MEDICAL BOARD OF CALIFORNIA
Licensing Program

MIDWIFERY ADVISORY COUNCIL

December 3, 2015

Medical Board of California
Hearing Room
2005 Evergreen Street
Sacramento, CA 95815

MEETING MINUTES

Agenda Item 1 Call to Order/Roll Call

The Midwifery Advisory Council (MAC) of the Medical Board of California (Board) was called to order by MAC Chair Carrie Sparrevohn at 1:00 p.m. A quorum was present and notice was sent to interested parties.

Members Present:
Carrie Sparrevohn, L.M., Chair
Karen Ehrlich, L.M.
Tosi Marceline, L.M.
Barbara Yaroslavsky
James Byrne, M.D.

Staff Present:
Diane Dobbs, Department of Consumer Affairs, Legal Counsel
Kimberly Kirchmeyer, Executive Director
Natalie Lowe, Licensing Manager
Elizabeth Rojas, Staff Services Analyst
AnnaMarie Sewell, Associate Governmental Program Analyst
Jennifer Simoes, Chief of Legislation
Kerrie Webb, Legal Counsel
Curtis Worden, Chief of Licensing

Members of the Audience:
Bruce Ackerman, Midwives Alliance of North America
Kayti Buehler, California Association of Midwives
Rosanna Davis, L.M., California Association of Midwives
Andrea Ferroni, L.M.
Rachel Fox-Tierney, L.M.
MacKenzie Hardwick
Diane Holzer, L.M.
Kaleem Joy, L.M.
Rachel Kiene, L.M.
Lesley Nelson, L.M.
Shannon Smith-Crowley, American College of Obstetricians and Gynecologists

Linda Walsh, California Nurse-Midwives Association
Sue Wolcott, L.M., Shasta Midwives

Agenda Item 2 Public Comment on Items not on the Agenda

Ms. Sparrevohn stated that Ms. Monique Webster had resigned from the MAC public member position on November 23, 2015, and the position would be noticed for the March MAC meeting.

Ms. Rosanna Davis commented that El Camino Hospital in Mountain View, CA was unaware of the Transfer of Planned Out-of-Hospital Delivery to Hospital Reporting Form and requested information be provided to the hospital.

Ms. Buehler suggested that a report regarding the consistent lack of collaboration and consultation that is available be placed on the agenda for the next MAC meeting.

Agenda Item 3 Approval of the August 13, 2015 Midwifery Advisory Council Meeting Minutes

Ms. Marceline provided an edit to strike the word "vaginally" on page five, in the second paragraph of the meeting minutes.

Ms. Sparrevohn made a motion to approve the August 13, 2015 meeting minutes with edits; s/Ms. Ehrlich. Motion carried unanimously.

Agenda Item 4 Report from the Midwifery Advisory Council Chairperson

Ms. Sparrevohn requested the support and assistance of the Board to provide resources in order to organize a midwifery college education program.

Ms. Kirchmeyer stated that staff can identify the entities that the MAC could contact for approval, of schools such as the Bureau of Private and Post-Secondary Education.

Ms. Sparrevohn suggested that individuals who are interested in organizing a midwifery college education program contact her.

Agenda Item 5 Implementation of Senate Bill 408 Midwife Assistants

Ms. Simoes stated that Senate Bill (SB) 408 was signed into law by the Governor to ensure midwife assistants meet minimum training requirements. The implementation plan is to hold an Interested Parties meeting and to draft regulations regarding the training requirements by the end of January 2016. The proposed regulations will be presented at the March 2016 MAC meeting for input, and then presented for approval at the May 2016 Board meeting with a possible regulation hearing at the July 2016 Board meeting.

Agenda Item 6 Update on Implementation of Assembly Bill 1308

Ms. Webb indicated that Assembly Bill (AB) 1308 focuses on regulations that need to be put into place pursuant to Business and Professions Code (B&P) section 2507. Ms. Webb stated that a meeting was held with the California Association of Midwives (CAM) and the American College of Obstetricians and Gynecologists (ACOG), but it was unproductive in moving the issue forward. Ms. Webb stated that CAM suggested a compromise by putting limitations on some types of vaginal births after cesarean (VBAC), but ACOG wanted every woman who is contemplating a VBAC at home to have a physician consult first.

Ms. Sparrevohn questioned if more Interested Parties meetings would be planned for this topic.

Ms. Webb stated that there were no meetings currently planned.

Ms. Sparrevohn questioned if it was mandatory to have consensus before moving forward with regulation.

Ms. Webb indicated that it was not mandatory to have complete consensus prior to moving forward with the regulations; however, the problem is with the science and the language of the statute, specifically with the language "likely to have an impact on the course of the pregnancy and delivery." Ms. Webb stated that both sides see the science very differently.

Ms. Sparrevohn stated that she would be in favor of moving forward in a way that validates the low risk nature of a VBAC with one prior cesarean, and thought CAM was advocating for that as well.

Dr. Byrne stated that when someone seeks a consultation with a physician, they are free to disregard the recommendation.

Ms. Sparrevohn indicated that midwives are not free to disregard the physician recommendation, and the law states the physician must indicate the condition is not likely to impact the pregnancy or birth, or midwives cannot care for the woman.

Dr. Byrne referred to agenda item two and stated there was concern regarding access to care in local communities. Dr. Byrne stated that he had reached out to the Office of Statewide Health Planning and Development (OSHPD) to receive information from the Licensed Midwife Annual Report (LMAR) in order to review the data for VBACs in the prior year and link it to the county data. Dr. Byrne found that the LMAR does not currently show the counties in which VBACs are performed, and requested the LMAR be revised to collect that type of data.

Ms. Ehrlich responded that Dr. Byrne's request was addressed in the recommended revisions to the LMAR that had been previously submitted. In the meantime, it prevents women from receiving the care they want, and preventing midwives from providing care that is within their scope of practice.

Dr. Byrne stated that when assessing risk for prior VBACs it is a low risk for uterine rupture.

Ms. Ehrlich stated that when speaking of birth and taking care of healthy women in general, with the exception of prior cesareans, there is always a risk factor. Ms. Ehrlich indicated that the risk for VBAC women with one prior cesarean is not higher than women who have never had a birth.

Ms. Yaroslavsky indicated that information should be based on facts, and that by obtaining factual information it allows for a stronger ability to make a good decision.

Ms. Ehrlich stated she was concerned with the barriers that will occur if they do not move forward with allowing licensed midwives to care for women with one prior cesarean.

Dr. Byrne indicated that it would help justify the movement that Ms. Ehrlich was seeking if more data was available to show that it really was beneficial.

Ms. Marceline commented that things change year by year, and when data is captured for a previous year it may not reflect the current situation. Ms. Marceline stated that procedures performed in hospitals and at home for a woman who is having a VBAC will impact whether she is more or less likely to rupture. Ms. Marceline provided an example stating that many hospitals feel that low doses of Pitocin, to either induce or augment a woman's labor if she is having a hospital birth and a VBAC, seem to be in their scope of practice, but it is definitely not in the licensed midwives scope of practice; therefore, there will be a different rate of rupture in home birth cliental than in hospital birth cliental.

Ms. Marceline stated that some women will choose to have a VBAC in a hospital setting, that may not be appropriate for a home birth setting, and that is where the licensed midwife is counseling and selecting her cliental carefully.

Dr. Byrne stated that if the rate was lower with better management, maybe it would cut the risk down four fold so that the risk of uterine rupture is 1 out of 1000, and in the event that it does happen, it is potentially a catastrophic injury. Dr. Byrne stated that it is an issue of what is predictable or what is preventable. Dr. Byrne added that he thought clarity of information and a balanced approached would be the strongest approach.

Ms. Sparrevohn stated that she had analyzed the LMAR data and reviewed every outcome since 2007, that might be attributed to a VBAC gone badly and even when she did that, the outcomes were really good. Ms. Sparrevohn indicated that overall midwife statistics are good, which points to the fact that midwives are not having a lot of problems with VBACs specifically. Ms. Sparrevohn asked how a consult with an obstetrician would change the outcome for any woman that has had one prior cesarean.

Dr. Byrne stated it would not change the outcome. Dr. Byrne indicated that if there is a potential client that is not a mutually assessed good candidate for VBAC, with four prior cesareans, in some ways that information is beneficial coming from a physician, because it is probably not welcomed news, and hearing it from a different voice might help. He thought that from the aspects of informed decision making and clarity, there are a few things that are predictable or preventable for such a catastrophic outcome.

Dr. Byrne stated that according to the 2014 LMAR data, VBAC is a relatively small number, and instead of throwing in the towel, he asked if it is worth delaying the entire initiative over one issue, or can that one component be parked and agreed upon at a later date since it seems that this is an impasse point.

Ms. Sparrevohn questioned if it would it be possible to place a condition in the regulation allowing changes to the LMAR in order to capture data, and allow for the time being, one prior cesarean with a documented low transverse incision to not require a physician consult, and the regulation be reevaluated at a specific date in order to capture historical data.

Ms. Webb indicated that the suggestion of going forward with regulations with some limitation on VBAC, but not a total limitation without a physician consult, is not something ACOG seems open to at this time.

Ms. Sparrevohn questioned if ACOG could agree to that sort of condition, could it be legally placed in the regulations.

Ms. Webb indicated that it could be done.

Dr. Byrne suggested to include VBAC as a high risk condition and to allow ongoing review and reassessment at a later date.

Ms. Ehrlich questioned if it would still be required that the woman see a physician.

Dr. Byrne confirmed that the woman would still need to see a physician to document if there was an impact on access of care and impact on choice.

Ms. Ehrlich stated that for a couple of decades women have had the right to have their VBACs at home with licensed midwives and stated that what will happen is that right will be taken away and then maybe given back in the future. Ms. Ehrlich felt it should be the other way around since it is historically something that has been the scope of midwifery practice and it needs to be included with further review of being reasonable.

Ms. Ehrlich requested to review the existing information being captured in studies throughout the United States, and take that data into account when trying to eliminate the right of pregnant women.

Ms. Yaroslavsky stated that since there is no data for VBACs being collected for midwives or hospitals, the discussion should not occur until the data is received.

Dr. Byrne commented that OSHPD has the data for hospitals, and added that the clarity would be helpful.

Ms. Ehrlich stated that she objects taking something away from women that they already have, without indication that it is dangerous to the ones making that choice with full and informed consent by midwives.

Ms. Sparrevohn provided an overview of the regulation that was enacted in 2005 regarding VBAC. Ms. Sparrevohn indicated that when midwives originally adopted the Standard of Care for Licensed Midwives, VBACs were allowed with specific requirements of what had to be in the consent, and one of those things was ACOG's position statement on VBACs. Ms. Sparrevohn stated that the Standard of Care written in 2005 was a way to make sure that women having a home VBAC, or even considering a VBAC, would get consistent information from midwives. Ms. Sparrevohn stated that with the enactment of AB 1308 it went away because the legislation that authorized that regulation got eliminated as part of AB 1308. Ms. Sparrevohn concluded that the MAC was required to create a new regulation, which was currently at an impasse, even though the previous regulation that was in place was working fine and everybody had agreed to it in 2005.

Ms. Smith-Crowley stated that ACOG did not agree to the regulation, and what the Board did was illegal. Ms. Smith-Crowley stated that the Board was not content with ACOG and California Medical Association (CMA) for including physician supervision into the law.

Ms. Smith-Crowley questioned how many times other licensed professionals were allowed to waive the scope of practice. Ms. Smith-Crowley stated a patient cannot agree to have their physician assistant do their appendectomy, or do their open heart surgery, as there are parameters. Ms. Smith-Crowley stated that the only reason the regulation went through is because ACOG decided not to sue. Ms. Smith-Crowley stated that the regulation was extremely problematic for ACOG, and as a concession to ACOG, the Board indicated that the ACOG document would be required to be given to women. ACOG saw the hand writing on the wall that ACOG was not winning. ACOG did not want to sue and thought it would be able to clean it up later.

Ms. Smith-Crowley stated that to set the record straight, ACOG has not supported home VBACs. Ms. Smith-Crowley concluded that the legislation that went through was something that the author decided was important, and ACOG felt they had reached a reasonable compromise by having a physician examination to discuss how physicians expected the course of the pregnancy to go, whether the woman was a good candidate or not, and that it had nothing to do with home births.

Ms. Sparrevohn indicated that she attended the same meeting and recalls that ACOG wrote the regulation. Ms. Sparrevohn felt that everyone understood at the time that ACOG was not endorsing home VBACs; however, the MAC, the Board, and ACOG agreed to the regulation and ACOG authored it.

Ms. Smith-Crowley indicated that the Board did allow ACOG to have input and she can provide the letter that was written to the Office of Administrative Law indicating ACOG thought the regulation exceeded the statute.

Ms. Ehrlich commented that whatever was true or not in 2005, it was currently in the midwives' scope of practice to perform VBACs, and she thought that the regulation should be reinstated and it would meet the approval of the midwives in California.

Dr. Byrne requested clarification regarding a waiver process that allowed the patient to disregard the VBAC counseling.

Ms. Sparrevohn stated that it was an old process, and it was removed due to AB 1308. Ms. Sparrevohn indicated that the waiver was not specific to VBACs, it was a clause in the Standard of Care that allowed midwives to continue to care for a woman with potentially higher risk conditions as long as the woman was well informed, and she confirmed that she was informed, and then she would continue to birth at home with a midwife.

Ms. Ehrlich indicated that it was moderate risk, and it did not include high risk in the regulation.

Ms. Sparrevohn commented that she understood Ms. Smith-Crowley's statement, that perhaps ACOG agreed to do the specific VBAC regulation because there was a clause in the Standard of Care.

Ms. Smith-Crowley indicated that ACOG was not winning and that was a modification that provided more protection. Ms. Smith-Crowley stated that there is need for statutory changes to indicate a woman will need a physician consult, and the physician provides a discussion about VBAC, and not having a specific sign off. Ms. Smith-Crowley thought a physician consult would ensure there is a medical evaluation of a woman who is potentially at a higher risk.

Ms. Ehrlich suggested changing the statement from "higher risk" to "moderate risk" because if "higher risk" is placed into statute it will remove the right for women in California.

Dr. Byrne questioned what guidance there was from countries where home births are part of their national healthcare and how those countries, such as the Netherlands or the United Kingdom, approach the location of VBACs in counseling.

Ms. Marceline indicated that in the United Kingdom, if a mother is asking for something that the midwife feels is dangerous, and the mother is given informed consent, the mother has the last say. The midwife cannot refuse care because it is more dangerous for a mother to give birth alone.

Ms. Sparrevohn thought that the recommendation in the United Kingdom is to VBAC in a hospital, and in terms of the Netherlands, she was unsure.

Ms. Sparrevohn encouraged groups to find a middle ground.

Ms. Yaroslavsky inquired as to who would be responsible for meeting and agreeing on the terms of the regulations.

Ms. Sparrevohn stated that the agreement will need to happen between CAM and ACOG since the Board has done what it can in terms of Interested Parties meetings. Ms. Sparrevohn concluded that if regulations were going to be drafted for AB 1308 there would have to be movement, and if regulations are not drafted licensed midwives will not be able to provide Medi-Cal services in a birth center.

Agenda Item 7 Licensed Midwife Annual Report Taskforce

Ms. Lowe provided an update on the Interested Parties meeting that was held on October 13, 2015, to discuss possible revisions of the LMAR reporting tool. The meeting provided an open discussion on the requests and needs of licensed midwives and other interested parties on how the future statistics would

be collected and what data elements would be included. Following the meeting Board staff met with OSHPD staff to discuss the project and what roles and responsibilities each agency would have. It was determined that there were several items that would need additional research and review prior to completing a design document for recommendation to the Board. Ms. Lowe noted that one major area of concern for both Board staff and OSHPD was how data would be reported: whether it would be reported prospectively, or an accumulative report that captures the previous year's data as it is currently being done.

Ms. Lowe stated in addition to the comments provided at the Interested Parties meeting, Board staff felt it would be beneficial to obtain feedback from all licensed midwives in California on the matter, before proceeding with the design of the new system. Ms. Lowe indicated that a survey would be sent to all licensed midwives requesting feedback on the LMAR, and based on the information received; the Board would have a better understanding of the needs of all licensed midwives in California.

Ms. Lowe noted that moving to an online system, where data is reported prospectively, would allow for additional statistics to be captured relatively easy for the midwife. However, if it is agreed to move to a prospective data system, staff would need to take into consideration midwives that would be reporting on paper, and midwives that would be reporting previous years of data that could not utilize the online system.

Ms. Yaroslavsky requested that all the MAC members receive a copy of the questionnaire as some of the members were not midwives.

Ms. Yaroslavsky stated that if access to computers is an issue then staff should inform midwives of free online services that are available, for example, public access to computers at county libraries. Ms. Yaroslavsky suggested adding a question to the survey asking if there is free Wi-Fi service in a nearby public facility for the use of a midwife to complete the LMAR.

Dr. Byrne questioned if there is a precedent with other groups under the Board where one would have both options, and there would be a different fee structure for those who desire to submit a paper format.

Ms. Kirchmeyer responded that the Board must offer the document in paper and online. Ms. Kirchmeyer added that in order for the Board to require midwives to use an online program, the Board would need legislation.

Ms. Sparrevohn hoped that the midwifery organizations and midwifery networks could relay the message that being able to utilize the online prospective data collection system would benefit midwives and maybe midwives could encourage colleagues to utilize computers.

Ms. Marceline asked if midwives would need the consent of the mothers they care for in order to enter their data if the reporting requirements changed.

Ms. Lowe indicated that OSHPD is prohibited from collecting personal identifying information. The new system would automatically assign the patient a random identification number that the midwife could include in the chart, and would use to enter the information into the system. Ms. Lowe stated that the Board hopes there is a strong agreeance that reporting prospectively would be ideal and that an

online system would be the best way to report the data. However, if the survey indicates that the majority of the midwives decide not to report prospectively then the method to report will be readdressed.

Ms. Ehrlich requested to include the question, "Have you submitted your previous LMARs? If not, why and what would help to trigger you to actually do it?" in the survey.

Mr. Ackerman commented that the paper data forms used with the Midwives Alliance of North America (MANA) statistics system were extremely troublesome. In 2009, MANA found that only three midwives nationwide used the paper version and when staff at MANA spoke to those midwives individually, the midwife indicated that they had not gotten around to completing the reporting. Since then, MANA phased out the paper form.

Mr. Ackerman suggested that an improvement would be to repeal the legislation that is enabling the LMAR, and start collecting data through the MANA statistics.

Ms. Sparrevohn stated that she is aware of discussions relating to the MANA statistics project being moved to an entity that is not associated with MANA so that it would not be part of a professional organization and questioned the status of that process.

Mr. Ackerman indicated that the process will occur through a period of a few years, and the details have not been sorted out.

Ms. Smith-Crowley questioned if the MAC was aware of the new maternal data center with the State and if not, to view the California Maternal Quality Care Collaborative (CMQCC) website at www.cmqcc.org to review the integrated data with the Maternal Data Center. Ms. Smith-Crowley stated that the organization and the data they collect for quality improvement campaigns has reduced the maternal death rate by half in a handful of years. Ms. Smith-Crowley stated that the way the MAC is trying to integrate the care with physicians and midwives, is the way the MAC should look at the Maternal Data Center. Ms. Smith-Crowley stated that if the data goes through OSHPD, to the Maternal Data Center, and the Maternal Data Center could get information from Vital Statistics this would pull the data from everywhere. Part of the issue is that it is easier to figure out the pregnancy related deaths that are within the first 42 days, but it is more difficult to pull the information for the pregnancy associated deaths that are within the year. Ms. Smith-Crowley stated that whoever is completing the birth certificate has no clue that a woman had a birth within the last year, but when the data goes through the Maternal Data Center they are able to pull that data out.

Ms. Smith-Crowley stated that in looking at the data, if one is trying to figure out what is real and what is not, the Maternal Data Center is the one that can do it. Ms. Smith-Crowley stated it was collaborative when the Maternal Data Center worked on the first maternal death review and added that in 2006. The Maternal Data Center went through every maternal death in the state and completed a root cause analysis, and found that 40% of hospitals did not have a hemorrhage protocol in place.

Ms. Smith-Crowley stated that since there was not a protocol in place, the Maternal Data Center stopped the review and collaboratively wrote best practices. Ms. Smith-Crowley concluded that there are benefits of having data go through OSHPD, and the Maternal Data Center.

Ms. Sparrevohn stated that she thought, as they discussed using the MANA statistics project, that the data would always be funneled through OSHPD.

Mr. Ackerman indicated that was his understanding as well and shared that currently in Washington State all hospitals are using MANA statistics, the statistics go directly from the MANA data set to Obstetrics Clinical Outcomes Assessment Program (OB COAP).

Ms. Ehrlich requested Ms. Smith-Crowley to lobby for a home birth midwife with CMQCC.

Ms. Smith-Crowley agreed with Ms. Ehrlich and confirmed that she would do so.

Ms. Marceline recommended getting rid of the LMAR, and to utilize the new reporting system if it is going to be prospective since it can increase a sense of how well midwives are doing and where midwives need to improve.

Ms. Ferroni stated that she hoped Mr. Ackerman would speak more on the Washington MANA statistics collection that the licensed midwives in Washington use, that goes directly into their version of the CMQCC. Ms. Ferroni commented that she felt it addresses the problems with the data collection and the ability to assess how licensed midwives are doing for the hot topics such as VBAC. Ms. Ferroni concluded that it brings midwives into the big picture of quality improvement as maternity care providers and felt that the MAC should be focusing on that topic.

Agenda Item 8 Program Update

A. Licensing Statistics

Ms. Lowe provided an update on the licensing statistics stating that staff included the breakdown on the status of licenses at the end of the fiscal year which was requested by the MAC. Ms. Lowe noted that the data reflects the total licensing population at the end of each fiscal year, and it is important to recognize that the data is not a cumulative total.

B. Enforcement Statistics

Ms. Lowe provided an update on the enforcement statistics indicating that the data was separated to show licensed midwives and unlicensed midwives per the request of the MAC. Ms. Lowe hoped the data was clear since it shows the respective data for the two different data sets. Ms. Lowe stated that staff also removed the unlicensed midwives hospital reporting forms, and the data will only show hospital reporting forms for licensed midwives.

Ms. Sparrevohn questioned if the Board is receiving hospital reporting forms from unlicensed midwives with their names.

Ms. Lowe indicated the Board is not receiving reporting forms from unlicensed midwives and since staff separated unlicensed enforcement activity at the top from licensed and unlicensed, there will not be two separate reporting areas for the hospital reporting forms.

Ms. Sparrevohn asked if there might be an investigation that is opened as a carry over and how can they view that data.

Ms. Kirchmeyer indicated that an opened investigation is shown for a specific timeframe, and staff would need to add a line to show what open investigations are still pending.

Ms. Sparrevohn requested to add a line to show the data for pending investigations.

Agenda Item 9 Future Midwifery Advisory Council Meeting Dates

After discussion by the MAC, the proposed dates for the 2016 MAC meetings will be March 10, 2016, August 18, 2016, and December 1, 2016.

Ms. Sparrevohn made a motion to approve the 2016 MAC meeting dates; s/Ms. Yaroslavsky. Motion carried unanimously.

Agenda Item 10 Agenda Items for the Next Midwifery Advisory Council Meeting in Sacramento

- Report from the MAC Chair
- Update on Midwifery Legislation
- Update on LMAR Task Force
- Update on AB 1308 Regulation
- MAC Membership
- Update on Midwife Assistant Regulation
- Discussion of Reporting on Home Birth/VBACs from Other Countries
- Discussion on Consistent Lack of Collaboration and Consultation

Agenda Item 11 Adjournment

Ms. Sparrevohn adjourned the meeting at 2:49 p.m.

The full meeting can be viewed at http://www.mbc.ca.gov/About_Us/Meetings/2015/