

**MEDICAL BOARD OF CALIFORNIA****COMMITTEE ON PHYSICIAN  
SUPERVISORY RESPONSIBILITIES**

Embassy Suites  
150 Anza Boulevard  
Burlingame, CA 94010  
650-342-6000 (directions only)

**Wednesday, February 5, 2014**  
3:30 p.m. – 5:00 p.m.  
(or until the conclusion of Business)

**MINUTES**

*Due to timing for invited guests to provide their presentations, the agenda items below are listed in the order they were presented.*

**Agenda Item 1      Call to Order**

The Committee on Physician Supervisory Responsibilities of the Medical Board of California (Board) meeting was called to order by Dr. Michael Bishop at 3:30 p.m. A quorum was present, and due notice had been mailed to all interested parties.

**Agenda Item 2      Roll Call****Members Present:**

Christopher Barnard, M.D.  
Michael Bishop, M.D.  
Jack Bruner, M.D.  
James Newman, M.D.  
Harrison Robinson, M.D.

**Members Absent:**

Paul Phinney, M.D.  
Beth Grivett, P.A.  
Suzanne Kilmer, M.D.  
Gerrie Schipske, R.N.P., J.D., Chair

**Staff Present:**

Susan Cady, Enforcement Manager  
Kimberly Kirchmeyer, Executive Director  
Armando Melendez, Business Services Analyst  
Valerie Moore, Enforcement Manager  
Jennifer Simoes, Chief of Legislation  
Laura Sweet, Deputy Chief of Enforcement  
Renee Threadgill, Chief of Enforcement  
Kerrie Webb, Staff Counsel

Curt Worden, Chief of Licensing

**Members of the Audience:**

Theresa Anderson, California Association of Physicians Assistants

Norman C. Davis, Esq.

Carl A Powell, D.O., F.A.C.S., California Academy of Cosmetic Surgery

John Valencia, American Society for Dermatologic Surgery

Julie D'Angelo Fellmeth, Center for Public Interest Law (CPIL)

K. Herr

Kathleen McCallum, NorCal Aesthetic Nurses Association

Yvonne Choong, California Medical Association (CMA)

**Agenda Item 3            Approval of Minutes from the July 19, 2012 Meeting**

*A motion was made to approve the minutes from the July 19, 2012 meeting/s: Bruner/Newman. Motion carried.*

**Agenda Item 4            Public Comment on Items Not on the Agenda**

No public comments

**Agenda Item 5            Discussion on Medical Spas**

Ms. Simoes brought the issue of medi and/or medical spas to the Committee to discuss the possibility of creating a definition in statute. She gave some background on existing law and talked about AB 1548 (Carter), which had the intent to raise the penalties for violating the corporate practice of medicine. It also defined outpatient elective cosmetic medical procedures or treatments in statute as “medical procedures or treatments that are performed to alter or reshape normal structures of the body solely to improve appearance.” Ms. Simoes also presented the International Medical Spa Association’s definition of a medical spa as follows: “A medical spa is a facility that operates under the full time onsite supervision of a licensed healthcare professional. The facility operates within the scope of practice of its staff, and offers traditional complementary and alternative health practices and treatments in a spa-like setting. Practitioners working within a medical spa will be governed by their appropriate licensing board, if licensure is required.”

The Committee asked this item be placed on a future agenda to discuss if there is a need to define a medi or medical spa.

Ms. Simoes continued stating a medical spa is not a facility that is currently licensed and/or regulated in California and the purpose of defining the medical spa in law would be to license and regulate this type of facility. She also noted the Board staff does not recommend creating a definition for medical spas in law, because individuals providing medical services are already required to be licensed and are regulated accordingly.

Dr. Robbins questioned if a physician must be on the premises of a medical spa at all times. Ms. Simoes stated that there is no licensure for medical spas in California law and there are no agencies that regulate medical spas. The Board regulates the individuals that work in the medial spas and the Board completed

the physician availability regulations, but it is only for elective cosmetic procedures that use lasers or intense pulse light devices. Physical presence is not a requirement in those regulations.

Dr. Robbins asked Ms. Simoes what she was referring to when she spoke about the physician being on the premises at all times. Ms. Simoes said she was referring to a health professional and by health professional she means the physician or the nurse practitioner that is supervised by the physician, the Physician Assistant (PA) or the other health care professional.

Dr. Bruner commented that he had some concerns that when the statement says full time onsite supervision that it means someone is on sight supervising something or someone. However, the physician is actually the supervisor but it appears other people are supervising also.

Ms. Simoes said this is information currently on the Board's website and it is correct that the physician availability regulations do not require a physician onsite. She stated the Committee is looking at this item and as this memo was being prepared there are many items that need to be updated with the addition of the Board's availability regulation and the addition of AB 1548. She added, none of these items fall under the cosmetic procedure process on the Board's website. The website is being updated to include the information this Committee has gathered and the bills that have passed under the section on lasers and cosmetic procedures.

Dr. Bruner said that he hopes the revision will reflect how the State of California defines a med spa rather than how an international group defines it.

Ms. Simoes said med spa is not defined in the State of California, which is what is currently being discussed and the only definition she could find was the definition from the International Medical Spa Association. She said she thought it would provide a base, because items are defined in statute when it is a licensure category.

Dr. Bruner stated this does not define medical spa and that he was not sure it would belong in the regulations. He continued with he had always been concerned that people could advertise and use the word medi spa or medical spa when in fact they are not. This is an advertising issue, it is not a licensing issue and wanted to know if there was some language that could be placed in the regulations that says if medi spa is used in ads it must be owned and operated by a health care professional.

Ms. Simoes stated that the Board can only issue sanctions against physicians and cannot impose a sanction against someone that is not one of the Board's licensees.

Dr. Bruner stated that a business should not be able to advertise as a medi spa without a health care professional being there and suggested that it go under the corporate practice of medicine regulations.

Dr. Newman commented that anytime the term medi spa is used it should be clear to the public, and most people assume a physician is affiliated with these facilities because the term "medical" is used. He recommends to the Board that anytime the term "medical" is used it should reflect that a medical doctor is involved and therefore anyone using the term "medical," or "medi spa," would be regulated under the Board.

Dr. Bishop concurred with Dr. Newman stating that this may require some legislative action and the Board

should consider getting a sponsor and discussing it in depth. In addition it could be taken one step further once the term “medi spa” has been defined and there are medical services being provided, the Board should consider the supervisory requirements.

Dr. Newman recommended that the ownership of a medi spa should be no different than the ownership of a medical practice and that a nonmedical entity cannot have ownership in a medi spa.

Dr. Bruner restated his reason for saying the Board can put this under the corporate practice of medicine regulations. He also brought up that other people have already invented the definition of a medi spa. The entity known as a medi spa is considered to be a site where the practice of medicine occurs. By putting the previous sentence in the regulations it would solve many problems.

Dr. Robbins suggested looking at the patent office because medi spa is actually a patented name. He added it is not routinely enforced but it does exist as a patent.

Dr. Barnard commented that an electronic medical records requirement would certainly make it uniform.

Norman Davis, a health care attorney, stated he has concerns regarding some unreasonable selective enforcement by the Department of Consumer Affairs, the Board, and by the Board of Registered Nursing, which has targeted professionals in esthetic and cosmetic medicine. He suggested the wording regarding lasers and intense pulse light devices mentioned are too restrictive and recommended to the Committee that it broaden that definition to energy based devices to covers things like the focused ultra sound and other types of energy devises.

Ms. Simoes noted the Board already voted to broaden all procedures and it will be reported at the next Board meeting. She also noted there will be legislation this year, that will be in the Senate Business and Professions Committee omnibus bill and is going to direct the Committee to go through the regulation process again on physician availability for all procedures.

#### **Agenda Item 6      Presentation of Fictitious Name Permits**

Mr. Worden delivered a brief presentation on the requirements for the use of a fictitious name permit (FNP) that allows a physician or podiatrist to practice under a name other than their own. Mr. Worden talked about the process for reviewing a FNP, the issuance time line and the cost.

There were questions and conversation regarding a non-physician or lay person holding an FNP and employing a physician. Committee Members questioned the availability of a cross referencing system where the names of the owners of an FNP can be linked to the FNP. They also suggested cross referencing every business in California advertising as a medi or medical spa and identifying if there is a FNP. The Committee suggested sending a letter saying the Board requires a FNP. The Committee suggested that information be ready before the next quarterly Committee meeting.

#### **Agenda Item 7      Presentation on the Outcome of the Case on the Supervision of Certified Registered Nurse Anesthetists**

Ms. Webb stated that the Board Members asked for a presentation on the outcome of the case regarding the supervision of certified registered nurse anesthetists (CRNAs). Ms. Webb presented some background on

the case and spoke about the federal regulations in place that allow reimbursement by Medicare. Medicare will still pay for CRNA services without supervision as long as the procedure was ordered by a physician. She also touched on the regulations and conditions that allow a State's Governor to opt out of those requirements. She spoke about the outcome of litigation by the California Society of Anesthesiologists and California Medical Association arguing that the Governor acted contrary to California law.

#### **Agenda Item 8      Discussion of Future Agenda Items and Possible Dates and Locations**

- Discussion regarding data collection regarding how many medispas there are in the State of California and what kind of revenue can be generated from the fees to identify those entities.
- Survey all the liability carriers on how they view medispas.
- Give a presentation from a major liability carrier that will clearly define what they consider supervision.
- A draft of language for advertising medi spa that could possibly go into regulations, or statute.

In conversation Dr. Bishop stated the will of this Committee is that when the term "medi" is used it should be required to have a physician involved in it which means a legislative change may be required.

Ms. Simoes explained there is no license for a medical or medi spa under any agency. She went on to say that this is about who has the authority to use the term.

Ms. Webb brought up the standard of care regarding how a physician who is practicing outside of their training and experience must still act within the standard of care.

Ms. Kirchmeyer commented that if an individual is practicing and a complaint is filed they are held to the same standards as a trained specialist doing the same procedure and when a complaint is received, an expert in that field will determine if it is within the standard of care.

There was discussion regarding the difference between supervision and standard of care with suggestions that regulations just passed said supervision must be done by somebody with the required skills. Ms. Simoes clarified that the regulations are about how a physician must be available, not their style of supervising. She said that in the regulations that were adopted it says, a physician with relevant training and expertise shall be immediately available.

Dr. Barnard said the American Academy of Dermatology has very clear guidelines and suggested using them as a bench mark.

Ms. Kirchmeyer said staff could take it under consideration.

Dr. Bishop asked if there were any ideas about a date for the next meeting.

Ms. Simoes stated she would refer to the Chair before setting a date.

Theresa Anderson, California Academy of Physician Assistants, stated that based on the conversation about supervision, she would like to offer a couple of points that are stated in the Physician's Assistant Practice Act. She felt this might help with some clarification in terms of the supervision required for PAs.

**Agenda Item 9          Adjournment**

*Dr. Bishop thanked the Committee for being there and asked for a motion to adjourn. The meeting was adjourned at 5:00 p.m.*

The full meeting can be viewed at [www.mbc.ca.gov/board/meetings/Index.html](http://www.mbc.ca.gov/board/meetings/Index.html)