MEDICAL BOARD OF CALIFORNIA

Executive Committee

Medical Board of California
Lake Tahoe Room
2005 Evergreen Street
Sacramento, CA 95815

July 18, 2012

MINUTES

Agenda Item 1 Call to Order/Roll Call

The Executive Committee of the Medical Board of California was called to order by the Chair, Barbara Yaroslavsky at 3:30 p.m. A quorum was present and notice had been sent to interested parties.

Committee Members Present:
Barbara Yaroslavsky, President
Janet Salomonson, M.D., Vice President
Hedy Chang
Shelton Duruisseau, Ph.D.
Sharon Levine, M.D.

Members Absent:
Gerrie Schipske, R.N.P., J.D., Secretary

Staff Present:
Nicola Biasi, Investigator
Susan Cady, Enforcement Manager
Dianne Dobbs, Department of Consumer Affairs Legal Counsel
Tim Einer, Administrative Assistant
Kurt Heppler, Staff Counsel
Kimberly Kirchmeyer, Deputy Director
Armando Melendez, Business Services Assistant
Regina Rao, Business Services Analyst
Anthony Salgado, Licensing Manager
Teresa Schaeffer, Enforcement Analyst
Kevin Schunke, Outreach Manager
Jennifer Simoes, Chief of Legislation
See Vang, Business Services Assistant
Linda Whitney, Executive Director
Curt Worden, Chief of Licensing

Members of the Audience:
Yvonne Choong, California Medical Association (CMA)
Julie D'Angelo Fellmeth, Center for Public Interest Law (CPIL)

Randall Hagar, California Psychiatric Association
Tina Minasian, Consumers Union Safe Patient Project
Gary Nye, California Medical Association (CMA)
David Pating, M.D., California Society of Addiction Medicine

Agenda Item 2 Public Comment on Items Not on the Agenda
No public comment was offered.

Agenda Item 3 Approval of Minutes from the May 3, 2012 Meeting
Dr. Levine made a motion to approve the minutes from the May 3, 2012 meeting; s/Duruisseau; motion carried.

Agenda Item 4 Discussion of and Possible Recommendation on SB 1483 Physicians and Surgeons: Physicians Health Program
Ms. Simoes began by discussing that SB 1483 Steinberg, is sponsored by the California Medical Association, the California Hospital Association, the California Psychiatric Association, and the California Society of Addiction Medicine.

Ms. Simoes wished to thank the author's office for addressing many concerns raised by the Board. The previous major issues of concern with this bill, it's location in the Medical Practice Act, lack of identified state agency to have oversight of the committee and the Physician Health Program (PHP), and the absence of a funding source, have been addressed.

This bill would establish the PHP, to be administered by the Physician Health Recovery and Monitoring Oversight Committee (Committee). This bill was amended to place the Committee within the Department of Consumer Affairs (DCA) and would require DCA to select a contractor to implement the PHP. The Committee would serve as the evaluation body of the PHP. The PHP would provide for confidential participation by physicians who have a qualifying illness, and are not on probation with the Board. The PHP would refer physicians, also called participants, to monitoring programs through written agreements and monitor the compliance of the participants with that agreement. The bill would require the Committee to report to DCA the outcome of the PHP, and would require regular audits.

The bill defines physician and surgeon as a holder of a valid physician and surgeon certificate. It would also include students enrolled in medical schools approved or recognized by the Board, graduates of medical schools enrolled in medical specialty residency training programs approved or recognized by the Board, or physicians and surgeons seeking reinstatement of a license from the Board. The Board would require applicants to report this information on their licensing application, as this information is already required to be reported, and the sponsors have been informed of this fact.

This bill would require the PHP to have a system in place for immediately reporting physicians who fail to meet program requirements. The system would be required to ensure absolute confidentiality in the communication to the enforcement division of the Medical Board and would not be allowed to provide information to any other individual or entity. Although this bill requires the program to report to the Board participants who fail to meet the requirements of this program, it does not specifically require the reporting to the Board of those whose treatment does not substantially alleviate impairment, those who withdraw

or terminate prior to completion, or those who, after an assessment, are unable to practice medicine safely. This lack of reporting to the Board appears to be an oversight in how the bill was drafted and should be corrected for consumer protection.

Lastly, this bill would increase the biennial license renewal fee for all physicians and surgeons by $39.50, to fund the cost of the PHP and the Committee. Board staff does have a concern with implementing the fee January 1, 2013. The Board sends renewal notices to physicians 90 days in advance of the expiration date. For licensees with renewal dates in January 2013, the renewal letters go out in October 2012. With the transition to a new computer system set for October 15, 2012, the Board's current computer system is frozen and no new changes can currently be made. The new system will not be able to accept revisions until mid to late November. The programming time in order to accomplish this update and revise all renewal forms, will take approximately three to four months. Board staff would not have time to update the computer system, revise renewal forms, and get out the renewal letters by October 1, 2012. Board staff instead would either have to delay the renewal of those applicants or have to send a letter requesting the additional $39.50 in renewal fees. This additional workload, would result in a fiscal impact to the Board of approximately $20,000. It is not clear that it is actually feasible for the Board to do this implementation.

The Board will be able to implement this bill if the increased fee had a delayed implementation date of July 1, 2013. This would give the Board until April 1, 2013 to update the computer system, revise forms, etc. It would allow Board staff the necessary time to do this within its normal workload and would not result in a fiscal impact to the Board. Board staff suggests a neutral if amended position on this bill, with the amendment being to delay implementation of the increased fee to July 1, 2013.

Public comment was provided for this agenda item.

Randall Hagar, Government Affairs Director for the California Psychiatric Association, informed the members that his organization is a co-sponsor of this bill and they have been involved in the development of it for three years. He urged the members to support the bill and was available to answer questions they might have.

Gary Nye, a physician psychiatrist, stated he was very involved in the Board's prior diversion program and its evolution. He has served on a variety of well being committees, and is currently active on a confidential line which is sponsored by the California Medical Association and the California Dental Association. He was available to answer questions the members might have. Dr. Nye urged support for this bill. He believes the Board should make this available or help to make available an alternative to straight discipline to physicians who may be in need of treatment for those conditions indicated in the bill.

Yvonne Choong from the California Medical Association (CMA) thanked the Board for having this item on their agenda. There had been some questions regarding outreach and how physicians will find out about this program. It is envisioned that there would be a lot of outreach, essentially a statewide network working with medical groups, hospital well being committees, and malpractice carriers. In addition to monitoring the monitors, there is an education component to educate hospital well being committee members as well so that all

physicians are aware of what resources are available in this area. The other issue that Ms. Choong wished to address was the amendment requesting the start date. The Board's concerns are understood. However, the reason they would request the January 1, 2013 start date is because the diversion program has not been in existence for several years and they would like to get this program off the ground as soon as possible and delaying it by six months reduces revenue by approximately by $1.1 million. The CMA is actively working with the author's office to find some compromise with the Board on that issue.

David Pating, M.D., from the California Society of Addiction Medicine urged support of this bill. One of the roles that he served was on the Diversion Advisory Committee. The former diversion program has been disbanded and since then there really has not been anything to fill the need to manage and monitor physician heath. Dr. Pating has been doing a series of trainings for county well being committees and organizations throughout the state, some in conjunction with Ms. Cady. He thinks he has found many overlapping interests among physicians, hospital well-being committees, and the Medical Board in preserving a healthy workforce. Depression and substance abuse is very high in the community but more importantly, hospitals well-being staff are looking for guidance from the Board to manage and promote physician health and wellness. Dr. Pating believes that this program could meet the Board's needs. One, this is voluntary and it is not diversion so there is no safe harbor for physicians that have discipline issues. Two, it is transparent. Three, it was from the beginning accountable to the Board. As health reform is approaching, there is potential for physician shortages. Meeting the needs of California will require both new physicians as well as keeping physicians who are currently practicing healthy.

Julie D'Angelo Fellmeth from the Center for Public Interest law, (CPIL) stated, there are a lot of things wrong with this bill. It creates a new state regulatory Board at a time when the Governor and his administration are trying to constrain government. Secondly, it allows private trade associations, which are the sponsors of this bill, to dictate the membership and control of this oversight committee. Third, it requires the Board to fund the new board and its vendor, with physician licensing fees; thus tying the Board, in the eyes of consumers and the media, to this new program over which the Board will have no control.

She added it will cost doctors over twice what they paid to fund the old failed diversion program yet, no one has seen any fiscal analysis to support the new surcharge on physician licensing fees. Nothing has been provided that tells how the surcharge will be split between the new regulatory board controlled by the sponsors of this bill and the vendor that the board will oversee. Finally it is incomplete; it does not even do what it purports to do. The way it was presented is that physicians who have serious substance abuse problems would go to inpatient treatment. Treatment programs are regulated and licensed by the state but, when physicians come out of treatment, these monitoring programs that they might enter, are not regulated by the state. That is what she was told this bill intended to do; however, it does not do that. It purports to create a certification program for private monitoring companies or programs, but there is no mechanism or standards in the bill for a certification process.

Ms. D'Angelo Fellmeth asked the Board to recall some history about their old diversion program. The old diversion program was created as part of the Board back in 1981 and shortly after it was created the Board established, at the behest of the California Medical Association, a liaison committee to the diversion program. The Liaison committee existed

for 24 years; it was controlled by representatives of three of the four sponsors of this bill, California Medical Association, California Society of Addiction Medicine, and California Psychiatric Association. Because of the existence of the liaison committee, the Board did not have an active oversight role over the diversion program. For most of its existence the Board punted that oversight to the liaison committee. The diversion program failed five performance audits during its 27 year history and as a result of the fifth failed audit, the Board voted unanimously five years ago, to end the program. The Liaison committee was in place during four of the five failed audits and it did nothing to even address, much less resolve, the deficiencies identified by any of those four sets of audits. This bill hands control of this new regulatory board, along with a significant amount of money to the same organizations that failed to police the old diversion program. The bill requires that the new state board hire and oversee a vendor that will carry out of the work. A very recent analysis dated June 26, 2012 by the Assembly Business and Professions Committee describes the California Public Protection and Physician Health (CPPPH), which is a non-profit organization that the CMA and the other sponsors of this bill created back in 2010. That analysis describes a 37-page business plan of the CPPPH which includes passage of this bill and the eventual conversion of the program back to a true diversion program, the very thing that this Board unanimously voted to abolish just five years ago. That Assembly Committee analysis is public information. The CPPPH website and its business plan are also public information. CPPPH's website reveals that many of the individuals who control it are the exact same individuals who sat on the liaison committee and failed to properly police the diversion program for 24 years. The bill will not only hand control of the new state board to three organizations who controlled the liaison committee, it potentially enables the exact same individuals who sat on the liaison committee and failed to police the diversion program to become the vendor that this new board must hire using public money. The analysis specifically contemplates that result. CPIL has asked Senator Steinberg to significantly amend this bill to, among other things, prevent anybody associated with the old diversion program from obtaining any control over this new program. CPIL has asked for other amendments as well, including giving the Governor complete discretion as who to appoint to the new board, clarifying what the program does and does not do, and requiring a responsible fiscal analysis of what this program will actually cost. For example, the CPPPH's business plan says that the cost will be about $600,000 a year. That requires about a $10 surcharge, not a $40 surcharge. If those amendments do not materialize in the very near future, CPIL will oppose this bill and other consumer groups will do the same, including former Medical Board members who were part of the unanimous vote.

Ms. D'Angelo Fellmeth further stated there is not another meeting before the end of the legislative session and the Board cannot take a position on a bill that they have never seen. She urged the Board to oppose this bill for the reasons that she had just discussed. It is unclear, it is incomplete, it potentially hands control of a new board and its vendor to the same organizations and the same individuals, which failed to properly police the Board's diversion program for a 24 year period.

Tina Minasian from Consumers Union Safe Patient Project conveyed concerns. Ms. Minasian was a victim of one of the doctors that was in the diversion program. One of her biggest concerns about this bill, is it sounds just like diversion again. There is still a question if the physicians who are in the program would be suspended from practice. The doctor that injured her and countless others was never suspended from practice. The doctor was able to

continue to practice medicine while he was in the previous diversion program and during that time, he hurt many people. The other question that Ms. Minasian has about this program is: how many chances will a physician be given? Her doctor had multiple chances and he entered the diversion program twice.

Ms. Minasian also inquired about what would happen if participants lie on their application with licensing and do not tell the Board that they are a participant in this program? How will the Board know that they are lying, if the Board is not even supposed to know who is in the program? Physicians whose licenses were previously revoked due to their failure in the previous diversion program, will those physicians be able to appeal their license and enter into this new program? The bill does not answer Ms. Minasian's questions. One of the things that her physician did when he was in the diversion program was he lied to the Board multiple times. How will the Board know if participants retain a service of a private monitoring entity. Ms. Minasian believes this program to be another diversion program and she urged the Board to not support this bill.

Dr. Salomonson made a motion to recommend to the full Board, a neutral unless amended position on SB 1483. Furthermore, the amendments being the delayed date, clarifying what is to be reported to the Board, and the clarification that a participant in PHP is required to report on the licensing application; s/Duruisseau; motion carried.

Closed Session
Agenda Item 5
Pursuant to Government Code Section 11126(a)(1), the Executive Committee met in closed session to conduct the Annual Evaluation of the Executive Director.

Return to Open Session

Agenda Item 6 Adjournment
Dr. Salomonson made a motion to adjourn; s/Chang; motion carried. The meeting was adjourned at 6:15 p.m.