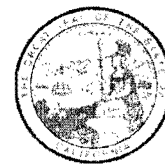




MEDICAL BOARD OF CALIFORNIA
Executive Office



Medical Board of California
Sheraton Gateway Los Angeles
6101 West Century Blvd.
Los Angeles, CA 90045

April 29-30, 2010

MINUTES

In order to remain consistent with the record, the agenda items presented in these minutes are listed in the order discussed at the April 29-30, 2010 meeting.

Agenda Item 1 Call to Order/ Roll Call

Ms. Yaroslavsky called the meeting of the Medical Board of California (Board) to order on April 29, 2010 at 4:12p.m. A quorum was present and notice had been sent to interested parties.

Members Present:

Barbara Yaroslavsky, President
Jorge Carreon, M.D.
Hedy Chang, Secretary
John Chin, M.D.
Shelton Duruisseau, Ph.D.
Gary Gitnick, M.D.
Sharon Levine, M.D.
Mary Lynn Moran, M.D.
Janet Salomonson, M.D.
Gerrie Schipske, R.N.P., J.D.
Frank V. Zerunyan, J.D., Vice President

Members Absent:

Reginald Low, M.D.

Staff Present:

Fayne Boyd, Licensing Manager
Susan Cady, Enforcement Manager
Candis Cohen, Public Information Officer
Janie Cordray, Research Specialist
Julie Escat, Investigator
Dominic Galluzo, Investigator
Kurt Heppler, Legal Counsel
Jerry Hull, Senior Investigator
Breanne Humphreys, Licensing Manager
Teri Hunley, Business Services Manager

Ross Locke, Business Services Office
Kelly Nelson, Legislative Analyst
Deborah Pellegrini, Chief of Licensing
Regina Rao, Business Services Office
Kevin Schunke, Regulation Coordinator
Anita Scuri, Department of Consumer Affairs, Supervising Legal Counsel
Jennifer Simoes, Chief of Legislation
Laura Sweet, Deputy Chief of Enforcement
Kathryn Taylor, Licensing Manager
Cheryl Thompson, Executive Assistant
Renee Threadgill, Chief of Enforcement
Linda Whitney, Interim Executive Director

Members of the Audience:

Michelle Anne Bholat, UCLA School of Medicine
Hilma Balaian, Kaiser Permanente
Yvonne Choong, California Medical Association (CMA)
Roberta De La Rosa, Centinela Hospital Medical Center
Karen Ehrlich, Midwifery Advisory Council (MAC)
Julie D'Angelo Fellmeth, Center for Public Interest Law (CPIL)
Stan Furmanski, M.D., Member of the Public
Brett Michelin, California Medical Association (CMA)
Carlos Ramirez, Senior Assistant Attorney General
Rehan Sheikh, Member of the Public
Lee Ann West, Member of the Public

Agenda Item 2 Public Comment on Items not on the Agenda

Stan Furmanski, M.D., member of the public, requested an opportunity to address the Board at the July 2010 meeting regarding his concerns with the Physician Assessment and Clinical Education Program (PACE).

Lee Ann West, member of the public, expressed her objection to the Board's enforcement practices.

Agenda Item 3 Approval of Minutes from the January 28-29, 2010 Meeting

Dr. Gitnick moved to approve the minutes from the January 28-29, 2010 meeting; s/Zerunyan; motion carried.

Agenda Item 5 Presentation on Medical Marijuana

Jane Zack Simon and Larry Mercer, Deputy Attorney Generals from the Health Quality Enforcement Section of the Attorney General's Office in San Francisco, provided an overview of the Medical Board's role and policies with regard to medical marijuana. Health and Safety Code §11362.5 was enacted by the voters of California in November 1996 in order to ensure that seriously ill Californians have the right to obtain and use marijuana for medical purposes. The physician's role is that of a gatekeeper; it is up to the physician to determine if the patient has a medical condition that would be benefited by the use of medical marijuana. The Board has consistently communicated its policy that doctors do not violate the standard of practice and do not face discipline from the Board as long as they arrive at their decision to recommend

marijuana as medical treatment in accordance with accepted standards of medical responsibility (history and physical examination, development of a treatment plan with objectives, informed consent, periodic review and consultation, and proper medical record keeping). The Board's official policy statement is posted on its website.

Mr. Mercer reported, to date, no physician has been investigated or disciplined solely for recommending marijuana. Over the past fourteen years, very few disciplinary decisions involving medical marijuana have been issued. Board investigations are generally triggered by complaints from law enforcement agencies, other physicians, or the patient's family members. Investigations proceed in the same manner as they would for any other prescribing case; however, since a physician cannot *prescribe* marijuana, there are no pharmacy records or CURES reports available as there would be for other Schedule 2 controlled substances. Securing patient cooperation in obtaining medical records can also be a problem. Due to these constraints, other methods of investigation (such as using undercover operatives) may be employed.

Ms. Schipske reported there is a proliferation of physicians who have been hired by marijuana dispensing collectives to give on-site, video, or telephone evaluations in order to provide recommendations for medical marijuana. These collectives often solicit physicians and chiropractors online to perform these evaluations. In most cases, no prior exam or follow up occurs and no medical records are kept. Ms. Schipske was concerned with the corporate practice of medicine and how the dispensaries use the guise of a physician to falsely legitimize their businesses.

Ms. Simon indicated these are enforcement and prosecution issues; the Board is limited by its jurisdiction to looking at the individual doctors involved, not the practices of the dispensaries. Mr. Mercer added that undercover operations to investigate these doctors is expensive and labor intensive; the Board must decide if it has the resources to pursue each physician who might be involved in this practice.

Agenda Item 6 Licensing Committee Update and Consideration of Committee Recommendations

Dr. Salomonson reported the Licensing Committee heard a presentation on the licensing process and timeframes and discussed regulatory changes with regard to the abandonment of applications. The Committee voted to recommend that the Board adopt regulations and schedule a public hearing at the July 2010 meeting.

Dr. Salomonson made a motion to accept the Committee's recommendation and set the abandonment of application matter for regulatory hearing at the July 2010 meeting; s/Schipske; motion carried.

Other items discussed by the Committee included the issuance of a limited license, licensing of polysomnographic technologists, and priorities for processing physician and surgeon applications. Key findings from the Business Process Re-engineering (BPR) study were reviewed. Future agenda items include a discussion on adding a photo to physician pocket identification cards and identifying and developing remedies for road blocks in the licensing process.

Agenda Item 7 Physician Responsibility in the Supervision of Affiliated Health Care

**Professionals Advisory Committee Update and Consideration of
Committee Recommendations**

Dr. Moran reported the Committee adopted a draft work statement. Senator Negrete McLeod has introduced SB 1150 which mandates the work of the Committee.

Dr. Moran made a motion to accept the Committee's recommendation that discussion on physician supervision of certified registered nurse anesthetists be deferred until the lawsuit by CMA and California Society of Anesthesiologists against the Governor is resolved; s/Chang; motion carried.

Agenda Item 8 Wellness Committee Update

Dr. Duruisseau reported the Wellness Committee is working to coordinate an interested parties discussion in order to create a 'best practices' manual for wellness programs at hospitals throughout California. CMA has volunteered to help with the project. The meeting will be scheduled in the summer of 2010.

Mr. Schunke is representing the Board on a collaboration project with UC Davis' Well-Being Committee to develop wellness/CME modules. The group has identified four modules they would like to produce (mental health, substance abuse, burn out, and creating a work/life balance).

Dr. Laurie Gregg and Mr. Schunke made a presentation to the UC Davis Wellness Committee on the results of the Wellness Survey that was conducted last winter. Dr. Gregg would like to prepare an article on the survey to submit to the FSMB for publication.

**Agenda Item 4 Executive Committee Report and Consideration of Committee
Recommendations on Filling Executive Director Position**

Pursuant to Government Code Section 1126(e)(2)(A), the Board went into closed session at approximately 5:20 p.m. to discuss filling the Executive Director Position.

Open Session:

The Board reconvened in open session at approximately 5:30 p.m.

Ms. Yaroslavsky reported the Executive Committee met and recommended a candidate to the Full Board for the Executive Director position. She announced the Board voted to appoint Linda Whitney as the new Executive Director of the Board. Ms. Whitney will be sworn in during the April 30, 2010 meeting.

There was no public comment and Ms. Yaroslavsky adjourned the meeting at 5:35 p.m.

Agenda Item 10 Call to Order/ Roll Call

Ms. Yaroslavsky called the meeting of the Medical Board of California (Board) to order on April 30, 2010 at 9:06 a.m. A quorum was present and notice had been sent to interested parties.

Members Present:

Barbara Yaroslavsky, President
Jorge Carreon, M.D.
Hedy Chang, Secretary
John Chin, M.D.
Shelton Duruisseau, Ph.D.
Gary Gitnick, M.D.
Sharon Levine, M.D.
Reginald Low, M.D.
Mary Lynn Moran, M.D.
Gerrie Schipske, R.N.P., J.D.
Janet Salomonson, M.D.
Frank V. Zerunyan, J.D., Vice President

Staff Present:

Susan Cady, Enforcement Manager
Candis Cohen, Public Information Officer
Janie Cordray, Research Specialist
Amber Driscoll, Investigator
Kurt Heppler, Legal Counsel
Teri Hunley, Business Services Manager
Ross Locke, Business Services Office
Kelly Nelson, Legislative Analyst
Deborah Pellegrini, Chief of Licensing
Regina Rao, Business Services Office
Jaime Sandoval, Investigator
Kevin Schunke, Regulation Coordinator
Anita Scuri, Department of Consumer Affairs, Supervising Legal Counsel
Jennifer Simoes, Chief of Legislation
Laura Sweet, Deputy Chief of Enforcement
Kathryn Taylor, Licensing Manager
Cheryl Thompson, Executive Assistant
Renee Threadgill, Chief of Enforcement
Linda Whitney, Interim Executive Director

Members of the Audience:

Bev Augustine, Department of Consumer Affairs
Michelle Anne Bholat, UCLA School of Medicine
Hilma Balaian, Kaiser Permanente
Claudia Breglia, California Association of Midwives
Yvonne Choong, California Medical Association (CMA)
Zennie Coughlin, Kaiser Permanente
Roberta De La Rosa, Centinela Hospital Medical Center
Karen Ehrlich, Midwifery Advisory Council (MAC)
Julie D'Angelo Fellmeth, Center for Public Interest Law (CPIL)
Stan Furmanski, M.D., Member of the Public
Beth Grivett, California Academy of Physician Assistants
James Hay, California Medical Association (CMA)

Kim Kirchmeyer, Department of Consumer Affairs
Brett Michelin, California Medical Association (CMA)
Erick Pollak, M.D., Member of the Public
Rosielyn Pulmano, Senate Business and Professions
Carlos Ramirez, Senior Assistant Attorney General
Rehan Sheikh, Member of the Public
Taryn Smith, Senate Office of Research
Brian Warren, Department of Consumer Affairs
Lee Ann West, Member of the Public

Ms. Yaroslavsky administered the Oath of Office to Ms. Whitney as the new Executive Director of the Medical Board.

Agenda Item 11 REGULATIONS – PUBLIC HEARING

Ms. Yaroslavsky opened the public hearing on the proposed regulations to amend Section 1328 of Title 16 of 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 proposal would amend the regulation related to written examinations used for licensure as a physician and surgeon to keep it current and useful. Specifically, this rulemaking will recognize the examination combination of USMLE Steps 1 & 2 and NBME Step 3. It would also make a technical change to reflect the statutorily changed structure and elimination of the Division of Licensing. For the record, Ms. Yaroslavsky stated the date was April 30, 2010; the hearing began at approximately 9: 10 a.m.

No written comments were received by the April 26, 2010 deadline. No oral testimony was offered during the public hearing. Ms. Yaroslavsky closed the hearing.

Mr. Zerunyan made a motion to adopt the proposed changes to the regulations; s/Chang; motion carried.

Agenda Item 12 Public Comment on Items Not on the Agenda

Stan Furmanski, M.D., requested to make a presentation to the Board at the July 2010 meeting on the disqualification of two examiners in the PACE program and other concerns.

Agenda Item 13 Board Member Communications with Interested Parties

Ms. Yaroslavsky reported that she and Ms. Whitney attended the Executive Committee meeting of the CMA to meet the officers and share the Board's vision and legislative agenda for 2010.

Agenda Item 14 President's Report

Ms. Yaroslavsky noted that she and Mr. Zerunyan are working with staff to regularly review the Board's budget and expenditures. She has attended Health Professions Education Foundation (HPEF) meetings to discuss regulations and select recipients for the Stephen M. Thompson Physician Corps Loan Repayment Program awards. Ms. Yaroslavsky attended a meeting at the DCA with other boards presidents and executive officers on the Consumer Protection Enforcement Initiative (CPEI).

A. Appointment to Special Faculty Permit Review Committee

Ms. Yaroslavsky appointed Dr. Low to the Special Faculty Permit Review Committee effective August 1, 2010. Dr. Low has been attending the meetings to learn the process so he may take over as the chair and physician member when the current chair, Dr. Gitnick, completes his term.

B. Appointment to Wellness Committee

Ms. Yaroslavsky appointed Dr. Gary Nye to the Wellness Committee to replace Dr. Peter Moskowitz who resigned in January 2010.

Agenda Item 15 Federation of State Medical Boards Update

Janie Cordray was honored by the Administrators in Medicine (AIM) at its annual meeting in Chicago as the recipient of the John Ulwelling Special Recognition Award. Ms. Cordray was recognized for her efforts in producing a daily electronic news clip service for all state medical boards. Ms. Yaroslavsky and Ms. Chang expressed the Board's appreciation for her valuable contributions and presented her with an honorary award.

Ms. Yaroslavsky reported she attended the FSMB annual meeting in Chicago and found it extremely valuable. She expressed her disappointment that Ms. Whitney's out of state travel was not approved. With its responsibility for licensing and regulating such a large number of physicians, California's expertise and input at the national level is vital. She expressed her hope that the Board's Executive Director be permitted to attend FSMB meetings in the future.

Ms. Chang provided highlights of the FSMB meeting. She noted 200 public members serve on state medical boards nationwide. While some states have no public members, California has one of the highest numbers of public members. The educational needs of these public members was a topic of discussion at the meeting. The maintenance of license (MOL) was also discussed by the state boards. Ms. Chang will be seeking feedback from the members and other interested parties on this topic.

Ms. Yaroslavsky reported Arkansas's medical board consists of 14 members and represents approximately 10,000 doctors. California's board also consists of 15 members, but represents over 127,000 doctors. This disparity may be an item for future discussion.

Agenda Item 16 Executive Director's Report

A. Budget Overview

Ms. Whitney reported Ms. Yaroslavsky and Mr. Zerunyan met with the Board's budget analyst to review individual line items in the budget. She provided explanations on the line items relating to general expense, consultant and professional services, and other items of expense which are used for law enforcement materials such as ammunition, badges, etc. Temporary help and overtime expenses were also reviewed, with the over expenditure attributed to costs associated with reducing the licensing backlog in the Fall of 2009. The Board will continue to over expend in these two areas in order to meet the Governor's Job Creation Initiative.

The Board is authorized to have 4 months of reserves in its fund. Although the current estimate shows 5.9 months of reserves as of July 1, 2010, at the end of FY 2011/12 the reserve fund will be less than 4 months. Therefore, staff has not brought a proposal related to the reduction of fees to this meeting. By the end of July 2010, the Board will know if the Consumer Protection Enforcement Initiative (CPEI) is approved and if other budget change proposals (BCPs) have moved forward. If approved, a reduction of fees would not be necessary.

Kimberly Kirchmeyer, Deputy Director of Board and Bureau Relations at the Department of Consumer Affairs, reported the CPEI proposal moved through the Assembly Budget Committee and was held over in the Senate Budget Committee for the next hearing. She expressed her hope that both the CPEI and BreEZE BCPs will move forward.

Ms. Whitney reported the Administration has placed a hard freeze on furniture purchases. This freeze impacts planned relocations for Enforcement staff into new offices and any new staff that may be added through the CPEI and Licensing BCPs. Surplus furniture is being stored in anticipation of future needs.

The freeze also included the purchase of new vehicles. Currently, the Board has 115 enforcement positions that are entitled to a vehicle. The combination of the current freeze and the previous Vehicle Reduction Plan which required the surveying of 17 of the Board's 113 vehicles leaves the Board with only 96 vehicles in its fleet. This presents a concern for the Board's ability to provide vehicles to its investigators so they may perform their jobs.

Ms. Whitney noted the freeze included out of state travel, as well. Agency has asked the Board to cut back on expenditures for Board meetings, including reducing overnight stays and using free public agency locations. As such, the July 2010 meeting has been moved from downtown to the Board's headquarters in Sacramento. The November 2010 meeting will be held in Long Beach, CA. Ms. Schipske reported the Memorial Hospital of Long Beach has offered to host the meeting at their facility. Since the Board does not regulate hospitals, Ms. Scuri indicated this would not present a conflict of interest.

B. Staffing Update

Ms. Whitney announced the retirement of Deborah Pellegrini, Chief of Licensing, and Janie Cordray, Research Specialist. She introduced Jennifer Simoes as the new Chief of Legislation. The vacancy rate for the Enforcement Section is currently at 3%. In anticipation of future retirements, a request has been made to the DCA to hold Supervisor I and II examinations in order to fill future vacancies. A medical consultant will be added to the Executive Office to serve in an advisory capacity and to help with the development of examinations for the medical consultants used in licensing and enforcement.

C. Strategic Plan: Consideration of 2011 Update

Many of the objectives identified in the 2008 Strategic Plan have already been achieved or soon will be. Ms. Whitney announced an update of the Plan would begin in 2011. Ms. Yaroslavsky and Dr. Gitnick will work with Ms. Whitney to develop a plan and make a recommendation on whether to combine the Strategic Plan update with the Board audit; the plan will be discussed at the July 2010 meeting.

D. Board Meeting Dates and Locations

Meeting dates for the remainder of 2010 were reviewed. After discussion, the Board decided to change the November meeting date to November 4-5, 2010.

E. Board Evaluation Update

Ben Frank has been retained to perform the Board's evaluation. The first draft report is expected in mid-June. The members were encouraged to complete and return their Board Member Surveys to Mr. Frank as soon as possible.

Ms. Yaroslavsky appointed Mr. Zerunyan and Dr. Salomonson to a committee to review the draft report so needed refinements and clarifications can be completed before the final report comes to the Full Board.

Agenda Item 17 Legislation

A. Status of Regulatory Action

Mr. Schunke reviewed the Regulatory Action matrix located on page 188 of the packet. Section 100 changes, which are non-substantive in nature, will be reviewed at the July 2010 meeting. Amendments to the Disciplinary Guidelines have been approved by the DCA and will next go to the State and Consumer Services Agency (SCSA) for review, then to the Department of Finance for fiscal consideration.

The Notice to Consumers by Physicians regulation was filed with the Secretary of State's Office on March 29, 2010 and will become effective June 27, 2010. Candis Cohen, Public Information Officer, reported the regulation was posted on the Board's website with a link to a sample of actual signage. Staff sent notice to approximately 150 professional physician associations notifying them of the new regulation and a letter asking for their assistance in disseminating the information to their members. Many of these organizations have included information on their websites. The front page of the Board's July 2010 newsletter will be devoted to the regulation. The requirement will also be added to the guidebook that is distributed to new licensees. Ms. Cohen reported the Board of Podiatric Medicine and the Physician Assistant Committee are considering similar regulations. She noted the calls she has received have been very positive; individuals seem eager to comply and are asking for assistance in interpreting the regulation for their particular setting.

B. 2010 Legislation

Ms. Whitney and Ms. Simoes presented an update on 2010 Legislation.

1. MBC Bills: AB 1767, SB 1031, SB 1489

- **AB 1767** (Hill) Enforcement: expert reviewers – This bill is currently on the Assembly Floor; Mr. Zerunyan testified at the Assembly Business and Professions hearing.
- **SB 1031** (Corbett) Medical Malpractice Insurance – Amendments to this bill continue. Staff will be meeting with the University of California to discuss coverage options. Legislative members are pleased and see SB 1031 as a good public policy bill that will have a positive impact on the healthcare of Californians. The fiscal is still a concern and the bill currently has the Board supporting the program.

During public comment, Beth Grivett, California Academy of Physician Assistants (CAPA), requested that the Board add physician assistants to the bill.

- **SB 1489** (B&P Committee) Omnibus – This bill will include technical amendments.

2. **DCA CPEI - SB 1111**

This bill failed to pass. Ms. Kirchmeyer indicated, in addition to the legislative component, the CPEI includes administrative improvements. The DCA recently held their first enforcement academy. In addition, enforcement statistics and improvement plans have been gathered from each of the DCA boards in order to identify areas where the Department can be of assistance. DCA is reviewing regulatory language on a board by board basis. She remarked that much of the language was taken from language previously developed by the Medical Board in response to the Enforcement Monitor's report. DCA will work with Ms. Whitney and the Board's attorneys to identify regulatory language from SB 1111 that may possibly move forward.

3. **Other Legislation**

- **AB 2148** (Tran) Personal Income Tax: charitable deductions – The bill deals with allowing a tax deduction for medical services provided without compensation. Karen Ehrlich, Chair Elect, Midwifery Advisory Council, requested that the legislation also include other healthcare workers in addition to MDs and ODs.
Dr. Duruisseau made a motion to support the bill; s/Levine; motion carried.
- **AB 2566** (Carter) Cosmetic Surgery: employment of physicians – This bill would prohibit outpatient cosmetic surgery centers from violating the prohibition of the corporate practice of medicine. Dr. Moran asked if the bill would apply to medi-spas. Ms. Whitney explained that it would, if the medi-spa was providing medical services.
Dr. Moran made a motion to support the bill; s/Chang; motion carried.
- **AB 2600** (Ma) Continuing Education Requirements – This bill would require the Board to consider including a continuing medical education (CME) course in the diagnosis and treatment of hepatitis as one of the CME requirements. The bill does not *mandate* that a course on hepatitis be required. Members expressed their discomfort with any legislation that would mandate specific courses; they felt the professional specialty organizations should make these determinations since they possess the appropriate expertise. Staff recommended a neutral position. The Education Committee was directed to look for opportunities to educate the physician community on the diagnosis and treatment of hepatitis, possibly via the newsletter and/or website. During public comment Rehan Sheikh, member of the public, expressed his opposition to the bill.
Mr. Zerunyan made a motion to take a neutral position on the bill; s/Moran; motion carried.
- **SB 700** (Negrete McLeod) Peer Review – This bill provides a definition of peer review and adds that the peer review minutes or reports may be obtained by the Board.
Mr. Zerunyan made a motion to support the bill; s/Levine; motion carried.

- **SB 726 (Ashburn) Hospitals: employment of physician: pilot project revision** – This bill makes revisions to a current pilot program administered by the Board relating to the direct employment of physicians by certain hospitals. The current language in the bill indicates the *Board* is responsible for arbitrating issues regarding physicians in the hospitals. Ms. Whitney has been in discussion with the authors and has been told that the language will be changed to reflect that the *hospital board* is responsible for arbitration; however, this change has not yet been made. Hence, staff recommends a support if amended position at this time.

Dr. Moran made a motion to support if amended. Dr. Levine seconded the motion.

During public comment, Brett Michelin, CMA, requested that the Board take an oppose position or a support in concept position due to flaws he sees in the bill. He noted SB 726 greatly expands the scope of the pilot program by using the federal definition of a “health professional shortage area” to determine which hospitals would be allowed to participate in the pilot; many more hospitals would qualify under this definition. The bill would also require the Board to confirm steps taken by the hospital CEO on issues such as whether or not the CEO has demonstrated significant need in the community to increase the number of physicians hired. Mr. Michelin noted the small community clinics or Federally Qualified Health Clinics (FQHCs), which are allowed to directly employ physicians, are strenuously opposed to the bill due to a concern that their employed physicians will leave to work at larger hospitals participating in the pilot. He reported AB 646 and AB 648, which also address the hospital employment of physicians pilot, are still possibilities.

Ms. Whitney addressed CMA’s objections to the bill. She noted the Board had previously supported the expansion of the pilot program so there would be sufficient data and information for an evaluation. There are 46 district hospitals and 38 rural non-district hospitals in the pilot. Each hospital would be allowed to employ two physicians for the pilot, for a total of 168 physicians; if a hospital demonstrates significant need to the Board, the number of employed physicians in that hospital could be increased to three. Staff does not see this as a significant expansion of the scope of the pilot.

Dr. Levine remarked it was important to make sure the measures to be used for evaluating the success of the pilot are determined in advance. Ms. Whitney indicated the bill does address the evaluation of the pilot, but without great specificity.

Dr. Salomonson expressed her concern that a provision requiring the medical staff and elected trustees of the hospital to vote on whether a physician’s employment is in the best interests of the communities served by the hospital was removed from the bill; she would like to see this provision restored.

***Dr. Moran withdrew the motion to support if amended.
Dr. Salomonson made a motion to support in concept; s/Schipske; motion carried.***

- **SB 1069** (Pavley) Physician Assistants – This bill would authorize physician assistants (PAs) to perform physical examinations, order durable medical equipment, and certify disability for the purpose of unemployment insurance eligibility.

Dr. Levine made a motion to support the bill; s/Chang.

Dr. Gitnick expressed his concern with the level of training required to conduct a proper physical examination. Beth Grivett, P.A. noted physical examinations are within a PA's current scope of practice. Jim Hay, M.D. reported CMA supports the bill. Ms. Whitney noted PAs work within a delegated services agreement. She clarified the bill includes technical amendments that allow the PA to sign off on different procedures within the delegated services agreement without having to return to the physician for a signature.

Ms. Chang expressed concerns and withdrew her second of the motion.

Ms. Yaroslavsky suggested information on the roles and responsibilities of physician extenders be included at a future Education Committee meeting.

Dr. Low seconded the motion to support. Ms. Yaroslavsky called for a vote. Motion carried (2 abstentions).

- **SB 1150** (Negrete McLeod) Healing Arts: advertisements – This bill would impose various requirements relating to healthcare practitioner advertising, cosmetic surgery, outpatient settings, and accreditation. The bill is essentially the same as SB 674 that the Board supported last year.

Ms. Schipske made a motion to support; s/Moran; motion carried.

- **SB 1172** (Negrete McLeod) Diversion Programs – This bill includes provisions recommended by the SB1441 Task Force. Most of the requirements in the bill pertain to boards with diversion programs. The bill would allow healing arts boards to order a licensee to cease practice if the licensee tests positive for any substance that is prohibited under the terms of the licensee's probation or when ordered to undergo a clinical diagnostic evaluation.

Dr. Moran made a motion to support; s/Carreon; motion carried.

- **SB 1410** (Cedillo) Medicine: licensure examinations – This bill would delete the limitation sponsored by the Board that an applicant for licensure may only make four attempts to obtain a passing score on Step III of the United States Medical Licensing Examination (USMLE). Staff recommends an oppose position in the interests of public protection.

Dr. Moran made a motion to oppose the bill; s/Chang; motion carried (1 abstention).

Ms. Whitney reported staff is working with the Office of Statewide Health Planning and Development (OSHDP) on the extension of the Board Members on the Health Professions Education Foundation (HPEF). The amendment would extend the 2011 sunset date so the Board's members may continue to sit on the foundation to assist with the Steven M. Thompson Loan Repayment Program and other foundation work.

Agenda Item 28 Department of Consumer Affairs Update

B. DCA Strategic Plan

Bev Augustine, Deputy Director of Strategic Planning and Organizational Development, DCA, offered the Department's assistance with the Board's update to its strategic plan. She referred the Members to the Department's 2010-2012 Strategic Plan located in their packets and reviewed its mission, vision and goals that include recognition as a leader at the national level, support of the Administration's job creation initiative, effective communication and customer service, and utilization of technological advances in order to better serve its stakeholders. She reported that performance measures for the strategic plan have been developed. All boards will be reporting on these measures beginning in October of 2010. The performance measure reports will also be posted publicly on each board or bureau's website. Beginning July 1, 2010 each board will post a Customer Service Survey on its website to begin to collect data on customer satisfaction.

Agenda Item 18 Licensing Outreach Report

Kevin Schunke provided an update on his licensing outreach activities which include resident orientations and licensing workshops. Outreach has been expanded to include hospital recruiters and credentialing staff, and plans are being made to broaden outreach to medical groups, clinics, and professional societies in the future. Mr. Schunke has developed an extensive contact list for Graduate Medical Education (GME) and teaching hospital staff which allows him to keep these stakeholders abreast of Board and regulatory developments and deadlines and to identify areas he may be of assistance.

Agenda Item 19 Licensing Chief's Report

A. Licensing Program Update

Mr. Schunke reported in October 2009 approximately 850 letters were sent to each of the ACGME Program Directors and to all of the GME offices at 175 teaching hospitals throughout California requesting a list of residents and fellows needing licensure or post-graduate training authorization letters (PTALs) by June 30, 2010. Approximately 1,800 names were provided to the Board and added to a matrix. The matrix is updated on a weekly basis with all file activity from the previous week, including applications received, files that were reviewed for the first time, and files that were licensed. A monthly update is provided to each of the 40 teaching hospitals that provided names. Currently, 1,080 of the individuals in the matrix have already been licensed and 625 are pending. Of the 625 individuals pending licensure, 515 have had their applications reviewed and are awaiting additional documents, 45 have not yet had their application reviewed, and 65 have not yet submitted an application. Individuals who have not yet applied greatly increase the likelihood that their license will not be issued by June 30 and that GME staff and program directors will have to formulate alternative work schedules for early July.

Dr. Gitnick asked if it would be feasible to send a letter to the deans of the medical schools with the names of those who are unlikely to be licensed by June 1 and suggest that they begin to adjust their programs so the delivery of healthcare services is uninterrupted. Mr. Schunke indicated he would do so.

Ms. Yaroslavsky directed the Licensing Committee to consider options and opportunities to facilitate the submission of applications, such as using faux application deadlines or reducing

fees for early applications. Mr. Schunke reported some teaching hospitals offer incentives such as paying the application or license fee, offering preferential work schedules, or paying Step III USMLE exam fees in order to encourage early licensure.

Ms. Pellegrini noted management reports have been developed and are now available to help manage the licensing flow and workload. In previous years, resident and fellow applications were given priority over other applications. This prioritization, which contributed to the licensing backlog in the Fall of 2009, is no longer occurring.

Ms. Pellegrini referred members to the Workload and Licensing Application Production Reports in their packets. The reports show the licensing workload fluctuates greatly from one week to the next, which also causes processing times to vary. The reports show that only 11% of files are complete upon initial review (13% of US applications, 7% of PTALs, and only 1% of International applications). Processing times are down to 68 days for initial review; pending mail review is down to 10 to 29 days. Most US applications come in during the months during August through October; most international applications come in during April through July. Approximately 4,700 licenses were issued in 2009 (not including PTALs); to date 4,100 licenses have already been issued with the highest application months still to come. Ms. Pellegrini anticipates 500 – 800 more licenses will be issued in 2010 than in 2009.

A planned reduction in staffing and halt to overtime was overridden by the Governor's Job Creation Initiative in order to cut the number of pending applications by 50% and conduct an initial review of new applications within 45 days by June 30, 2010. Staff set a goal to review all mail within 7 days. Overtime has been authorized for license review activities only.

Ms. Pellegrini reported 22 cases were reviewed at the Senior II Level in the past quarter. The cases involved applicants with criminal histories (primarily DUIs), failure to make appropriate disclosures, post-graduate training issues, discipline by another state or agency, chemical addictions, and clinical competency issues.

The Web Applicant Access System (WAAS), which allows applicants to check the status of their applications, is being accessed by approximately 800 applicants each week. A satisfaction survey imbedded in WAAS shows that 85% of those accessing the system find it useful, however 85% also indicated they still need to call the Board after viewing their results. Staff is reviewing survey comments to identify ways to better serve applicants' information needs. Information on the date an item is received and from which entity will soon be available on WAAS.

The current licensing inventory stands at approximately 2000 applications. Due diligence will be performed to determine which applications are no longer active so they may be removed from the inventory.

The implementation of the Business Process Re-engineering (BPR) Study will focus on activities that will increase efficiencies, such as completing the policy and procedure manual and reviewing application instructions and licensing information on the Board's website.

Ms. Pellegrini will work with Ms. Whitney to ensure a smooth transition upon her retirement. Ms. Yaroslavsky thanked Ms. Pellegrini for her 32 years of state service and for her work for the Medical Board.

B. Midwifery Advisory Council Update and Consideration of Council Recommendations

Karen Ehrlich, Chair Elect, referred Members to the Staff Report on the April 2010 Midwifery Advisory Council (MAC) meeting. Licensed midwives face significant barriers to care in California. The MAC voted to request the Board's permission to begin to address these barriers to care, specifically to: work with liability insurance carriers to make it more affordable for a physician to hire a licensed midwife; change the process to register live births so that licensed midwives may fulfill the requirements they have by law; identify key legislative and regulatory areas to be addressed to ensure the Licensed Midwife Practice Act (LMPA) is implemented the way the legislature envisioned.

Ms. Chang moved to authorize the MAC to move forward with addressing barriers to care provided by licensed midwives; s/Schipske; motion carried.

Agenda Item 20 Approval of Maternidad La Luz Midwifery Challenge Program Modification

Business and Professions Code Section 2513 states that an approved midwifery education program shall offer the opportunity for students to obtain credit by examination for previous midwifery education and clinical experience. The Maternidad La Luz's (MLL) Challenge Program has been previously approved by the Board; the program currently requires the midwife applicant to spend one year on campus to allow the school to verify skills, education, and practical knowledge prior to allowing the applicant to take the challenge examination. The MLL approached the Board in December 2009 to modify its existing curriculum to allow midwife applicants to challenge its program by distance education and practical verification. In addition, MLL is requesting approval to broaden the applicant acceptance criteria to allow Certified Professional Midwives (CPMs) to take the challenge examination. Staff and legal counsel reviewed the materials submitted by MLL and concurred that the modifications to the existing Challenge Program continue to meet the statute and regulatory requirements. Staff recommends that the Board approve the modifications to the existing challenge program and allow the applicant acceptance criteria to be broadened, as these changes are consistent with law.

Dr. Low made a motion to approve the modifications to the Maternidad La Luz Challenge Program and to broadening the applicant category to include certified professional midwives; s/Schipske; motion carried.

Agenda Item 21 Approval of Proposed Resolution of Written Examination Passing Scores

Mr. Heppler stated legal counsel recommends, as a matter of caution, the Board formally establish by resolution that the Board accepts a scaled passing score of 75 as the minimum passing score on all three parts of the USMLE. This reaffirms the Board's past practice of accepting the passing score set by the FSMB as its own passing score.

Dr. Low made a motion to formally establish by resolution that the Board accepts a scaled passing score of 75 as the minimum passing score on all parts of the USMLE; s/Zerunyan; motion carried.

Agenda Item 22 Update on Special Task Force on International Medical School Recognition

Dr. Low reported Dr. Joe Silva has already completed his initial review of one of the international medical schools applying for recognition. Dr. Harold Simon of UC San Diego and Dr. James Nuovo of UC Davis are also conducting reviews. Dr. Mark Servis, Associate Dean of Curriculum and Competency Development at UC Davis, has been added as an additional reviewer. There are currently 5 pending applications for recognition:

- The American University of Antigua's (AUA) application was originally submitted in March 2008. In January 2010, a review was completed and a request for additional documentation was sent; the Board is awaiting a response to its request.
- Universidad Iberoamericana's (UNIBE) application was received in August 2008; it was reviewed in 2010 and a letter was sent requesting additional information. The Board is awaiting a response to its request.
- The Medical University of Silesia, Poland submitted an application in January 2009. The initial review has been completed. A letter will be sent to the school requesting additional information.
- Ross University, Bahamas Campus, submitted an application in November 2009. The review will be assigned to a medical consultant next week.
- The Medical University of Warsaw's application was received in April 2010 and will be assigned to a medical consultant shortly.

Ms. Chang reported many state boards use California's international medical school approval list in formulating their own list.

Agenda Item 23 Proposed Amendments to Regulations for SB 1441

Ms. Whitney reported staff has reviewed the SB 1441 standards that came out of the Substance Abuse Coordination Committee (SACC) and has determined there is no need for the Board to implement any new standards at this time. The existing Disciplinary Guidelines already address a number of the issues raised in the proposed standards. SB 1172, which the Board voted to support, incorporates the legislative recommendations from the SACC; the Board *will* need to address implementation of some sections of that language via regulations if it should pass.

Ms. Kirchmeyer reported changes were recently made to SB 1172 requiring any licensee found to be abusing substances to immediately cease practice, rather than being placed on an inactive status. This eliminates the need to promulgate regulations. The majority of the standards in SB 1441 address individuals in a diversion program; as the Board no longer has a diversion program, they do not pertain to the Board.

Agenda Item 24 Enforcement Committee Update and Consideration of Committee Recommendations

Dr. Low noted the Enforcement Committee convened its first meeting on April 29, 2010. The vision and purpose of the Committee was defined to provide advice and direction to the Enforcement Program as issues arise, as well as to provide education and information to Board Members and the public.

Staff described issues with training medical expert reviewers and they will be developing a training concept that will utilize medical school training facilities. Staff also described training modules that can be made available to Board Members. These modules address most aspects of the Enforcement Program from the receipt of a complaint in the Central Complaint Unit, to field investigations, to the Discipline Coordination Unit, and, lastly, to the probation function. One or more of these modules will be presented at the next committee meeting.

Agenda Item 25 Enforcement Chief's Report

A. Approval of Orders Restoring License Following Satisfactory Completion of Probation, Orders Issuing Public Letter of Reprimand, and Orders for License Surrender During Probation.

Ms. Threadgill requested approval of 14 Orders Restoring License to Clear Status Following Satisfactory Completion of Probation and 4 Orders for License Surrender While on Probation.

Dr. Moran made the motion to approve the orders; s/Levine; motion carried.

B. Expert Utilization Report

Ms. Threadgill directed members to page 218 of the packets for a chart reflecting the use of experts by specialty during the past quarter. A list of specialty/sub-specialty areas experiencing a shortage of expert reviewers is located on page 223.

C. Enforcement Program Update

Ms. Threadgill reported staff reviewed statistical data on the cases presented to the panels from January 2008 to March 2010. Based on this analysis, the alpha assignments for the two panels will be redistributed to achieve a more equal balance between the two panels.

The Probation Unit staff has been updating the Petition for Reinstatement packages for modification and termination of probation. The proposed package is on pages 227-232 of the packet.

Ms. Yaroslavsky asked if the Board is allowed to require an evaluation of technical skills before an individual applies for reinstatement, specifically for individuals who have not practiced for several years but are seeking penalty relief so they may return to practice. Ms. Threadgill noted the petition process is set by law; probationers are entitled to petition for modification or reinstatement after the appropriate number of years if they meet the minimum requirements set by law. Legislative changes would be required to change the petition process.

Agenda Item 26 Vertical Enforcement Program Report

Ms. Threadgill directed members to page 233 of their packets for statistics on the Vertical Enforcement (VE) Program. She reported the 2009 figure for All Calendar Day Age from

Accusation Filed to Disciplinary Outcome listed in their packets is incorrect; it should be 473 days.

Senior Enforcement staff continues to meet quarterly with Carlos Ramirez and supervising deputy attorney generals from the Health Quality Enforcement Section. Kim Bell, Supervising Deputy Attorney General, and Laura Sweet, Medical Board Deputy Chief of Enforcement, have begun work on the records acquisition training module that will be presented at a state-wide investigators training conference. The training, which will be for deputy attorney generals and investigators, will be designed to provide a manual with sample pleadings for civil penalties cases and subpoena enforcement cases. Mr. Ramirez reported additional training modules for deputies and investigators are planned.

Mr. Zerunyan noted for 2009, the average number of days from the time a case is assigned to an accusation being filed is 578 days or almost 1 ½ years, and the average number of days from an accusation being filed to a disciplinary outcome is 339 days or almost 1 year. Mr. Ramirez reported the Attorney General's Office is requesting hearings as soon as possible and rarely agree to continuances. The time it takes to schedule a case with the Office of Administrative Hearings (OAH) varies depending on the geographic region. On-going teacher termination hearings at OAH and opposing counsels' schedules have also impacted hearing timelines. Ms. Threadgill stated that investigation averages have decreased or held steady, despite the ongoing furlough and loss of staff hours.

Dr. Salomonson asked how many complaints proceed to investigation and discipline. Ms. Kirchmeyer replied, based on her experience at the Medical Board, that of the 8,000 or so complaints received each year, approximately 2000 proceed to investigation and approximately 300 result in disciplinary action, or an average of 3%. According to the FSMB's data, this percentage is fairly consistent in medical boards across the nation.

Ms. Kirchmeyer advised that one of the goals of the CPEI will be to reduce the length of time from the date a complaint is originally received until the time formal disciplinary action is taken to 12 to 18 months by 2012/2013. The Department will collect data from the boards to evaluate progress toward this goal. Administrative and IT improvements should facilitate this reduction in the timeframes.

The CRIMS IT system requirements that were developed by the Board will be included in the Department's BreEZE IT system requirements. A Request for Proposal has been prepared and should be released in May 2010; the BCP for the BreEZE system is awaiting approval. The Department has planned an aggressive schedule for implementing the system, with a goal to roll out the BreEZE system in December 2012.

Agenda Item 27 Physician Assistant Committee Update

Dr. Low reported the Physician Assistant Committee (PAC) last met in February 2010 in Sacramento. A regulatory hearing was held to change the amount paid by Diversion participants. The regulation would require those participating as part of an enforcement action to pay all costs; self-referred participants would pay 75% of costs. Some minor changes were made after the hearing and the modified text was sent out for public comment.

The Committee will begin to provide information to OSHPD pursuant to SB 139, similar to the information provided by the Medical Board. This bill (from 2007) seeks to gather information on the supply and demand of various health care professionals in California.

The PAC is considering revising the regulation pertaining to preceptor/preceptee to determine if the current one-to-one ratio should be modified. Additionally, the PAC has formed a Task Force to review proposed changes to the accreditation for two year programs.

The Committee is considering whether to change their name from Physician Assistant Committee to Board. This change will not affect the relationship that the Committee retains with the Medical Board.

The Committee discussed THREE pending legislative bills, but did not take a position on the bills.

- SB 389 deals with the fingerprinting of licensees.
- AB 1310 deals with the collection of data for health care professionals which then shall be reported to OSHPD.
- SB 1069, which is sponsored by the California Association for Physician Assistants, would allow PAs to sign any and all forms which a physician can sign if it is delegated to them in their Delegation of Services Agreement.

The next meeting of the PAC will be on July 26th in Sacramento.

Agenda Item 28 Department of Consumer Affairs Update

On behalf of the Department, Ms. Kirchmeyer congratulated Ms. Whitney on her appointment as Executive Director. She thanked staff for collecting data the Department requested for various reports and the Board for passing the Notice to Consumers regulation.

The Customer Service Survey previously mentioned by Ms. Augustine in her report is currently being piloted with another board. Information on the survey will be provided to Ms. Whitney and staff before it is implemented.

The Department is exploring ways to be more proactive in its approach to enforcement. The issue of continuing competency for licensees will be addressed at the July 2010 DCA Board Member Training as a possible way to increase patient protection.

A. Board Member Training

A Board Member Training session for all DCA board members will be held on Tuesday, July 27, 2010 at the city library in Sacramento. The training will provide information on licensing and enforcement processes, the role of members, performance measurements for the boards, and board member governance. All board members are encouraged to attend. The meeting may be webcast.

Agenda Item 29 Agenda Items for July 29-30, 2010 Meeting

Ms. Yaroslavsky requested that the following items be included in the July 2010 agenda:

- Election of Officers
- Update on the Governor's Job Creation Initiative
- Discussion on the Medical Board /UC Davis telemedicine pilot
- Presentation of the Physician Humanitarian Award

Ms. Schipske requested an analysis of the new federal health care reform and how it will impact physicians and drive future legislation.

Beth Grivett, CAPA, offered to provide a presentation on current legislation and PA scope of practice issues. Ms. Schipske suggested that the California Coalition of Nurse Practitioners also be included in such a presentation on physician extenders.

Agenda Item 22 Adjournment

There being no further business, the meeting was adjourned at 2:50 p.m.

Barbara Yaroslavsky, President

Hedy Chang, Secretary

Linda K. Whitney, Executive Director

TITLE 16. Medical Board of California

NOTICE IS HEREBY GIVEN that the Medical Board of California (hereinafter referred to as the "Board") is proposing to take the action described in the Informative Digest. Any person interested may present statements or arguments orally or in writing relevant to the action proposed at a hearing to be held at the Medical Board of California's Hearing Room, 2005 Evergreen Street, Sacramento, California, at 9:00 a.m. on July 30, 2010. Written comments, including those sent by mail, facsimile, or e-mail to the addresses listed under Contact Person in this Notice, must be received by the Board at its office not later than 5:00 p.m. on July 26, 2010, or must be received at the hearing. The Board, upon its own motion or at the instance of any interested party, may thereafter adopt the proposals substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as contact person and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

Authority and Reference: Pursuant to the authority vested by Section 2018 of the Business and Professions Code, and to implement, interpret or make specific Sections 2082, 2141 and 2435 of said Code, the Board is considering changes to Division 13 of Title 16 of the California Code of Regulations as follows:

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Amend Section 1306 in Article 2 of Chapter 1 of Division 13, relating to the Abandonment of Application Files.

Existing regulation specifies that the Board shall "deny an application without prejudice" if an applicant does not "exercise due diligence" by completing the application within one year. The intent of this section is to notify applicants that the Board will close their licensing application if they do not fulfill all applicable licensing requirements and receive a physician's and surgeon's license within one year after they filed the application. However, applicants can misinterpret the existing obsolete, ambiguous terminology to mean that the Board will take formal action to deny their application. This proposal would replace obsolete, ambiguous terminology with concise language that establishes what actions are necessary on the part of an applicant to prevent his or her application from being deemed abandoned by the Board. This proposal would also require that applicants notify the Board of a change of address within thirty days.

FISCAL IMPACT ESTIMATES

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None

Nondiscretionary Costs/Savings to Local Agencies: None

Local Mandate: None

Cost to Any Local Agency or School District for Which Government Code Section 17561 Requires Reimbursement: None

Business Impact: None

The board has made an initial determination that the proposed regulatory action would