MEDICAL BOARD OF CALIFORNIA
Licensing Operations

Midwifery Advisory Council
Lake Tahoe Room
2005 Evergreen Street
Sacramento, CA 95815

December 13, 2011

Agenda Item 1 Call to Order/Roll Call
The Midwifery Advisory Council (MAC) of the Medical Board of California was called to order by Chair Karen Ehrlich at 12:03 p.m. A quorum was present and Ms. Thompson provided roll call.

Members Present:
Karen Ehrlich, L.M., Chair
Faith Gibson, L.M.
Carrie Sparrevohn, L.M.
Barbara Yaroslavsky

Staff Present:
Jeff Breen, Analyst, Licensing Program
Tim Einer, Administrative Assistant
Kurt Heppler, Legal Counsel
Jimmy Miranda, Contracts Specialist
Letitia Robinson, Manager, Licensing Program
Jennifer Simoes, Chief of Legislation
Christina Thomas, Analyst, Licensing Program
Cheryl Thompson, Analyst, Licensing Program
Linda Whitney, Executive Director
Dan Wood, Public Information Officer
Curt Worden, Chief of Licensing

Members of the Audience:
Bruce Ackerman, Midwives Alliance of North America (MANA)
Heather Baker, L.M.
Jennifer Brown, L.M.
Shannon Smith-Crowley, American College of Obstetricians and Gynecologists (ACOG)
Frank Cuny, California Citizens for Health Freedom (CCHF)
Renee Hanevold, C.N.M.
Jennifer Heystek, L.M.
Diane Holzer, L.M.
Tanya Khemet, L.M.
Constance Rock, L.M., California Association of Midwives
Veronica Ramirez, California Medical Association

Agenda Item 2 Public Comment on Items Not on the Agenda
Kelly Olmstead, LM, requested that the MAC meetings be webcast.

Agenda Item 3 Approval of Minutes from the April 7, 2011 Meeting
Ms. Yaroslavsky made a motion to approve the minutes from the April 7, 2011 meeting; s/Sparrevohn; carried.

Agenda Item 4 Resignations of Council Members
Ms. Whitney reported that council members Dr. Ruth Haskins and Dr. William Frumovitz have resigned and will no longer be serving on the Council. She recommended that the vacancies be addressed at a future meeting.

Agenda Item 5 Midwifery Program Update
Ms. Robinson reported during FY 2010/11 there were 40 licenses issued and 98 licenses were renewed. This was a substantial increase from FY 2009/10, where only 19 licenses were issued.

During the first quarter of FY 2011/12, 9 applications were received and 4 licenses were issued. To date, during the second quarter of FY 2011/12, 8 additional licenses have been issued and 1 license application is pending due to an enforcement action hold.

During FY 2010/11, 3 licenses were cancelled due to the 5 year delinquency non-renewal.

As of December 1, 2011 there are 251 midwife licenses that are renewed and current, with 31 in delinquent status.

The North American Registry of Midwives, (NARM) exam was hosted by the Medical Board on August 17, 2011. There were 17 individuals who sat for the exam. Exam results are not provided to the Board unless the person applies for a license and requests NARM to send the exam results to the Medical Board. The next NARM exam is scheduled for February 15, 2012.

Due to a change in the American Congress of Obstetrics and Gynecologist's (ACOG), web policy, the Board may now link directly from its website to ACOG Practice Bulletins on issues of relevance to midwives.

Ms. Robinson reported that Cheryl Thompson has taken another position in the Licensing Program and will no longer be the analyst for the Midwifery Program. Ms. Robinson has received many applications for the position and hopes to have it filled by the end of the year. Ms. Sparrevohn requested that an e-mail be sent out to the Council members when the Midwifery position is filled.

Agenda Item 6 Midwifery Advisory Council Memberships

A. Discussion and Consideration of Request to Seek Approval to Modify Council Membership
Mr. Worden reported that at the October 28, 2011 Board meeting, Ms. Ehrlich requested that the Board approve consideration of increasing the size of the Midwifery Advisory Council (MAC). Business and Professions Code Section 2509 establishes the MAC and specifies that it consist of an equal number of licensees and members of the public. The exact number of Council members is not specified in law, but, at its inception, staff recommended that the Council consist of 3 licensees and 3 public members. The public member positions have historically been filled by a member of

the Board and a representative from ACOG and the California Medical Association.

Discussion ensued among Council members on the composition of the MAC and whether to add two additional members (one licensee and one parent who have used midwifery services), or whether to retain the current 6-member composition, but provide less specificity in the requirements for the public member positions.

Based on Council discussion, Ms. Yaroslavsky made a motion for the MAC to recommend to the Board that the current 6 member composition be retained and that the existing public member vacancies be filled by:

(1) a California licensed physician with current practice and training in obstetrics and;

(2) an interested party that parallels the language of the statute and who does not hold a license issued by the Medical Board.

Ms. Sparrevohn seconded the motion; motion carried.

B. Nomination Process

Mr. Worden directed members to page 13 of the meeting packet for an outline of the proposed nomination process for MAC membership.

In response to a Council member's question on whether the applications could be discussed in closed session, Mr. Heppler clarified that this would not be permitted as it would violate the Bagley-Keene Open Meetings Act. Serial communication is also prohibited. Ms. Whitney advised members to contact her or Mr. Worden about application issues or concerns.

Ms. Yaroslavsky expressed concern that the Board would not be able to sit new members by the next MAC meeting. Ms. Whitney noted that, at the February 2012 Board meeting, the MAC would recommend filling the vacant positions as previously voted. If this recommendation is adopted, the MAC would request that the Council be allowed to expedite the call for applications and formalize its nomination recommendations at its March meeting. The MAC would then present these member recommendations to the Board at the May 2012 Board meeting; if confirmed, the new members would be seated for the August 2012 MAC meeting.

Ms. Ehrlich asked if it would be possible to seat the new members at the March 2012 meeting.

Ms. Sparrevohn made a motion that the Council recommend to the Board that the nomination process be expedited and request that, at its March 2012 meeting, the MAC is granted delegated authority to select and seat the new members; s/Gibson; motion carried.

C. Discussion of Council Members Terms

At the April 2011 MAC Meeting, staff was asked to look into term limits and the policies for other Board committees and the practices in other states. The Board members are limited to two consecutive four year terms; no other committees of the Board have required term limits. Some states that have a midwifery council or committee's similar to California limit the length of service (e.g., Washington – no more than 5 consecutive years; Virginia – no more than two consecutive 4 – year terms) and others have no term limits (e.g., Florida – members serve until replaced). Term limits for MAC members are not established by law.

Karen Ehrlich made a motion not to pursue term limits for MAC members; All seconded the

motion; motion carried.

Agenda Item 7 Enforcement Report

Ms. Carrasco, Central Complaint Unit, reported that during FY 2010/11, ten complaints involving midwives were received; eight of these complaints were closed. Of the two open complaints, one was referred to the Attorney General's Office and one was referred for criminal action.

Council members asked staff to provide a breakdown of licensed and unlicensed midwife complaints at the next MAC meeting. Ms. Carrasco provided procedural information on how the Complaints Unit reviews and investigates midwifery complaints. She explained that the expertise of licensed midwives is utilized as needed in reviewing cases.

Agenda Item 8 Licensed Midwife Annual Report

A. 2010 Annual Survey Results

Mr. Worden reported that the Summary of the 2010 Licensed Midwife Annual Report (LMAR) is available for review. The statistics are based on data the licensed midwives provided to the Office of Statewide Health Planning and Development (OSHPD). A hold has been placed on the licenses of midwives who did not submit a 2010 LMAR, preventing them from renewing their license until they have completed this legislatively mandated report.

B. 2011 Annual Report Status Update

Ms. Gibson voiced concerns that the OSHPD data statistics were not always accurate. She cited an example in which the numbers in section "E", which identify outcomes and fetal demise, were inconsistent. Typographical errors in some of the headings on the 2010 Report were noted. Ms. Thompson mentioned that, per the Memorandum of Understanding between the Board and OSHPD, the deadline for making changes to the 2011 Report has passed. Mr. Worden noted that staff would check on the formatting errors.

Ms. Ehrlich provided a chart comparing the reported data from the LMAR over the past four years. The reported data is very consistent over this period of time.

C. Discussion of Possible Task Force to Review Licensed Midwife Annual Report Issues

At the April 2011 MAC meeting, a request was made to consider using the Midwives Alliance of North America (MANA) Statistics Database Registry for the collection of data for the 2011 LMAR. This option would allow California licensed midwives to prospectively report their data to MANA throughout the reporting year and then extract the information at the end of the year for submission to OSHPD. Some of the LMs are currently providing data to MANA on a voluntary basis, as this data is used by MANA for research purposes.

Clarification was provided in how OSHPD gathers midwifery data versus MANA. OSHPD receives aggregate data from the midwives through the legislatively mandated Licensed Midwife Annual Report and then provides an aggregate of all the submitted data to the Medical Board. The data provided by MANA is real time data that is provided by the midwife. Bruce Ackerman, MANA Stats Project, reported MANA Project staff members are able to review and clear up any reporting discrepancies with the midwife before the information is compiled into a final report. This provides a quality assurance component to the statistics being compiled. However, MANA does not collect all the information that is now required by the Legislature. Mr. Ackerman noted

that revisions would need to be made to the current MANA form should the Board move forward with this option.

Ms. Whitney noted that any change to the reporting process or mechanism would require a legislative change.

Mr. Ackerman reported the earliest the changes could be made to the MANA reporting instrument would be in 2014 for the reporting of data from the year 2013.

Ms. Yaroslavsky made a motion to form a task force to research reporting options; s/Gibson; motion carried.

Ms. Yaroslavsky suggested that Ms. Gibson be included as a member of this task force. It was also recommended that a member of OSHPD participate in the task force. Constance Rock, California Association of Midwives, expressed interest in having a member from their organization sit on the task force, as well.

In order to take action on these recommendations, the MAC will have to request permission from the Board. The task force would:

- Review the current information identified on the LMAR and recommend changes to the statutes that would enhance the quality of the LMAR data.
- Review the changes to the statutes that would be necessary to incorporate another reporting option (such as MANA).

Agenda Item 9 Legislative Update

Ms. Simoes reported that a request to change the word "infant" to "neonate" in the reporting requirements for the LMAR (Business & Professions Code Section 2516) was previously approved by the Board, but did not make it into an omnibus bill in 2011. A new proposal to add a retired license status for LMs was approved at the November 2011 Board meeting. Senate staff and the Republican Caucus agree to include both of these items in a 2012 omnibus bill.

Agenda Item 10 Discussions and Consideration of Proposed Language to Add a Definition of "Enrolled" to 16 CCR 1379.2 to Clarify Student Status

Mr. Heppler referred to the proposed language to add Section 1379.2(d) to the Business and Professions Code noted that the term "enrolled" would be used in the same context as in Section 2514 of the Code. The term "enrolled" would be defined as "registered in a formal program of midwifery, or supervised clinical training at an academic institution."

Ms. Sparrevohn and Ms. Ehrlich recommended revising the language in order to protect an "apprenticeship pathway" to licensure. They suggested inserting draft language between Section 1379.2(d) and (e), to include a definition in which students working one-on-one with a licensed midwife could utilize the Challenge Mechanism to meet the educational requirements. There was disagreement between staff and some council members on whether the legislative intent of the Challenge Mechanism was to include or eliminate an apprenticeship pathway to licensure that allows for independent study. Some members voiced concern with the idea of usurping the formal education program and utilizing the independent study approach to midwifery licensing without

appropriate regulations to address the validity of the apprenticeship training provided to the student.

Council members agreed to table the item for now and discuss the following issues at a future meeting:

- Under current law, what independent study options meet the criteria needed to qualify to take the Midwifery licensing exam?
- Clarification on the definition of "student."
- Additional clarification on the definition of "enrollment."

Agenda Item 11 Update on Barriers to Care

A. Lab Account Updates

Ms. Robinson referred to the minutes from the January 14, 2011 meeting of the California Department of Public Health's (CDPH) Clinical Laboratory Technology Advisory Committee (CLTAC). The CLTAC, which is composed of 22 members, represents various interest groups related to clinical laboratories and advises the CDPH on matters associated with clinical laboratories. Ms. Robinson reported on the difficulties LMs face in securing lab accounts. In many instances, midwives are being asked by the lab facilities to provide supervising physician documentation prior to opening a lab account. The CLTAC members were in agreement, based on the legal definition of a licensed health care provider, that LMs are allowed to order laboratory tests; however, they cautioned that it is the decision of the independent lab on whether or not to accept business from midwives.

Karen Ehrlich recommended that the Board request that CDPH post information on its website stating LMs having the authority, as licensed Healing Art Practitioners, to independently open laboratory accounts for medical diagnostic testing within their scope of practice (Business and Professions Code Section 1288). This information is posted on the midwifery home page of the Medical Board's website. Ms. Robinson mentioned that she has extended an invitation to CDPH staff to attend upcoming Board meetings.

B. Discussion and Consideration of Proposed Language to Define Appropriate Level of Physician Supervision

Mr. Heppler reported that the Board is required to adopt regulations defining the appropriate level of supervision required for the practice of midwifery (B&P §2507(f)). He directed members to the draft of the proposed regulations (16 CCR §1379.23) and advised them that this matter should be open for public debate and then addressed by the full Board.

Lengthy discussion ensued on the specific language of the proposed regulation. Council members preferred revising the current draft language to eliminate any verbiage limiting midwifery care to "pregnant women" and "pregnancy." Specifically, they would like the language to read: "The requirement for physician supervision contained in Section 2507 of the Code is deemed to have been met if the licensed midwife has established an informal, collaborative relationship with at least one physician who meets the requirements of Section 1379.22, and who agrees to provide guidance and instructions regarding the care of ~~pregnant~~ women and /or newborns ~~during a normal pregnancy~~ and to provide emergency advice, should complications develop."

Ms. Sparrevohn made a motion to accept the changes to the draft language; s/Gibson; motion

carried.

Sarah Davis, a member of the public, asked for clarification with the word, "collaborative," since it was her understanding that a collaborative relationship cannot be informal. Mr. Heppler clarified by identifying "consultation," as a more formal term, as opposed to the word, "collaborative," which means, working together. Diane Holzer, a member of the public, asked if an arrangement with an emergency room would be considered a collaborative relationship. Mr. Heppler's response was, "As long as that collaborative condition is satisfied."

Mr. Heppler advised that the proposed regulation will require Board approval. The next step in the process will be for the MAC to request that the Board set the matter for regulatory hearing. This can be done at the Board's February 2012 meeting. He noted that, given the history of this topic and the Board's prior unsuccessful attempts to draft regulations, the Board may direct staff to set up an interested parties workshop prior to setting this matter for hearing.

Ms. Gibson made a motion that the MAC request that the Board to set the matter for regulatory hearing; s/Sparrevohn; motion carried.

C. Discussion and Consideration of Proposed Language to Provide Authority for Licensed Midwives to Obtain Necessary Supplies and Drugs.

Mr. Heppler reported that at the May 6, 2011 Board meeting, the Board granted the MAC permission to work on regulations to ensure consistency between the requirement in 16 CCR §1379.30 that midwifery education programs prepare midwives to use a variety of drugs and devices in the management of the normal pregnancy and the actual authorization for the use these drugs and devices in the midwife's practice. He referred members to the regulatory proposal to add §1379.24 to the California Code of Regulations.

Council members recommended modifying the draft language to read: "A licensed midwife shall have the authority, limited to the practice of midwifery, to obtain and administer drugs, immunizing agents, diagnostic tests and devices, and to order laboratory tests. This authority includes, but is not limited to, obtaining and administering intravenous fluids, analgesics, postpartum oxytocics, RhoGAM, local anesthesia, oxygen *(added),* ~~paraceravical blocks, prudendal blocks~~, local infiltration, vitamin K, eye prophylaxis, diaphragms and cervical caps."

Ms. Yaroslavsky made a motion that the MAC request that the Board set the matter for regulatory hearing; s/Sparrevohn; motion carried.

Agenda 12 Proposed 2012 Meeting Dates

Council members agreed upon the following meeting dates for the 2012 calendar year:

- March 29, 2012
- August 30, 2012
- December 6, 2012

Agenda 13 Election of Officers for Term Beginning with the March 2012 Meeting

Ms. Yaroslavsky nominated Carrie Sparrevohn for the Chair of the MAC; s/Gibson; Ms. Ehrlich called for a vote; Ms. Sparrevohn was elected as the Chair of the Mac beginning with the March 2012 meeting.

Ms. Gibson nominated Karen Ehrlich for the Vice Chair of the MAC; s/Sparrevohn. A vote was called. Ms. Ehrlich was elected as the Vice Chair of the MAC beginning with the March 2012 meeting.

Agenda 14 Agenda Items for the March 2012 Meeting in Sacramento

The following items were requested for the next MAC meeting:

- Webcast teleconference feasibility for future MAC meetings.
- Report by staff to clarify midwifery enforcement data
- Modifications/corrections to the OSHPD form for 2012
- Implementation of Task Force to review LMAR reporting options
- "Scope of Authority" Legal opinion requested: Unlicensed midwives attending/assisting births with licensed midwives.
- Update on the status of the proposed regulations

Adjournment

Ms. Yaroslavsky made a motion to adjourn the meeting; s/Gibson; motion carried.