



MEDICAL BOARD OF CALIFORNIA Licensing Program



MIDWIFERY ADVISORY COUNCIL

December 4, 2014

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

MINUTES

Agenda Item 1 Call to Order/Roll Call

The Midwifery Advisory Council (MAC) of the Medical Board of California (Board) was called to order by MAC Chair Carrie Sparrevohn at 1:00 p.m. A quorum was present and notice was sent to interested parties.

Members Present:

Carrie Sparrevohn, L.M., Chair
Karen Ehrlich, L.M.
Tosi Marceline, L.M.
Monique Webster
Barbara Yaroslavsky

Members Absent:

James Byrne, M.D.

Staff Present:

Diane Dobbs, Department of Consumer Affairs, Legal Counsel
Kimberly Kirchmeyer, Executive Director
Natalie Lowe, Licensing Manager
AnnaMarie Sewell, Licensing Analyst
Jennifer Simoes, Chief of Legislation
See Vang, Business Services Analyst
Curt Worden, Chief of Licensing

Members of the Audience:

Jeanne Anderson, L.M., Southern California Midwives
Kayti Buehler, L.M., California Association of Midwives
Rosanna Davis, L.M., California Association of Midwives
Rachel Fox-Tierney, L.M.
Faith Gibson, L.M., California College of Midwives
Rachel Hansen, L.M.
Lora Hart, California Association of Midwives

Kaleem Joy
Rebekah Lake, L.M., California Association of Midwives
Rebecca May, Department of Consumer Affairs
Lesley Nelson, L.M.
Kelly Olmstead, L.M., California Association of Midwives
Constance Rock, L.M., California Association of Midwives
Alexandra Rounds, California Families for Access to Midwives
Madeleine Shernock
Marlene Smith, L.M., CPM
Linda Walsh, L.N.M., California Nurse Midwives Association

Agenda Item 2 Public Comments on Items not on the Agenda

No comments were provided.

Agenda Item 3 Approval of the August 14, 2014 Midwifery Advisory Council Meeting Minutes

Ms. Lowe stated that MAC members had provided edits to Board staff prior to the meeting and that the following changes would be updated in the minutes: on page two of the minutes, the second line from the bottom, beginning with "Ms. Sparrevohn continued", the word "was" would be changed to "were"; on page four of the minutes, two-thirds of the way down the page, in the sentence beginning with "Ms. Ehrlich questioned" the words "was going to" would be changed to "would"; on page five of the minutes, second paragraph, the spelling of Ms. Ehrlich's name would be corrected.

Ms. Sparrevohn asked for public comment. No comments were provided.

Ms. Yaroslavsky made a motion to accept the August 14, 2014 minutes with edits; s/Ms. Ehrlich. Motion carried.

Agenda Item 4 Report from the Midwifery Advisory Council Chairperson

Ms. Sparrevohn stated that many positive steps had been taken during the year to implement the changes required by Assembly Bill 1308 (AB 1308) and that all interested parties, including midwives, consumers, physicians, and the Board, have the same goal: to create a safe environment for birthing families while allowing them the freedom of autonomy to weigh their options, and make choices appropriate to their own circumstances.

Ms. Sparrevohn stated that while moving forward with these changes, it is of utmost importance that the safety for birthing women and families be balanced with the imposition of requirements that compromise their autonomy. Ms. Sparrevohn added that during this process, all involved should be constantly asking the question, how will this requirement increase consumer safety or improve the course of care? Requirements imposed on consumers that do not meet this test have no place in the regulations that are being crafted. Additionally, any departure from, or change to the previous regulations that were imposed to improve safety for consumers, should only be undertaken with good evidence that change would increase safety for birthing women and their families.

Ms. Sparrevohn stated that she looks forward to the continuing work of the MAC in 2015, and is certain that the current regulatory process will produce a product that will protect both the safety and the autonomy of birthing families.

Ms. Sparrevohn asked for public comment. No comments were provided.

Agenda Item 5 Update on New Board Member Packet Task Force

Ms. Sparrevohn referred to the charts provided in the meeting materials and stated that at the last MAC meeting a three to four page form was presented that compared licensed midwives with certified nurse midwives in California. After review of the document it was decided that a one page form would be beneficial in summarizing the differences between the two license types.

Ms. Sparrevohn asked for comments from the MAC.

Ms. Yaroslavsky thanked Dr. Byrne and his committee for creating the form and stated that it was easier for the lay person to understand, as well as for professionals.

Ms. Sparrevohn asked for public comment. No comments were provided.

Ms. Ehrlich made a motion to adopt the revised form; s/Ms. Yaroslavsky. Motion carried.

Agenda Item 6 Update on Midwife Assistant Legislative Proposal

Ms. Simoes provided an update on the midwife assistant legislative proposal, stating that the Board had provided language to the Senate Business, Professions, and Economic Development Committee (Senate B&P) for the proposal of legislative changes sponsored by the Board, to determine if they would be interested. At this time, the proposal is still with Senate B&P. Ms. Simoes stated that if Senate B&P was not interested, she would then pursue another author.

Ms. Ehrlich stated that she was expecting to have seen the language at this meeting, and was surprised that it was not included in the meeting materials.

Ms. Sparrevohn responded that the language had been presented at the August MAC meeting and that it had not changed.

Ms. Simoes confirmed that the language had not changed, and that it was the same language she had received from Ms. Webb and Ms. Sparrevohn.

Ms. Ehrlich stated that she did not remember seeing the language and that she was not sure whether it would fall into the purview of the language that had already been proposed, but that there are a number of women in California that are certified professional midwives who have obtained licensure by the Board and that she would like an option for those that choose not to get licensed, to be automatically approved to be hired as a midwife assistant in California.

Ms. Sparrevohn responded that the language written, indicates two methods for becoming a midwife assistant: one method would be a school that would have a program similar to that of a medical assistant program; and the second method would be licensed midwives would train and certify their own assistants.

Ms. Simoes stated that she would provide the MAC with the language for reference.

Ms. Sparrevohn asked for public comment. No comments were provided.

Agenda Item 7 Update on Certified Nurse Midwife to Licensed Midwife Entry

Ms. Kirchmeyer stated that the Board had reviewed the option of adding licensure as a California certified nurse midwife (CNM) as a pathway to become a licensed midwife in California, and determined that a legislative change would be required to pursue this option. Ms. Kirchmeyer stated that it appears CNMs will move forward next year with a bill that will remove physician supervision requirements. Therefore, the Board does not feel that it is prudent at this time to move forward with a legislative proposal to pursue this option. The Board realizes that there are concerns regarding the practice when there is dual licensure, and feels that this issue should wait until a decision is made by the California Board of Registered Nursing.

Ms. Kirchmeyer added that even if physician supervision is not removed for CNMs, it may be an issue that should be carried by the CNMs themselves and not the Board.

Ms. Simoes indicated there is quite a bit of legislative interest by more than one legislative office, so it is highly probable that someone will be authoring a bill.

Ms. Ehrlich stated that she is in support of the change, as some CNMs may be functioning outside of their scope of practice and their law. She hopes that they will be able to find a way to practice within the terms of law.

Ms. Kirchmeyer added that if the Board decided to move forward with a legislative change it would happen at the same time CNMs take it themselves. She added that if the Board determined a regulatory change was needed it would also need to go to the Board, and be set for a hearing. Therefore the timeframes would likely end up being the same as the legislative process.

Ms. Sparrevohn asked for public comment. No comments were provided.

Agenda Item 8 Update on Licensed Midwives Interested Parties Meeting

Ms. Lowe provided an update on the October 15, 2014 Interested Parties meeting that was held to discuss the regulations needed for the Transfer of Planned Out-of-Hospital Delivery to Hospital reporting form as well as the regulations needed to define "pre-existing maternal disease or condition likely to affect the pregnancy" and "significant disease arising from the pregnancy". Ms. Lowe stated that there was an impressive turnout for the meeting and quite a bit of discussion on the subject of defining "pre-existing maternal disease or condition likely to affect the pregnancy." Due to the lengthy discussion that ensued, there was not sufficient time to discuss the other items on the meeting's agenda.

Ms. Lowe stated that it was made clear during that meeting that additional discussions were needed in order to come to a consensus regarding the proposed language. An additional meeting was scheduled for December 15, 2014.

Ms. Sparrevohn asked for public comment.

Ms. Jeanne Anderson, L.M., identified herself as a licensed midwife that practices primarily in Ventura County and represents midwives in Southern California. Ms. Anderson stated that traditionally parents had the right to

make choices they feel are in the best interest of their family and their children, and this right is recognized in society as an integral part of parenthood.

She added that the very first choice parents make for their child is where and how the child will be born, and who will be the care provider. California Code of Regulations, Title 22, Section 72527 and Section 72528 guarantees patients the right to receive all information that is material to an individual patient's decision concerning whether to accept or to refuse any proposed treatment or procedure. By restricting a woman's access to alternative childbearing care, such as midwifery versus obstetric, their basic rights as consumers and parents are being denied. The American Congress of Obstetricians and Gynecologists (ACOG) committee opinion number 166 from December 1995 concurs with this. Once the patient has been informed about material risks and benefits of the treatment, the patient has the right to exercise full autonomy and decide whether to proceed with treatment or to make a choice among a variety of acceptable treatments.

Ms. Anderson further stated in the exercise of that autonomy, the informed patient also has the right to refuse to undergo any treatment, which constitutes informed refusal. AB 1308 removes the childbearing woman's right to informed consent and refusal. Business and Professions Code (B&P) Section 2507 sets limits regarding the midwifery attended birth of twins, breeches, and births occurring outside of the estimated gestational window of 37.0 and 42.0 weeks. Even when the childbearing woman has been clearly informed of the risks and benefits, she is forbidden to retain midwifery care according to B&P Section 2507. This forces her to choose care which may be contrary to her wishes, and therefore can be interpreted to constitute battery. Others may choose to birth unassisted, which is not in the best interest of the childbearing woman or her unborn child.

She added that AB 1308 is an illegal repeal of the standard of care, which was pushed through the legislature without the full knowledge and consent of many midwives. The proposed regulations to define B&P Section 2507 (b)(1)(A)(i) and (ii) only compound this problem, requiring a consultation with an Obstetrician/Gynecologist (OB/GYN) who will in many instances then refer the mother to another specialist for evaluation, instead of allowing the midwife to decide if and when, and who, should be seen for the variations that occur during the mother's antepartum care. This can place an unwarranted financial burden and additional stress on the childbearing woman, with unnecessary appointments and fees for those services, and makes midwifery care burdensome for those who choose it. AB 350 and Senate Bill 1479 allowed for unfettered public access to midwifery care, yet AB 1308 denies women their preferred choice of care if they decline a licensed midwife's mandated advice to see an OB/GYN. AB 1308 does not allow midwives to make differential diagnosis, but in fact turns that responsibility over to the OB/GYN. Most midwives would enjoy collaborative relationships, not only with OB/GYNs, but also with other specialties where midwives could seek counsel if needed.

Ms. Anderson added that many Southern California midwives do not feel that they have been adequately represented by the California Association of Midwives (CAM), and do not want the MAC or the Board to assume that the majority of the midwives practicing in California always agree with the proposals that are presented by CAM. When AB 1308 was brought to the midwives' attention last year, a petition was signed by over 200 midwives, asking that the bill not go through until there was more opportunity for input to be given by those midwives that would be directly affected.

Ms. Anderson hopes that the Board will promote access to care rather than placing additional burdens on the childbearing women and the midwives that serve them. AB 1308 is costly and burdensome to patients and does not allow for patient informed consent in regard to declining procedures. Most of the proposed additional regulations of AB 1308 compound a problem of unfettered public access to midwifery care and should be removed.

Ms. Sparrevohn thanked Ms. Anderson for her comments and clarified that as AB 1308 had passed, the Board does not have the authority to change anything within the language. Ms. Sparrevohn stated that if anyone wanted to change parts of AB 1308, that they have every right to do so through the legislative process, but the Board and the MAC do not have the ability to work outside of AB 1308. The Board and the MAC must follow its directive and create a list of items that require physician consultation as dictated by AB 1308.

Ms. Sparrevohn continued, stating that AB 1308 had not removed anything regarding a woman's right to decide what care she is going to accept. It states that if a woman wants to have her twins at home, she must find a licensed provider other than a licensed midwife to serve her.

Ms. Sparrevohn encouraged Ms. Anderson to seek legislation if they so choose. The Board and MAC do not have the ability to change it, but can craft the best regulations to serve birthing women and their families to protect their safety, and to assure their autonomy of choice in the birthing environment.

Ms. Sparrevohn suggested that Ms. Anderson attend the Interested Parties meeting on December 15 and to stay engaged in the meetings, while at the same time work on organizing midwives to change the law.

Ms. Gibson commented that at the last Interested Parties meeting, the meeting appeared to be officiated by MBC and ACOG and wanted to clarify that the regulations belong to the people of California, and not to any special interest group. Ms. Gibson suggested that at the next meeting there should be a panel of one representative from each organization, or that all attendees sit in the audience and speak as needed.

Ms. Lowe responded that the next Interested Parties meeting would be held in the Lake Tahoe Room at the Board's headquarters, and would be a round table discussion allowing for an equal opportunity for anyone to make comments.

Ms. Rosanna Davis requested that the Interested Parties meeting be recorded and publicized.

No further public comments were provided.

Agenda Item 9 Program Update

Ms. Lowe stated that Board staff have been busy preparing for the Interested Parties meetings, the MAC meeting, and the day to day work of the Midwifery program. Currently there were some items pending completion for the program, including: conducting a follow up survey regarding the implementation of AB 1308 and providing additional information on the Board's website regarding the transfer reporting form and the process to complete the form.

A. BreZE Update

Ms. Lowe stated that Board staff continue to test new applications and make requested changes for what is currently in production. The online application for renewing midwife licenses is not scheduled to be released at this time and that an update would be provided to the MAC when any new information becomes available.

Ms. Ehrlich stated that at the last MAC meeting she had inquired if there could be an option to search by county on the online BreZE system and requested the status of her request.

Ms. Lowe responded that the online search in BreZE now allows a search to be performed by county.

B. Licensing Statistics

Ms. Lowe referred to the licensing statistical chart provided in the meeting materials, stating that the numbers remain consistent and the licenses issued per month continue to stay around the average with five being issued in the last quarter.

C. Enforcement Statistics

Ms. Lowe referred to the enforcement statistical chart provided in the meeting materials, stating that the transfer reporting form numbers were also included for review. Ms. Lowe provided a brief overview of the numbers, stating that in the first quarter of the fiscal year 54 transfer reporting forms were submitted to the Board. Ms. Lowe stated that Board staff were not completely satisfied with reporting the transfer reporting forms in the format shown, or in the specific section where it was currently provided, and that the format of the report would most likely be changed prior to the next meeting.

Ms. Sparrevohn asked if Board staff would attempt to correlate the forms received with the Licensed Midwife Annual Report (LMAR) data, in terms of hospital transfers, to determine if all the hospital transfer reporting forms are being received.

Ms. Lowe stated that one of the intents of the form was that it would assist in validating the LMAR data that is submitted, and that once the process was in place and all parties involved were aware of the reporting requirements, then the process of analyzing the data would begin.

Ms. Sparrevohn asked for public comment. No comments were provided.

Agenda Item 10 Update on Midwifery Advisory Council Membership

Ms. Lowe stated that while Board staff were reviewing the term limits for the current MAC members, it was found that Ms. Sparrevohn and Ms. Yaroslavsky's terms had expired. Board staff will be working with the Full Board to have Ms. Yaroslavsky's term extended. As for Ms. Sparrevohn's position, Board staff will need to begin the process of noticing the position. Ms. Ehrlich, Ms. Webster, and Dr. Byrne's term limits will expire in June of 2015 and Board staff will be noticing those positions as well, so that applications can be presented at the next MAC meeting in March. Following the MAC meeting, the recommendations will be made to the Full Board at its May meeting so that appointments can be made prior to the expiration of the terms.

MAC member interest forms will be sent to those on the subscribers' list as well as posted on the Board's website within the next week or two.

Ms. Ehrlich expressed concern regarding the terms that had expired and stated that the MAC could possibly have five brand new people by June 2015. She added that when the MAC was first established it was determined that the terms would be staggered, so that there would be continuity of knowledge. Ms. Ehrlich requested the Board extend the terms of those whose terms would expire in June 2015 so that staggered terms could continue in the way it was originally intended.

Ms. Kirchmeyer stated that the Board had set the terms at the time of the MAC establishment, so it would require Board action at the January meeting in order to change the term limits.

Ms. Ehrlich agreed that it should be presented to the Board in January.

Ms. Sparrevohn stated that when the MAC was originally set up in 2007, every term was staggered so three midwives had a one year, two year, and three year term. Her term initially was one year, Ms. Ehrlich's term was two years, and Ms. Gibson's term was three years. Ms. Sparrevohn thought that the reason multiple terms may be expiring at the same time is that when Ruth Haskins, M.D. retired from the MAC in the middle of the term, Dr. Byrne's term should have gone through the expiration date of Dr. Haskins, but was instead granted for three years.

Ms. Yaroslavsky suggested that Board staff meet with the MAC Chair to research what had occurred.

Ms. Kirchmeyer and Ms. Sparrevohn both agreed with Ms. Yaroslavsky's suggestion.

Ms. Sparrevohn asked for public comment. No comments were provided.

Agenda Item 11 Future Midwifery Advisory Council Meeting Dates

After discussion by the MAC, the proposed dates for the 2015 MAC meetings are: March 26, 2015, August 13, 2015, and December 3, 2015.

Ms. Sparrevohn asked for public comment. No comments were provided.

Agenda Item 12 Agenda Items for the next Midwifery Advisory Council Meeting in Sacramento

The following agenda items were identified by Ms. Sparrevohn for the next MAC meeting:

- Report from the MAC Chair
- Midwifery Program Update
- Update on New Board Member Packet
- Taskforce Update on the LMAR Data Collection Tool
- Update on Midwife Assistant Legislative Proposal
- Update on Assembly Bill 1308
- Update on Licensed Midwives Interested Parties Meeting
- Presentation by Ms. Diane Holzer – Best Practices for Home to Hospital Transfers by Midwives
- Update on MAC Membership

Ms. Sparrevohn asked for public comment. No comments were provided.

Agenda Item 11 Adjournment

Ms. Sparrevohn adjourned the meeting at 1:56 p.m.

The full meeting can be viewed at www.mbc.ca.gov/About/Us/Meetings/2014/