



MEDICAL BOARD OF CALIFORNIA



Executive Committee

Medical Board of California

Lake Tahoe Room

2005 Evergreen Street

Sacramento, CA 95815

September 19, 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, Sharon Levine, M.D. at 9:07 a.m. A quorum was present and notice had been sent to interested parties.

Committee Members Present:

Sharon Levine, M.D., President

Reginald Low, M.D.

Janet Salomonson, M.D.

Barbara Yaroslavsky, Past President

Other Members Present:

Michael Bishop, MD

Staff Present:

Susan Cady, Enforcement Manager

Dianne Dobbs, Department of Consumer Affairs' Legal Counsel

Tim Elner, Administrative Assistant

Kurt Hepler, Staff Counsel

Kimberly Kirchmeyer, Deputy Director

Natalie Lowe, Licensing Manager

Cindi Oseto, Licensing Manager

Regina Rao, Business Services Analyst

Letitia Robinson, Research Specialist

Anthony Salgado, Licensing Manager

Kevin Schunke, Outreach Manager

Jennifer Simoes, Chief of Legislation

Laura Sweet, Deputy Chief of Enforcement

Christina Thomas, Licensing Analyst

Renee Threadgill, Chief of Enforcement

See Vang, Business Services Assistant

Linda Whitney, Executive Director

Curt Worden, Chief of Licensing

Members of the Audience:

Teresa Anderson

Charlene Carr

Gloria Castro, Supervising Deputy Attorney General, Department of Justice (DOJ)

Frank Cuny

Dr. Charles Phillips

Anne Sodergren, Assistant Executive Officer, Board of Pharmacy

John Toth, M.D.

Agenda Item 2

Public Comment on Items Not on the Agenda

Frank Cuny, Executive Director of California Citizens for Health Freedom urged the Board to consider sponsoring or supporting a bill that his organization will be introducing next year. This bill will make integrated treatment of cancer legal in California. Mr. Cuny is aware of over 2,000 people who go to Mexico each year for cancer treatment that is not available in California. Under current law, it is a criminal offense for a physician to provide integrated treatment for cancer.

Dr. Charles Phillips conveyed his concerns on the credentials of Board members.

Agenda Item 3

Approval of Minutes from the July 18, 2012 Meeting

Ms. Yaroslavsky made a motion to approve the minutes from the July 18, 2012 meeting to include the additions and technical changes that were recommended and submitted to the Executive Director by legal counsel and President Levine; s/Low; motion carried.

Agenda Item 4

Committee and Appointments Update

Dr. Levine announced that Dr. Salomonson will be the Chair of the Licensing Committee and Dr. Low will be the Chair of the Enforcement Committee.

Dr. Levine continued that a Vice President and Secretary will be elected at the quarterly Board meeting in October.

Ms. Yaroslavsky has replaced Hedy Chang, as the public member for the Special Faculty Permit Committee and Dr. Silvia Diego will be the member replacing Dr. Duruisseau on the Health Professions Education Foundation.

Staff has requested that a Sunset Review Subcommittee be established. Dr. Low and Dr. GnanaDev will be reviewing the materials for enforcement. Dr. Salomonson and Dr. Bishop will be reviewing licensing materials, and Dr. Levine and Ms. Yaroslavsky will be reviewing the overall content and formatting.

Agenda Item 5

Discussion of Revised Emergency Contraception (EC) Protocol

Ms. Sodergren from the Board of Pharmacy discussed that their board is currently involved in the rule-making process to provide emergency contraception pursuant to a protocol. At the July 2012 meeting of the Medical Board, the members voted to pursue some additional changes to the regulation language.

These changes and amendments were presented to the Committee members for their verification and concurrence in the development of the regulations. Mr. Heppler clarified that these regulations belong to the Board of Pharmacy however there must be a concurrence with the Medical Board to receive approval. Ms. Sodergren discussed that the language will be brought to the Board of Pharmacy's October meeting for review and possible action.

Dr. Levine made clear that it was the will of the Executive Committee to notify the Board of Pharmacy that the amendments that were proposed, are in fact what was agreed to at the July Medical Board meeting.

Agenda Item 6 Health Care Event Program Update

Mr. Worden reported that the regulations for the out-of-state physicians and surgeons who volunteer to provide medical services at sponsored free health care events, became effective August 20, 2012.

The Board is the first health care board to complete regulations for the sponsored free health care events. The Board has created a Web page, put this information on the Web site, and made announcements regarding this program. As of today, the Board has not received any applications from physicians that wish to participate in this program.

Agenda Item 7 Legislative Status Report of 2012 Session

Ms. Simoes began by discussing **SB 924**. This is the bill relating to Physical Therapists Direct Access and it did not make it through the Legislature.

SB 122 (Price), is the bill related to the international medical schools. It contains language approved by the Board and the wording was placed in the bill. It went to the Governor, but it has not been signed or vetoed and staff is still awaiting a response.

SB 1483 (Steinberg), this bill is the Physician Health Program and it also did not make it through the Legislature.

Ms. Simoes continued that **SB 1236** (Price), the Healing Arts Boards bill that included the Physician Assistant Committee becoming the Physician Assistant Board and the Board's VEP one-year extension, was signed.

Public comment was provided for this agenda item.

Dr. Phillips expressed concern with the Physician Assistant Committee being changed to it's own board. He communicated that it should still remain under the Medical Board.

Ms. Simoes stated that certain things would still need to be done through the direction of the Board, such as issues of scope of practice and regulations.

Agenda Item 8 Administrative Update

A. Funding Reports

Ms. Kirchmeyer reported that at the end of the last fiscal year, the Board's fund condition was at 6.7 months. This year it is at 5.2. The Board reverted about \$4 million this past fiscal year,

mainly due to the inability to hire positions, particularly the investigator positions, which led to a high vacancy rate. Additionally the inability to travel and purchase vehicles also led to reversion. In looking at the fund condition, the Board will be extremely close to the mandate of two to four months at the end of fiscal year 2012/2013 and also at the end of fiscal year 2013/2014.

In an effort to be transparent, it was pointed out that there were several items that will not be seen in the Board's fund condition. The Board is a pass-through for funds received for both the Stephen M. Thompson Loan Repayment Program and the Family Physician Training Program. Both of these funds are to further access to care.

Funds from the Stephen M. Thompson Loan Repayment Program are transferred to the Health Professions Education Fund. Funds received from the Family Physician Training Program are transferred to the Office of Statewide Health and Planning Development. The Loan Repayment Program is a \$25.00 mandatory fee for initial licensees and also for those that renew. The Family Physician Training Program is a voluntary program and any individual that wants to submit money, the Board will act as a pass-through for these funds.

Ms. Kirchmeyer continued by reviewing the Board's Asset Forfeiture Account. This money is obtained when the Board works with another Federal or local agencies in an investigation. During the investigation assets are seized, and then based upon the relationship of the assets to the crime, they can be forfeited under Federal statute. The Board then asks for an equitable share of the assets based upon it's share of the investigation. This money can then be used for weapons and protective gear, travel and training, or electronic surveillance equipment. There are specific rules that need to be followed for these purchases, the purchases must be in the specific categories that were just identified, and they must be used by the Board's investigators.

B. BreEZe

The BreEZe project has been delayed. There were several factors leading to the delay. At this time the vendor is developing a new implementation plan which will include a new anticipated go-live date. The new date is anticipated to be the middle of December. Staff will continue to be very involved in the project and hope to provide the members with an expected go live date at the October meeting.

C. Personnel

The Board currently has 21 vacancies of the 271.1 allotted positions. This is an 8% vacancy rate. There are actually several individuals that are in background for these 21 positions.

As stated at the July meeting, due to side letter agreements with the States bargaining units, the Board lost all of the student assistants, and 11 non-mission critical retired annuitants effective September 1, 2012. Because of this loss, several of the Board's functions are moving slower, including opening and delivering mail and updating the applicant lookup.

There was no authority to fill behind these positions right away. The Board is trying to hire seasonal and permanent intermittent staff to complete these duties. The Board submitted requests to keep all 31 of the retired annuitants, as staff felt that their duties were mission critical. However, after a review by the State and Consumer Services Agency, the Board was only

allowed to keep 20 of the retired annuitants. Of those 20, only six are allowed to continue through the fiscal year, and only two can continue beyond that date. The Board is working on a succession plan and knowledge base transfer with the current retired annuitants, so that the information they possess is actually transferred on to the staff.

D. 2013 Meeting Dates and Locations

Ms. Kirchmeyer advised the Committee that at the July meeting, Ms. Whitney provided the members with 2013 suggested meeting dates. In order to enter into a contract with a hotel, it was requested that the Committee members make a decision on the first meeting of 2013.

Dr. Salomonson made a motion to approve the first 2013 Board meeting on the dates of January 31 – February 1, 2013 and directed staff to secure a contract location in the San Francisco Bay Area; s/Low.

Public comment was received for this agenda item.

Dr. Phillips suggested that the meeting location should be in Fresno.

Dr. Levine called for the vote. Motion carried.

Agenda Item 9 Strategic Plan Status Update

Mr. Einer and Ms. Kirchmeyer discussed that it was decided by the Board President, that the Strategic Plan should be presented at each of the Executive Committee meetings. Mr. Einer stated that the materials presented were updated to indicate the activities that have been completed, with dates that have passed or are due at this time.

At the July Committee meetings, the program chiefs reported that several items on those committee agendas were in follow-up to objectives in the Strategic Plan. The Chief of Licensing and the Chief of Enforcement will continue to indicate where the items they are discussing target the objectives of the strategic plan.

Objective 1.5: Conduct a comprehensive review of international schools

The updated international school review process will not be completed by the summer of 2012, due to the required training period for staff and the need to complete the Sunset review. The new date of completion has been moved to the summer of 2013.

Objective 2.1: Develop a plan to conduct a complete review of all laws and regulations relating to licensing to identify those no longer relevant and what needs to be added or eliminated. Identify requirements that are not necessary to the safety of practice but may be serving as barriers for qualified applicants, as well as simply updating requirements to be congruent with current educational environments.

Objective 2.2: Develop a plan to conduct a complete review of all laws and regulations relating to enforcement. Identify those laws/regulations that are no longer useful and augment those that are needed for public protection. Identify the Board's regulatory authority for promulgating new regulations and also identify those issues that require legislation.

Objective 2.1 is to be completed in conjunction with Objective 2.2. These two objectives are

going to be delayed due the fact the Board is unable to hire legal counsel or a retired annuitant to assist and review the current laws and regulations. A new timeline will be developed and presented in Spring 2013.

Objective 2.3: Conduct a review of the Vertical Enforcement/Prosecution (VEP) model to assure uniform implementation in all offices and identify any aspects of the model that are increasing cost without producing benefits.

These objectives will need to be completed for the Sunset Review hearing in Spring 2013, so therefore, the due date should be changed to Spring 2013 as well.

Objective 2.7: Identify opportunities to better educate judges/hearing officers.

The Board and Office of Administrative Hearings performed training for Administrative Law Judges on June 22, 2012. An update was provided at the July 2012 Enforcement Committee Meeting.

As for the task to examine disciplinary decisions to determine if they meet the Board's mission to protect the public, due to staffing vacancies and Sunset Review this task has been deferred; however, it will begin during Spring 2013.

Objective 2.10: Examine the decline of the number of reports received pursuant to Business and Professions Code section 805 (reporting peer review actions).

A preliminary review has begun on this issue. Based upon this information, this item is being suggested for discussion by the Executive Committee as a possible item for the Sunset Report. On this item and several of the other tasks in this objective, due to Sunset Review, they will not be completed until the Summer of 2013.

Objective 3.9: Conduct outreach to ethnic and other language publications and groups.

A list of media opportunities is being compiled and is expected to be completed in the Winter 2013. It was reported that recently the Executive Director provided a presentation to the National Hispanic Medical Association. Mr. Einer continued that at the January 2013 Board meeting, a plan to address other needs and expand the Board's communication efforts will be presented.

Objective 4.4: Improve educational outreach to hospitals, health systems, and similar organizations about the Board and its programs. Educate the health care profession not only about the Medical Board, but all of the health boards in the Department of Consumer Affairs. Re-establish a speakers' bureau or some other outreach for this purpose.

Due to the Sunset Review this will not be completed until the Spring of 2013.

Mr. Einer summarized that the other objectives are on target for completion, or have been completed as indicated in the status column. One point brought out was that the Board having to eliminate student assistants and the non-mission critical retired annuitants, could have a negative impact on several of the objectives. Many of the objectives were planned with having the retired annuitants perform the research for the objective tasks. The issues will continue to be monitored and the Committee will be informed of the impact at future meetings.

Public comment was received for this agenda item.

Dr. Phillips communicated concerns about conflict of interest issues and members having the ability to vote on the Strategic Plan.

Agenda Item 10 Sunset Review Report Discussion and Guidance

Ms. Kirchmeyer introduced Research Program Specialist, Letitia Robinson. The Sunset Report has a section entitled "New Issues." This section is to be used to inform the Senate Business and Professions Committee of issues and solutions identified by the Board.

In the report, it is necessary to provide a discussion of the outstanding issues, and the Board's recommendation for action that could be taken. Board staff has defined several issues that would need guidance from the Committee in order to pursue the write-up for the Sunset Report.

The first item addressed was the mandatory email address for physicians. It is believed that in an effort to save money and streamline processes, it should be required that all physicians at the time of initial licensure or renewal, provide the Board with an email address. Currently, the physicians provide a mailing address and notify the Board if it changes. It was suggested that perhaps a write-up should be prepared regarding doing this same process for email.

The next item discussed was the postgraduate training posting on the Board's Web site. Section 803.1 states the Board shall disclose a physician's approved postgraduate training. Then Section 2027 states the Board's Web site should contain anything in Section 803.1. The Board currently posts the number of years completed in postgraduate, but the name of the training is not easily obtained, and may not even be available at the time of licensure; as most individuals are in postgraduate at the time of application, and may go into other postgraduate training. Staff is not sure of the consumer protection of this information, and suggested that it be included in a write-up for the Sunset Review.

To clarify the exemption from the corporate bar for Postgraduate (PG) training in hospitals is another item that staff believes should be placed in the sunset review report.

One other issue is to promulgate regulations regarding physician availability. This actually came out of the Physician Responsibility in Supervision Committee and staff would like to expand what SB 100 had into other practices.

Ms. Robinson turned the attention to the issues related to licensing.

The first item she discussed was the fast track program – medical education and postgraduate training. There is currently a nationwide physician shortage and nearly half of the shortage is in primary care. To help address this problem, lessen the time and fiscal burden on students, there is a movement toward an accelerated three year medical education curriculum.

It is unknown at this time if whether the number of weeks of clinic training in each core subject, and the number of clinic weeks required for graduation will differ from current law. Staff is seeking guidance to prepare an analysis on the issue that may require legislative changes to benefit from these new programs.

The next issue mentioned was the United States Medical Licensing Examination (USMLE).

This is a three-step examination for medical licensure in the United States, and is sponsored by the Federation of State Medical Boards and the National Board of Medical Examiners (NBME). The exam has three steps, and the third step is being changed. This part of the exam focuses on the knowledge and understanding of the biomedical and clinical science essential for unsupervised general practice of medicine. The new step three will administer two separate exams, each one day in length. Staff is seeking to prepare an analysis to discuss laws and regulations that may need to be amended to conform to these changes.

Physician re-entry is another issue. Current law allows a physician to renew a license within five years of expiration. If not renewed within that five years, the license is canceled. Currently there is no requirement for a physician to demonstrate clinical competency when out of practice for a significant period of time, during and up to those five years of non-renewal. However, disciplinary guidelines on the other hand require clinical competency examination after 18 months of no practice. Staff is seeking to look into this issue further with regard to seeking consistency on these timeframes.

The next licensing issue discussed was clarifying Medical Assistant (MA) scope. Medical assistants are unlicensed individuals who perform non-invasive routine technical support services, under the supervision of licensed physicians in a medical office or clinic. Medical assistants may obtain certified status through private agencies approved by the Board. Although certification status is not a State requirement, certain medical malpractice insurance carriers may require their insured to only employ certified medical assistants.

Ms. Robinson informed the members that the Board continues to receive a high number of inquiries regarding what technical supportive services a medical assistant may or may not legally perform. Staff is looking into the issue of clarifying services that may be performed by a medical assistant.

Ms. Robinson then discussed the issue of board certification. Unless physicians are certified by a specialty board as defined by law, they are prohibited from using the term "Board Certified," in their advertisement. The law allows the Board to determine if a specialty board has equivalent requirements to those required by the American Board of Medical Specialties. However, the Board does not have expertise on staff to perform this function; staff is seeking to look into the viability of other options that may provide equivalent consumer protection.

The next issue related to SB 100 and the hospital based outpatient surgery center. The law currently requires outpatient surgery setting accreditation agencies to send inspection reports of their accredited outpatient surgery settings to the Board. The inspection reports are sent over upon initial accreditation, on re-accreditation, and when reporting findings in response to a complaint about the surgery setting. These reports are to be kept on file by the Board, and the final reports are public documents. Some hospital based outpatient surgery centers may be inspected in conjunction with the hospital's accreditation, and therefore, may not have a separate inspection report for the Board for the outpatient surgery center. The Board is seeking to re-examine the reporting requirements for hospital based outpatient surgery centers.

The next issue centered around midwife supervision. The law requires physicians to supervise midwives. However, midwives cannot obtain physician supervision, because most medical malpractice insurance carriers will not insure physicians who supervise midwives. The Board is

seeking to examine legislative options for dealing with the midwifery supervision issue.

Ms. Robinson continued that there is also an issue with several of the categories listed in the statute for the midwives annual report that need to be clarified. Several of the midwives reported that they may have submitted erroneous information because of their misinterpretation of some of the questions, or information that they are being asked to provide in their reports. The reports completed by the midwives are submitted to an outside agency, which in turn provides that information to the Board, with aggregate data for the Board to include in the annual report. Board staff is seeking to examine other options for reporting and collecting statistical information for this annual report.

The next issue covered pertaining to midwives, is the confusion by certain laboratories, as to whether licensed midwives are independently eligible to open lab accounts. Midwives, as licensed healing art practitioners, are independently eligible to open laboratory accounts for medical diagnostic testing, within their scope of practice. As the clarifying authority, staff is seeking to examine, laboratory tests and limited dispensing of medications within midwives scope of practice.

The final issue discussed was the Registered Dispensing Optician (RDO) program. The RDO program is comprised of the registered dispensing optician business, spectacle lens and contact lens dispensers that are employed by those businesses, and non-resident contact lens sellers. The Board has regulated this profession since 1939. The questions that now need to be addressed is if this profession still needs to be regulated? And is the Board the appropriate agency to regulate the program? The State Board of Optometry is considering regulation of the RDO program. Board staff is seeking to prepare an analysis on whether the Board is the appropriate regulatory body for the RDO program.

Ms. Kirchmeyer then focused on enforcement items. The members were reminded of the significant decline in the number of 805 reports received by not just the Board, but by the National Practitioners Data Bank (NPDB), and this is occurring across all the states. This may be due to the fact that hospitals are finding problems earlier on, and sending physicians to training prior to requiring an 805 report. This may also be due to the fact hospitals are just not reporting. Because the Board does not have jurisdiction over the hospitals, it has no way of knowing if the lack of reporting is justified. Only the California Department of Public Health (CDPH) has the authority to review hospital records. It should be discussed if Board staff should prepare a written report on a legislative option whereby CDPH would have to provide any information it finds during their inspection on reportable peer review to the Board.

The report continued with information that Section 2225.5 of the Business and Professions Code is inconsistent in the time allowed to provide medical records. For physicians it allows 15 days, and for hospitals it allows 30 days. Staff would like to look at making the law consistent on these two items and that they both be 15 days, especially for hospitals that have electronic health records.

Currently a condition of probation requires a physician provide a copy of a decision and accusation to the Chief of Staff at any hospital, where he or she has privileges, a copy to any facility where he or she practices medicine, and a copy to the CEO of all insurance carriers that provides malpractice insurance coverage. There is no requirement to notify the patients. Some

Boards actually require the posting of a notice stating the licensee is suspended or on probation. If the Board were to require this posting or something of this nature, the Board would have to have statutory authority for this requirement.

Ms. Kirchmeyer continued with discussing the CURES computer reporting system that is outdated and does not provide real-time access to prescribers and dispensers. A system needs to be designed where a prescriber can have immediate access to a patient's prescription history. More funding is needed to provide this type of computer system. Additionally, research needs to be done to determine if this computer system should be administered by the Department of Justice where it is currently housed, or with another entity. This is another item that staff would like to write up for the Sunset Review.

The next area reviewed was the ten year posting for physician public record actions. Business and Professions Code section 2027 states that the Board can only post public documents on physicians on the Board's Web site for ten years from the date of the action. Although the records are public indefinitely, the Board cannot post them on a physician's profile. If the public did not know to call the Board, they may not know that a physician was actually on probation in the past. Staff would like to know if this is the best for providing consumer protection and would like to address this in the Sunset Review report.

Ms. Kirchmeyer then addressed the Medical Malpractice Reports (801s) and the exemption from upfront review. All complaints alleging quality of care must be reviewed by a medical expert with pertinent expertise prior to referral of the case to the field for investigation, unless the complaint is an 805 report or a complaint against a physician on probation, or subject to a pending investigation or accusation. 801 complaints often times need to have records subpoenaed to obtain certified medical records. The case then has to be transferred to the field to obtain the medical records, or obtain medical release from the patient. Once these items are received, the case then has to be returned to the Central Complaint Unit to provide the upfront expert review. This can sometimes take three to four months, and there is a huge time delay on the complaint processing time. These cases have had numerous reviews through the course of the litigation process. Staff would like to exempt these from the upfront review in Business and Professions Code section 2220.08.

The final item discussed was expert testimony. Pursuant to law, no expert testimony may be permitted by either party in an administrative matter, unless certain information is exchanged in writing. Part of this information is a brief narrative statement of the general substance of the testimony. The Board also has a precedential decision regarding this matter. At an Enforcement Committee this matter was discussed, and there was a thought that more information than just a brief narrative would be helpful. The Board is looking to expand that requirement in law.

Dr. Levine asked the committee members for any additional comments or questions.

Dr. Salomonson inquired about the ability of perhaps expanding the search capability on looking up physicians on the Board's Web site.

Dr. Low commented about the email issue. He does support this, but he believes that everyone should have the option of not having an email address.

Dr. Low continued that in terms of the postgraduate training and posting it to the Web site, this would require a tremendous amount staff time to do that. He also voiced concern with how this information would be validated to be sure that they have completed that training, and if they actually possess that certification.

Dr. Low mentioned that regarding the 805 reporting, he had asked at a previous Board meeting what power the Board has over hospitals that do not report 805s. Apparently they can be fined up to \$100,000. It is important that hospitals are made aware that they are in fact at risk if they do not report.

Ms. Yaroslavsky wished to make an additional comment in tandem with Dr. Low's, about the 805 reporting. She suggested that a joint letter from the Board and the CDPH be sent to hospitals in order to proactively get that information out.

Ms. Yaroslavsky addressed the matter of outpatient surgery centers. These facilities currently post notices of doctors licensed by the Board. She suggested a review of the opportunities or perhaps a posted notice of who in fact does oversee the surgery centers, what the accreditation agency's name is, and a phone number.

Ms. Yaroslavsky continued with discussing the CURES issue. She inquired if staff is looking into the possibility of sharing the cost of the program with the Board of Pharmacy.

Ms. Kirchmeyer clarified that staff is looking at this and the proposed funding of CURES would pertain to all prescribers and dispensers.

Dr. Low commented on physician re-entry and the issue about license cancellation after five years and the 18 months requirement for clinical competency examination. He discussed that those things are not exclusive. Someone could have their license expire because they have moved to another state, but that does not mean that they have not practiced.

Ms. Kirchmeyer responded that a physician can stop practicing whether they are in state or out of state. It is possible for a physician that has not practiced for four years, to renew their license without having to show anything that they have continued their competency.

Dr. Salomonson suggested that with the postgraduate training that is posted on the Website, it is a helpful tool for consumer protection. It would be to the benefit of the licensee to have this information recorded and a line could be added to the renewal form that allows this self-reporting.

Public comment was received for this agenda item.

Frank Cuny shared concerns with the five year renewal process and what new physicians are being taught. He also provided an additional concern about the midwifery program and the fact that in order for a patient to receive Medi-Cal, it must be signed off by a physician. As a result, in some rural areas, midwives would not be able practice and be paid for their services.

Dr. Phillips provided comment that giving medical students three years for medical school is absurd.

Agenda Item 11

Adjournment

Dr. Low made a motion to adjourn; s/Yaroslavsky; motion carried. The meeting was adjourned at 10:48 a.m.

DRAFT