

MEDICAL BOARD OF CALIFORNIA – Executive Office

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Agenda Item 2

Embassy Suites
Tiburon/Sausalito Room
250 Gateway Boulevard
South San Francisco, CA 94080

July 26 - 27, 2007

MINUTES

Agenda Item 1 Call to Order/Roll Call

Dr. Fantozzi called the meeting to order on July 26, 2007 at 8:05 a.m. A quorum was present and notice had been sent to interested parties.

Members Present:

Richard Fantozzi, M.D., President
Steve Alexander
Hedy Chang
Steven Corday, M.D.
John Chin, M.D.
Dorene Dominguez
Shelton Duruisseau, Ph.D.
Gary Gitnick, M.D.
Laurie C. Gregg, M.D.
Reginald Low, M.D.
Mary Lynn Moran, M.D.
Janet Salomonson, M.D.
Gerrie Schipske, R.N.P., J.D.
Ronald H. Wender, M.D.
Barbara Yaroslavsky
Frank V. Zerunyan

Members Absent:

Cesar Aristeiguieta, M.D.
Ronald L. Moy, M.D.
Mitchell S. Karlan, M.D.

Staff Present:

David T. Thornton, Executive Director
Kimberly Kirchmeyer, Deputy Director
Kathi Burns, Manager, Licensing Unit
Candis Cohen, Public Information Officer
Janie Cordray, Research Specialist

Kurt Heppler, Staff Counsel, DCA Legal Office
Valerie Moore, Associate Analyst, Enforcement Program
Kelly Nelson, Legislative Analyst
Richard Prouty, Manager, Discipline & Staff Services Unit
Gary Qualset, Chief of Licensing
Regina Rao, Business Services
Paulette Romero, Associate Analyst
Teresa Schaeffer, Executive Assistant
Kevin Schunke, Regulation Coordinator
Anita Scuri, Senior Staff Counsel, DCA Legal Office
Renee Threadgill, Chief of Enforcement
Frank Valine, Diversion Program Administrator
Linda K. Whitney, Chief of Legislation
Curt Worden, Manager, Licensing Section

Members of the Audience:

Sandra Bressler, California Medical Association
George Cate, Senate Business and Professions Committee
Zennie Coughlin, Kaiser Permanente
Julie D'Angelo Fellmeth, Center for Public Interest Law
James Hay, M.D., California Medical Association
Ed Howard, Center for Public Interest Law
Carrie Lopez, Department of Consumer Affairs
Brett Michelin, California Medical Association
Carlos Ramirez, Office of the Attorney General
Antonette Sorrick, Department of Consumer Affairs

Agenda Item 1 Approval of Minutes from April 26 - 27, 2007 Meeting

It was M/S/C (Yaroslavsky/Moran) to approve the minutes from the April 26 – 27, 2007 meeting.

In order to remain consistent with the record, the agenda items presented in these minutes are listed in the order discussed at the July 26 - 27, 2007 meeting.

Closed Session:

Agenda Item 3 Appointment of Executive Director

Pursuant to Government Code section 11126(a), the board went into closed session at 8:07 a.m. to appoint a new executive director.

Open Session:

The board reconvened in open session at 8:35 a.m.. Dr. Fantozzi announced the appointment of Barbara Johnston as the board's new executive director effective August 1, 2007.

Dr. Fantozzi acknowledged Carrie Lopez, Director of the Department of Consumer Affairs and George Cate, Senate Business and Professions Committee in attendance at the meeting today.

Agenda Item 5 Legislation

Linda Whitney, Chief of Legislation, provided an update on 2007 legislation sponsored by the board.

The board took the following positions on legislation:

AB 3 (Bass)	Physician Assistants - Support
AB 253 (Eng)	Restructuring of the Medical Board of California - Sponsor/Support
AB 329 (Nakanishi)	Chronic Diseases: Telemedicine - Sponsor/Support
AB 1025 (Bass)	Professions: Denial of Licensure - Oppose unless amended
AB 1073 (Nava)	Work. Comp.: CA Licensed Physicians on Utilization Review - Support
AB 1224 (Hernandez)	Telemedicine: Optometrists - Support
SB 102 (Migden)	Blood Transfusions: Brochure - Support
SB 472 (Corbett)	Prescription Drugs: Labeling Requirements and Panel - Support
SB 620 (Correa)	Anesthesia Permit for Physicians in Dental Offices - Support

AB 253 (Eng) - Ms. Whitney reported the Department and the Administration have taken a support if amended position on this bill. She directed the member's attention to a copy of a letter from the Department dated May 29, 2007 recommending the reduction in the size of the board from 21 members to **15 members consisting of 8 physician members and 7 public members**. The Executive Committee held a meeting on June 18, 2007 and voted to support the Department's recommendation to reduce the size of the board to 15 members. Ms. Whitney requested the board's concurrence with the Executive Committee recommendation.

Ms. Yaroslavsky stated for the record she did not support the motion made at the Executive Committee meeting without further analysis of the workload and impact on the board if the two divisions are integrated into one board.

Mr. Thornton responded and stated combining the two divisions will accomplish a more evenly distributed workload. The board will still have two disciplinary panels to review **all** the cases whether they are licensing cases or disciplinary cases. The work of the divisions would then be taken up by

standing committees for enforcement, licensing, diversion, and any other committees the board deems appropriate.

Following a discussion by the members, it was moved (Alexander/Chang) to support the Executive Committee position on the number and composition of the board. The motion carried by a vote of 12-3 with 1 abstention.

At this time Ms. Whitney introduced Jane Simon, Deputy Attorney General, to discuss concerns the Attorney General's office has regarding the proposed bill and the composition of the panels.

Ms. Simon presented an analysis of SB 253 prepared by Deputy Attorney General Beth Faber Jacobs and discussed the problems identified with the bill as currently written. It is the Attorney General's office concern if the panels are not composed of a majority of physician members making decisions, the board will lose the presumption of correctness based on the expertise with the proposed composition. Ms. Simon presented several different alternatives to the board.

After considering the arguments presented and hearing public comment it was moved to amend SB 253 as follows: ***the number of public members assigned to a disciplinary panel shall not exceed the number of physicians and surgeons assigned to that panel and at no time shall a panel consist of less than four members.*** The motion carried.

The next bill Ms. Whitney discussed was SB 761 – Diversion/Enforcement.

Dr. Fantozzi gave a brief history of the board's Diversion Program and discussed the prior audits of the program including the diversion audit ordered as part of SB 231 to be completed by July 1, 2007.

Dr. Gregg made a statement concerning the challenges and struggles associated with the Diversion Program. She stated if the program continues there must be a zero tolerance policy and disclosure of the program participants on the board's Web site.

Mr. Alexander made the following motions:

1. Move that, in light of Medical Board of California's primary mission of consumer protection, and as the regulatory agency charged with the licensing of physicians and surgeons and enforcement of the Medical Practice Act, the board hereby determines it is inconsistent with the board's public protection mission and policies to operate a diversion program within or as part of its consumer protection programs, and that the diversion program, as it's currently structured and operated, be sunset as soon as practicable, but not later than June 30, 2008.
2. Move that, effective immediately, the Medical Board of California develop a transition plan to continue the diversion program on an interim basis until the sunset date.
3. Move that, the president of the board convene a diversion program summit, seeking input from the Diversion Advisory Council, regulatory experts, profession organizations, healthcare and

patient consumer groups, public interest groups, and other appropriate stakeholders and experts to determine the most appropriate policy and mechanism for fulfilling the board's consumer protection mission while addressing the issue of the impaired licensee; the results of the summit to be reported to the board no later than June 2008 for action by the legislature as necessary based upon the findings and recommendations of the summit and the board.

4. Move that, at the summit, a recommendation to the Legislature be considered for the establishment of a new state agency or similar agency to provide diversion/monitoring programs for all California licensed professionals overseen by experienced professionals in alcohol and drug dependency rehabilitation.
5. Move that, the president of the board and chair of the diversion committee work with the author of the legislation on behalf of the board.

Public testimony was heard from the following regarding SB 761:

Jim Hay, representing the California Medical Association (CMA) urged the board to consider all options regarding the Diversion Program. The CMA will work with the board to assure transition and right course of action to improve the program.

Sandra Bressler, representing the CMA spoke in support of keeping the Diversion Program and urged the board to make the necessary improvements to the program.

David Pating, M.D., representing the California Society of Addiction Medicine challenged the assumptions by the board and asked the board to look at all the options regarding the Diversion Program.

Tina Minasian, patient and consumer advocate spoke in support of abolishing the Diversion Program.

Terri Farley, member of the public discussed her sister who was injured by a participant who was in the Diversion Program.

Janet Mitchell, patient and consumer advocate spoke in support of eliminating the Diversion Program and stated the board's primary mission is to protect the citizen's of California.

Linda Starr, patient, testified she suffered injuries sustained during a procedure performed by a participant who was in the Diversion Program. She spoke in support of abolishing the program.

Lee Snook, M.D., treating physician and member of the Diversion Advisory Committee advised the board he was concerned that if the board eliminated the diversion program it would only drive the physician with alcohol/drug problems underground.

Robert Reisfield, M.D, Kaiser Well-Being Committee stated the board should only choose to eliminate the Diversion Program if there are better systems available.

Julie D'Angelo Fellmeth, Administrative Director for the Center for Public Interest Law spoke in support of the motion to eliminate the Diversion Program.

Randall Hagar, California Psychiatric Association stated they support the comments made by CMA, Dr. Pating, and Dr. Snook.

Ed Howard, Senior Counsel, Center for Public Interest Law spoke about the motions before the board and what the board needs to consider when voting on these motions to fix the problem. He stated they first needed to recall the product and then convene a summit to figure out a way to put in place a product that is safe and sound for patients and physicians.

Don Fensterman, Project Manager for Maximus Diversion Program stated he had concerns regarding abolishing the Diversion Program and not having a mechanism in place to monitor physicians once they come out of an in-patient treatment facility.

Following a lengthy discussion by the members and the public regarding the Diversion Program, Mr. Alexander repeated the motion.

The board voted unanimously to approve all five motions made by Mr. Alexander.

Mr. Zerunyan proposed a motion to ask the author of the bill to include a provision to give the board the authority to suspend the license of all participants in the program.

It was moved to table Mr. Zerunyan's motion.

Ms. Whitney and Ms. Threadgill, Chief of Enforcement, provided information on the second part of SB 761 regarding Vertical Enforcement Model. This bill would extend the pilot program.

Ms. Whitney directed the member's attention to their board packet for a copy of the Report to the Legislature on Vertical Enforcement. Ms. Whitney explained the Executive Committee took no position in amending the bill at its June 18, 2007 meeting pending review of the final report by the full board in July.

There was discussion by the members regarding the recommendations in the report to the legislature.

Mr. Alexander moved the board recommend the following option:

1. Transfer the Medical Board investigators to the Department of Justice, however, given that more time is needed to fully analyze this option, recommend option #3 to continue the pilot for another two years to allow the collection of additional data, clean-up language and rename the program

Vertical Enforcement. Further, the report to the Legislature is amended to reflect the board's legislative position.

George Cate, Senate Business and Professions Committee provided his concerns regarding the direction of the board and the provision currently set forth in the bill regarding reclassifying the investigator positions. He explained the legislative session is over at the end of August. He stated it was the author's understanding the board's direction was to improve the situation for the Medical Board's investigators so they will stay with the board.

In light of the testimony presented, Mr. Alexander withdrew his motion.

It was M/S/C to support the July 18 version of SB 761 with the following amendments: to modify the language related to supervision/direction of investigators by deputy attorneys general, integrate the case tracking systems of the medical board and attorney general's office with ProLaw and to co-locate offices wherever feasible. In addition, medical board investigative staff be paid equivalent to special agents in the Department of Justice.

The motion was approved by unanimous vote.

Mr. Alexander moved that a task force be appointed to complete this report and deliver it timely to the Legislature recognizing the board is already behind the June 30, 2007 due date.

Agenda Item 7 Executive Director's Report

A. Budget Overview and Staffing Update

Mr. Thornton reported current board expenditures and revenue appear to be consistent with projections. The final analysis of the board budget will be completed by the November 2007 meeting.

B. Meeting Survey and Rating Sheet

Members were asked to complete the form and provide any comments on any changes they would like to see made to the meeting format or topics.

C. Proposed Meeting Dates for 2008

Mr. Thornton presented the proposed 2008 Board meeting dates and locations to the board for approval.

It was M/S/C to approve the 2008 meeting dates.

D. Federation of State Medical Board's (FSMB) Request to Distribute Pain Management Book to all Licensees

Mr. Thornton explained the Federation of State Medical Boards asked for the board's support of a book entitled Responsible Opioid Prescribing, by Scott M. Fishman, M.D. and is requesting the board's approval to distribute this book to all current in-state licensees and new licensees.

It was M/S/C to approve distribution of the pain management book as proposed and staff was directed to work with the FSMB on the funding to cover the cost of distribution.

E. Status Report – Board notifications of Revocations, Suspensions and Meetings

Mr. Thornton reported the board's on-line subscriber list for notifications sent via email has been very effective in getting information out to the public in a timely manner.

Agenda Item 7 Health Manpower Pilot Project

Dr. Gregg reported the proposed pilot project to allow nurse practitioners, certified nurse midwives and physician assistants to perform early pregnancy termination and management of early pregnancy failures has been approved. She encouraged the board to continue to follow this project with respect to consumer safety.

Agenda Item 14 Workgroup on Cultural and Linguistic Continuing Medical Education

Ms. Chang reported she attended a Continuing Medical Education (CME) provider workshop in April which was very informative. She met with CMA and IMQ on May 4, 2007, and attended another provider workshop on May 11.

Agenda Item 8 California Physician Corps Program Update

Ms. Yaroslavsky reported the Health Professions Education Foundation (HPEF) quarterly meeting will be held on July 30, and 31, 2007 at the LAX Marriott Hotel. A new executive director has been appointed to the HPEF. Ms. Yaroslavsky also reported the HPEF was successful in obtaining \$1,000,000 for the Allied Healthcare Loan Repayment. She thanked the members for their continued support of this worthy program while they continue to move forward.

Agenda Item 9 Public Comment on Items not on the Agenda

Tina Minassian, patient and victim of an alcoholic physician who was allowed to practice medicine

while he was a participant in the Diversion Program stated she was in support of abolishing the program and offered additional recommendations for the board's consideration:

1. Require all physicians to tell patients about the existence of the board and its enforcement role.
2. Sponsor legislation to require civil attorneys to inform malpractice victims how to file a complaint with the board.
3. Sponsor legislation repealing or lengthening the statute of limitations.
4. Post every malpractice settlement on the board's web site.
5. Post every criminal conviction on the board's web site.
6. Sponsor legislation creating a "Snitch Law".

Tara Kittle, healthcare consumer spoke in support of improving the safety of the healthcare consumer by providing physicians with the tools they need to perform their job.

John P. Toth, M.D., representing the California Citizens for Health Freedom, read a letter from Frank Cuny to the board regarding the development of a manual for investigators on alternative medicine and the use of an alternative medicine consultant during the review of these cases.

Janet Mitchell, patient and healthcare consumer advocate asked the board to move forward in pursuing cases involving fraud and concealment.

Agenda Item 10 Strategic Plan

This item was deferred to the November 2007 meeting.

The meeting adjourned at 4:00 p.m.

Friday, November 2, 2007

Agenda Item 11 Call to Order/Roll Call

Dr. Fantozzi called the meeting to order on November 2, 2007 at 10:10 a.m. A quorum was present and notice had been sent to interested parties.

Members Present:

Richard Fantozzi, M.D., President
Steve Alexander
Hedy Chang
John Chin, M.D.

Steven Corday, M.D.
Dorene Dominguez
Shelton Duruisseau, Ph.D.
Richard D. Fantozzi, M.D.
Gary Gitnick, M.D.
Laurie C. Gregg, M.D.
Reginald Low, M.D.
Mary Lynn Moran, M.D.
Janet Salomonson, M.D.
Gerrie Schipske, R.N.P., J.D.
Ronald H. Wender, M.D.
Barbara Yaroslavsky
Frank V. Zerunyan, J.D.

Members Absent:

Cesar Aristeiguieta, M.D.
Mitchell S. Karlan, M.D.
Ronald L. Moy, M.D.

order to remain consistent with the record, the agenda items presented in these minutes are listed in the order discussed at the July 26 - 27, 2007 meeting.

Agenda Item 6 President's Report

A. Communication from Interested Parties

Dr. Fantozzi disclosed the following meetings:

- Steve Miller, President of the American Board of Medical Specialties on issues related to licensing.
- Department of Justice regarding legislation.
- William Norcross, M.D., UCSD Medical School regarding issues related to Wellness Programs.

Agenda Item 12 Physician Humanitarian Award

Dr. Fantozzi introduced and presented the Physician Humanitarian Award to Clyde Ikeda, M.D.. Dr. Ikeda is a plastic and reconstructive surgeon from San Francisco. He is a team leader of "Hospital de la Familia," a group of volunteer doctors and nurses, 109 of whom are California physicians. He serves as its medical director and since 1976 provides services four times a year to a hospital in Guatemala. Dr. Ikeda performs reconstructive plastic surgery on many patients, especially children.

Agenda Item 13 Reports from the Divisions/Committees

A. Division of Licensing

Dr. Gregg reported the following:

- Ms. Schipske was appointed to the Application Review Committee and Ms. Chang and Dr. Gitnick were appointed to the Special Programs Committee.
- The Division of Licensing (DOL) approved a motion to support a legislative proposal for issuing a limited license to applicants with disabilities that would otherwise qualify for licensure.
- The Midwifery Committee met and the Midwifery Advisory Council (MAC) was directed to assist Licensing staff in identifying or developing a program for the retraining/re-entry for midwives and to consider using information gathered from reviewing disciplinary cases against midwives to develop measures to prevent future violations.
- The DOL approved the Midwife Annual Report Coding System, in concept, and authorized the MAC to approve the final coding system at its September meeting.
- The DOL approved a motion to grant recognition to Jagiellonian University's English Program without requiring a site visit and to make that recognition retroactive to the inception of the program in 1994.

It was M/S/C to approve the legislative proposal to issue a limited license to applicants with disabilities.

B. Division of Medical Quality

Ms. Yaroslavsky reported the following:

- The Division of Medical Quality (DMQ) approved a motion to increase the expert reviewer's compensation by \$50 and staff was directed to provide a report at the next meeting showing the recruitment and retention of medical experts.
- The DMQ approved a motion to set a hearing to amend and establish oral argument regulations.
- The DMQ approved the re-appointment of a DEC member.
- Panel A held two oral argument hearings and discussed two proposed decision, two stipulations, and one judicial review.
- Panel B discussed four proposed decision, four stipulations and one judicial review

Dr. Gregg reported the following:

- The Diversion Committee approved the Diversion Policy and Procedure Manual.
- The Diversion Committee incorporated language on a competency exam into the participants agreement.
- The Diversion Committee made additions to the Quarterly Quality Review Reports to be utilized for future meetings.
- The Diversion Committee directed the Diversion Advisory Council to work on a transition plan.

Agenda Item 14 Cultural and Linguistic Physician Competency Workgroup

Update on AB 1195 – Presentation by Institute for Medical Quality (IMQ)

Ms. Chang introduced Dr. K.M. Tan, Chief of Radiology at San Rafael Medical Center, Kaiser Permanente, who provided a brief overview on the Institute of Medical Quality (IMQ). The IMQ was awarded a grant funded by the California Endowment to provide technical assistance and other resources to providers of CME, to integrate Cultural and Linguistic Competency into their courses. The IMQ also participates in an annual conference and workshop to educate people about the issues raised by AB 1195. The presentation also included a demonstration of their Internet Web site.

B. Update on AB 801

Mr. Qualset gave an update on the status of the workgroup convened pursuant to AB 801. He reported they have meetings convening regularly focusing on AB 1195 and incorporating CLC into the CME courses. They are moving forward with the implementation of AB 801 and continue to identify the interested parties to be involved throughout the state. The next meeting is scheduled for September 25, 2007.

Agenda Item 15 Wellness Update

Dr. Duruisseau presented an issue paper on physician wellness which outlined the purpose, background, conclusion and recommendations to address physician burnout for the board's review and consideration. The focus of the review centered on the benefits that might be derived from the implementation of the program to assist with licensees' well-being. Since the mission of the board is to protect healthcare consumers, it must be recognized that this best can be achieved by having healthy physicians care for their patients. Dr. Duruisseau recommended the board establish a Wellness Committee, comprised of 3 board members and 3-5 public members representing strategic partners to further consider the Board's role in addressing programs to improve in licensees' well being.

Dr. William Norcross, M.D., UCSD School of Medicine provided his comments regarding the meaning of their role and physician well-being. He stated he was glad to see the culture was changing and is looking forward to working together with the board to help change the culture even further. He provided suggestions in which the board could be involved in encouraging well being using staff resources, Newsletter articles and outreach to healthcare facilities in California.

Dr. Fantozzi made a motion to establish a Wellness Committee to promote physician wellness and move forward with the process. The motion carried.

Public testimony was heard from Jim Hay, M.D., representing the CMA who spoke in support of promoting physician wellness.

Tara Kittle, patient, also provided testimony in support of promoting physician wellness.

Agenda Item 16 Access to Care

Dr. Gitnick reported the following:

Rebecca Hafner-Fogarty, M.D. Medical Director, provided a presentation on emergence of the Minute Clinic. The clinics, about 150 nationwide, provide convenient but limited service at a low cost. They treat common ailments only – such as strep throat, ear infections and allergies and offer an alternative to packed doctors' offices and pricey emergency rooms. A Minute Clinic will be opening in Los Angeles County within the next six weeks.

- The committee adopted a motion to use the mission statement drafted by staff.
- Dr. Fantozzi provided an update on developing and expanding chronic care models for Diabetes Prevention and Management Initiative Workgroups to enhance the access to care of the underserved citizens of California. He also described the efforts going forward with telemedicine throughout the state and current importance of our volunteer physician program.
- Dr. Gitnick regrettably reported the Steven Thompson Loan Repayment Program is not funded and will end unless some source of funding is found.

At this point, Dr. Fantozzi took the opportunity to officially welcome and swear-in the new board member, Gerrie Schipske.

Agenda Item 17 Agenda Items for the November 2007 Meeting

No agenda items were offered by members.

Dr. Gregg announced she withdrew her application for reappointment and announced her resignation. She thanked the members and staff for their dedication and support to the mission of the board; it is the ultimate definition of a working board.

Dr. Fantozzi announced the following committee changes:

- Ms. Chang was appointed to the Executive Committee
- Ms. Shipske was appointed to the Application Review, Access to Care and Public Education Committee.
- Dr. Solomonson and Dr. Wender will co-chair the Diversion Committee.
- Dr. Moran was appointed to the Midwifery and Public Education Committees.
- Dr. Low and Dr. Moran were appointed to the Medical Errors Task Force.
- Dr. Duruisseau, Dr. Chin, Dr. Corday, Dr. Gregg, and Dr. Norcross and a representative from Loma Linda to be assigned to the Wellness Committee.

Dr. Fantozzi announced this was Mr. Thornton's last meeting. Mr. Thornton was thanked by the board members and various members of the audience for his years of service.

Mr. Alexander stated for the record that he apologized to Jim Hay, M.D., for his comments made regarding the Diversion program discussion which were not intended to be offensive.

Agenda Item 18 Public Comment on Items Not on the Agenda

There was no further public comment heard.

Agenda Item 18 Adjournment

There being no further business the meeting adjourned at 12:00 noon.

Richard Fantozzi, M.D, President

Vacant, Vice President

Barb Johnston, Executive Director