



MEDICAL BOARD OF CALIFORNIA
Executive Office



Executive Committee

**Holiday Inn Capitol Plaza
River View Room
300 J Street
Sacramento, CA 95814**

**Teleconference Location:
UCLA Medical Center
10833 Le Conte Avenue, 44-138 CHS
Los Angeles, CA 90095-1684**

March 25, 2009

MINUTES

Open Session:

Agenda Item 1 Call to Order/Roll Call

The Executive Committee of the Medical Board of California was called to order by the Chair, Dr. Richard Fantozzi at 1:33 p.m. Notice had been sent to interested parties.

Members Present:

Richard D. Fantozzi, M.D.
Hedy Chang
Gary Gitnick, M.D.
Barbara Yaroslavsky
Frank Zerunyan, J.D.

Staff Present:

Barb Johnston, Executive Director
Kimberly Kirchmeyer, Deputy Director
Candis Cohen, Public Information Officer
Janie Cordray, Research Specialist
Kurt Heppler, Department of Consumer Affairs Staff Counsel
Armando Melendez, Business Services Office
Kelly Nelson, Legislative Analyst
Regina Rao, Business Services Office
Cheryl Thompson, Executive Assistant
Renee Threadgill, Chief of Enforcement
Michele Tuttle, Legislative Assistant
Linda Whitney, Chief of Legislation

Members of the Audience:

Yvonne Choong, California Medical Association
Mr. Conway (at Teleconference location)
Frank Cuny, California Citizens for Health Freedom
Rick Keene
John Toth, M.D., California Citizens for Health Freedom
Brian Warren, Department of Consumer Affairs

Agenda Item 2 Approval of Minutes from the November 6, 2008 and December 8, 2008 Meetings

Ms. Yaroslavsky made a motion to approve the minutes from the November 6, 2008 Executive Committee meeting; s/Zerunyan; vote was taken by roll call; motion carried.

Ms. Yaroslavsky made a motion to approve the minutes from the December 8, 2008 meeting; s/Chang; vote was taken by roll call; motion carried.

Agenda Item 3 Legislation

A. 2009 Legislation

Linda Whitney, Chief of Legislation, stated, since this was a teleconference meeting, all votes on Legislation would be taken by voice vote via roll call. With the exception of the actions the Full Board has taken on Board-sponsored bills, Ms. Whitney indicated all positions taken during this meeting would be an action of the Executive Committee, providing the basis for her testimony at hearings during April and early May, until the Full Board has the opportunity to discuss the bills.

AB 501 (Emmerson) – Physician and Surgeons: Limited License

Ms. Whitney directed members to the three Board-sponsored bills, beginning with AB 501 (Emmerson). This bill relates to licensing, and contains a provision for a limited license. Approval from the Full Board has been given to incorporate the fee cap and the expansion of the reserve into this bill, with the author agreeing to take these additions. The use of "M.D." language is out for review, with the language being vetted by interested parties. The UC system supports this concept, but revisions may emerge. Staff is awaiting the input of other entities.

Ms. Whitney introduced a proposed amendment to section 2441 of the Business and Professions (B&P) Code; this provision amends the current section dealing with the waiver of license fee for the disable status category by clearly stating the intent of the amendment is to enhance public protection and not create an undue burden on the licensee; additionally, a licensee who is in disabled status who is not engaged in the practice of medicine for five years or more from the waiver date authorized in this section, would have to establish to the satisfaction of the Board that he or she is qualified to practice medicine safely. Individuals falling into this category could be required to take a clinical examination. This is the same requirement that already exists for any individual who is delinquent for five years. Ms. Whitney asked for permission to incorporate this amendment into the

legislative proposal. Ms. Yaroslavsky made a motion to approve incorporating this amendment; s/Zerunyan. Ms. Yaroslavsky asked for clarification to ensure this proposal would allow doctors with a disability to receive an initial limited license without having to go through the probationary license process, removing the impression the doctor might be under a disciplinary action. Ms. Whitney stated that the bill would accomplish this.

Mr. Zerunyan asked if “disability” was defined anywhere. Mr. Heppler indicated that it was not defined. Mr. Zerunyan was concerned the definition of “disability” might become a subject of litigation in the future and thought it would be helpful if it could be defined and included in the statute.

Mr. Zerunyan also asked how the consumer would know of any limitations on the physician’s license. Ms. Whitney indicated the information would be included on the Board’s website; she was unsure of what information would appear on the actual certificate of licensure that the physician would post on the wall. Given that most consumers aren’t aware of the ability to check their physician’s license on-line, Mr. Zerunyan was still concerned that a patient would be unaware of the limitations on their doctor’s license. Dr. Fantozzi suggested that efforts should be made to make any action or wording consistent with the Americans with Disabilities Act (ADA). In addition to making sure the public was aware of the limitation on the physician’s license, Dr. Fantozzi felt the Board should also make sure the licensee was not put in a prejudiced position. Ms. Whitney indicated she would work with staff attorneys and consultants from the legislature to come up with an agreeable solution.

A vote was taken by roll call and the motion to approve incorporating the amendment of B&P Code Section 2441 into AB 501 carried.

AB 1070 (Hill) – Healing Arts: Discipline: Public Reprimand

Ms. Whitney indicated this bill was the Board’s enforcement enhancement legislation. The bill currently includes B&P Code Section 2227, which is to add an educational condition to a public reprimand recommended by the Administrative Law Judge. The bill incorporates Board approved sections on requiring certified medical records, amendments to B&P Code Section 801.01 malpractice reporting, amending B&P Code Section 2008 so the Board President may serve on panels, and amending B&P Code Section 2425.3 for reporting of convictions at time of renewal. The bill is intended to possibly incorporate the Vertical Enforcement (VE)/Prosecution enhancements, depending on the outcome of the VE Report which is due to the Legislature on July 1, 2009. There will be no language until the VE Report is out and the Board has had an opportunity to meet to discuss the report.

Staff is recommending that B&P Code Section 801.02 be added to this bill. An insurance company informed the Board of a process they are using termed “remedial services”, which is similar to the “Sorry Works” type of system where an apology and possibly a payout is made prior to any filing of a malpractice claim. Staff is proposing language that would allow the Board to receive this information and carry out its duty of consumer protection while ensuring the confidentiality of these remediations.

Ms. Yaroslavsky made a motion to approve adding B&P Code Section 801.02 to AB 1070; s/Chang.

Ms. Whitney indicated this new section would set forth findings as well as protect the remediation that is done, and would require reporting, just as in malpractice settlements, of remediations in the amount of \$30,000 or more to the Board. The Board would be able to look into these remediation actions and take action, if appropriate. Ms. Whitney indicated when the Board receives information based upon B&P Code Section 801.01, only around 5% proceed to accusation. Hence, while most are looked at, only a small number go forward to an actual enforcement action. Nevertheless, in the Board's duty as a consumer protection agency, this is the appropriate thing to do.

A vote was taken by roll call and the motion to approve adding B&P Code Section 801.02 to AB 1070 carried.

AB 1094 (Conway) – MBC: Physician and Surgeon Well-Being

Ms. Whitney indicated this bill is the Board's Wellness Program bill. Dr. Duruisseau met with the Director of Consumer Affairs (DCA), DCA staff, and Board staff on March 10, 2009 to discuss the opposition from last year regarding this bill and the veto. Staff was directed to continue on their legislative analysis that would go to the State and Consumer Services Agency (Agency). Unfortunately, word was received on March 16, 2009 that the Legislative Director at Agency had called the author's office and informed the author the bill would be opposed and most likely vetoed. The author's office informed Board staff the bill would probably be used for another purpose. Dr. Duruisseau requested, as soon as the new Agency secretary was in place, to have a meeting.

Ms. Yaroslavsky asked if the bill was to be used by the author's office for another purpose and the Board would lose the opportunity to forward a wellness bill. Ms. Whitney indicated that the Board would not only lose the opportunity with this bill, but possibly in the future as well. Dr. Fantozzi was curious as to why the administration is announcing, before the bill has gone through the legislative process, that they will veto a bill that has not had an opportunity to be looked at or amended. He felt there was no further action for the Board to take, other than to direct staff to work with the author and keep the Board informed.

Mr. Zerunyan asked if there was a language or drafting issue with the bill, specifically referring to the use of the word "program" in the language which might be perceived as being unnecessary. Ms. Whitney indicated she has not heard from Agency or DCA with regard to this matter; she has been obtaining direction from Dr. Duruisseau as the chair of the Wellness Committee. Dr. Fantozzi offered, as President of the Board, to speak to whomever Ms. Whitney felt was appropriate in order to move the bill forward. Ms. Whitney expressed her hope that a meeting with Agency would identify where their concerns lay with the bill. Brian Warren, DCA Legislative Office, stated the DCA did not take a position on the bill; the bill was dealt with at the Agency level. While many bills were vetoed last year due to the budget issue, this particular bill had a veto message. The "program" issue was not specifically mentioned in the veto message, rather the broader issue of whether it was the Board's charge to have a wellness program and how that program tied to consumer protection. Ms. Whitney stated the Wellness Committee had assembled a package with research tying physician burnout and other issues to patient safety and consumer protection. Dr. Fantozzi reiterated the Wellness bill was never intended to be a program.

No action was requested or taken.

Ms. Whitney introduced three bills dealing with the employment of physicians at hospitals: AB 646 (Swanson), AB 648 (Chesbro), and SB 726 (Ashburn).

AB 646 (Swanson) – Physicians and Surgeons: employment: delete pilot project

Ms. Whitney stated this bill will eliminate the current pilot program and allow for limited direct employment of physicians at rural hospitals and any public or non-profit hospitals. This changes the prohibition on the corporate practice of medicine and allows hospitals to employ physicians. The pilot program the Board evaluated showed very few physicians and hospitals were interested in participating in this program, although there were many restrictions preventing them from participation. There has been no real evaluation of the need for the direct employment of physicians in this manner. Staff is recommending an oppose position on this bill. Mr. Zerunyan made a motion to oppose the bill; Ms. Yaroslavsky seconded the motion.

Ms. Whitney indicated the Committee could vote to “oppose unless amended” to narrow the focus of the physicians who could come into the program, though Ms. Whitney doubted the author would be interested in this amendment. Dr. Fantozzi asked if this is a pilot the Board would be overseeing. Ms. Whitney stated the Board would not necessarily oversee the pilot, but, rather, would receive the information from the hospitals regarding the physicians and would track which physicians were at which hospitals in order to be aware of issues or questions that arise. Dr. Fantozzi asked if this pilot would create workload issues for staff. Ms. Whitney stated without limitations, the additional workload could be significant; with limitations, the workload could be minor and absorbable. Mr. Zerunyan amended his motion to oppose unless amended to limit the parameters of the physicians and the number of hospitals.

During public comment, Yvonne Choong, California Medical Association (CMA), shared that CMA strongly opposed AB 646 and AB 648 for similar reasons. They could only support a continuation of the original pilot program.

A vote was taken by roll call and the motion to oppose unless amended to narrow the focus carried.

AB 648 (Chesbro) – Rural Hospitals: physician employment

Ms. Whitney indicated this bill was basically the same bill as AB 646, except it is specifically for rural hospitals employing physicians. Again, the bill does not have any parameters and staff recommends oppose unless amended to limit the number of participants. Ms. Yaroslavsky made a motion to oppose unless amended; s/Zerunyan; vote was taken by roll call and the motion carried.

SB 726 (Ashburn) – Hospitals: employment of physicians; pilot project revision

Ms. Whitney indicated this bill was a pilot program authorizing acute care hospitals to employ physicians. It is very similar to the pilot program currently in existence, with the difference being that it allows more participants. There are, however, parameters in place limiting participants. Staff recommends support if

amended, looking at the longer operational period for full evaluation to be conducted. Ms. Yaroslavsky made a motion to support if amended; s/Zerunyan.

Ms. Choong, indicated CMA has taken a support if amended position on this bill.

A vote was taken by roll call and the motion to support if amended carried.

Ms. Whitney introduced three bills dealing with the issue of Peer Review: AB 834 (Solorio), SB 58 (Aanestad), and SB 700 (Negrete McLeod). She stated there would be a fourth peer review bill sponsored by CMA which will focus on the 809 sections; however, the language has not yet been amended into the bill and it is not included in the Legislative Packet. Each of the bills focuses on a different aspect of peer review.

AB 834 (Solorio) – Health Care Practitioners: peer review

This bill is sponsored by the California Hospital Association. Currently, there is no language in the bill indicating the bill's intent. The recommendation is to take a watch position. Ms. Yaroslavsky made a motion to watch the bill; s/Chang; vote was taken by roll call and the motion carried.

SB 58 (Aanestad) – Physicians and Surgeons: peer review

Ms. Whitney indicated Dr. Aanestad held two interested parties meetings to discuss the development of this bill and possible amendments to enhance the peer review system. Ms. Yaroslavsky made a motion to watch this bill; s/Zerunyan; vote was taken by roll call and the motion carried.

SB 700 (Negrete McLeod) – Healing Arts: peer review

This bill focuses on possible enhancements for the Board related to peer review. Board staff has been working closely with the author's staff to develop ideas and concepts. Dr. Low participated in the public hearing on the peer review issue, doing an excellent job representing the Board. The current language of the bill is minimal. Ms. Yaroslavsky made a motion to support and continue to work on enhancements to the bill; s/Chang.

Yvonne Choong, CMA, stated CMA is opposed to this bill as it is currently written requiring all minutes of peer review hearings to be submitted.

A vote was taken by roll call and the motion to support and continue to work on enhancements carried.

AB 245 (Ma) – Physicians and Surgeons

Ms. Whitney indicated this bill was included in their packets because many enhancements to public disclosure requirements of the Board may be incorporated into this bill. Ms. Yaroslavsky made a motion to watch this bill; s/Zerunyan; vote was taken by roll call and the motion carried.

AB 252 (Carter) – Practice of Medicine: cosmetic surgery: employment of physicians

This bill, sponsored by the American Society for Dermatological Surgery, codifies a physician's license will be revoked if they violate corporate practice laws and establishes a legal presumption of "knowingly", and makes it a felony for an entity to provide cosmetic medical treatments or contract with physicians for providing these services. The bill attempts to address many of the issues that have arisen in laser hearings and medical spa issues. Ms. Chang made a motion to support this bill; s/Yaroslavsky.

Mr. Zerunyan asked, if the violation of corporate practice law was a felony, could mens rea (the prior intention to commit a criminal act) be made a strict liability. Mr. Heppler indicated the answer to this question would require further research.

Ms. Yaroslavsky asked if we have, in law, doctors who participate knowingly in the unlicensed practice of medicine having their licenses automatically revoked, and, if not, could it be included in this legislation. Ms. Whitney indicated the Board has not supported an automatic revocation, mostly because each case can be different. Nevertheless, this might be an issue the Board could consider at the full Board meeting as a discussion item.

Ms. Whitney stated these issues will have to be worked out in the legislative proceedings, but suggested the Board might want to "watch" the bill at this point and wait for a full Board discussion. Ms. Chang withdrew her motion to support the bill and changed it to a watch position; Ms. Yaroslavsky seconded the motion.

During public comment, Rick Keene, American Dermatological Association, indicated this bill was exactly the same bill the Board supported last year, carried by Assemblyman Nakanishi. In light of the many medi-spas opening with scant oversight, he sees this as a very important public safety move and public policy measure. He asked the Board to take a support position on the bill.

Dr. Fantozzi asked Ms. Whitney to address and provide clarification on the two issues which were raised and bring the bill back to the full Board for discussion.

A vote was taken by roll call and the motion to watch the bill carried.

AB 526 (Fuentes) – Public Protection and Physician Health Program Act of 2009

Ms. Whitney stated this is a place holder bill for the Public Protection and Physician Health Program Act sponsored by the CMA. Staff is working with CMA to understand the direction CMA is taking in developing this program. Ms. Whitney indicated Ms. Yaroslavsky has been involved in the meetings regarding this bill, but language is currently not available to present to the Board. Ms. Yaroslavsky made a motion to take a watch position on this bill; s/Chang.

Mr. Zerunyan stated there was no need to legislate a physician obtaining treatment since there was nothing preventing them from doing so, but, rather, the issue was whether the Board could participate in such a program. He felt the Board had just abandoned such a program for the reason of consumer protection not being

served.

Ms. Choong, CMA, responded the bill was not about treatment, but about monitoring and oversight of physicians post-treatment. She indicated this program is not meant to replace diversion. The physicians the CMA envisions enrolling in this program would not have any disciplinary action against them; it is a pro-active step before the physician begins to have problems.

Mr. Zerunyan stated, from his perspective, the minute you involve the Medical Board, the Board cannot hide or participate in any kind of venue where the names of those individuals are shielded from the public. He presumes there will be no incentive for a physician to participate in any program of this sort if they are not guaranteed to be shielded.

Ms. Choong clarified that the program would not deal with physicians who are already involved with the Board in any way. She indicated this would be a separate program in which participants would be monitored if found they were not participating or meeting the terms of their contract in any way; additionally, language might be inserted into the bill to refer non-compliant physicians to the Board.

Mr. Zerunyan asked who would run this program. Ms. Choong responded that decision has not yet been made. She stated that originally the program was going to be run out of the Department for Public Health, but this was no longer probable. They are currently in negotiations with the State and Consumer Services Agency as a possible home for the program, but, again, this part of the bill was still undecided.

Dr. Fantozzi asked what role, if any, the CMA saw the Board as playing. Ms. Choong responded the Board would have no role, other than in cases where a physician was failing the program and they were believed to be a public danger; in such cases, that individual would be referred to the Board.

Dr. Fantozzi asked if there was a fiscal component to the bill. Ms. Choong responded the CMA envisioned the only way to fund this program in the long term would be through licensing fees. Mr. Zerunyan stated this, in itself, would involve the Board.

A vote was taken by roll call and the motion to take a watch position on the bill carried.

AB 583 (Hayashi) – Health Care Practitioners: disclosure of education and hours

Ms. Whitney indicated this bill is sponsored by the CMA and the California Society of Plastic Surgeons. The bill would require health care practitioners to disclose in writing their license type and the highest level of academic degree to patients and would also require physicians to disclose their board certification. The bill is to address the public's confusion on who they might be seeing and what degree that practitioner holds. Ms. Yaroslavsky made a motion to support the bill; s/Chang.

Ms. Yaroslavsky asked if this disclosure information would be included on the individual's nametag. Ms. Whitney reported this information could also be presented in a handout to the patient. Ms. Yaroslavsky asked if, along with the other required information, the fact that the Board is the licensing and regulatory entity could also be included in the disclosure. Ms. Whitney stated the author could be asked to include this additional disclosure in the bill.

Ms. Yaroslavsky withdrew her motion to support the bill and changed it to support if amended to include information that clarifies for the consumer who the licensing board is, and is more specific about how this information is provided to the consumer. Dr. Fantozzi directed Ms. Whitney to continue to work with the author to resolve these issues of concern.

Mr. Zerunyan stated the bill allows the practitioner to choose one of three methodologies to provide this notice to consumers (via nametag, in writing to the patient during the initial office visit, or in a prominent display in his/her office). He felt that the term "prominent" in the third option needed to be better defined. Additionally, Mr. Zerunyan felt a more uniform system of notification would be preferable and less confusing to consumers.

Ms. Yaroslavsky stated she also questioned the requirement that the physician post the hours when they are in the office. She was unsure of the need for this requirement and asked for clarification. Dr. Fantozzi stated since the CMA supports this bill and does not take issue with this requirement, the Board probably would not have reason to object.

Frank Cuny, California Citizens for Health Freedom, expressed his concern that the health care practitioner be identified by nametag. Even with a posted license on the wall, he stated it can be difficult for the patient to know if the person actually delivering care is a physician, physician's assistant, or a nurse practitioner. A white coat is not enough.

A vote was taken by roll call and the motion to take a support if amended position on the bill carried.

AB 718 (Emmerson) – Prescription Drugs: electronic prescribing

Ms. Whitney reported this bill will require every licensed prescriber or pharmacy to have the ability to electronically transmit prescriptions in California by January 1, 2012. Ms. Whitney questioned whether this date was achievable, particularly for outlying and rural areas. Ms. Yaroslavsky made a motion to support the bill; s/Chang.

Mr. Zerunyan expressed his concern that this was an unfunded mandate.

Ms. Choong stated the CMA opposes this bill; however, it is their understanding that this will not be the final bill since significant amendments are forthcoming.

Ms. Yaroslavsky withdrew her motion to support and changed her motion to a watch position. A vote was taken by roll call and the motion to take a watch position on the bill carried.

AB 721 (Nava) – Physical Therapists: scope of practice

Ms. Whitney stated this bill would authorize a physical therapist (PT) to initiate treatment of conditions within the scope of practice of a PT. Dr. Gitnick made a motion to oppose the bill; s/Chang.

As a physician, Dr. Fantozzi expressed his concern over the ability and expertise of PTs to diagnose certain medical conditions. Further, he was concerned about the PT's self-determination of whether or not a condition requires treatment beyond their scope of practice; he is uncomfortable with leaving this decision at the discretion of the PT. Dr. Gitnick echoed his concerns, stating, as an example, that it would be difficult for a well-trained PT to differentiate between back pain due to a spinal problem versus a kidney stone. He stated this is the physician's role. A PT is not trained to make differential diagnosis; they are trained to treat specific diagnosed events. He felt it was in the patient's best interest that these diagnoses and care decisions remain with the physician.

Ms. Choong, CMA, stated the CMA is opposed to the bill for the reasons Dr. Fantozzi and Dr. Gitnick expressed. Additionally, she indicated the CMA has had discussion with the PTs about this issue and have offered to work with them to amend the language to allow additional visits with the PT before doing a re-referral back to the physician. She stated the PTs are very interested in acting as independent practitioners with direct access. Ms. Choong indicated at their recent lobby day, the PTs stated they were catching things the doctors were missing, implying their ability to diagnosis was higher than that of physicians.

Mr. Zerunyan agreed with the stated concerns; however, he also understands the consumer's frustration with the delay in receiving physical therapy while waiting to get an appointment with their physician in order to obtain a referral. In addition to opposing the bill based on the consumer protection aspect, he also opposes the bill because it is an unfunded mandate.

A vote was taken by roll call and the motion to take an oppose position on the bill carried 4-0 with 1 abstention.

AB 832 (Jones) – Clinic Licensing: minor services

Ms. Whitney reported this bill is the proposed fix to the *Capen v. Shewry* decision which caused problems with the licensing and accreditation of outpatient surgery centers. The Department of Public Health is not issuing licenses to physician owned facilities. Staff recommends a watch position, directing staff to work with the author, sponsor, and interested parties because of the technical issues related to this bill as compared to Senator Negrete McLeod's bill on outpatient settings. Ms. Whitney indicated there are conflicts that need to be sorted out which should be done before the Board moves forward with a position on this bill. Ms. Yaroslavsky made a motion to accept staff's recommendation to take a watch position and to work with the author, sponsor, and interested parties; s/Chang.

Ms. Yaroslavsky asked if this bill would make it optional to license outpatient surgery centers or make it mandatory that they be licensed, and, within that scope of practice, if there would be language requiring doctors to have transfer privileges to nearby hospitals. Ms. Whitney indicated there were technical problems with the bill in that licensure is permissive in one spot and mandatory in another, however, the intent is to include all outpatient surgery settings into the licensing program under the Department of Public Health.

A vote was taken by roll call and the motion to take a watch position on the bill carried.

SB 674 (Negrete McLeod) – Healing Arts: outpatient settings: advertising

Ms. Whitney stated this bill, which covers a variety of subjects, including advertising, outpatient setting accreditation requirements, supervision of laser and IPL device procedures, the wearing of nametags for healthcare professionals and public information, also adds to the definition of outpatient surgery settings to incorporate in vitro fertilization. It amends Health & Safety Code Section 1248. Ms. Yaroslavsky made a motion to support if amended; s/Zerunyan.

A vote was taken by roll call and the motion to take a “support if amended” position on the bill carried.

AB 1116 (Carter) – Cosmetic Surgery: Donda West Law

This bill enacts the Donda West Law and requires a physical examination of patients prior to cosmetic surgery. The examination could be performed by a physician and surgeon, nurse practitioner, physician assistant, or dentist licensed to perform this type of surgery. Ms. Whitney reported this bill was vetoed last year due to budget issues. The Board had previously taken a support position on the bill. Ms. Yaroslavsky made a motion to support the bill; s/Chang.

Dr. Fantozzi expressed concern with the bill’s specification of who would conduct the physical examination; although implied, he wanted to ensure the individual conducting the exam was qualified and accepted responsibility for the exam. He was unsure of the qualification of, for example, dentists to conduct the exam since the underlying issues were the presence of cardiopulmonary disease, nutritional issues, and other factors that go beyond a simple query of how the patient was feeling. Dr. Fantozzi would prefer that the list of those allowed to administer the exam be eliminated.

Dr. Gitnick pointed out that physicians are covered by the Medical Practice Act and are licensed to do almost any procedure in the State of California. He agrees that only qualified individuals should conduct the exam, but was unsure how the Medical Practice Act could force that to happen. Ms. Whitney explained the bill was very specific to those dentists who hold a permit as an oral maxillofacial surgeon and who have a permit to do cosmetic surgery as being eligible to conduct the physical exam prior to cosmetic surgery. Dr. Fantozzi reiterated his concern that even these types of dentists do not have the expertise to diagnose cardiopulmonary illness prior to surgery. It is his belief that a physician should conduct the exam. Ms. Whitney stated the law already allows a dentist with a special permit to do maxillofacial surgery; to say the dentist can no longer do the surgery without prior examination of the patient by a physician would likely not be accepted by the bill’s author. Dr. Gitnick and Dr. Fantozzi indicated they could only agree to an oppose or oppose if amended position on this bill for these concerns.

Ms. Yaroslavsky withdrew her motion to support the bill and changed it to oppose unless amended. A vote was taken by roll call and the motion to take a oppose unless amended position on the bill carried.

SB 132 (Denham) – Polysomnographic Technologists

Ms. Whitney reported the Board had a letter from Senator Denham asking for support of this bill which requires the registration of and qualification requirements for polysomnographic technologists who work in sleep centers under the direction and supervision of a physician. Last year the Board took a neutral position on the same bill. The Respiratory Care Board, the CMA, and the Sleep Society all support this bill. Ms. Whitney indicated there are technical items the Board would like to see included in the bill such as the need for a separation of the registration and application fee and the inclusion of criminal penalties. The Board would be responsible for both the registration and enforcement of these individuals. Ms. Yaroslavsky made a motion to support if amended; s/Chang.

Dr. Fantozzi asked about the anticipated number of registrants, the registration fee, and, hence, the revenue that would be brought forward to support the costs of registration and enforcement. Ms. Whitney stated the estimated number of registrants was 520, and the registration fee would be calculated and negotiated to make the bill revenue neutral.

A vote was taken and the motion to support if amended carried.

SB 294 (Negrete McLeod) – Nurse Practitioners: expand scope of practice

This bill expands the scope of practice for nurse practitioners allowing them to implement standardized procedures, admit patients, order durable equipment, and more. Mr. Zerunyan made a motion to oppose; s/Chang.

A vote was taken and the motion to oppose the bill carried.

SB 389 (Negrete McLeod) – Professions and Vocations: finger printing

Ms. Whitney reported this bill deals with fingerprinting, which is already done by the Board. However, this bill adds a provision requiring everyone who is licensed by a board to be fingerprinted. This bill would satisfy the motion the Board passed in November of 2008 to have fingerprint records for all physicians who are licensed in the State. The Board was going to go through the regulatory process to ensure fingerprinting of all physicians, but now it appears, if this bill moves forward, that will no longer be necessary.

Mr. Zerunyan made a motion to support the bill; s/Chang.

Ms. Choong, CMA, stated the CMA opposed this bill unless amended; they would like to see the exemption of physicians over the age of seventy from the fingerprinting requirement in the belief that it is not a good use of resources. They would also like to see more focus on the other boards who currently are not fingerprinting.

A vote was taken and the motion to support the bill carried.

SB 470 (Corbett) – Prescriptions: labeling

This bill would allow patients to request that their health care provider, when writing a prescription, include the intended purpose of the medication on the prescription label. Mr. Zerunyan made a motion to support the bill; s/Yaroslavsky; motion carried.

SB 638 (Negrete McLeod) – Regulatory Boards: joint committee on operations

Ms. Whitney reported this bill addresses the Sunset Review process. Last year a similar bill, which was not passed, was proposed to revise how the sunset process would take place; instead of going to the Joint Committee on Boards, Commissions, and Consumer Protection, the Sunset Review would go to the Policy Committees. The current bill incorporates these changes and also establishes new sunset dates for various boards and bureaus which have not yet been determined. The Board is currently due to sunset on July 1, 2010; it is the Board's hope that this date will be reset for 2011 or 2012.

Ms. Yaroslavsky made a motion to support the bill; s/Zerunyan; motion carried.

SB 774 (Ashburn) – Nurse Practitioners: scope of practice: define

Ms. Whitney indicated this is a spot bill for language that will be developed regarding the scope of practice for nurse practitioners. Ms. Yaroslavsky made a motion to watch the bill; s/Zerunyan; motion carried.

SB 819 (Senate Business & Professions Committee) – Omnibus: provisions from 2008

Ms. Whitney reported the provisions in this bill were those previously carried in SB 1779 (2008) which was vetoed. She re-confirmed the Board's support of the provisions in the bill. Ms. Yaroslavsky made a motion to support the bill; s/Zerunyan; motion carried.

SB 821 (Senate Business & Professions Committee) – Omnibus: MBC provisions

Ms. Whitney indicated this bill is this year's omnibus legislation which carries three provisions for the Board. Ms. Chang made a motion to "support" the bill; s/Yaroslavsky; motion carried.

SB 92 (Aanestad)

Ms. Whitney provided a handout to Members and to the public of the sections of the 132-page bill that pertain to the Board. This bill is a major health reform bill. Section 1 on page 2 of the handout covered the failure of a physician to conduct a good faith examination as required in the provisions listed in the bill; this would constitute unprofessional conduct and grounds for disciplinary action. There are also sections of the bill that apply to the health care services agreement which would specify that only California licensed health care

professionals may deny or delay authorization for health care services. Hence, it relates to HMOs and insurance carriers. The bill also specifies the primary obligation of the licensee is to the enrollee or the insured. Additionally, the bill includes a provision on medical assistants.

Staff is not asking for a position on this bill at this time. Ms. Whitney stated staff would closely watch this bill and bring it back to the full Board at the May 2009 meeting

Finally, Ms. Whitney reported on a Registered Dispensing Optician (RDO) bill. She stated staff is working with the sponsor to administratively address their issues regarding the renewal and address of record of RDOs. No action was requested or taken.

Agenda Item 4 Public Comment

Hearing no public comment, the meeting was adjourned at 3:20 p.m.