



DIVISION OF MEDICAL QUALITY

**Embassy Suites
South San Francisco, CA**

July 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 8:05 a.m. Members present included:

Members Present:

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

Members Absent:

Cesar A. Aristeiguieta, M.D., President
Ronald L. Moy, M.D.

Staff and Guests Present:

David T. Thornton, Executive Director
Barbara Johnston, Executive Director (appointment effective August 1, 2007)
Kimberly Kirchmeyer, Deputy Director
Renee Threadgill, Chief of Enforcement
Kurt Heppler, DCA Legal Counsel
Carlos Ramirez, Senior Assistant Attorney General
Jose Guerrero, Supervising Deputy Attorney General
Lawrence Mercer, Deputy Attorney General

Thomas Reilly, Deputy Attorney General
Jane Zack Simon, 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
Rhonda Baldo, Associate Analyst
Richard Prouty, Staff Services Manager
Teresa Schaeffer, Associate Analyst
Valerie Moore, Associate Analyst
Lynda Swenson, Area Supervisor - North California
William A. Norcross, M.D., Director, Physician Assessment and Clinical Education Program
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
Antonette Sorrick, Deputy Director, Department of Consumer Affairs, Board Relations
Frank Lucido, M.D.
Tara Kittle

Agenda Item 2 Approval of Orders

Approval of Orders Restoring License Following Completion of Probation

The Division reviewed and approved 8 Orders. Vote: 11-0

Approval of Orders Issuing Public Letters of Reprimand

The Division reviewed and approved 9 Orders. Vote 11-0

Approval of Orders for License Surrender During Probation/Administrative Action

The Division reviewed and approved 3 Orders. Vote 11-0

Agenda Item 3 Approval of Minutes

It was M/S (Corday/Moran) to approve the Open Session minutes of the April 27, 2007 Division Meeting. Motion carried (11-0).

Agenda Item 4 Legislation and Regulation Updates

No report was given.

Agenda Item 5 Consideration of Proposal to Amend Oral Argument Regulations

Kimberly Kirchmeyer, Deputy Director, reported Dr. Aristeiguieta and Mr. Zerunyan met with an administrative law judge and board staff to discuss the process for oral argument. The committee determined amendments to the regulations were needed and suggested the following:

- Amending California Code of Regulations (CCR) section 1364.30(c) to authorize the administrative law judge and any panel member to request a party support the party's oral argument on the matter with a specific citation to the record;
- Amending CCR section 1364.30(e) to require the respondent to be placed under oath if they address the panel;
- Creation of CCR section 1364.32 to place specific requirements on written argument submitted in response to an order of nonadoption or reconsideration.

Mr. Zerunyan added the amendments to the regulations will help streamline the process and ensure information is not added to the record.

It was M/S (Duruissseau/Wender) to approve the proposed language to amend CCR section 1364.30 and creation of CCR section 1364.32 and hold a regulatory hearing on this matter at the November 2007 meeting. Motion carried unanimously.

Agenda Item 6 Division Chief's Report

Renee Threadgill, Chief of Enforcement, provided an update on the reorganization of the probation unit. The transfer of the cases from the investigators to inspectors/investigator assistants is in the training phase, and the transition is expected to be completed by the end of the year.

Ms. Threadgill stated the development of a computer medium which will allow the DAGs in the district offices the ability to access information from CAS in a user-friendly environment is underway.

Ms. Threadgill announced the promotion of Laura Sweet, Los Angeles Area Supervising Investigator II, to Deputy Chief with Board. Lynda Swenson, Probation Supervisor II has been promoted to the Chief position of the Division of Investigation.

Agenda Item 6A Medical Expert Program – Survey

Ms. Threadgill stated in response to continued feedback from expert reviewer surveys, the DMQ members asked board staff to explore the feasibility of increasing the expert reviewers' pay. Upon preliminary research, it was found the Board could increase the expert reviewers' hourly rate of pay without a significant impact to the Board's current budget and without having to submit a BCP to DCA. Ms. Threadgill recommended the DMQ approve a \$50 per hour increase

to the expert reviewers' pay, which would raise the pay from \$100 to \$150 per hour.

Mr. Alexander requested board staff conduct a comprehensive budget analysis to determine the maximum pay the Board could budgetarily accommodate for the expert reviewers. Discussion ensued on the expert reviewer program including current recruitment and retention efforts.

It was M/S (Wender/Moran) to approve a \$50 per hour increase of expert reviewers' pay. Motion carried unanimously. The DMQ further directed Ms. Threadgill to provide a comprehensive budget analysis of the expert reviewers' pay and a comprehensive report on the Board's recruitment and retention efforts to the DMQ at the November 2007 meeting.

Agenda Item 6B Expert Utilization Report

Ms. Threadgill directed the DMQ members' attention to the expert utilization report. There were no questions asked or comments made.

Agenda Item 7 Vertical Enforcement Update/Progress Report

Carlos Ramirez, Senior Assistant Attorney General, reported the information technology staff from the AG's office and the Board are actively working on a method of integrating information from CAS into a system the DAGs and investigators can use. He stated a progress report will be provided to the DMQ at the November 2007 meeting.

Mr. Ramirez stated he is in the process of hiring three new deputies in HQES, as two senior deputies in San Diego and one senior deputy in Los Angeles have retired. He stated 75 to 80 applications were received for those three positions.

Discussion ensued on the information to be integrated into the new system, the accessibility of the information by both deputies and investigators, the amendment of SB731 to include a directive that both deputies and investigators use ProLaw, and the projected time to implementation of the new process. The DMQ directed Mr. Ramirez and Ms. Threadgill to provide a comprehensive report regarding vertical enforcement at the November 2007 meeting, which should include every detail of the full integration of the program under the current law, the challenges to full integration, Board policy to be established to assist with integration, and budgetary authority needed to implement full integration.

Agenda Item 8 Discussion of Federal and California Appellate Decisions Pertaining to Medical Marijuana

Jane Zack Simon and Lawrence Mercer, Deputy Attorney General, reported the recent court cases involving medical marijuana, e.g., the Ninth Circuit's decision in *Conant v. Walters* and United States Supreme Court decision in *Gonzales v. Raich*, have had no impact on the policy statements previously adopted by the Board with respect to a physician's role when recommending and approving patient use of medical marijuana. The Board's existing policy is

physicians who recommend marijuana to patients should do so in accordance with the generally accepted standard of practice including a good faith examination, treatment plans, evaluation of the patient, having a bona fide physician-patient relationship, maintenance of medical records, etc. Ms. Simon stated there is no reason for the Board to make any changes to the policy at this time.

Frank Lucido, M.D., stated the recent federal decisions also had no impact on the California Compassionate Use Act of 1996, which entitles physicians to make recommendations of medical marijuana in a safe and appropriate manner as long as they do not aid and abet a patient in obtaining the cannabis.

**Agenda Item 9 Proposed Designation of Precedential Decisions pursuant to
Government Code §11425.60**

Kurt Hepler, DCA Legal Counsel, provided a history of the Board's authority to designate decisions as precedential. He presented the procedural backgrounds and Facts/Findings of two decisions, i.e., Joseph J. Basile, M.D. and Tod H. Mikuriya, M.D., to the DMQ for such designation.

It was M/S (Alexander/Wender) to designate a portion of the decision in the matter of the accusation against Joseph J. Basile, M.D., as precedential, more specifically, Factual Findings 1 and 2; the first sentence of Factual Finding 3; Factual Findings 4 and 5; Factual Finding 6 except for the last two sentences; and Legal Conclusions 1 through 5. The motion carried unanimously.

It was M/S (Wender/Alexander) to designate the decision in the matter of the accusation against Tod H. Mikuriya, M.D., as precedential with emphasis on the standard of care for conducting a medical marijuana evaluation being identical to that followed by physicians in recommending any other treatment or medication and further that the Compassionate Use Act does not immunize a physician from disciplinary action in those cases where the physician's care falls below the accepted standard. The motion carried unanimously.

Dr. Lucido asked the DMQ to further clarify whether the entire Mikuriya decision was designated as precedential or only a portion of it. After much discussion, and a caution from Thomas Reilly, Deputy Attorney General, against limiting the precedent in any way, it was M/S (Alexander/Wender) to designate the entire text of the Mikuriya decision as precedential. The motion carried unanimously.

Agenda Item 10 Report Regarding Practice Monitoring Conditions

Lynda Swenson, Area Supervising Investigator II, reported detailed information on the practice monitors is being gathered in order to develop some consistent standards for the practice monitors to follow. She stated as part of the PACE PEP Program, Dr. Norcross and his staff developed an educational CME course to be used as a training tool for practice monitors.

William A. Norcross, M.D., Director of the PACE Program, stated since the April 2007 DMQ

meeting, the PACE Program held two CME conferences. The practice monitors in attendance provided good feedback to the PACE Program and were provided information concerning educational and behavioral skills in how to be an effective mentor for physicians, e.g., what to do at the first meeting with the physician; how to examine the physician's continuing personal development in an objective way which can be sustained over time; how to do chart audits; how to give feedback to the physician in a meaningful way to help the physician with improved record keeping. In a related subject, Dr. Norcross stated USCD has received an \$8 million grant which will enable them to build an infrastructure for the TeleHealth Network and be very useful in the mentoring program.

Agenda Item 11 Report on Surgical or Procedural Deficiencies

Dr. Norcross reported the review of surgical and procedural competency continues to be a challenge. UCSD has been looking at ways to explore these types of competencies for a number of years. There are issues with liability on the part of the physician, the mentoring physician, the hospital, and performance outcomes. He stated he continues to contact programs throughout the world to obtain useful information.

Dr. Wender suggested the Board consider taking a strong stand for appropriate peer review in hospital settings. Mr. Heppler pointed out the Board has a contract in place to study peer review. Discussion ensued. Ms. Yaroslavsky stated she would consider forming a review committee to monitor this study.

Tara Kittle stated there needs to be a better system of physician accountability available to the public. She stated physician error records should be placed in a computer system, which is accessible throughout the state and made available to the public when evaluating physicians in regard to patient care.

Agenda Item 12 Diversion Program Report

Frank Valine, Diversion Program Administrator, provided a brief overview of the Diversion Committee's meeting held on July 26, 2007. In light of the full Board's recommendation to abolish the Diversion Program, a transition team will be created to oversee the process and ensure the Program meets its current operational mandate. The Diversion Committee approved the insertion of the language of the clinical competency examination regulation into Part II of the Agreement for Participants in the Diversion Program.

It was M/S (Duruissseau/Alexander) to approve the reappointment of Shannon Chavez, M.D. as a DEC member. Motion carried unanimously.

Agenda Item 13 Agenda Items for November 2007 Division Meeting

- Regulation Hearing on Amendment to Oral Argument Language
- Comprehensive Report on the Status of the Integration of the Vertical

Enforcement Probation

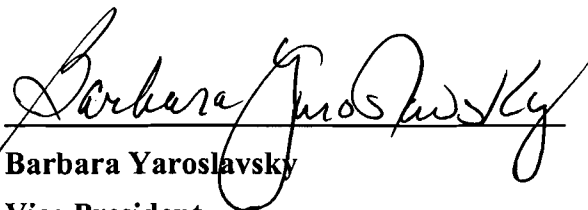
- Comprehensive Report on Recruitment and Retention of Expert Reviewers Including a Study and/or Recommendation for Appropriate Compensation

Agenda Item 14 Public Comment

No public comment given.

Agenda Item 15 Adjournment

There being no further business, the meeting was adjourned at 9:45 a.m.



Barbara Yaroslavsky
Vice President