MEDICAL BOARD OF CALIFORNIA
Executive Office

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

February 2-3, 2012

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 February 2, 2012 at 4:00 p.m. A quorum was present and notice had been sent to interested parties.

Members Present:
Barbara Yaroslavsky, President
Janet Salomonson, M.D., Vice President
Michael Bishop, M.D.
Jorge Carreon, M.D.
Hedy Chang
Silvia Diego, M.D.
Shelton Duruisseau, Ph.D.
Dev GnanaDev, M.D.
Sharon Levine, M.D.
Reginald Low, M.D.

Members Absent:
Gerrie Schipske, R.N.P., J.D., Secretary

Staff Present:
Douglas Becker, Investigator
Susan Cady, Enforcement Manager
Tim Einer, Administrative Assistant
Kurt Heppler, Staff Counsel
Teri Hunley, Business Services Manager
Kimberly Kirchmeyer, Deputy Director
Armando Melendez, Business Services Staff
Regina Rao, Business Services Staff
Anthony Salgado, Licensing Manager
Kevin Schunke, Outreach Manager

Anita Scuri, Department of Consumer Affairs, Supervising Legal Counsel
Jennifer Simoes, Chief of Legislation
Laura Sweet, Deputy Chief of Enforcement
Susan Thadani, Senior Investigator
Cheryl Thompson, Licensing Analyst
Renee Threadgill, Chief of Enforcement
Linda Whitney, Executive Director
Dan Wood, Public Information Officer
Curt Worden, Chief of Licensing

Members of the Audience:

Teresa Anderson, California Academy of Physician Assistants
Molly Burke, Member of the Public
Yvonne Choong, California Medical Association (CMA)
Paul Costa, Department of Consumer Affairs
Zennie Coughlin, Kaiser Permanente
Frank Cuny, California Citizens for Health Freedom
Karen Ehrlich, L.M., Midwifery Advisory Council
Julie D'Angelo Fellmeth, Center for Public Interest Law (CPIL)
Jack French, ConsumersUnion Safe Patient Project
Amanda Friedman, CPIL
Faith Gibson, Midwifery Advisory Council
Julia Haskins, Blue Shield of CA
Rick Hanley, Member of the Public
Laurel Holmes, CPIL
Tina Minasian, ConsumersUnion Safe Patient Project
Joy Mobley, Member of the Public
Carlos Ramirez, Office of the Attorney General
Simone Renteria, Department of Consumer Affairs
Tom Riley, CA Society of Dermatology and Dermatologic Surgery
Angelique Scott, Department of Consumer Affairs
Rehan Sheikh, Member of the Public
Cheryl Simmons, Blue Shield of CA
Carrie Sparrevohn, Midwifery Advisory Council
John Toth, M.D., California Citizens for Health Freedom

Agenda Item 2 Introduction and Swearing in of New Board Members

Ms. Yaroslavsky welcomed and administered the Oath of Office to two new Board members, Michael Bishop, M.D. and Dev GnanaDev, M.D., appointed to the Board by Governor Brown on December 21, 2011.

Dr. Michael Bishop is director of anesthesia for same-day surgery at the University of California, San Diego Hillcrest and is attending anesthesiologist and clinical professor of anesthesiology at the University of California, San Diego.

Dr. Dev GnanaDev, is a surgeon and Medical Director at Arrowhead Regional Medical Center in San Bernardino County.

Agenda Item 3 Public Comment on Items not on the Agenda
Frank Cuny, Director of California Citizens for Health Freedom complemented the new Board members and wished them luck. He also praised the administration for their previous support of the bill that allows physicians to do complementary medicine in the holistic area, as long as it is safe and effective. Next year his group hopes to introduce a bill on the issue of the alternative holistic treatment of cancer and hopes that the Board will join them in its support.

Agenda Item 4 Approval of Minutes from the October 27-28, 2011 Meeting
Dr. Salomonson made a motion to approve the minutes from the October 27-28, 2011 meeting; s/Low; motion carried, with Dr. Bishop, Ms. Chang and Dr. GnanaDev abstaining.

Agenda Item 5 Discussion of Strategic Plan Objective 5.4 Annual Review of Committees; Establishment of Board Committees
Deputy Director Kimberley Kirchmeyer led the discussion of Strategic Plan Objective 5.4, Annual Review of Committees and the establishment of Board Committees. During the last meeting, there was not enough time to discuss the Board Committees according to Objective 5.4 of the new strategic plan. In order to expedite the process, a survey was sent to Board members to ask for their input on the Committees of the Board. Ms. Kirchmeyer referred the members to the consolidated information that was provided for each Committee of the Board. She stated that she would like to review each Committee individually to determine if the members would like to keep the Committee, change the goals of the Committee, change the meeting times of the Committee, or make any other modifications.

- **Executive Committee.**
  Based on the comments received, it was determined that the Executive Committee should remain as it is, with one exception. One recommendation was for the Committee to do a periodic assessment by the members to identify perceptions of effectiveness and efficiency of Board meetings and suggestions for improvement. Ms. Kirchmeyer recounted that the Board used to survey members at each meeting and inquired if perhaps the Executive Committee might want to conduct an annual survey to see if there is anything that needs to be reviewed and then changed.

Dr. Levine made a motion to keep the Executive Committee as it is with the addition to conduct an annual survey by the members to identify perceptions of effectiveness and efficiency of Board meetings and suggestions for improvement. In addition, the Executive Committee would meet when needed and primarily meet at the quarterly meetings or in between, if necessary; s/GnanaDev; motion carried.

- **Licensing Committee.**
  It was determined that the Licensing Committee should also stay the same with the addition of maintenance of licensure as an issue for the Committee to discuss and the addition of Polysom and Outpatient Surgery Centers to the programs of the Board related to licensing. This committee would meet at quarterly meetings, when issues that need discussion arise, and when it has a full agenda.

Dr. Low made a motion to keep the Licensing Committee as it is with the addition of maintenance of licensure as an issue for the committee to discuss and the addition of Polysom and Outpatient Surgery Centers to the programs of the Board related to licensing. This Committee would meet at quarterly meetings, when issues arise that need discussion, and when it has a full agenda; s/GnanaDev; motion carried.

- **Enforcement Committee.**
  From the comments it seems this Committee should also remain as is and it also appears that the issues identified are appropriate. It should continue to meet at quarterly Board meetings and again when needed. For this Committee there are also sub-committees which may need to meet in between if necessary.

Dr. GnanaDev made a motion to keep the Enforcement Committee as it is. This committee would meet at quarterly meetings and when needed; s/Duruisseau; motion carried.

- **Application Review Committee, Special Faculty Permit Review Committee, Special Program Committee and Midwifery Advisory Council.**
  For the statutory Committees, they are to be retained and a motion is not necessary to keep them intact. There was just one comment pertaining to the Special Faculty Review Committee and Mr. Worden will be bringing forward this issue on the 2168 candidates.

- **Access to Care Committee**
  The suggestion to combine Access to Care Committee with the Education and/or Wellness Committees was discussed. It was decided that a motion should be made to table the vote on this Committee. Staff will survey the Board members to clarify the role that the Access to Care Committee should have and if it should be collapsed or condensed into the Education Committee. Dr. Low requested that the staff also look into the amount of money that can be devoted to this effort annually. Motion to table the vote on this committee passed unanimously.

- **Advisory Committee on Physician Responsibility in the Supervision of Allied Health Care Professionals**
  Ms. Kirchmeyer communicated that the Advisory Committee on Physician Responsibility in the Supervision of Allied Health Care Professionals is the logical committee to deal with the SB100 requirement of determining physician availability in cosmetic surgery settings that use lasers. There is a requirement for the Committee to look into that and develop regulations. Staff recommends that this Committee remain intact and meet off cycle of the quarterly Board meetings. When looking to set up regulations, it is necessary to have interested parties meetings. Meeting off cycle for this particular Committee would help to increase the time involved for the robust discussions that take place prior to the introduction of new regulations.

Public comment was provided for this agenda item.

Tom Riley with the California Society of Dermatology and Dermatologic Surgery commended the Board on the complex discussion and shared that appropriate comments had been made. SB100 is a very important issue for two reasons. One of them has to do with licensing and the other has to do with what the doctors' responsibility inside of these facilities will be. The clock is

now ticking on the regulatory process and it makes the work of this Committee even more important. Mr. Riley affirmed that the Board should move forward. They should find a chair for the Committee, aggressively collect public input, and then if after that process there are other things having to do with the scope to be addressed, use this Committee to address other things.

Tina Minasian, representing the ConsumersUnion Safe Patient Project spoke that since the Advisory Committee on Physician Responsibility in the Supervision of Allied Health Care Professionals will include discussion of aspects of the implementation of SB100, it is important that this Committee remain on schedule with the quarterly Board meetings. Ms. Minasian requested that the Board please make sure that the public has access to the implementation of SB100 by keeping this Committee on schedule with the quarterly Board meetings.

Dr. Low made a motion to keep the Advisory Committee on Physician Responsibility in the Supervision of Allied Health Care Professionals. This Committee would retain its current statement of responsibility, will meet off cycle from the quarterly Board meeting and will add the SB100 laser IPL issue to its tasks; s/Bishop; motion carried.

- **Education Committee**
  Ms. Kirchmeyer stated that there was a comment received from Michele Monserratt-Ramos from the ConsumersUnion which was intended for the strategic plan. Looking into this comment further, it is more applicable under this agenda item. Ms. Monserratt-Ramos asked the Board to educate the public on how complaints are prioritized, as well as the legislatively mandated priorities. Another comment was to increase the priority of expanding current outreach to the public and provide information on the Board's programs, patients' rights, and how to file complaints. These suggestions really fit under the Education Committee and are issues where this Committee could be involved. It is also recommended that this Committee look at the requirements of SB380, related to education material regarding the prevention and treatment of chronic disease.

Dr. Levine made a motion to keep the Education Committee as it is. It should add the SB380 requirement as an issue. This Committee will meet off cycle from the quarterly Board meeting and would also bring forth goals for the future; s/Low; motion carried.

- **Physician Recognition Committee**
  Ms. Kirchmeyer discussed that based on the majority of comments received from the Board members, the Physician Recognition Committee is no longer a priority and should be discontinued at this time.

Dr. Levine made a motion to discontinue the Physician Recognition Committee at this time; s/Duruisseau; motion carried.

- **Wellness Committee**
  Ms. Kirchmeyer provided information that there was a suggestion to combine the Wellness Committee with the Education Committee and also a comment requesting the elimination of this Committee. Staff recommends that a motion be entertained to move the Wellness Committee to the work of the Education Committee.

Dr. Bishop made a motion to move the Wellness Committee to the Education Committee; s/Duruisseau; motion carried.

- **Cultural and Linguistic Competency Work Group**
  Ms. Kirchmeyer asked the Board to have a discussion to provide a clear direction on the Cultural and Linguistic Competency Work Group. After discussing the scope and goals of this Committee, a recommendation was made by Ms. Whitney suggesting merging the responsibilities of the Access to Care Committee with the Cultural and Linguistic Committee and hold a meeting to see if the new mission and goals could be defined with clear objectives.

Dr. GnanaDev made a motion to merge the responsibilities of the Access to Care Committee with the Cultural and Linguistic Competency Work Group and hold a meeting off cycle from the quarterly Board meeting to see if the new mission and goals could be defined with clear objectives; s/Chang; motion carried.

Dr. Levine asked for a clarification of SB1195.

Ms. Whitney explained that SB1195 is legislation that required the Board set up a workgroup to determine if those individuals providing continuing medical education (CME) were in fact incorporating cultural and linguistic portions within their training. The Board is supposed to determine if, in fact, the CME providers are correctly including that within their training.

Ms. Yaroslavsky adjourned the meeting at 5:40 p.m. and announced that the Board Meeting would reconvene on Friday, February 3, 2012 at 9:00 a.m.

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Agenda Item 6 Call to Order/ Roll Call
Ms. Yaroslavsky called the meeting of the Medical Board of California (Board) to order on February 3, 2012 at 9:15 a.m. A quorum was present and notice had been sent to interested parties.

Members Present:
Barbara Yaroslavsky, President
Janet Salomonson, M.D., Vice President
Michael Bishop, M.D.
Jorge Carreon, M.D.
Hedy Chang
Silvia Diego, M.D.
Shelton Duruisseau, Ph.D.
Dev GnanaDev, M.D.
Sharon Levine, M.D.
Reginald Low, M.D.

Members Absent:
Gerrie Schipske, R.N.P., J.D., Secretary

Staff Present:

Tim Einer, Administrative Assistant
Kurt Heppler, Staff Counsel
Teri Hunley, Business Services Manager
Kimberly Kirchmeyer, Deputy Director
Armando Melendez, Business Services Staff
Regina Rao, Business Services Staff
Kevin Schunke, Outreach Manager
Anita Scuri, Department of Consumer Affairs, Supervising Legal Counsel
Jennifer Simoes, Chief of Legislation
Victor Sandoval, Supervising Investigator
Melinda Sundt, Investigator
Laura Sweet, Deputy Chief of Enforcement
Cheryl Thompson, Licensing Analyst
Renee Threadgill, Chief of Enforcement
Linda Whitney, Executive Director
Curt Worden, Chief of Licensing

Members of the Audience:

Teresa Anderson, California Academy of Physician Assistants
Molly Burke, Member of the Public
Yvonne Choong, California Medical Association (CMA)
Paul Costa, Department of Consumer Affairs
Zennie Coughlin, Kaiser Permanente
Bryce Doeherty, The Doeherty Group
Catherine Dower, UCSF Center for the Health Professions
Karen Ehrlich, L.M., Midwifery Advisory Council
Julie D'Angelo Fellmeth, Center for Public Interest Law (CPIL)
Conrad Del Rosario, San Francisco District Attorney's Office
Reichel Everhart, Department of Consumer Affairs
Jack French, ConsumersUnion Safe Patient Project
Amanda Friedman, CPIL
Faith Gibson, Midwifery Advisory Council
Rick Hanley, Member of the Public
Laurel Holmes, CPIL
Tina Minasian, ConsumersUnion Safe Patient Project
Joy Mobley, Member of the Public
Carlos Ramirez, Office of the Attorney General
Tom Riley, CA Society of Dermatology and Dermatologic Surgery
Rehan Sheikh, Member of the Public
Shannon Smith-Crowley, American Congress of OB/GYNS – CA
Carrie Sparrevohn, Midwifery Advisory Council
Ryan Spencer, California Medical Association (CMA)
Archie Wong, San Francisco District Attorney's Office

Ms. Yaroslavsky introduced special guest, Reichel Everhart. Ms. Everhart was appointed on January 11, 2012 as the new Deputy Director for Board and Bureau Relations for the Department of Consumer Affairs. Ms. Everhart addressed the Board and let the members know that she is

looking forward to working with them. She stated that if there are any concerns or questions that they may have on any issue related to working with the Department Consumer Affairs, to contact her or let Linda know and she will be happy to help.

Agenda Item 7 Public Comment on Items not on the Agenda

Julie D'Angelo Fellmeth, the Administrative Director of the Center for Public Interest Law (CPIL) spoke to the Board. For the benefit of the new Board members, she advised them that CPIL is an advocacy and academic organization based at the University Of San Diego School Of Law. For 30 years CPIL has been monitoring California state agencies that regulate business and professions and trades, including the Medical Board of California.

Ms. D'Angelo Fellmeth thanked Dr. Reggie Low for his work in chairing the Board's Enforcement Committee. His efforts and good work were commended in trying to get the Board's investigative staff and the Attorney General's office Health Quality Enforcement Section on the same page in compiling and reporting of enforcement data.

Last fall a complaint was made to the Governor by Public Citizen, a Washington D.C. based public interest organization. The complaint alleged that this Board failed over the last 20 years to take disciplinary action against a number of California licensed doctors who had been disciplined by hospitals through the peer review process and had been reported to the National Practitioner Data Bank (Data Bank). Public Citizen also reported that about 100 of these doctors were labeled imminent risk by the hospitals that reported them to the Data Bank but they were not disciplined by the Board. The Governor's office was concerned and Board staff did an analysis of Public Citizen's allegations. According to the minutes of the October 2011 Board meeting, 2/3 of the cases reported by Public Citizen were past the statute of limitations and had been purged due this Board's retention requirements. It has been learned that the Board's staff only queries the Data Bank at the point of initial licensure. It does not query the Data Bank every two years upon the renewal of a physicians' license. If this was done, it might have picked up some of the hospital disciplinary actions before the statute of limitations ran out. It costs $4.75 to query the Data Bank and this fee could be added to the physicians' renewal fee. The Board was encouraged to investigate this issue and have staff do a cost benefit analysis of what it would cost and the good it would do to complete a Data Bank query every two years at renewal. Currently the Data Bank is not open to the public and individuals cannot query their doctor. The Board should look into this issue as part of their public protection mandate.

Tina Minasian and Jack French, representing ConsumersUnion, spoke that two weeks prior to this meeting, several of their members had met with Ms. Whitney and Ms. Kirchmeyer. They wanted the Board to know about concerns they have with the appropriate oversight and safety of outpatient surgery centers.

There were three areas of concern that were discussed. One would be opportunities for consumers to interact with the Board and they requested that the Board teleconference all of their public meetings and include committee meetings. This would mean that the public can listen over the phone and provide public testimony over the phone during public comment periods. Numerous other agencies do this including the CA Healthcare Acquired Infections Committee and the CA Health Benefit Exchange. Both of those agencies are governed by the Bagley Keene Act. It was requested that the Board ask that DCA webcast all of the Board's public meetings and make clear on its website the opportunities and rules for public participation at Board

meetings. The second item is the statute of limitations that governs patient complaints with the Board. The Board website has confusing information to patients who are trying to understand and comply with deadlines for filing complaints. This has resulted in the Board refusing to review complaints that patients believe were filed timely. Board staff has been provided with some examples of unclear and misleading communications on its website related to its statutes of limitations. It was requested that the Board clarify the information provided on the website, in brochures, and on the forms. It was also recommended that the Board immediately notify the patient involved when the Board learns of an alleged improper act or omission by a physician from a source other than the patient which triggers the statutes of limitations and when a patient makes a complaint to the Board. The Board should explain the statutes of limitations and inform the patient how much time is left before the statute of limitations will run out in their case. The third concern pertains to the implementation of SB100. It was suggested that the Board include on its website historic information about outpatient settings violations that have been noted by accrediting agencies in the past and work quickly to coordinate a clear process with the Department of Public Health regarding the reporting of adverse events. When appropriate, the Board should investigate whether an adverse event involves physician misconduct. The Board should communicate to California physicians that they must report adverse events and if they do not do so in a timely manner, they could be fined.

Agenda Item 26 Update of Pharmacy Board Actions

Virginia Herold, Executive Officer of the Board of Pharmacy, introduced herself to the Board. She explained that the Board of Pharmacy is currently dealing with severe drug diversion from pharmacies. An example was provided of two pharmacies, one of which lost 1.5 million vicodin pills and the other which lost 2 million pills. The Board of Pharmacy remains rigorous in watching pharmacies to make sure this does not occur. They have mandatory reporting requirements as does the DEA for controlled substances. Last year AB507 was sponsored by the American Cancer Society in the belief that patients are being denied adequate pain treatment. It is claimed that when patients go to prescribers and then go to pharmacies, the pharmacy is being overregulated and the patient is being denied access to medication they need for pain relief.

Agenda Item 27 Discussion and Consideration of Co-Sponsoring Pain Management Summit with Pharmacy Board

Ms. Herold continued by explaining that in 1994, the Department of Consumer Affairs brought together the Board and the Board of Pharmacy to convene a pain summit. This happened 18 years ago. There have been suggestions to revisit this issue of pain management. In order to increase the impact of this summit, the Board of Pharmacy would like to join the Board in working to help educate prescribers and dispensers. This will ensure that they know how to work together and use the available resources of technology or medication therapy so they can better care for patients.

Ms. Herold proposed to the Board that they authorize staff to work with the Board of Pharmacy staff to develop a concept for a pain summit to take place later in 2012.

It was also discussed that Ms. Herold would like to see prescribers and pharmacies have a dialogue on how they can communicate better. When a pharmacist calls a prescriber to inquire about a patients' treatment, frequently it is not well received. Many dispensers are hesitant to make those calls and yet they are held responsible if they dispense drugs that they should have not because they didn't make the call.

Ms. Herold stated that the Board of Pharmacy would also like to do some educational pieces for long term state of the art thinking in pain management. The Board has access to various experts throughout the country and that could be used to develop something that will lend to better patient care.

Dr. GnanaDev inquired if the Board of Pharmacy will also be working with the CA Pharmacy Association and the CA Medical Association. Ms. Herold responded that they would need the support of all associations as well as a number of others, for example, the Board of Registered Nursing. There are still many pieces and the general agenda is still being assembled to determine the input and output from various agencies.

Dr. Levine asked Ms. Herold if she was confident that the CURES program would be funded. Ms. Herold advised that the CURES program currently does not have any direct funding per se. It is funded through grants that the former Bureau of Narcotic Enforcement would get and that is how they chose to pay for this program. Dr. Low suggested that perhaps surtax on pain medication could be used to fund the CURES program. It would not be a large amount but, enough to fund the program. Ms. Herold stated that California is one of the few states that does not have a separate registration for those that prescribe and dispense controlled substances. That could be a potential area for funding the CURES program but, that would require legislation and it may not be warmly received because that would create a fee in this economic climate.

Ms. Chang made a motion to direct staff to work with the Board of Pharmacy staff to develop the content for and convene a Pain Management Summit jointly sponsored with the California State Board of Pharmacy for California health care providers; s/Levine;

Public comment was provided for this agenda item by Yvonne Choong with the CA Medical Association (CMA). Ms. Choong informed the board that the CMA would appreciate being included in this effort as well. This remains a high priority issue for them and currently the CMA has a group of pain management specialists and other physicians that are working on developing a physician advisory for physicians who are not pain management specialists to educate on how they can appropriately prescribe opiates.

Ms. Whitney informed the Board that she was approached by Ms. Herold with this idea because the Board of Pharmacy president was very interested in this issue. This would be a great effort for the two Boards to jointly work together and then reach out to the stakeholders. There has not been a strong partnership in the past few years and by working together now, a strong partnership will be developed. Ms. Whitney intends to attend the Board of Pharmacy meetings, as appropriate, to provide updates on activities of the Board to solidify this partnership. It is desired to form a strong alliance with the Board of Pharmacy since there are so many things that interact between the two Boards.

Ms. Yaroslavsky called for the vote. Motion carried.

Agenda Item 8 Physician Assistant Committee Update

Dr. Low announced that the Physician Assistant Committee (PAC) has elected a new Chair, Bob Sachs who is well known to the committee and a PA at USC. Steve Klompus was the former Chair and will now serve in the role as Vice-chair.

The PAC is working on a regulation pursuant to AB2699 which allows out of state licensees to offer their professional services at sponsored free health care events. That PAC will discuss regulation language at the February 6, 2012 meeting.

The PAC is also considering amending the regulations regarding the interpretation of the "personal presence" of a physician as well as the scope of practice of a PA. Since this regulation involves scope of practice it will need to be promulgated by the Board on behalf of the PAC. At the next meeting on Feb 6, 2012, the PAC will review the final draft language and if approved, bring it back to the next Board meeting for consideration.

The PAC is also working on amending the disciplinary guidelines in order to incorporate SB1441.

The PAC approved the final 2012 sunset report and it will be submitted to the legislature by the requested date. The sunset hearing is scheduled for March 19, 2012 and the chair and Executive Officer will be attending. The Executive Officer has been very effective at coordinating her staff to deal with the licensing backlog that occurred because one of the staff members retired. A new employee has been hired and will begin on February 6, 2012.

Agenda Item 9 Enforcement Committee Update

Dr. Low reported that the Enforcement Committee had a meeting, February 2, 2012, during which he provided an update of the subcommittee's activities.

Dr. Low reminded the Board that at the last Board meeting it learned that the Board and the Attorney General's (AG's) office maintain data but they do it independently and the data does not match completely. That is because they calculate it differently and manage it differently. One of the Enforcement Committee's primary purposes is to resolve that problem. Several meetings have taken place. On January 3, 2012 the Board staff met and on January 9, 2012 the Board staff, met with Dr. Low and Mr. Carlos Ramirez and Ms. Gloria Castro from the AG's office. This was an extremely productive meeting. It was decided at that meeting that the supervisory staff of the Health Quality Enforcement Section (HQES) of the AG's office and the supervisor staff of the Board would meet to reconcile the previous month's statistics. Moving forward, every month a meeting will be conducted to reconcile this data. The AG's office agreed to provide monthly reports from their case management system. Ms. Sweet from the Board's enforcement section stated that the Board staff would provide specific case activity reporting forms to the HQES of the AG's office. After each district office and the AG's office reconcile the data, one single report will be provided to the Board. There will no longer be two separate reports, which is tremendous progress.

On January 18, 2012, there was another meeting between the AG's HQES staff and the Board staff to facilitate the implementation of this new procedure.

Dr. Low reported that Mr. Ramirez had explained to him that he previously provided data to the Board but it was difficult for Ms. Whitney to use this data because it was in a format that was inconsistent with how the Board tracks items. In the end it turns out that the Board will be getting reports from the CMS section of the AG's office that will meet the needs of the Board. The CMS is the entity within the Department of Justice (DOJ) that is responsible for the

preparation of the reports reflecting the statistical data. Currently CMS is trying to program reports that will attach the attorney billing on a particular case. On January 23, 2012, the Board staff met with the DOJ CMS staff as well as with Mr. Ramirez and Ms. Castro and made requests for these specific reports.

On January 9, 2012, a meeting was held that discussed the need to incorporate the median as well as the mean times for the data that is being collected. Dr. Low suggested that the outlying cases receive independent review so the Board can understand the causes for inaction and remedy the situation as soon as possible.

It was also discussed that information about items relating to case aging, such as the DOJ wanting to acquire the ability to hold cases or toll during the pendency of criminal prosecution, is something that the Board already does and the cases will not age further. These changes would better reflect what is actually going on. Ms. Castro also reported that the LA office of the HQES is under orders to not slow down the investigation process, particularly when scheduling conflicts arise with the review of expert packages. Both agencies agreed to provide reports that may be of value to assist reconciling data and sharing information.

Dr. Low praised Ms. Sweet's energy in the effort of organizing the expert training project. Standardization amongst the experts will improve quality and efficiency. The first expert training meeting should occur in April.

Agenda Item 10 Licensing Committee Update

Dr. Salomonson reported that the Licensing Committee met on February 2, 2012. At the meeting, Mr. Worden provided an update on staffing in the licensing program and stated positions are being filled. Mr. Worden and Anthony Salgado, Licensing Manager, provided updates on the business process reengineering recommendations. Some of the highlights would be revision and streamlining of the physician application process and improvements on the website relative to the application process. There is still work to be done and decisions to be made regarding the post graduate training authorization letter process and revisions of the policy and procedure manual.

Another licensing project is implementation of SB100 which is the outpatient surgery center requirements. One of the requirements is that the status of the outpatient centers will be on the Board's website. Currently, the way the data has been provided it is not possible to look up a list of accredited centers, but, the public will be able to look this information up on the website in the future.

Agenda Item 11 Federation of State Medical Boards Update

Ms. Chang began by sharing several projects that the foundation, which was endowed by the Federation of State Medical Boards, is working on. One is a small project that was funded with the state of Washington's Medical Board. It is no longer under the Department of Health and Human Services and reports directly to the Governor. It needed to justify its existence and whether it is doing a good job or not. The final evaluation stage is the project that the foundation is doing.

The other project is still in the discussion stage and pertains to the scope of practice. It is a best practice evaluation and education piece for investigators and will be a joint project among four

states.

Ms. Chang described the Federation's upcoming 100 year celebration and annual conference in April. The conference will be held in Dallas and consists of various education topics. Ms. Chang and Ms. Yaroslavsky will be attending and all board members were encouraged to attend.

Ms. Whitney updated the Board on a number of things that staff is working on with the Federation. Ms. Whitney participated on the workgroup to define minimal data sets. The final meeting was on Tuesday, January 31, 2012, and discussed comments provided from the other boards on the document developed by the committee. This report will now go to the Federation Board, the Reference Committee, and it will be presented at the full membership meeting in April. Over the past few months, several teleconference meetings were held with the Federation staff regarding the new USMLE validation process that may hold up the release of some scores for physicians. California Program directors have been notified and the MBC is working very closely with Federation staff to monitor this so all who need licensure by July 1, 2012, will have their scores in plenty of time.

Ms. Whitney also reported that on January 25, 2012, the staff at the Board participated in a webinar presented by the Federation regarding a proposal similar to national licensure. The Board will continue to track this issue and continue to report back to the Board members. The Board has assigned a manager to track the Federation pilot project on maintenance of licensure and will provide updates at future licensing committee meetings. This will include tracking what ABMS is doing regarding maintenance of certification too.

The Federation's foundation is surveying boards regarding members and staff being targets of violence. Results will be shared with the Board in the future. Other reports being completed by the Federation staff for presentation at the annual meeting are: a report on physician re-entry into the practice of medicine; guidelines to physicians and state boards on the use of social media; and, a report on the composite action index and summary of state board actions. (This is the summary that is put out each year on statistics from all the various boards.)

Dr. Levine inquired in terms of the issue of physician reentry into practice and asked if the Board or the Federation have any sense of the size or scope of what that population is, and, how often does this come up.

Ms. Whitney replied that it is obviously coming up more frequently than it has in the past. The size of the issue is unknown and different states are reacting differently. Ms. Whitney gave an example from the disciplinary guidelines: if someone has been out of practice for 18 months, then he/she would have to take some remediation courses in order to reenter the practice of medicine. If someone has not renewed his or her license for up to five years, there is no examination whether that person has been practicing or not during the five years. Those are looked at on a case by case basis and may require different types of remediation. Some states require that physicians who have been out of practice for two years, have to take certain remediation. States are a little bit different and no one has put together the actual number of individuals the states are talking about but, the Federation is trying to bring all of this material together so the states are not acting independently; and have a sense of what the other states are doing; and how they are addressing the reentry issue. This process is looking at how ABMS is dealing with recertification because that has to be factored into the problem.

Ms. Chang commented that there is possibly a visitor from the Arizona board and liaison of the Federation that will attend the next Board meeting and the Board could suggest that they provide a presentation on reentry.

Agenda Item 12 Health Professions Education Foundation Update
Dr. Duruisseau made a comment about how impressed he has been by the testimonies given by the participants who are receiving the loan repayment program awards. The work that these individuals are doing in underserved communities is very impactful. Dr. Duruisseau shared that it might be useful for the Board to at least hear some of these compelling and compassionate testimonies given by these individuals and how the work they are doing is related to access to care.

Ms. Yaroslavsky agreed with Dr. Duruisseau's comments. Dr. GnanaDev spoke that usually if physicians stay in a community for three to four years, they will remain there permanently. He requested staff to provide statistics to examine the percentage of these physicians staying in these underserved communities even after the loan repayment program is over.

Agenda Item 13 Board Member Communications with Interested Parties
No interested party communications were reported by members.

Agenda Item 14 President's Report
During the past quarter, Ms. Yaroslavsky participated in three DCA board president calls. These calls include the various Board presidents and the Executive Officers of DCA to discuss issues of common concern. It is a learning experience and an opportunity to have a voice at the table and be in partnership with DCA, under the leadership of this Governor and his staff.

Ms. Yaroslavsky also continues to have a weekly call with Board Executive Staff. These calls provide an opportunity to review information and stay on top of all aspects that affect the Board from licensing and statistics to enforcement and legislation.

Ms. Yaroslavsky reported that she attended the December 14, 2012 Board staff holiday party. It was apparent that everyone seemed to have a wonderful time. The organizational skill of the staff is totally amazing. Their support and engagement indicates their teambuilding abilities. On January 20, 2012, Ms. Yaroslavsky participated in an orientation with the new Board members in Sacramento. She thanked Ms. Whitney and her staff for the excellent work that was put forth. It was so informative that Ms. Yaroslavsky recommends that Board members should have the opportunity to go through an orientation such as this on a regular basis.

Agenda Item 15 Executive Director's Report
A. Staffing and Administrative Update
Ms. Whitney announced the appointment of Tim Einer, the new Administrative Assistant. With this hiring, it will be Cheryl Thompson's last Board meeting. Ms. Whitney thanked Ms. Thompson for a job very well done. In December, the new Public Information Officer, Dan Wood was hired. Mr. Wood has 30 years experience in journalism and television broadcasting and has already made an impact on the Newsletter. Letitia Robinson has been hired as the Research Program Specialist to replace Janie Cordray. Ms. Cordray will continue working on special projects and for historical reference. Ms. Robinson is a former manager in the licensing

unit. She will focus her efforts on the VEP evaluation, various statistical analyses and preparing the sunset review report that will be due in the fall of 2012.

In early December, Ms. Herold, the Executive Officer of the Board of Pharmacy, invited Ms. Whitney and Ms. Simoes to attend the California Endowment Shareholder Group on improving prescription medication labeling. Ms. Herold has provided a great service to the Board to ensure that it is at the table and participating in the information regarding improving prescription medication labeling. This information will eventually be shared with the Board physicians in the Newsletters and on the website.

On January 12, 2012, the National Practitioner DataBank staff provided an excellent all day training session to the Board and DCA staff. There were over 60 people in attendance including several from the AG's office and from Kaiser. Ms. Whitney thanked Ms. Kirchmeyer for taking the lead and setting up this training.

On January 18, 2012, Ms. Whitney and Ms. Kirchmeyer met with representatives from Consumers Union; they requested broader webcasting of Board meetings to include committees which had already been planned for this meeting. They requested that Board meetings be available via teleconferencing. This is a legal matter and has been referred to DCA Legal Office. They also made a number of suggestions for improving the website and brochures regarding clarity on the statute of limitations. They asked questions about the implementation of SB100 and information that would be posted on the website. Ms. Whitney advised them that a written response would be provided to these items after the Board meeting.

Ms. Whitney reported that on January 20, 2012, the two new Board members came to the Board headquarters to receive orientation from executive staff and various managers in the licensing and enforcement sections. They will still need to go through DCA orientation.

On January 23, 2012, staff met with the AG's office regarding information systems referred to as CMS and worked on additional details to get the data needs to the Board for VEP evaluation. Staff hope to have the data in the very near future so it can be compared with some of the analysis that was done in the Ben Frank Report and recommendations that were there.

Ms. Whitney discussed that she and the new DCA Deputy Director Ms. Everhart, met on January 24, 2012 and will have a meeting with the new Director and Chief Deputy Director by the end of February.

Deputy Director Kimberly Kirchmeyer added several more administrative updates. Ms. Kirchmeyer mentioned that most of the Board members have been receiving their Board information via a thumb drive or USB. It is now being considered to have these items sent via email to the members via their Board email account. This suggestion was enthusiastically received by several members. Ms. Kirchmeyer said that she would look into implementing this with the Information Services Branch (ISB).

Ms. Kirchmeyer also wanted to let the members know that the Board has been working with both the Department of Healthcare Services and the Centers for Medicare and Medicaid Services to notify physicians of two opportunities to receive funding for electronic health records. An email blast was sent to physicians notifying them of this program and its deadline for application. The

Board also partnered with the University of CA at San Francisco (UCSF) to assist the Department of Healthcare Services in being able to provide a base line or a starting point for the use of EHR's statewide. The UCSF drafted a survey that was sent out to physicians along with their renewal notice from the Board. The information gathered from this survey by UCSF is being used to draft a report for the department. The Department of Healthcare Services and UCSF may wish to present to the Board at a future meeting on this report. The Board is also working with the centers for Medicare and Medicaid services for their Medicare EHR incentive program. An email blast will be sent to all physicians in the future on this program and its application deadlines too. Both of these programs are important to physicians and the public and the Board is happy to partner with these sister agencies. As information is received on these programs, it will be provided to the board. There will also be links on the website providing information for these programs as well as putting articles in the newsletter on the programs and the deadlines.

Moving onto the staffing update Ms. Kirchmeyer, reported that since the last board meeting the hiring freeze has been lifted. It has been possible to advertise, interview and hire individuals for positions. At the last Board meeting it was reported that the Board had 71 vacancies that included the CPEI positions. At the end of January, the Board had 51 vacancies including the CPEI positions and of those 51 vacancies there are approximately 14 individuals either awaiting a background investigation or confirmation of eligibility. There are also three future vacancies occurring from staff transferring to other agencies. 51 vacancies equates to an 18% vacancy rate compared to 25% at the last board meeting. If the CPEI positions are removed from those figures, there is actually about a 13% vacancy rate.

B. Budget Overview

Ms. Kirchmeyer continued with an overview of the budget. The first item discussed was the Board's fund condition. The Governor's budget included the reestablishment of six positions for operations safe medicine however, the funding for these positions was not approved and the board will therefore have to absorb the costs of the unit within its existing budget.

The BreEZe project was also included in the Governor's budget for a one time augmentation of $1.278 million in fiscal year 12/13.

Ms. Whitney and Ms. Kirchmeyer will be reviewing the Board's budget to ensure that the Board can absorb the costs for the operation safe medicine in the future and if necessary may again put forward a request for the funding for these positions. Additionally, based upon future workload for this unit staff may be requesting position authority and funding for a Northern California unit as well.

If the Board spends as planned, it will be within its statutory mandate of less than four months reserve at the end of fiscal year 2011/2012 and in the middle of the mandate in fiscal year 2012/2013. This is important to note because as reported at the last meeting, the Bureau of State Audits is monitoring the Board's fund condition to see if it is within the statutory mandate of 2-4 months. Also, as reported at the last meeting the Board did respond to the Bureau of State Audits regarding its recommendation that the Board consider reducing licensing fees in order to not exceed its mandate. The Bureau has released its report on recommendations not fully implemented for all state agencies and included the Board's response in this report. The Board's response indicated that at this time, the Board is projected to be at the mandated level at the end

of this fiscal year and projected to be even lower in the following fiscal years. The response stated that it would not be prudent for the Board to consider a reduction at this time. Based upon the Board's response and the Bureau's review the Bureau stated in its report that its assessment was that the Board will not implement this recommendation. The Board staff continues to review its fund condition to determine if fees need to be reduced, but if the Board continues this plan, it will be within the mandate by fiscal year 12/13.

Dr. Salomonson inquired if the 2013/2014 reserves were down, would there be a possibility of recouping the Board's loan.

Ms. Kirchmeyer explained that based on the fund conditions, when the Board is at the point where it is going to be without sufficient funding to continue the program, DCA would request from the Department of Finance the refund or repayment of the loan. The statute actually states that you cannot go through the process of increasing licensing fees until the money is recouped into the Board's fund.

Ms. Kirchmeyer reminded the members of the legislation which changed the Board's reserve mandate from two months to between two and four months. It also included a requirement that the Department of Finance Office of State Audits and Evaluations perform a preliminary review of the Board's financial status "including but not limited to its projection related to expenses, revenues, and reserves and the impact of the loan from the contingent fund of the Board to the general fund made pursuant to the budget act of 2008." This review is to be completed by June 1, 2012. Beginning on January 17, 2012, the auditors from the Department of Finance started reviewing the budget documents from the Board. They have met with DCA and reviewed all of their documents. They came to the Board on January 20, 2012 and began reviewing Board specific documents and interviewing staff. They have met with Ms. Whitney, budget analysts Debbie Titus and Tamiko Heim and Ms. Kirchmeyer. They are looking at how the Board reviews the budget documents and makes projections on revenue and expenditures. Ms. Kirchmeyer will continue to update the Board members as more information from these auditors is received and she will also provide the Board with a copy of the final report.

Ms. Kirchmeyer also addressed the budget bill. Because the Board has a budget change proposal for operation safe medicine, it will be following this bill and may be required to testify at budget hearings regarding this unit. The hope is that this bill goes through as planned and the Board will receive final approval for operation safe medicine for fiscal year 2012/2013 and ongoing.

Also presented were the Board's actual expenditures as of November 30, 2011. The Board has stayed on target for this time of year and there is nothing that raises concerns. Ms. Kirchmeyer did make the Board aware that there will be a request forthcoming for video conferencing equipment for three field offices as well as for the Headquarters office. It is believed that this will allow and provide better training and more meetings for the field as well as opportunities for meetings with other departments located throughout the state. The documentation is being prepared for review by the DCA. Ms. Kirchmeyer thanked Dr. Low for his suggestion on this idea and his support on that item as well.

Ms. Kirchmeyer reminded Board members that is important for them to submit their travel claims and work hours in a timely manner. This will assist the Board in monitoring its spending and also ensure that accurate reports are produced for the meetings.

C. BreEZe Update

Ms. Kirchmeyer reported the BreEZe vendor began on the project in late September and is in full swing at this time. Board staff has been very involved in this project. The ISB unit has approximately six staff involved in different aspects of this project. Additionally, seven staff members have been identified that will be trained on the system and will be able to provide training for all Board staff as well as training for boards and bureaus for DCA. DCA has hired a new chief information officer, Amy Cox-O'Farrell and she came from the CSLB, where she was head of its IT unit. The BreEZe system is scheduled to be implemented in the fall of 2012. The Board will be working on communication plans for licensees, interested parties, and the public on this new system. Staff is planning on providing a complete presentation at the July Board meeting.

D. FISMA Update

Ms. Kirchmeyer reminded members of a request from DCA to identify the most significant risks to the Board. The request was based upon the Financial Integrity and State Managers Accountability act known as FISMA. The definition of risk was defined as those objects or impediments that stand in the way of achieving the Board's goals and objectives. The four top risks identified include: staff resources, enforcement, BreEZe implementation and appropriate budget funding. The report was submitted to the Department of Finance by DCA.

Agenda Item 16 Special Faculty Permit Review Committee Update and Consideration of Applicant

Ms. Yaroslavsky announced that this item was pulled from the agenda as there were no special faculty permits for review.

Agenda Item 18 Licensing Chief's Report

Mr. Worden reported that the Special Faculty Permit Review Committee meeting was held on Jan 23, 2012. One applicant was presented but the committee decided to request additional information. There is currently one application for Specialty Board Application and that is awaiting response from the board.

Polysomnography program regulations become effective on Feb 18, 2012. Work continues on implementing the new program with website information, notifications to interested parties, and procedures for processing the applications.

The implementation of AB1424 has been added to the Board website homepage, licensee page, and the applicant page. AB1424 pertains to individuals who have over $100,000 in delinquent taxes. The tax delinquency will result in the denial of application for licensure or the suspension of license or certification.

A. Staffing

Mr. Worden thanked all of the licensing staff. They are continuing to do an excellent job. They have maintained processing goals for almost every week. Licensing currently has five vacancies. Approximately 25% of licensing staff are in various stages of training for their positions. Even though vacancies have been significantly reduced there is still a great deal of training going on and that equates to staff not working at their full capability at this time.

Dr. Salomonson inquired for clarification of the increased responsibilities regarding outpatient surgery centers and if that position had been budgeted.

Mr. Worden stated that this is part of the midwifery analyst position. Currently Mr. Worden, Mr. Salgado, and Ms. Robinson are working with the ISB staff to develop a system that will be on the website with all the information. The required information the outpatient surgery centers will submit will be provided electronically.

Dr. Salomonson inquired if this is an unfunded mandate or if outpatient surgery centers pay a fee to be listed.

Mr. Worden explained that outpatient surgery centers pay a fee to the accreditation agency. The Board requires a $5,000 application fee from a potential accreditation agency and they pay $100 per facility at renewal every three years.

B. Program Statistics

Mr. Worden provided program statistics. In the second quarter for the fiscal year, the Board received 1,666 physician and surgeon applications. 1,689 physician and surgeon applications were reviewed, this included PTALs. There are a total of 4,225 pending physician and surgeon applications, of those 3,530 have been reviewed, 795 are pending review, and 1,203 physician and surgeon licenses were issued this quarter.

There were 121 pending applications for senior staff review. Per the request of the Chair of Licensing a breakdown of the senior review categories was provided.

For the physician and surgeon application data for January 7, 2012, the initial review for US files was actually 50 days. Last year at that time it was 30 and for the IMG files it was 33. The pending mail was seven for US and IMG. Currently the US files are at 42 days for initial review and IMG files are at 29. Pending mail is at seven and seven for both US and IMG.

C. Status of International Medical School Program

Mr. Worden explained that charts provided to the members have been revised to include: schools that have requested recognition; and, schools where the Board has received an application or PTAL, where the medical school is not on the Board's recognized list and applicants have requested the Board to evaluate their school for recognition. This list includes international medical schools applying for recognition pursuant to either CA Code of Regulations §1314.1 (a)(1) or §1314.1(a)(2). At the time these statistics were compiled, there were 75 international medical schools on this list. With an analyst finally assigned after a year vacancy, this process will be able to move along at a quicker pace. Several schools have applied and are in the process of the review and have been on hold for over a year. Two of those are schools that are applying for their A2 recognition.

Ms. Yaroslavsky thanked Mr. Worden and his staff and wanted the entire Board to recognize the efforts of the entire licensing unit.

Dr. Levine told Mr. Worden how much she appreciated the frequent emails that are sent to the Board members to keep them updated and apprised of their progress.

Agenda Item 19 Licensing Outreach/Education Report

Mr. Schunke clarified that all state agencies are still subject to the Governor's executive order regarding restrictions on travel. Starting in February, Mr. Schunke will begin the 2012 outreach to the teaching hospitals in California. Currently there are 14 trips that have been approved that cover about 20 primary teaching hospitals and the affiliated hospitals. In recognizing and in trying to adhere to the spirit travel restrictions, Mr. Schunke is trying to condense and combine as many visits to teaching hospitals in one area as he can.

In December the Board sent out about 1,000 letters to all the program directors and to the GME offices and to the designated institutional officers in California. This letter offered the Board's services for applicants. The matrix is for residents that are coming up to a licensing deadline at the end of their training year when they must be licensed. The letter not only encouraged them to get in contact with the Board and to provide the names but, to use the Board as a resource.

Several hospitals have contacted the Board for the first time. Coincidently, the first initial contact has been made with Arrowhead Regional Medical Center, coinciding with Dr. GnanaDev's appointment with the Board. .

Mr. Schunke has been in frequent contact with City of Hope down in the Los Angeles area. He has never had the opportunity to go visit them but plans to go during his visit to the UCLA Olive View Center in the San Gabriel Valley.

A license fair will be conducted for the first time at Cedars Sinai Hospital. When traveling down to UCSF in Fresno, he will be making several stops at some of the other locations in the Central Valley. This will not only save costs but it is an opportunity to expand outreach.

Also with the encouragement of individual members on the Board and Ms. Whitney, Mr. Schunke is starting to increase his outreach to the hospital recruiters as they hire new staff members at the hospital to try and discourage them from hiring new staff to start in the summer when the Board is really focused on getting the residents licensed in a timely manner.

As mentioned, the matrix for 2012 is being created. Last year there were almost 2,000 names on it. Mr. Schunke anticipates the matrix to be smaller this year because Mr. Worden and his staff have been so efficient. In fact, one of the teaching hospitals surprised him when it responded that all of its residents already were licensed by December.

Dr. GnanaDev thanked Mr. Schunke for his outreach efforts. He suggested that perhaps Mr. Schunke could see about providing training to the staff at the GME and DIO offices. They will be the surrogates when it comes to the residents and the Board could educate them on the licensing process.

Agenda Item 20 Midwifery Advisory Council Update

A. Licensed Midwife Update

Karen Ehrlich, L.M. introduced Carrie Sparrevohn, L.M. to the Board. Ms. Ehrlich informed the Board that this would be her last report as Chair of the MAC as Ms. Sparrevohn had been elected Chair of the MAC and she would be moving to the Vice-Chair position for the next term.

At the last MAC meeting on Dec 13, 2012, the MAC discussed ACOG's new position statement

on collaboration between OB/GYN's and Certified Nurse Midwives and Licensed Midwives. She is hopeful that this might help to change the climate for the licensed midwives in California and is very happy to see that collaborative care statement coming forward.

Ms. Ehrlich reported that there had been a discussion about modifying the MAC membership. She wanted the Board to clearly know that the MAC wants and needs physician input on the council. One of the slots on the council should remain as an obstetrician licensed by the Board. There is also a preference that the second slot be potentially filled by a consumer of midwifery services.

There will also be some regulations that are going to be proposed to the Board. One pertains to appropriate levels of supervision of midwives and essentially will move into a realm that more resembles collaboration. Another will be to finally authorize licensed midwives to be able to use the tools of their trade like ordering lab work, ordering ultrasounds and being able to purchase medications and oxygen that are necessary for the well being and safe keeping of mothers and babies.

Ms. Ehrlich stated the midwives will soon be moving into the fifth year of statistical reporting. There has been some difficulties associated with it and the council will study the reporting through the Midwives Alliance of North America. This Program is prospective and all data is reviewed by the staff and validated. It is believed that by having prospective data it would be clearly understood the work that is being provided by the midwives. Ms. Ehrlich wished to repeat what was stated at the Board meeting last fall that the four years that have already been reported shows that the midwives are doing good work in California.

Carrie Sparrevohn, L.M., introduced herself to the Board. She stated she is looking forward to chairing the MAC. Ms. Sparrevohn informed the members that she has been licensed since the first group of midwives were licensed in 1996-1997. She currently holds a different position in her community than a lot of licensed midwives as she works in a private physician office but is not attending any births.

B. Discussion and Consideration of the Following Regulatory Proposals

1) Section 1379.23 – Physician Supervision and Collaborative Relationship

Curt Worden provided background on this agenda item. The MAC has requested the Board to direct staff to set the matter of defining the appropriate level of physician supervision of licensed midwives for regulatory hearing. Mr. Worden described that staff has drafted a potential solution which is physician collaboration. The next step is to request the Board to consider the draft language and to authorize the staff to hold an interested parties meeting so that input is provided to see what would need to be modified or make it acceptable and actually useful for the midwives. If the regulation process is started without an interested party forum, it will become a more lengthy process.

Kurt Heppler reminded the members that this is an administrative board and that civil liability is not its forte and this is left to the judicial system. Administrative discipline is the forte of this Board and it takes action based upon the parameter of public protection.

Dr. Duruisseau made a motion that given the Board's prior unsuccessful attempts to develop regulations on the appropriate level of physician supervision of licensed midwives and the widely divergent opinions of interested parties, staff is directed to schedule an interested parties meeting to discuss concerns and issues. The issues and concerns brought forth at the meeting could then be summarized and analyzed by staff and brought back to the Board or MAC for further discussion and consideration. To the extent practicable, resolving issues prior to commencing the formal rulemaking process may lead to a more successful effort; s/Chang.

Ms. Yaroslavsky called for public comment for this agenda item.

Shannon Smith-Crowley representing American Congress of OB/GYN's in California, stated that some progress is being made and they are at the point and time where they have enough people that they can really bring something to the table in terms of an interested party meeting. Some liability carriers, including the University of CA, a self funded or self insured entity, and UCSF are specifically looking at work force and the roles of different types of providers. She would be very happy to work with the Board in identifying some of these interested parties. She believes that it would not solve everything but the single biggest barrier is the liability coverage, and her organization supports the interested party meeting.

Julie D'Angelo Fellmeth, from CPIL suggested that if an insurance company is refusing to cover an activity of a physician, which is mandated by law, that staff approach Insurance Commissioner, Dave Jones. The Insurance Commissioner has the authority to hold hearings on this issue of the insurance industry refusing to cover this activity or refusing to cut off physicians who provide supervision. The MBC is recommended to bring the Insurance Commissioner into this conversation.

Ryan Spencer with CMA stated that the CMA wanted to officially support how very important physician supervision is in terms of patient safety particularly when there are medical complications. If the Board does decide to move forward with this action, the CMA would like to be a part of the group.

Faith Gibson, L.M. provided background history for the Board, in the years before the passage of the LMPA. She appreciates the concept of the conversation about the safety of the patient however there has not been any supervision available where she lives. Ms. Gibson stated that there are zero people who are willing to participate. She shared that she remembered years ago when she was a labor and delivery room nurse and when she and the obstetricians were on the same side. They were once a team and now it could not be worse.

Ms. Yaroslavsky called for the vote. Motion carried.

The Board returned to agenda item 17.

Agenda Item 17 Presentation: California's Health Care Workforce – Are We Ready for the Affordable Care Act?

Catherine Dower, J.D., the Associate Director for Research at the UCSF Center for the Health Professions provided a presentation for the Board entitled: California's Heath Care Workforce – Are we Ready for the Affordable Care Act (ACA)?

Ms. Dower informed the Board that the Center for the Health Professionals team had put together a report regarding California's health care workforce readiness for the ACA era. This report is available in two formats. One is a book and the other is smaller issue brief. These reports are available at the website: www.futurehealth.ucsf.edu

The key point that Ms. Dower wished to share with the Board is that the health workforce is a major part of the labor sector. It was the only labor sector that grew during the economic recession. Continued growth is expected. It is estimated that 5 million jobs in healthcare will be the driving component of the job creation in the next decade. California is expected to see about 10% of that so about 500,000 more people employed in healthcare in the next eight years. One of the biggest issues facing the state of California is the significant misdistribution of practitioners not practicing equally in all areas of the state. With the growing population, more diverse population, and the aging population, the ACA implementation will strain primary care providers first.

Ms. Dower's full slideshow presentation is available on the MBC website under agenda item 17.

Ms. Yaroslavsky thanked Ms. Dower for her insightful presentation and asked that the meeting continue with the agenda item prior to the guest speaker.

Agenda Item 20 Midwifery Advisory Council Update
B. Discussion and Consideration of the Following Regulatory Proposals
2) Section 1379.24 – Midwifery Practice: Tests, Drugs, and Devices

Kurt Heppler discussed that this item is presented in an attempt to address a dichotomy in the regulations that talk about the educational requirements for a licensed midwife with no corresponding reference to the tools and implements that may be used in the that practice. This attempts to rectify that inconsistency.

Ms. Scuri further clarified that this is an attempt to help remove some of the other barriers to practice that occur if licensed midwives cannot get the supplies because the law or the regulations don't specifically say that they may utilize these materials.

Ms. Chang made a motion that the Board set for regulatory hearing the adoption of Section 1379.24 in Chapter 24 of Division 13, Title 16 California Code of Regulations, along with any edits or additional provisions that the Board may suggest for inclusion in the regulation; s/Levine.

Dr. Diego asked if the Board knew why they were having a hard time getting the supplies.

Ms. Yaroslavsky requested that Ms. Sparravohn and Ms. Ehrlich come forward to answer the question.

Ms. Sparravohn stated in response to this question that there is no provision to date that allows a licensed midwife to obtain things that are normally obtained by a written prescription from a physician and that includes oxygen, other devices and drugs.

Faith Gibson provided public comment that currently they are doing a workaround. Some

midwives will, for example, order Pitocin from Washington state. If there was a supervising physician, all of these things would be handled through the aperture of the supervising physician.

Dr Bishop asked Mr. Heppler if there were any of the other allied health professionals in California legally able to obtain to prescription drugs such as Nurse Practitioners or Physician Assistants.

Mr. Heppler replied that he is counsel to the Physician Assistant Committee and they are able to obtain them through drug orders and obtained with proper delegation of services agreement between the supervising physician and the physician assistant.

Ms. Scuri provided additional background that physician assistants and nurse practitioners, when they are utilizing drug orders, do have a supervising physician but then they are usually performing medical tasks. Midwifery is a separate type of practice that is not a part of medicine. It is hard to comprehend, but that is the way it is setup in the law. This proposal does not allow unfettered access. It is the authority, limited to the practice of midwifery, to obtain and administer these particular drugs, agents, diagnostic tests and services which they are in fact trained to use in their three year program.

Yvonne Choong from the CMA provided public comment. Ms. Choong made a suggestion that since this current topic is tied to supervision and an interested parties meeting is going to held related to the previous proposed regulations, perhaps this item should be considered in the interested parties meeting as well.

Carlos Ramirez from the Attorney General's office stated that perhaps he would offer the assistance of his office in perhaps drafting a formal or informal opinion as to whether this regulation either expands or merely complements the practice of midwifery. Perhaps some of the questions that have been presented by the board members could be addressed in that context.

Ms. Yaroslavsky thanked Mr. Ramirez for this offer and suggested that staff work together and examine if they can utilize these services.

After much debate from the Board Members Dr. Low stated that he thought that a regulatory hearing on this issue is premature. There are too many definitions and issues that are yet undefined. He proposed that there be a workgroup of interested parties who will lay a foundation for the Board. Everything would be presented and all the definitions explained to the Board and what the training entails that they go through. If this workgroup can present it to the Board in an organized fashion then they can more intelligently make a decision with proceeding with a hearing.

Ms. Chang made a motion to amend the original motion and to send this item back for an interested parties meeting with issues to be addressed and then brought before the Board before a regulatory hearing is set; s/Levine; motion carried.

C. Consideration of Proposal to Modify Appointment Process to the Council

Curt Worden advised the Board that there are currently two vacancies on the MAC due to resignations. Prior to this, the Board had authorized the MAC to check into the expansion of its membership. The MAC would still like to have an OB/GYN but would also like to have a non

board licensee as well. The public member would be a consumer that has been a user of the midwifery services.

Ms. Whitney advised that in the past when the MAC had a vacancy coming up staff would send out notices, MAC would select individuals and bring them back to the Board for approval. There has never been an instance where the Board has not approved a recommendation from the council. In this particular case, there are two vacancies so there are only four members of the council and no physician member. The MAC is asking to be allowed to move ahead through the process of finding two individuals to sit on the council one being a physician and one being a public member. They would be selected and seated at the March meeting before this Board confirms them as members. The question that has to be resolved is if the Board would want to delegate that to the MAC. Or, it could come back come back before the Board in May for confirmation having authorized those two individuals to sit in the MAC meeting in March.

Dr. Levine made a motion asking staff to work with the MAC to send out a notice to recruit members as described, that they be invited to sit with the council in the March meeting and the Board formally approve them in May; s/Duruisseau; motion carried.

Dr. Low requested to make an addendum to his Enforcement Committee report earlier in the meeting. He stated that it is his hope that the enforcement leadership at the Board would have the ability to hold a training session for the expert review course and invite their investigators to that meeting and also that the investigators be allowed to be invited to the other meetings that they hold throughout the state. He requested from the Board to know if this would be possible.

Ms. Yaroslavsky clarified if he was asking for a motion or just adding it as a point of information.

Dr. Low stated that he wanted to be sure that the Board has the authority to accomplish this and this would be mission critical for the enforcement program.

Ms. Whitney responded that staff will take his direction.

Agenda Item 21 Enforcement Chief's Report

A. Approval of Orders Following Completion of Probation and Orders for License Surrender

Ms. Threadgill requested approval for 15 orders restoring license to clear status following completion of probation and five orders for license surrender during probation or administrative action.

Dr. GnanaDev made a motion to approve the orders; s/Bishop; motion carried.

B. Expert Utilization Report

Ms. Threadgill reported that the District Offices used 450 experts in 2011 to review 786 cases and the total active list of experts as of January 3, 2012 is 1,172.

C. Enforcement Program Update

The Enforcement Program is currently focusing on reducing the time for the following data markers:

- Average days from request to receipt of medical records
- Average days from request to completion of physician interview
- Average days from request to receipt of expert opinion

The Enforcement Program anticipates improvement as a result of policy changes and legislation implemented to encourage cooperation. During the Enforcement subcommittee meeting Dr. Low suggested staff reduce the amount of time experts are allowed to review a case, which is something that staff are implementing. Instead of 30 days, the program is directing experts to review non-voluminous cases within 15 days.

This quarter has been extremely busy concentrating on filling Investigator and Supervising Investigator vacancies. As soon as the freeze was lifted, Enforcement staff immediately began conducting interviews and selecting candidates for background investigations. Enforcement staff identified seventeen candidates, nine of whom were from the Department of Justice and in jeopardy of being laid off. Because the DOJ candidates were in such high demand and numerous agencies were competing for these candidates (Dept of Insurance, Dept of Alcoholic Beverage Control), Board staff expedited the backgrounds. Unfortunately, after the backgrounds were nearly completed and staff were awaiting authority from the State Personnel Board to hire, four of the candidates withdrew from the background process because their jobs were saved at the Department of Justice. The program is interviewing again. Unfortunately, most of the candidates who are now being identified will require the 16-week academy whereas the agents did not. The current vacancy rate for investigators in 17% however, when the number of vacancies is adjusted to reflect those investigators in background the rate is 4%. The current vacancy rate for Enforcement Supervisors is 25%. The program has had difficulty filling three supervising investigator vacancies and is optimistic there will be more viable candidates as a new supervising investigator list will be available around the second week of February.

The Enforcement section has had significant investigative activity this quarter with unlicensed practice of medicine cases. The San Jose District Office led the investigation of an unlicensed individual who was performing liposuction in his home. Investigators served a search warrant early in the morning and the suspect was apprehended and arrested as he tried to flee out the back door. He is being held on $750,000 bond.

Operation Safe Medicine has also been extremely busy arresting unlicensed practitioners. During January, an investigator unwittingly walked in on a subject who was performing a hemorrhoidectomy. The subject was arrested and the patient was taken to a local emergency room.

A productive meeting was conducted with the Supervising Deputy Attorneys General, area Supervisors, Susan Cady, Laura Sweet and Renee Threadgill, where numerous issues were resolved. The program has disseminated the revised Vertical Enforcement Guidelines to staff. Thanks and much appreciation goes to Deputy Chief Laura Sweet and Supervising Deputy Attorney General, Tom Lazar for their work on this project. The program was able to schedule quarterly meetings for the remainder of this year and the beginning of next. As Dr. Low reported, the program has worked out a system to reconcile statistics with the Office of the Attorney General at both the district office level and the disciplinary coordination unit level. At the beginning of the year, program records reflected 118 cases that had been referred to the AG's office for more than 60 days and not filed. As of this report, only 27 remain over 60 days.

Despite investigator vacancies, staff has managed to reduce case aging by 31 days since this same time last year and by 71 days since the same time fiscal year 09/10. As the travel restriction eases, Deputy Chief Laura Sweet and Ms. Threadgill will resume the very successful aged case council to develop plans to quickly resolve troublesome cases that have aged.

Ms. Threadgill reported that at the last Board meeting she would be tracking the status of how the new law requiring contracts of all experts impacted the enforcement program. She is pleased to report that due to the effort of Susan Goetzinger, with assistance from CCU staff, 1207 contracts were sent out between December 27, 2011 and January 23, 2012. As of this Monday, 376 contracts were in place and more are being received daily.

The 11th edition of the Model Disciplinary Guidelines, were approved by the Office of Administrative Law and became effective on January 11, 2011. They are now available online and Ms. Threadgill provided the Board with soft copies. There are hard copies for them to reference as well. She thanked Susan Cady for her work to get these regulations approved.

The Central Complaint Unit underwent an audit by DCA which they passed successfully. The auditors will be invited to present the results of the entire DCA Enforcement audit during the July enforcement committee meeting.

The CURES program is undergoing some significant changes as a result of Department of Justice staffing cuts. CURES is the Controlled Substances Utilization and Review program within the Department of Justice that provides data upon which the enforcement program relies to investigate prescribing trends of physicians. Susan Cady met with DOJ staff and learned that the responsibility for the CURES program has been transferred to the Bureau of Criminal Identification and Investigative Services, but all previous staff were eliminated. At the present time, staff has been redirected from other units to provide support to CURES. The redirected staff has been successful in eliminating the backlog of applications for access to the system. These applicants are usually physicians or pharmacists attempting to determine if patients are doctor shopping or are heeding physician instructions regarding controlled medications. The CURES program has updated its website. http://ad.ca.gov/bne/cures.php.

The Enforcement Program's ability to access ad-hoc reports was lost more than six months ago, so the administrator is committed to working with the program to re-activate access to CURES data. At this point in time, DOJ staff is trying to restore the program as much as possible, but will more than likely need outside support from the Board, the Board of Pharmacy and other interested parties in its efforts to obtain permanent staffing for the program.

Staff will begin working with the new Research Program Specialist on Data analysis for the upcoming VEP report and sunset review.

As was discussed yesterday in Enforcement committee, staff is working with OAH to include ALJ perspective in the training to be presented to Expert Reviewers. Staff is also working on scheduling training for Administrative Law Judges pursuant to their listing of training interests.

Dr. GnanaDev asked Ms. Threadgill about the amount of training invested in investigator staff, what is the retention rate. Ms. Threadgill stated that she would need to review that and provide

that number to him.

Agenda Item 22 Vertical Enforcement Program Report

A. Status on Statistics

Mr. Carlos Ramirez began by thanking Dr, Low for his leadership on the enforcement committee and especially for his leadership in getting the data case reconciliation project started. This is a project that has been needed for quite some time he is glad it is on its way now. On Jan 23, 2012, AG staff and CMS staff met with Executive Director Linda Whitney and her executive staff and presented the three reports that have previously been requested from DOJ. Those have been delivered to the Board. Following that meeting, Board staff requested additional reports from CMS. Some of those can be readily accumulated and presented, while others may take a little more time but they are going to work on those as fast as they can.

B. HQE Organization and Staffing

With the result of two retirements, there are two vacancies in San Diego. One more deputy has been added to the Sacramento office to accommodate the work that has been transferred by the staff at the Board office.

Agenda Item 23 Legislation/Regulation

A. 2012 Legislation

Jennifer Simoes, Chief of Legislation, announced that the new 2012 law books are now in print and will be sent to the Board. This law book will have the changes that were made last year through legislation.

Board Sponsored Bill:

- **AB 1533** (Mitchell) UCLA IMG Pilot Program

  This bill is being co-sponsored by the Board with the University of California (UCLA). It would authorize a pilot for the UCLA international medical graduate (IMG) program. The bill proposes to allow program participants to engage in supervised patient care activities in this pilot program for up to six weeks. It allows individuals to get clinical training as a pilot part of that program and all training would occur with supervision provided by licensed physicians. The bill also requests the UC to prepare a report to the Board and the legislature after the pilot program has been operative for five years it includes specified information and also includes the potential for retention or expansion of the pilot program.

  The bill sunsets the pilot program on January 1, 2019. It will likely be heard in policy committee in March.

- **Omnibus**

  All of the other sponsored proposals were approved by the Board at the last board meeting and have been approved to be included in the senate omnibus bill.

  - **Non-Practice License Status – Authority to Impose Discipline** – The Board recently lost a court case related to taking disciplinary action against a licensee that held a retired license. This bill would make it clear that the Board does have that authority and retains jurisdiction over all licensees, regardless of the status of his or her license.

- **Renewal Notices – Ability to Send via E-Mail** – This will provide the ability to send renewal notices via email if physicians opt to receive their correspondence via email. There will be some language added that the Board must confirm the email addresses every year to ensure that notices are being sent to the correct email account.
- **Licensed Midwives – Retired Licensed Status** – The Board will provide a new provision that will establish a retired licensed status for licensed midwives.

Other Legislation:

- **AB 1548** (Carter) Cosmetic Surgery: Employment of Physicians

This bill is exactly the same as AB 2566 that was vetoed last year. It is sponsored by the American Society of Dermatologic Study (ASDS). The bill would prohibit outpatient cosmetic surgery centers from violating the prohibition of the corporate practice of medicine. Ms. Simoes' recommendation is that the Board takes a support position on this bill.

Ms. Chang made a motion that the Board support AB 1548; s/GnanaDev

Ms. Yaroslavsky called for public comment on this agenda item.

Bryce Docherty, from the American Society for Dermatologic Surgery Association provided public comment for this agenda item. The bill is intended to raise the penalties to go after the corporate entities that are luring in physicians and putting some patients in harm's way. It is believed that this bill gives the tools for a local district to go after unscrupulous corporate behavior. Mr. Docherty requested the Board's support of this bill.

Ms. Yaroslavsky called for the vote. Motion carried.

- **SB 352** (Huff) Chiropractors: Allergies

This bill would prohibit chiropractors from treating allergies, including hypersensitivity to foods, medications, environmental allergens or venoms, with the use of laser therapy. This bill would also prohibit chiropractors from advertising to provide the above listed services.

Ms. Simoes provided background on this item for the purposes of analysis. The Board of Chiropractic Examiners (BCE) has drafted regulations relating to the use of cold laser therapy. BCE's regulations would only allow chiropractors to use the cold lasers for uses approved by the FDA, and specifically prohibit chiropractors from using lasers for specified reasons including but not limited to, laser ablation, surgical procedures and the laser treatment of allergies in cases where there is a known risk of anaphylactic reaction to the individual being treated.

Board staff attended the BCE meeting and asked for inclusion of cosmetic procedures in that list. Board staff and others are seeing a lot of advertisements such as Groupon, for laser-lipo, non-surgical facial lifts things of that nature. It is believed that this would clarify to patients the chiropractic scope of practice.

Dr. GnanaDev made a motion to support this bill if amended to specifically list the things that should not be in a chiropractic scope of practice; s/Chang; motion carried.

- **SB 924** (Price, Walters, and Steinberg) Physical Therapists: Direct Access to Services: Professional Corporations

This bill would add licensed physical therapists to the current list of chiropractors, acupuncturists, naturopathic doctors, occupational therapists, marriage and family therapists and clinical social workers of healing arts practitioners who may be shareholders, officers, directors, or professional employees of a medical or podiatry corporation. This bill would allow a patient to directly access PT services, without being referred by a physician, provided that the treatment is within the scope as long as specified conditions are met. This bill would also require a PT to provide a patient that has directly accessed their PT services to provide a specified written notice, orally and in writing and signed by the patient, before performing PT services.

Ms. Simoes stated that staff suggests an amendment to shorten, or cut in half, the amount of time that a patient can directly see a PT to perhaps 15-30 calendar days or six visits, whichever occurs first.

Ms. Chang made a motion to oppose bill SB 924 unless amended; s/Levine

There was a discussion about the difference of taking an oppose position on a bill versus an oppose unless amended position.

Dr. Levine discussed the policy issue which is under the scope of practice of a physical therapist, their scope does not include making a diagnosis. This direct access to physical therapy is essentially accessing treatment without the establishment of a diagnosis. Much of the time that is probably harmless but from a policy perspective that is exactly what this bill would do. People already have the ability to go to a trainer or massage therapist on their own. The difference of course is insurance coverage. What this bill does is essentially say that physical therapy services for the first 30 days will be covered by insurance in the absence of a diagnosis and that is the policy side. So the choice would be oppose unless amended and the amendment would be to remove the direct access. It is not known if that will happen so alternatively to limit the period of time which patients would have the guarantee of the insurance coverage for the physical therapy visits without the establishment of a diagnosis prior to initiating therapy.

Dr. GnanaDev stated that he does like the position of oppose unless amended. The concern is clearly someone getting "treatment" for 30 calendar days.

Ms. Chang expressed her viewpoint that she would like to see a person go to the doctor first before going to physical therapy.

Ms. Yaroslavsky stated that currently anyone can go for any kind of treatment the issue is with this bill the person could go and have insurance cover it.

Dr. Levine clarified that it is very hard to get a claim paid without a diagnosis. A physical therapists scope of practice does not include diagnosing. In order for there to be a diagnosis, the patient would need to see a physician first. The challenge facing the Board is there is support for half of the bill and it has been married to an issue that is more complex.

Ms. Yaroslavsky called for public comment on this agenda item.

Ryan Spencer, from the CMA provided public comment. CMA has been one of the most interested stakeholders with this bill and actually started speaking with Senator Steinberg when he opened negotiations early in January to try to come to some type of compromise. CMA does not officially have a position on this bill. There are concerns with the bill just on its face and one thing that needs clarification is if physical therapists are specifically prohibited in law from treating a patient without a diagnosis. This bill will allow them to be treated without a diagnosis. It has nothing really to do with insurance because it is left up to the independent insurance companies to determine if they want to cover their enrollee without a diagnosis or referral. There is actually specific language in the bill that says that this is not an insurance mandate. They are trying to keep that separate from this bill. This is just allowing physical therapists to treat something that they really do not know what they are treating because CMA would argue that PTs do not have the education to perform those treatments. CMA appreciates the comments being offered and can assure that there will be other suggestions that they will be offering the author.

Mr. Spencer continued that there is an ironic part in the bill. CMA understands that there is a legislative desire to take a look at direct access. The CMA is not trying to be obstinate to the idea of direct access, unless there is some type of patient protections involved. Current law does require there to be a diagnosis. This bill removes the word diagnosis completely and just says that as long as there is sign off on the plan of care with an examination.

Mr. Spencer also addressed the employment issue of the bill. One of the parts that the physical therapists wanted included was the establishment of physical therapy corporations which allowed them to employ physicians. They were opposed to physicians employing physical therapists but now suddenly they are okay with it if they have a physical therapy corporation employing physicians.

Ms. Chang stated that she would like the motion to be defined unless amended. She wanted to be sure that doctors look at the patient before the physical therapy.

Ms. Simoes clarified that the key point of the amendment would be to shorten the timeframe before a patient is actually required to see the physician. What staff is suggesting with this amendment is to shorten the timeframe from 15 to 30 calendar days instead of business days or 6 visits whichever occurs first. That would bring the Board to the table to shorten that timeframe.

Ms. Chang removed her motion.

Ms. Chang modified her motion to suggest that direct access to be taken out or provide some kind of alternative greater public protection proposal; s/GnanaDev

Dr. GnanaDev discussed concerns with being protectors of the practice of medicine and condoning the number of times that someone could be seen without a diagnosis.

Ms. Yaroslavsky cautioned that taking an opposed stand on the bill would not be a wise decision. If the public would like to go today to a physical therapist or any kind of health professional, that is what free will is about.

Dr. Duruisseau voiced concern that the Board should be at the table to have participatory engagement. If there is an additional item in the bill that the Board does not like they can always go back and have a voice. He stated that that not being at the table is problematic for him.

Dr. Levine agreed with Dr. Duruisseau that the Board cutting themselves out of the conversation would be a mistake.

Ms. Chang withdrew her modified motion and made a new motion.

Ms, Chang made a motion to oppose the bill unless it is amended to remove the direct access provisions that allow for direct patient access to PT services without a diagnosis; s/GnanaDev. Ms. Yaroslavsky called for the vote. Motion carried, with Dr. Levine and Ms. Yaroslavsky abstaining.

B. Status of Regulatory Action

Mr. Schunke discussed three bits of good news. The first being the polysomnography regulations have been approved by the Office of Administrative Law and filed with the Secretary of State.

The second item is the disciplinary guideline regulations have been approved and filed with the Secretary of State. Mr. Schunke thanked Susan Cady for doing a tremendous job and her dedication brought this three year project to a close.

The final item is the implementation of regulations for sponsored free healthcare events. This regulation file has been pending at the Department of Finance for almost two and a half months. Information received yesterday confirmed that the regulation packet has finally been approved. The file will be completed with the hope of submitting it in its final format to the Office of Administrative Law (OAL). It is anticipated that a thorough review will be conducted by OAL with identification of some further issues to be addressed. The Board is the first board that has been able to move forward with this regulatory package. This is a new program and concept that has never been reviewed. Once this regulatory package is approved, it will provide better guidance to the other boards which are currently moving forward with their own regulatory packages and it will be an asset to them to use this as an example for the process.

Agenda Item 24 Consideration of Delegation to the Department of Consumer Affairs – Approval of Sponsored Events (Business and Professions Code Section 901)

Ms. Scuri briefed the Board that in 2011 a bill took effect that allowed sponsored healthcare events to use the services of individuals licensed in another state. It provides a mechanism for registering those sponsoring healthcare entities as well as vetting the qualifications of the licensees from out of state who would be participating. Given that these events usually include multiple types of healthcare providers, dentists, optometrists, physicians, nurses, etc., the Board in its regulations, provides that the Board may delegate to the DCA the authority to register those healthcare entities, not the providers, just the entities. The reason for that inclusion in the regulation was that it made more sense to have one centralized place to say yes or no to registering an entity so there are not contradictory responses from different boards.

Dr. Levine asked for an example of an entity and if this is just the sponsorship of the event.

Ms. Scuri provided as an example of Care Now, they are usually non-profit entities that put on the health fair or a screening program and upon approval of this regulation would make that delegation to DCA to review and register sponsoring entities.

Dr. Levine made a motion that the Board delegate to the DCA, by formal resolution, the authority to receive and process forms related to the registration of sponsored health care fairs and other sponsored events; s/Bishop

Dr. GnanaDev inquired about who would regulate the providers and if it would be the other states where they hold their licenses.

Ms. Scuri answered that the providers that are not California licensees must go through an approval process with the Board.

Ms. Whitney further clarified that there is a whole process that a provider must go through, including fingerprints in order to provide services at one of these events.

Ms. Yaroslavsky called for the vote. Motion carried.

Agenda Item 25 Discussion and Consideration of Regulatory Proposal to Implement Assembly Bill 1267 (Misdemeanor Conviction-Inactive Licensure)

Mr. Heppler discussed AB 1267 which essentially requires the Board to place an inactive status on a physicians' medical license, also called a certificate, when he or she is incarcerated following the conviction of a misdemeanor.

The issue is when that physician is no longer incarcerated, what are the mechanisms that he or she can provide notice to the Board that he/she is no longer incarcerated. In addition, what would the board display during this previous incarceration on his or her license status. The proposed language on page 113, attempts to answer those two questions. The way that the physician would need to inform the Board, after release from incarceration would require that he or she provide a certified copy of release issued by the local jurisdiction in which he or she was incarcerated. The licensees would provide that by mail or personal service at their option. They could not just call up and provide a verbal notification.

For a physician that is incarcerated on a misdemeanor conviction, the Board website would state:
-Inactive Misdemeanor Conviction licensee was convicted of a misdemeanor and is currently incarcerated-no practice is permitted.

Staff is recommending that this be set for regulatory hearing at the next board meeting. Meaning that a statement of reasons would be prepared and a notice to have a public comment period, a written public comment period and also take public comment at that board meeting and then at the conclusion of that the Board could decide whether to proceed with the regulations.

Dr.GnanaDev made a motion that the staff set the proposed regulation of implementing regulations for AB 1267 for hearing at the May 2012 board meeting; s/Duruisseau

Dr. Duruisseau asked for clarification, when licensees send the required information by mail or personal services and is successful in getting their license back, if the website would be updated?

Mr. Heppler confirmed that the website display would then be corrected to reflect their actual license status. The condition of the bill says within 5 days of receiving that notice, the Board would be obligated to correct or refresh the status on the website.

Ms. Yaroslavsky called for the vote. Motion carried.

Agenda Item 29 Discussion and Consideration of Proposed Chiropractic Regulations Related to the Use of Lasers and Comments Thereto
The Board of Chiropractic Examiners (BCE) attempted to promulgate a regulation regarding the use of lasers by chiropractors.

Staff has met with BCE staff of the Board and offered some comments about what they wanted to do and that comment is on page 152.4: *"Nothing in this section shall be construed to authorize the use of a laser by a chiropractor outside the chiropractic scope of practice. This includes, but is not limited to laser ablation, cosmetic procedures, surgical procedures and the laser treatment of allergies in cases where there is a known risk anaphylactic reaction to the individual being treated."*

The suggestion of the Board was not well received by the BCE.

Dr. Duruisseau made a motion that the Executive Director be authorized to comment on the regulations proposed by the Board of Chiropractors Examiners and offer an amendment that would clarify that chiropractors cannot use lasers for cosmetic procedures; s/Chang

Dr. Diego inquired if the BCE is concerned that the Board underscored cosmetic surgery and was it an issue or if there was anything that was said that they do not intend to practice cosmetic surgery.

Ms. Simoes reflected that at the hearing, the BCE members suggested that they already knew cosmetic procedures were not in the chiropractic scope. Ms. Simoes requested that they specifically add it like they had added other things like surgical procedures and laser ablation. They then suggested that cosmetic procedures might be too broad of a term and that the regulations may be returned by the Office of Administrative Law because the Medical Board offered some suggested definitions. The BCE informed Ms. Simoes that this item should be taken back to the Board which is why it is on the agenda.

Ms. Yaroslavsky called for the vote. Motion carried.

Agenda Item 28 Discussion and Consideration of Final Draft Strategic Plan
Ms. Kirchmeyer presented the final draft strategic plan. Edits from the subcommittee had been received and were included in the packets. There were eight items that needed discussion by the Board with decisions that needed to be made on those certain objectives.

Objective 1.1 – This objective is scheduled take about 18 months for completion. The priority of this objective may necessitate it be completed more quickly than 18 months. If so it will be necessary to know that the Board has the resources to complete this earlier than identified.

Objective 1.2 – This objective would be a prerequisite to Objective 1.1. Both of these objectives have to do with the CME structure and requiring that physicians remain current. It is recommended that Objective 1.1 and Objective 1.2 be reversed so they are better placed in the plan.

Dr. Levine made a motion to change the order of Objective 1.1 and Objective 1.2; s/Duruisseau; motion carried.

Objective 1.4 – This objective states to establish a committee and task force to examine the FSMB Maintenance of Licensure and ABMS Maintenance of Certification.

Dr. Levine made a motion that Objective 1.4 should be under the purview of the licensing committee or a subcommittee of it; s/Duruisseau; motion carried.

Objective 1.6 and Objective 2.5 – Objective 1.6 pertains to conducting a literature review and internal study of the performance of physicians. Objective 2.5 is a study of disciplinary cases to identify trends or issues that may signal dangerous practices or risks.

Dr. Duruisseau made a motion that Objective 1.6 and Objective 2.5 should be moved up from priority C to priority B; s/Salomonson; motion carried.

Objective 2.8 – This objective would add a new activity of communicating to all interested parties, the scope of the Board's authority and what is outside of the Board's authority in order to avoid confusion.

Dr. Levine made a motion on Objective 2.8, adding a new activity to inform and clarify the Board's responsibility to regulate outpatient surgery centers; s/GnanaDev; motion carried.

Objective 3.6 – This objective would add another activity by expanding the newsletter to better inform physicians and medical students.

Dr. Bishop made a motion on Objective 3.6, adding a new activity to evaluate through focus groups and survey instruments how the current newsletter is being utilized by licensees; s/Duruisseau; motion carried.

Objective 5.4 – This objective was a recommendation to conduct an annual review of all the committees established by the Board. The previous day it was recommended that this be changed from an annual review to every other year. Another recommendation that was pointed out is that when a committee is established, there should also be a sunset date placed on them.

Dr. Bishop made a motion on Objective 5.4, to conduct a review every other year of all committees established by the Board and also to place a sunset date on a newly established committee; s/Duruisseau; motion carried.

Objective 6.2 – This objective is to identify issues and areas in which the Board may assist in promoting better public health.

Dr. Bishop made a motion on Objective 6.2, to identify issues and areas in which the Board may assist in promoting better public health; s/Duruisseau

Ms. Yaroslavsky inquired where this objective came from.

Ms. Kirchmeyer stated that this came from a recommendation from the subcommittee.

Ms. Whitney requested that the Board consider tabling at least this one objective and approving the entire plan with the exception of this objective. The Board could send this item to the Access to Care Committee to be reexamined.

Dr. Duruisseau withdrew the motion.

Dr. Levine made a new motion to take out Objective 6.2 for now; s/Duruisseau; motion carried.

Ms. Whitney asked for confirmation that the Board was okay with the edits that were submitted.

The Board confirmed that they were okay with the edits that were submitted.

Agenda Item 30 Agenda Items for May 3-4, 2012 Meeting in Los Angeles

Ms. Chang and Ms. Yaroslavsky requested that staff be directed to provide information on the feasibility of accessing the National DataBank every two years and bring it forward to the next meeting.

Ms. Yaroslavsky reported that the Board will hear back from staff and the Midwifery Advisory Council regarding the workshop of physician supervision and tests, drugs and devices. The Board will also hear back from the council regarding the candidates who filled the two vacant positions.

Ms. Yaroslavsky also reported that there will also possibly be one regulatory hearing on the scope of practice for physician assistants. There is also an approved pain management summit that will need to be updated on the progress that has been made to co-host that with the State Board of Pharmacy.

The Access to Care Committee and its new shape and format has been tabled and staff is to report back on this issue and their research.

There will be a regulatory hearing on the inactive status for misdemeanor conviction.

Ms. Whitney reported that Dr. GnanaDev has agreed to provide a presentation on the use of hospitalists in medical centers.

Staff is examining the need to revise some of the information on the website regarding medical marijuana, thus this may be ready for a topic for discussion in May.

There is hope to have data finalized on the time it takes other states to process physician applications.

The Federation of State Medical Boards will be coming to the May meeting to make a presentation on their annual meeting that will be held in April.

Agenda Item 31 Adjournment

There being no further business, Dr. GnanaDev made a motion to adjourn; s/Duruisseau; motion carried.
The meeting was adjourned at 3:27 p.m.

Barbara Yaroslavsky, President

Gerrie Schipske, R.N.P., J.D., Secretary

Linda K. Whitney, Executive Director