



**DIVISION OF MEDICAL QUALITY
QUARTERLY MEETING**

*Action may be taken on any
items listed on the agenda*

MEMBERS OF THE DIVISION

*Cesar A. Aristeiguieta, M.D.,
President
Barbara Yaroslavsky,
Vice President
Stephen R. Corday, M.D.,
Secretary
Steve Alexander
John Chin, M.D.
Dorene Dominguez
Shelton Duruisseau, Ph.D.
Reginald Low, M.D.
Mary L. Moran, M.D.
Ronald L. Moy, M.D.
Janet Salomonson, M.D.
Ronald H. Wender, M.D.
Frank V. Zerunyan*

July 27, 2007

**Embassy Suites
250 Gateway Boulevard
South San Francisco, CA 94080
(650) 589-3400**

AGENDA

ALL TIMES ARE APPROXIMATE AND SUBJECT TO CHANGE

TIBURON/SAUSALITO ROOM

Friday, July 27, 2007

8:00 a.m. – 10:00 a.m. OPEN SESSION

1. CALL TO ORDER; ROLL CALL
2. Approval of Orders Restoring License Following Successful Completion of Probation, Orders Issuing Public Letter of Reprimand, and Orders for License Surrender During Probation
3. Approval of the April 27, 2007 Minutes
4. Legislation and Regulation Update (For Items A and B, refer to legislative packet and regulation matrix.)
 - A. 2007 Legislation
 - B. Status of Regulatory Action
5. Consideration of Proposal to Amend Oral Argument Regulations (Kirchmeyer/Zerunyan/Heppler)
6. Division Chief's Report (Threadgill)
 - A. Medical Expert Program Survey
 - B. Expert Utilization Report
7. Vertical Enforcement Update/Progress Report (Ramirez/Threadgill)
8. Discussion of Federal and California Appellate Decisions Pertaining to Medical Marijuana (Deputy Attorneys General Simon and Mercer)

The mission of the Medical Board of California is to protect healthcare consumers through the proper licensing and regulation of physicians and surgeons and certain allied healthcare professions and through the vigorous, objective enforcement of the Medical Practice Act.

9. Proposed Designation of Precedential Decisions pursuant to Government Code §11425.60 (Scuri)
 - A. In the Matter of the Accusation Against Joseph J. Basile, M.D. (Case No. 03-2000-108170 and OAH No. N2002050521)
 - B. In the Matter of the Accusation Against Tod H. Mikuriya, M.D. (Case No. 12-1999-98783 and OAH No. N2002110020)
10. Report Regarding Practice Monitoring Conditions (Lynda Swenson)
11. Report on Surgical or Procedural Deficiencies (William Norcross, M.D.)
12. Diversion Program Report (Valine)
 - A. Program Status
 - B. DEC Member Re-Appointments
 - C. Consideration of Proposals to Amend/Add Regulations
 1. Regulatory Criteria for Admission to and Termination from the Diversion Program
 2. Criteria for the Ordering of a Clinical Competency Examination
 3. Response to Relapses
13. Items for November 2007 Division Meeting
14. Public Comment on Items Not on the Agenda
15. Adjournment

PANEL A: Dr. Aristeiguieta (Chair), Mr. Alexander, Dr. Chin, Dr. Duruisseau, Ph.D., Dr. Low & Dr. Moran

UNION SQUARE/GHIRADELLI ROOM

Friday, July 27, 2007

1:00 p.m. OPEN SESSION

CALL TO ORDER; ROLL CALL

Oral Argument on Nonadopted Proposed Decision

1. FISCHBEIN, Stuart James, M.D.

1:45 p.m. *CLOSED SESSION – Nonadopted Proposed Decision

FISCHBEIN, Stuart James, M.D.

2:00 p.m. OPEN SESSION

Oral Argument on Nonadopted Proposed Decision

2. HALIL, Saihb Sinuhe

**The Division and/or Panel of the Division will convene in Closed Session, as authorized by Government Code Section 11126(c)(3), to deliberate on disciplinary decisions and stipulations.*

For additional information, call A. Renee Threadgill, Chief of Enforcement, at (916) 263-2389. Listed times are approximate and may be changed at the discretion of the President/Chair.

2:45 p.m. *CLOSED SESSION – Nonadopted Proposed Decision

HALIL, Saihb Sinuhe

3. Deliberation on disciplinary matters, including decisions and stipulations.

OPEN SESSION

Adjournment

PANEL B: Ms. Yaroslavsky (Chair), Dr. Corday, Ms. Dominguez, Dr. Moy, Dr. Salmonson, Dr. Wender & Mr. Zerunyan

TIBURON/SAUSALITO ROOM

Friday, July 27, 2007

1:00 p.m. OPEN SESSION

CALL TO ORDER; ROLL CALL

***CLOSED SESSION**

4. Deliberation on disciplinary matters, including decisions and stipulations.

OPEN SESSION

Adjournment

Meetings of the Medical Board of California are open to the public except when specifically noticed otherwise in accordance with the Open Meetings Act. The audience will be given appropriate opportunities to comment on any issue presented in open session before the Board, but the President may apportion available time among those who wish to speak.

For additional information call (916) 263-2389.

NOTICE: The meeting is accessible to the physically disabled. A person who needs disability-related accommodations or modifications in order to participate in the meeting shall make a request to the Board no later than five working days before the meeting by contacting Teresa Schaeffer at (916) 263-2389 or sending a written request to Ms. Schaeffer at the Medical Board of California, 1426 Howe Avenue, Suite 54, Sacramento, CA 95825. Requests for further information should be directed to the same address and telephone number.



Agenda Item 3

DIVISION OF MEDICAL QUALITY

**Sacramento Convention Center
Sacramento, CA**

April 27, 2007

MINUTES

Agenda Item 1

A quorum was present and due notice having been mailed to all interested parties, the meeting was called to order at 8:01 a.m. Members present included:

Members Present:

Cesar A. Aristeiguieta, M.D., President
Barbara Yaroslavsky, Vice President
Steve Alexander
Shelton Duruisseau, Ph.D.
Reginald Low, M.D.
Mary L. Moran, M.D.
Ronald L. Moy, M.D.
Janet Salmonson, M.D.
Ronald H. Wender, M.D.
Frank V. Zerunyan

Members Absent:

Stephen R. Corday, M.D., Secretary
John Chin, M.D.
Dorene Dominguez

Staff and Guests Present:

David T. Thornton, Executive Director
Renee Threadgill, Chief of Enforcement
Kurt Heppler, DCA Legal Counsel
Carlos Ramirez, Senior Assistant Attorney General
Stephen Boreman, Deputy Attorney General
Candis Cohen, Public Information Officer

Linda Whitney, Chief of Legislation
Kevin Schunke, Regulation Coordinator
Kelly Nelson, Legislative Analyst
Paulette Romero, Associate Analyst
Janie Cordray, Research Program Manager
Frank Valine, Diversion Program Manager
Camille McGee, Associate Analyst
Richard Prouty, Staff Services Manager
Teresa Schaeffer, Associate Analyst
Valerie Moore, Associate Analyst
Arlene Krysinski, Associate Analyst
Brenda Allen, Staff Services Analyst
Richard Acosta, Staff Services Analyst
Laura Sweet, Area Supervisor - L.A. Metro
Julie D'Angelo Fellmeth, Center for Public Interest Law
Sandra Bressler, California Medical Association
Brett Michelin, California Medical Association
James Hay, M.D., California Medical Association
Zennie Coughlin, Kaiser Permanente Medical Group
Frank Lucido, M.D.
Sashia Kim, Consultant, Senate Office of Research

Agenda Item 2 Approval of Orders

Approval of Orders Restoring License Following Completion of Probation

The Division reviewed and approved 12 Orders. Vote: 9-0

Approval of Orders Issuing Public Letters of Reprimand

The Division reviewed and approved 4 Orders. Vote 9-0

Approval of Orders for License Surrender During Probation/Administrative Action

The Division reviewed and approved 3 Orders. Vote 9-0

Agenda Item 3 Approval of Minutes

It was M/S (Salmonson/Wender) to approve the Open Session minutes of the February 2, 2007 Division Meeting. Motion carried (9-0).

Agenda Item 4 Legislation and Pending Regulations

No report was given.

Agenda Item 5 Diversion Program Report

Frank Valine, Diversion Program Administrator, provided an overview of the Diversion Committee's meeting held on April 27, 2007.

It was M/S to approve the appointment of Steven Oppenheim, M.D. as a new DEC member. Motion carried unanimously.

It was M/S to approve the appointments of Lee Snook, M.D., Barry Rosen, M.D., David Pating, M.D., Stephanie Shaner, M.D., Marvin Firestone, M.D., J.D., Thomas Ciesla, M.D., Bruce Kaldor, M.D., and Shannon Chavez, M.D. as Diversion Advisory Council members. Motion carried unanimously.

The audit of the Diversion Program has been completed and no major problems were found. The auditor's report will be released in June 2007.

The Diversion Advisory Council has been assigned the task of developing guidelines for determining when a competency examination should be ordered. A report on their findings will be presented at a future board meeting.

Agenda Item 6 Division Chief's Report

Renee Threadgill, Chief of Enforcement, reported the probation program is currently undergoing reorganization, which will result in a reduction of the assigned workload for all investigative staff and aid in the reduction of the processing time for the cases in the vertical enforcement model. The Board's current Investigator Assistant positions will be converted to an existing classification within the Department of Consumer Affairs, possibly Inspector or Field Representative, and the sworn investigators who currently monitor probationers will be transferred to the district offices and assigned active investigations.

Due to funds seized through Asset Forfeiture, the Board will hold an investigator training conference on May 15-17, 2007. Dr. Aristeiguieta, Mr. Alexander and Dr. Fantozzi have offered their support and will be in attendance.

Agenda Item 6A Medical Expert Program – Survey

Ms. Threadgill stated the overall comments from the experts surveyed are favorable. Some suggestions for program improvement are being reviewed and ways in which to exchange more information with the experts are being developed.

After much discussion, the DMQ members directed staff to research the financial impact on the Board for increasing expert reviewers' pay; to solicit applications for expert reviewers; and to include recruitment information for medical experts in each Newsletter.

Sandra Bressler, California Medical Association, offered CMA's continued support in recruitment of new medical experts. She cautioned the Board about the potential of overusing

current medical experts.

Ms. Threadgill commented the Board continually monitors the use of the experts in order to ensure they are not being over utilized. A quarterly report on the use of the medical experts is prepared and will be made available for review.

Agenda Item 6B Vertical Enforcement Update/Progress Report

Carlos Ramirez, Senior Assistant Attorney General, stated the AG's office has modified its procedure in processing cases in the vertical enforcement model to be closer to what was envisioned during the discussion leading to SB231. Cases are now being assigned to the trial deputies within 72 hours of receipt in the district offices and other locations. Problems with co-location and shared database systems exist, however, solutions on how to make the process run smoother are being sought.

It was M/S (Alexander/Wender) for staff and management to move forward with finding solutions to bring the investigators and the AG's office staff closer together to a workable vertical enforcement model. Motion carried unanimously.

Agenda Item 7 Federal and California Appellate Decisions Pertaining to Medical Marijuana

It was M/S (Duruiseau/Zerunyan) to move the discussion of this agenda item to the DMQ's July 2007 meeting. Motion carried unanimously.

Agenda Item 8 Medical Errors Task Force Report

Dr. Aristeiguieta reported a meeting with the Medical Errors Task Force and some of the stakeholders of medicine in California for information gathering is set for June 15, 2007. He stated defining exactly what a medical error is and what the Board wants to achieve are critical in determining the Board's appropriate role.

Agenda Item 9 Oral Argument Task Force Report

Mr. Zerunyan reported he and Dr. Aristeiguieta met with Board staff and representatives from the OAH to discuss the issues relating to the oral argument process. The task force proposed the creation of a regulation requiring the parties to file briefs with citations to the record that specifically support their argument, which will avoid the introduction of new evidence into the oral argument proceeding. Language with respect to the regulation will be drafted and presented to the Board at a future meeting.

Julie D'Angelo Fellmeth, Center for Public Interest Law and former Enforcement Monitor, suggested the Board include language requiring respondents who testify at oral arguments to be put under oath.

Agenda Item 10 Election of Officers

It was M/S (Duruissseau/Wender) to nominate the current panel of officers for another term. Motion carried unanimously.

Agenda Item 11 Agenda Items for July 2007 Division Meeting

- Discussion on Practice Monitoring Condition
- Discussion on Surgical or Procedural Deficiencies
- Federal and California Appellate Decisions Pertaining to Medical Marijuana
- Medical Errors Task Force Update

Agenda Item 12 Public Comment

Frank Lucido, M.D. stated he continues to provide medical cannabis evaluations. He stated he has developed safe and protective standards for patients and physicians. He stated the loss of the Angel Rache case at the Appellate and Supreme Courts has not had any impact on the protection provided to physicians under Prop. 215. He further provided Mr. Thornton with the 10th anniversary edition of *O'Shaughnessy's* for review and distribution to the DMQ.

Agenda Item 13 Adjournment

There being no further business, the meeting was adjourned at 9:20 a.m.

Cesar A. Aristeiguieta, M.D., F.A.C.E.P.
President