



# MEDICAL BOARD OF CALIFORNIA

## QUARTERLY BOARD MEETING



Doubletree by Hilton Hotel Torrance – South Bay  
Salon A & B  
21333 Hawthorne Blvd.  
Torrance, CA 90503

May 3-4, 2012

### MINUTES

*Due to timing for invited guests to provide their presentations, the agenda items below are listed in the order they were presented.*

#### Agenda Item 1 Call to Order/ Roll Call

Ms. Yaroslavsky called the meeting of the Medical Board of California (Board) to order on May 3, 2012 at 3:50 p.m. A quorum was present and notice had been sent to interested parties.

#### Members Present:

Barbara Yaroslavsky, President  
Janet Salomonson, M.D., Vice President  
Gerrie Schipske, R.N.P., J.D., Secretary  
Michael Bishop, M.D.  
Jorge Carreon, M.D.  
Hedy Chang  
Silvia Diego, M.D.  
Shelton Duruisseau, Ph.D.  
Dev GnanaDev, M.D.  
Reginald Low, M.D.

#### Members Absent:

Sharon Levine, M.D.

#### Staff Present:

Maksim Degtyar, Investigator  
Dianne Dobbs, Department of Consumer Affairs, Legal Counsel  
Tim Einer, Administrative Assistant  
Kurt Heppler, Staff Counsel  
Teri Hunley, Business Services Manager  
Kimberly Kirchmeyer, Deputy Director  
Natalie Lowe, Licensing Manager  
Armando Melendez, Business Services Analyst  
Regina Rao, Business Services Analyst  
Anthony Salgado, Licensing Manager  
Jaime Sandoval, Investigator

Kevin Schunke, Outreach Manager  
Anita Scuri, Department of Consumer Affairs, Supervising Legal Counsel  
Jennifer Simoes, Chief of Legislation  
Linda Whitney, Executive Director  
Dan Wood, Public Information Officer

**Members of the Audience:**

Sharon Allison, Kaiser LAMC  
Teresa Anderson, California Academy of Physician Assistants  
Hilma Balaian, Kaiser Permanente  
Rebecca Bramble, AZCOM Midwestern  
Humayun Chaudhry, D.O., Federation of State Medical Boards  
Genevieve Clavreul  
Yvonne Choong, California Medical Association (CMA)  
Zennie Coughlin, Kaiser Permanente  
Conrad Del Rosario, San Francisco District Attorney's Office  
Karen Ehrlich, L.M., Midwifery Advisory Council  
Julie D'Angelo Fellmeth, Center for Public Interest Law (CPIL)  
Jack French, Consumers Union CA Safe Patient Network  
Joseph P. Furman, Furman Healthcare Law  
Stan Furmanski, M.D.  
Michael J. Grace, Doc Defender  
Atoosa Hoisseni, AZCOM Midwestern  
Marie Lord, AZCOM Midwestern  
Ryan McAtee, AZCOM Midwestern  
Michele Monserratt-Ramos, Consumers Union CA Safe Patient Network  
Beshoy Nashed, AZCOM Midwestern  
Carlos Ramirez, Senior Assistant AG, Office of the Attorney General  
Loren Reed, Department of Consumer Affairs, Public Affairs Office  
Robert Sachs, P.A., Chair, Physician Assistant Committee

**Agenda Item 2 Introduction of New DCA Attorney**

Ms. Yaroslavsky welcomed and introduced Dianne Dobbs. Ms. Dobbs is the senior staff council at the Department of Consumer Affairs (DCA). She joined the DCA in June 2007. Since that time she has served as counsel for the Court Reporters' Board, the Respiratory Care Board, the Bureau of Automotive Repair, the Bureau for Private Postsecondary Education, the Inspection and Maintenance Review Committee, the Naturopathic Medicine Committee, and the Hearing Aid Dispensing Committee, and she is currently an instructor for the Department's Enforcement Academy.

Prior to coming to the Department, Dianne worked as a solo practice trial attorney in the areas of business, employment, family probate, and juvenile law. She earned her law degree from Golden Gate University in San Francisco and her MBA and bachelor's degrees in business management from Holy Names University in Oakland.

Ms. Dobbs was introduced to the Board because she will be replacing Ms. Scuri, who is retiring at the end of June.

A resolution was presented to Anita Scuri on her upcoming retirement on June 30, 2012. Ms. Yaroslavsky commended Ms. Scuri on more than 18 years of outstanding and meritorious service to the Board.

**Agenda Item 3      Public Comment on Items not on the Agenda**

Dr. Stan Furmanski stated that there could be a problem encountered with regard to sex bias with the Microcog exam. There is a statistical difference between the scores of male and female doctors where the women are alarmingly scoring lower than men. Concern was also voiced about the making of lucrative deals with third party vendors to administer the Microcog exam. The Board has never approved the use of Microcog exams and yet several people in the Enforcement Program are presently requiring doctors to take the Microcog exam.

Michele Monserratt-Ramos from Consumers Union CA Safe Patient Network spoke that her group had met with Ms. Whitney and Ms. Kirchmeyer earlier in the year. She urged the Board to request that DCA webcast all of the Board's public meetings and that the Board post webcasts of the meetings on its website as soon as possible after the meetings are adjourned. It was suggested that the Board should provide a link, available at the time of meetings, so the public can easily access live webcasts and provide public comment. It was also suggested that the Board make clear and prominent on its website the opportunities and rules for public participation in the Board meetings and how written public testimony submitted to the Board is handled. Another request was for the Board to begin teleconferencing of its meetings to allow members of the public to participate in the meeting remotely.

**Agenda Item 4      Approval of Minutes from the February 2-3, 2012 Meeting**  
*Dr. Diego made a motion to approve the minutes from the February 2-3, 2012 meeting; s/Chang; motion carried, with Ms. Schipske abstaining.*

**Agenda Item 5      Update of Pharmacy Board Actions**

Virginia Herold, Executive Officer of the CA State Board of Pharmacy, provided a presentation on counterfeit drugs. Ms. Herold urged the Board members that if they believe they have come in contact with a counterfeit drug or a fraudulent transaction involving that drug, that they notify the CA State Board of Pharmacy, as this is part of the CA Business and Professions Code.

Dr. GnanaDev asked how the Board of Pharmacy is working with the FDA and the AG's office on the growing shortage of routine drugs available in hospitals to verify that an entrepreneur will not take advantage of this shortage of drugs and readily come up with more counterfeit drugs.

Ms. Herold explained that regrettably, some entrepreneurs have already done this and are currently under investigation. Ms. Herold advised that prescription medications should only be purchased from a licensed wholesaler. This truly is a FDA issue but, it was advised that if something seems suspicious to report that to the Board of Pharmacy.

Ms. Yaroslavsky inquired about what is being done as far as the coding on pills for identification purposes.

Ms. Herold responded that this is a very new technology where the manufacturer imprints a unique serialized number on a pill so it can be tracked. This is something that could be made available in the future for biotech and advanced products and very expensive pills, because those are the drugs that are being counterfeited.

Ms. Yaroslavsky inquired if the Board of Pharmacy provides medication alerts on their website.

Ms. Herold informed the Board that they do provide alerts when there is a problem with a particular drug and provided an example of a current recall of a sterile injectable product.

Ms. Yaroslavsky asked about pharmacies receiving medications from abroad.

Ms. Herold strongly urged caution to either a practitioner or a patient if they buy prescriptions off the internet or from outside the United States.

Ms. Yaroslavsky requested to know if this was legal.

Ms. Herold explained that it is not legal and periodically the FDA will go into the mass mail distribution centers where these products come from and prevent them from doing this.

#### **Agenda Item 6      Update on Pain Management Summit**

Ms. Herold continued that she and Ms. Whitney remain steadfast in working together to conduct a joint pain management summit. The tentative dates are November 28-29, 2012 and will most likely take place in the San Francisco Bay Area. The intention of the pain management summit is to discuss appropriate pain management. It will focus on the use of narcotics and other drugs, discuss the CURES program, and deal with communication for ideal pain therapy so that pharmacists understand what prescribers are dispensing and that prescribers understand when pharmacists may call to verify why a particular set of drugs or regiment is prescribed.

Ms. Whitney added that the Board staff has a working group that will provide input. Once ideas and materials are put together, Board staff will then reach out to interested parties. The Board is currently looking at CME for both pharmacists and physicians. The desire is for this to be a working summit for both parties with needed information provided to those individuals.

Dr. Low asked who the target audience would be for the pain management summit.

Ms. Whitney stated that the target audience will be physicians as well as pharmacists. Part of it will be targeting the pain physicians but it will also be a chance for all physicians to develop a better rapport with pharmacists and help with ongoing issues with interconnectivity.

Dr. Carreon made a suggestion to create a comprehensive multidisciplinary meeting. The pain management summit is fine but, there should be more. The problem is much deeper and there should be a multidisciplinary approach to find the root cause analysis that is killing young people in our communities.

Public comment was provided for this agenda item.

Conrad Del Rosario, supervising prosecutor for the San Francisco District Attorney's Office, expressed his support for the pain management summit. The pain management summit will be a great opportunity to bring together the medical community and the law enforcement community. This would afford a platform for his agency to be a resource for the pain management summit and he welcomed this opportunity.

Genevieve Clavreul voiced concern about the quality of generic medications that are being received. These generic medications involve huge variations to the actual brand prescriptions. There was also a suggestion that the pain management summit should include nurses. Many nurses also prescribe and they have a group that specializes in pain management and those members should be involved in this very important summit.

Joseph P. Furman brought to the Board's attention the organization that he is a part of that provides CME to physicians. It is called Pain Week, Pain.edu. Pain Week is conducted in Las Vegas every year and this year, the five day conference will be held in September, the Tuesday after Labor Day. The convention or CME meeting is for frontline practitioners in pain management, as well as any other physicians. The Federation of State Medical Boards executive directors and assistant US attorneys all are participating. It is precisely as Dr. Carreon noted, a multidisciplinary approach that includes physicians that are in family practice, physicians that are anesthesiologists who are pain management specialists, pharmacists, people in the community who are suffering from chronic pain, and law enforcement. This organization could be an important resource for the Board.

#### **Agenda Item 7      Physician Assistant Committee Update**

Dr. Low reported that the most recent Physician Assistant Committee (PAC) was held in February. Two of the members were not reappointed and there are now three vacant positions.

In 2009, a new law became effective that allows physician assistants to obtain a fluoroscopy permit. The Department of Public Health has determined that more regulations will have to be adopted before they can implement these provisions and they are working on that now.

It was reported that the Enforcement Program goals have been met for complaint intake and processing, investigation, disciplinary action, probation intake, and probation violation processing.

The half time licensing position that was vacant for one year has been filled and the PAC is completely current on applications with no backlog.

The PAC has discussed the regulatory proposal to implement legislation governing sponsored healthcare events. This would allow physician assistants licensed in other states to offer their services at healthcare events, similar to the regulations the Board is promulgating. This will remain in the discussion stage for now and a review of the draft language will occur at their May meeting.

There was a regulatory hearing held on the requirements for preceptors and training requirements. A 15-day notice is being sent out and then the PAC will discuss and possibly approve this at its next meeting.

There was a sunset hearing for the PAC held on March 19, 2012. The PAC was represented by the Chairman, Bob Sachs and Executive Officer, Elberta Portman. Some of the recommendations included:

- All of the reporting requirements under the section 800 series of the Business and Professions Code should apply to physician assistants.
- The name of the PAC should be changed to the Physician Assistant Board or the PA Board, as it is the only remaining committee in the Department of Consumer Affairs and

this would make it consistent with all the other Boards.

- Replacing the PAC's physician member with a PA member. By law, the physician member of the PAC must be a member of the Medical Board. During the hearing, two members of the PAC respectfully requested that the Medical Doctor member be retained to ensure that there is a good line of communication between the Medical Board and the PAC.

The Sunset Committee bill extends the PAC to January 1, 2017.

Ms. Yaroslavsky asked if the three vacancies on the PAC are public members and who appoints them.

Dr. Low and Mr. Sachs replied that currently the three vacancies are for physician assistants and they are appointed by the Governor.

**Agenda Item 8      Consideration of Regulatory Proposal to Revise Physician Assistant Scope of Practice (Section 1399.541 – Medical Services Performable)**

Mr. Sachs and Mr. Heppler advised the Board that most regulations for Physician Assistants (PA) can be adopted by the PAC. However, any regulations defining the scope of practice of a PA have to be adopted by the Board with the recommendation coming from the PAC.

The PAC is requesting that the Board amend a current regulation that addresses the medical services that can be performed by a PA and the personal presence of a physician in supervising the PA. The proposal would amend California Code 1399.541 and would update and clarify PA requirements. The new regulation would include that a PA would be able to perform surgical procedures without the supervising physician being physically present in the OR suite as long as a licensed healthcare practitioner administering the anesthesia is physically present in the operating room.

Following a detailed discussion by the Board, a consensus was not reached. Ms. Yaroslavsky recommended that this be sent back to the PAC. Mr. Sachs was advised to work with the PAC staff and the Board staff to bring back something from the PAC that addresses the Board's concerns regarding the wording that this would permit the PA to perform surgical procedures. The current language is too broad and it should address appropriate portions of surgical procedures.

**Agenda Item 9      Consideration of Revised Regulatory Proposal Regarding Sponsored Healthcare Events**

Ms. Scuri explained to the Board members that previously they approved these sponsored healthcare events regulations which will implement the provisions of section 901 of the Business and Professions Code, relating to sponsored healthcare events, also known as healthcare fairs.

The proposed regulations were disapproved by the Office of Administrative Law (OAL) for reasons relating to the clarity of the registration forms. Board staff has met with OAL and DCA to make the appropriate revisions to the forms and supporting documents. The Board has circulated the revised text for the required 15 days to receive comments.

*Dr. Low made a motion to approve the revisions and to adopt the regulations and to also authorize the Executive Director to complete the rule making file to make any necessary technical changes that may be requested by the control agencies. Furthermore, the motion would include that the regulation would be effective immediately upon filing with the Secretary of State; s/GnanaDev; motion carried.*

#### **Agenda Item 11      Physician Responsibility in Supervision Committee Update**

Ms. Schipske reported that the Physician Responsibility in Supervision Committee met in Long Beach on April 11, 2012. The purpose of the meeting was to discuss the requirement of SB 100 that was signed into law last year. SB 100 requires the Board to adopt regulations regarding the appropriate level of physician availability needed within clinics or other settings using laser or intense pulse light (IPL) devices for elective cosmetic procedures. The purpose of the discussion was to obtain professional and stakeholder input to assist the Board in drafting regulatory language. The Committee did not have a quorum for purposes of submitting those today to the Board but it is anticipated that they can be submitted at the next Board meeting.

After a robust discussion, there was a general consensus that a physician does not have to be physically present at all times when a laser or IPL device is being used. There was also a general consensus that the telephone is an appropriate mode for being immediately available in many circumstances. Members of the Committee and stakeholders agreed that it would not be appropriate to specifically list procedures that require different levels of availability in the regulatory language and that geographic or chronological limitations should not be included in the regulatory language related to the physician's availability.

Members and stakeholders voiced significant concerns with applying a particular availability standard that would only be applicable where lasers or IPLs are used for elective cosmetic procedure. It was voiced that availability standards should be implemented across the board, not only for elective cosmetic procedures. Another important factor that was discussed was the level of training of the practitioner. Many in the meeting felt that the availability issue is closely tied with the level of training of the practitioner using the laser or IPL and perhaps standards should be developed for the training required to use these devices.

There was discussion around existing law related to what type of procedures can be performed by mid-level practitioners and the requirement in existing law regarding an appropriate exam. There was also discussion around a public education campaign to inform the public of the laws related to outpatient settings and possibly working with the Board of Registered Nursing on educating the public on current law related to nurses. There would also be a reminder to the public, physicians, and mid-level practitioners on the ban on the corporate practice of medicine. The outcome of these future discussions could result in the development of future regulations that could be presented to the Board.

The next step for this Committee is to meet again in June or early July to hold a stakeholder meeting in Sacramento and obtain more input and also have staff from the Senate B&P Committee attend. Future agenda items were discussed, one related to possibly defining "medical spa", and another would be to have a presentation on the fictitious name permit requirements and process.

Dr. Bishop discussed that as a participant in the Committee meeting he did not feel that a consensus had been achieved. He commented that the Committee should come up with some

recommendations based on common sense and let the community standard of care take the lead.

Ms. Yaroslavsky made the suggestion that this discussion should be continued at their next Committee meeting.

Dr. Low asked legal counsel if the Board still deals with the community standard of care versus the national standard of care? There is a tremendous variability in many communities such as a big city and rural areas and those community standards can be a lot different and there is a lot of danger in using community standard as the reference.

Ms. Dobbs answered that it is generally the community standard of care that is used.

Public comment was received for this agenda item.

Genevieve Clavreul commented that during the Committee update, it was mentioned to work with the Board of Registered Nursing. Ms. Clavreul wanted the Board to know that as of December, the Board of Registered Nursing does not exist and Governor Brown has not appointed anybody since then. It was encouraged that the Board put forth an effort to make sure that there are new members that are part of the Board of Registered Nursing for participation in upcoming Committee meetings.

#### **Agenda Item 12      Enforcement Committee Update**

Dr. Low reported the Enforcement Committee had met earlier that afternoon. Mr. Kurt Heppler provided an informative presentation on Enforcement Core Concepts where he discussed concepts that included due process, consumer protection, statutes and regulations. Mr. Heppler also reviewed the Board's function, to license qualified applicants, carry out disciplinary action and promulgate regulations. What the Board does not do is to determine civil liability or award monetary damages.

Ms. Laura Sweet provided the Committee with an update on the expert reviewer training project that is in its final stages. The very first expert reviewer training program is going to be held on May 19, 2012 and there are already over 110 experts that have committed to attending the program. Ms. Sweet also provided a demonstration of the power point presentation that will be utilized during this interactive meeting. The entire process of this program is to standardize expert reviews and hopefully decrease variability and improve quality.

Dr. Low provided an update on a training program for the Administrative Law Judges. Judge Jonathan Lew met with Dr. Low some time ago to go over an agenda that should be used so that there is more standardization amongst the judges. This training program is scheduled for June 22, 2012.

On April 2, 2012, the Board's report to the Legislature on the vertical enforcement and prosecution model was emailed and hand delivered to the legislature. It was distributed to Board members, staff, and posted on the website as well. This report contained actions to implement recommendations made to strengthen the vertical enforcement and prosecution model. The Board in conjunction with the Health Quality Enforcement Section (HQES) of the Department of Justice (DOJ) have implemented some of the more substantial recommendations. These implementations include updating the joint manual, holding a statewide training for Board investigators and HQES attorneys, and as reported earlier an eight hour training module for



medical expert reviewers that is to be conducted on May 19, 2012. Dr. Low did remark that the Board and DOJ had limited data during the time that the report was completed. The legislature approved the Board to provide only a narrative report and then a full report with the comprehensive data during the Board's sunset review process.

#### **Agenda Item 13      Licensing Committee Update**

Dr. Salomonson reported that the Licensing Committee had met earlier that afternoon. At the meeting, Mr. Salgado provided an update on staffing in the licensing program. Positions are being filled, but there are a lot of people in training; they continue to do a remarkable job in a still stressed situation. Mr. Salgado also provided updates on the business process reengineering project with the primary recommendations including revision of the application and streamlining the process, the Board's website relative to the applicants, the Post Graduate Training Authorization Letter (PTAL) process, and revision of the policy and procedure manual.

Ms. Lowe provided an update on implementation of SB 100, regarding the outpatient surgery center requirements and the component that is under the purview of licensing. The Board is implementing a database that is going to appear on its website with information on the status of outpatient centers with respect to the four accreditation agencies. At this time staff is still trying to gather the data in a consistent fashion. However, it was stated that consumers can call the Board and inquire about a particular surgery center and find out about the accreditation status.

Mr. Salgado provided an update on the implementation of the Polysomnography Program (Polysom) and it is now up and running.

Also discussed was an update on the compliance of Section 2168, relating to the special faculty permit holders.

#### **Agenda Item 16      Health Professions Education Foundation Update**

Dr. Duruisseau advised the Board that at the last Foundation meeting members discussed the issue of access to care and the affordable care act of 2014 and when implemented, what might be the impact. Many believe that the impact will be enormous and at the same time there was a brief discussion of the Health Professions Education Foundation (HPEF) loan program. It was requested that staff provide statistics on how the recipients are engaged in increasing the accessibility of healthcare and promoting the longevity of primary care physicians in medically underserved areas of California. The statistics requested were to examine the percentage of these physicians staying in these underserved areas after the loan payment program expires. Information from the HPEF was distributed to the members to provide a background of participants, the amount of money that has been awarded, comments about where these physicians are still located and practicing, and useful comments about the population that they are currently serving.

Dr. Duruisseau also focused on the MBC Newsletter and the testimony from five individuals that are participating in the program and the comments that are reflected as a result of their work.

Mr. Schunke provided a summary of the HPEF Loan Repayment Program Awardees. Legislation implementing the loan payment program was enacted in 2002 and the first three award cycles administered by the Board were 2003-2005. These three years are the only information fully available to the Board before the program transitioned to the HPEF. During the three years during which Mr. Schunke administered the program, awards were granted to 69 recipients.

There is not accurate contact information for all the recipients or current work locations. However, it is believed that about 39% of the awardees, or 27, are still working at the same practice site where they were working when they received the award, and that 24 of them, 35%, are working at other practice sites that are believed to be eligible under the program. Combining those two statistics is 74%. Mr. Schunke concludes that 18 of the awardees or 26%, may have moved on to other sites, some may have been elevated to faculty members at various medical schools around the country, and some may have moved to hospital sites in California.

Before moving onto the next agenda item, Ms. Yaroslavsky requested that Mr. Zerunyan come forward. Mr. Zerunyan was presented with an award for appreciation for his past service on the Board. He was appointed to the Board in October 2006 by former Governor Schwarzenegger and served as Vice President of the Board during 2010 and 2011, and was on the Enforcement, Budget, Access to Care, and Physician Recognition Committees of the Board.

#### **Agenda Item 15      Federation of State Medical Boards Update**

Ms. Chang reported the Federation of State Medical Boards (FSMB) recently had its 100 year anniversary and annual conference.

Dr. Chaudhry from the FSMB was introduced and he presented the Board with a plaque. This award honors the Board as a valued member of the FSMB and for serving the public interest and protecting the health of California citizens.

Ms. Chang continued by thanking the participation and commitment by various Board members that are serving on different organizations and committees within the FSMB. Ms. Yaroslavsky has been appointed to the Special Committee on Ethics and Professionalism, as well as Dr. Duruisseau. Dr. Diego is serving on the Post-Licensure Assessment System Program Committee, Dr. Salomonson was appointed to the USMLE Step 3 Committee, and Ms. Chang continues her work on the FSMB Board, the Post-Licensure Assessment System Program Committee, and the FSMB Foundation.

Ms. Yaroslavsky adjourned the meeting at 6:00 p.m. and announced that the Board Meeting would reconvene on Friday, May 4, 2012 at 9:00 a.m.

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#### **Agenda Item 19      Call to Order/ Roll Call**

Ms. Yaroslavsky called the meeting of the Medical Board of California (Board) to order on May 4, 2012 at 9:25 a.m. A quorum was present and notice had been sent to interested parties.

#### **Members Present:**

Barbara Yaroslavsky, President  
Janet Salomonson, M.D., Vice President  
Gerrie Schipske, R.N.P., J.D., Secretary  
Michael Bishop, M.D.  
Jorge Carreon, M.D.  
Hedy Chang  
Silvia Diego, M.D.  
Shelton Duruisseau, Ph.D.  
Dev GnanaDev, M.D.

Reginald Low, M.D.

**Members Absent:**

Sharon Levine, M.D.

**Staff Present:**

Russell Chee, Supervising Investigator I  
Dianne Dobbs, Department of Consumer Affairs, Legal Counsel  
Tim Einer, Administrative Assistant  
Jon Genens, Investigator  
Kurt Heppler, Staff Counsel  
Teri Hunley, Business Services Manager  
Kimberly Kirchmeyer, Deputy Director  
Mercedes Lescaille, Investigator  
Natalie Lowe, Licensing Manager  
Armando Melendez, Business Services Staff  
Kathleen Nicholls, Supervising Investigator II  
Regina Rao, Business Services Staff  
Anthony Salgado, Licensing Manager  
Kevin Schunke, Outreach Manager  
Anita Scuri, Department of Consumer Affairs, Supervising Legal Counsel  
Jennifer Simoes, Chief of Legislation  
Mark Smith, Investigator  
Robert Wagner, Investigator  
Linda Whitney, Executive Director  
Dan Wood, Public Information Officer

**Members of the Audience:**

Sharon Allison, Kaiser LAMC  
Eric Alyea, AZCOM Midwestern  
Teresa Anderson, California Academy of Physician Assistants  
Hilma Balaian, Kaiser Permanente  
Michelle Anne Bholat, M.D., UCLA IMG  
Maxwell Braverman, AZCOM Midwestern  
Ashley Casano, AZCOM Midwestern  
Humayun Chaudhry, D.O., Federation of State Medical Boards  
Genevieve Clavreul  
Yvonne Choong, California Medical Association (CMA)  
James Conway, Pacific Assistance Group  
Zennie Coughlin, Kaiser Permanente  
Ann D'Amato, LA County Medical Association  
Julie D'Angelo Fellmeth, Center for Public Interest Law (CPIL)  
Rocky Delgadillo, LA County Medical Association  
Karen Ehrlich, L.M., Midwifery Advisory Council  
Reichel Everhart, Department of Consumer Affairs, Deputy Director for Board Relations  
Nathalie Foray, AZCOM Midwestern  
Jack French, Consumers Union CA Safe Patient Network  
Joseph P. Furman, Furman Healthcare Law  
Stan Furmanski, M.D.  
Bruce Gipe, M.D., Primary Critical Care Medical Group

Kimberly Grueneisen, AZCOM Midwestern  
Randall Hagar, CA Psychiatric Association  
Paniz Heidari, AZCOM Midwestern  
Bernard Karmatz  
Matthew McEwan, AZCOM Midwestern  
Michele Monserratt-Ramos, Consumers Union CA Safe Patient Network  
Dung Nguyen, AZCOM Midwestern  
John Nguyen, AZCOM Midwestern  
Carlos Ramirez, Senior Assistant AG, Office of the Attorney General  
Loren Reed, Department of Consumer Affairs, Public Affairs Office  
Carrie Sparrevohn, Midwifery Advisory Council

**Agenda Item 20      Public Comment on Items not on the Agenda**

Rocky Delgadillo, LA County Medical Association, welcomed the Board to Los Angeles County. The LA County Medical Association is interested in partnering with the Board and is always looking for new opportunities to work together in healthcare protection campaigning in the county. The LA County Medical Association is currently revamping their Southern California physicians magazine and that is another area for opportunity where the Board could provide content for that magazine. Their association has started a foundation and it is currently in the process of raising money to award scholarships for medical school for underprivileged children.

Dr. Salomonson commented that Mr. Delgadillo recently spoke at her community hospital. She was very impressed and a thought that she had was that if malpractice insurance were more affordable, physicians could stay in the workforce longer on a part-time basis.

Mr. Delgadillo thanked Dr. Salomonson for her comment and that is an issue that he could take with him. The association is currently getting better discounts on medical malpractice insurance coverage and perhaps there is also another way for them to help doctors too.

Dr. Stan Furmanski voiced concerns relating to CPEP and KSTAR. Several employees of the Board are making arrangements with third party vendors who are not qualified to do business in California, in Colorado or anywhere else. It is a misuse of the authority of the Board to have employees threatening doctors that they must go to Colorado to participate in a program that is not licensed here and not licensed in Colorado. Dr. Furmanski provided exhibits for the Board and Mr. Heppler's review.

Julie D'Angelo Fellmeth, Center for Public Interest Law (CPIL) wished Anita Scuri a healthy and happy retirement.

Genevieve Clavreul commented that in the past she had requested from the Board clarification on a prescribing medical order and in return she received a definition on what an apothecary is. Ms. Clavreul specifically wanted to know if it is legal in a specific formula for a physician to write orders for a drug using the apothecary system versus a matrix system. Ms. Yaroslavsky suggested that Ms. Clavreul speak to Deputy Director Kirchmeyer separately and apart from this meeting about this concern.

**Agenda Item 14      Executive Committee Update**

Ms. Yaroslavsky pointed out that Executive Committee did meet and they are moving forward on developing and modifying an assessment tool and the evaluation will be taking place at the July meeting.

**Agenda Item 21      Presentation on Use of Hospitalists**

Ms. Yaroslavsky introduced Dr. Bruce Gipe. Dr. Gipe is well known in Southern California and the world as one of the foremost authorities on what hospitalists mean to modern day healthcare. He is the founder and Medical Director of the Primary Care Group, a hospitalist company based in North Hollywood.

Dr. Gipe provided a presentation that covered three main topics he wished to share with the Board. First, the things that are happening in private practice that effect group practice of hospitalist medicine; second, a history of how the hospitalist group evolved; and finally, an update on certain state of the art hospitals in California and the United States.

Dr. Gipe's full slideshow presentation is available on the MBC website under agenda item 21.

Ms. Yaroslavsky and the Board thanked Dr. Gipe for his extremely informative report.

Public comment was provided for this agenda item.

Genevieve Clavreul provided comment that she felt the presentation was very one sided as she has done quite a bit of research on hospitalists. She strongly urged the Board to look at the whole picture as her research concluded that this is almost seen as a dead end career and it is very difficult for those hospitalists to get promoted or to find a satisfying position.

**Agenda Item 22      REGULATIONS – PUBLIC HEARING**

Ms. Yaroslavsky opened the public hearing on the proposed regulation to adopt Section 1355.45 in Article 1, Chapter 2, Division 13 in the California Code of Regulations as described in the notice published in the California Regulatory Register and sent by mail to those on the Board's mailing list. The proposed regulation will implement, interpret, and make specific the type of notice required to be submitted to the Board when a physician is no longer incarcerated. This regulation will also provide a definition to the public on the term "inactive" when posted to the Board's Internet site in connection to a physician who is incarcerated and unable to practice medicine. For the record, Ms Yaroslavsky stated the date was May 4, 2012; the hearing began at approximately 10:30 a.m.

One written comment was received and given to the Board members. The written comment did not accurately reflect what the Regulations are prescribed to do. No oral testimony was offered during the public hearing. Ms. Yaroslavsky closed the hearing.

*Dr. Duruisseau made a motion to adopt the regulation as it is written and direct the executive director to complete the rule making process; s/Chang; motion carried.*

**Agenda Item 23      Board Member Communications with Interested Parties**

No interested party communications were reported by members.

**Agenda Item 24 President's Report**

Ms Yaroslavsky noted that she participates in weekly phone conversations with staff and they always prove to be instructive and informative. She visited the MIND Institute in Sacramento. There has been one phone call with board presidents and the new director of DCA. Ms. Yaroslavsky has also had various phone calls with the Governor's appointment staff and continues to work with them in helping to move on appointments to the Board.

**Agenda Item 25 Executive Director's Report**

Ms. Whitney announced the Spring Newsletter was available. This edition has links to audio and video files and will continue to become more interactive. Feedback on the Newsletter can be submitted to Public Information Officer, Dan Wood.

Ms. Whitney reported that as she meets with executives from various boards, she has gained insight on similarities and differences with the common goal of consumer protection. She will continue to bring back to the Board or Committees various ideas and discussions in the evolving practice of medicine. One example was a discussion at the Board of Pharmacy regarding a video display of the notice to consumers. This will be a concept that will be forwarded to the Education Committee to review and to determine if the Board's regulations should be examined and possibly revised.

An ongoing review of possible improvements on the Board's website continues in order to provide information to consumers, applicants and licensees. The systematic review will take some time and input is welcome from consumer groups, physician groups, medical societies, hospitals, and any interested parties. Some of these parties will be invited to review material and provide feedback to get the best product for the Board's consumers and licensed physicians.

Ms. Whitney participated in two conference calls with the Federal Drug Administration regarding counterfeit drugs. Some of this information is on the Board's website and will also be included in the Newsletter.

The Administrators in Medicine (AIM), met on April 24, 2012. AIM is a meeting of the executive directors from all the state medical boards and osteopathic boards. Ms. Whitney has materials and will be providing a short summary and information to the members of what was learned in the future.

**A. Staffing and Administrative Update**

Ms. Whitney informed the Board that she testified at the Senate Budget Sub 4 Committee regarding the need for the Board's Office of Safe Medicine and the positions that go along with it. The Subcommittee approved the proposal to permanently establish the unit with six staff. Subsequently, the Assembly Subcommittee approved it too.

As Ms. Whitney informed the Board on April 23, 2012, the Department of Finance, pursuant to Budget Letter 12-03, swept or took 18.1 positions from the Board's total of 283.2 positions, as part of the salary savings elimination. Since the Board has 15.5 vacant positions from the Consumer Protection Enforcement Initiative (CPEI), this will not significantly impact existing positions. It will eliminate those positions that were targeted to help reduce complaint processing and investigation timelines.

Ms. Whitney participated in meetings with the DCA Chief Deputy Director and various executive officers to discuss issues related to travel and payment of travel claims. In addition, DCA will no longer allow the purchase of frames or plaques to provide to individuals as this is part of a recognition award and the state does not consider that appropriate.

The Board has received a request from the Donate Life California requesting that the Board send a letter of support to appropriate parties requesting that the California Attorney General issue a statement in support of the interpretation of law that first person consent is the law in California as stated in the Uniform Anatomical Gift Act and is binding after the donor's death. This statement would make it clear to consumers and health care providers that the gift of life after death is binding. Ms. Whitney further clarified that this is to ensure that physicians are not fearful or concerned that if they go ahead and remove organs pursuant to the donor's request that they would not come under scrutiny by this Board or other law enforcement offices. Ms. Whitney concluded that she would complete the letter on behalf of the Board.

Ms. Yaroslavsky stated that this information might be something to include in the Newsletter.

Ms. Kirchmeyer began by thanking the members for their support for the 2011 holiday party. As a token of appreciation, the staff presented the members with a group photo and collage from the party.

A new method of obtaining Board meeting materials has been implemented by utilizing the secure website SharePoint. This current meeting did result in some delays in the electronic transfer due to the size, but staff is looking into possibly posting the materials in different components rather than all together. All future materials for panel meetings and Board meetings will be sent to the SharePoint website. The members were urged to contact the staff if there are any problems with the delivery of materials.

At the last Board meeting it was reported that the Board had 51 vacancies including the CPEI positions. As of May 1, 2012, the Board has 42 vacancies including those positions from CPEI. Of the 42 vacancies, there are approximately 14 individuals awaiting either a background investigation or confirmation of eligibility at DCA so they can be hired. However, there will also be four future vacancies occurring due to staff transferring to other agencies. 42 vacancies equates to a 15% vacancy rate at the Board compare to 18% from the last meeting. If the CPEI positions are removed from those figures, there is actually a 9% vacancy rate. As mentioned by Ms. Whitney, the Department of Finance has indicated that the Board will have 18.1 positions swept, although the specifics of the elimination of these positions are not known at this time. The Board will need to remove 18.1 positions from the 42 vacancies. The Board will not be moving to fill those positions due to the need for elimination of the 18 positions. Ms. Kirchmeyer summarized by stating that there are basically 24 vacancies of which 14 individuals are in background, leaving 10 vacancies. Ms. Kirchmeyer and Ms. Whitney will be meeting to identify the specific positions that will be eliminated once more information is received from the Department of Finance. Positions are being filled as quickly as possible to ensure that the Board is able to perform its mission.

The Board has hired Cynthia Robinson and Anita Winslow in the Executive Office. Ms. Robinson and Ms. Winslow will be providing support services to the Executive staff and the Board members.

Dr. Diego expressed concern that with 18 positions going away and with 15 vacancies that would mean an additional three positions that would be up for elimination.

Ms. Kirchmeyer confirmed that was correct and more positions from other units within the Board will have to be pulled to meet the number of positions that have to be swept.

Ms. Yaroslavsky also voiced concern and wanted it reflected in the record that this sweep of positions is going to impact the Board's ability to do what is expected of them to do. The issue is the Board's budget is funded by licensing fees and is not part of the general fund budget.

Dr. Bishop added that he wanted the public to understand that the Board's budget is completely paid for by physicians' fees and to take funds away from the Board to use for other state projects essentially creates an excessive tax on physicians.

## **B. Budget Overview**

Ms. Kirchmeyer continued with an overview of the budget. The fund condition is the same as reported at the February 2012 meeting. The Governor's budget included the position authority for reestablishment of six positions in the Operation Safe Medicine Unit. However, the Board was not approved for the funding for these positions and therefore will have to absorb the cost for this unit within the existing budget. Additionally, the BreEZe project was also included in the Governor's budget for a one time augmentation of \$1.278 million in fiscal year 2012/2013. Both of these budget change proposals for the positions and augmentations have been approved by the Budget Subcommittees for both the Senate and the Assembly, these approvals will become effective on July 1, 2012.

Ms. Kirchmeyer and Ms. Whitney have discussed with the Board the possible need for two investigators for the Northern Operation Safe Medicine Unit, the data may not support a complete unit equal to the one established in Southern California. It is believed that a smaller Northern California unit can be supported and the Board will be requesting an augmentation for an additional two positions for this unit for the 2013/2014 budget.

The fund condition shows that if the Board spends as planned, it will be within its statutory mandate at the end of the fiscal year 2011/2012 and in the middle of the mandate in fiscal year 2012/2013. The mandate is between two to four months reserve. It is still not prudent to consider any reduction in fees at this time, as previously recommended by the Bureau of State Audits. The Board staff continues to review its fund condition and if the Board continues with expenditures as planned, it will be within the mandate by fiscal year 2012/2013.

Dr. GnanaDev inquired about the figures showing that the reserves would drop to \$1 million for 2015.

Ms. Kirchmeyer confirmed that he was correct. If the Board spends as planned, in 2013/2014 it will be at one month reserve. She did indicate that this does not take into consideration the \$15 million loaned to the general fund. As soon as the Board is at the point it will not be able to provide services, contact will be made to the Department of Finance to ask for return of the money from the general fund.

Ms. Yaroslavsky inquired about what is mandated in law to maintain a certain percentage or certain amount in reserve.



Ms. Kirchmeyer confirmed that in statute a two to four month reserve is required. It was mentioned that the current figures do not reflect the final budget for fiscal year 2011/2012 and there should be a more accurate picture at the next meeting.

Dr. GnanaDev requested clarification on the program expenditures jumping from \$47 million to \$54 million.

Ms. Whitney clarified that the \$47 million was actual spending and lower during the 2010/2011 fiscal year due to furloughs and the 5% cut on salaries and also the high number of vacancies due to the hiring freeze. These contributed to not expending to the full authorization.

Ms. Kirchmeyer added that the lower amount is also a result from the inability to travel and also inability to purchase items such as vehicles.

Dr. GnanaDev queried when the interest from the loan to the general fund would be repaid.

Ms. Kirchmeyer responded that when the Board requests the return of the money, the interest would be included.

Ms. Kirchmeyer focused attention to the Board's actual expenditures as of February 29, 2012. The Board continues to remain within the budget allotment and projections indicate that it will continue that way through the end of the fiscal year. The Board is continuing the purchase of the video conferencing equipment for three of the field offices as well as the headquarters office.

The members were reminded to submit travel claims and per diem in a timely manner. This assists in the ability to monitor spending as well as making certain that accurate reports are available for the meetings.

The final budget item discussed was travel. As Ms. Whitney had pointed out, DCA is taking a close look at the travel by staff and Board members to verify that adherence to travel rules including the requirement for the least costly travel to the state. Members need to use the contracted airlines, use a rental car instead of personal vehicle when the travel is more than 100 miles away, use Super Shuttle if it is cheaper than a taxi, and use a rental car if it is cheaper than a taxi. It is the Board's understanding that claims that do not use the least cost to the State may not be completely reimbursed when submitted. The members were encouraged to contact Tim Einer in the Executive Office with any questions when travel arrangements were being made.

### **C. BreZE Update**

Ms. Kirchmeyer reported that the Board staff is still very involved in the BreZE project. There currently are multiple staff working full time on the project from the Information Systems Branch. Staff from all of the units are reviewing the system requirements and determining whether it will meet their needs. The system is still scheduled to be implemented in the fall of 2012 and work will continue on communication plans for licensees, interested parties, and the public on this new system. It is planned to have a complete presentation of the new system at the July Board meeting.

#### **D. Audit Updates**

As previously stated, legislation which changed the Board's reserved mandate from two months to between two and four months, also included a requirement that the Department of Finance Office of State Audits and Evaluations perform a preliminary review of the Board's financial status. This includes but is not limited to its projections related to expenses, revenues, reserves, and the impact of the loan from the contingent fund to the general fund made pursuant to the Budget Act of 2008. This audit is in its final review and the Board has been notified that it will receive the draft sometime between May 14-16, 2012. Once the report is received, the Board will have 10 days to provide a response, which will be reviewed with the budget subcommittee. A copy of the audit and the Board's response will be provided at the next meeting.

#### **Agenda Item 26 Department of Consumer Affairs Update**

Ms. Everhart discussed that the Director of DCA has recently met with consumer organizations and other interested stakeholders regarding teleconferencing of Board meetings. DCA continues to look into teleconferencing and legal questions to see if that is a viable option.

Mr. Yaroslavsky inquired about the use of state buildings throughout the state system that have meeting rooms and if DCA has considered using these for meeting or teleconferencing.

Ms. Everhart stated that is one of the options that is being investigated. The other would be to provide a toll free call in number for members of the public but, they would also have to look into who would be required to staff that number to get the questions and then relay those to the members of boards and bureaus of DCA.

Ms. Yaroslavsky cautioned about the use of teleconferencing in the platform of a public meeting. Sometimes the lack of a physical presence makes it difficult to get the gist of what the speaker is communicating without the benefit of seeing them.

Ms. Everhart continued that DCA maintains its efforts to work closely with the Governor's office on Board appointments. She affirmed that DCA will continue to have open communications with the Board for a collaborative working relationship.

Ms. Yaroslavsky expressed several concerns that she requested Ms. Everhart take back to DCA. The first concern is with the Board's vehicles and the use of home storage permits. It is very important that the Board has safe vehicles. It is also important that in order for investigators to do their work, to be able to safely store their vehicles at home and then be able to use them for their investigation work. The second concern relates to continued travel restrictions and the effect that it has for this Board to provide public protection and the timely issuance of licenses.

Public comment was provided for this agenda item.

Hilma Balaian from Kaiser Permanente expressed support for the benefits of Mr. Schunke being able to continue with orientations on best practices. This has been a very valuable tool that creates a smooth licensing process and encouraged the Board and DCA to allow this program to continue.

Genevieve Clavreul reminded the Board of her comment from the prior day regarding the Board of Registered Nursing and that there is only one appointed member out of nine on this Board. Ms. Yaroslavsky advised Ms. Clavreul to communicate her comment directly to Ms. Everhart.

## **Agenda Item 27      Licensing Chief's Report**

### **A.      Staffing**

Mr. Salgado reported that on behalf of Curt Worden, he would like to thank all of the licensing staff as they continue to do an outstanding job and have maintained processing goals for every week during this quarter. The licensing manager position that was last held by Letitia Robinson has been filled by Natalie Lowe. Due to an increased workload in the review of international medical schools, an additional associate governmental program analyst has been requested and is pending approval. Once approved, the Board will advertise, conduct interviews, and hire a new staff person. This position will assist Cheryl Thompson, who is the current international medical school analyst. Licensing currently has three office technician vacancies; two of the vacancies are in the call center and one is in administrative support. These positions have been advertised and interviews are being conducted. Approximately 40% of the licensing staff are in various stages of training for their positions. Even though vacancies have significantly reduced, there is still a great deal of training.

### **B.      Program Statistics**

Mr. Salgado reported that during the third quarter of the fiscal year the Board received 1,862 physician and surgeon applications. 1,979 applications were reviewed, including post graduate training authorization letter applications. There are a total of 4,515 pending physician and surgeon applications and of those 3,928 have been reviewed. 587 are pending review and 1,419 physician and surgeon licenses were issued this quarter. During the third quarter, the consumer information unit answered approximately 28,000 phone calls. In application review, last year at this time the initial review of applications was 36 days for US graduates and 30 days for international medical school graduates. The pending mail was seven days for both US and international medical schools. Currently the US file reviews are at 40 days for initial review and the international medical school files are at 30 days for initial review. Pending mail is still seven for both US and international medical school graduates.

The members were referred to the workload report that referenced Strategic Plan Goal 5: Organizational Effectiveness; Objective 5.1: Licensing Applications to be Reviewed Within 45 Days. In the third quarter, the Board had one week of the total 13 weeks where the initial review exceeded the goal of 45 days. However, during that week the Board only exceeded its review by no more than five days.

Business and Profession Code 2065 and 2066 statistics, as of May 3, 2012: the Board received 994 applicant names submitted by the 39 participating hospitals. 947 of these applications have been received and 921 of these applications have been reviewed. Out of the 921 applications that have been reviewed, 616 applicants have been licensed. All of the remaining applicants have been notified by the Board and these applicants are being diligently tracked for licensure at the end of June if all documentation is received.

### **C.      Status of International Medical School Program**

Seven additional schools have been recognized under CA Code of Regulations §1314.1 (a)(1). The seven schools are in addition to the two schools that were listed in the Board materials, bringing the total for the quarter to nine newly recognized schools. The additional nine schools impact 14 applicants who are awaiting school recognition before their PTAL could be issued. All other schools have been contacted and the Board is currently awaiting responses in regards to recognition.

There was discussion from the members about the look up system that licensees access to check on the status of their application and what is missing. Ms. Yaroslavsky verified that there is a system in place that all physicians that apply can look up the status of their application and see exactly what is missing and timeline information. She suggested that this is something that could be added to the Newsletter to remind physicians there is an online look up system available to them after they have applied for licensure.

For the next meeting, Dr. Salomonson requested a percentage breakdown of the number of US/Canadian applicants versus international applicants. This information would be helpful as the processing of international graduates tends to be a much more lengthy process.

#### **Agenda Item 28      Midwifery Advisory Council Update**

##### **B.      Interested Parties Meeting Regarding Regulatory Proposals Update**

Ms. Lowe reported that on March 29, 2012 a midwifery regulations and interested parties workshop was held. Discussions included proposed regulations for section 1379.23, physician supervision and collaborative relationship and section 1379.24 midwifery authority to obtain, order, and administer drugs, devices, and tests. Based on the discussion at the meeting, edits have been made to the proposed regulations and are anticipated to be presented at the August 30, 2012 MAC meeting in Sacramento.

##### **C.      Council Update**

Carrie Sparrevohn, L.M., the new Chair of the MAC, introduced herself to the Board. Ms. Sparrevohn reported that the interested parties meeting was well attended by midwives from all over the state as well as members of the physician community and ACOG. She looks forward to the presentation of the final language at the August MAC meeting.

One item that has been coming forward is the issue of midwifery students and assistants. Clarity is needed and Ms. Sparrevohn seeks to create a taskforce to look at the issues surrounding this. There is interest in this taskforce who can delve into what the questions are. It can address these issues in a concise manner so that staff would not have to spend so many phone hours responding to these questions and concerns.

The second item that should be discussed within the MAC is the possible setting of term limits for the MAC members. It is important to continue to have valuable input from various members. Rotation of the licensed midwifery community, as well as other interested parties in home birth and midwifery care, could be helpful.

Another agenda topic for the MAC will be the discussion and approval of the language of the proposed regulations based upon the interested parties meeting.

One final item is the shifting of the data collection to a system that is already in place. Currently the data for the MAC is collected in a retrospective manner and this is not a very reliable method for data collection. The Midwives Alliance of North America has been gathering information on home births throughout the country and Canada for greater than 12 years. Ms. Sparrevohn would like to convene a taskforce to look at the feasibility of going forward with using the Midwives Alliance of North America as a data collection tool.

**A. Discussion and Consideration of Appointments to the Council**

Ms. Lowe cited that existing law requires the Board to appoint members to the MAC. At the February 2-3 quarterly Board meeting, it was determined that vacant public member positions on MAC would be filled by one California licensed physician practicing in the area of obstetrics/gynecology and one non-licensee of the Board. In addition there is a vacant Board licensed midwife. The Board also granted permission for the MAC to vote on and seat the selected members at its March 29, 2012 meeting, with the selected members subject to approval by the full Board at this May 2012 meeting.

The MAC voted to recommend to the full Board the reappointment of Karen Ehrlich, L.M. Ms. Ehrlich has been a licensed midwife since 1996. She has been a member of the MAC since 2007 and served as Chairwoman from April 2010 through 2011 and Vice Chairwoman in 2012. She continues to serve on the Midwifery Education Accreditation Council and has done so since 2007. As a licensed midwife, Ms. Ehrlich is interested in continuing to serve on the MAC.

***Ms. Chang made a motion to accept the request to appoint Karen Ehrlich to a three-year term in the Licensed Midwife position with the MAC; s/GnanaDev; motion carried.***

Dr. James Byrne has been the Chief of Obstetrics and Maternal Fetal Medicine at the Santa Clara Valley Medical Center for the past eight years. In 2011, Dr. Byrne founded the Lucinda Health Foundation, a non-profit organization that seeks to improve maternal care delivery through several pathways, including a collaborative practice model for midwives and physicians. He is currently appointed on the American College of Obstetricians and Gynecologists, District IX, California, State Obstetrics Safety Committee. He is dedicated to improving maternal care and safety and has longstanding efforts in supporting midwifery.

***Dr. GnanaDev made a motion to accept the request to appoint James Byrne, M.D. to a three-year term in the Public Member position with the MAC; s/Diego; motion carried.***

Ms. Monique Webster has a Master's degree in Public Health with an emphasis on Maternal and Child Health. Her current position on the Berkeley Community Health Commission speaks of her continued interest in public health issues. Ms. Webster has volunteer experience as a postpartum doula in the San Francisco Bay area, and is currently planning a home birth with a midwife.

***Ms. Chang made a motion to accept the request to appoint Monique Webster to a three-year term in the Public Member position term with the MAC; s/Low; motion carried.***

***Ms. Schipske made a motion that the agenda items for the next MAC meeting on Aug 30, 2012, would include the discussion to create a taskforce for issues concerning midwife students and assistants, setting term limits on members of the MAC, discussion of the proposed regulation changes and a discussion on data collection; s/Chang; motion carried.***

**Agenda Item 29 Presentation: FSMB Centennial Meeting and Projects of the Board**

Ms. Chang introduced Dr. Humayun "Hank" Chaudhry, the President and CEO of the Federation of State Medical Boards (FSMB) of the United States.

Dr. Chaudhry provided a presentation that highlighted what the FSMB does for the Board, new directions on its vision and mission statement, its structure and function and how it seeks to be

the leader in medical regulation. The goal is to share with each state best practices to encourage the practice of safe medicine.

At the heart of the FSMB work are three elements:

- 1) Advocacy
- 2) Education
- 3) Data

Dr. Chaudry's full presentation is available on the website under agenda item 29.

#### **Agenda Item 17      Licensing Outreach/Education Report**

Mr. Schunke provided an update to the 2012 matrix statistics. There are 39 hospitals participating this year and four of these are new. Of the 39, there are two from last year that are not participating this year because all of their residents are already licensed. Mr. Worden and his licensing staff are to be commended for their tremendous work. There are almost 1,000 names on the matrix however last year at this time there were almost 1,500. There are 616 individuals that have already been licensed. Unfortunately, of the names that have been reported to the Board, there are still about 50 people who have not applied. Invariably it is two to three weeks before the licensing deadline when the Board generally receives the last applications. There are also approximately 11 people whom need a license this summer that have been identified as having a significant licensing issue whether it be a criminal history, dishonesty, performance issues, or substance abuse problem, and will be reviewed and considered in a separate process.

Outreach at the teaching hospitals continues. Some of the smaller hospitals that have not participated in the past now have residents asking their GME offices to contact the Board. Mr. Schunke is not expending additional funds to visit these smaller hospitals; coordination is being made to include them when they are in the geographic area of a large hospital that is being visited. This is to be mindful of travel restrictions.

Public comment was provided for this agenda item.

Hilma Balaian, from Kaiser Permanente expressed concern that the Federation timeline for the USMLE Step 3 test results are going to come out during a period of time when they are already very busy getting licenses ready for the July deadline.

Ms. Yaroslavsky thanked Ms. Balaian for bringing this to the Board's attention and suggested that staff contact the Federation and inform them of this concern.

#### **Agenda Item 32      Legislation/Regulation**

Ms. Simoes reported that per the strategic plan, she contacted over 40 legislative district offices to let them know that the quarterly Board meeting was being held in Southern California and to extend an invitation to them. Ms. Simoes continues to meet with legislative and committee staff on a daily basis on Board sponsored bills, bills where the Board has a position, and on bills or issues that surface that might impact the Board.

#### **Board Sponsored Bill:**

- **AB 1533 (Mitchell) UCLA IMG Pilot Program**

This bill would authorize a pilot for the University of California (UCLA) International Medical Graduate (IMG) program. The pilot would allow program participants to engage in

supervised patient care activities for a typical assignment lasting 16 weeks, but not to exceed 24 weeks, as part of an approved and supervised clinical clerkship/rotation at UCLA health care facilities, or with other approved UCLA affiliates. All such training will occur with supervision provided by licensed physicians. This bill would also request the UC to prepare a report for the Board and Legislature which would include the number of participants in the pilot program; the number of participants issued a license by the Board; and the potential for retention of expansion of the pilot program. The bill would sunset the pilot program on January 1, 2019.

Some amendments were taken. The amendments require the report to be submitted on or before January 1, 2018 and to require the report to include data on the number of participants who practice in designated medically underserved areas.

This bill has not received any "no" votes. It was on consent in Assembly Appropriations and on the Assembly Floor, and is currently in the Senate, awaiting hearing in the policy committee.

Public comment was provided for this agenda item.

Michelle Anne Bholat, M.D. from the UCLA IMG program provided public comment. Dr. Bholat provided a background of the UCLA IMG program as an innovative approach to help address the healthcare issue of physician work shortage in California. Dr. Bholat thanked the Board for its support of this bill.

- **Omnibus**
- **SB 1575 (Senate B&P)**

This bill is the vehicle by which omnibus legislation has been carried by the Senate Business, Professions and Economic Development Committee (B&P). The omnibus language would allow the Board to send renewal notices via e-mail; would clarify that the Board has enforcement jurisdiction over all licensees, including licensees with a non-practice license status; would establish a retired license status for licensed midwives; and other technical changes. This bill passed out of Senate B&P Committee on consent and is now in the Senate Appropriations Committee.

There is language being proposed by Senate B&P Committee and this language is to extend the sunset date of the Vertical Enforcement Program (VEP) to the same date as the Board's sunset, from 1/1/13, to 1/1/14. This change will allow for the full evaluation of VEP as part of the Board's 2013 sunset review process.

Public comment was provided for this agenda item.

Julie D'Angelo Fellmeth, Center for Public Interest Law (CPIL) asked for clarification if the entirety of HQE would go away on January 1 and if they would have to be extended as well.

Ms. Simoes confirmed that the VEP part of HQE would go away on January 1.

- **SB 1236** (Senate B&P Comm.)

This is a sunset bill that impacts the Physician Assistant Committee. This bill is still in the beginning stages of development so staff is not bringing it to the Board for a position at this time. This bill would create the Physician Assistant Board, which would no longer be under the auspices of the Medical Board. Staff will continue to watch this bill closely and bring it to the Board for a position at the July Board meeting.

**A. 2012 Legislation**

- **AB 1621** (Halderman) Physicians and Surgeons: Prostate Cancer

This bill would exempt physicians working on trauma cases from current law that requires physicians to provide specified information on prostate diagnostic procedures to patients who undergo an examination of the prostate gland.

*Dr. GnanaDev made a motion that the Board support AB 1621; s/Low; motion carried.*

- **AB 1896** (Chesbro) Tribal Health Programs: Health Care Practitioners  
AB 1896 would align state law with the federal Patient Protection and Affordable Care Act (PPACA) and would exempt all health care practitioners employed by tribal health programs from California licensure, if they are licensed in another state.

Board staff will continue to work with the California Rural Indian Health Board (CRIHB), the author's office, and other interested parties to ensure that if this bill passes, it is implemented in a way that will ensure consumer protection for all patients served in tribal health programs. No vote was necessary as the Board does not need to take a position at this time. It may be presented to the Board in July for a position.

- **AB 2561** (Hernandez) Certified Surgical Technologists  
This bill would define certified surgical technologists (CST) and would define surgical technology patient care. This bill would prohibit individuals from holding themselves out to be CSTs unless they meet specified requirements. The bill does not raise any concerns for the Board; staff suggested the Board be neutral on this bill.

*Dr. Duruisseau made a motion that the Board take a neutral position on AB2561; s/Bishop; motion carried.*

- **AB 2570** (Hill) Licensees: Settlement Agreements  
This bill would prohibit licensees within DCA from including a "gag clause" provision in a civil settlement agreement, or one that prohibits the other party in the dispute from contacting, filing a complaint with, or cooperating with, the appropriate licensing board, or requiring the other party to withdraw a previously filed complaint. A violation of this provision would subject the licensee to disciplinary action.

*Dr. GnanaDev made a motion that the Board support AB 2570; s/Duruisseau; motion carried.*

- **SB 1095** (Rubio) Pharmacy: Clinics  
This bill is sponsored by the California Ambulatory Surgery Association (CASA) and would expand the type of clinics that may be issued a limited license by the Board of Pharmacy to include specified outpatient settings and Medicare certified ambulatory surgical centers. The license issued by the Board of Pharmacy allows these clinics to



purchase drugs at wholesale for administration or dispensing to clinic patients for pain and nausea under the direction of a physician.

*Dr. Salomonson made a motion that the Board support AB 1095; s/Duruissseau; motion carried.*

- **SB 1274 (Wolk) Healing Arts: Hospitals: Employment**  
This bill would allow Shriners Hospital for Children (Shriners) to continue to employ physicians and allow the hospital to bill insurers for the services rendered to patients with insurance coverage.

*Dr. Duruissseau made a motion that the Board support SB1274; s/Chang*

Dr. GnanaDev did voice concern that this should only be applicable for Shriners.

Ms. Simoes explained that this bill has been crafted to only apply to Shriners.

*Ms. Yaroslavsky called for the vote. Motion carried.*

- **SB 1338 (Kehoe) Abortion**  
This bill was recently significantly amended in policy committee and would now only allow a nurse practitioner, certified nurse midwife or physician assistant who has completed training through the Heath Workforce Pilot Project No. 171, to be authorized to continue to perform abortions by aspiration techniques. The staff suggested the Board not need to take a position on this bill at this time.
- **SB 1416 (Rubio) Medical Residency Training Program Grants**  
This bill would establish a grant program in the Office of Statewide Health Planning and Development (OSHPD) to be used to fund grants to medical residency training programs for the creation of additional residency positions. The grant program would be funded by donations from private individuals or entities, and the funds would be required to be appropriated by the Legislature. The bill was amended to require OSHPD, in consultation with the California Healthcare Workforce Policy Committee, to develop criteria for distribution of available moneys in the fund by December 31, 2013. This bill would also require OSHPD to give priority to programs that meet particular specifications.

*Dr. Duruissseau made a motion that the Board support SB 1416; s/Diego; motion carried.*

- **SB 1483 (Steinberg) Physician Health Program**  
This bill is sponsored by the California Medical Association, the California Hospital Association, the California Psychiatric Association, and the California Society of Addiction Medicine. This bill would create the Physician Health Awareness, and Monitoring Quality Act of 2012. This bill would establish the Physician Health Program (PHP), which would be administered by the Physician Health, Recovery, and Monitoring Oversight Committee (Committee), also created by this bill. The bill would require the DCA to select a contractor to implement the PHP, and the 14 Member Committee would serve as the evaluator of the PHP. The PHP would provide for confidential participation by the physicians who have a qualifying illness and are not on probation with the Board. The PHP would refer physicians (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 on the outcome of the PHP and the bill would require regular audits of the PHP.

Staff presented some major concerns with this bill. One area of concern is the program is currently located in the Medical Practice Act. Also, the bill does not identify a state agency to have oversight of the Committee and the PHP, and there is no funding source identified to support the PHP and the Committee. Although the Board is not specifically named in this bill, it would appear to make the Board a responsible party for implementing and overseeing the PHP, which is counter to positions that the Board has taken in the past. In addition, the Board may be responsible for funding this bill through increased licensing fees; the Board has previously opposed bills that would have created similar programs that were funded by increased fees without any oversight or control of the expenditures by some state entity.

There are also concerns related to the definition of "physician and surgeon" in this bill, as it includes medical students and residents and there is no mechanism in the bill to alert the Board when a student or graduate in a residency program is not compliant and could be a danger to patients in the future.

According to the author's office, this bill is a work in progress, and many of the issues pointed out in this analysis will be fixed as the bill goes through the process. Staff did meet with the sponsors to discuss these issues. The sponsors relayed that they were okay with moving the provisions of this bill out of the Medical Practice Act and into the general code sections. It was communicated to Board staff that this bill will eventually be amended to include language that will fund the PHP and the Committee through a \$40 fee on all licensees, similar to the \$25 fee on licensees that funds the Stephen M. Thompson Loan Repayment Program.

Staff suggested an opposed unless amended on this bill. The major amendments would be to move the provisions of this bill out of the Medical Practice Act and into the general code sections to make this a DCA oversight function, and to identify a funding source that does not increase licensing or renewal fees.

***Dr. GnanaDev made a motion that the Board support SB 1483 if amended; s/Schipske***

The Board discussed that in concept they support the effort of wellness in healthcare providers. There are still many unclear points of information that need to be addressed in this bill before the Board can make an informed decision.

***A motion was made by Dr. Bishop to table this bill for further discussion at the next Board meeting; s/Chang***

Public comment was provided for this agenda item.

James Conway of the Pacific Assistance Group urged the Board to support this bill. Mr. Conway spoke that what he encounters constantly from hospitals and the well being committees is confusion and questions about direction. They would like for the Board to have a defined

position on this. Mr. Conway would like the Board to support the creation of a viable California early intervention program.

Julie D'Angelo Fellmeth from the Center for Public Interest Law (CPIL) informed the Board that she supported the motion to table this bill. It appears that this bill is still a work in progress and there are too many items that still need to be amended. There were several things in the bill that Ms. D'Angelo Fellmeth did wish to point out. First it does not create a diversion program and it does not prevent the Board from continuing to investigate and take disciplinary actions against substance abusing physicians, even if they go into the program that eventually gets created by this bill. The second any program created by this bill must adhere to the uniform standards that were developed by the Substance Abuse Coordination Committee of the DCA pursuant to Senate Bill 1441. So far this bill does clearly require any program that gets created by this bill to adhere to those standards. Finally, it is felt that the program should report to the Board if a physician who is a participant in the program violates the contract he or she signed. The language is not there yet and it was urged that the Board should not take a position until July.

Randall Hagar of the California Psychiatric Association appeared before the Board on behalf of the sponsors. There are still pieces that need to be combined and integrated. Mr. Hagar stated that he appreciated this process and the motion on the table and would be happy to answer any questions that the Board might have.

Yvonne Choong of the California Medical Association (CMA) suggested that the Board consider either supporting in concept or taking a neutral position. This is being envisioned as an entity that would help to coordinate all of the many aspects involved in somebody's recovery; the treatment, the monitoring, not directly delivering those services but making sure they are delivered appropriately and that there is some central point of contact both for the Board, employers, and hospitals to know that when a physician says that they are in recovery, they are getting services from reputable sources.

Michele Monserratt-Ramos from Consumers Union CA Safe Patient Network stated that the lack of funding was a concern and there was an item that needed to be refined regarding what should be reported to the Board and what would not be reported to the Board. Ms. Monserratt-Ramos stated that this process of selected reporting is not reasonable for the Board or for consumers. She wished that the Board would oppose SB 1483.

Bernard Karmatz encouraged the Board to take a support position with the understanding that these amendments are just at the brink of being brought forward and all of the issues of concern to the Board will be addressed.

*Ms. Yaroslavsky called for the vote. Motion carried, with Ms. Schipske voting no.*

- **SB 1488 (Yee) Traditional Chinese Medicine: Traumatologist Certification**  
This bill would define Traditional Chinese Medicine (TCM) Traumatology Council as a non-profit organization for the purpose of developing standards for and certifying the practice of, TCM Traumatology. The Council would consist of seven members, including a member from the Board. The Council would be required to determine the certification standards, including the level of experience and training needed to qualify for TCM Traumatology Certification. The Council would issue certificates for certified TCM

Traumatology to individuals who apply and meet specified training and clinical experience, as set forth in the standards that the Council would be required to establish.

Staff is bringing this bill to the Board's attention because a member of the Board would be required to sit on the Council. Board staff suggested that the Board does not need to take a position on this bill at this time as there are issues that still need to be addressed to make this bill operational.

- **SCR 69** (Pavley) CA Autism Awareness Month  
This concurrent resolution would designate April 2012 as California Autism Awareness Month. This resolution would affirm the Legislature's commitment to autism spectrum disorder (ASDs) issues; would emphasize that every individual with an ASD is a valued member of society; would commend the individuals and nonprofit organizations contributing to the well-being of individuals with ASDs and their families; and would stress the need to identify children with ASD to begin early intervention, integrated, seamless, comprehensive, and competent services and supports for individuals with ASDs and their families.

Staff suggested that the Board take a support position, as ASD is an important health issue in California and the Board should support any efforts to promote consumer awareness and the importance of early intervention for ASDs.

*Dr. Duruisseau made a motion that the Board support SCR 69; s/Low; motion carried.*

**Status of Pending Regulations:**

Ms. Simoes requested that the Board review the regulation matrix that lists the status of all regulatory proposals in process.

**Agenda Item 18      NPDB Feasibility**

Ms. Kirchmeyer discussed that at the February 3, 2012 Board Meeting, a suggestion was made encouraging the Board to look into the cost benefit analysis of querying the National Practitioner Data Bank (NPDB) every two years, at the time of a physician's renewal. Staff completed an analysis of this suggestion and based upon the cost of the query and the insignificant number of hospital reports not received by the Board, Board staff recommended that this not be pursued because there is an alternative that has already been implemented.

*Dr. GnanaDev made a motion to adopt the staff recommendation; s/Salomonson;*

Public comment was provided for this agenda item.

Julie D'Angelo Fellmeth, from CPIL informed the Board that a valid source of information that the Board receives is from the NPDB. It contains licensing and disciplinary information from all states, hospital disciplinary action, and medical malpractice payout information. Because the Board does not query the NPDB with the exception of doctors who are being newly licensed and who are already licensed in another state, and occasionally during a disciplinary matter, the Board could be missing out on some critical information. It was conveyed that the Board should reconsider its decision.

Ms. Yaroslavsky requested that staff bring back additional information on the NPDB to the July 2012 meeting. Ms. Kirchmeyer stated that she would bring to the meeting the statistics that were provided to the Board by the NPDB.

Dr. GnanaDev withdrew the motion.

Michele Monserratt-Ramos from the Consumers Union CA Safe Patient Network referred to the memo prepared by Board staff that identified 20 cases in which 805 reports made to the NPDB did not have a matching report made to the Board. It was suggested that the Board investigate why these 805 reports did not have an accompanying or matching reports. The Board was urged to take advantage of this important information source and should consider gathering this information on a pilot basis to learn what the benefits actually are.

**Agenda Item 30      Enforcement Chief's Report**

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

Ms. Whitney requested approval for 11 orders restoring license to clear status following completion of probation and five orders for license surrender during probation or administrative action.

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

**B.      Expert Utilization Report**

Ms. Whitney reported that the Enforcement Program used 117 experts in the first quarter of 2012, 158 cases were sent to experts. There currently are a total of 1,125 experts and some of them will be attending the training on May 19, 2012.

**C.      Enforcement Program Update**

On April 12, 2012, the HQE supervising DAGs met via video conference with the Board regional supervisors and management for a quarterly sharing of issues and resolutions. This was a productive meeting with some research assignments. The next scheduled meeting is in June.

The Enforcement Program has 16 vacancies but most of these investigator positions have an individual in the background process. There are two supervisor vacancies, one in Fresno and one in Pleasant Hill, due to the promotion of Teri Bennett, who was a Supervisor I and has now been promoted to the Northern Area Supervisor II position. The Program hopes that most backgrounds will be completed by June 30, 2012.

Also included in the report was the strategic plan goal for reducing the timelines and processing 50% or more of the Programs complaints within 50 days. The Program is not there yet, but will continue to strive to meet this goal.

A discussion continued regarding the number of average days it takes to complete a complaint investigation. One of the ways it will hopefully be reduced is to lower the number of days that the Board will be asking the medical experts to provide a review of a case. The Board will be asking for a review in two weeks instead of 30 days. In terms of the investigation, at the time of the report there were six offices that were under the 180 day average, which is in the statutory goal. It is believed that once vacancies are filled, all offices will be down to the average 180 day timeframe.

Dr. GnanaDev voiced concern with the length of time it takes to complete the investigation and what the options would be to take a physician out of practice if they were truly harming someone.

Ms. Whitney explained the Interim Suspension Order (ISO) is used in a case where a patient is being harmed.

### **Agenda Item 31      Vertical Enforcement Program Report**

Mr. Carlos Ramirez provided a handout on the post accusation average timeframes and an analysis about the aspects of the case processing times.

Mr. Ramirez directed the Board to four recommendations that could prevent cases from accruing additional time:

1. Work with the Office of Administrative Hearings to initiate the hearings in Board cases within 180 day of receiving the request to set. This will possibly cut the time by 40 days.
2. Request that the Office of Administrative Hearings adopt a uniform statewide procedure for setting hearings in Board cases. Currently the system that is used in Sacramento and Los Angeles is far superior and has more formality than the other methods that are being used in San Francisco and San Diego.
3. Adopt the State Bar Disciplinary Model and create an in-house panel of Administrative Law Judges. It is an expensive option but it does provide the Board the option of hiring their own Administrative Law Judges to hear only Board cases.
4. Request that the Judicial Council modify its rules and reduce the waiting period to file a motion to dismiss for failure to prosecute a case to one year.

### **Agenda Item 10      Update of Strategic Plan Implementation**

Ms. Kirchmeyer discussed the updates of the strategic plan.

#### **Objective 1.1: Examine current continuing medical education (CME) structure, its effectiveness, the current California requirements, and opportunities for improvement.**

There will be an extension of the due date on this objective. Statistics will be gathered to look into the current CME structure. Because of the lack of a licensing manager, these statistics have been deferred to the July 2012 Board meeting.

Ms. Yaroslavsky asked what the relevant importance is that rises the priority to an A level.

Ms. Kirchmeyer explained that priority level A was mandated or mandatory functions.

#### **Objective 1.5: Conduct a comprehensive review of international schools.**

The presentation of the history of international medical schools has been moved to the July Board meeting due to travel restrictions. Additionally, the update and revision of the application process has been moved due to the lack of staffing in the licensing unit.

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

The examination of the disciplinary decisions to determine if they meet the Board's mission to protect the public will be deferred until this summer.

### **Goal 3: Consumer and Licensee Education: Increase Public and Licensee awareness of the**

**Board, its mission, activities and services.**

Several of these objectives have actually been updated but, they are going to move forward and go before the Education Committee. Mr. Wood is putting together a complete plan that will be reviewed and discussed at the upcoming Education Committee and these objectives will be updated after that plan has been approved by the Committee.

All other objectives in the plan are on target for completion or have been completed. Staff will continue to provide updates at each meeting on the progress of the objectives so the Board knows how it is meeting its goals and objectives.

**Agenda Item 33      Agenda Items for July 19-20, 2012 Meeting in the Sacramento Area**  
The Licensing Committee will have a full presentation on SB 100 implementation and the full Board will respond to questions raised at the Licensing Committee meeting.

There will be a presentation of the PA scope of practice.

There will possibly be a presentation of critical care practitioners in medicine.

Staff will report back on the National Practitioner Data Bank.

**Agenda Item 34      Adjournment**

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

The meeting was adjourned at 3:50 p.m.

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Barbara Yaroslavsky, President

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Gerrie Schipske, R.N.P., J.D., Secretary

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Linda K. Whitney, Executive Director