



# MEDICAL BOARD OF CALIFORNIA

Protecting consumers by advancing high quality, safe medical care.

2005 Evergreen Street, Suite 1200  
Sacramento, CA 95815-5401  
Phone: (916) 263-2389  
Fax: (916) 263-2499  
www.mbc.ca.gov

Gavin Newsom, Governor, State of California | Business, Consumer Services and Housing Agency | Department of Consumer Affairs

## MIDWIFERY ADVISORY COUNCIL

Hearing Room

2005 Evergreen Street

Sacramento, CA 95815

December 6, 2018

## MEETING MINUTES

### Members Present:

Diane Holzer, L.M., Chair  
Claudia Breglia, L.M.  
Jocelyn Dugan

### Members Absent:

Anne Marie Adams, M.D.  
Chemin Perez, L.M.  
Barbara Yaroslavsky

### Staff Present:

April Alameda, Chief of Licensing  
Rhonda Baldo, Associate Governmental Program Analyst  
Sean Eichelkraut, Information Technology Supervisor II  
Kimberly Kirchmeyer, Executive Director  
Christine Lally, Deputy Director  
Tonya Morairty, Associate Governmental Program Analyst  
Monique Murray, Staff Services Manager I  
Regina Rao, Associate Governmental Program Analyst  
AnnaMarie Sewell, Associate Governmental Program Analyst  
Kevin Valone, Staff Services Analyst  
Kerrie Webb, Legal Counsel

### Members of the Audience:

Rosanna Davis, L.M., California Association of Licensed Midwives  
Karen Ehrlich, L.M., Midwifery Education Accreditation Council  
Susan Engle, Nursing Education Consultant, Board of Registered Nursing  
Rachel Fox-Tierney, L.M., C.P.M.  
Jennifer Kamel, California Association of Licensed Midwives  
Rachel Kiene, L.M., Certified Professional Midwife  
Jessica Little, Capital Midwifery  
Bianca Mercado  
Madeline Shernock, L.M., Welcome Home Midwife

Sue Wolcott, L.M., Shasta Midwives  
Martin Watson

**Agenda Item 1            Call to Order/Roll Call/Establishment of a Quorum**

Diane Holzer, Midwifery Advisory Council (MAC) Chair, called the meeting of the MAC to order on December 6, 2018, at 1:12 p.m. A quorum was not present and due notice was provided to all interested parties.

**Agenda Item 2            Public Comments on Items not on the Agenda**

Ms. Ehrlich suggested that the Licensed Midwife Annual Report (LMAR) due date be changed to March 31st, instead of March 30th each year. Ms. Ehrlich stated the date has led to confusion due to the fact that the last day of March is the 31st not the 30th.

Ms. Holzer stated the MAC would take Ms. Ehrlich's suggestion under advisement.

**Agenda Item 3            Approval of Minutes from the August 16, 2018 Midwifery Advisory Council Meeting**

A quorum was not present, therefore, this item was tabled for the next meeting.

**Agenda Item 4            Report from the Midwifery Advisory Council Chair**

Ms. Holzer stated she attended the Medical Board of California (Board) quarterly meeting in October 2018. Ms. Holzer remarked she learned that the Board is the largest, with over 140,000 licensed physicians and that one in every six physicians in the United States holds a California license.

Ms. Holzer noted that the letter to all California medical facilities regarding the reporting requirements for the Transfer of Planned Out-of-Hospital Delivery to Hospital Reporting Form has been posted on the Board's website and provided to the California Department of Public Health for distribution.

Ms. Holzer stated she would like to discuss goals and priorities for the MAC for 2019 at the next meeting now that the LMAR is complete.

Ms. Holzer stated the California Association of Licensed Midwives (CALM) will be seeking legislation to create a midwifery board and the future of the MAC will depend on the outcome of the legislation.

**Agenda Item 5            Update on the Licensed Midwife Annual Report**

Ms. Alameda reported that the revisions to the LMAR reporting tool are complete.

Ms. Alameda stated that Mr. Eichelkraut, manager of the Information Systems Branch (ISB), is present to demonstrate the LMAR, answer questions, and provide a sample of screen shots of the new system.

Ms. Alameda stated the Board will be sending letters to all licensed midwives with information on the new reporting system.

Mr. Eichelkraut reported that Board staff revised the LMAR system to be modern and user friendly. Mr. Eichelkraut explained that the original LMAR was launched in 2010 and maintained by the Office of Statewide Health Planning and Development (OSHPD).

OSHPD will continue to host the LMAR data, aggregate the data, and provide the Board with the summary report at the end of each year. Mr. Eichelkraut explained additional security features have been added, including a two-factor authentication, similar to a banking account or personal email. Mr. Eichelkraut indicated the Board received feedback from OSHPD that due to infrequent use many people forget their username. Therefore, the Board implemented a feature to easily reset a username and password.

The registration process requires an email address, a username, a license number, the last four digits of the user's social security number, and date of birth.

In addition the LMAR includes a new feature to automatically calculate the number of clients.

Mr. Eichelkraut explained the Board's helpdesk can now assist licensees with technical support. A paper version of the LMAR will still be available for licensees who prefer that method.

In addition, the Board will provide licensees with fill-in forms for use by the 2019 reporting year.

The new form is designed for the licensee to be able to report for each client throughout the year to have the data readily available in the client file at the end of each year.

Ms. Dugan asked for clarification on the two-factor authentication.

Mr. Eichelkraut explained the two-factor authentication is valid for five minutes. If the licensee steps away for more than five minutes, the licensee will be required to enter his/her password again to obtain a new code.

Mr. Eichelkraut clarified the LMAR system does not require patient names.

Ms. Davis stated she was encouraged to see that there will be a form available to place in each chart to assist with a tally.

Mr. Eichelkraut indicated that the form is similar to tax forms and indicates what the licensed midwife needs before completing the LMAR. A user guide will also be available on the Board's website.

Ms. Davis asked if a hotline is available for communication or an email to submit questions or problems.

Mr. Eichelkraut stated that there will be a link on each page with clear instructions on contact information. Mr. Eichelkraut concluded his presentation and update, and indicated Board staff will continue to work with OSHPD during the transition.

**Agenda Item 6                    Discussion and Possible Action on an Administrative Procedures Manual for Midwifery Advisory Council Members including but not limited to General Rules of Conduct, Meeting Protocols, Recruitment for Midwifery Advisory Council Membership, Term Limits and Selection of Officers and Mandatory Training and Policies**

Ms. Alameda stated at the last MAC meeting there were questions and discussion related to vacancies, recruitment eligibility, and education for new MAC members.

As a result of that discussion, it was suggested that an administrative manual for MAC members be developed, similar to what the Medical Board Members use and have adopted.

Ms. Alameda stated Board staff developed a draft administrative manual for the MAC to review. Ms. Alameda provided an overview of each section of the manual. Ms. Alameda requested that Ms. Webb provide additional information regarding term limits.

Ms. Webb stated that Business and Professions Code section 131, provides that for any committee, no member shall serve more than two consecutive full terms.

That would apply to a member of a Board committee or council under the Department of Consumer Affairs.

Ms. Webb explained that members have to take a break between terms if they have reached the maximum term limit.

Ms. Webb expressed this makes recruitment and educating potential members all the more important, because there must be movement in the membership. This will be adjusted for the next meeting and term limits will need to be established.

Ms. Alameda stated the draft administrative manual will be brought back to the next MAC meeting to be discussed, reviewed, and adopted.

Ms. Ehrlich asked why the vice chair position went away.

Ms. Holzer explained that the position of vice chair has not gone away, she intends on nominating Ms. Yaroslavsky at the next MAC meeting.

**Agenda Item 7                    Discussion and Possible Action on a Midwifery Advisory Council Vice Chair**

A quorum was not present, therefore, this item was tabled for the next meeting.

**Agenda Item 8                    Overview of the Enforcement Process**

Ms. Kirchmeyer provided a presentation of the enforcement process.

She shared the mission of the Board and explained how the Board protects California consumers through its licensing and enforcement functions.

Ms. Kirchmeyer detailed the complaint review process, describing how complaints are received, and the triage process, along with the midwifery complaint review process. Ms. Kirchmeyer explained how complaints are categorized and indicated that all complaints received are evaluated and triaged. Ms. Kirchmeyer explained that the Board does not have jurisdiction over fees charged or the demeanor of a licensee. However, the Board does refer the individual complainant to the appropriate party, to resolve their issues.

Ms. Kirchmeyer stated the Board identifies if a complaint is high priority or urgent.

These include sexual misconduct, licensee impairment, substance abuse or mental or physical impairment.

High priority complaints are immediately forwarded for investigation.

Ms. Kirchmeyer indicated unlicensed activity and 805 reports are both considered urgent complaints.

Ms. Kirchmeyer explained the Board has a unit that deals solely with conduct complaints, such as failure to provide medical records, failure to sign a death certificate, patient abandonment, or fraud. Ms. Kirchmeyer explained the Board must have a release from either the patient or from a patient representative to move forward on quality of care complaints.

Otherwise, the Board would need to have enough information to subpoena the records.

Ms. Kirchmeyer opined some of the cases in the midwifery community are harder to investigate because the Board must get the patient's authorization and many patients will not sign off on the authorization. In that case the Board must get a subpoena.

Ms. Kirchmeyer elaborated, once the Board receives a complaint, the midwife is contacted for records and a summary of care and treatment.

The Board then gathers the information, the medical records, and any information received from the midwife and sends it to a midwifery consultant to determine if there has been a departure from the standard of care or if it needs further investigation. If it is determined that further investigation is needed it will be sent to a district office under Department of Consumer Affairs (DCA).

Ms. Kirchmeyer stated the Board reviews each complaint to determine the appropriate action.

The Board can either close the complaint, pursue disciplinary action, refer it for formal investigation or issue a citation and fine. Ms. Kirchmeyer stated the Board amended the midwifery regulations to allow the Board to issue citations and fines to midwives.

Ms. Kirchmeyer explained the investigation process and outlined formal investigation.

Ms. Kirchmeyer stated for quality of care cases, the investigator requests records, interviews the complainant or other witness, and forwards to a consultant review.

Ms. Kirchmeyer noted in some cases more than one expert is required.

Ms. Kirchmeyer explained in other types of cases the investigator may obtain copies of an arrest or conviction report, obtain copies of court documents, interview the midwife, conduct an undercover operation, and possibly request an evaluation. Ms. Kirchmeyer indicated possible investigation outcomes could be, close the case, issue a citation and fine, refer for disciplinary action, or refer for criminal action.

Ms. Kirchmeyer explained if an accusation was filed it would be the first public document filed unless a suspension was issued.

Ms. Kirchmeyer explained all decisions go to a panel of the Board, except surrender of license and default decisions. The decision will either be to adopt, non-adopt or reject. Ms. Kirchmeyer stated the disciplinary outcomes could result in revocation, surrender, or probation with terms and conditions. Ms. Kirchmeyer concluded that a final action is posted on the Board's website, licensee profile, and listed on the Board's public documents. It is also reported to the National Practitioner Databank, and placed in the Board Newsletter.

Ms. Ehrlich asked what changes would be made to the vertical enforcement process effective January 1, 2019.

Ms. Kirchmeyer explained that it will remove the Deputy Attorney General (DAG) working with the investigator and will revert back to the process that occurred prior to 2006. Ms. Kirchmeyer indicated the DAG would get involved if there was disciplinary action.

Ms. Ehrlich asked if it is better for a licensee not to have an attorney present when going before the Board because in some instances it is looked at as proof of guilt.

Ms. Kirchmeyer stated it is up to the licensee whether or not they choose to have representation present.

Ms. Davis asked if midwives are informed if a complaint is made.

Ms. Kirchmeyer stated it depends on the complaint.

Ms. Kirchmeyer explained, for example, if a complaint was non-jurisdictional, the complaint would be closed and the midwife would not be notified about the complaint.

Ms. Davis asked at what point a case would be reviewed by a doctor.

Ms. Kirchmeyer stated that the initial review is conducted by the Central Complaint Unit then forwarded to a midwifery expert for review. If appropriate, it would be forwarded to investigation. At that time, if requested by the investigator or the DAG, it may be reviewed by a physician medical expert.

Ms. Davis asked if the DAG can request a complaint be reviewed.

Ms. Kirchmeyer indicated yes.

Ms. Davis asked if that was per the guidelines.

Ms. Kirchmeyer stated if an additional review is needed to help prove or disprove a case, it would be requested at that time.

Ms. Davis asked if opinions are written by doctors or midwives.

Ms. Kirchmeyer stated it could be both. The review would remain confidential unless it goes to hearing.

Ms. Davis asked if the Board has a range of financial costs of complaints and investigations.

Ms. Kirchmeyer explained she does not have an exact cost.

However, the cost of a case that goes through to hearing has been estimated by the Board to be around \$38,000.

Ms. Davis asked if there was data available on comparing the types of complaints, investigations and decisions between midwives and physicians.

Ms. Kirchmeyer stated the volume is quite different.

The Board has disciplined approximately 450 physicians per year and very few midwives.

Ms. Davis asked if a probation monitor would have midwifery training.

Ms. Kirchmeyer stated that probation monitors do not have any formal medical/midwifery training. The monitor is a civil service employee of the state who is monitoring compliance with the conditions of probation.

Ms. Shernock asked how the Board receives feedback on this process, such as if a licensee did not agree with the process.

Ms. Kirchmeyer stated the Board always welcomes and encourages feedback. Anyone wishing to give feedback may send a letter to the Board.

Ms. Shernock asked how frequently the Board receives complaints from insurance companies.

Ms. Kirchmeyer stated the Board has received complaints from insurance companies potentially for fraud, however she did not have a number immediately available and would need to review the annual report to confirm a number.

Ms. Shernock asked about Board employees performing undercover operations and if Ms. Kirchmeyer could give an example.

Ms. Kirchmeyer explained for the current medical overprescribing cases the Board does have individuals go undercover into a physician's office to verify prescribing practices.

Ms. Kirchmeyer stated for a midwife, an investigator could present themselves as a client or call the midwife and ask for treatment.

Ms. Shernock asked at what point in the process would a licensee interact with a licensed midwife assisting in an investigation.

Ms. Kirchmeyer stated the only time would be during an interview or at a hearing.

Ms. Webb stated if anyone is interested in becoming a midwifery consultant or a midwifery expert they can visit the Board's website or talk with staff and apply.

#### **Agenda Item 9                    Program Update**

Ms. Murray provided an update on the licensing program indicating that three MAC member appointments will be expiring on June 30, 2019. The Board will be advertising for these vacancies beginning January 2019.

Ms. Murray referred to the Licensing Statistics, indicating that in the first quarter of fiscal year 2018/2019, the Board received six new applications, issued five licenses, and there was 406 current midwife licensees.

Ms. Murray reviewed the Transfer of Planned Out-of-Hospital delivery forms, indicating the Board received 40 hospital reporting forms, all of which were licensed midwives. Ms. Murray reviewed the enforcement statistics for licensed midwives, indicating that five complaints were received in the first quarter. No complaints were referred for criminal action, investigation, or to the Attorney General's office.

Ms. Murray stated for unlicensed midwives there were three complaints received in the first quarter and one was referred for investigation.

#### **Agenda Item 10                    Discussion and Possible Action on 2019 Midwifery Advisory Council Meeting Dates**

Ms. Holzer set a tentative date of March 7, 2019 for the next MAC meeting. The date was set by agreement and not by an official vote.



**Agenda Item 11            Agenda Items for the Next Midwifery Advisory Council Meeting in Sacramento**

Ms. Holzer recommended the following agenda items for the next MAC meeting:

- Discussion on establishing 2019 goals for the MAC
- Update on midwifery related legislation
- Selection of new appointments to the MAC: one midwife position, one physician position, and two public positions
- Selection of new vice chair
- Possible adoption of an administrative manual
- Presentation on protected peer review
- Discussion and action on 2019 MAC meeting dates
- Report from the Chair
- Update on the Midwifery Program
- Discussion on actions to improve services for midwifery clients by physicians

**Agenda Item 12            Adjournment**

**Ms. Holzer adjourned the meeting at 2:48 p.m.**

The full meeting can be viewed at [http://www.mbc.ca.gov/About\\_Us/Meetings/2018/](http://www.mbc.ca.gov/About_Us/Meetings/2018/)