Administration's Interim Final Rule (IFR). The Board of Pharmacy requested that the Board work with them in developing a simplified information booklet for physicians and pharmacists.

Kerry Weisel, Deputy Attorney General, reported the DEA's requirements for e-prescribing of controlled drugs is laid out in a 330 page document that is both detailed and highly technical in nature. Ms. Weisel and Deputy Attorney General Joshua Room created a guidance document in order to adequately inform California licensees about the requirements contained in the IFR. She referred members to the summary document included in their packets. Information for the written guidance document was derived from the IFR and materials provided by the DEA's Office of Diversion Control. She suggested that the Board may want to provide a link to these useful materials on its website. Many of the questions a physician might have about e-prescribing controlled substances can be answered by the providers of the application software.

Ms. Weisel stated that the summary document, which is proposed to be included on the Board's website, will be helpful to physicians, as many may not be aware that it is now acceptable for controlled substances to be electronically prescribed. The document, which will assist physicians in following the proper procedures, discusses the interaction between DEA regulations and California law.

Dr. Duruisseau made a motion to accept the guidance document and post it on the Board's website; s/Levine; motion carried.

Agenda Item 3 Approval of Minutes from the January 28, 2011 Meeting

Ms. Chang moved to approve the revised version of the minutes from the January 28, 2011 meeting; s/Levine; motion carried.

Agenda Item 4 REGULATIONS - PUBLIC HEARING

Ms. Yaroslavsky opened the public hearing on the proposed regulations to adopt section 1327(a) 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 May 6, 2011.

Mr. Heppler reported the City of Hope petitioned the Board to amend Title 16, CCR, §1327 dealing with clinical training programs for foreign medical students and accreditation requirements. Due to the bylaws of the California Medical Association (CMA), which preclude accreditation by the Accreditation Council for Continuing Medical Education (ACCME), it is impossible for the City of Hope to become approved. The proposed regulation, in addition to making a few conforming changes, would allow a clinical training program, still subject to the filing of an application and approval by the Board, to be approved by *either* CMA *or* the ACCME.

Ms. Yaroslavsky noted that written comments were received from the City of Hope in support of the amendment. Mr. Heppler reported written comments were also received from Ross University School of Medicine regarding an issue in existing regulation unrelated to this rulemaking proceeding. The comments, therefore, need not be considered in this rulemaking procedure.

Mr. Worden added that the amendment, if approved by the Board, would provide the opportunity for the City of Hope and other hospitals in a similar situation to provide clinical training to students,

No public comment was offered. Ms. Yaroslavsky closed the hearing.

Dr. Salomonson made a motion to adopt the proposed amendments to Section 1327(a) of Title 16 CCR; the motion was seconded and carried.

Agenda Item 5 REGULATIONS -PUBLIC HEARING

Ms. Yaroslavsky opened the public hearing on the proposed regulations to adopt sections 1333, 1333.1, 1333.2, and 1333.3 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.

Ms. Scuri reported AB 2699, which was passed in 2010 and took effect in 2011, permits practitioners who are licensed in a state other than California to provide services at a health care event in California. The proposed regulations would implement the statute. No written comments were received on this item. Ms. Scuri directed members to the modified text that was distributed prior to the meeting and made available to the public. She provided an overview of the substantive changes to the text. The proposed regulations would define "a community based organization" and "out of state practitioner". Further, they would set forth the sponsoring entity registration and record keeping requirements. Section 1333.1(d), adds a "notice to consumers" type of notification requiring the sponsoring entity to place a notice visible to patients at every station where patients are seen by physicians stating that the physician is either licensed and

regulated by the Medical Board of California or holds a current valid license from another state and has been authorized to provide healthcare services only at this specific health fair; the notice would include the Medical Board's contact information.

In Section 1333.2, the cost for the criminal records check makes it clear that the applicant shall pay the costs for furnishing the fingerprints and conducting the criminal history record check, which would only apply to the first application for authorization. Section 1333.2(c) includes mandatory grounds for denial of authorization to participate if the Board is unable to obtain a timely report of the results of the criminal history check. Section 1333.2(e) adds a notice to consumers similar to that which is required in 1333.1(d), but it applies to an individual practitioner, rather than a sponsoring entity, since events sponsored by a local government entity are not required to register with the Medical Board. Conforming changes have been made to the authorization form (901-B).

Ms. Yaroslavsky asked if the authorization form will be used by other health professions for providing services at the same kinds of events. Ms. Scuri responded that forms used by other health licensing boards will be very similar. The forms that were developed were to serve as templates, though modifications will be required to suit each licensing board's needs and requirements.

No public comment was offered. Ms. Yaroslavsky closed the hearing.

Dr. Levine made a motion to authorize the Board's Executive Director to adopt the modified language at the expiration of the 15-day comment period if there are no adverse comments; s/Chang; motion carried.

Agenda Item 6 Physician Responsibility in the Supervision of Affiliated Health Care Professionals Advisory Committee Update and Consideration of Possible Action on Committee Recommendations

Dr. Moran reported the Committee received an overview of the relevant rules and issues regarding the physician's oversight of allied health care professionals. This included an overview of the newly enacted Notice to Consumers law (AB 583) and a presentation on the corporate practice of medicine by Deputy Attorney General Russell Lee. In addition, the Committee heard a report on other states' definitions of a medical spa and availability. Ms. Scuri provided an overview of the standardized procedures regulations from the Board of Registered Nursing.

The Committee determined two action items for its next meeting: 1) identifying the need for legislation that may be lacking, possibly even re-attempting failed legislative efforts, and 2) identifying ways to educate the public and physicians on the nature of these oversight relationships / processes and what the laws dictate.

Ms. Schipske thanked Dr. Moran for chairing the Committee, stating it has been both instructive and enlightening on a number of issues. She suggested that the Board formally communicate with the Board of Registered Nursing on the many concerns that arose during the Committee's meetings. She thought this would be helpful and requested that it be placed as an action item on the Board's agenda.

Ms. Yaroslavsky agreed and suggested that a written compilation be made of all the issues that were raised and possible solutions that were developed through the Committee's work. This compilation could then be disseminated to interested parties, included in the Board's newsletter, and distributed by other available means.

Agenda Item 7 Access to Care Update

Ms. Yaroslavsky reported the Access to Care Committee heard informative presentations on collaborative practice models in medicine from Eric Davydov, M.D., Medical Director of the Facey Medical Group, and Paula Verdette, M.D., Medical Director of Huntington Hospital.

Agenda Item 8 Licensing Committee Update and Consideration of Possible Action on Committee Recommendations

Dr. Salomonson reported Mr. Worden provided an update on the application processing status. Among applicants requiring licensure by July 1 in order to continue with their training, 361 still have not been licensed; 29 applied in April (though these individuals should still be licensed by the deadline); and 27 individuals have still not submitted an application. Kevin Schunke, Licensing Outreach Manager, will be contacting the training programs to report on the status of their applicants. The coordinated efforts of Mr. Worden and Mr. Schunke have been successful in licensing these individuals in a timely manner.

Updates were also given on the Business Process Re-engineering Project. The policy and procedure manual project was put on hold due to staffing shortages. Dr. Low and Mr. Worden provided an update on the international medical school approval process.

The Licensing Committee will not meet at the July 2011 Board meeting, but will be scheduled for the October 2011 meeting.

Hilma Balaian from Kaiser Permanente's GME Office in Los Angeles, commended the Licensing Committee for their efforts. She praised the Outreach Program and its success in streamlining the licensing process for residents and stated this was the first time in 12 years that all of their residents are already licensed, far before the deadline. Ms. Balaian expressed her appreciation for the work Mr. Schunke had done in communicating with the GME programs.

Agenda Item 12 Strategic Plan Subcommittee Update

Dr. Levine reported the Board is beginning its process of strategic planning. The prior strategic plan was completed in 2008 and is available on the Board's website. Janie Cordray is the consultant for the process; she has developed a Board member survey, a staff survey, and questions for former Board executive officers to begin creating a framework for the agenda for the strategic planning process. Board members will be surveyed and individually interviewed between now and the end of June 2011. A strategic planning meeting for Board members will be held on the afternoon of July 27, 2011 in Sacramento, prior to the scheduled Board meeting. Dr. Levine instructed the members that the survey does not have to be filled out, it is to prompt their thinking about what priorities the Board ought to be pursuing for the next several years.

Agenda Item 9 Special Programs Committee Update and Consideration of Possible Action on Committee Recommendations

Ms. Chang reported the Committee has recommended that the "2112" fellowship application for training in a specialty or subspecialty field at a teaching hospital in California be approved pending a site visit to the hospital to determine if the hospital meets the minimum requirements of B&P Section 2112 and California Code of Regulations Section 1325.5.

Ms. Chang made a motion for the Board accept this report; s/Duruisseau; motion carried.

Agenda Item 10 Enforcement Committee Update and Consideration of Possible Action on Committee Recommendations

Dr. Low reported the Enforcement Committee received an update on probation practice monitors by Mr. Heppler. The update included information on the difficulty disciplined licensees may have in obtaining probation monitors. At the last Committee meeting, there was concern that licensed physicians may be reluctant to serve as monitors due to the fear of possible defamation lawsuits or legal action, however, an analysis by staff did not support this contention. Nevertheless, the Probation Program is revising the monitoring forms to recommend that a practice monitor seek and execute a "hold harmless" agreement with the disciplined physician. Legal staff believes no further action is warranted on the issue of civil immunity of practice monitors.

The Committee also heard a presentation on significant improvements that will provide practice monitors with a formal structure to perform chart review and site inspections, and a standardized report format to be used when preparing quarterly reports to the Board. These improvements will be put into place after legal approval.

Ms. Threadgill delivered a presentation to the Committee on expert reviewer utilization in the Central Complaint Unit (CCU) and District Offices. B&P Code §2220.08 requires that any complaint involving quality of care must be reviewed by one or more medical experts with pertinent education, training and expertise to evaluate the specific standard of care in order to determine if the case should be sent to the field for further investigation. Expert's qualifications and utilization figures were discussed. A database is available to help the CCU and investigative staff select a proper expert. The prospective field expert is interviewed in order to ensure the individual has the proper expertise. Once the expert packet of documents is prepared, it undergoes scrutiny by both the supervising investigator and the deputy attorney general to ensure that nothing is included that might bias the expert in his or her review. The current median time for an expert package to be reviewed for the field and finalized is 36 days; the goal is to reduce this to 30 days.

Enforcement process "data markers", for both the Central Complaint Unit and the District Offices, were discussed. Although the data is relatively limited at the present time, as more data comes in, it will be possible to identify the areas of delay and make improvements to efficiency.

Dr. Low stated the Enforcement Committee will not meet at the July 2011 meeting, but will reconvene in October 2011.

Tara Kittle commended the Enforcement Committee for their work in improving efficiency. She expressed her concern that it only takes one expert to determine if a breach in the standard of care has occurred. She encouraged the Committee to consider requiring a minimum of two expert reviews, possibly from different parts of the state, in order to provide additional insight in making this determination.

Agenda Item 11 Executive Committee Update

Ms. Yaroslavsky reported the Executive Committee met to conduct an evaluation of the Executive Director.

Agenda Item 13 Physician Assistant Committee Update

Dr. Low reported the Physician Assistant Committee (PAC) created a Physician Assistant Education and Training Subcommittee which met on January 19, 2011. Topics discussed included PA training and education methods used by the PAC to approve paid training programs. Significant time was spent discussing the requirement that preceptors be licensed physicians whose practice is sufficient to adequately expose preceptees to a full range of experience. Initially, a preceptor cannot be assigned to supervise more than one preceptee at a time. At the following PAC meeting, direction was given to the subcommittee to focus on the education aspect and reassess the preceptor-to-preceptee ratio. Additionally, the PAC asked for a better definition of who can be a preceptor.

The PAC met on February 3, 2011. Committee members were notified of the numerous budget issues confronting the PAC and other state agencies. Reductions in travel, enforcement reimbursement, hiring freezes, and other adjustments are being made.

Two regulations are moving through the adoption process. The first regulation, "Notice to Consumers", contains language similar to what was adopted by the Board and is being finalized for the Department and the Office of Administrative Law (OAL). The second regulation implements enhancements to enforcement processes.

Dr. Low indicated the PAC has three legislative proposals that were submitted to the Department. The proposals involve reporting requirements, the elimination of international graduate programs, and the elimination of the provision in the law that allows a US medical school graduate to take the PA exam because the national examining agency only allows graduates of approved PA schools to take the exam.

Agenda Item 18 President's Report

Ms. Yaroslavsky reported her time as the Board's president is occupied by participating in conference calls, reading cases, attending meetings, and being available for input. She participates in a monthly roundtable call with the DCA Director along with all the DCA healing arts board presidents and executive officers. The calls provide an open forum with the opportunity to question and discuss areas of concern. A weekly call is also held with the Executive Director to review issues. Ms. Yaroslavsky stated she finds staff eager and receptive to any questions or comments she may have.

Ms. Yaroslavsky expressed the Board's appreciation for staff who must function under reduced staffing levels, increased responsibilities, and limited resources. In spite of these constraints, licensing timelines are significantly reduced from the backlog that existed 18 months ago and outreach to teaching hospitals has been successful in licensing residents in a timely manner.

Legislation continues to take a priority in the public protection arena. Ms. Yaroslavsky thanked Jennifer Simoes, Chief of Licensing, for her efforts in ensuring the Board's bills are being heard. Ms. Yaroslavsky has met with several legislators in Sacramento to seek sponsorship of the Board's bills and explain the purpose of the legislation. In doing so, the legislators are educated on the Board's role and responsibilities.

Ms. Yaroslavsky, who serves as a member of the Midwifery Advisory Committee (MAC), stated she is pleased with the advancements that have been made.

As a member of the Health Professions Education Foundation, Ms. Yaroslavsky has attended meetings and participated in calls on committee work. She reported additional money will be spent this cycle in the Stephen Thompson Physician Loan Repayment Program. Dr. Duruisseau also sits on the HPEF Selection Committee for the Loan Repayment Program.

Ms. Yaroslavsky thanked Dr. Duruisseau for setting up conversations with Terry Leach, Interim Executive Director of the UC Center for Health Quality and Innovation, and Dr. Catherine Nation, UC Office of the President, to discuss the addition of creative programs around the state.

Ms. Yaroslavsky reminded members of the presentation made by Dr. Dowling at the April 2010 Board meeting where he shared UCLA's innovative program to place doctors who have graduated from World Health Organization medical schools in community based hospitals. She reported she was able to attend the graduation ceremony for these doctors as they began their post-graduate training throughout California.

In April 2011, Ms. Yaroslavsky attended the statewide Investigator's Conference and met with many dedicated staff. She thanked Renee Threadgill, Chief of Enforcement, and her staff for making the conference successful.

Ms. Yaroslavsky has been invited to participate in a statewide primary care workgroup, California Health Workforce Alliance. She attended a meeting of the group in Los Angeles.

The Federation of State Medical Board's Annual Meeting was held in Seattle on April 28-30, 2011. Ms. Yaroslavsky stated that the meeting was very informative. She reported that California has already dealt with issues that other states are just beginning to wrestle with. She looks forward to the opportunity for broader sharing of ideas and processes among boards that are similar in size or in the number of licensees. Ms. Yaroslavsky noted that boards are structured and operate differently throughout the nation. There are state boards that have only three public members, thereby limiting the influence of their vote. Some boards have the public present for the discussion of enforcement cases and outcomes. While the Board uses "clear and convincing evidence" as the standard for discipline, many other states use "a preponderance of the evidence" standard.

She stated the importance of California participating in these discussions and forums. Ms. Yaroslavsky sits on the Bylaws Committee. Dr. Diego has been named to the Post Licensure Assessment System (PLAS) Committee. Ms. Chang has been elected to a three-year term of the FSMB Board of Directors. Dr. Moran serves on the Nominating Committee. Dr. Salomonson, sits on the Education Committee and attended a USMLE meeting in Philadelphia (at no expense to the Board) to develop questions for the USMLE exam.

Ms. Yaroslavsky announced that Dr. Hayes Bautista and Dr. Sergio Aguilar-Gaxiola will join the Board's Cultural and Linguistic Competency Workgroup.

Agenda Item 14 Federation of State Medical Boards Update

Ms. Chang reported that FSMB is addressing many of the same issues as the Board, including access to care and pending physician shortages, physician health and wellness, and telemedicine. The Federation and the National Board of Medical Examiners are working together to address the re-entry of physicians who have been out of practice for a period of time and the maintenance of licensure (MOL). They are looking for state boards to undertake a pilot project on MOL.

Ms. Chang serves on the Foundation of the Federation of State Medical Boards. The Foundation, along with the new chair of the FSMB, Janelle Rhyne, and the Administrators in Medicine (AIM) are working together on a project to develop a comprehensive system for measuring a state medical board's performance. The measurements will examine a manpower analysis, a measurement similar to the one used by the Public Citizen, and many other factors.

Agenda Item 16 Board Member Communications with Interested Parties

There were no communications disclosed by members.

Agenda Item 19 Executive Director's Report

A. Budget Overview

Ms. Whitney directed members to page 176 of their packets for the Analysis of the Fund Condition. Budget Year 2010-2011 shows a reserve of $26.7 million dollars, or a 5.7 month reserve. The fund condition for the Budget Year 2011-2012 drops to 2.9 months of reserve due to a proposed General Fund loan of $9 million dollars. In addition, the fund condition still shows $577,000 as a 2011-2012 proposed augmentation for Operation Safe Medicine (OSM); however, Ms. Whitney indicated this augmentation was unlikely to be approved this year. She expressed staff's disappointment with this outcome and noted that an augmentation request for the 2012-2013 fiscal year is being prepared for submission. It is hoped the new Administration will understand the need to continue this program on a permanent basis. Ms. Whitney has been in communication with the Deputy Director over administration about the possibility of shifting some positions to cover those in OSM.

Mr. Zerunyan expressed his desire for the public to understand the General Fund loan issue. The previous Administration borrowed $6 million dollars, which has not yet been returned. There is no date for the return of the proposed $9 million being borrowed by the current Administration. He has reviewed the conditions of the loans and stated that it appears there is no specific date or conditions set in place with respect to the return of the funds. Mr. Zerunyan stated this makes the return of funds completely discretionary, possibly allowing for the funds to never be returned to the Board.

Ms. Whitney directed members to page 186 of the meeting packet for the language regarding the General Fund loan in the budget bill. It states "the Director of Finance shall order the repayment of all or a portion of this loan if he or she determines that either of the following circumstances exist: (a) the fund or account from which the loan was made has a need for the moneys, or (b) there is no longer a need for the moneys in the fund or account that received the loan. This loan shall be repaid with interest calculated at the rate earned by the Pooled Money Investment Account at the time of transfer." In essence, the Board would have to go back to the Legislature and let them know the Board is in need of those moneys in order to have them returned.

Page 177 of the packet lists the expenditures of the Board through the end of February 2011. The Board has expended approximately 62% of its authorization with 67% of the year being completed. Projecting this out, the Board will under-spend its authorization by approximately $1 million dollars, largely due to furloughs and the hiring freeze.

Dr. Paul Phinney, CMA Board of Trustees, stated CMA is aware of the proposed $9 million loan and the existing $6 million loan, as well as the lack of information in the statute on a date for repayment. CMA is concerned with the misuse of physician fees. In 2008 it sued the state to invalidate the loan, however, the courts have not been sympathetic with the suit. CMA remains committed to challenging the state's raid of physician's fees. It believes that balancing the state's budget with this sort of borrowing is a violation of the Medical Practice Act. The focus of the courts in evaluating the legality of borrowing from the contingent fund has been whether such borrowing hinders the performance of the Medical Board's regulatory function. Dr. Phinney stated there is reason to be concerned, referencing the recent LA Times article criticizing the Board's performance as a regulator, relating this failure to being "woefully understaffed and regularly robbed of budget funds." He asked how the proposed $9 million loan (combined with the already taken $6 million) will affect the Board's operation and its ability to carry out its regulatory function, both now and going into the future.

Ms. Whitney responded, stating the Department of Finance looks at the Board's fund condition in both the short and long term to make decisions on budget change proposals or augmentations. The augmentation for Operation Safe Medicine may be more difficult than anticipated with the $9 million loan from the Board's budget. The Board has anticipated the loan and it appears that there will still be sufficient funds to move forward; however, this does not address the Governor's other executive orders that limit personnel resources and individual employees' ability to perform their duties, such as attending meetings and conferences.

Ms. Yaroslavsky noted the difficulty is not just in the loan, but in the ability to spend the money that the Board has available.

Dr. Salomonson agreed, stating the Board is prohibited from spending the money in its account, thereby creating the appearance of a surplus while positions go unfilled. Therefore, because of the perceived surplus, it justifies moving more money out of the Board's fund.

Ms. Whitney reported a new executive order was issued on April 26, 2011 that places restrictions on travel. This, too, will impact the budget by reducing expenditures. The executive order allows for only mission critical travel, such as for enforcement and functions required by statute.

Only a minimum number of employees are allowed to travel for mission critical trips. As an example, the normal number of staff to attend and effectively run a Board meeting is 20; Agency reduced the number allowed to attend the meeting to 12. This has had significant impact on staff and their ability to provide adequate coverage on all items on the agendas. This executive order impacts other work of the Board. Public outreach will be limited to locations where staff can drive via state vehicle and not require lodging or meals. Any public outreach in Southern California will be extremely limited and only provided by field office staff. The order applies to conferences, including those where staff has been invited to deliver presentations. Ms. Whitney will be seeking direction on travel for licensing outreach, as the Board considers this mission critical; she will keep members informed. As it relates to Board meetings, the July meeting scheduled in Sacramento will not be impacted. However, if the order is still in effect in October, Ms. Whitney requested permission to move the meeting to Sacramento.

Dr. Low made a motion to move the October 2011 meeting from San Diego to Sacramento contingent upon whether a waiver has been obtained within 3 months prior to the meeting; s/Chang.

Ms. Schipske opposed the motion, stating the Board needs to be very adamant with the Administration that the purpose of holding the meetings throughout the state is to allow access to the public and physician community who do not have the means to travel. She stated it was not in the best interests of consumers to limit the locations for public board meetings. Ms. Schipske indicated it was inappropriate for an agency funded by licensing fees to be put into the same category as agencies funded by General funds. The Board has a role and a mission, which includes being accessible to the public, and stated the Board should convey this message back to the Administration.

Dr. Salomonson stated she agreed with the comments being made, but also realizes the difficulties created for staff when the number of individuals allowed to travel to meetings is so limited. Dr. Low concurred, stating the importance of having the appropriate staff present in order to have an effective, quality meeting.

Dr. Duruisseau suggested that, should the Board attempt to obtain a waiver, it should be more than a letter to the Administration; he stated a delegation of the Board would be more effective in order to impress upon the Agency the significance of this issue. He indicated the burden should not be placed upon the staff to obtain a waiver, but the members should become involved.

Ms. Kittle stated her support for holding the meetings throughout the state in order to allow access to the public.

Michele Monserratt-Ramos, Consumers Union Safe Patient Campaign, indicated that at the November 2010 Board meeting she suggested adding a telecommunications component to the Board's proceedings. She stated this was even more pertinent now, given the travel and staffing restrictions. Ms. Monserratt-Ramos asked the Board to consider teleconferencing the meetings in order to allow both staff and consumers to participate.

Ms. Clavreul expressed her concern with moving the meeting to Sacramento. As a consumer, she stated this would limit her right to address the Board.

Ms. Balaian stated that the Board's Outreach program saves time and money for both the Board and residents who are applying for licensure. Licensing fairs bring multiple resources together in one place and provide an opportunity for the residents to ask questions and have their applications checked by a representative of the Board for completeness and accuracy. She stated that limiting staff travel for outreach would be a tremendous error.

Mr. Heppler clarified the motion stating: if the executive order restricting travel is still in place *and* the Medical Board cannot get the necessary travel exemptions or waivers for a sufficient number of staff to attend the out-of-Sacramento meeting, then the meeting will be moved to Sacramento.

Ms. Yaroslavsky called for the vote; motion carried; Opposed – Schipske; Abstained – Yaroslavsky.

Ms. Whitney noted that the meeting in Sacramento on July 2011 had originally been scheduled to take place at the UC Davis School of Medicine; however, a lack of available conference rooms will require the meeting to be moved to another Sacramento location.

Returning to the issue of the loan to the General Fund, Dr. Phinney stated CMA is specifically concerned that the loan is in conflict with the Medical Practices Act. It places the funds in question into a different category. The Medical Practices Act statute specifically states that the funds are to be used *solely* for carrying out the activities of the Medical Board. The Act has additional specific language prohibiting transfer of Medical Board funds to the state. Dr. Phinney reported the courts circumvented this provision by stipulating that, because the loan is temporary, it does not constitute a transfer. CMA disagrees with this interpretation and is committed to continue this fight.

B. Staffing and Administrative Update

Ms. Whitney reported that, as of May 1, 2011, the Board had 45 vacancies. This number does not include the 16 CPEI positions that were authorized this year. There are 5 more known retirements in May, although a couple of these positions may be able to be filled with applicants from within the DCA. Four freeze waivers have been submitted for positions: Medical Consultant (Licensing), Medical Consultant (Enforcement), Supervisor I for field office enforcement positions, and Office Technician for the Cashier Unit, Call Center and front-end licensing support. The waivers are first sent to the DCA Fiscal Office, then to the DCA Director, next to the SCSA Secretary, then to the Department of Finance, and, finally, to the Governor's Office for approval. The first waiver was for the "Medical Consultant – Licensing" for 8 permanent intermittent positions; this was submitted before the executive order on February 14 and was resubmitted on March 14 under the newly defined waiver process. This waiver was approved by the Governor's Office on April 20, 2011. The "Medical Consultant – Enforcement" for 8 permanent intermittent positions was submitted on March 21, 2011 and is currently at the Department of Finance. Waivers were submitted on April 5, 2011 for 5 Supervisor I enforcement positions for the field offices; this waiver is currently at the DCA Director's Office.

Six waivers were requested on April 20, 2011 for Office Technician positions in cashiering (which is income generating), the Call Center, and front end support for licensing; this request is currently at the DCA Fiscal Office. Investigator waiver requests should go to DCA next week.

Among the 45 existing vacancies, 4 are located in the Executive Office, 2 in Administrative Services, 1 in Business Services, 12.8 in the Licensing Program, 4 in the Central Complaint Unit, 1 in the Office of Standards and Training, 14 in the Enforcement Section, and 6 in the Probation Section. Ms. Whitney reiterated that these numbers do not include the 16.4 vacancies related to the CPEI. The retirement of the Board's Budget Analyst, Debbie Titus, in mid-June will be a great loss; Ms. Titus has served in this capacity since 1986. Staff is in the process of interviewing for her replacement and will examine the possibility of seeking a freeze waiver to hire Ms. Titus as a retired annuitant to train her replacement.

In March, the acting Director issued a policy statement prohibiting board members from serving as expert consultants in the licensure examination development process. Since the Board has a physician member who serves as an invited guest on the FSMB Exam Development Committee for the USMLE, Ms. Whitney asked for clarification from the Department. DCA responded that national examination development workshops are not included the scope of this new policy and, thus, will not impact Dr. Salomonson's ability to continue to serve on the USMLE committee.

Ms. Whitney reported that Jennifer Simoes, as the Board's acting Public Information Officer, has been busy responding to press requests. Staff is still trying to fill the position, but have had a very limited group of interested applicants as the position can only be filled internally due to the hiring freeze.

Ms. Whitney concluded by commending all of the Board's staff on their willingness to step up while dealing with significantly reduced staffing levels. She particularly thanked staff in attendance at the Board meeting who had to cover for those not allowed to attend by making other staff member's presentations or managing other's committee meetings. Ms. Whitney also expressed her appreciation to the enforcement staff for providing security at each of the meetings.

Ms. Kittle suggested hiring locally for services such as the sound system or security as a way to deal with the travel restrictions. She also expressed her support for a delegation to obtain a travel waiver for staff to attend distant Board meetings.

Ms. Chang stated that the Board may be reaching a point of near crisis with all the restrictions being placed on it. She suggested that the Board President have a discussion with the Executive Director in order to form a plan on how to address these issues.

Ms. Yaroslavsky stated this was an excellent idea. She also indicated that it would be reasonable to expect a faster turnaround from the Agency and Department on some of the waiver processes that were in place.

Agenda Item 20 Legislation / Regulation

A. 2011 Legislation

Ms. Simoes directed members to the Legislative Packet. She noted that additional handouts providing an updated tracker sheet and updated analyses were distributed to members and made available to the public.

Board Sponsored Bills

- **AB 1127 (Brownley) – Physicians & Surgeons: Physician Interview** – This bill would make it a violation of unprofessional conduct for a physician and surgeon who is the subject of an investigation by the Medical Board to repeatedly fail, absent good cause, to attend and participate in an interview scheduled by mutual agreement of the physician and surgeon and the Board. The Board decided to sponsor this bill because it believes it will expedite the closure of disciplinary cases and significantly reduce case delays by providing an incentive for physicians to attend and participate in the interviews. This bill was recently amended to address concerns raised by CMA, which is now neutral on this bill. It recently passed out of the Assembly Appropriations Committee.

  Rehan Sheikh, member of the public, asked if the Board had obtained an opinion from a legal counselor from the Attorney General's Office on whether the bill violates the Fifth Amendment rights of physicians.

- **AB 1267 (Halderman) – Physicians & Surgeons: Misdemeanor Incarceration** – This Board-sponsored bill would authorize the Board to automatically place a physician's license on inactive status when a physician is incarcerated after the conviction of a misdemeanor for the period of incarceration. The bill originally imposed an automatic suspension, but was recently amended to an inactive status after meeting with CMA. This achieves the same goal; the physician is not allowed to practice medicine while incarcerated. The difference from the original concept is that this is not a disciplinary action and does not negatively affect the physician's licensing record. This would be an action that changes the license status to inactive while the physician is incarcerated. The bill would still require disclosure on the Board's website that the physician is incarcerated. CMA has taken a neutral position on the bill. The bill has passed out of both Assembly Business and Professions Committee and Assembly Appropriations on consent (indicating bipartisan support and no opposition).

- **SB 541 (Price) – Regulatory Boards: Expert Consultants** – The Board is co-sponsoring this bill along with the Contractor's State Licensing Board. The bill would enable all boards and bureaus in DCA to continue to utilize expert consultants in the same manner as in the past 25 plus years, without having to go through the formal contracting process. If the bill passes, all boards would be allowed to complete a simplified 2-page contract with expedited processing, including allowing delegation to the boards for contracting authority. The bill passed out of Senate B&P without any "no" votes. Many boards and bureaus support this bill.

  Dr. Levine made a motion to reaffirm the Board's sponsorship and support of SB 541; s/Zerunyan; motion carried.

- **Omnibus Bill** – The Board has some technical changes to be included in an omnibus bill. Senate B&P Committee staff is reviewing language and will inform Ms. Simoes if the language will be amended into the omnibus bill.

Potential New Legislation

Ms. Whitney referenced Dr. Dowling's presentation on UCLA's International Medical Graduate Program at the April 2010 meeting. In his presentation, he mentioned that the individuals in the program were not allowed to do clinical work, only observerships, because they are already graduates of medical school. Dr. Dowling suggested changing a section of code to allow these individuals to participate in clinical training like medical students. Board staff was hesitant about doing this, and, thus, entered into conversations with the UC President's Office. It would like to examine the possibility of a pilot program that would enable these individuals to do a limited number of weeks in a clinical training-type program. Ms. Whitney proposed that the Board authorize staff to work with the UC system to develop language to allow for a pilot program at UCLA, for up to 5 years, for those individuals in the International Medical Graduate Program who meet specified requirements such as testing and language skills, etc., to engage in supervised clinical training of up to 10 to 20 weeks. If the language can be developed and support gained from interested parties (i.e., other medical schools and physician groups), then the Board would co-sponsor legislation with the UC System. If the language was developed and moved into the second house, this would occur before the next Board meeting, thus, approval by the Board is needed in order to proceed.

Dr. Duruisseau made a motion to proceed with the development of a pilot program; s/Levine; motion carried.

2011 Legislation

- **AB 352 (Eng) – Radiological Assistants** – This bill would enact the Radiologist Assistant Practice Act. The bill would require the Board to create and appoint a Radiologist Assistant Advisory Council (RAAC), which would make recommendations to the Board on the establishment of standards and issuance of approval for programs and the scope of practice for radiologist assistants (RAs). The bill would allow licensed RAs to perform medical services set forth by regulations of the Board when the services are rendered under the supervision of a qualified physician and surgeon. The Board would be required to issue licenses for RAs. The RAAC will result in minimal fiscal impact to the Board.

  According to the author's office, RA's are licensed and regulated in 29 other states, and similar approaches have been successfully adopted in 5 other states. Staff suggests a support position on the bill.

  Bryce Docherty, American Society of Radiologic Technologist addressed the Board, urging its support of the bill. He noted the bill has already been amended three times. He thanked Ms. Simoes for her efforts and Mr. Heppler for his technical assistance on the bill. Mr. Docherty stated the intent has always been to make the program wholly fee-supported, with licensure fees to be set by the Board.

Sal Martino, CEO of the American Society of Radiologic Technologists, and Dr. Kenneth Chin, board certified intervention radiologist, also expressed their support of the bill.

Ms. Chang made a motion to support AB 352; s/Levine; motion carried.

AB 374 (Hayashi) – Athletic Trainers –This bill would enact the Athletic Trainers Practice Act effective January 1, 2013 and would establish the Athletic Trainer Licensing Committee (ATLC) with the Medical Board to license athletic trainers. The bill authorizes the ATLC to adopt regulations to implement this bill and requires the ATLC to approve education and training programs for athletic trainers. The Board believes this bill will result in significant fiscal impact to the Board, with licensing fees unlikely to cover costs. Staff suggests an oppose position on the bill unless it is amended to be placed in a more appropriate board like the Physical Therapy Board or is structured as a semi-independent board like the Physician Assistant Committee under the Department of Consumer Affairs. Further, the scope of practice must be more clearly defined and the grounds for denial of licensure must be added to the bill.

Mr. Zerunyan made a motion to oppose AB 374 unless it is amended; s/Levine; motion carried.

- **AB 415 (Logue) – Healing Arts: Telehealth** – This bill would repeal existing law related to telemedicine and replace this law with the Telehealth Advancement Act of 2011. The bill defines "telehealth" as the mode of delivering health care services and public health via information and communication technologies to facilitate the diagnosis, consultation, treatment, education, care management and self-management of a patient's health care while the patient is at the originating site and the health care provider is at the distant site.

Staff suggests that amendments are needed in order for the Board to support this bill. These include adding language that a violation of the telemedicine law constitutes unprofessional conduct, adding language from existing law related to not altering the scope of practice of any health care provider and the portion related to the delivery of services. In addition, language should be added to clarify that the physician is responsible for determining if treatment is appropriate for telehealth; this should not be decided by the payment policies that are required to be adopted by the health care service plans and health insurance companies.

Staff recommends a support if amended position on the bill. Ms. Simoes reported two of the suggested amendments have been taken. Staff can work with the author's office and the Assembly Health Committee on the third requested amendment, as they have agreed it is needed.

A motion was made to support AB 415 if amended; s/Duruisseau; motion carried.

- **AB 507 (Hayashi) – Pain Management** - The bill would make changes to existing law related to severe chronic intractable pain and would repeal existing law that allows the Department of Justice to employ physicians for interviewing and examining patients related to prescription possession and use of controlled substances. The bill would continue to allow

physicians to refuse to prescribe opiate medication for patients who request the treatment for pain or a condition causing pain. However, the bill requires physicians to refer patients to physicians who treat pain or a condition causing pain, with methods that include the use of opiates. Board staff believes this is problematic because it *requires* a physician to refer the patient to another physician. The bill should be amended to be permissive, to provide exclusion for physicians who do not know of another physician to refer their patients to, or to provide a referral to a web site that would contain a list of physicians such as one or more of the American Board of Medical Specialties certified physician sites. The other changes in this bill are technical in nature. Staff suggests a support if amended position, with the amendment being for the bill to be permissive or flexible in referrals.

Dr. Low expressed disbelief that a physician would not know another physician to make a referral to. He stated there are pain clinics everywhere. He was not sure the amendment was necessary.

Dr. Salomonson supported the amendment.

Ms. Chang made a motion to support AB 507 if amended; s/Duruisseau; motion carried.

- **AB 536 (Ma) – Physicians and Surgeons: Expungement** – The bill would require the Board to remove misdemeanor or felony convictions posted by the Board on its Internet website within 90 days of receiving a certified copy of an expungement order from the licensee. As the Board strives to keep accurate information on its website, staff suggests a support position on this bill.

Ms. Scuri explained the difference between having a conviction expunged after being "good" for one year and being factually innocent of a charge. She stated it would be preferable if the bill could be amended to clarify that it does not mean the Board must purge its *files*, especially if the public document references the expunged conviction, but only requires removal of the information from the Internet.

Ms. Chang made a motion to support AB 536 with the amendment suggested by Ms. Scuri; s/Diego.

Julie D'Angelo Fellmeth, Center for Public Interest Law (CPIL), expressed CPIL's concerns with the bill. She noted the Board has been disclosing felony convictions on its Internet website since 1998 due to the passage of a bill creating B&P Code §2027. It is due to the posting of this information that the Board's website is ranked in the top 10 of all state medical board websites in the US by the Public Citizen. Most of the items required to be posted by B&P §2027 are also required to be removed in ten years, with two exceptions, one being felony convictions which must be posted indefinitely. Expungements do not necessarily mean that the physician did not commit the act that resulted in the felony conviction. If a felony conviction is expunged, she would prefer that the website state that the conviction was expunged, rather than removing it completely from the website. The Board's public disclosure laws have served it well in the past and she urged caution in supporting any changes.

Ms. D'Angelo Fellmeth indicated misdemeanors have only been posted on the Board's website for the last two to three years, and they are only posted if they are the basis of an accusation or disciplinary action. She would have the same concerns about removing misdemeanor expungements, but is more concerned about removing felony convictions.

Mr. Heppler noted that case law suggests that even if a conviction is expunged, that does not render it a legal nullity. The purpose of Penal Code Section 1203.4 is to "promote good behavior" while on probation. If an applicant applies for licensure after having a conviction expunged, it must still be disclosed on the application for any state license.

Lavonne Powell, DCA, stated the Department is opposed to any bill that will make it more difficult for consumers to access public information. She noted that expungements are easy to obtain. Sometimes the licensees still owes their licensing authority money (for example, for cost recovery) when a judge gives them an expungement order. She also urged caution in supporting changes.

Ms. Chang withdrew her motion and made a new motion to oppose AB 536; s/ Diego.

Ms. Yaroslavsky suggested that it might be wiser to take a position of "oppose unless amended" so the Board can work with the author's office and other stakeholders on the direction of the bill.

Ms. Scuri suggested that the "oppose unless amended" position reflect that the conviction is expunged and the date of expungement be posted on the Board's website, in addition to the posting of the conviction.

Ms. Chang withdrew her motion and made a new motion to oppose AB 536 unless amended to require the posting of the fact of the expungement rather than the removal of the conviction; s/Diego; motion carried.

- **AB 589 (Perea) – Medical School Scholarships** – This bill would create the Steven M. Thompson Medical School Scholarship Program (STMSSP) within the Health Professions Education Foundation. STMSSP participants must commit in writing to three years of full-time professional practice in direct patient care in an eligible setting. The maximum amount per total scholarship is $105,000 to be distributed over the course of medical school. The STMSSP would be funded by funds transferred from the Managed Care Administrative Fines and Penalties Fund. The author's office believes the bill will help to address physician shortages in medically underserved areas. Staff suggests a support position.

Dr. Duruisseau made a motion to support AB 589; s/Esrailian; motion carried.

- **AB 783 (Hayashi) – Professional Corporations: Licensed PTs** – This bill would add licensed physical therapists and occupational therapists to the list of healing arts practitioners who may be shareholders, officers, directors, or professional employees of a medical corporation. Since 1990, the Physical Therapy Board has allowed physical therapists to be employed by medical corporations. On September 29, 2010, the California Legislative

Counsel issued a legal opinion that concluded a physical therapist may not be employed by a professional medical corporation and stated that only professional physical therapy corporations or naturopathic corporations may employ physical therapists.

Currently, many physical therapists are employed by medical corporations. According to the author's office, this bill was introduced to prevent the unnecessary loss of employment by allowing medical and podiatric medical corporations to continue to employ physical therapists as they have done for over 21 years. Board staff suggests a support position on the bill.

Dr. Levine made a motion to support AB 783; s/Chang; motion carried.

- **Direct Employment Bills**:

AB 824 (Chesbro) – Rural Hospitals: Physician Services
AB 926 (Hayashi) – Physicians & Surgeons: Direct Employment
AB 1360 (Swanson) – Physicians & Surgeons: Employment
These bills have recently become 2-year bills; no position was taken by the Board.

- **AB 895 (Halderman) – Personal Income Tax: Physicians: Qualified Medical Services** - This bill would provide a tax credit for physicians of up to $5,000 for providing medical services or emergency medical services free of charge or at a reduced rate at a local community clinic or in an emergency department of a hospital. Board staff suggests a support position.

Karen Ehrlich, Midwifery Advisory Council, requested that the Board consider adding allied health professionals into those who would qualify for the tax credit for free services. Ms. Yaroslavsky suggested that Ms. Ehrlich contact the author's office with her request.

Ms. Chang made a motion to support AB 895; s/Diego; motion carried.

- **AB 958 (Berryhill) – Regulatory Boards: Statutes of Limitations** – This bill has become a two year bill; no position was taken by the Board.

- **SB 100 (Price) – Healing Arts: Outpatient Settings** - The Board took a support if amended position on this bill at its January 2011 meeting. The bill has been significantly amended to remove all provisions regarding licensing of outpatient settings by the California Department of Public Health (CDPH), and to remove all provisions related to advertising. New requirements are added for accreditation agencies, outpatient settings, and the Board. The Board would be allowed to adopt regulations to specify procedures that should be performed in accredited settings for facilities or clinics that are outside the definition of an outpatient setting. The bill requires that the accreditation agencies provide information on all outpatient settings that are accredited and requires the Board to maintain and post this information on its website. The bill also sets up a process for the correction of identified deficiencies in the outpatient setting.

The bill requires the Board to investigate all complaints upon discovery that an outpatient setting is operating without accreditation. Currently, this type of complaint would be

forwarded to the District Attorney's Office. This provision would add to the Board's workload. Such information would be relayed to the Operation Safe Medicine Unit, but, as discussed earlier, the funding for this unit may not be extended. Board staff suggests a support if amended position on the bill. Technical amendments are needed to make only the final inspection reports available to the public and to specify that inspections should be physical inspections.

Ms. Chang made a motion to support SB 100 if amended; s/Moran.

Mr. Heppler suggested that the provision requiring the Board to bring an injunction if it determines that an outpatient setting is not in compliance should be permissive instead of mandatory, as it may be possible to gain compliance in other ways.

He also noted that when the Board receives Public Records Act requests, it does not provide information on complaints or investigations [Government Code §6254(f)] since it is acting in its role as a state licensing agency investigating its own licensees. This would not be the case with outpatient settings since these are not the Board's licensees. Mr. Heppler requested that the coverage for exemption of disclosure, specifically of inspection or investigation reports, be extended to investigations the Board would conduct on outpatient settings.

Mr. Heppler also noted the bill would amend B&P §2023.5 to require the Board to adopt regulations regarding physician availability for the use of laser or intense pulse light devices. He stated it was his understanding that the Board did hold forums on this topic and determined that no regulations were necessary, but, rather, existing laws needed to be enforced.

Dr. Salomonson expressed concern that the Board, in supporting the bill, would be signing on to become the inspector for outpatient settings.

Ms. Yaroslavsky called for the vote; the motion to take a support if amended position on SB 100 carried.

- **SB 233 (Paley) – Emergency Services and Care: Physician Assistants** – This bill would explicitly clarify that a physician assistant (PA) can provide treatment and consultation in an emergency care setting. Board staff suggests a support position on the bill.

Dr. Low made a motion to support SB 233; s/ Moran; motion carried.

- **SB 380 (Wright) – Continuing Education: Nutrition Course** – A handout update on this bill was provided to members and made available to the public. The bill originally dealt with mandated continuing medical education (CME); it was recently changed to address opposition and concerns. The bill authorizes the Board to set content standards for any educational activity concerning a chronic disease that includes appropriate information on the impact, prevention, and cure of the chronic disease by the application of changes in nutrition and lifestyle behavior. The bill only provides authority for the Board to set content standards, but does not *require* that it do so. Staff suggests a neutral position on the bill.

Ms. Chang made a motion to take a neutral position on the bill; no second was offered. The Board did not take a position on SB 380.

- **SB 544 (Price) – Consumer Health Protection Enforcement Act** – This bill has become a two year bill; no position was taken by the Board.

- **SB 747 (Kehoe) – Continuing Education: Lesbian, Gay, Bisexual & Transgender Patients** – This bill would require physicians and surgeons, registered nurses, licensed vocational nurses, psychologists, physician assistants, psychiatric technicians, marriage and family therapists, and clinical social workers to complete a one-time continuing education course that provides instruction on cultural competency, sensitivity, and best practices for providing adequate care to lesbian, gay, bisexual and transgender (LGBT) persons. According to the sponsor, the LGBT community has specific medical needs and concerns and it is critical that health care professionals receive necessary training to understand those needs and provide improved patient care. Although the Board usually opposes mandated CME, Ms. Simoes stated that, because of the Board's interest in preventing and addressing health disparities and promoting cultural competency, Board staff suggests a neutral position.

No motion was offered; the Board did not take a position on SB 747.

- **SB 824 (Negrete McLeod) – Opticians: Change of Ownership** – The bill would require a registered dispensing optician (RDO) acquiring ownership of a business to file the notice with the Board within 10 days of the completion of the transfer of ownership. It would also make the RDO selling or transferring the ownership interest subject to the same 10 day timeline and be responsible for complying with all laws relating to the place of business until the cancellation notice is received by the Board. According to the sponsors, the requirement that the certificate be posted is hard to comply with during a change of ownership, as the registration documents must be furnished to the Board. They believe the bill will provide a process that allows the RDO to remain open while the documents are being processed. The Board believes that putting a 10 day timeline on both parties to get their required paperwork to the Board will make this process run more smoothly and effectively. Board staff suggests a support position on the bill.

Ms. Chang made a motion to support SB 824; the motion was seconded; motion carried.

Ms. Simoes directed members to the Tracker II listing of bills in the back of their Legislative Packet for their individual review.

B. Status of Regulatory Action

Ms. Simoes referred members to the Status of Regulatory Action matrix located on page 188 in their packets for information on pending regulations. She reported that the regulatory file for Abandonment of Application Files was sent to the Secretary of State's Office on April 26, 2011.

Agenda Item 22 12:00 (Noon) Presentation: CMA California Physician Workforce Report

Ms. Yaroslavsky indicated that the presentation by CMA would be held over for the July 2011 meeting. She thanked CMA for their flexibility.

Agenda Item 24 Licensing Chief's Report

A. Licensing Program Update

Mr. Worden praised staff for their hard work in maintaining licensing timelines in light of the many vacancies in the Licensing Program. As of the week of May 2, 2011, the initial review date for US files is 36 days and 30 days for international files; review of pending mail is at 7 days.

The next Special Faculty Permit Review Committee is scheduled for June 16, 2011; however, no applications have been received at this time. If no applications are received by May 9, 2011, the meeting will be canceled.

Inquiries have been received from several international medical schools interested in applying for recognition by the Board; there is one pending application that has just started the recognition process. Mr. Worden reported there is one pending specialty board application and an inquiry from another specialty board regarding the process for recognition. The Polysomnographic Technologist Program is drafting the Final Statement of Reasons for its regulations.

B. Status of Implementation of AB 2386 (Armed Forces Medical Personnel)

The application form implementing AB 2386 (Training Registration of US Armed Forces Military Medical Physician and Surgeon Personnel in California Hospital Facilities) has been approved and is posted on the Board's website. A sample of the form is located on page 231 of the meeting packet.

Agenda Item 25 Midwifery Advisory Council Update and Consideration of Council Recommendations

A. Update on the Licensed Midwife Annual Report

Ms. Ehrlich reported the Board's Information Systems Branch and OSHPD have worked hard to help prevent reporting errors in the Licensed Midwife Annual Report for electronic filers. The Midwifery Advisory Council (MAC) is exploring the option of working with the Midwives Alliance of North America Statistic's Project to allow for prospective reporting of data.

B. Update on Physician Supervision

At the April 7, 2011 MAC meeting, Dr. Ruth Haskins presented a Collaborative Practice Statement issued by the American College of Obstetricians and Gynecologists (ACOG) and the American College of Nurse-Midwives (ACNM). Ms. Ehrlich directed members to page 249 of their packets for a copy of the statement. The joint statement is part of an on-going initiative to promote collaborative practice between obstetrician-gynecologists and certified nurse-midwives and/or certified midwives. Ms. Ehrlich stated the midwifery community is gratified and pleased with efforts of ACOG and ACNM to move toward collaboration. Licensed midwives look forward to further discussions so that, together, a framework for collaborative practice can be crafted that will benefit California's ob-gyns, licensed midwives, and the families they serve.

B&P §2507(f) requires that the Board adopt regulations defining the level of supervision required for the practice of midwifery. All previous attempts to do so, however, have resulted in an impasse due to widely differing views among the medical, midwifery, and insurance professions on the appropriate level of supervision. With the issuance of ACOG's Collaborative Practice Statement and the Board's previous authorization allowing the MAC to address this issue, the

MAC will rekindle previous efforts to define physician supervision and perhaps introduce the concept of collaborative practice via regulation.

C. Recommendation to Pursue Regulations to Ensure that Midwifery Practice and Educationals Requirements (16 CCR 1379.30) Are Consistent

Current regulations spell out the educational requirements for midwifery education programs. The education program must prepare the midwife for the management of the normal pregnancy, labor, and delivery, including the administration of intravenous fluids, postpartum oxytocics, RhoGAM, local anesthesia, and vitamin K and eye prophylaxis, among others. However, the current regulations do not specifically authorize a licensed midwife to incorporate these requirements into her practice. As such, midwives often face difficulty in securing supplies such as oxygen, anesthetics, and oxytocics in order to practice safely and effectively. In an effort to address this barrier to care as previously authorized by the Board, the MAC would like to propose that staff move forward to develop regulations to ensure that midwifery practice and educational requirements are consistent. The MAC would like to see a regulation that specifically states that licensed midwives have the authority to use these resources that they have been educated for.

Ms. Schipske made a motion to direct staff to work on regulations to ensure consistency between midwifery practice and educational requirements; s/Low; motion carried.

D. Request for Board Authorization to Consider Modifying the Size and/or Composition of the Midwifery Advisory Council.

Ms. Ehrlich reported the current council, as determined by the Medical Board at its inception, is composed of six members; by law, half must be licensed midwives. Two obstetricians sit on the MAC, as does Ms. Yaroslavsky as a public member and representative of the Board. The midwifery community has always desired representation by citizens who have personally experienced midwifery care. She requested that the Board consider the addition of two additional positions to the council, one for a parent who has been served by a licensed midwife, and an additional midwife in order to keep within the mandate of the law. Ms. Ehrlich stated that she would like to see a licensed midwife from Southern California added to the MAC, as the three midwives currently serving on the Council are all from Northern California.

With regard to adding members to the MAC, Ms. Yaroslavsky asked if the Council had, in fact, voted to add members. Mr. Heppler clarified that, at its April 2011 meeting, the MAC made a motion to request authorization from the Board to study the issue of expanding the allocation of members to the MAC and the composition thereof.

Dr. Duruisseau made a motion to authorize the MAC to study the issue of adding members to the Council; s/Chang; motion carried.

Agenda Item 26 Enforcement Chief's Report

A. Approval of Orders Following Completion of Probation and Orders for License Surrender During Probation

Ms. Threadgill requested approval of 9 orders to restore licenses to full status following satisfactory completion of probation and 4 orders for license surrender during probation or administrative action.

Dr. Duruisseau made a motion to approve the orders; s/Chang; motion carried.

B. Expert Utilization Report

Ms. Threadgill directed Members to page 251 of the packets for a chart reflecting the use of 140 experts to review 180 cases by specialty during the past quarter. The number of experts in the Enforcement Program's database is currently 1,262.

C. Enforcement Program Update

The District Office vacancy rate for investigators is currently hovering around 9%. However, the vacancy rate for Supervising Investigators has reached 29%. Staff is seeking hiring freeze exemptions for these vacancies; the investigator request will be finalized this week.

Since the "Notice to Consumers" posting became effective, the volume of complaints received by the Board has increased an average of 60 complaints per month. The Central Complaint Unit is experiencing an unprecedented number of vacancies as a result of retirements and promotions. With professional staff vacancies anticipated to reach 30% over the next two months, the Enforcement Program must reexamine where resources are expended by staff in the Complaint Unit and adjust accordingly.

Recruitment efforts to fill the vacant enforcement positions have been affected by the recent hiring freeze as the recruitment pool is limited to existing DCA employees. Staff is continuing to seek hiring freeze exemptions. However, while faced with diminishing resources, the Enforcement Program will not be able to pursue complaints such as advertising violations, fictitious name permit issues, fee splitting (e.g., coupons containing offers for medical services), HIPAA violations, or complaints involving testimony as a medical expert. These types of complaints can be closed with a disposition code reflecting "lack of resources" which can be retrieved and reopened as the staffing issues are resolved.

Ms. Threadgill acknowledged the work done in the Citation and Fine Program by Anthony Salgado who was recently promoted to a manager position with the Licensing Program. At the present time, there are no alternatives for absorbing the workload associated with this program.

Ms. Threadgill reported that some of the data markers for enforcement timelines were presented during the Enforcement Committee meeting. Although the data was too limited to make program changes at this time, staff will be examining the markers as additional information comes in to determine if policy changes are necessary in order to improve case processing timelines. Despite the furloughs, staffing shortages, and the inability to replace vacant staff investigator positions, investigators reduced the time it takes to resolve a case by 28 days between FY 08-09 and FY 10-11. With adequate resources and the removal of limitations such as furloughs, Ms. Threadgill stated the improvement could be even more pronounced.

Agenda Item 27 Vertical Enforcement Program Report

Ms. Threadgill directed members to page 255 of the packet for information on the Vertical Enforcement (VE) statistics. She noted there is a slight change in the presentation of this data. All of the Board's cases are now in the VE model and are being reported in the "All" category.

In April 2011, a statewide investigator and inspector training were held. The training included an hour specialty presentation by Dr. Moran. Ms. Threadgill thanked Dr. Moran for her presentation and expressed appreciation for the assistance and participation provided by Ms. Yaroslavsky and Ms. Whitney. The training also included a presentation regarding defense attorney techniques, an asset forfeiture presentation by the DEA, and much more. Part of the investigator training included the attendance of Deputies from the Health Quality Enforcement (HQE) Section on medical records acquisition. This training with HQE was jointly prepared and presented. The feedback from this invaluable experience has been very positive. Ms. Threadgill reported this was the first time MBC Investigative Staff and HQE staff have jointly participated in a statewide training project. In fact, this was the first time HQE staff have had an opportunity to meet their colleagues from around the state.

Carlos Ramirez, Senior Assistant Attorney General, directed members to page 256 of the packet for a summary of HQE times frames for VE for 2010. Following the compilation of these statistics, an inventory was made of all Board cases within HQE in which an accusation had not been filed and notices of defense and requests for hearings had not been sent. Mr. Ramirez then issued a directive to HQE staff that all these Board cases, notices and requests should be filed and sent by March 25, 2011. He reported that, with the exception of two cases, this deadline was met.

HQE has continued to monitor the progress of cases, both in the filing of accusations and requests to set hearings. On April 21, 2011, there were 11 cases that had not been filed; since then, 8 of these cases have now been filed. Mr. Ramirez will continue to report on the progress at future meetings.

Ms. Yaroslavsky thanked Mr. Ramirez for providing the statistics as she found them very helpful.

Mr. Zerunyan stated the matrix that is being developed to show enforcement timelines will be very helpful as this will highlight specific areas that need to be addressed. He clarified that the statistics Mr. Ramirez provided only show cases opened in 2010; these numbers are different from those provided by Ms. Threadgill as her statistics include *all* open cases. It is unclear if the Board's statistics can be accurately compared with HQE's statistics until further analysis is undertaken.

Mr. Zerunyan stated his expectation that the Enforcement Program and HQE will work together to arrive at an agreement on how the numbers are to be reported in order to allow a fair and accurate assessment and comparison.

Agenda Item 28 SB 1441 Task Force Update: Standard #4

Ms. Whitney reported SB 1441 required the creation of the Uniform Standards Regarding Substance-Abusing Healing Arts Licensees. These standards were adopted in early 2010 with an outstanding issue related to the standards governing aspects of biological fluid testing (Standard #4). The Substance Abuse Coordination Committee recently reviewed these standards and discussed the frequency of testing. She directed members to page 259 of the packet for information on the Testing Frequency Schedule. Previously, the standard had been 104 required

tests per year. This standard has been changed to 52-104 tests per year. In addition, a second level was added for licensees in the second year of probation or diversion and each year thereafter, up to five years. The minimum number of tests in Level II is 36-104 tests per year. Beyond five years, the tests may be administered one time per month if there have been no positive drug tests in the previous five consecutive years of probation or diversion. This change was requested by the Board and adopted by the Committee. The Uniform Standards are now complete.

Agenda Item 29 Department of Consumer Affairs Update

A. Governor's Executive Orders

Lavonne Powell, DCA Representative, praised the Board's staff for its preparation and handling of the meeting with only half the number of those expected to be in attendance.

Ms. Yaroslavsky thanked Ms. Powell, but added that the impact of the restrictions on staff at the meeting will carry over as staff returns to the office to work on actions, minutes, and other items from the meeting.

Ms. Powell indicated that a budget letter will be sent out that contains additional details on travel restrictions. She noted that DCA is particularly challenged by this Executive Order.

B. Consumer Protection Enforcement Initiative (CPEI)

No update.

C. BreEZe Update

Ms. Powell directed members to page 267 for an update on the BreEZe project status. She reported that the Department is in negotiations with the bidder to secure a feasible contract for the project to move forward.

D. Other Administrative Updates

Ms. Powell stated she was impressed with the Board's practice monitor enhancements. She anticipates hearing of the results and sharing these enhancements with other boards that have practice monitors or are considering them.

Ms. Yaroslavsky thanked Ms. Powell for her report. She asked the Department to provide the Board with discretion and flexibility in dealing with the constraints placed upon it, and asked that there might be transparency and accountability from the Department.

Agenda Item 30 Agenda Items for July 28-29, 2011 Meeting in Sacramento, CA

Dr. Carreon stated that the maternal mortality rate in California is highest in the nation. In addition, he indicated that the recreational use of prescription drugs belonging to another person has become a problem throughout the country. As leaders in public protection, he would like the Board to discuss how it can work with other agencies to address these two issues.

Ms. Yaroslavsky suggested that these issues might be best addressed in the Education Committee with an update on the programs that exist with regard to prescription drugs or a presentation on the reporting and oversight of prescription drugs.

Ms. Schipske requested that a presentation by Toni Sullivan, author of *Collaboration: A Health Care Imperative,* be made at the July meeting. She asked that copies of this book be distributed to members, particularly to those on the Access to Care Committee.

Ms. Yaroslavsky agreed and stated she would like to see a year-long program of presentations on the topic of collaborative care.

Agenda Item 31 Adjournment

There being no further business, Ms. Chang made a motion to adjourn. The meeting was adjourned at 3:32 p.m.

Barbara Yaroslavsky, President

Hedy Chang, Secretary

Linda K. Whitney, Executive Director