MEDICAL BOARD OF CALIFORNIA
Executive Office

Embassy Suites – San Francisco Airport
Mendocino / Burlingame Room
150 Anza Blvd.
Burlingame, CA 94010

January 28, 2011

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/ Roll Call
Ms. Yaroslavsky called the meeting of the Medical Board of California (Board) to order on January 28, 2011 at 9:05 a.m. A quorum was present and notice had been sent to interested parties.

Members Present:
Barbara Yaroslavsky, President
Frank V. Zerunyan, J.D., Vice President
Hedy Chang, Secretary
Jorge Carreon, M.D.
John Chin, M.D.
Silvia Diego, M.D.
Shelton Duruisseau, Ph.D.
Eric Esrailian, M.D.
Jennifer Kent
Sharon Levine, M.D.
Reginald Low, M.D.
Mary Lynn Moran, M.D.
Janet Salomonson, M.D.
Gerrie Schipske, R.N.P., J.D.

Staff Present:
Lindsay Brearley, Enforcement Investigator
Susan Cady, Enforcement Program Manager
Catherine Hayes, Probation Manager
Kurt Heppler, Legal Counsel
Breanne Humphreys, Licensing Manager
Teri Hunley, Business Services Manager
Rachel LaSota, Inspector
Ross Locke, Business Services Staff

Natalie Lowe, Enforcement Analyst
Armando Melendez, Business Services Staff
Regina Rao, Business Services Staff
Letitia Robinson, Licensing Manager
Kevin Schunke, Committee Manager
Dennis Scully, Enforcement Investigator
Anita Scuri, Department of Consumer Affairs, Supervising Legal Counsel
Jennifer Simoes, Chief of Legislation
Laura Sweet, Deputy Chief, Enforcement
Cheryl Thompson, Executive Assistant
Renee Threadgill, Chief of Enforcement
Linda Whitney, Executive Director
Curt Worden, Chief of Licensing

Members of the Audience:

Sergio Aguilar Gaxiola, M.D., UC Davis
Zennie Coughlin, Kaiser Permanente
Frank Cuny, California Citizens for Health Freedom
Julie D'Angelo Fellmuth, Center for Public Interest Law
Karen Ehrlich, L.M., Midwifery Advisory Council
Stan Furmanski, M.D., Member of the Public
George Gabovry, California Citizens for Health Freedom
Dean Grafilo, California Medical Association
Cynthia Holden, American University of the Caribbean
Kimberly Kirchmeyer, Department of Consumer Affairs
Tom Lazar, Office of the Attorney General
Ricardo Leon, M.D., Universidad Autónoma de Guadalajara
Sean O'Connor, Department of Consumer Affairs
Rosielyn Pulmano, Senate Business and Professions
Carlos Ramirez, Office of the Attorney General
Katie Scholl, Center for Public Interest Law
Leonard Sclafani, American University of Antigua
Mark Serves, M.D., UC Davis
Rehan Sheikh, Member of the Public
Joseph Silva, M.D., Medical Consultant
Taryn Smith, Senate Office of Research
Brooke Blanchard Tabshouri, Center for Public Interest Law
John Toth, M.D., California Citizens for Health Freedom

Ms. Whitney thanked the Board members for their generous donations to the Staff Holiday Party and recognized Jennifer Simoes and Natalie Lowe for their hard work in organizing the event.

Agenda Item 2 Introduction and Swearing in of New Board Member

Ms. Yaroslavsky introduced and administered the Oath of Office to new Board Member, Jennifer Kent, who is an Associate Director with the California Department of Health Care Services and was appointed by Governor Schwarzenegger on December 31, 2010.

Agenda Item 3 Public Comment on Items not on the Agenda

Dr. Stan Furmanski addressed the Board regarding his request under the Public Records Act for any records on the validation of test materials and standards, specifically in the area of diagnostic radiology. He noted that staff's written response to his request indicated there were no such documents. Dr. Furmanski stated this lack of validated testing materials and adopted standards for grading such tests have resulted in a legal challenge. He further noted the University of California has divulged there is "human subject research" going on in San Diego, with the primary source of research subjects being the physicians the California Medical Board sends to "the program" in San Diego.

Agenda Item 4 Approval of Minutes from the November 5, 2010 Meeting

Dr. Low moved to approve the minutes from the November 5, 2010 meeting with a minor edit on page 88 of packet (p. 20 of minutes) to clarify that the request for recognition is for the Ross University Bahamas campus; s/Chang; motion carried.

Agenda Item 5 Licensing Committee Update

Dr. Salomonson reported the Licensing Committee received an update on processing times for physician and surgeon applications. Letitia Robinson, Licensing Manager, provided updates on the Business Process Reengineering recommendations, progress on streamlining the application process, updates to the Board's website related to applicants, and a study of the Post Graduate Training Authorization Letter process. Breanne Humphreys, Licensing Manager, delivered an update on the implementation of new management reports and the revision of the Policies and Procedures Manual.

Agenda Item 6 Enforcement Committee Update and Consideration of Possible Action on Committee Recommendations

Dr. Low reported the Enforcement Committee heard a presentation from the Probation Unit describing the practice monitor conditions and options for improvement. Presently there are 186 probationers who are required to have a practice monitor. This condition requires that probationers identify and propose a practice monitor within 30 calendar days from the effective date of their decision. The practice monitor must be somebody who has no prior or current business or personal relationship with the probationer. This requirement was designed to insure that the monitor could provide fair and unbiased reports to the Board. The practice monitors are reimbursed by the probationer for any costs associated with acting as a monitor and typically range between $100 - $600 per hour. Weaknesses in this arrangement have been identified and options for improvements are being considered. These options include: (1) maintaining the current system with minor improvements; (2) creating a pool of practice monitors with guidelines and requirements; and (3) considering the UC San Diego Physician Enhancement Program. A comprehensive evaluation of these options will take place at the May 2011 meeting. It was recommended that the Board survey existing probation monitors for feedback on obstacles they face in performing their role.

The Committee also received an update on the status of the Expert Training Program from Laura Sweet, Deputy Chief of Enforcement. The training plan has been completed and staff is now converting it to an interactive computer program that will allow for audience participation. It is anticipated that the program will be offered in the Fall of 2011. Ms. Threadgill provided a review of the training modules that are currently available.

Agenda Item 7 Education Committee Update

Ms. Yaroslavsky reported the Education Committee reviewed outreach to the community on hepatitis education. Two articles have appeared in the Board's newsletter on this topic. The committee heard a presentation by Mr. Swanberg from the California Prison Health Care Receiver's Office requesting an exemption from the Notice to Consumers signage requirement. The Committee took his request under advisement.

Agenda Item 8 Physician Responsibility in the Supervision of Affiliated Health Care Professionals Advisory Committee Update

Dr. Moran reported the Committee focused on developing a definition of "supervision," however they found it difficult to settle on a single definition given that many different clinical scenarios exist. The committee will examine other definitions of supervision that already exist in statute and will revisit this question at a future meeting. The agenda for the next meeting will focus primarily on the corporate practice of medicine. Other future agenda items include how to define a "medi-spa," a discussion of various existing nursing protocols, ways to educate physicians on their existing responsibilities in supervision, and how to educated the public on the types of safety precautions they should be looking for in clinical settings.

Agenda Item 9 Physician Recognition Committee Update / Announcement

Dr. Moran announced the Physician Humanitarian Award recipients have been selected and notified. Recipients Rodney Borger, M.D. and Richard Kammerman, M.D., will accept their awards at the May 2011 meeting in Los Angeles.

Agenda Item 10 Physician Assistant Committee Update

Dr. Low reported the Physician Assistant Committee (PAC) met on November 18, 2010 in Sacramento. There were two regulatory hearings at the meeting. The first regulation would add consumer protection enhancements to the PAC's enforcement program and delegate to the Executive Officer the ability to approve settlement agreements for the revocation, surrender, or interim suspension of a license. This regulation will be modified again.

The second hearing was in regard to the implementation of provisions of Business and Professions Code Section 138 which requires boards within the Department of Consumer Affairs to adopt regulations requiring licensees to provide notice to consumers that the practitioner is licensed by the PAC, as is now done by the Medical Board. This language was approved.

The Executive Officer of the PAC reported on recently enacted regulations that require board-referred Diversion participants to pay the entire participation fee, while self-referred participants are required to pay 75% of the fee. This regulation was approved by the Office of Administrative Law and became effective January 19, 2011. Notices will be placed on the PAC's website and sent to licensees and all parties affected by the change. The new requirement only affects participants who enroll in the Diversion Program on or after January 19, 2011.

At the November 2011 meeting, the committee also discussed two methods in which the PAC may approve PA training programs under the current regulations. The committee moved to clarify the requirements and formed a subcommittee, the Physician Assistant Education and

Training Subcommittee, to address the issue. The first meeting was held on January 19, 2011. Dr. Low will report on their progress at the next Board meeting.

The Chair and Vice Chair of the PAC were re-elected for 2011. The meeting dates for 2011 were set, with the next meeting scheduled at the University of California - Davis.

Agenda Item 11 Federation of State Medical Boards Update
Ms. Chang reported the maintenance of licensure initiative was the main issue addressed at the most recent FSMB meeting. The final draft of the initiative has been completed and is being circulated; a webinar was held in order to collect comments. The initiative is ready for approval by FSMB's board and will be presented to all the member boards at the annual conference in April 2011. Ms. Chang expressed her hope that California's Medical Board will be able to participate in the upcoming annual conference.

There will be FSMB symposium on telemedicine on March 10, 2011. Ms. Chang stressed the importance of the being involved in this discussion since telemedicine will have a great impact on the future and quality of medicine.

The FSMB Foundation, on which Ms. Chang serves, has received grants for the Online Prescriber Education Network and for the Physician's Guide to Responsible Opioid Prescribing booklet for educating physicians on safe prescribing of pain medicines.

Agenda Item 12 Nominations to Federation of State Medical Boards Update
Ms. Yaroslavsky reported the Board has submitted the following nominations to FSMB as approved at the November 2010 meeting:

- Ms. Chang – re-election to the Board of Directors.
- Dr. Salomonson – re-election to the Education Committee
- Ms. Yaroslavsky – re-election to the By-Laws Committee

Ms. Chang's election will be voted on by the full FSMB body at their April 2011 meeting. Dr. Moran is currently serving in an elected position on the Nominating Committee; since these positions are limited to a two-year term, the Board cannot nominate her for re-election.

The FSMB is holding its annual meeting in April 2011. The Board has submitted an out of state travel request for the fully-funded trip for the Executive Director and President of the Board. Ms. Yaroslavsky expressed her hope that the trip would be approved by the Governor's Office.

As reported by Ms. Chang, the Federation is sponsoring a symposium in Washington D.C. on telemedicine. Although the Board will not be attending, the minutes of the meeting will be reviewed and reported on at the May Board meeting.

The FSMB is hosting a meeting in San Diego in February. Ms. Whitney and Mr. Zerunyan will attend as representatives of the Board.

Agenda Item 13 Health Professions Education Foundation Update
Ms. Yaroslavsky reported the Health Professions Education Foundation (HPEF) recently made its first round of grants for nursing scholarships and loan repayments. Grants to physicians will begin soon. The HPEF is actively seeking federal and private foundation grants to assist with education costs for those entering health professions.

Agenda Item 14 Board Member Communications with Interested Parties
No Members reported any communications.

Agenda Item 15 President's Report
Ms. Yaroslavsky participated in three monthly conference calls with the Department Director, his deputies, healing arts board presidents and executive directors. The calls covered the transition to a new administration, the hiring freeze, and the budget. She has requested that Ms. Whitney share the minutes from these calls with members so they are informed on these discussions, as well as on the status of Board Member appointments and confirmations.

Ms. Whitney noted a number of Members will be coming up for confirmation in 2011. In addition, four members have terms expiring on June 1, 2011. Members interested in applying for reappointment need to submit their paperwork to the Governor's Office. Ms. Simoes will follow the confirmation hearings.

Agenda Item 16 Executive Director's Report

A. Budget Overview
Ms. Whitney directed Members to the Analysis of Fund Condition of the Board located on page 96 in their packets. She noted there is a 5.8 month balance in reserve; this is an increase from the estimate of 5.3 months reported at the November 2010 meeting. This difference is due to the furloughs that were in place in the first part of the fiscal year; most bargaining unit agreements have now been signed. All of the Board's augmentation requests for FY 11/12 were disapproved. The Board is moving forward with a spring request to augment the budget in FY 11/12 for the continued operation of the Operation Safe Medicine program which was a two-year pilot program. This augmentation request is for $577,000; it would be an on-going basis of 6 staff persons. The Board's first budget hearing is set for January 31, 2011. A meeting has been scheduled with one of the Budget Committee members prior to the hearing to discuss the Board's budget.

The current year expenditures are listed on page 97 of the packet. The distribution of the newsletter via email will continue to generate savings in printing and postage. In January 2011, 109,000 newsletters were distributed via email with a rejection rate of less than 2%. This enables the Board to print and mail only 27,000 copies of the newsletter. The Board will continue to pursue green initiatives, such as the use of flash drives for Board Member materials.

B. Staffing Update
As of January 31, 2011, there will be 34 vacant positions within the Board; this equates to a 12% vacancy rate throughout the Board. This number does not include 4 positions that will be vacated in February 2011 due to retirements or transfers to other boards or departments that are exempt

from the freeze and are able to hire. These vacancies have a significant impact on many staff members; the Executive Office has 4 of those vacancies.

On January 19, 2011 the Department of Consumer Affairs held its quarterly meeting for board executive officers. In attendance were Senate Business and Professions (B&P) staff who indicated Senator Price, Chair of Senate B&P, was looking into the possibility of ending the hiring freeze for the Department of Consumer Affairs. An exemption request was made by the Department for licensing positions. On January 26, 2011 the Board requested that vacancies related to the Job Workforce Initiative also be included in the Department's exemption request. Medical consultants and the vacant deputy director position cannot be filled until the freeze is lifted or a waiver is approved. Individual and/or group waiver requests (such as for medical consultants) will be submitted by the Board beginning in the first week of February 2011.

Dr. Duruisseau asked if overtime or temporary help are authorized to fill the gap in staffing and resources. Ms. Whitney indicated that staff is not allowed to work overtime; temporary positions authorized prior to the freeze may be maintained, but additional positions may not be added nor any temporary staff that leaves be replaced.

Ms. Schipske asked if the Board could request that Ms. Yaroslavsky, as president, send a letter to the appropriate state officials requesting that the funding of Operation Safe Medicine and hiring waiver requests be carefully considered, given that the Board is funded by licensing fees, not from the State General Fund.

Dr. Salomonson agreed that public protection will be compromised if the staff and resources are not available to enforce the law.

Ms. Schipske made a motion that the president of the Board draft a letter conveying the Board's view that projects such as Operation Safe Medicine and the funding of positions necessary for adequate enforcement and completion of other Board responsibilities be approved since, without these resources, the Board is handicapped in carrying out its mission as directed by law; s/Salomonson; motion carried.

C. Strategic Plan / On-going Board Evaluations

Ms. Whitney reported the Strategic Plan Subcommittee met on January 26, 2011 to discuss desired outcomes and a timeline for the revised strategic plan. The Board's performance audit will be integrated as an element of the planning process, as will the Board's January 2014 sunset review date. A script will be developed for Janie Cordray to use in interviewing each of the Board Members and select staff to solicit input on the planning process and on what the Members want the Board to achieve. The July 2011 meeting has been targeted for the full Board's participation in the strategic planning process, possibly with a half-day and evening meeting on the Wednesday before the regular meeting is scheduled to begin.

Ms. Yaroslavsky noted the importance of this planning process and encouraged each Member's active participation.

Agenda Item 17 Legislation / Regulation

Ms. Simoes directed Members to the Legislative Packet. The 2011 Legislative Calendar shows the following deadlines for the legislative process:

- February 18, 2011 - last day for bills to be introduced;
- May 2011- policy committee deadlines;
- June 2011 - bills must pass their house of origin;
- September 9, 2011 – last day for bills to be passed;
- October 9, 2011 – last day for Governor to sign or veto bills.

A. AB 2699 Implementation Update

This bill exempts all healing arts practitioners who are licensed and certified in other states from California state licensure for the purposes of providing voluntary health care services to uninsured and underinsured Californians. The Board, along with all other healing arts boards, must develop regulations in order to implement this bill. The DCA has drafted model regulations for all boards to use as a starting point. The text of these model regulations and the draft authorization form is included in the legislative packet. The major provisions of the model regulations include definitions of community based organizations and out-of-state practitioner, requirements for sponsoring entity registration and record keeping, and requirements for out-of-state practitioner authorization to participate in a sponsored event. In this last section, in particular, the Board will need to provide additional information in the model regulations. A decision from the Board will be required on some of these items:

- The processing fee: This will be the amount the Board would charge individuals who request authorization to practice. Staff is proposing to cover basic review and processing for a fee of no more than $25. The fee amount reflects that these are volunteers who want to provide their services.

Dr. Duruisseau made a motion to include a processing fee up to $25 in the draft regulations; s/Chang; motion carried.

Dr. Salomonson expressed her concern with the inability of out-of-state practitioners to follow up with patients seen at these events and possible malpractice concerns. She stated these limitations could reduce patient protection.

Ms. Whitney noted that, although the Board opposed the legislation, it has been enacted and the regulations are to ensure there are consumer protections for patients who attend these events. Physician complaints would be reported to the Board who would then notify the proper state medical board. In addition, the entity that sponsors the event must have malpractice insurance.

- Additional education and experience requirements: Staff proposes to require that physicians must have graduated from a medical school recognized by the Board and have nothing on the Department of Justice (DOJ) record that would otherwise disqualify them from licensure. The bill already requires the license to be in good standing in other states where the physician is licensed. The model regulations define "good standing."

A motion was made to include in the draft regulations a requirement that the physician's license be in good standing, that the physician graduated from a school approved or recognized by the California Medical Board, and have nothing on the DOJ record that would disqualify them from licensure; s/Zerunyan.

Ms. Kent stated that requiring a clear DOJ record would, therefore, require participating physicians and other practitioners to go through and pay for the state DOJ criminal background check process. This would raise the cost to participating physicians by an additional $40 to $50. This would seem to go against the intent of the law.

Kimberly Kirchmeyer, Deputy Director, Department of Consumer Affairs, noted the statute required passing a background check.

Ms. Scuri clarified that Section 901 states the health care practitioner must satisfy specific requirements, including not having committed any act or been convicted of a crime constituting grounds for denial of licensure registration under Section 480. The only way to determine this, other than self-certification, is by a fingerprint check.

Ms. Whitney noted, as the Board receives continuous updates from the DOJ, the fingerprint check would be a one-time cost for participating practitioners.

Ms. Kirchmeyer reported not all states require background checks of their applicants. Eliminating this requirement could impact consumer protection.

Ms. Yaroslavsky called for a vote on the motion: motion carried.

- Staff proposes to require participating physicians to post or notify consumers receiving care that complaints about quality of care should be made to the Medical Board.

Dr. Salomonson made a motion to include a requirement in the draft regulations that participating physicians post or notify to consumers receiving care that complaints about quality of care should be made to the Medical Board; s/Schipske; motion carried.

- Staff proposes eliminating any limit on the number of sponsored events the practitioner may participate in during a 12 month period from the draft regulations.

Dr. Low made a motion to remove from the draft regulations any limit on the number of sponsored events the practitioner may participate in during a 12 month period; s/Schipske; motion carried.

Dr. Salomonson made a motion to set the matter for hearing at the May 2011 Board meeting; s/Zerunyan; motion carried.

B. 2011 Legislative Proposals

i. Approved Legislative Proposals

The Board approved two proposals at the November 2010 meeting:

- Require physicians to cooperate/attend physician interviews with the Board and consider non-compliance unprofessional conduct.
- Automatically temporarily suspend a physician and surgeon's certificate when a physician is incarcerated after a misdemeanor conviction during the period of incarceration.

The deadline to submit the language to the Legislative Counsel was met.

Ms. Simoes reported she met with Assembly Member Hill's office on both of these proposals. His office has expressed interest in the temporary suspension issue, and possibly the physician interview requirement issue, as well. If he chooses not to author the legislation, staff will search for another author.

ii. New Legislative Proposals

Staff is requesting authorization to develop 2011 legislation to allow the Board to continue to utilize expert reviewers as is currently being done via an invoicing basis without going through the formal consulting service contract process for each reviewer utilized. Expert reviewers are used to provide opinions in enforcement matters from the initial review through testifying at a hearing.

A November 10, 2010 memo from the DCA stated that all healing arts boards must enter into a formal consulting services contract with each reviewer utilized. At a meeting held on this matter, DCA stated it would take a minimum of 60 days to process each contract. The Board currently has the authority to hire consultants and contract with reviewers, but the state has determined that the way it allowed DCA to contract individually with reviewers did meet the letter of the Public Contract Code.

The Board utilized 280 expert reviewers in one quarter to review completed investigations, which translates to 457 cases. Under the new DCA policy, the Board would be required to go through the contracting process for each of those reviewers, even if the reviewer only reviewed one case. The contract would need to be approved before the Board can utilize the reviewer's services and the Board would have to encumber the funding for the reviewer once the contract is approved.

Going through the formal contracting process in order to utilize a reviewer would create an enormous backlog for both DCA and the Board and would significantly impact the time required to complete the initial review and investigate complaints. At a recent DCA executive officer meeting with Senate Business and Professions (B&P) staff in attendance, Senate B&P expressed interest in the proposal and possibly carrying legislation for all boards. Staff is requesting authorization to go forward with its own proposal in case this does not occur. The other DCA boards and bureaus are in support of the Medical Board taking the lead on this legislation.

Ms. Kirchmeyer reported the 60 day timeframe for processing the contracts was unacceptable to the Department, as well. Since these contracts are simple, they would not need to go through the

normal review process, nor would they have to go through the Department of General Services if the contract is under $12,500. Very few contracts would be over this amount. In addition, the contracts could be for a period up to 3 years. The DCA Contracts Unit was able to process 4 contracts for another board in about 1 week, though the contracts still had to be sent out to the individual for signature and returned to DCA. There is concern that if the Contracts Unit is inundated with 2,000 to 3,000 contracts at one time there will be a backlog. DCA is meeting with the boards and bureaus to determine the number of contracts that will be needed and the workload involved in order to develop a flow process. Currently, there is nothing that allows DCA to be exempt from the formal contracting process, however, the Department is not halting the current practice so as to not grind enforcement to a standstill. Ms. Kirchmeyer stated the DCA will not oppose any legislation for exemption.

Mr. Zerunyan made a motion to authorize staff to go forward with this proposal and seek legislation to exempt expert reviewer utilization from the formal contracting process; the motion was seconded; motion carried.

C. 2011 Legislation – Other

Senator Price, Chair of the Senate B&P Committee, introduced SB 100. This bill, which is a reintroduction of SB 674 from 2009, allows outpatient settings to be licensed by the California Department of Public Health (CDPH) or accredited by an accreditation agency approved by the Medical Board. Currently, physician owned surgical clinics cannot be licensed by CDPH. The bill deems an outpatient setting that is accredited to be licensed by CDPH, and allows CDPH to license facilities that are owned by physicians (thereby clarifying *Capen v. Shewry*). The bill also includes new requirements for outpatient setting accreditation and licensing, requirements for information sharing between the Board and CDPH, for public disclosure, for supervision of laser and intense pulse laser device procedures, advertising, and disclosing outpatient setting information to the public.

The bill would require the Board to disclose to the public if an outpatient setting has been suspended, placed on probation or received a reprimand from the accreditation agency. The Board would also be required to notify the CDPH within 10 days if an outpatient setting's accreditation has been revoked, suspended, or placed on probation. The CDPH must also notify the Board if they revoke a surgical clinic's license. By February 1, 2012, the Board must provide CDPH with a listing of all outpatient settings that are accredited as of January 1, 2012. Beginning April 1, 2012, the Board must provide CDPH a listing every three months that includes the name, address, and telephone number of the owner of the facility, name and address of the facility, name and number of the accreditation agency, and the effective and expiration dates of the accreditation. The Board must also provide the accreditation standards approved by the Board to CDPH. The bill provides for public access to the status of all outpatient settings.

In order for the Board to provide the required information to CDPH in the set time frames, the Board must require the accreditation agencies to provide this information within a specified period of time. Currently, the Board receives updates from the agencies every 30 days. The bill also requires the Board to evaluate the accreditation agencies every 3 years, to evaluate responses to complaints against an agency, and to evaluate complaints against the accreditation of outpatient settings. This will be a new workload requirement for the Board, but these evaluations

will help ensure public protection. The bill would also add to the process for the Board to terminate the approval of an accreditation agency. The Board would be allowed to issue a citation in addition to terminating approval and establish by regulation a system for issuing citations to accreditation agencies that don't meet the criteria.

Further, the bill requires the Board to ensure accreditation agencies are inspecting the outpatient facilities every 3 years. It also allows the Board to perform inspections if the agency does not.

Staff is suggesting a support if amended position on the bill.

Dr. Moran made a motion to take a support if amended position and authorize staff to work with the author's office on SB 100; s/Kent.

Ms. Kent stated that, currently, the CDPH cannot inspect physician-owned facilities (although they were responsible for doing so prior to the *Capen v. Shewry* decision). She believes the accreditation of facilities should not be the Board's business as it is beyond the Board's scope of expertise. She noted that physicians have the *option* of being accredited, but there is nothing in law *requiring* accreditation. The bill does not add this requirement. Ms. Kent found the current lack of oversight of physician-owned clinics highly objectionable.

Dr. Carreon voiced concern over the accreditation being done by multiple state and private entities. For patient protection, he believes uniform accreditation standards should be required.

Rosielynn Pulmano, Senate Business and Professions Committee staff, reported another layer of consumer protection was being added with this bill. Health & Safety Code 1248 *et. sec.* gives the Board the authority to approve accrediting agencies. The Board looks at the accreditation standards (which are already in place) when reviewing agencies for approval. The bill improves these standards and makes sure they are uniform throughout, prevents accreditation "shopping", and establishes that outpatient settings that are accredited are automatically considered licensed by CDPH ("deemed licensure"). Currently, the Board cannot close a physician-owned surgical clinic, despite problems. The Board's authority extends only to physicians. If there is reason to believe there is patient harm, allowing CDPH to close a facility will improve public protection.

Dr. Moran noted that, by law (B&P Section 2214), a procedure cannot be performed under anesthesia that comprises life preserving reflexes unless it is done in an accredited or licensed facility or in a setting specified in Section 1248.1 of the Health and Safety Code.

Ms. Kent requested that the Board pursue amendments to ensure there are no gaps in Health and Safety Code Sections 1248.1 and 1248.2.

Ms. Schipske stated that, as the bill would assign additional responsibilities to the Board, there should be commensurate revenue sources for the Board to be able to carry out the functions it would be mandated to perform. The fee structure for the clinics may, therefore, need to be reviewed.

Ms. Yaroslavsky called for a vote on the motion as stated; motion carried.

D. Status of Regulatory Action
Ms. Simoes referred members to the Status of Pending Regulations matrix located in the packet.

Agenda Item 18 City of Hope - - Petition to Modify 16 CCR 1327(a)(3)
Mr. Heppler reported the petition for regulatory amendment was submitted by the City of Hope. The request is to amend the existing regulations by adding another continuing education accreditation agency (the Accreditation Council for Continuing Medical Education - ACCME) to subdivision (a)(3) of Section 1327 of the California Code of Regulations. This change would allow the City of Hope to apply to the Board for approval to administer clinical training programs in which medical students enrolled in a recognized international medical school may participate. Currently, the City of Hope cannot enroll foreign medical students in its clinical training programs because it is not accredited by the California Medical Association, but it is accredited by the ACCME. The ACCME's bylaws prohibit a Continuing Medical Education (CME) provider from obtaining or holding accreditation from a state medical society. When the regulation was first promulgated ACCME did not exist.

Mr. Worden, Chief of Licensing, noted that, should the regulatory amendment be adopted, the City of Hope would still be required to apply to the Board to enroll foreign medical students following the requirements and process set forth in Section 1327.

Robert Morgan, M.D., Director of Continuing Medical Education, City of Hope, spoke in support of amending the regulation.

Mr. Heppler indicated the amendment would also include a technical clean up that would add clarifying language to 1327(a).

Ms. Kent made a motion to set the matter for hearing at the May 2011 Board meeting; s/Chang; motion carried.

Agenda Item 20 Update on Special Task Force on International Medical School Recognition

A. Status of Schools Being Reviewed
Dr. Low referred members to their packets for a list of the six International Medical Schools that have submitted applications for recognition by the Board. The list provides both timelines and the current status of the application. Two of the six schools will be reviewed by the Board at today's meeting.

The temporary assignments of three of the medical consultants hired to conduct the medical school reviews have or will soon expire. The examination for licensing medical consultants was released with a final filing date of January 21, 2011. However, there is a current hiring freeze which prevents the Board from hiring new consultants or extending the appointment of current appointment terms. Nevertheless, staff is proceeding with establishing a hiring list that can be used when the hiring of the medical consultants is once again possible.

Mr. Worden reported the Universidad Iberoamericana (UNIBE), Dominican Republic, is currently being reviewed by one of the Board's medical consultants. The review has not yet been completed. The Medical University of Warsaw (English-Language Program), Poland, has submitted additional information that has been reviewed by the medical consultant. The review has not yet been completed at this time. The Queensland University, Australia, has requested information on the approval process for its U.S. Branch Campus. The Medical University of Silesia (English-Language Program), Poland, and the Technion-Israel Institute of Technology (US/CAN Program), Israel, will be both be reviewed at this meeting.

B. Update on Pending Site Visit to American University of Antigua

Mr. Worden reported staff has requested and received site visit approval from the Governor's Office. The University of Antigua (AUA) has submitted the funds for the site visit. Staff is working with AUA on which hospitals in New York will be visited and on travel arrangements for the site visit in Antigua. The site visit is tentatively scheduled for mid-March 2011.

C. Status / Timeline for Periodic Compliance Requirements

Mr. Worden addressed the periodic compliance requirements for previously recognized international medical schools as mandated by CCR Section 1314.1, He indicated the Special Task Force on International Medical Recognition met to discuss how to proceed. He referred members to the list in their packets of the 14 schools requiring re-evaluation. Mr. Worden reviewed the proposed schedule. If, as a result of the hiring freeze, the Board does not have staff available to process the work and medical consultants to conduct the reviews, the proposed schedule would have to be altered. He recommended that the Board approve the proposed schedule, but give the Special Task Force the option of adjusting the schedule, as needed, based on staff availability.

Dr. Duruisseau made a motion to approve the proposed schedule and authorize the Special Task Force to revise the timeline as necessary; s/Levine; motion carried.

Agenda Item 21 Consideration of Request for Recognition of Medical University of Silesia (English Language Program)

Joseph Silva, M.D., M.A.C.P., medical consultant to the Board, reported the Board already recognizes the Medical University of Silesia (MSU). MSU is a well established medical school in Poland with the primary mission of training citizens of Poland to practice medicine in Poland. MSU started an English language program for medical students that speak English with the goal of practicing medicine in the U.S., Canada, and other European countries. MSU's English Language Program provided documentation and clarifying information in response to the Board's requests for additional information. Dr. Silva has reviewed the application and additional information provided by the school and reported the program meets the criteria for the Board's review pursuant to Section 12314.1(a)(2) of Title 16, California Code of Regulations.

Dr. Low made a motion to recognize Medical University of Silesia (English Language Program) retroactive to the start of the English Language Program in 1996 without a site visit; s/Duruisseau; motion carried.

Agenda Item 22 Consideration of Request for Recognition of Technion–Israel Institute of Technology (American Program)

Mark Servis, M.D., Associate Dean of Curriculum and Competency Development, UC Davis School of Medicine, and medical consultant to the Board, reported he had reviewed the Self-Assessment Report submitted by the Technion-Israel Institute of Technology, Faculty of Medicine for its TeAMS or English-language American Medical Students Program, located in Haifa, Israel. Technion-Israel Institute of Technology is a well established medical school in Israel; it has been in existence for over 40 years and has graduated over 4,000 physicians. It has a six year medical education program in the Hebrew language for Israeli citizens, and began a five year joint English language medical education program with Touro College in New York in 1983 for students who wanted to pursue residency training in the United States. It discontinued the joint program with Touro College in 2006 and began its own independent four year English Language Program based entirely in Haifa in 2006. The program's mission is to prepare U.S. and Canadian citizens to practice medicine in the United States and Canada. Dr. Servis noted the faculty is excellent and the curriculum largely mirrors that of the Technion Hebrew language medical school program. The TeAMS program is limited to 32 students per year and has a strong emphasis on research training and experience. Technion provided additional and clarifying information as requested by staff which Dr. Servis has reviewed. Dr. Servis reported the program meets the criteria for the Board's review pursuant to Section 12314.1(a)(2) of Title 16, California Code of Regulations and Sections 2089 and 2089.5 of the Business and Professions Code. Dr. Servis recommended recognition by the Board retroactive to 2006.

Dr. Duruisseau made a motion to recognize Technion-Israel Institute of Technology, Ruth and Bruce Rappaport Faculty of Medicine, Technion American Medical Students Program (TeAMS) retroactive to the start of theTeAMS program in June 2006 without a site visit ; s/Chang; motion carried.

Agenda Item 30 Licensing Chief's Report

A. Licensing Program Update

Mr. Worden directed Members to page 131 of the packet for workload data for the first and second quarter of the fiscal year and briefly reviewed the results. The initial review of physician and surgeon applications for U.S. and Canadian graduates is 30 days; for international graduates it is 37 days. All pending mail is being reviewed within 7 days of receipt. He praised staff for their work in meeting the timeline goals. The deadline for U.S. graduates who must be licensed by the end of the second year of their training and international graduates who must be licensed by the end of their third year of training is approaching. This surge in the number of applications will increase staff's workload and timelines will likely rise. Vacancies in the Licensing Program (and the inability to fill them due the hiring freeze) will create a challenge and also impact timelines. So far, staff has been able to manage the increased workload with the assistance of all the Licensing Program managers.

He reported the next Special Faculty Permit meeting has been scheduled for March 24, 2011. If there are no completed applications received by February 28, the meeting will be cancelled.

Duke University recently contacted the Board regarding recognition of their new medical school program with the National University of Singapore.

There is one specialty board application in process; the initial review has been completed by staff and a letter requesting additional information and clarification has been sent.

B. **Status of Implementation of AB 2386**

Mr. Worden directed Members to the draft of the form that will be used to notify the Board of combat ready medical training of U.S. Armed Forces physician and surgeons that will take place in California hospital facilities. Once the draft form is approved by legal, it will be posted on the Board's website.

On behalf of the Board, Ms. Yaroslavsky thanked the Licensing Program managers and staff for their efforts and accomplishments in spite of the numerous challenges they face.

Agenda Item 25 Licensing Outreach Report

Mr. Schunke reported that he, Ms. Whitney, Mr. Worden, and several licensing managers attended two GME meetings hosted by the Board, one in Northern California and one in Southern California. Invitations were extended to all 175 teaching hospitals in California. The meetings were well attended and provided an opportunity to learn the teaching hospitals' concerns and share the Board's expectations.

Outreach efforts encourage teaching hospitals to submit the names of all U.S. and international graduates requiring licensing by the end of the training year to the Board. This sharing of information helps staff plan its workload and allows the hospitals to track their residents' application status. In 2010, 37 of the major teaching hospitals participated in the process. As of January 2011, 36 hospitals are participating (8 for the first time). Hospitals that have participated in previous years but have not yet submitted lists for the current year have been personally contacted. In 2010, the names of approximately 1800 graduates were submitted to the Board and added to its matrix of those requiring licensure. Currently, there are approximately 1,000 names on the Board's matrix. Ms. Schunke believes that many of those who would normally be added to the teaching hospital's lists have already been licensed, a positive reflection of the Licensing Program's timeliness in processing applications.

Of the 1,000 names on the matrix, 800 have submitted license applications to the Board. This provides useful feedback to the GME offices as the Board provides them with information on which individuals on their list have (or have not) submitted applications. Of the 800 applications received, 260 have already been licensed; 50 additional applications are complete but are awaiting "birth month" licensure; 15 have paid the licensing fee, but have not yet submitted an application; and 2 applications have been flagged as having significant issues that may impact their ability to be licensed.

Future outreach events for 2011 include new resident orientations in June and July and licensing fairs at teaching hospitals through the remainder of the year.

Agenda Item 26 Telemedicine Pilot Program Status Report

Mr. Schunke reported the implementation of the Telemedicine Diabetes Education Program, jointly coordinated by the Medical Board and the University of California-Davis, went relatively smoothly during its first year. The project is currently facing some minor challenges. These challenges have allowed the team to consider the realities of rural health care, even when using telemedicine. While the project is coming to a close at some of the clinics, other clinics have had to cancel classes due to patients dropping out or failing to attend the education programs. Some patient volunteers in rural settings are traveling over one hour from their homes to the closest clinic in order to participate in the diabetes education seminars. One clinic has experienced connectivity issues and poor quality auditory and video equipment. There are about 3 months left to recruit clinics to participate in order for their patients to receive the full benefit of the program. Health coaching and CME events are fully operational. Representatives of the team have been invited to address the Board at the July 2011 meeting to provide an overview of the second year of the program and remaining activities for the third and final year of the pilot program.

12:00 p.m. (noon) Presentation on the Universidad Autónoma de Guadalajara and the University of California, Davis Collaborative Partnership for Medical Training

Dr. Duruisseau reported California will face a 17,000 physician shortage by 2015; it is predicted the U.S. will face a physician shortage up to 150,000 by 2020, including 40,000 primary care physicians. Currently, the population of California is approximately 38 million people, of which 4.5 million represent Hispanics (37% of the population). Only 5% of the licensed, practicing physicians in California are Hispanic. Given this disparity, UC Davis is exploring a collaborative partnership with the Universidad Autónoma de Guadalaja (UAG) Medical School that will allow UAG's graduates to participate in a Pre-Internship Program.

Dr. Duruisseau introduced Dr. Ricardo Leon, UAG Vice President of Health Sciences and former dean of UAG's School of Medicine, and Dr. Sergio-Gaxiola, a graduate of UAG, Professor of Internal Medicine, and Director of UC Davis Health System Center for Reducing Health Disparities. Dr. Leon presented an overview of the Pre-Internship Program, which is designed for UAG students who completed college or pre-med studies in the U.S. or Canada. The Pre-Internship Program involves one year of supervised clinical training in a university hospital or affiliated institution in Mexico or the United States that has been approved by UAG. After successfully completing the program and passing Steps I and II of the USMLE and ECFMG certification, the students are awarded the degree of "physician" and then progress into graduate medical education in preparation for licensure. The program, which has an emphasis on primary care, allows U.S. students the opportunity to become bilingual and bi-cultural which will be an advantage in serving Hispanic and other underserved populations in the U.S. health system. They obtain valuable clinical experience in an environment similar to that in which they will practice in the future.. Dr. William De La Pena, Board Regent and graduate of UAG, speaking via conference phone, noted over 1,000 graduates of UAG are currently practicing medicine in California.

Agenda Item 24 Consideration of Proposed Changes to Title 16, California Code of Regulations Section 1378.1-- Polysomnography Program

Mr. Heppler stated these regulations seek to implement the recently enacted legislation requiring registration of polysomnographic technicians, technologists, and trainees. The Board had considered an initial set of regulations; these were sent out for a 15-day notice to resolve some technical oversights. Comments were received during this period, but these arrived after Mr. Worden, Ms. Scuri and Mr. Heppler met with proponents of the regulations.

There are currently 3 levels of registration: technologist (highest level), technician (middle level), and trainee (lowest level). The proposed regulations allow individuals to become a technologist by either taking the national certification exam or demonstrating to the Board safe practice of polysomnography for a period of at least 5 years ("grandfather clause"). Upon meeting with interested parties, it became evident that the interpretation of the grandfather clause varied. Interested parties suggested the grandfather clause would enable a person practicing polysomnography safely to obtain registration on that basis alone. Mr. Heppler and Mr. Worden stated they could not recommend this language to the Board, as it would expand the scope of the original statute. In response, the interested parties proposed creating 5 classes of registration: technologist, 3 levels of technicians, and trainees. The 3 levels of technicians would vary in the duties they would be allowed to perform. The interested parties suggested that the regulations be amended to recognize that an educational program designated by the Board of Registered Polysomnographic Technicians (BRPT) would meet the minimum requirements to be credentialed to become registered as a technologist. A technical error in subdivision 4 would also be corrected as part of the amendments. Mr. Heppler recommended that the Board move forward with a new 15-day comment period, incorporating the change in the accredited program and the correction in subdivision 4 of the regulations.

Mr. Worden recommended against expanding the number of registration classes to 5 levels as this would create confusion for consumers.

Dr. Salomonson made a motion to modify the text and send it out for a 15-day public comment period and to delegate to the Executive Director the authority to adopt the regulation at the expiration of the comment period if there are no adverse comments; s/Chang; motion carried.

If adverse comments are received, this item must be brought back to the board at the next meeting for further discussion.

Agenda Item 27 Midwifery Advisory Council Update

Karen Ehrlich, Chair, Midwifery Advisory Council (MAC), reported the MAC met on December 9, 2010 in Sacramento. The next meeting is scheduled for April 7, 2011. She reported work continues on the Licensed Midwife Annual Report (LMAR), both the form and the reporting process. Ms. Ehrlich expressed her concerns with the reporting process, noting the LMAR uses a retrospective reporting system which is not as accurate as a system that uses prospective reporting that is validated. Dr. Haskins, MAC member, has requested that the LMAR data be compared with midwifery outcome data from other states to assess how California midwives are performing. The Midwives Alliance of North America (MANA) has an ongoing statistics collection project with a comprehensive, nationwide database of midwifery courses of care.

Ms. Ehrlich would like to see California's reporting requirement and process linked with MANA's program as it would allow prospective reporting, validation, and meaningful comparisons. Midwives must complete the LMAR by March 30, 2011. This will be the fourth year of reporting. Ms. Erhlich believes the flaws with the current reporting system and process cannot be corrected. She asked the Board to work with the MAC as they address this issue.

MAC continues to address barriers to midwifery care as presented at previous meetings. Jennifer Simoes has been working with the Department of Public Health to address the difficulty midwives have in obtaining lab accounts. As licensed health care providers, midwives are allowed to have a lab account on their own authority. Labs have been denying midwives accounts without a supervising physician's signature on file. Ms. Ehrlich requested that the Board's legal counsel assist in generating a letter to the labs refuting their earlier practice.

The Comprehensive Perinatal Services Program (CPSP) is an enrichment program for obstetrical low income patients in California that provides obstetric care, nutrition, social services, and perinatal education services, all of which are based in the midwifery model of care. Currently, midwives are not included in CPSP's authorized provider list. Ms. Erhlich requested that the Board work with MAC to petition for a change in regulations to add midwives to the CPSP provider list. Ms. Yaroslavsky stated this should be on the next MAC agenda with a corresponding report to the Board.

Ms. Ehrlich noted growing hostility from the medical community toward the practice of midwifery. In spite of differences in philosophy, she noted both share the goal of consumer protection. She expressed her hope that the Board would work with and support midwives in this common goal in order to take the best possible care of the women they serve.

Ms. Schipske requested that the issues surrounding the collection of midwifery outcome data be placed on the Full Board agenda. She would like learn more about the MANA collection process and wants to make sure midwives are not penalized for faulty data.

Ms. Whitney noted the data collection is prescribed by law and the determination of necessary changes would need to be made through the MAC. She noted the collection form has been evolving, though additional changes may be called for.

Ms. Schipske would also like a report to the Full Board on the letter to the laboratories regarding lab accounts and the petition to change the CPSP regulations.

During public comment, Frank Cuny, California Citizens for Health Freedom, stated the sponsorship of a bill is needed to resolve the physician supervision issue. California physicians are generally prohibited in their insurance agreements from providing supervision of midwives lest they lose their hospital privileges and insurance coverage. Nevertheless, midwives are required by law to have physician supervision. He believes the Board must sponsor such a bill themselves to resolve this problem.

Agenda Item 28 Consideration of Proposed Changes to Title 16 California Code Of Regulations Section 1361--the Manual of Disciplinary Guidelines and Model Disciplinary Orders

Susan Cady, Enforcement Manager, reported at the November 2010 Board meeting a hearing was held to discuss the proposed amendments to the Board's Model Disciplinary Guidelines. At the end of the hearing, it was suggested that any action on the rulemaking should be tabled until the January 2011 meeting so that staff could review the comments that were provided. On January 6, 2011, an interested parties meeting was held in Sacramento. Prior to the meeting, public comments were received and were included in the meeting packets. After receiving testimony and public comment, modifications to the text were made and the period for public comment was held and closed on January 25, 2011. A comment was received from the California Medical Association (CMA) which was provided in the package. Staff asked the Board to consider the proposed revisions to the Model Disciplinary Guidelines.

Ms. Chang made a motion to adopt the regulations as modified; s/Schipske.

During public comment, Kimberly Kirchmeyer, DCA, thanked the Board for making the changes in their Disciplinary Guidelines for the immediate cease practice order upon a positive test result. She reported the Uniform Standards for the required number of biological fluid tests has been voted on and approved by the DCA. The Department requests that the Board move forward as soon as possible with other issues in the SB 1441 Uniform Standards that still need to be implemented by regulation.

Julie D'Angelo Fellmeth, Center for Public Interest Law (CPIL), expressed her thanks to the Board for incorporating CPIL's suggestions into the Disciplinary Guidelines.

Ms. Whitney stated, as a member of the SB 1441 Uniform Standards Committee, she participated in the voting that took place regarding the required number of biological fluid tests. Although a number of the board representatives voted for requiring 104 biological fluid tests per year, Ms. Whitney indicated she did not, knowing there was not evidenced based information for requiring this number of tests. At the Committee meeting, a number of the board officers raised concerns about the number of tests, thus, as part of the decision making, it was agreed that the Committee would meet again to revisit this issue and consider the evidence based information on testing frequency. However, the follow up meeting was canceled and over a year has passed without it ever being rescheduled. Ms. Whitney reported a number of the board officers have discussed this issue and have not moved forward with regulations requiring the 104 tests per year until evidence based information has been presented and discussed.

Ms. Yaroslavsky called for the vote to adopt the regulations as modified; motion carried.

Agenda Item 29 Enforcement Chief's Report

A. Approval of Orders Restoring License Following Completion of Probation, Orders Issuing Public Letter of Reprimand, and Orders for License Surrender During Probation.

Ms. Threadgill requested approval of 10 orders to restore licenses following satisfactory completion of probation.

Dr. Moran made the motion to approve the orders; s/Kent; motion carried.

B. Expert Utilization Report

Ms. Threadgill directed Members to page 180 of the packets for a chart reflecting the use of 556 experts to review 732 cases by specialty during the past quarter. The number of experts in the Enforcement Program's database has increased from 1,207 to 1,289 since the last quarter.

An update regarding Expert Reviewer training program improvements was provided during the Enforcement Committee on January 27, 2011 by Deputy Chief Laura Sweet. It is anticipated that the first presentation will be held at UC Davis in the fall of 2011. Initially, the training was scheduled to be offered in the spring of 2011, however, the inability to replace staff due to the hiring freeze has required remaining staff to take on the duties of those vacant positions, causing a shift in priorities.

C. Enforcement Program Update

The Enforcement Program has a vacancy rate of approximately 19 percent for supervisors and 5 percent for investigators; this equates to an overall vacancy rate of approximately 8 percent. Ms. Threadgill noted the Enforcement Program normally recruits and hires from an open list to fill the investigator positions and a promotional list to fill the supervisory positions. Currently, as a result of the hiring freeze, the Program is only permitted to hire via transfers from within the Department. Further, promotions are not allowed under the freeze. Despite this, the Program has advertised the vacancies, conducted interviews, and identified candidates for promotion in case the freeze is lifted.

Ms. Threadgill reported the Aged Case Council continues to move forward cases that appear to be "stuck." The case age average continues to decrease since the program was started, currently averaging 312 days. This average is impressive considering the investigators are still furloughed 3 days per month and existing vacancies are unable to be filled.

The Statewide Investigator Training Conference has been rescheduled to April 12-15, 2011. Ms. Threadgill will reconfirm availability with those Members who indicated they would participate. She extended an invitation to all Members to attend.

Enforcement supervisors and managers attended training and a statewide meeting on January 19-20, 2011 where they were briefed on the status and distinctions of the various bargaining unit contracts.

Since the re-inception of Operation Safe Medicine (OSM), 34 cases have been submitted to the District Attorney or City Attorney for criminal prosecution. Twenty-one of those cases have

been filed and eight have thus far resulted in convictions. Ten cases are pending and two have been rejected. Of those 34 cases, 21 have been referred since July 1, 2010. So far during FY 2010/2011, OSM has received 61 complaints involving the unlicensed practice of medicine.

The volume and seriousness of the cases thus far investigated and submitted for prosecution underscore the importance of a unit dedicated solely to the issue of unlicensed practice. Ms. Threadgill cited multiple examples of OSM cases. She noted that of the 34 cases submitted to the District Attorney's Office, two cases were referred to OSM from the office of the Orange County and Los Angeles County District Attorney. OSM has developed a reputation as a highly skilled, specialized, and effective investigative unit. Several cases have received media attention and have highlighted the unit's important work. The existence of this unit is imperative in order to protect the public from the actions of unlicensed practitioners.

D. Status of Implementation of SB 700

SB 700 required the Medical Board to create a new reporting form pursuant to 805.01 of the Business and Professions Code and to post an 805 Fact Sheet on the Board's website. A copy of the form was included on page 187 of the packet. This new law requires hospitals to inform the Board of a formal investigation within 15 days and allows Board access to relevant documents upon the notification, rather than having to wait until the disciplinary hearing has been held. The implementation will include an article in the Board's newsletter.

Ms. Yaroslavsky asked that the hospitals and affected entities would be informed directly of these changes; she suggested that staff work with the Department of Public Health and the Hospital Councils of Northern and Southern California, the Association of Counties and county governments.

Ms. Kent suggested that the Department of Public Health could issue an "all facilities letter", since facilities other than hospitals would be impacted by this change.

Agenda Item 30 Vertical Enforcement Program Report

Carlos Ramirez, Senior Assistant Attorney General, reported HQES has hired two additional Supervising Deputy Attorney Generals for the Los Angeles Office, bringing the total number of supervisors there to 3. HQES is redefining the role of the lead prosecutor; this change was instituted to eliminate the need for deputies in the Los Angeles area to travel back and forth to the Board's District Offices, thereby eliminating time spent traveling and reducing costs. These changes will be effective February 1, 2011. Work on processing default decisions for Medical Board cases has been completed. These have been sent to the DCA Council for input which will be incorporated as appropriate. Statistics are being compiled for 2010; these will be provided at the May 2011 meeting.

Mr. Zerunyan requested that a detailed timeline of "A to Z" operations, with potential roadblocks and time losses identified, be presented at the May 2011 meeting. He would like to see improvements in the timelines.

Dr. Salomonson noted that if, as was previously discussed, it takes an additional 60 days to obtain contracts for medical experts, these cases need to be tagged so neither the Enforcement

Program or HQES is held responsible for an increase in timelines.
Ms. Whitney reported that she and Ms. Threadgill have an appointment to discuss the contracting issue with DCA staff in April, delaying the date of appointment so Board staff has a chance to address the issues via other avenues.

Ms. Threadgill noted that Enforcement staff is working with Health Quality Enforcement Section (HQES) staff to work on the VE Manual. This project has been started with the next meeting scheduled for February 2011. Staff is currently working on improvements to the default decision processing; this section of the manual is in the rough draft form.

Ms. Schipske suggested that the issues being addressed by the Full Board Evaluation Subcommittee, since they primarily focus on the Enforcement Program, be vetted through the Enforcement Committee. This was acceptable to all involved.

Agenda Item 31 Request to Designate a Precedent Decision – *Jill Siren Meoni*
Ms. Scuri reported that in 2000 the Board adopted a regulation that allowed it to designate as precedent any decision or part of a decision that contains a significant legal or policy determination of general application that is likely to recur. The Board has designated two precedential decisions in the past 10 years. To implement this regulation, the Board created policies back in 2004 specifying the path this would take to get to the Board. The agenda serves as public notice that the Board will consider the decision as a precedent decision.

Ms. Scuri directed Members to page 189 of the packet for a memo explaining the background for the decision, as well as the facts and findings of the case. The purpose of the proposed precedent decision is to provide guidance to all parties involved in the disciplinary proceeding with respect to what is expected of an exchange of information regarding expert witnesses and the timeframes within which that exchange must occur. This comes out of a decision where this issue was explored in great detail. The Panel that had this particular case made certain findings and provided guidance in that decision. The Attorney General's Office has made a request that this be designated as precedent; executive staff and legal counsel concur with this request. The Board has the option to decide the issue at the meeting or hold it over for a subsequent meeting.

Tom Lazar, Supervising Deputy Attorney General, reported that in Medical Board cases, Board policy requires that its experts prepare "expert reports" that explain in detail what their opinion is and what that opinion is based on. When a case is received and an accusation filed, those reports are turned over to the defense, thereby providing them with all the information they need on the charges and what the Board's expert is going to say. For decades, the reverse has not been true. Defense counsel would routinely instruct their experts not to prepare a report or put anything in writing. This was a defense tactic with the predictable result of stifling pre-trial settlements. Deputy Attorney Generals who were prosecuting Medical Board cases would not know what the defense expert was going to say until the expert took the stand to testify. In 2004, the Board's Enforcement Monitor described this problem.

In order to address this problem, SB 231 (statutes of 2005), which was part of a comprehensive reform package of the Board's Enforcement Program, was signed into law. Business and Professions Code Section 2334, which was part of this reform package and became effective

January 1, 2006, required both the complainant and the respondent to provide the following four things to each other: 1) a curriculum vitae for each expert; 2) a brief narrative statement setting forth the general substance of the testimony the expert is expected to give, including any expert testimony and its basis; 3) a representation that the expert had agreed to testify at the hearing; and 4) a statement of the experts hourly and daily fee for providing testimony and consulting with the party who retained his or her services. In order to ensure the expert witness information is timely, the Legislature required it be exchanged at least 30 days prior to the commencement of the hearing and required that any party failing to do so may not present that expert testimony.

While this legislation should have solved the problem, the Office of Administrative Hearings took a different position, concluding that it had discretion to impose the Legislatively-fixed penalty depending on the circumstances. The Meoni case was an example of how multiple experts were designated without adequate disclosure, but the penalty was not imposed. The Board took the Meoni decision as an opportunity to provide instruction and guidance to the Office of Administrative Hearings, Administrative Law judges, prosecutors, and doctors on how Section 2334 is to be applied in Medical Board cases. This is keeping with the intent of the legislature. It requires disclosure and, if it is not provided, prevents the expert from taking the stand.

If the Board adopts this as a precedent decision, it would allow the prosecutor to attach to any *Motion in Limine to exclude an expert* a copy of the precedent decision, which tells the Administrative Law judge this is how the Board wants this code section applied in their cases. If the matter proceeds to the Superior Court or Court of Appeal, prosecutors will be able to rely on a precedent decision. The Office of the Attorney General requests that the Board adopt this as a precedent decision.

During public comment, Rehan Sheikh, member of the public, expressed his opposition to the request to designate the precedent decision, stating it was unnecessary.

Ms. D'Angelo Fellmeth reported the Center for Public Interest Law strongly supports the request of the Attorney General's Office to designate a portion of the Meoni decision as precedential.

Mr. Zerunyan thanked Mr. Lazar for his work on this matter, noting the precedential decision, if adopted will have a far reaching impact on almost all of the Board's quality of care cases and will help settle cases.

Mr. Zerunyan made a motion to adopt the designated portions of the Meoni decision as precedential; s/Chang; motion carried.

Ms. Scuri noted the remaining steps of the adoption process require indexing the decision and placing it on the Board's website, which staff will complete.

Agenda Item 32 Update on Board's Mechanism for Impaired Physicians
Ms. Whitney reported this item is in response to Dr. Moran's request to have staff address what is being done since the sunset of the Diversion Program.

A. Law

Mr. Heppler clarified that the purpose of an administrative disciplinary proceeding is never to punish the licensee, but always to protect the public. It expresses the Legislature's intent that the Medical Board's primary mission in exercising its licensing, enforcement, and regulatory function is the protection of the public. While Business and Professions Code Section 2229(b) directs that, whenever possible, disciplinary action should be taken that is calculated to aid in the rehabilitation of the licensee, Section 229(c) states that where rehabilitation and protection are inconsistent, protection shall be paramount.

B. Probation: Terms and Conditions

Ms. Cady reported that in July 2008 the Board's Diversion Program was dissolved. Those physicians that had at least 3 years of sobriety were considered to have successfully completed the Diversion Program. Those that required continued testing and monitoring were transitioned to the Probation Unit for the biological fluid testing. The Board's current Disciplinary Guidelines recommend at least 10 different terms and conditions that can be included in an administrative decision ordering probation. Six of these conditions focus specifically on the treatment and monitoring for substance abuse issues. The order will typically contain an "abstain from use" requirement that can be modified depending on the individual circumstance, but biological fluid testing is always included as part of the requirement. The decisions can also require a psychiatric and medical evaluation with the requirement that the physician comply with any treatment recommended by the evaluating physician.

The current monitoring process is similar to what was provided by the Diversion Program, with the exception that the testing and monitoring is required as a condition of probation and the failure to comply is considered a violation of probation and can be cause for further discipline. In addition, proposed amendments to the Disciplinary Guidelines will allow the Board to issue a cease practice order should the physician have a confirmed positive biological fluid test or fail to cooperate with testing.

The action taken by the Board and the requirements for monitoring are considered public. Under the Diversion Program, if the physician voluntary enrolled in the program, participation was confidential and no referrals were made to the Enforcement Program unless the physician was deemed not safe to practice.

C. Wellness Committee

Ms. Whitney reported when the Board was faced with a decision on whether to extend the Diversion Program's sunset date, it voted not to pursue legislation that would continue the Diversion Program. The Legislature chose not to introduce any legislation or amend existing legislation to continue the Diversion Program. Problems with the program, including difficulty in obtaining staffing and funding, resulted in a failed audit; this contributed to the Board's decision not to continue the program.

With the end of the Diversion Program, the Board decided to explore options to help physicians throughout their career by creating a Wellness Committee. The Committee seeks to identify ways the Board can support physician wellness as a way to promote quality medical care to consumers, while allowing the private sector to deal with addiction issues. The Committee has

worked with medical schools and deans on practices and information that can be integrated into their curriculum and programs on issues such as drug and alcohol addiction, stress reduction, and physical and mental health. Best practices are being explored by the Committee in order to share models that may be used by other hospitals, medical groups, and individuals who do not have wellness programs or activities.

Ms. Whitney noted there are other entities, such as the California Society for Addiction Medicine and the California Medical Association, that are working to make sure there are resources available to help physicians with substance abuse issues. The Board supports these and other efforts, but will not be reinstituting a diversion program.

The Department has tried to take on the topic of diversion. Some boards are very supportive of the program while others experience a variety of issues. The Board, by adopting the changes in the Disciplinary Guidelines, has ensured that a cease practice order may be issued immediately upon a positive test result, once these are filed with the Secretary of State.

Ms. Kent suggested that it might be helpful to provide suggestions to physicians on programs that have been statistically proven to aid physicians with addiction issues. Dr. Duruisseau took this suggestion under advisement for the Wellness Committee.

Agenda Item 33 Department of Consumer Affairs Update
Ms. Kirchmeyer thanked the Board for "going green" by providing meeting materials to the Members electronically. She also offered the DCA's SOLID Unit to help with the Strategic Planning Process.

A. Budget / Hiring Freeze / Other Administrative Updates
Thus far, there have not been many appointments with the change in Administration. Neither a State and Consumer Services (SCSA) Secretary or Undersecretary have been appointed, thus some of the regulation packages are still pending review at SCSA. At this time, Acting Director Brian Stiger has been asked to continue at DCA; he continues to move forward items including the Consumer Protection Enforcement Initiative (CPEI) and to implement any Executive Order received.

Ms. Kirchmeyer reported the Department sought clarification on the hiring freeze from the new Administration and was told to continue with the freeze as it was originally established. Only interdepartmental transfers are allowed at this time. The exemption process has not been clearly identified, however the Department will continue to seek freeze exemptions for critical positions. An exemption has already been submitted for licensing job creation positions, CPEI positions, and others.

An Executive Order was issued on January 11, 2011 requiring a 50% decrease in the number of cell phones and smart phones statewide. DCA is working to implement this order as quickly as possible. Boards and committees were required to submit a plan by January 18 on how they will reach this goal, with the phones being turned in by February 1, 2011. The Executive Order states that, because of contract obligations, it is possible that the 48,000 cell phones might not be able to be eliminated by the June 1, 2011deadline, but it is also conceivable that it could be done

earlier. The DCA has looked at cell phone contracts and determined that it can be done earlier than the deadline without any penalties for early contract termination.

The Department was notified that the Senate and Assembly budget hearings will take place earlier than usual this year. An Assembly budget hearing will take place on January 31, 2011 and a Senate budget hearing on February 7, 2011. The Medical Board does not have any budget change proposals going forward, however, there was an opportunity to submit spring finance letters. These letters were submitted to SCSA and will then go to the Department of Finance (DOF). Ms. Kirchmeyer reported that a letter went out from the DOF stating, regardless of funding source, only the most critical enrollment, case load, and population requests will be considered, as well as spring finance letters that address court mandates or conditions where any delay in funding would result in eminent, irreparable, and significant damage to the health and safety of persons or property in the state. The budget letter did not contain any language, nor has the Department received any other information to date, regarding a loan from the Medical Board to the General Fund.

With regard to information technology (IT) contracts, Ms. Kirchmeyer reported that contracts identified as having an IT component must be reviewed by the Office of the State Chief Information Officer (OCIO). Additionally, the contract must have an Information Technology Procurement Plan and may also require a review by the Department of General Services (DGS). These changes have increased the IT contracting timeline. The Department recommends that boards that have contracts containing IT components start the contracting process early. The Medical Board's contract for the scanning of medical records has been impacted by these new requirements.

Ms. Yaroslavsky requested that, as the Department moves forward in consolidating contracts, to consider allowing purchases up to a certain dollar amount to be approved by the boards' executive directors.

Ms. Kirchmeyer noted, for IT contracts, the DCA does not have this discretion, as these contracts go to the SCSA and then over to the OCIO.

B. Consumer Protection Enforcement Initiative (CPEI)

The Department is moving forward with the items that it can. The second set of performance measurements are being collected and will be posted on DCA's website during the first week of February 2010. These measurements provide for transparency to the public. Members are encouraged to go to the website to view the length of time it takes from the time a complaint is received until disciplinary action is taken; other measurements for the enforcement process are also included.

Ms. Chang asked about approval of out of state travel requests for Ms. Whitney and Ms. Yaroslavsky to attend the FSMB annual meeting in Seattle, as their travel and lodging costs would be borne by FSMB. Ms. Whitney indicated the individual trip was submitted for FY 2010/2011. Although Ms. Kirchmeyer stated she has not seen this particular request, she noted all out of state travel was being scrutinized very closely, even if there is no expense associated with the trip. Last year the Department submitted requests for approximately 100 trips and received approval for only 5, these for very critical mandated functions.

C. BreEZe Update

Ms. Kirchmeyer reported the Department's project to replace the antiquated CAS and ATS systems for enforcement and licensing is on target and moving forward. She introduced Sean O'Connor, Business Program Manager for the BreEZe project, who provided an overview of the project. BreEZe will also incorporate document image storage and will allow each board to control configuration on items such as application requirements, automated work flow routing, approval rules, and others. He thanked Ms. Whitney for her support in allowing Board staff to serve on the various BreEZe workgroups.

Mr. Zerunyan asked if deputy attorney generals would be allowed access to the system as part of the Vertical Enforcement Program. Kirchmeyer stated the DOJ is one of the interfaces with the BreEZe system; there could be future discussion on allowing HQES deputy attorney generals access to the system by designating them as users. Their access could be limited to particular cases they are assigned to. If DOJ grants approval and authority to link their information via Pro-Law, Board investigators would also be able to access this data. There is also the possibility to interface with other agencies license health professionals, such as the Department of Public Health and the Emergency Medical Services Authority.

Mr. O'Connor reported there is an initial vendor payment for software and detail design only. After that, the vendor will not be paid until the boards and bureaus have accepted and implemented the system. A transaction fee will be assessed to each board for initial applications and renewals. The target cost is anticipated to be $3 per application/renewal for the first 5 years, then between $.30 to $.50 cents for the next 10 (optional) years. The licensee would not pay the transaction fee; the cost would be taken from the existing licensing fee remitted to the Board. Payment for the Legacy software currently being used would no longer be required which would offset part of the cost.

Project oversight is provided by the BreEZe Executive Steering Committee, on which Ms. Kirchmeyer and a Medical Board staff member sit. In addition, two independent IT consultants have been hired to provide project oversight and watch for danger signs and report to the California Technology Agency.

The project has Legislative Budget Committee approval, the business project manager and technical project manager have been selected. Data conversion, forms consolidation, and reports workgroups have been initiated.

In the procurement process, the initial Request For Proposal (and addendums) has been released for the pre-qualified vendors (Verizon and Accenture) to respond to; responses are due on February 16, 2011. Final system acceptance documents are being collected from the various DCA boards and bureaus in order to move forward. There will be many key milestones for the project in the coming 4 months.

With regard to the implementation plan, the Medical Board is slated for the first phase of implementation with a scheduled delivery date of December 2012. The other boards for which the Medical Board provides enforcement services will also be included in the first phase. Since the vendor will not be paid until the system is implemented, Ms. Kirchmeyer hopes this will motivate them to work a little more quickly.

Agenda Item 34 Agenda Items for May 5-6, 2011 Meeting in Los Angeles, CA
Dr. Duruisseau requested a future agenda item be added for access to care for the most vulnerable members of California's population. He would also like to hear from CMS. He is concerned that there will not be the necessary providers.

Ms. Yaroslavsky stated the Access to Care Committee could convene in the future to address this issue.

Ms. Whitney announced the May 5-6, 2011 meeting will be held at the Sheraton Gateway in Los Angeles. The July 2011 meeting will be hosted by the UC Davis Medical School in Sacramento.

Agenda Item 35 Adjournment
There being no further business, a motion was made to adjourn; s/Chang. The meeting was adjourned at 3:20 p.m.

Barbara Yaroslavsky, President

Hedy Chang, Secretary

Linda K. Whitney, Executive Director