MEDICAL BOARD OF CALIFORNIA
Licensing Operations

Midwifery Advisory Council
Lake Tahoe Room
2005 Evergreen Street, Suite 1200
Sacramento, CA 95815

August 11, 2010

MINUTES

Agenda Item 1 Call to Order/Roll Call
The Midwifery Advisory Council (MAC) of the Medical Board of California was called to order by Chair Karen Ehrlich at 11:35 a.m. A quorum was present and notice had been mailed to all interested parties.

Members Present:
Karen Ehrlich, L.M., Chair
Ruth Haskins, M.D., Vice Chair
Faith Gibson, L.M.
Carrie Sparrevohn, L.M.
Barbara Yaroslavsky

Members Absent:
William Frumovitz, M.D.

Staff Present:
Ramona Carrasco, Central Complaint Unit
Diane Ingram, Manager, Information Services Branch
Letitia Robinson, Manager, Licensing Operations
Jennifer Simoes, Chief of Legislation
Anita Scuri, Supervising Senior Counsel, Department of Consumer Affairs (DCA)
Cheryl Thompson, Analyst, Licensing Operations
Linda Whitney, Executive Director

Members of the Audience:
Claudia Breglia, L.M., California Association of Midwives (CAM)
Mason Cornelius, Licensed Midwife
Frank Cuny, California Citizens for Health Freedom (CCHF)
Robyn Strong, Manager, Patient Data Section, Healthcare Information Division, OSHPD
Jeff Toney, Division of Legislation and Policy Review, Department of Consumer Affairs

Agenda Item 2 Public Comments on Items Not on the Agenda
No public comments were offered.

Agenda Item 3 Approval of Minutes from the April 8, 2010, Meeting
It was M/S/C (Sparrevohn /Yaroslavsky) to approve the* April 8, 2010, *meeting minutes with a minor amendment.

Agenda Item 4 Licensed Midwife Annual Report

A. OSHPD / MBC Memorandum of Understanding
OSHPD and the Board have been meeting to develop a Memorandum of Understanding (MOU). The MOU has transitioned into a multi-year Inter-Agency Agreement (IAA) between the two agencies that establishes and documents the collaboration of the work being done on the Licensed Midwife Annual Report for MBC by OSHPD and provides a payment method to reimburse OSHPD for the time spent collecting data and hosting the application on their website. The agreement is currently in draft form. MBC is responsible for making changes to the online reporting application through December 2010; OSHPD will be responsible for any changes for the next two years, beginning in January 2011.

B. 2009 Report
Ms. Thompson reported that of the 217 midwives who are currently renewed and current, 27 have not yet submitted their Annual Report; 15 midwives who are currently in delinquent status have not yet submitted their reports. An administrative hold will be placed on these midwives' licenses that will block their ability to renew their license until their Annual Report has been submitted.

Ms. Gibson provided a synopsis of the 2009 Annual Report results. In 2009, 3,023 clients were served by California licensed midwives. There were 1,974 planned out-of-hospital births at the onset of labor; 1,621 of these were completed in an out-of-hospital setting. There were a total of 688 transfers of care (555 elective; 133 urgent). Nine instances of fetal demise after 20 weeks were reported. There were 4 instances of neonatal mortality (1.5 per 1,000 live births) and 1 instance of maternal mortality reported.

C. 2010 Report – Report Survey Suggestions
MBC and OSHPD have been working together on the 2010 Annual Report online survey; many of the changes are technical in nature and will make the online survey more user friendly. A "Frequently Asked Questions" section will be added to the survey, as well as clarification on some of the definitions used.

There was lengthy discussion among members on specific changes to the survey. These revisions will be incorporated into the 2010 survey by staff.

The Annual Report was developed to collect data required in law by B&P §2516. Ms. Gibson recommended changing the wording for requirement of Section 2516(a)(3)(L) to read "complications resulting in the mortality of a *neonate*" (rather than an *infant*). This technical change could be included in an omnibus bill. A corresponding change would have to be made in the Report Survey.

Dr. Haskins requested that future Annual Reports include an addendum comparing the data with that from other states or countries. Ms. Whitney indicated this could be a staff project with a report made to the Council (and possible posting on the Board's website), but that would not be included in the final report to the Legislature.

Agenda Item 5 Program Update

Ms. Thompson reported during FY 09/10, 19 new midwife licenses were issued and 74 licenses were renewed. As a comparison, in FY 08/09, 23 licenses were issued. As of August 1, 2010, there are 217 midwives in California with a renewed and current license status.

At the July 30, 2010 Medical Board meeting, Bastyr University Department of Midwifery Program, formerly known as the Seattle School of Midwifery, was formally approved by the Board with retroactivity to June 2010 when the first class graduated under Bastyr.

On Wednesday, August 18, 2010, approximately 15 midwifery candidates will sit for the NARM exam at the Medical Board's offices. This exam, which is offered twice per year, satisfies the Board's written examination requirement for licensure.

Agenda Item 6 Licensed Midwife Disciplinary Action Statistical Data

Ms. Carrasco, Complaint Unit Analyst, directed members to page 20 of their packets for information on Midwifery Program enforcement statistics. Ms. Scuri clarified that cases referred for criminal action typically deal with violations of midwifery standards or unlicensed practice, rather than issues such as DUIs.

Agenda Item 7 Update on Proposed Legislation

A. SB 1489

Ms. Simoes reported SB 1489, the omnibus bill which includes midwifery language, was amended on April 26, 2010 to include the language that clarifies the reporting requirements for midwives. The bill currently is on the Assembly third reading and has been passed through on consent. It is also on the Senate floor Consent Calendar. Amendments to the bill, such as the suggested change to B&P §2516, would be difficult to make at this point in time. Ms. Simoes suggested any additional technical changes be held for next year's omnibus bill.

Agenda Item 8 Terms and Conditions of Probation

This item was tabled until the December 2010 MAC meeting.

Agenda Item 9 Formation of Work Group to Determine Whether Regulations Are Needed to Define What Constitutes "Failure to Comply" for Purposes of B&P Section 2516

At the January 7, 2010, meeting, staff was asked to examine regulatory language that would explain what the law meant with regard to "failure to comply" in B&P Section 2516. Previous discussion centered on how complete the Annual Survey had to be in order to fulfill the requirement in law (e.g., whether a survey with sections left blank, with internal inconsistencies in reported data, and that had not been signed would be considered a "complete" survey). Ms. Sparrevohn stated that only a report that was truly complete should satisfy the requirement in law.

Ms. Whitney suggested the on-line survey could be altered so that it could not be submitted unless all sections were completed and the survey was signed; this would resolve the issue for the majority of licensees who submit their surveys on-line. Staff will implement these changes and research whether it is possible to prevent submission if there are data inconsistencies.
These changes, however, will not resolve the issue for those submitting incomplete paper versions of the survey. Staff will work with OSPHD to develop a procedure for rejecting unsigned or incomplete paper surveys and notifying Board staff so a written notification can be sent to the licensee. Ms. Ehrlich would like the incomplete survey form be returned to the licensee in order to make resubmission of the survey easier.

Agenda Item 10 Presentation on Barriers to Care and Potential Formation of Task Force
Claudia Breglia, California Association of Midwives, directed members to page 30 of their packets for a list of issues that have been identified as barriers to midwifery practice in California. Many barriers are related to the supervision requirement in the Licensed Midwife Practice Act (LMPA) and the difficulty midwives face in securing a physician willing or able to supervise them. Suppliers won't provide their products or services (such as ultrasounds, pharmaceuticals, and medical devices) without a supervising physician's signature on file. Occasionally clients are allowed to pay for services such as ultrasounds, but then the providers refuse to release results to anyone but the supervising physician. Without supervising physicians, licensed midwives are technically out of compliance with the law and are practicing illegally. This occasionally leaves midwives vulnerable to harassment. When a complaint against a midwife is investigated, only a midwife with a supervising physician is allowed to provide expert review. Since most expert reviewers work exclusively in doctors' offices and do not attend home births, this deprives midwives of a review by peers in the community who are familiar with birth in the home.

Physician supervision also creates issues with regard to prescription medication and the ability of licensed midwives to obtain emergency and other injectible medications. There is no provision for procuring or providing legend drugs and devices in law or regulation. Oxygen, syringes, suture materials, and IV equipment can also be difficult to obtain. Ms. Sparrevohn noted this is becoming an issue even for those LMs working *with* physician supervision in a clinic or office setting due to requirements for the e-prescribing of medications.

Ms. Simoes stated that the physician supervision issue would need to go to the full Board since a legislative change would be necessary in order to change the physician supervision requirement in law to physician collaboration.

The California Department of Public Health (CDPH) has jurisdiction over several areas that impact midwives. Midwives attempting to register births are not allowed to process or complete paper birth certificate forms, are not allowed to submit forms electronically, and are subject to additional requirements or restrictions by various counties that are not required by the State Office of Vitals Records. LMs are often unable to register births within the 10 days required by law due to county specific time schedules and restrictions. Ms. Simoes stated that this issue could possibly be addressed without a legislative change by meeting with CDPH to discuss birth certificate issues.

CDPH Alternative Birth Center regulations do not list licensed midwives as one of the required attendants during birth; this prohibits the hiring of LMs as out of hospital birth attendants in these settings. Additionally, CDPH's Laboratory Field Services determination that LMs must have the signature of the supervising physician on file in order to open or maintain an account makes it

difficult for LMs to open accounts with diagnostic laboratories for basic lab services such as pregnancy tests, prenatal panels, and urine tests. Both of these barriers would require a change in regulations.

The omission of licensed midwives from various lists of authorized service providers such as the Department of Health Care Services (Medi-Cal reimbursement), CDPH for the Comprehensive Perinatal Services Program (CPSP), and the Managed Risk Medical Insurance Board (Access for Infants and Mother's Program) creates payment issues for midwives and restricts birth options for low income women. Clinics are reluctant to hire LMs since they cannot be reimbursed for clinical services they provide to patients. Ms. Sparrevohn noted that any code that includes licensed nurse midwives (LNMs) could also include LMs since the scope of practice is identical for both. Addressing these issues would require regulatory changes.

As out of network providers, Ms. Breglia noted private insurance carriers pay LMs at significantly lower rates, will not pay LMs directly, or will not cover their services at all. Ms. Simoes stated the Board would typically not involve itself in private insurance payment issues. Dr. Haskins indicated LMs would need to collectively meet with individual insurance companies on this issue. Ms. Breglia reported that Florida has a law requiring insurance companies who pay maternity benefits to pay licensed midwives who attended home births. Dr. Haskins suggested that pursuing a legislative change on this issue would probably be unsuccessful at this time.

Ms. Breglia stated the time was right to address the physician supervision requirement. She thought that approaching the issue as a protection of the consultant physician and the provision of high quality care to patients would be the most successful strategy. The supervision requirement has created a barrier to quality care for consumers who choose to have their babies at home and for physicians who would like to work with midwives to provide seamless transfer into the medical system when it becomes necessary. She would prefer that an individualized, consultative relationship with a physician be required and that these physicians be released from liability for the midwife's actions prior to their assumption of the patient's care. Other states have created similar requirements in law. No states, other than California, require physician supervision of licensed midwives.

Dr. Haskins recommended that the MAC not seek a legislative solution to the physician supervision issue at this time since it is likely to be strongly opposed by the American College of Obstetricians and Gynecologists (ACOG) and the California Medical Association (CMA). She suggested addressing the various barriers by working with other government oversight agencies and approaching liability carriers and insurance actuaries with statistics on midwifery care.

Ms. Scuri stated B&P Section 2507(f) directs the Board to adopt regulations defining the appropriate level of supervision required for the practice of midwifery. She suggested the MAC may want to consider revisiting this section of law since the rulemaking process is under the Board's control, not the Legislature's, and there is "play" in how supervision is defined. She recommended that the MAC wait to approach the Board until it had consensus on how to proceed.

Ms. Whitney indicated she would direct staff to proceed with setting up meetings with the relevant oversight agencies and to report back the result of those meetings at the next MAC meeting. She will also direct staff to start researching and setting up a timeline for workshops and discussions on the regulatory process to address other identified barrier issues.

Ms. Gibson reported on a study from British Columbia, which has the same direct entry midwifery system as California, except they have a "seamless system of care" with the obstetrical/medical community. The British Columbia perinatal death rate for home births attended by midwives is 0.35 per 1,000 births; for midwives attending births in hospitals the rate is 0.57 per 1,000. The rate for physicians doing planned hospital births for the same low risk category of mothers the rate was 0.64. Midwives in California currently have a perinatal death rate of 1.9 per 1,000. It is unknown if California's rate could achieve similar results if a seamless system existed here, but the rate would most likely improve.

Ms. Sparrevohn stated the ability of LMs to procure basic lifesaving drugs, oxygen and other medications needs to be addressed; this will likely require legislative change. Currently, LMs cannot prescribe or administer or furnish drugs except under the supervision of a licensed physician.

Ms. Sparrevohn noted the listing of drugs and devices that midwives use are only included in the educational requirements in regulations; it is not included in the scope of practice. LMs have broadly interpreted this legislation to reason that since they are trained to use these drugs and devices, then it is implied that they may use them. The list includes drugs such as Pitocin and Rhogam, which, as controlled substances, can only be prescribed or administered under a supervising physician's authorization.

Ms. Breglia reported Louisiana has a law that states that a midwife licensed under these regulations may lawfully have possession of small quantities of the above named medications normally required for administration; each use shall be reported in the client's chart. Currently, there is nothing in California law that allows a LM to get a furnishing license. LMs cannot get a DEA number.

Ms. Scuri clarified that a midwife with a supervisory relationship with a physician could, under the physician's direction (which could be standardized procedures or a signed protocol), furnish medications to a patient.

Ms. Scuri noted the section of law dealing with supervision has been interpreted to essentially say, "even though you are licensed, if you don't have a supervising physician you are the same as an unlicensed person". She stated that this is not a reasonable interpretation of the law.

Ms. Ehrlich voiced her support of Ms. Whitney's plan for addressing the barriers to care by first setting up meetings with appropriate agencies. She requested that lab accounts be one of the first items addressed.

Ms. Scuri summarized by stating the midwife community is free to go in whichever direction it chooses. While it is likely they don't want to work at cross purposes with the MAC, it is their prerogative to do something that the Board is not yet ready to do.

Agenda Item 11 Proposed Meeting Dates for the Remainder of 2010 and 2011

The proposed meeting dates for the remainder of 2010 and 2011 are December 9, 2010; April 7, 2011; August 11, 2011, and December 8, 2011.

Ms. Sparrevohn made a motion to approve the proposed meeting dates; s/Yaroslavsky; motion carried.

Agenda Item 12 Agenda Items for Next MAC Meeting
Ms. Gibson asked that the new law that will add neonatal and maternal deaths to Section E of the Licensed Midwife Annual Report be added as an agenda item.

Ms. Yaroslavsky requested a review of the Medical Board's website be added as an item for the December 2010 meeting.

Agenda Item 13 Adjournment
Meeting adjourned at 4:22 p.m.