MEDICAL BOARD OF CALIFORNIA
Executive Office

Doubletree by Hilton San Diego Mission Valley
Catalina Room
7450 Hazard Center Drive
San Diego, CA 92108

October 28, 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 October 28, 2011 at 9:15 a.m. A quorum was present and notice had been sent to interested parties.

Members Present:
Barbara Yaroslavsky, President
Janet Salomonson, M.D., Vice President
Gerrie Schipske, R.N.P., J.D., Secretary
Jorge Carreon, M.D.
Silvia Diego, M.D.
Shelton Duruisseau, Ph.D.
Sharon Levine, M.D.
Reginald Low, M.D.

Members Absent:
Hedy Chang

Staff Present:
Janie Cordray, Research Specialist
Kurt Heppler, Staff Counsel
Teri Hunley, Business Services Manager
Kimberly Kirchmeyer, Deputy Director
Armando Melendez, Business Services Staff
Cindi Oseto, Licensing Program Manager
Regina Rao, Business Services Staff
Mary Beth Rodriguez, Senior Investigator
Eric Ryan, Supervising Investigator
Kevin Schunke, Outreach Manager
Anita Scuri, Department of Consumer Affairs, Supervising Legal Counsel
Jennifer Simoes, Chief of Legislation

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

Members of the Audience:

Teresa Anderson, California Academy of Physician Assistants
Gloria Castro, Office of the Attorney General
Yvonne Choong, California Medical Association (CMA)
Zennie Coughlin, Kaiser Permanente
Frank Cuny, California Citizens for Health Freedom
Karen Ehrlich, L.M., Midwifery Advisory Council
Julie D'Angelo Fellmeth, Center for Public Interest Law (CPIL)
Mara Felson, Member of the Public
Amanda Friedman, CPIL
Stan Furmanski, M.D., Member of the Public
Dean Grafilo, CMA
Laurel Holmes, CPIL
Heather LeMaster, Nizhoni Midwifery Institute
Babry Oren, BAO Health Resources Corporation
Carlos Ramirez, Office of the Attorney General
Loren Reed, Department of Consumer Affairs
Harrison Robbins, M.D., CACS
Gerri Ryan, L.M., Nizhoni Midwifery Institute
Tracy Smith, Sharp Grossmont
John Toth, M.D., California Citizens for Health Freedom

Agenda Item 2 Public Comment on Items Not on the Agenda

Mara Felson requested the Board's attention to a situation involving a number of physicians in Calaveras County. Ms. Yaroslavsky recommended that Ms. Felson speak with the Chief of Enforcement.

Frank Cuny, California Citizens for Health Freedom, reported they hope to introduce a bill this year to legalize the integrative treatment of cancer and ask for the Board's support of the legislation. Currently, physicians who utilize integrative cancer treatment can be arrested, as it can be a criminal offense to provide treatment other than chemotherapy, radiation or surgery. He distributed a variety of written materials on integrative cancer treatment.

Dr. Stan Furmanski stated one of the standardized tests the Board utilizes is the Microcog test for cognitive screening; the test is used at the clinical assessment program where California physicians requiring assessment are referred. He noted there are now three "whistleblowers" who have reported problems with the way the Microcog test is administered. He suggested it might be appropriate for the Board to do an audit to see if there may be irregularities or fraud in the administration of the exam and also recommended a review of all standardized testing practices.

Agenda Item 3 Approval of Minutes from the July 28-29, 2011 Meeting
Dr. Levine made a motion to approve the minutes from the July 28-29, 2011 meeting; s/Carreon; motion carried.

Agenda Item 4 Access to Care Update
Ms. Schipske reported the Access to Care Committee met on October 27, 2011. Dr. Toni Sullivan, author of *Collaboration: A Health Care Imperative,* provided a presentation on the parameters that need to be followed for successful collaborative practices with a particular focus on the relationship between physicians and nurses. She stated further discussion on the scope of practice for physicians and advance practice nurses is needed to make sure the "lines" are clearly delineated while still encouraging collaboration.

Agenda Item 5 Physician Assistant Committee Update
Dr. Low provided a brief overview of the role, scope, and training of physician assistants (PAs). The Physician Assistant Committee (PAC), which is part of the Medical Board, is responsible for consumer protection, making recommendations about the scope of practice of PAs, and providing information about PAs to the health care community and others. The Delegation of Services Agreement between the supervising physician and the PA is an essential document that must be in place before the PA is allowed to practice.

The PAC met on August 22, 2011. The Committee received approval on two regulatory files. The first file requires PAs to post a "Notice to Consumers", similar to the Board's requirement for physicians. The second file provides for enhancements in the PA Enforcement Program. The PAC will soon begin work on amending the Disciplinary Guidelines in order to incorporate SB 1441 standards; the Diversion Program contract is also being amended to include these standards. Work on regulations to allow out-of-state licensees to provide their professional services at sponsored free healthcare events will soon begin, as well. A subcommittee has been working on a draft of the 2012 Sunset Report. The full PAC reviewed the report on October 10, 2011.

The PAC discussed the interpretation of the supervising physician's personal presence. A subcommittee was appointed to review the regulation; they met on October 3, 2011 and will meet again on November 10, 2011. Dr. Low and Medical Board staff will work closely with the PAC staff to ensure mutual concerns are addressed.

The PAC, which is a small organization, has a staff vacancy in the licensing area. This has created a licensing backlog. Authorization has not been received to fill the position. The Executive Officer coordinated a temporary, but significant, reassignment of staff to clear the backlog. This reassignment creates consequences for other programs within the PAC.

Agenda Item 6 Enforcement Committee Update
Dr. Low reported he met with staff on September 14, 2011 to discuss a plan to assist the Enforcement Program with improvements to the timelines. As a result of the meeting, Dr. Low is appointing a subcommittee to work with staff to review the details of the enforcement statistics and process in order to develop a plan of improvement that may include legislative recommendations. The Enforcement Committee can also help with the development of the evaluation report on the Vertical Enforcement Program which is due to the Legislature in March 2012.

Staff will be looking at additional medical training opportunities for administrative law judges, deputy attorneys general, and Enforcement Program staff and will report their findings back to the Committee. Dr. Low has volunteered to be the initial medical training liaison; as such, he will work with staff and the Office of Administrative Hearings to provide the training on medical subjects in the spring or summer of 2012.

Agenda Item 7 Special Faculty Permit Review Committee Update and Consideration of Applicants and Committee Member Change

A. 2168 Applicants

Dr. Low reported that per section 2168 of the Business and Professions Code, the Board is authorized to issue a special faculty permit to a person who is deemed to be academically eminent under the provisions of the statute and meet the other eligibility requirements for issuance of a permit. The review committee consists of one representative of each of the eight medical schools in California and two board members. A teleconference meeting of the Special Faculty Permit Review Committee (SFPRC) was held on September 15, 2011 to review applications for Daniel Hommes, M.D. (UCLA-DGSOM), and Georg Wieselthaler, M.D. (UCSF-SOM). Curt Worden, Chief of Licensing, provided a brief synopsis of each applicant's qualifications.

Dr. Low made a motion to approve Dr. Hommes for the issuance of a Special Faculty Permit at UCLA; s/Salomonson; motion carried.

Dr. Low made a motion to approve Dr. Wieselthaler for the issuance of a Special Faculty Permit at UCSF; s/Levine; motion carried.

Dr. Low requested that the chair of the Licensing Committee appoint a licensing subcommittee of one physician member to work with staff and legal counsel to research the need for a more defined Special Faculty Permit application and to revise the required supporting documentation, including the possible need to update the regulation. He noted that there was no follow-up once the physicians were issued a permit and felt this should be part of the Board's responsibility. Mr. Worden noted the permits must be renewed every two years, but there is no time limit on how long the permit may be held.

B. Stanford University Committee Member Change Request

Stanford University has requested to change their SFPRC member from Lawrence Shuer, M.D., to Clarence Braddock, M.D., M.P.H., Associate Dean for Graduate Medical Affairs.

Dr. Low made a motion to approve this change; s/Levine; motion carried.

Agenda Item 8 Licensing Committee Update

Dr. Salomonson reported the Licensing Committee met on October 27, 2011. At the meeting, a presentation was made by Cindi Oseto, Licensing Manager, on the licensing process for international medical school graduates. Mr. Worden provided a presentation on the designation and recognition of international medical schools. Clarification was provided on the lists of international medical schools maintained by the World Health Organization (WHO)/ University of Copenhagen and the Educational Commission for Foreign Medical Graduates (ECFMG). Applicants from these schools may assume their school should be recognized by the Board by nature of being included on these lists, however these organizations do not accredit or approve medical schools.

A process is in place for the re-evaluation of previously recognized international medical schools, which by law must be reviewed every seven years, but has been postponed due to staffing shortages.

Agenda Item 9 Federation of State Medical Boards Update

Ms. Whitney reported that Ms. Chang will continue to provide updates to the Board on the License Portability Pilot Project that includes ten states. The American Board of Medical Specialties is working on a Maintenance of Certification Program in collaboration with the FSMB. The FSMB board of directors is revising and updating its policy statements to be voted on at the April 2012 House of Delegates meeting.

Board staff has received the draft Reentry to Practice Report that will be presented at the FSMB's April meeting. Ms. Whitney reported she has assigned a medical consultant to assist staff in its review of this document so the Board's comments can be transmitted to the FSMB by December 12, 2011.

The Board has been contacted by the FSMB regarding attendance at an upcoming meeting. Dr. Ram Krishna, FSMB's Liaison Director to the Board, and Dr. Hank Chaudry, President and CEO of the FSMB, will attend the Board's May 2012 meeting in Los Angeles. This will immediately follow the FSMB's annual meeting, so they will be able to provide members with an update on the meeting and resolutions that were passed. As requested by Dr. Levine, an update will be provided on the maintenance of licensure issue at this time.

On October 20, 2011, staff participated in a roundtable discussion with the ECFMG that was sponsored by the FSMB. Discussion focused on ECFMG's plan to require all international medical schools to be accredited by 2023. Staff will monitor this closely and will work with the ECFMG as needed.

The FSMB is accepting nominations for the board of directors and nominating committee. No Board members have expressed an interest in being nominated for these elected positions.

On November 9-10, 2011 the FSMB is sponsoring a board attorney workshop in Florida. An out-of-state travel request was submitted for Kurt Heppler, Staff Counsel, to attend the meeting, but the request was denied by the DCA due to the travel freeze. On October 13, 2011, the new State Policy and Government Relations Associate of the FSMB contacted the Board to offer assistance in tracking federal and other state legislation.

Per Ms. Schipske's request, Ms. Whitney contacted the FSMB regarding the collection of processing times for applications and licensure in other states. Unfortunately, the FSMB does not collect data on processing times, but referred staff to the composite requirements and statistics for 2012. They also suggested the Board pose a question to other state medical board's executive directors through the Administrators in Medicine. Responses that are received will be summarized and presented to Ms. Schipske.

The Board has received a draft report examining the metrics that are used by the FSMB related to the Composite Action Report. This will be presented at the April 2012 FSMB meeting. Ms. Whitney will assign a medical consultant to assist staff in its review of the document; comments will be transmitted to the FSMB by the December 15, 2011 due date.

Agenda Item 10 Health Professions Education Foundation Update
Ms. Yaroslavsky stated the HPEF Board of Trustees meeting was held in the fall; the Foundation is moving forward with its mission critical functions. The Steven M. Thompson Loan Repayment Program awarded 76 loan repayment awards for a total of $8,053,000 dollars; this includes almost $3 million from a fund matching program with the federal government.

Agenda Item 11 Board Member Communications with Interested Parties
No interested party communications were reported by members.

Agenda Item 12 President's Report
Ms. Yaroslavsky thanked Dr. Michel Sucher and Dr. David Greenberg for their informative presentation on the diagnosis of substance use disorders and determining when a physician is safe to practice medicine.

During the past quarter, Ms. Yaroslavsky attended a meeting with the Agency Secretary, the Director of the DCA, Ms. Whitney and Ms. Threadgill regarding the Board's Enforcement Program and the Public Citizen allegations. Staff has been working on an examination of the data mentioned in the Public Citizen's report. Two thirds of the data cited is past the statute of limitation and has been purged due to retention requirements. A follow up meeting with the Governor's Office, staff, and the Attorney General's Office is scheduled for November 9, 2011.

Ms. Yaroslavsky continues to have weekly calls with staff, as well as participate in monthly calls with the Director of the DCA, all executive officers, and board chairs. Discussions focus on travel restrictions, hiring freezes, board appointments from the Governor's Office, and other relevant updates. The next conference call is scheduled for December 8, 2011.

Agenda Item 13 Executive Director's Report
A. Staffing and Administrative Update
Ms. Whitney recognized staff that has been performing multiple jobs to cover vacancies that have gone unfilled due to the hiring freeze. She reported she participated in the Administrators in Medicine (AIM) Western and Center Regional meeting. Executive directors from approximately 20 licensing agencies discussed successes and issues related to how cases are reviewed, prioritized and evaluated, including the most likely cases to lead to discipline.

Ms. Threadgill, Ms. Cady and Ms. Whitney met with the presiding judges of the Office of Administrative Hearings (OAH) to inform them of the Board's strategic planning process, the March 2012 deadline for the Vertical Enforcement Prosecution Report, and the schedule for the Board's sunset review process. The meeting also included discussion on training needs per the Government Code, re-licensure issues, international medical school issues, new laws that will be effective in 2012, and enforcement issues. The Board will send some of the OAH judges and deputies from the Attorney General's Office to the Coalition for Physician Enhancement Conference for presentations on the impact of aging on physician clinical performance and quality of care. The individuals attending will, in turn, provide the information from the conference to their staff.

Staff has begun examining statistics for the evaluation of the Vertical Enforcement process; the Attorney General's Office provided some data, but it was not prepared in the same manner as the board's which prevented a true comparison. Staff will continue to work with the AG's Office on the collection of data, with the issue hopefully resolved by the middle of November 2011.

Ms. Whitney reported she has been in contact with the Branch Manager of Policy and Research at the National Practitioners Data Bank (NPDB) regarding coming to California to provide training to staff on reporting requirements and other services. If NPDB representatives are able to come, other licensing agencies will be included in the training; if they are not able to come, a webinar will likely be scheduled for staff.

A meeting has been scheduled for November 9, 2011 with the Governor's Office, the Attorney General's Office, the Department, and staff to discuss the Board's Enforcement Program and timelines. Mr. Worden and Ms. Whitney met with the graduate medical education deans of the UC campuses to discuss various licensing issues and to update each of them on the Board's licensing activities. The next quarterly meeting is scheduled for February.

The Department has provided its implementation memo on the requirements for the expert reviewer contracts. These guidelines will be reviewed to determine the impact on timelines for enforcement and will be reported back to the Board at its next meeting.

Per a request from Dr. Low, staff has asked AIM to post a survey of other state boards regarding their use of faculty permits or similar programs related to licensure laws; the results of the survey will be reported back to the Licensing Committee.

Ms. Kirchmeyer reported that on October 11, 2011 the Board was informed that, based upon the Financial Integrity and State Manager's Accountability Act (FISMA), the Department needs to identify and report the most significant risks in the department and implement a plan to reduce or mitigate those risks. The Department has asked the Board to identify the three highest risks the Board is facing today; explain the probability and impact of each risk; and explain what steps have been taken to date to reduce or mitigate the risk. Ms. Whitney and Ms. Kirchmeyer will meet next week to discuss and provide a response to DCA.

Staff also responded to a request from the State Personnel Board (SPB) via the DCA regarding the translation of Board documents and forms, including those on its Web site. The State Personnel Board had identified a deficiency in the Spanish translated documents based upon the

Board's reporting on the required Biennial Language Survey. The SPB asked for information on which documents have been translated and the Board's plan for translating any other documents into Spanish. Spanish-translated documents were identified, including the Board's complaint form, enforcement process brochures, tip sheets, and several other consumer pamphlets. However, forms specific to applicants and licensees will not be translated since those individuals must speak English to take the licensing examination and therefore would be required to be able to complete the forms in English. On October 24, 2011, staff was contacted by Senate Pro Tem Darrell Steinberg's Office with a similar request. According to the Pro Tem's staff, they are gathering information about the availability of multi-lingual services in various sectors of state government. Staff will be putting together a response for Senator Steinberg's Office next week and will also include all the languages spoken by investigative staff that has made presentations at ethnic organizations.

With regard to staffing, at the last meeting, Ms. Kirchmeyer reported the Board had 58 vacancies, including the Consumer Protection Enforcement Initiative positions. At the end of October, the Board will have 71 vacancies, including the CPEI positions. This number does not include 2 future vacancies occurring due to retirements or staff transferring out of the Board. 71 vacancies equates to a 25% vacancy rate at the Board.

The Board is still allowed to hire individuals within the Board and from the Department; however, freeze exemptions requests must be submitted to fill any positions with individuals outside of the Board or the Department. The Board has submitted eleven freeze exemptions to the DCA. Five of the freeze exemptions have been approved by the Governor's Office including Medical Consultants in Licensing and in Enforcement, four Supervising Investigators, five Investigators, and (on October 20, 2011) six office technicians in the Licensing Unit. Three of the freeze exemptions (for the Public Information Officer, three Associate Governmental Program Analysts in the Licensing Program, and an Administrative Assistant in the Executive Office) have been approved by the Department and by State and Consumer Services Agency and are currently pending at the Department of Finance. These were submitted to the Department of Finance on October 12, 2011. The State and Consumer Services Agency denied the Board's request for an Executive Assistant in the Executive Office. Lastly, three of the freeze exemptions are pending review by the Department; these are for Advisory Medical Consultants, four inspectors that do the probation monitoring, and seven more investigators.

There was discussion among members on the impact of the hiring freeze on staff and the Board's operations. Ms. Whitney noted that some functions and projects, such as the review and re-review of international medical schools, have been delayed due to staffing shortages. She reported that voluntary overtime has been implemented to ensure that licensing applications are reviewed in a timely manner, adjustments have been made in how incoming complaints are triaged, and the August Midwifery Advisory Council meeting had to be canceled.

Ms. Schipske suggested that the Board direct Ms. Yaroslavsky, as Board President, to contact both the Secretary of the SCSA and the Governor's Office regarding its concerns. In light of the fact that the Board's funds come from licensee fees, not the General Fund, she stated it does not make sense for the Board to be subject to the same cuts and reductions as departments that derive their revenue from the general fund. If staff cannot perform the functions for which the license fees have been paid due to staffing shortages, then negative public comment will be forthcoming.

She expressed concern over the impact of staffing shortages to existing staff and the ability of the Board to perform its mandated public protection role.

Ms. Schipske made a motion for Ms. Yaroslavsky to personally contact and send a letter to the Governor's Office and the SCSA Secretary expressing the Board's concerns as discussed; s/Duruisseau.

Ms. Yaroslavsky noted she has had direct contact with the Darrell Steinberg, President Pro Tem of the Senate, John Perez, Speaker of the Assembly, as well as the Governor's staff on the current situation. She also has had conversations with members of the legislature to remind them that the Medical Board is a special funded board.

Dr. Salomonson and Dr. Levine spoke in support of the motion.

Karen Ehrlich, LM, suggested that a copy of the letter also be sent to the Los Angeles Times.

Ms. Yaroslavsky called for the vote. Motion carried.

Ms. Kirchmeyer noted that the Board is still under the travel freeze; any travel for staff that is not enforcement related requires the submission of a Travel Expense Claim that must be pre-approved by the DCA. Approval has been received for most requested trips, but submitting requests creates an additional workload. There has not been any information regarding when or if this freeze will be lifted.

B. Budget Overview

Ms. Kirchmeyer directed members to the budget reports on pages 114 through 121 of the meeting packet. Page 114 shows the most recent fund condition for the Board. The fund condition reflects anticipated costs due to re-establishment of the Operation Safe Medicine Unit, the BreEZe project, and also the cost for accepting payments via credit card.

Ms. Kirchmeyer noted that Board was audited by the Bureau of State Audits in 2007. At that time, the Board's fund was over the mandated two-month level of reserve and the Bureau recommended that the Board consider reducing licensing fees in order to not exceed its mandate. Since that audit, the Board has sponsored legislation that moved the mandate from two months to between a two to four month reserve. The Bureau continues to follow-up on the implementation of their recommendation on a yearly basis; on September 28, 2011 the Board received a letter from the Bureau requesting the status of the recommendation. The Board responded to the Bureau with the attached fund condition indicating that, at this time, the Board is projected to be at the mandated level at the end of Fiscal Year 2011/2012 and projected to be even lower in the following fiscal years. This is due in part to several items, including the $9 million loan to the General Fund and also the anticipated costs mentioned previously. It would not be prudent for the Board to consider a reduction at this time. Although the Board was at a 6.7 month reserve at the end of this past fiscal year, it is projected to be at 4 months at the end of this fiscal year and is projected to drop to 1.5 months reserve in fiscal year 2013/2014. The large increase in the reserve last year was largely due to the hiring freeze, the inability to hire staff and therefore the large vacancy rate, as well as the inability to travel and make purchases for large items, such as vehicles.

The level of the reserve will be revisited at the end of this fiscal year when staff has a better idea of this year's spending and any other items that may impact the Board's fund condition.

Ms. Whitney indicated that, should the Board drop below the 2-4 month reserve level, license fees would not be increased; the Legislature would be required to address the return of part of the General Fund loan money to the Board. At this point, there is no set deadline for the return of the loan money; it will be returned to the Board on an as needed basis.

Page 115 of the packet shows the entire Board's actual expenditures as of August 31st. Ms. Kirchmeyer reported the Board is right on target for this time of year and there is nothing that raises any concerns.

C. BreEZe Update

The contract for BreEZe, the comprehensive licensing and enforcement IT system for all DCA boards and bureaus was signed with a company called Accenture at the end of September. Ms. Whitney and Ms. Kirchmeyer attended the BreEZe launch event on Wednesday, October 26th. SCSA Secretary Caballero spoke at the event as well as the Deputy Secretary from the California Technology Agency. The meeting was to introduce the project team and provide the boards and bureaus a demonstration of the system. Due to the delay in the contract being signed, the project is about one month behind schedule, however it is anticipated that the system will be running by this time next year.

Since the vendor is now on board, Board staff will need to become very involved to ensure that the system meets the Board's needs. Two staff members from the Information Systems Branch are working at DCA on the project. Additionally, core subject matter experts and managers attended meetings with the vendor this week where a demonstration of the detailed system was presented.

Staff from the Medical Board will be required to attend system configuration interviews with the vendor beginning November 28th through December 7th. This is the most important part of the project. However, with the freeze still in place and having multiple vacancies, attendance at these meetings will impact the Board's functions. If necessary, mission critical overtime will be authorized for employees to perform their core functions while they are involved in the BreEZe project.

The most significant risk for the project is data conversion. Staffing shortages will have a negative impact on this risk, as there must be enough staff to clean the data once reports have been run showing data that must be updated prior to conversion. The Board will know more once the vendor has identified the mitigation on the data conversion.

Agenda Item 14 Consideration of Modified Text for Polysomnographic Technologist Regulations

Kurt Heppler, Staff Counsel, reported the Board has previously discussed the implementation of the polysomnography program. Eligibility for registration was an issue in previous discussions, as there was concern that the initial recommendation would only grandfather in those persons who have been practicing polysomnography safely for five years from the examination requirement. The proponents of the measure thought the grandfathering should apply to all the

registration requirements, not just the examination requirement. The statute was somewhat vague on the matter; as such, the proponents took the opportunity to clarify in legislation that the grandfathering of the safe practice of polysomnography for five years entitled the applicant to a waiver from all requirements. The Board has modified its current regulations to conform to the statute. Correspondingly, changes have also been made to the work experience form and the application form, so they, too, conform to the changes in the statute. Mr. Heppler distributed and directed members to the third modified text which will be submitted for a fifteen-day comment period. If any adverse comments are received, the matter will come back before the Board.

Dr. Levine made a motion to authorize the Executive Director to adopt the regulations at the conclusion of the fifteen day comment period if there are no adverse comments; s/Low.

David Gonzales, California Sleep Society, offered public comment in support of the regulation.

Ms. Yaroslavsky called for the vote; motion carried.

Agenda Item 15 Licensing Chief's Report
Mr. Worden reported staff has been working on a revision of the license application for physicians and surgeons. The first draft has been completed and submitted to other licensing staff and managers for comments and suggestions; the revised draft will then go to legal for review and approval. He hopes this process will be completed by January 2012.

There is one specialty board application pending; staff is waiting on a response from the applicant.

A. Staffing
Mr. Worden commended staff for the excellent job they have been doing in spite of the staffing shortages. Licensing Program managers have been working a lot of extra hours to keep things running and staff have provided back up support to each other. He noted that, on occasion, there are only two people working in the Call Center. There are eight US file reviewer positions; of these, two are experienced reviewers (one has been out on extended leave), four are new reviewers in training, and 2 positions are vacant. There are no applications for these vacancies (applications may only come from within the Department as there is no freeze waiver for these positions). There are 2.8 Associate Government Program Analyst vacancies in the Licensing Program. These positions are responsible for performing the more complex, higher level analytical duties such as senior level application review, international medical schools, training, and policies and procedures. Licensing managers are currently performing these duties in addition to their regular work, but delays are inevitable.

There will be a new vacancy for an international file reviewer on November 1, 2011; this position has been advertised. Another reviewer will be out on medical leave for at least two months. Two international reviewers are new and are in training; it typically takes 6-9 months to become fully trained. Again, staff is covering the duties, but it is very stressful.

Currently, Mr. Worden reported there are 14.6 vacant positions in the Licensing Program. This equates to a 26% vacancy rate.

B. Program Statistics

Mr. Worden directed members to the Workload Report on page 124 of the meeting packet. The Board received 1,711 applications for physicians and surgeons during the first quarter of FY 11/12; 1,491 initial reviews were completed during this period. Pages 128 and 129 show a five year history of applications received and licenses issued.

There are currently 108 applications requiring a second level of review. Dr. Salomonson requested additional information on these files to see if there are any trends the Board should be aware of. Ms. Whitney noted information on the number of actions taken on license applications in previous years is included in the Annual Report to the Legislature.

The licensing statistics for the week ending on October 22, 2011 were emailed to members; there were 169 new applications received that week. The initial review was 44 days for US file applications and 30 days for international applications; pending mail was 7 days for both types of files.

C. Status of International Medical School Program

A detailed list of the international medical schools requiring review is included beginning on page 130.1 of the packet. The list, which grows weekly, includes schools who have submitted a self-assessment report as well as schools listed on applications for PTALs or licensure that are not on the Board's list of recognized schools. There are currently 62 medical schools in pending status. Some schools have been on pending status for a while due to the vacancy for the international medical school analyst position. Mr. Worden has been covering some of these duties, but there have been inevitable delays. The freeze waiver request for this position is currently at the Department of Finance for review.

During the past quarter, four international medical schools provided the necessary documentation to meet the requirements for recognition pursuant to 16 CCR 1314.1(a)(1); these are the government recognized schools that are owned and operated by the government or a non-profit agency whose primary goal is to train the citizens of its own country.

Ms. Yaroslavsky suggested that it might be appropriate to prioritize the list of schools requiring review so the schools with the most applicants awaiting a review of their school are given the highest priority.

Agenda Item 16 Licensing Outreach Report

Kevin Schunke, Outreach Manager, reported an exemption from the travel restrictions had been granted in order to continue the Board's outreach at licensing workshops and fairs for new residents. He thanked the members and staff for their work in securing the approval for travel. Since the last Board meeting, Mr. Schunke has traveled extensively throughout Southern California and the Bay Area conducting outreach to graduate medical education programs. He has received several requests for licensing outreach visits and licensing fairs in 2012. Future travel has not yet been approved, but he is hopeful that approvals will be granted.

Mr. Schunke and Mr. Worden will meet to discuss the July 1, 2012 licensing deadline for 2065/2066 applicants and whether or not to continue with the matrix that was developed to track these applicants. In previous years, the matrix has proven highly effective in ensuring that these

individuals were licensed by the deadline. Each year, the number of programs and hospitals that participate in the matrix has increased. Mr. Schunke indicated, while out in the field, he receives highly positive feedback on the licensing staff and the improvements that have been made in the licensing timelines.

During public comment, Robin Meehan, House Officer and Administrative Manager for UC San Diego, expressed her appreciation for the valuable service Mr. Schunke provides. She also noted the value of the matrix to their program, with all applicants requiring licensure being licensed on time.

Agenda Item 17 Midwifery Advisory Council Update

A. Licensed Midwife Annual Report Statistics and Update

Karen Ehrlich, L.M., Chair of the MAC, directed members to the 2010 Licensed Midwife Annual Report Summary starting on page 131 of the packet. She noted that the number of clients served under the supervision of a licensed physician was only 6.5%. Physician supervision of licensed midwives is essentially unavailable in California, primarily due to malpractice insurance requirements that the physicians not assist anyone who is helping with a home birth. The percentage of clients served with physician collaboration was around 58%; a significant number of midwives are able to secure some level of cooperation and consultation with physicians to ensure the best possible care for mothers and babies. This number could be higher if malpractice insurance requirements allowed physicians to assist licensed midwives in home births. In 2010, the number of clients served by midwives who were considered good candidates for homebirth at the onset of labor was 2,245. The transfer rate of women or newborns requiring transfer to a hospital is about 20%; this is consistent with data from home birth practices throughout the United States, Canada, Holland, and other countries where home birth is accepted and supported. This shows that California midwives are doing their job in identifying mothers and babies in need of extra care during labor or birth or afterwards. This also means that 80% of the mothers who chose home birth are successfully giving birth at home and remain healthy throughout the process of birth and postpartum.

The cesarean rate for women who began labor at home but later transferred to a hospital is 8%. This is at a time when the U.S. cesarean rate is at 34% and rising (this number includes women who were unhealthy to begin with or who developed problems during the pregnancy, so a true comparison of the rates is not possible). This low rate of intervention represents a significant cost savings to the health care system. There is a major push within medicine to lower overall hospitalization rates, including for those who are very sick; Ms. Ehrlich suggested midwifery care as a way to lower hospitalization rates and medical costs for healthy women.

The reported maternal mortality rate for 2010 was zero. The perinatal mortality rate is unclear as in one location of the form it appears that there were 2 perinatal deaths reported (after the transfer of care) and in another location as many as 7 instances of fetal demise (after the transfer of care). Ms. Ehrlich stated this discrepancy in the collected data is reason to change the reporting system to the one used by the Midwives Alliance of North America (MANA) which is epidemiologically designed and overseen by specialists in the field of research and epidemiology. Ms. Ehrlich stated that the current reporting system is clearly flawed. She will be asking the MAC to discuss moving to the MANA statistics system.

Ms. Ehrlich reported she has put together a summary of the results from the four years the Licensed Midwife Annual Report has been used; Ms. Thompson will put the summary into a computerized format. She noted the outcomes were remarkably consistent over the four year period, with the majority of transfers of care being due to non-emergency reasons, such as maternal exhaustion, dehydration, requests for pain medication, etc. Ms. Ehrlich indicated this was evidence that the midwives were doing their jobs well.

Ms. Ehrlich reported that the physician supervision requirement continues to create barriers for midwives caring for their clients. The Council will be addressing regulations to define the appropriate level of physician supervision at its next meeting. However, she is not convinced that regulations will correct the difficulties midwives face in obtaining lab accounts, renting office space, etc. Ms. Ehrlich expressed her hope that the Board would work with the midwives in the combined mission of protecting the consumers of California.

Dr. Carreon asked why physicians are unwilling to help or back-up midwives.

Ms. Ehrlich stated that the malpractice insurance companies prohibit physicians from providing home birth back-up. She noted that physicians who do so are threatened with the loss of their malpractice insurance, sometimes retroactively, if they provide back-up. There are a significant number of obstetricians who believe midwives should not be working, and that there should be no homebirths. She also recognizes that there are obstetricians who might help if midwives were to operate according to standards that they consider appropriate. However, Ms. Ehrlich noted the ACOG standards are obstetrical *medical* standards, which are not *midwifery* standards and do not necessarily work for home births. Further, a midwife operating according to the ACOG standards could be prosecuted for the unlicensed practice of medicine. Midwifery standards are different, as midwifery is a distinct and separate profession. These standards must be recognized as doing a good job; the statistics show this to be true.

Dr. Salomonson suggested that the statistics on outcomes be presented to the malpractice insurance carriers, as they base their rates on statistics.

Ms. Schipske recommended finding another legislative sponsor to support midwifery issues.

Ms. Ehrlich indicated she has tried on numerous occasions to find a sponsor, as has the California Association of Midwives, without success.

Agenda Item 18 Enforcement Chief's Report

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

Ms. Threadgill requested approval of fifteen orders restoring licenses to clear status following satisfactory completion of probation and two orders for license surrender during a period of probation or administrative action.

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

B. Expert Utilization Report

Ms. Threadgill reported the Board used 382 experts to review 672 cases during the past quarter. The number of experts in the Enforcement Program's database continues around 1,200. Experts are being sought in psychiatry, addiction medicine, and pain management specialties. The passage of SB 541 provides an exemption for the Board from the lengthy process that would otherwise have to be followed to obtain contracts with medical experts; however the manner in which the contracting must be done may increase timelines slightly.

She noted that providing adequate training for potential experts has been an on-going challenge. Deputy Chief Laura Sweet has been working on improvements which include providing interactive training to the reviewers. However, there have been technical obstacles that may prevent the interactive portion of the training as was originally envisioned. Deputy Chief Sweet will provide a status report regarding this at the next quarterly meeting.

C. Enforcement Program Update

1. Staffing

Ms. Threadgill announced the promotion of Eric Ryan to the Supervising Investigator position in the San Diego District Office.

The Enforcement Program has a current vacancy rate of approximately 25% for supervisor positions, 19% for investigator positions, and 21% overall. The Program received five investigator freeze exemptions and immediately conducted interviews and moved forward with the hiring process. Identified candidates are currently undergoing background checks. An additional seven investigator exemptions have been requested; these positions have been advertised and interviews are under way to fill those positions in anticipation of the receipt of the requested exemptions. A candidate has also been selected for the Fresno supervising investigator position and the background check is underway. Freeze exemptions were also received for medical consultant positions which are currently being filled.

The next priority for the Enforcement Program will be training for the new hires. Fortunately, the majority of the investigator candidates that are in background will not require a basic academy and will only need to have an abbreviated training course from the Medical Board.

The Department is currently conducting a pre-audit risk assessment of the Central Complaint Unit (CCU) that is anticipated to last approximately one month. The purpose of the risk assessment is to identify areas where process improvement is necessary. The individual conducting the assessment is from the DCA Audits Unit; he has been provided space at MBC headquarters to facilitate his access to procedure manuals, the complaint intake process, prioritization, and employee interviews.

The CCU continues to receive an increased number of consumer complaints. At the May 2011 quarterly Board meeting, Ms. Threadgill reported the CCU was experiencing an unprecedented number of vacancies resulting from retirements and promotions while faced with an increased number of complaints. As a result, staff re-examined priorities for the expenditure of resources and determined it was not possible to pursue certain complaints such as advertising violations, fictitious name permit and/or corporate practice of medicine issues, billing or fraud complaints from patients or insurance companies, patient abandonment, HIPAA / breach of confidentiality issues, or testimony as a medical expert. Ms. Threadgill stated she is pleased that the Complaint

Unit is once again able to pursue these complaints. The vacant analyst positions have been filled. Additionally, an analyst was hired to staff the Citation and Fine Program.

2. Program Statistics

Ms. Threadgill directed members to page 143 of the meeting packet for statistics on the investigative prosecution timelines, noting that the statistics displayed on this page are based on the calendar year as opposed to the fiscal year. The average days to conclude an investigation not resulting in prosecution continues to decrease. Although the timeline remains over the Board's statutory goal, there has been improvement in this area. The average days to obtain a suspension order have decreased in comparison to the previous two years.

The number of citations issued decreased due to the vacant citation analyst position. She noted that the numbers for the past quarter show this problem is being resolved with the new analyst now in place. There has not been much variance from fiscal year to fiscal year in the average days to complete the Complaint Unit processes. In the investigative process, the length of time it takes to acquire medical records continues to be a problem. Although the timeline has not increased during periods of multiple challenges, there remains room for improvement. Staff will have the opportunity to work with members of the Enforcement Subcommittee to identify additional process improvements.

In July 2008, the Enforcement Program staff made recommendations to the Board and set goals to improve the investigation process timeline. Ms. Threadgill noted the Program is on track to meet these goals. The time it takes to complete the investigation process continues to decrease. The goal is 275 days; during the last fiscal year, the time was down to 312 days, reflecting a steady decrease. The overall time to complete the entire administrative process is still a problem that needs to be addressed.

Since the 2008 report, the Program has achieved significant accomplishments, which include: obtaining an amendment to B&P §2225.5 that requires the production of certified medical records; conducting statewide training for investigators and Deputy Attorneys General on the acquisition of medical records; holding meetings with Kaiser South and Kaiser North regarding implementation of efficiencies in producing medical records; and most recently, establishing a system with Kaiser North for the electronic exchange of requests and medical records. This system has been implemented in CCU as well as the District Offices. Staff anticipates this will improve timelines in the records acquisition area and will pursue establishing a similar system with Kaiser South and other facilities.

The Enforcement Program obtained an agreement with the Office of the Attorney General to assist with the preparation of subpoenas and also revised the subpoena policy to greatly reduce the preparation time. It is also anticipated that the time to complete the subject physician interview will decrease with the implementation of AB 1127 which provides incentives for physicians to attend and participate in physician conferences when requested. Additionally, policies have been modified to expedite the method of contact with physicians.

Staff has worked with the DCA Exam Unit to offer continuous testing for investigators. This change, in addition to the establishment of a new investigator classification, has facilitated the retention of investigators. Staff continues to seek freeze exemptions to hire investigators. Online

continuous testing for medical consultants has also been implemented.

Additional accomplishments since the 2008 report include the implementation of the Aged Case Council in 2009, the placement of manuals and templates online for easier access, time management training for investigators, legislation was obtained to exempt the Board from the contract process for hiring expert reviewers (SB 541), revision of the Vertical Enforcement (VE) manual and guidelines to streamline processes and procedures, beginning the revision of the Expert Reviewer training program, and the revision of the Model Disciplinary Guidelines. Comprehensive statistical reporting was developed for reporting critical data markers. As mentioned by Ms. Whitney, Enforcement Program staff met with the Office of Administrative Hearings (OAH) presiding justices to discuss possible improvements to the administrative process, including providing an update on the Disciplinary Guidelines that will be filed with the Secretary of State in mid-January 2012.

Ms. Threadgill reported that each month, beginning November 1, 2011, staff will send to the Health Quality Enforcement Section a list of all cases that the Board shows as pending without an accusation for 60 days or more. This effort will assist in reconciling the data.

Ms. Yaroslavsky asked Ms. Threadgill to clarify whether a doctor who has signed a stipulation for terms and conditions of probation can choose which program he or she would like to go for remediation or if the Board chooses the program. Ms. Threadgill stated that if the term and condition is for assessment and clinical training, the program must be approved by the Board. The Board has approved the PACE program as a qualifying program but will accept any equivalent program.

Agenda Item 19 Vertical Enforcement Program Report

Carlos Ramirez, Senior Assistant Attorney General reported the HQES was created in 1991; in 2006 the Vertical Enforcement Program (VEP) was implemented. The VEP is a highly interactive system of service delivery, requiring investigators and deputies to work together on some of the most important aspects of the investigation process. Mr. Ramirez reported Attorney General Harris is both interested in and supportive of VE. There have been fiscal challenges such as furloughs and the hiring freeze that have impacted timelines.

B. Presentation on Statistics

Gloria Castro, Supervising Deputy Attorney General, directed members to pages 148.5 through 148.13 for information on the HQES program and statistics. She noted the statistics were initially compiled in response to a Medical Board evaluation (B. Frank report); the statistics continued to be compiled in the same format in order to allow comparisons with previously reported data. Ms. Castro acknowledged that there will be differences between the information presented by the AG's Office and the information presented by the Enforcement Program. HQES looks forward to continuing to work with the Board to decide on proper benchmarks on how statistics are reported.

Ms. Castro reported the data is collected in various ways. She stated that the AG's Office is getting better at documenting and auditing processes, so the Board receives the most correct representation of the AG's cases, both good and bad. The AG's Office uses a system called ProLaw, where the data is entered into the system by the DAG assigned to the case, according to

set policies. A case management system is used to run reports from ProLaw. As the data continues to change as time goes forward and cases are closed and new ones are added, the numbers reported will continue to change. Every effort is made to be thorough. The AG's Office uses "average days" for reporting, since the Board also reports in average days. Ms. Castro noted that the AG begins their statistical computation from January 1, 2006 (when the VE was implemented), whereas the Board reports using the fiscal year; this is one of the items that the two entities will need to reach consensus on so reporting is consistent.

Page 148.5 indicates the length of time it took for the AG's Office to send a pleading to the Board for filing after receiving a completed investigation. The statistics for 2005 through 2009 represents data that was compiled by calendar year. The statistics for 2010 represent a thumbnail of the entirety of cases received and sent for pleading in 2010, reflecting an average of 42 days to send a pleading to MBC for filing; this represents a steady decline in the number of days required over previous years. Ms. Castro noted these are calendar days, not working days; hence 42 days (with furloughs) equates to 20 working days.

Pages 148.6 and 148.7 show the same statistics, but separates the data for "Accusations Only" and "Accusations/Petitions to Revoke Probation" and provides a breakdown of timelines by district office. Ms. Castro noted the statistics include out of state discipline cases, which brings the average down slightly. Mr. Ramirez stated that in the past year, an increased number of cases have been transmitted to the Sacramento and San Francisco offices; at the same time, these offices have hired new deputies which has led to a delay due to a learning curve. He noted that job offers have been made to additional deputies for these offices due to the heavy caseload. The AG's Office attempts to shift some of the work load to relieve busy offices, but travel restrictions sometimes make this unfeasible and can add time to the case.

Ms. Schipske requested that information on the median number of days, as well as the mode, be displayed, since the average can be very skewed by outliers.

Ms. Castro noted the complexity of cases varies significantly; although the statistics do not capture this information, it is tracked in the ProLaw system.

Dr. Salomonson stated it would be helpful to separate cases that involve medical care issues versus those involving physician impairment or boundary issues.

Ms. Yaroslavsky expressed a desire for the tracking system to be able to provide a level of detail that will allow trends to be identified in the types of cases that are being investigated and proceeding to discipline. She asked that Mr. Ramirez work with staff to determine the specific information needed.

Ms. Castro indicated the standard within HQES is to have these cases filed within 30 days. Page 148.8 reflects the number of days to complete a filed accusation or petition to revoke probation by way of hearing, stipulation or default. In 2010, the statewide average was 392 days for 144 cases. Although not reflected in the graph, as cases continue to be closed that were completed in 2010, the actual average is closer to 377 days for 184 decisions. This shows the addition of out of state discipline cases which lowers the average.

Page 148.9 reflects how many days in the entire process from when a case is first received at a District Office to when a decision is signed by the Board. In 2010, the average number of calendar days was 836. Ms. Castro noted that the 151 cases indicated in the graph for 2010 does not show the spread over multiple calendar years. She distributed an additional graph that displays an amalgamation of everything that was completed for a particular calendar year that reflects the spread of cases over multiple calendar years. She suggested focusing on the numbers from 2006 – 2008, as the numbers for 2009 and 2010 represent a very small number of cases. Ms. Castro indicated the important point to note is the average number of days is moving downward. For 2006 the average number of days from the time a case was received in the district office to when a decision was signed by the Board was 943.3, in 2007 it was 861.28. Once all the older cases from a particular year are completed, the final data for that year will be available.

Ms. Whitney indicated that the Board collects and reports data differently. All cases closed during a calendar year (or fiscal year) are reported, regardless of when they were opened; data is collected on the total number of days the case has been opened to determine an average.

Ms. Castro reported, to date, the Board has signed off on at least 523 decisions that began as VE cases. Page 148.10 reflects the number of accusations that resulted in "serious discipline" which she defined as discipline that is not achievable in the investigative stage; hence the data does not include citations and fines, or public letters of reprimand. If the subject can be convinced to accept a public letter of reprimand without the filing of an accusation (usually the result of an agreement by the District Office and the AG's Office that this is the result that would probably be achieved if an accusation was filed), this results in a legal cost savings. This allows the AG's Office to focus its time on the more serious cases. The data on page 148.10 shows the percentage of cases that resulted in serious discipline divided by the total number of cases filed by a particular office in the calendar year (including withdrawals and dismissals), regardless of when the case was received.

Mr. Ramirez referred members to page 148.11 for a list of clients served by HQES, with the Medical Board being its largest client. Eighty-five percent of HQE's budget comes from the Medical Board.

Dr. Low stated it is important that HQES and the Board be on the same page in how data is collected and reported; it is imperative that the data bases be reconciled. The goal of both programs is to improve efficiency. He recognized the constraints with regard to manpower, travel, etc., but noted there are a lot of things that can be done to improve the timelines. He asked that HQE be represented on the Enforcement Subcommittee. He stated the time to acquire medical records and receive expert reviews is unnecessarily long. Changes need to be made to processes such as these to improve timelines.

Dr. Levine noted the data reported by the AG's Office and the Medical Board represents two different perspectives. The Board starts at the end and looks backward for a complete picture. The AG's data is a snapshot in time arrayed against one another; the whole picture isn't evident until three or four years out. She stated that this reporting of two different sets of numbers creates confusion.

Mr. Ramirez reported the Vertical Enforcement Prosecution Manual has been approved by HQES and will soon be implemented.

C. HQE Organization and Staffing

As mentioned earlier, Mr. Ramirez reported HQES is in the process of hiring two additional deputies, one for the San Francisco Office and one for the Sacramento Office.

Agenda Item 20 Legislation / Regulation

A. 2011 Legislation Wrap-Up and Implementation Schedule

Jennifer Simoes, Chief of Legislation, referred members to the Legislative Packet and the Tracker List. She reported the three bills sponsored by the Board passed through the Legislature and were signed by the Governor.

Board Sponsored Bills:

- **AB 1127** (Brownley) Physicians & Surgeons: Physician Interview
  This bill makes it unprofessional conduct for a physician who is the subject of an investigation by the Board to repeatedly fail, absent good cause, to attend and participate in an interview scheduled by mutual agreement between the physician and the Board. For implementation, staff proposes to include an article in the Board's newsletter, notify and train Board staff, notify the AG's Office, and update the Citation and Fine regulations to include this requirement.

- **AB 1267** (Halderman) Physicians & Surgeons: Misdemeanor Incarceration
  This bill authorizes 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 the incarceration. For implementation, staff proposes to include an article in the newsletter, notify and train Board staff, notify the AG's Office, and adopt regulations to specify the type of notice that needs to be submitted to the Board to let the Board know the physician is no longer incarcerated. The regulations also need to specify what will be posted on the Board's website as the reason for inactive status for misdemeanor incarcerations.

  Ms. Yaroslavsky suggested that the Department of Corrections and the court system be notified as well.

- **SB 541** (Price) Regulatory Boards: Expert Consultants
  This bill exempts all boards and bureaus in the Department of Consumer Affairs from the formal contracting process. For implementation, staff proposes to include an article in the newsletter, notify and train Board staff, notify and train expert consultants, work closely with the Department on the new simplified contracting process for utilizing expert consultants, and develop a tracking system to ensure no expert exceeds contract levels, and time for contract process.

Other 2011 Legislation

- **SB 100** (Price) Healing Arts: Outpatient Settings
  Ms. Simoes indicated the analysis in the Legislative packet includes a breakdown of the requirements for the Board, the accreditation agencies, and the outpatient settings.

Ms. Yaroslavsky requested Board members review SB 100, as she will be assigning a review of the requirements to one of the committees in order to ensure the Board has a full understanding of the new requirements in law.

Ms. Simoes reported the Board will be required to obtain and maintain a listing of information on outpatient settings on its website; update its website if the outpatient setting's accreditation is revoked, suspended, placed on probation; or if a reprimand is received, for the purpose of providing information to the public.

The Board is also required to adopt regulations on or before January 1, 2013 regarding the "appropriate level of physician availability" needed within clinics for the use of prescriptive lasers or intense pulse light devices for elective cosmetic procedures.

The Board will be required to evaluate accreditation agencies every three years; evaluate responses to complaints against an agency; and evaluate complaints against the accreditation of outpatient settings.

For implementation, staff proposes to include an article in the Board's newsletter, notify and train Board staff, notify accreditation agencies and outpatient settings of the new requirements of the bill, work with accreditation agencies to obtain the necessary information for the required listing of outpatient setting data for the website, and ensure they are in compliance with the requirements of this bill. Further, staff proposes establishing a process for the reporting of changes to data reported by the accreditation agencies, and set up a database that can be updated for the listing of the outpatient settings.

In addition, staff proposes meeting with various stakeholders on standards and regulations for settings that offer in vitro fertilization, reconvene the Board's Advisory Committee on Physician Responsibility in the Supervision of Affiliated Health Care Professionals to specifically address regulations for the "appropriate" level of physician availability, and examine the need for guidance to physicians or enhanced regulations related to procedures that need to be performed in an accredited setting.

Finally, staff proposes to establish a process to evaluate complaints against accreditation agencies and provide feedback or take other action, and establish a process to maintain inspection reports, track that they are completed and that the issues have been addressed, and work with the Board's Information Systems Branch to link to final reports for the outpatient settings on the Board's website.

Ms. Yaroslavsky suggested notifying the District Attorney's Office of the new provisions in the bill as well.

Dr. Salomonson stated she would like consumers to be aware of the need to check whether or not an outpatient setting was accredited before scheduling a procedure there.

Ms. Simoes indicated that this is just the first phase of legislation; additional requirements will likely be addressed in the future.

Dr. Levine suggested estimating the budgetary impact of the new workload to the Board and then tracking the actual cost over time.

B. 2012 Legislative Proposals

Ms. Simoes reported the concept for the UCLA International Medical Graduate Program Pilot Project was previously approved by the Board. Staff is working with the UC Office of the President, who has decided to co-sponsor the bill, and is looking for an author for the bill.

New Proposals

- **Non-Practice License Status – Authority to Impose Discipline**

Ms. Simoes reported the Medical Board recently lost a court of appeal case related to taking disciplinary action against a licensee that held a retired license. The respondent's attorney alleged the Board lacked jurisdiction to impose discipline because, as the holder of a retired license status, the respondent was not permitted to engage in the practice of medicine. Board staff and legal counsel believe that Board does have jurisdiction to impose discipline on any license it issues because that licensee can opt to change their license status by meeting limited requirements. If the Board lacked jurisdiction to impose discipline, it may create a retired status loophole that would insulate any licensee from discipline by transferring his or her license to a retired or inactive status. However, the court ruled that the holder of a retired status license is not a licensee under the Board's jurisdiction and that the Board's disciplinary authority is relevant to the holder of a retired license, "only if and when the retired licensee seeks to return to the practice of medicine and files an application" with the Board for restoration of his or her license. Board staff would like to sponsor legislation to make it clear that the Board retains jurisdiction over all licensees, regardless of the status of his or her license. This proposal also impacts the recently enacted legislation that automatically places a physician's license on inactive status when a physician is incarcerated after the conviction of a misdemeanor.

Dr. Levine made a motion to approve the Board's sponsoring of this legislation; s/Salomonson; motion carried.

- **Renewal Notices – Ability to Send via E-Mail**

The Board will be moving to a new information technology (IT) system that will allow physicians and surgeons to receive notifications via email. Currently physician and surgeons can pay their renewal fees online; however, they receive their renewal notice via US postal service. The new IT system will allow individuals the opportunity to choose the best method (i.e. electronically or via US Postal Service) of receiving information from the Board. The instructions will be specific that if they identify the electronic method, this will be the only notification tool used. In reviewing the Board's laws, it has been determined that Business and Professions (B&P) Code section 2424(a) will impede this process as currently written. The statute requires the Board to send a delinquent notice via US postal service and it must be sent certified mail. In order to save mailing costs, mailing time, printing costs, etc., the Board would like to amend the statute to allow these delinquency notifications to be sent via email if the physician chooses this method of communication.

This could be done by deleting this subdivision in its entirety, or amending it to add e-mail communication as an option. This statute change may be considered as part of the omnibus bill.

Ms. Schipske made a motion to approve this legislative proposal; s/Low; motion carried.

- **Omnibus**

The following changes were requested and approved last year and will be included in the 2012 omnibus bill:

- **Section 2064** – changing "and" to "or" in the section of law that relates to allowing a foreign medical student enrolled in an approved medical school "and" clinical training program to allow them to practice medicine. The statute should read "or", it was not meant to require an individual to be enrolled in medical school and a clinical training program.
- **Section 2184** – Adding clinical training to postgraduate training programs, as one of the ways the Board is allowed to extend the passing scores of the USMLE.
- **Section 2516** – Changing the word "infant" to "neonate" in the licensed midwife annual report, neonate is a more appropriate term.

The following change is a new omnibus bill provision:

- Adding a new provision that will establish a retired license status for licensed midwives, similar to the retired license status for physicians. This appears to have been left out due to an oversight. For most practitioners, there is a status that allows for retirement where fees are not required, but the licensee can still use the initials of a licensee after his or her name.

Dr. Levine made a motion to approve this concept; s/Low; motion carried.

Ms. Simoes reported that the California Medical Association will likely put forth a proposal related to a physician health program. As mentioned during public comment by Mr. Cuny, a potential bill may come forward related to the integrative treatment of cancer. Staff is also aware of potential legislation related to cardiovascular technologists or registered cardiovascular invasive specialists as a new licensure category.

C. Status of Regulatory Action

Mr. Schunke directed members to the matrix on page 150 of the packet detailing the status of pending regulations. He noted the regulations pertaining to Disciplinary Guidelines left the DCA and were submitted to the SCSA on October 12, 2011. Pursuant to law, the DCA Director granted an extension of the deadline for the file to be submitted to the Office of Administrative Law by December 14, 2011.

The regulations pertaining to the Sponsored Free Health Care Events were delivered to the DCA on October 25, 2011. The Board is the first board that has moved forward with a regulatory package to implement the new law. Assuming that the regulations move through the review process with the CA SCSA, and the Department of Finance, it is hoped that staff will be able to report approval of the package by the next board meeting in early 2012. Staff is beginning to meet and discuss regulations that will need to be set for hearing in 2012.

Agenda Item 23 2012 Board Meeting Dates

Ms. Yaroslavsky reported she received a request to move the previously approved July 26-27, 2012 meeting date to July 19-20, 2012.

Dr. Low made a motion to change the July meeting date to July 19-20, 2012; s/Salomonson.

Ms. Whitney noted that, by moving the meeting date a week earlier, there may not be sufficient time to put together regulatory files that are approved at the May 2012 meeting to be heard in July. Regulations approved in May would be heard at the October 2012 meeting.

Ms. Yaroslavsky called for a vote; motion carried.

Agenda Item 21 Discussion and Consideration of Draft Strategic Plan Presented by the Executive Committee

Ms. Kirchmeyer presented members with the draft strategic plan objectives as revised by the Executive Committee at its October 27, 2012 meeting.

Dr. Duruisseau made a motion to accept the strategic plan objectives as a consent item; s/Levine; motion carried.

Ms. Kirchmeyer reviewed the changes made to the objectives by the Executive Committee.

Dr. Salomonson made a motion to accept all the changes to the strategic plan made by the Executive Committee as identified by Ms. Kirchmeyer; s/Levine.

Ms. Kirchmeyer noted public comment was received from Michele Monserratt-Ramos, Consumer Union Safe Patient Campaign, urging the Board to involve the public in discussions on the objectives.

Ms. Yaroslavsky called for the vote; motion carried.

Ms. Whitney informed the members that the revised Strategic Plan will be presented for a final vote at the February 2012 meeting.

Agenda Item 22 Discussion of Strategic Plan Objective 5.4 Annual Review of Committees; Establishment of Board Committees

At approximately 2:30 p.m., quorum was lost; the meeting continued as a task force.

Ms. Kirchmeyer directed members to pages 152-154 of the meeting packet for the language for objective 5.4 and a listing of the committees of the Board. Staff recommended that the Executive Committee and all the mandatory committees (Application Review Committee, Special Faculty Permit Review Committee, Special Programs Committees, and Midwifery Advisory Council) all remain as they are through 2012, with the exception of the Midwifery Advisory Council which has requested possibly increasing their membership by two additional members. Staff recommends that these committees continue to meet quarterly or on an 'as needed' basis.

Ms. Whitney indicated that staff would send an email to members, asking them to indicate, other than the Licensing and Enforcement Committees, which of the remaining five committees they consider to be the three most important at this time, as well as how frequently they feel these committees should meet. This information should not be shared among members, but will be used to determine the needs of these committees and prepare information on available staffing to meet these needs. The information will be shared at the next Board meeting.

Agenda Item 24 Agenda Items for February 2-3, 2012 Meeting in San Francisco

Ms. Whitney reported that there are several requests from previous meetings for agenda items that will carry over to future meetings. These include:

- A request from Ms. Schipske for an update or clarification on medical marijuana. Ms. Schipske asked that CMA's recent position on medical marijuana be included in any update. Ms. Yaroslavsky recommended that a review of the Board's policy and previous work on this issue be included, as well.
- A request from Dr. Levine on the maintenance of licensure and certification. Ms. Whitney indicated that both the FSMB and ABMS are also looking at this issue.
- In anticipation that the Sponsored Free Health Care Event regulations are finalized, there will be an agenda item to adopt the resolution to delegate to the DCA the authority to receive sponsoring entity forms pursuant to §1331.1(a) and (b) of the regulations.

Dr. Salomonson requested an update on SB 100, either as part of the full Board agenda or the Licensing Committee agenda.

Ms. Yaroslavsky asked that members contact Ms. Whitney with any requests for agenda items.

Agenda Item 25 Adjournment

There being no further business, Dr. Duruisseau made a motion to adjourn; s/Levin; motion carried.

The meeting was adjourned at 2:47 p.m.

Barbara Yaroslavsky, President

Gerrie Schipske, R.N.P., J.D., Secretary - Janet Salomonson, M.D., Vice President

Linda K. Whitney, Executive Director