



# MEDICAL BOARD OF CALIFORNIA

Executive Office

AGENDA ITEM 2B



## DIVISION OF MEDICAL QUALITY

Hilton San Diego Mission Valley  
San Diego, CA

November 2, 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 8:04 a.m. Members present included:

#### Members Present:

- Cesar A. Aristeiguieta, M.D., President
- Barbara Yaroslavsky, Vice President
- Steve Alexander
- John Chin, M.D.
- Shelton Duruisseaux, Ph.D.
- Mary L. Moran, M.D.
- Janet Salomonson, M.D.
- Ronald H. Wender, M.D.
- Frank V. Zerunyan

#### Members Absent:

- Reginald Low, M.D.

#### Staff and Guests Present:

- Barb Johnston, Executive Director
- Kimberly Kirchmeyer, Deputy Director
- Renee Threatgill, Chief of Enforcement
- Laura Sweet, Deputy Chief
- Kurt Heppler, DCA Legal Counsel
- Carlos Ramirez, Senior Assistant Attorney General
- Michael Cochrane, Deputy Attorney General
- Martin Hagan, 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  
Teresa Schaeffer, Associate Analyst  
Lori Taul, Administrative Assistant  
Valerie Moore, Associate Analyst  
Nancy Edwards, Supervising Investigator  
Patricia Stillwell, Senior Investigator  
Angela Chang-Mills, Investigator  
Diane Ingram, Information Systems Branch Manager  
Angelo Whitfield, Project Consultant  
David Pating, M.D.  
Julie D'Angelo Fellmeth, Center for Public Interest Law  
Carolyn Sam, 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  
Tara Kittle  
Janet Mitchell

**Agenda Item 2 Approval of Orders**

Approval of Orders Restoring License Following Completion of Probation

The Division reviewed and approved 14 Orders. Vote: 9-0

Approval of Orders Issuing Public Letters of Reprimand

The Division reviewed and approved 12 Orders. Vote 9-0

Approval of Orders for License Surrender During Probation/Administrative Action

The Division reviewed and approved 4 Orders. Vote 9-0

**Agenda Item 3 Approval of Minutes**

Kurt Heppler, DCA Legal Counsel, pointed out that a correction was needed in the first paragraph of page 9 of the agenda packet, which is page 5 of the DMQ minutes, as "bona fide" was misspelled.

It was M/S (Zerunyan/Wender) to approve the Open Session minutes of the July 27, 2007 Division Meeting with the amendment. Motion carried (9-0).

**Agenda Item 4      Legislation and Regulation Updates**

No report was given.

**Agenda Item 5      Diversion Program Report**

Frank Valine, Diversion Program Administrator, reported at its meeting on November 1, 2007, the Diversion Committee approved the transition plan for the Diversion Program. The summit will be held on January 24, 2008.

**Agenda Item 6      Division Chief's Report**

Renee Threadgill, Chief of Enforcement, provided an update on staffing changes within the Board. She stated the four Area Supervising Investigator positions have been filled.

**Agenda Item 6A      Medical Expert Program – Survey**

Ms. Threadgill reported the comments from the expert reviewers continue to be positive, as 83% of the expert reviewers expressed a high level of satisfaction with the overall experience in performing case reviews. The DMQ members requested the survey be expanded to include more questions pertaining to the expert reviewers' interaction with the DAGs.

**Agenda Item 6B      Expert Utilization Report**

Ms. Threadgill stated the number of active expert reviewers has increased since her last report to the DMQ. The Board efforts to obtain expert reviewers in the various specialties have been successful. Staff continues to be mindful not to over utilize any single expert.

**Agenda Item 6C      Expert Review Program Reports**

Ms. Threadgill reported in January 2007, a workgroup was convened to explore ways to improve the expert reviewer program. She presented the workgroup's recommendation to issue plaques to expert reviewers in acknowledgment of their service to the DMQ for consideration. After a thorough discussion on ways to acknowledge the expert reviewers, the DMQ determined more information is needed before instituting such a program. Dr. Wender agreed to work with staff on this issue. It was MS to direct staff to reexamine the proposal for the award program for expert reviewers and bring the matter back to the Board at a future meeting. Motion carried unanimously.

**Agenda Item 7      Vertical Enforcement Update/Progress Report**

Carlos Ramirez, Senior Assistant Attorney General, introduced two newly hired Deputy

Attorneys General in the San Diego AG's office, Michael Cochrane and Martin Hagan. Mr. Ramirez asked that his written report to the DMQ be amended to reflect Vertical Enforcement instead of Vertical Prosecution. He further stated he will work with Ms. Threadgill and present a completely integrated operations manual to the DMQ at its April 2008 meeting.

Diane Ingram, Information Systems Branch Manager, stated a feasibility study is under way to analyze alternatives for a replacement system which will allow the MBC and DOJ systems to communicate. Discussion ensued on the process of feasibility study reports and the length of time it takes to complete them.

Angelo Whitfield, Department of Justice Project Consultant, reported on the progress of an interim program which allows the DAG's to access their cases in ProLaw and to work through investigations using ProLaw.

Ms. Kirchmeyer stated staff will provide documentation of the milestones for this temporary system to the Board at its next meeting. She added Mr. Whitfield and Ms. Ingram will give a presentation showing the direction this system is headed to the full board later today.

#### **Agenda Item 8      REGULATIONS - PUBLIC HEARING**

Dr. Cesar Aristeiguieta, President of the DMQ, called the hearing to order and announced the DMQ would conduct a public hearing on the proposed regulation to amend Section 1364.30 and to add Section 1364.32 of Title 16 of the California Code of Regulations as described in the notice published in the California Regulatory Notice Register and sent by mail to those on the board's mailing list. For the record, Dr. Aristeiguieta established the date and time of the hearing as November 2, 2007, at 9:05 a.m. He briefly described the regulatory proposals and gave instructions to potential speakers. He described the six legal review standards with which regulations must comply as well as the procedures that would be followed during the hearing.

**Oral and Written Arguments** – Amend Section 1364.30 in Article 8 of Chapter 2, Division 13; Adopt Section 1364.32 in Article 8 of Chapter 2, Division 13. This proposal will: 1) allow an administrative law judge or panel member to ask the parties to cite the record (Sec. 1364(e)); 2) require written arguments to cite the record, and authority, if applicable, for each point addressed (Sec. 1364.32); and 3) require respondents to be placed under oath if the respondent elects to address the panel (Sec. 1364.30(e)).

Julie D'Angelo Bellmeth, Center for Public Interest Law testified that since the DMQ will not exist after December 2007 a technical change was needed in Section 1364.30(a), i.e., the word "division" should be changed to "board."

In the absence of any other written or oral testimony, Dr. Aristeiguieta closed the regulatory hearing to further testimony.

Discussion ensued regarding Ms. Fellmeth's comment. Mr. Heppler clarified the proposed amendments to the existing regulatory language. It was M/S (Yaroslavsky/Wender) to proceed with the change indicated below, and delegate to the Executive Director the authority to amend Section 1364.30 and add Section 1364.32 of Title 16 of the California Code of Regulations, as proposed at the expiration of the 15 day comment period if there are no adverse comments, with the following modification to Section 1364.32, subdivision (a): "A party who wishes to present oral argument to the panel of the board that issued an order of nonadoption or reconsideration shall make a written request for oral argument not later than twenty (20) calendar days after the date of the notice of nonadoption or the order granting reconsideration." Motion carried unanimously.

The regulatory hearing was adjourned.

**Agenda Item 9      Public Comment**

Janet Mitchell expressed her concerns and discontentment with the Board for reinstating Dr. Rutland's license to practice medicine in California. She stated Dr. Rutland is a danger to the people in this state and needs to be monitored very carefully.

Tara Kittle encouraged the Board to continue analyzing and responding to cases involving potential medical errors in a way to ensure constructive outcomes.

**Agenda Item 10      Adjournment**

There being no further business, the meeting was adjourned at 9:23 a.m.

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Cesar A. Aristeiguieta, M.D., F.A.C.E.P.  
President