MEDICAL BOARD OF CALIFORNIA

QUARTERLY BOARD MEETING

Sheraton San Diego Hotel and Marina
Fairbanks A & B
1380 Harbor Island Drive
San Diego, CA 92101

October 25-26, 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
Dr. Levine called the meeting of the Medical Board of California (Board) to order on October 25, 2012 at 3:00 p.m. A quorum was present and notice had been sent to interested parties.

Members Present:
Sharon Levine, M.D., President
Michael Bishop, M.D.
Silvia Diego, M.D.
Dev GnanaDev, M.D.
Denise Pines
Janet Salomonson, M.D.
Gerrie Schipske, R.N.P., J.D.
David Serrano Sewell, J.D.
Barbara Yaroslavsky, President

Members Absent:
Reginald Low, M.D.

Staff Present:
Angela Chang, Investigator
Dianne Dobbs, Department of Consumer Affairs' Legal Counsel
Tim Einer, Administrative Assistant
Kurt Heppler, Staff Counsel
Kimberly Kirchmeyer, Deputy Director
Armando Melendez, Business Services Analyst
Regina Rao, Business Services Analyst
Letitia Robinson, Research Specialist
Kevin Schunke, Outreach Manager
Barbara Shakowski, Investigator
Jennifer Simoes, Chief of Legislation
Laura Sweet, Deputy Chief of Enforcement
Renee Threadgill, Chief of Enforcement

See Vang, Business Services Analyst
Linda Whitney, Executive Director
Curt Worden, Chief of Licensing

Members of the Audience:

Teresa Anderson, California Academy of Physician Assistants
Hilma Balaian, Kaiser Permanente
Yvonne Choong, California Medical Association (CMA)
Zennie Coughlin, Kaiser Permanente
Julie D'Angelo Fellmeth, Center for Public Interest Law (CPIL)
Long Do, California Medical Association (CMA)
Jack French, Consumers Union CA Safe Patient Network
Doreathea Johnson, Department of Consumer Affairs' Legal Affairs
Lisa McGiffert, Consumers Union CA Safe Patient Network
Carole Moss, Consumers Union CA Safe Patient Network/Nile's Project
Ty Moss, Consumers Union CA Safe Patient Network/Nile's Project
Maryann O'Sullivan, Consumers Union CA Safe Patient Network
Carlos Ramirez, Senior Assistant Attorney General, Office of the Attorney General
Loren Reed, Department of Consumer Affairs, Public Affairs Office
Harrison Robbins, M.D.
Kathryn Scott, Lenscrafters
Carrie Sparrevohn, Midwifery Advisory Council
Charlene Zettel, Donate Life California

Prior to agenda item two, Dr. Levine introduced and welcomed the two new Board members. Denise Pines and David Serrano Sewell, J.D., appointed to the Board by Governor Brown on August 29, 2012.

David Serrano Sewell is a Deputy Chief Attorney for the city of San Francisco. He recently completed seven years of service with the California Institute for Regenerative Medicine, the state agency responsible for awarding $3 billion for stem cell research.

Denise Pines is from Los Angeles and is responsible for strategic planning and business development for her company, Denise Pines Incorporated. Prior to founding her business, Ms. Pines served as the President of the Smiley Group.

Agenda Item 2 Public Comment on Items not on the Agenda

Charlene Zettel from Donate Life California, urged the Board to consider sponsoring a specialty license plate that promotes organ and tissue donation. She requested that the members place this item on an upcoming agenda.

Jack French from Consumers Union Safe Patient Project, wished to pose several issues related to the Board's responsibility for physician owned ambulatory surgery centers. Due to the recently enacted SB 100, it requires the Board to post information on the Web site regarding ambulatory surgery centers. The Board is also including the final inspections on the Website as well. Access to this information should be more consumer friendly and public education to address this was encouraged. There is also a concern that adverse events that occur at these centers is to be reported and fines levied in the event that these reporting requirements are ignored. The Board was urged to notify ambulatory surgery centers and physicians now and periodically of these new reporting requirements and associated fines. There was also a suggestion that

at a future meeting staff should report on the respective role that the Board and the California Department of Public Health would have to coordinate the receipt of this adverse action information.

Carole Moss from Consumers Union Safe Patient Project, shared concern with issues related to the statute of limitations. This official process is something that remains unclear to consumers. The Board was encouraged to review the impact of the statute to see how often the Board finds extreme departure or failing by a physician and then drops the case because the statute of limitation has run out.

Agenda Item 5 Consideration and Approval of Sunset Review Report Final Draft

Prior to Ms. Kirchmeyer and Ms. Robinson beginning their report, Dr. Levine provided a short explanation of the Sunset Review process. The Sunset Review is a periodic opportunity where the Legislature reviews the authorizing statutes under which the Board carries out its mission. This periodic review allows confirmation that legislation and regulations have kept up with what is happening with the practice of medicine and the delivery of care.

Ms. Kirchmeyer presented that this Sunset Review report was prepared in response to the questionnaire provided to the Board by the Senate Business and Professional Economic Development Committee. In addition to the report, there are three binders that will be presented to the Committee. These binders include Board studies and publications. Every four years the Board goes through a review to determine effectiveness and if there is a need to extend the sunset date of the Board.

The Medical Board statutes state that the Board will remain in effect until January 1, 2014. Therefore, Legislation must be introduced in 2013 to extend the Board's sunset date in order for the Board to continue. The Sunset Review process starts with the completion of the report that must be submitted to the Senate by November 1, 2012. The Senate Policy Committee will review the document and provide information back to the Board based upon the review. A hearing will be held in Spring 2013, at which time the Board will present responses to these findings.

This is also the Board's opportunity to reexamine the laws of the Board and make enhancements in order to make the Board more effective and increase consumer protection. The Board has identified 22 issues that will improve the licensing, enforcement, and overall Board functions.

Ms. Robinson began by reviewing seven new issues for Licensing Program enhancements that will ensure the laws are written to accommodate the continuing evolution of medical training and testing in the United States and worldwide.

The first issue would be for the Board to recommend to the Legislature to revise the laws to allow for changes that will take place in the USMLE examination process, specifically to address the step three migration into two parts, with two separate examination scores.

Ms. Robinson continued with the next issue that would recommend to the Legislature revising laws to allow for the evolving method of teaching medical students in year round classes with shortened academic year requirements and competency based training methods. This would allow for training in various settings, not just hospital based training.

The third issue that the Board would recommend to the Legislature is that the Board continue its

review of the Federation of State Medical Boards Maintenance of Licensure Program and it could propose solutions in future Legislation or at the next Sunset Review.

The next issue presented would be to recommend that the Legislature revise the laws regarding the non practice reentry into medical licensure to ensure public protection.

The fifth recommendation to the Legislature by the Board would be to require licensees to provide, and keep current, an email address for notifications.

The next recommendation to the Legislature would be to eliminate the requirement for the Board to post on the Web site post graduate training information.

The final Licensing recommendation to the Legislature would be a revision to the laws to clarify that unlicensed residents in accredited resident fellowship programs in California are exempt from corporate practice laws.

Dr. GnanaDev made a motion to accept the seven issues to improve the Licensing Program and to move these forward to the Legislature as issues for the Medical Board; furthermore, the fifth recommendation should include a revision that email addresses will remain confidential, and to strike the word unlicensed in the final recommendation; s/Yaroslavsky.

Public comment was received for this agenda item.

Yvonne Choong, from CMA commented that by not posting post graduate training that could eliminate a key piece of information for many patients. Currently, the post graduate training is verified by the Board whereas, the board certification specialty is self-reported by the physician.

Dr. Levine called for the vote. Motion carried.

Ms. Kirchmeyer continued that the Enforcement Program sections would be split into two separate sections. The first three issues would enhance consumer protection related to prescription drug use.

Ms. Kirchmeyer reported that the Board has reason to believe that numerous deaths have occurred in the state that are related to prescription drug overdoses. In the last fiscal year, the Board received only four coroner reports and only one of them was due to a drug related death. Business and Professions Code §802.5 requires a coroner to make a report to the Board when he or she believes information based on the findings of a pathologist indicate that a death may be the result of a physician's gross negligence or incompetence. The decrease in coroners reports could be due to the fact that coroners have to make this determination. In order to alleviate coroners from making this determination, the Board would recommend all deaths related to prescription overdoses should be reported to the Board for further investigations. This would allow the Board to determine if the prescribing physicians were treating the patient in an appropriate or negligent manner.

Ms. Kirchmeyer continued that the CURES system is a monitoring system that enables prescribers and dispensers to obtain a patient history or evaluation report to assist in identifying patients who might be doctor shopping. There currently is not enough funding to make necessary improvements to the computer system to make it more user friendly and improve consumer protection.

It is recommended that all licensees who prescribe or dispense pay an additional minimal fee to support the necessary enhancements to the computer and staffing to run the system. Once the enhanced system is operational, all prescribers should be required to perform a CURES lookup prior to all Schedule II and III prescriptions.

Ms. Yaroslavsky made a motion that the Board move forward with coroner reporting and changing the layout to neutral wording; it was also recommended to move forward with CURES with a revision that states the system needs to have adequate funding, and it be provided by individuals who prescribe or dispense, pharmaceutical companies, and the public; s/GnanaDev.

Public comment was received for this agenda item.

Yvonne Choong suggested that the CMA recommends that the Board change the recommendation of reporting prescription drug overdoses to be contingent upon more data study, and educating coroner offices of their responsibilities rather than jumping immediately to require that the coroner report all deaths to the Board. Ms. Choong continued that the CMA is in agreement with the CURES funding and believes that this should be a shared cost, not just a fee added to licensees.

Lisa McGiffert, Consumers Union CA Safe Patient Network spoke that the recommendation regarding the coroners reports could be a valuable tool. This information could help identify trends or commonalities if a certain physician's name were to come up repeatedly.

Julie D'Angelo Fellmeth, Center for Public Interest Law (CPIL) spoke in support of a proposal requiring coroner reporting for prescription drug overdose deaths.

Dr. Levine called for the vote. Motion carried.

Ms. Schipske made a motion to remove the issue requiring physicians to access the CURES system; s/GnanaDev; motion carried.

Ms. Kirchmeyer continued with discussing enforcement and consumer protection enhancements and suggested that the Board recommend to the Legislature that all malpractice settlements be posted.

Julie D'Angelo Fellmeth, CPIL provided public comment by reviewing with the Board the history of medical malpractice settlements in excess of $30,000.

Dr. Salomonson made a motion to withdraw the recommendation from the Sunset Report to post all malpractice settlements. It is requested that more research be done on how to better use the malpractice information that is received by the Board to appropriately report to consumers and provide valuable information; s/Bishop.

Public comment was received for this agenda item.

Lisa McGiffert, Consumers Union CA Safe Patient Network requested that the Board consider moving this forward. This is pertinent information that consumers would turn to the Board to view this public information.

Yvonne Choong, CMA stated they support the motion to bring this back after more information is compiled.

Dr. Levine called for the vote; motion carried.

Ms. Kirchmeyer reviewed that the next recommendation pertained to quality of care and it is suggested that the Board should receive an exception for malpractice cases from the upfront review required pursuant to Business and Professions Code §2220.08.

The next item presented related to physician availability, knowledge, and training. The Board would recommend that legislation be passed requiring regulations be implemented to define physician availability in other settings and outline a physician's training and knowledge needed when supervising other healthcare providers.

Ms. Kirchmeyer continued with a recommendation of requiring physicians to notify patients to when their license is placed on probation with monitoring requirements.

After discussion from the members, it was decided to remove the patient notification recommendation from the report. This item will be brought back as an agenda item at a future meeting for a broader discussion.

Ms. Kirchmeyer next discussed consistency in the time to provide medical records. The Board should recommend that the law be amended to require a facility to provide medical records within 15 days upon request, if the facility has electronic health records.

The next item discussed was the decline in the number of 805 reports received by the Board. It is recommended that an amendment to existing law be made to require the California Department of Public Health and hospital accrediting agencies to send reportable peer review incidences found during an inspection of the facility to the Board. The Board would also recommend a requirement that these entities notify the Board if the hospital is not performing peer review.

Ms. Kirchmeyer continued with the recommendation to eliminate the ten year posting requirement in order to ensure transparency to the public.

Dr. Levine stated that this is somewhat two fold. One would be for the Legislature to decide if the removal of items after ten years should be eliminated, and the other is to clarify when the clock begins on the ten years.

The next item presented for recommendation was the expert reviewer opinions. The first change would require the respondent to produce expert reports addressing each of the quality of care issues raised in the pending accusation. Second, the deadline for both sides to make the required disclosures under §2334 is only 30 calendar days prior to the commencement date of the hearing, if the deadline is not met, it can result in a delay to an early settlement of these cases. Lastly, the term commencement date as used in that section should be legislatively defined. This should be the first hearing date initially set by the Office of Administrative Hearing, regardless of any subsequent continuances of the hearing.

Dr. Levine clarified that there should be specificity to the timeframes.

Ms. Yaroslavsky made a motion that the Board should receive an exemption for malpractice cases from the upfront review required pursuant to Business and Professions Code §2220.08; require the establishment, by regulation, of training knowledge and availability of physicians in specified practice settings; require that health facilities with electronic health records produce patient reports in 15 days; require California Department of Public Health and other accrediting agencies to send peer review reportable actions; eliminate the requirement to remove Board actions over ten years; require production of the full respondents expert report and examine defining a term commencement of the hearing and define the number of days that production of information is required. s/Serrano Sewell.

Public comment was received for this agenda item.

Hilma Balaian, Kaiser Permanente, voiced concern with some of the newly licensed doctors might have a probationary status on their license. By being required to disclose this to their patients, their training could be in jeopardy if the patient refuses to be examined by them.

Lisa McGiffert, Consumers Union CA Safe Patient Network, wished to go on the record with several issues. One is that when a physician is on probation, it is important and critical for patients to know when these situations are present. The other item would be eliminating public information from the Web site after ten years; this should remain on the internet and be available forever for the public to see the whole history.

Teresa Anderson, California Academy of Physician Assistants wished to comment that for PAs, there is legislation or regulation that governs how they are supervised. In terms of availability, they are able to be supervised either in person or electronically.

Harrison Robbins, M.D. discussed procedures of laser and IPLs as a significant problem that is easily overlooked.

Dr. Levine called for the vote. Motion carried.

Ms. Robinson then continued with presenting the next recommendations. She explained that unless physicians are certified by a specialty board as defined by law, they are prohibited from using the term board certified in their advertisements. The Board would recommend elimination of the Board approving specialty boards equivalent to the American Board of Medical Specialties, leaving those that are currently recognized as approved for advertising purposes.

The next recommendation would involve the requirement that all medical assistants be certified by an approved organization.

Dr. Levine discussed that she would actually like to remove this item from the recommendation until more information could be obtained.

Ms. Robinson discussed that the next recommendation would be to transfer the Registered Dispensing Optician (RDO) program to the Optometry Board.

The last issue discussed in this section encompasses three items in the Sunset Review that pertain to

the Midwifery Program. The Board will recommend addressing in legislation the ongoing issues related to Midwifery including supervision, medical devices and drugs necessary for the profession, and student apprenticeships and assistants.

Ms. Yaroslavsky made a motion to recommend inclusion in the Sunset Review: the elimination of the specialty board, review by the Board, transfer of the RDO program, and the three licensed midwife program issues; s/Schipske.

Public comment was received for this agenda item.

Kathryn Scott, representing Lenscrafters communicated that the suggestion to move the RDO program to the Optometry Board creates serious concerns and at the end of the day, the consumer will pay if the industry is regulated in a way that compresses the market. Ms. Scott suggested that perhaps her organization and the Board could have a dialogue to discuss this in more detail.

Carrie Sparrevohn, Chair of the Midwifery Advisory Council, spoke that there are several ongoing issues. One is the medication issue. Midwives are trained to use certain drugs and devices but, they cannot obtain them unless there is physician supervision. The other issue is the student issue that was not really thought out when the original legislation was written and now needs some clarifying pieces. Ms. Sparrevohn stressed that legislation is needed and she is available to provide whatever support that staff might need to work through these issues.

Yvonne Choong stated that they look forward to having the supervision issue be more defined. Being more vague is probably going to be less helpful than being more specific.

Ms. Yaroslavsky, the maker of the motion, requested that the issues that were presented be separated for voting purposes. Ms. Schipske, the second on the motion, agreed to the amended motion.

Dr. Levine called for the vote for the approval of the elimination of the specialty board. Motion carried.

Dr. Levine called for the vote for moving forward with the licensed midwife program issues. Motion carried.

Dr. GnanaDev made a motion to retract the recommendation of sending the RDO program to the Optometry Board, but to see if there is an alternative agency that is appropriate, such as the Department of Consumer Affairs; s/Schipske. Motion carried.

Prior to the conclusion of the meeting, Julie D'Angelo Fellmeth, CPIL provided public comment. Ms. D'Angelo Fellmeth wished to make comments on Vertical Enforcement (VE) and identify some omissions. One point is that she feels that the Board should be embracing VE in this report and seeking its extension with improvements to better protect patients. She discussed that the Board should rethink the tone of Section five and the critique of the AG's office and share some of the responsibility for the continuing VE implementation problems. She believes that the report should not only focus on the cost of VE but, on the improvements that it is making to the Enforcement Program. The Board needs to quantify the benefits of VE instead of just counting the dollar costs.

Dr. Levine adjourned the meeting at 6:52 p.m. and announced that the Board Meeting would reconvene on Friday October 26, 2012 at 9:00 am.

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Agenda Item 7 Call to Order/ Roll Call

Dr. Levine called the meeting of the Medical Board of California (Board) to order on October 26, 2012 at 9:00 a.m. A quorum was present and notice had been sent to interested parties.

Members Present:

Sharon Levine, M.D., President
Michael Bishop, M.D.
Silvia Diego, M.D.
Dev GnanaDev, M.D.
Denise Pines
Janet Salomonson, M.D.
Gerrie Schipske, R.N.P., J.D.
David Serrano Sewell, J.D.
Barbara Yaroslavsky, President

Members Absent:

Reginald Low, M.D.

Staff Present:

Dianne Dobbs, Department of Consumer Affairs' Legal Counsel
Tim Einer, Administrative Assistant
Kurt Heppler, Staff Counsel
Kimberly Kirchmeyer, Deputy Director
Armando Melendez, Business Services Analyst
Regina Rao, Business Services Analyst
Letitia Robinson, Research Specialist
Eric Ryan, Supervising Investigator
Kevin Schunke, Outreach Manager
Jennifer Simoes, Chief of Legislation
Pat Stillwell, Investigator
Laura Sweet, Deputy Chief of Enforcement
Renee Threadgill, Chief of Enforcement
See Vang, Business Services Analyst
Linda Whitney, Executive Director
Curt Worden, Chief of Licensing

Members of the Audience:

Teresa Anderson, California Academy of Physician Assistants
Hilma Balaian, Kaiser Permanente
David Bazzo, M.D., UCSD PACE
Yvonne Choong, California Medical Association (CMA)
Zennie Coughlin, Kaiser Permanente
Julie D'Angelo Fellmeth, Center for Public Interest Law (CPIL)

Jack French, Consumers Union CA Safe Patient Network
Michael Grace, Doc Defender
Alfredo Hueso, CA Citizens for Health Freedom
Doreathea Johnson, Department of Consumer Affairs' Legal Affairs
Kathleen McCallum, Northern CA Aesthetic Nurses Association
Lisa McGiffert, Consumers Union CA Safe Patient Network
Mona Maggio, Board of Optometry
Carole Moss, Consumers Union CA Safe Patient Network/Nile's Project
Ty Moss, Consumers Union CA Safe Patient Network/Nile's Project
William Norcross, M.D., UCSD PACE
Carlos Ramirez, Senior Assistant Attorney General, Office of the Attorney General
Loren Reed, Department of Consumer Affairs, Public Affairs Office
Harrison Robbins, M.D.
Joe Rose, American Health and Safety Institute
Gerri Ryan, Nizhoni Institute of Midwifery
Carrie Sparrevohn, Midwifery Advisory Council
John Valencia, American Society for Dermatological Surgery

Prior to agenda item eight, Dr. Levine returned to agenda item five and requested a motion to approve the Sunset Review Report final draft that was discussed the night before.

Ms. Yaroslavsky made a motion to approve the entire Sunset Review Report as amended, for distribution to the Legislature, with the caveat that members may submit stylistic comments to the Executive Officer or the Deputy Director for inclusion in the report; s/GnanaDev.

Public comment was received for this agenda item.

Mona Maggio, from the Board of Optometry asked the Board to consider the option of the placement of Registered Dispensing Optometrists (RDOs) under the direction of the Board of Optometry. This placement would assist in the streamlining and efficiency of complaints. There is currently a process that requires dual investigations. One complaint could be investigated by their board about the optometrist and within the realm of the same complaint, it could include the RDO and, that would need to be investigated by the Medical Board.

Dr. Levine called for the vote. Motion carried.

Agenda Item 8 Public Comment on Items not on the Agenda

Lisa McGiffert, from Consumers Union CA Safe Patient Network addressed concerns about the uniform standards for substance abusing doctors. When the Board is made aware of a doctor with substance abuse issues, this should be addressed in a comprehensive and predictable process that is publicly transparent and has integrity. Currently the Board is not in full compliance with the uniform standards policy that has been adopted for all healing arts boards. Ms. McGiffert requested that a future agenda item should address how the Board is defining substance abusing doctors and to report how it is currently dealing with these physicians when it has been brought to the Board's attention.

Ty Moss, representing Consumers Union CA Safe Patient Network/Nile's Project, requested that the Board should place as a future agenda item, a discussion of an option to teleconference public

meetings. This could increase the participation in the Board's meetings by allowing consumers to participate remotely.

Alfredo Hueso, on behalf of California Citizens for Health Freedom asked the Board to show their support for the proposed cancer freedom bill that their organization will be introducing next year.

Agenda Item 3 Election of Officers (Vice President and Secretary)
Dr. Salomonson made a motion to nominate Dr. Diego as Board Secretary; s/Yaroslavsky; motion carried.

Ms. Yaroslavsky made a motion to nominate Ms. Schipske as Board Vice President; s/Salomonson; motion carried.

Agenda Item 9 Approval of Minutes from the July 20, 2012 Meeting
Ms. Schipske made a motion to approve the minutes from the July 20, 2012 meeting; s/Yaroslavsky; motion carried.

Agenda Item 4 Executive Committee Update
Dr. Levine reported that the Executive Committee had met in September in Sacramento. The Committee received a presentation from the Board of Pharmacy reflecting the Board of Pharmacy's incorporation of the Medical Board's recommendations in the changes of the Emergency Contraception (EC) protocol. The Committee approved these proposed changes and Dr. Levine reported that these changes were accepted the previous day at the regulatory hearing of the Board of Pharmacy.

The Committee approved the January 31st – February 1st, 2013 meeting dates and it was announced that the meeting will be held in the San Francisco Bay Area.

A review of the progress on the Strategic Plan for 2012 was presented on items that have been completed and anticipated dates of completion for objectives that will be coming due.

Dr. Levine continued that staff requested guidance on various issues in the Sunset Review and those were covered during the afternoon session of the previous day's Board meeting.

Agenda Item 6 Discussion of National Practitioner Data Bank Information
Ms. Kirchmeyer provided background that during public comment at the February 2012 meeting, it was suggested that the Board look into the cost benefit analysis of querying the National Practitioner Data Bank (NPDB) every two years at the time of a physician's renewal. This data on the feasibility of querying the NPDB was presented at the May 2012 meeting. During this meeting, the Board had several questions and requested that more information be provided regarding the NPDB.

Staff researched the information and also contacted the NPDB to get specific information pertaining to the data that they receive and the actions that they have taken for failing to report information to them.

It was thought that if the Board queried the NPDB at the time of renewal, the Board would obtain additional information regarding the physician that may be cause to take action against the

physician. Based upon the research completed, it was determined that the Board received the same information provided to the NPDB, if not more.

Staff requested the NPDB provide the Board with all of the Peer Review reports that it received in calendar year 2010 and 2011. The Board found all of the reports in 2010 that were received by the NPDB were also received by the Board. In 2011, the Board received all of the reports with the exception of one report. The Board is looking into the reason that this report was not received and will take appropriate action.

It was also thought that the NPDB received more reports than the Board pertaining to Peer Review. Research actually shows that the Board received more of these reports than the NPDB seven out of the ten years. Further research has determined that the method of counting reports differs between the NPDB and the Board. If an action is taken and then subsequent action occurs, the NPDB counts that as another report. The Board counts that as supplemental information to the original report and would still only count that one time.

A suggestion was made that the reason the NPDB may have received more reports was because the NPDB took more severe action against hospitals who did not report to them. However, the data shows that there is no monetary penalty for not reporting to the NPDB; just that an entities name will be published in the Federal register. To date, the NPDB has not sanctioned any entity for not reporting. Ms. Kichmeyer did mention that the Board can issue a fine from $50,000 to $100,000, depending on the reason for the failure to report to the Board, and has taken six actions against hospitals for not reporting.

For matters pertaining to Medical Malpractice reporting, the research found that the Board receives significant more reports than the NPDB.

Ms. Kirchmeyer stated that it was evident from the data from both the Board and the NPDB, that the number of Peer Review reports and the Medical Malpractice reports have declined in the past ten years. Therefore, staff is recommending outreach activities to the mandated reporters to ensure that they are informed of their responsibility to report actions to the Board. An article was placed in the Summer newsletter explaining the Peer Review reporting requirements and future articles will be written too. Additionally, part of the Strategic Plan includes looking at the decline in the number of 805 reports.

The Board staff will continue to take a proactive approach and request the information from the NPDB that were received for California physicians in the last calendar year and looking at those compared to the Board's data. Staff will ensure that each report was received and if not, the Board will investigate the matter and take appropriate action.

Ms. Yaroslavsky asked if the Board will receive an annual report from staff about the status of the NPDB.

Ms. Kirchmeyer affirmed that this data comparison could definitely be placed as a future agenda item.

Public comment was received for this agenda item.

Julie D'Angelo Fellmeth, Center for Public Interest Law (CPIL), wished to reinforce what Ms. Kirchmeyer addressed about the dramatic drop in reporting over the last two decades. This possible underreporting is very troubling. The Strategic Plan intends to explore the drop in 805 reports, Ms. D'Angelo Fellmeth stated that the Board should probably expand this to other reporting categories as well.

Agenda Item 12 Presentation on PACE Training Courses

Dr. Levine introduced Dr. William Norcross and Dr. David Bazzo and requested that they provide a presentation on the UC San Diego School of Medicine Physician Assessment and Clinical Education (PACE) Program.

Dr. Levine explained that this item was on the agenda as an opportunity to remind the members of exactly what this program is and what it accomplishes. Many times in the Panel meetings the Board does refer physicians for testing and evaluation to the PACE program and it is important to have a periodic reminder of the program.

Dr. Bazzo began by outlining the PACE Continuing Medical Education (CME) programs that address identified deficiencies. The top five programs at this time include:

- Prescribing
- Medical Record Keeping
- Professional Boundaries
- Anger Management
- Physician Patient Communication

PACE is also able to customize CME. Not everything neatly fits into a particular category and there is no identifiable way to remediate that deficiency. What PACE has done is to create a circumstance where they take educational edicts and adult learning principals and try to evaluate that specific issue that was found to be deficient and try to create a program around that specific deficiency.

PACE takes a different approach to group instruction and caps or limits attendance in order to achieve a true interactive program. This leads to more intense dialogue and it forces the participant to become involved in the education from an adult learning principal.

PACE is dedicated to ongoing simulation of skill assessment and Dr. Norcross provided an update on the new Medical Education and Telemedicine (MET) building that will seek to achieve this goal.

The full presentation may be viewed on the Web cast:
http://www.youtube.com/watch?v=R_xR91ZKYAw&feature=BFa&list=PL6Up7Y6dOLoqwSGAmnhWAQjC6RYPIu74v

Public comment was received for this agenda item.

Michael Grace, of Doc Defender commented that California should be proud of the PACE program. It has performed an unique and valuable service in the reduction of physicians who are facing any manner of discipline and should be commended. Mr. Grace continued that the Board is not the only entity to whom the PACE program can identify. Much of the ground work of identifying

incompetent or dangerous physicians is currently being done by hospital staff committees through their own disciplinary processes.

Dr. Norcross confirmed that the majority of referrals for the PACE program do come from hospitals and not the Board. This shows that in general, hospitals are identifying physicians that are deficient or need help.

Harrison Robbins, M.D. inquired if attorneys that are central to settlements in final decisions following a case that settles above the $30,000 level are required submit an 805 report.

Dr. Levine requested that Dr. Robbins direct his question to Ms. Threadgill and Mr. Heppler.

Julie D'Angelo Fellmeth, Center for Public Interest Law (CPIL), wished to agree with Mr. Grace's comment about the PACE program being very valuable. She stated that the Board is fortunate to have the PACE program here in California in order to have it available to clinically assess physicians with whom it has concerns with.

Agenda Item 10 REGULATIONS – PUBLIC HEARING

Dr. Levine opened the public hearing on the proposed regulation to adopt Section 1379.50 of Title 16 of the California Code of Regulations, as described in the notice published in the California Regulatory Notice Register and sent by mail to those on the Board's mailing list. This regulatory proposal sets forth the requirements and criteria for the Board to implement, interpret, and make specific the provisions of section 3575, which took effect October 23, 2009, and provides a regulatory framework for applicants for a Polysomnography Registration to have more options to choose from when obtaining the required Basic Life Support certification. The Amendment removes the requirement that Basic Life Support certification can only be provided by the American Heart Association and adds that the requirement may also be met by certification issued by the American Health and Safety Institute. For the record, Dr. Levine stated that the date was October 26, 2012; the hearing began at approximately 10:50 a.m.

Mr. Heppler advised the Board that there was a collective error made by the Board and the petitioner. The formal name of the entity that grants the Basic Life Support certification is the American Safety and Health Institute. It is currently listed incorrectly in the regulations as the American Health and Safety Institute. Mr. Heppler suggested that given this, the Board essentially adopt the changes in the regulations to reflect the correct name of the certificate issuing body. The regulations would be amended to say that everywhere it says American Health and Safety Institute, the correct name of American Safety and Health Institute should be inserted.

Public comment was received for this agenda item.

Joe Rose, American Health and Safety Institute provided oral testimony during the public hearing in support of the amendment that would offer an equally competent provider of Basic Life Support certification.

Dr. Levine closed the hearing.

Ms. Yaroslavsky made a motion to adopt the regulation as amended with the correct name of the Basic Life Support provider. Furthermore, the Executive Director is instructed to circulate the amended regulations for 15 days; and in the absence of any adverse comments, prepare the rule making file and transmit it to the Office of Administrative Law for approval; s/GnanaDev; motion carried.

Agenda Item 11 REGULATIONS – PUBLIC HEARING

Dr. Levine opened the public hearing on the proposed regulation to adopt sections 1364.50 of Title 16 of the California Code of Regulations, as described in the notice published in the California Regulatory Notice Register and sent by mail to those on the Board's mailing list.

This regulatory proposal sets forth the requirement and criteria for the Medical s Board of California to implement, interpret, and make specific the provisions of section 2023.5 of the Business and Professions Code pursuant to subdivision (c), which requires the Board to adopt regulations regarding the appropriate level of physician availability needed within clinics or other settings using laser or intense pulse light devices for elective cosmetic procedures. These regulations shall not apply to laser or intense pulse light devices approved by the Federal Food and Drug Administration for over-the-counter use by a health care practitioner or by an unlicensed person on him or herself. For the record, Dr. Levine stated that the date was October 26, 2012; the hearing began at approximately 11:00 a.m.

Dr. Levine informed the Board that written comment was received from the California Medical Association (CMA) in support of the proposed regulations and an individual who does not agree with the wording of immediately available by email or telephone. This individual suggests the patient be seen by the spa physician within hours and the same day.

Mr. Heppler read a letter into the record from Kathleen McCallum of the California Aesthetic nurses Association. She wished to provide oral testimony but, had to leave due to time constraints. Ms. McCallum's letter wished to convey her Association's endorsement of the definition created by the Committee regarding physician availability.

Yvonne Choong, CMA provided oral testimony that her organization supports these regulations and they believe that the language adequately specifies a level of physician supervision that protects patients undergoing these procedures.

John Valencia, American Society for Dermatological Surgery provided oral testimony.to commend the Board for their work on this regulation, as it represents a significant advance that has not previously existed.

Harrison Robbins, M.D. provided oral testimony that provided background information about the work that the Committee provided to accomplish this regulation. Dr. Robbins expressed some concern with the wording of a paragraph that he felt was somewhat deficient or insufficient. He also requested confirmation about the provider being contactable by electronic or telephonic means without delay and the wording of interruptible. Dr. Robbins requested to know if that meant the provider is able to be interrupted to do this or did that mean during the time he or she is supervising they are non-interruptible.

Dr. Levine confirmed that it means that the provider is able to be interrupted during the procedure.

Teresa Anderson, California Academy of Physician Assistants provided oral testimony that their organization is in support of this and regulation and thanked the Board for their consideration.

Dr. Levine closed the hearing and asked for comments and questions from the Board.

Ms. Schipske wished to commend the Committee and staff for completing this first round that will definitely send a message to the Legislature.

Dr. Salomonson inquired if the settings where the procedures are being performed would need to have this regulation posted there and if it would include information on how to contact the Board.

Mr. Heppler stated that if in fact the last part of the regulation is invoked and there is a physician providing the assistance and direction to the procedure, that would trigger the practice of medicine requirement and logically that notice requirement would then follow.

Ms. Schipske made a motion to adopt the language as written, and direct the Executive Officer to complete the rulemaking process; s/Bishop; motion carried.

Agenda Item 13 Revised Emergency Contraception (EC) Protocol

Dr. Levine informed the Board that due to the action of the Board of Pharmacy, this agenda item did not need to be discussed.

Agenda Item 14 Update on Joint Forum to Promote Safe and Appropriate Controlled Substance Prescribing and Dispensing

Ms. Whitney announced that the Board of Pharmacy and the Medical Board have selected February 21 – 22, 2013 for the summit. The San Francisco Conference Center has been secured as the location. It has been verified that this will be available for Continuing Medical Education (CME) credit for both dispensers and prescribers. The primary speakers are still being confirmed and once this is done, work will begin to get the word out to a broader group of interested parties.

Ms. Schipske inquired if there is a way that a topic could be added to the forum about the promotion of safe and appropriate controlled substance prescribing, dispensing, and disposal. Disposal is becoming a very big problem particularly because providers do not tell patients the method of properly disposing unused medications.

Agenda Item 15 Special Faculty Permit Review Committee Update

Ms. Yaroslavsky reported that the Special Faculty Permit Review Committee met on September 16, 2012 to discuss possible changes to the Business and Professions Code Section 2168 and California Code of Regulations Section 1315.01-03. The Committee did not have any changes at this time but, recommended medical school officials should provide resources for special faculty permit holders who desire additional training as needed.

The Committee was also presented with proposed dates for upcoming 2012/2013 meetings. The next scheduled meeting date is December 20, 2012.

Ms. Yaroslavsky made a recommendation that staff take a look at cancelling meetings when there

are no applicants to be discussed as a procedure going forward.

Agenda Item 16 Physician Assistant Committee Update
Mr. Schunke reported that there are several regulations that the Physician Assistant Committee (PAC) has asked to be shared with the Board.

Mr. Schunke reminded the Board that at their May meeting, the members considered a regulatory change dealing with the personal presence of a supervising physician. The Board is responsible for regulations regarding scope of practice issues for physician assistants and regulations dealing with their scope come through the Board. When the members reviewed the draft language at the May meeting, the Board requested that the PAC review and revise the proposed language to address specific concerns expressed by the Board and resubmit the revised language at a future Board meeting. The PAC has been working on this and will be discussing this at their upcoming meeting next week. Once this is finalized, they will return and present this to the Board.

There is another regulation proposal which would expand the type of licensed healthcare providers who may act as preceptors to include physicians and surgeons, PAs, registered nurses who have been certified in advanced practice, certified nurse midwives, licensed clinical social workers, and several others. This regulation has been finalized and submitted to DCA for review and approval. Once this is approved, it will be submitted to the Office of Administrative Law.

The next regulation reviewed was for sponsored free healthcare events. The Board has proposed and adopted regulations that allow physicians licensed in other states to come to California and offer their services for a limited period of time at specific free healthcare events for uninsured and underinsured individuals. The PAC is now moving forward with their own regulatory package similar to what has been adopted by the Board.

The PAC is drafting uniform standards for substance abusing licensees under SB 1441.

Mr. Schunke also mentioned that there was a significant bill dealing with the sunset of the PAC and stated that it would be covered by Ms. Simoes during the legislative update.

The PAC is continuing to promote workforce development and will be reviewing their strategic plan.

At the conclusion of the report, Dr. GnanaDev asked a question regarding supervision of PAs that are participating in a special rotation residency program. Because of the Delegated Services Agreement (DSA) requirement when these PA residents rotate through areas where they can be supervised by other physicians, would this also include unlicensed residents?

Mr. Schunke and Mr. Heppler discussed that they would like to research this item and report back at the next meeting.

Agenda Item 17 Update on Licensing Outreach/Education Program
Mr. Schunke reported that he had attended his largest outreach event at Loma Linda where there were 175 unlicensed residents. He summarized that this year he had gone on 20 outreach trips and attended 45 - 50 outreach events including licensing fairs, meetings with GME staff, and providing presentations to medical students.

There is a statistic in the Board's annual report that states that the licensing program received 6,600 applications. Mr. Schunke estimated that he had met with 2,200 – 2,300 unlicensed residents during the year. That would equate to 1/3 of the applicant population that would have had an initial meeting or gone through the application process and have their questions answered during these outreach events.

The Governor's executive order that restricts all non-essential travel is still in effect. Fortunately, both DCA and the State and Consumer Services Agency have recognized that the licensing outreach program is mission critical to the Board's mandate. Mr. Schunke will soon prepare a memorandum for Ms. Whitney's signature to request approval of outreach travel for the 2013 calendar year.

Mr. Schunke has been able to make presentations to medical students at UCSD, Loma Linda, and earlier in the month to 225 students at UC Irvine. It was also reported that he traveled to Visalia to Kaweah Delta Hospital. This hospital was recently accredited to start postgraduate training programs in 2013 and Mr. Schunke had the opportunity to meet with staff members and hospital administrators to educate them on what the Board does and the application forms that are required.

Mr. Serrano Sewell stated that he could understand the important benefit of face to face interaction and that should be a priority but, is there any thoughts of an online interactive training being implemented.

Mr. Schunke responded that there are different opportunities that continue to be explored and there has already been several orientations that have been completed using Skype and telephonic meetings. There is also an idea of making available a pop up that expands or explains a question in greater detail when applicants are competing the online application.

Public comment was received for this agenda item.

Hilma Balaian, Kaiser Permanente wished to thank the Board for continuing the outreach program. She also thanked Mr. Schunke for his diligence in helping residents. Ms. Balaian shared that when her organization announces their licensing fair, the newer generation is much more responsive to things that they can see on their phones and computers. She suggested that perhaps the Board could prepare a five minute video that the outreach program could post on the Web site and send to interested residents.

Agenda Item 18 Licensing Committee Update

Dr. Salomonson reported that the Licensing Committee had the previous afternoon. Mr. Worden provided them with a status on staffing and the business process reengineering that was triggered by the previous backlog. The time that it is now taking to evaluate a new application has remained within the parameters. Mr. Worden informed the Committee that both international and U.S./Canadian applicants were at the same timeline. Dr. Salomonson remarked that this impressive because international evaluations can be more challenging.

Mr. Worden also provided the Committee with an update on the Board's Web site regarding the physician and surgeon application and also the policy and procedure manual that are both being redesigned.

Dr. Salomonson also stated that Mr. Worden discussed a number of items that are in the Strategic Plan and advised them of the components that were relevant to licensing.

There was also an extensive presentation on physician supervision requirements for the allied healthcare professionals. Dr. Salomonson communicated that this served as a good reminder of what a broad number of allied healthcare providers that the Board is responsible for.

The Committee also heard from Ms. Simoes and Mr. Worden on the implementation of SB 122. This bill provides an alternative pathway for California licensure to those individuals who have received some or part of their medical education at an unrecognized or disapproved medical school. Mr. Worden provided a plan on how staff will be able to adjust to the new assessment for requirements on this alternative pathway to licensure.

Dr. Salomonson reported that a question had been raised about the restriction of requirements that all post graduate residency training must be completed in the United States. It was suggested that the Committee reacquaint themselves in looking at international postgraduate education and this will be an agenda item at a future meeting.

Public comment was received for this agenda item.

Hilma Balaian, Kaiser Permanente, suggested that the Board provide some sort of primary source verification for Postgraduate Training Authorization Letters (PTAL).

Dr. Levine requested that Mr. Worden address this when he is providing the Licensing Chief's report.

Agenda Item 19 Update on Federation of State Medical Boards

Ms. Whitney informed the members that the Federation has endorsed House Measure HR 6352. This would add 15,000 new residency slots over the next five years to help address the physician shortage. Ms. Simoes is tracking this bill along with the Federation.

The Federation is sponsoring a board attorney workshop that will be held in November. The Board did make a request for out of state travel for Mr. Heppler but, this was not approved based upon travel restriction.

A tri-regulatory symposium for medical, nursing, and pharmacy was held in Washington, D.C. Ms. Chang, a former Board member and serving on the Federation board attended and will provide a summary of this meeting later in November.

The Federation has sent a notice and is seeking resolutions by February 15, 2013 for their annual meeting. Ms. Whitney encouraged the members that they discuss any ideas with her so they can be developed and presented at the Board meeting on February 1, 2013.

The Federation is seeking nominations for elective office. Ms. Whitney has not heard from any Board members who wish to run for office at this time. Ms. Chang may run for the office of Treasurer. If she does decide to do this, she would need a letter from the Board supporting her nomination.

Ms. Yaroslavsky made a motion to prepare a letter on Ms. Chang's behalf to support her nomination for Treasurer of the Federation of State Medical Boards; s/GnanaDev; motion carried.

A. Approval of Recommendations for FSMB Committees

Ms. Whitney continued that two Board members have stated their interest in being appointed to committees following the April 2013 annual meeting of the Federation. Dr. Levine is interested in being appointed to the Ethics and Professional Committee and Dr. GnanaDev is interested in being appointed to the Finance Committee.

Ms. Schipske made a motion to prepare a letter of support for nominations and recommending the appointments of Dr. Levine to the Ethics and Professional Committee and Dr. GnanaDev to the Finance Committee; s/Yaroslavsky; motion carried.

B. International Association of Medical Regulatory Authorities (IAMRA)

Ms. Whitney stated that the Board is member of the International Association of Medical Regulatory Authorities (IAMRA). This authority currently has 74 members representing 37 different countries. It held its annual international conference in Canada earlier in the month. The theme of the meeting was medical regulation in the real world. Approximately 200 people attended. Once Ms. Whitney receives the summary of what took place at the meeting, she will share that with the members.

Dr. Salomonson provided an update on her work with the Federation. She attended a specific panel for the USMLE Step 2, clinical skills standards setting . This is an important step that tests the applicants communication skills in terms of their ability to take a medical history. This is currently the sole time that the applicant is assessed for their fluency in English. There is no longer a separate English exam and part of standard setting was to listen to hundreds of speech samples to determine what is adequate.

Dr. Salomonson also continues to work with the Step 3 Committee. This step is the final step prior to licensure and Dr. Salomonson's contribution is to remind the other committee members that some students do not plan to take on more postgraduate training and this test could be the last exam they take until the maintenance of licensure.

Ms. Yaroslavsky reminded the members that she currently is on the Federation's Education Committee. Her Committee is charged with some of the content for the annual meeting and she has communicated issues of concern, interest, and opportunities to them and encouraged the members to apprise her or Ms. Whitney with any that they may have.

Ms. Schipske requested that one area of concern that needs to be addressed in more detail is the issue of collaborative practice. As this Board talks more about physician supervision and scope of practice as a real focal issue, this could be something that most other boards are also dealing with.

Dr. Salomonson did want to clarify one point on her work with the USMLE, all travel is reimbursed by the USMLE and Board funds are not used for this.

Agenda Item 20 Update on Health Professions Education Foundation
Ms. Yaroslavsky reported that the Health Professions Education Foundation had met for their quarterly meeting in Sacramento in August. They are currently in the process of taking a look at engaging in another strategic plan process and redirecting opportunities to further explore program funding sources as well as challenges to the existing programs.

Thanks to additional funds made available by the federal government, the foundation was able to place 30 additional physicians in underserved areas around the state. Ms. Yaroslavsky concluded by affirming that the foundation is doing a very good job in putting health professionals in communities and could do even better with more funding.

Agenda Item 21 Legislation/Regulations
Ms. Simoes reported on legislative outreach pursuant to Strategic Plan Goal 4, Objective 4.1, stating she contacted 12 legislative district and capitol offices to let them know about the quarterly Board meeting, to extend an invitation, and to provide information about the meeting. Ms. Simoes stated that the Legislature is currently not in session, but will reconvene on December 3, 2012.

A. 2012 Legislation Status and Implementation Plans
Ms. Simoes informed the Board of the implementation plans for the bills signed into law by the Governor. She began by discussing the Board sponsored bills.

The first bill discussed was **AB 1533** (Mitchell). This authorizes a pilot for the University of California at Los Angeles (UCLA) International Medical Graduate (IMG) Program. The pilot would allow program participants to engage in supervised patient care activities for a typical assignment lasting 16 weeks, and not exceeding 24 weeks, as part of an approved and supervised clinical clerkship/rotation at UCLA health care facilities, or with other approved UCLA affiliates. All training will occur with supervision provided by licensed physicians. This bill would also request the UC to prepare a report for the Board and Legislature which would include the number of participants in the pilot program; the number of participants issued a license by the Board; and the potential for retention or expansion of the pilot program. This bill would sunset the pilot program on January 1, 2019 and would require the report to be submitted on or before January 1, 2018.

The Board's implementation plan for this bill is to include a summary in the Board's upcoming newsletter; to notify and train Board staff on the new allowances in this bill; to maintain communication with UC on the status and success of the pilot portion of the UCLA IMG Program; and to schedule update presentations, as appropriate, at future Board meetings.
The next bill reviewed was **SB 1575** (Sen. B&P Comm.). This bill is the vehicle by which omnibus legislation has been carried by the Senate Business, Professions and Economic Development Committee. This omnibus language allows the Board to send renewal notices via email; clarifies that Board has enforcement jurisdiction over all licensees, including licensees with a non-practice license status; established a retired license status for licensed midwives; along with other technical changes.

The implementation for this bill is to include a summary in the Board's upcoming newsletter; to notify and train Board staff; once BreEZe is implemented, to provide physicians the option to receive renewal notices via email and ensure that physicians who have opted in to receive communication from the Board via email are contacted on an annual basis to confirm their email

address are current; to notify the Midwifery Council and Licensed Midwives of the new retired license status; to notify the Attorney General's (AG's) Office of the clarification in statute regarding the Board's clear enforcement jurisdiction over all licensees; and to update the Board's Web site, as necessary.

Ms. Simoes then moved on to 2012 Legislation, with the bills that have been signed into law.

AB 589 (Perea), Chapter 339. This creates the Steven M. Thomson Medical School Scholarship Program (STMSSP)within the Health Professions Education Foundation (HPEF). STMSSP participants must commit to three years full-time professional practice in direct patient care, and can receive a scholarship of $105,000 per participant. The Board supported this bill because it is consistent with the mission of the Board in promoting access to care.

The Board's implementation plan for this bill is to include a summary in the Board's upcoming newsletter.

AB 1548 (Carter), Chapter 140. This prohibits outpatient cosmetic surgery centers from violating the prohibition of the corporate practice of medicine and elevates the penalties of violating the corporate practice of medicine prohibition.

The implementation plan for this bill is to include a summary in the Board's upcoming newsletter; to notify and train enforcement staff; to notify the AG's office, and to update the Web site, as necessary.

AB 1621 (Halderman), Chapter 76. This exempts physicians working on trauma cases from current law that requires physicians to provide specified information on prostate diagnostic procedures to patients who undergo an examination of the prostate gland.

The implementation plan for this bill is to include a summary in the Board's upcoming newsletter; to notify and train staff; and to update the Web site.

AB 1896 (Chesbro), Chapter 119. This aligns state law with the federal Patient Protection and Affordable Care Act (PPACA) and exempts all health care practitioners, including physicians, employed by a tribal health program, from obtaining California licensure in another state.

The implementation plan for this bill is to include a summary in the Board's upcoming newsletter; to notify and train staff; and to update the Web site, as necessary.

AB 2570 (Hill), Chapter 561. This prohibits individuals that are licensed by a board, bureau, or program under or within the Department of Consumer Affairs (DCA) from including a "gag clause" provision in a civil settlement agreement.

The implementation plan for this bill is to include a summary in the Board's upcoming newsletter.

SB 122 (Price), Chapter 789. This allows individuals who have attended and/or graduated from and unrecognized or disapproved school to be eligible for licensure in California if they have continuously practiced in another state for 10 years, if they went to an unrecognized school or 20 years, if they went to a disapproved school.

The implementation plan for this bill is to include a summary in the Board's upcoming newsletter; to notify and train Board staff on the law and internal processes and procedures; to update the licensing application and directions; to post information on the Board's Web site regarding the new law and update applicant information on the Board's Web site; to require applications to go to the Application Review Committee (ARC) to determine eligibility, staff will work with ARC members on this process; once application issues are determined, staff will work on identifying the need for regulations. The need for regulations will most likely be brought to the Board at the April 2013 Board meeting. The plan also includes sending notification to those applicants that the Licensing Program is aware of so them may apply.

SB 1095 (Rubio), Chapter 454. This expands the type of clinics that may be issued a limited license by the Board of Pharmacy to include specified outpatient settings and Medicare certified ambulatory surgical centers.

The implementation plan for this bill is to include a summary in the Board's upcoming newsletter; to notify and train Board staff, and to update the Web site and add a link to the Board of Pharmacy's Web site.

SB 1236 (Price), Chapter 332. This is the sunset bill for the Physician Assistant Committee (PAC) and renames them to the Physician Assistant Board (PAB), and makes it its own Board, not a committee of the Medical Board of California (Board). This bill was amended to include the sunset date extension of the Vertical Enforcement and Prosecution (VEP) model, from January 1, 2013 to January 1, 2014.

The implementation plan for this bill is to include a summary in the Board's upcoming newsletter; to notify and train Board staff; to continue to work with PAC (now PAB), to maintain the cooperative working relationship; to notify the AG's office of the VEP sunset date extension; and to address VEP in the Board's Sunset Report.

SB 1274 (Wolk), Chapter 793. This allows Shriners Hospital for Children (Shriners) to continue to employ physicians, and will allow the hospital to bill insurers for the services rendered to patients with insurance coverage.

Ms. Simoes brought to the Board's attention several bills of interest on the Tracker list.

AB 1588 (Atkins) and **AB 1904** (Block). Both of these bills are military related. **AB 1588** requires boards under DCA to waive professional license fees, continuing education (CE) requirements, and other renewal requirements as determined by the licensing board, for any licensee or registrant called to active duty. **AB 1904** requires a board under DCA to issue an expedited license to the spouse or domestic partner of a military member on active duty.

SB 1099 is related to regulations and revises the dates that a regulation is effective.

SB 1172 prohibits a mental health provider, including psychiatrists from engaging in sexual orientation change efforts with a patient under 18 years of age, regardless of the willingness of a patient, patient's parent, or other person to authorize such efforts.

B. 2013 Proposed Legislation

Ms. Simoes advised the members that any proposed legislation for 2013 will be handled through the sunset review process. New issues were discussed at yesterday's meeting and final new issues will be available in the Board's sunset review report to the Legislature.

C. Status of Regulatory Action

Ms. Simoes directed the members to the chart in the Board packet to review the status of all regulatory proposals that are in process. This included the two proposals that hearings were held for earlier that day.

Agenda Item 22 Board Member Communications with Interested Parties

Dr. Levine reported that she had one inquiry from a chief of a department of medicine who asked that she intervene in a licensing issue. She immediately forwarded this request to Mr. Worden and Ms. Whitney and if this issue should come before her panel, she will recuse herself from any involvement in making a decision on this matter.

Dr. GnanaDev disclosed that he was appointed to the board of the American Medical Political Action Committee (AMPAC). He also reported that he had attended the annual meeting of the California Medical Association.

Ms. Schipske disclosed that she recently had a voicemail left for her from a physician that wanted to voice concern about the application for a physician in her practice. She immediately forwarded this message to Ms. Whitney.

Dr. Salomonson disclosed that she had also received a message with a request for assistance on a licensing issue that she forwarded to Mr. Worden.

Agenda Item 23 President's Report

Dr. Levine reported that she has been getting acclimated to better understand her responsibilities of the role of Board President. She spent a very productive day at the Sacramento office meeting with the executive team and individuals that work at headquarters. She had the opportunity to visit the field office in Pleasant Hill to meet with investigators and medical consultants that work out of that office.

Dr. Levine also was able to attend the executive director roundtable with Ms. Whitney and this greatly helped to understand the executive order regarding the use of student assistants and retired annuitants. It also provided an opportunity to provide a case for the critical nature of the Board's need to ensure that the work that these individuals perform continues. Dr. Levine also met with the director of DCA, Denise Brown to introduce herself. Ms. Brown was extraordinarily complementary about the work that the Board does and the progress that has been made.

Dr. Levine has been invited to participate in two national meetings related to medical education in the 21st century. These are both policy level meetings. One was sponsored by the National Health Policy Forum and was held in Washington, D.C. The other was held at Stanford University. They are both involving a national representation of leaders that is thinking about the challenges of the 21st century technological changes, scientific changes, changes in communication, and what needs to be done to prepare medical students for the future. This is still in the strategic thinking stages and Dr. Levine will continue to updated the Board of the outcome of these sessions.

Dr. Levine has been involved for some time with the American Board of Internal Medicine Stakeholder Roundtable on Professionalism. They recently had a meeting in Philadelphia that looked at issues of professionalism and when the report is finalized, she will bring the proceedings to the Board. This relates to her own interest on the Federation's committee on Ethics and Professionalism. Much of what has been identified in terms of enforcement is really failures of professionalism.

Agenda Item 24 Executive Director's Report

Ms. Whitney began by informing the members that normally there is a presentation at the meeting from the Board of Pharmacy. They are currently meeting on the same two days of this meeting. Ms. Whitney continued by stating that they are talking about two main issues at their meeting. In addition to the emergency protocol that they adopted, they are discussing compounding pharmacies and electronic pedigree requirements for prescription medication. As these are topics of importance for physicians, upcoming information will be included in the upcoming newsletter.

The Department will hold its quarterly executive officers meeting in mid-November. This meeting is following the one that Dr. Levine attended with Ms. Whitney. The topics include performance based budgeting. DCA has been identified as one of the pilot departments that will undergo this and as Ms. Whitney knows more, she will update the members at an upcoming meeting.

A. Update on Staffing and Administration

Ms. Kirchmeyer provided a staffing comparison from the last meeting to this meeting. At the last meeting it was reported that there were 27 vacancies and the vacancy rate was 10%. The Board currently has 18 vacant positions for a vacancy rate of 6.6%. This is great news and improves the work of the Board. There are also five individuals either in background pending a start date or pending verification of eligibility. There are actually only 13 positions that are vacant and this would bring the vacancy rate to 5%. Ms. Kirchmeyer took a moment to thank staff for their hard work in getting these positions filled. Work continues to interview and hire seasonal employees and intermitten employees to replace the loss of student assistants and retire annuitant positions.

The Board staff is still under the personal leave program and employees must take one day off per month and a 5% reduction in pay.

B. Budget Overview

Ms. Kirchmeyer directed the attention to the budget and pointed out that the Board's fund condition at the end of fiscal year 2011/2012 showed a reserve of 5.2 months. The Board only has one augmentation request moving forward and that is for the BreEZe system. Based upon the projections, it appears that the Board will be very close to the mandated level of two to months reserve at the end of this year, and within the mandated level in the next fiscal year.

Ms. Kirchmeyer confirmed that at this time it is not prudent to consider any fee reductions, as previously recommended by the Bureau of State Audits. Staff will continue to monitor this to determine the need.

Ms. Kirchmeyer continued by discussing the Board's actual expenditures. One item that was pointed out showed an overage in the budget of 16,203%. Staff is working on this and it was identified that several contracts were placed on this line item in error and it will be corrected.

A chart showing a cost comparison for the last five fiscal years was reviewed. This chart is in response to the strategic plan objective 5.3 and staff will continue to monitor this spending and report to the Board.

Ms. Kirchmeyer concluded by sharing with the members that the Board received a thank you letter from the Twin Rivers Unified School District for the generous donation of laptops and printers. The Board received new printers and laptops and was able to survey out the outdated equipment and donate this to a school district.

C. Approval of 2013 Board Meeting Dates and Locations

Ms. Whitney discussed that the Executive Committee did commit to the January 31 – February 1, 2013 Board meeting date in the San Francisco Bay Area. This will safeguard the ability for staff to secure contracts for meeting space and sleeping rooms.

Up for discussion was the April 25 -26, 2013 meeting location. Ms. Whitney also clarified the consequences of conducting a meeting on July 18 – 19, 2013 or on August 1 – 2, 2013. Due to the July 4th holiday, this would warrant a late delivery of the Board meeting materials to the members. The August date could also pose a problem due to the expiration of the 60 day grace period for three of the current Board appointees. If there are not new appointments made to the Board, this could result in the loss of a quorum.

Dr. Salomonson made a motion to hold the April 25 – 26, 2013 meeting in the Los Angeles area; s/Diego; motion carried with Dr. GnanaDev and Ms. Yaroslavsky abstaining.

Ms. Yaroslavsky made a motion to hold the meeting in the Sacramento area on July 18 – 19, 2013; s/Diego; motion carried.

Mr. Serrano Sewell made a motion to hold the October 24 – 25, 2013 in the Ontario area; s/Yaroslavsky; motion carried with Dr. Bishop abstaining.

Agenda Item 25 Enforcement Chief's Report

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

Ms. Threadgill requested approval for 11 orders restoring license to clear status following completion of probation.

Dr. Levine made a motion to approve the orders; s/Yaroslavsky; motion carried.

B. Expert Utilization Report

Ms. Threadgill reported that the number of active experts is 953. This number has slightly increased from the 944 that was reported at the last meeting.

The Enforcement Program is currently coordinating the second presentation of the revised Expert Reviewer Training which will be held on February 9, 2013 at UC Irvine. Ms. Threadgill and Ms. Sweet hope that another training will be provided in June at the UCSD, La Jolla location.

The Program continues to work with the ALJs to provide training by video conferencing to all OAH offices. Training topics have included pain management, electronic medical records, changing the face of medicine, and new robotics versus the old style surgery.

C. Enforcement Program Update

Ms. Threadgill continued with the Enforcement Program update by reporting that the vacancy rate for investigators is at 9%. When this factor includes candidates that are in background and not yet hired, the vacancy rate is only 3%. The vacancy rate for supervisors remains at 19% and the overall Enforcement vacancy rate is 11%. The Program recently hired seven new investigators who are attending a post special investigator basic course. This 16 week course is required for all investigators at some point during their first year of employment. Once the 16 week post training course is completed, the Board will conduct an in house mini academy that is specific training for Board investigators.

D. Program Statistics

Ms. Threadgill indicated that a question often arises regarding the percentage of cases that are stipulated versus the cases that go to hearing. There numbers were recently calculated and it was found that in fiscal year 2010/2011, 74.6 cases stipulated to a decision; 18.7% of the cases went to hearing and were decided by an administrative law judge and 6.7% resulted in a default decision. In fiscal year 2011/2012, the percentages were 76.9 of cases stipulated, 15.9% went to hearing and 7.2% resulted in a default decision.

Ms. Threadgill then discussed a chart that reflected the progress toward meeting the Enforcement Program goal to reduce the complaint processing time. The complaint unit has done an outstanding job of reducing the average time to 67 days with 48% of the complaints below 50 days. This represents a 16 day reduction in time when compared to 83 days at the end of fiscal year 2011/2012. The goal in the strategic plan is to reduce the time and have 50% of the complaints below 50 days.

Ms. Threadgill stated that there has been progress made in reducing the time to acquire medical records. However, there has not been as much success with the reduction of time to complete subject physician interviews.

Ms. Threadgill continued that at the previous day's meeting, public comment was received on the draft Sunset report to the Legislature. Concern had been expressed that the enforcement program has not attributed the great successes it has achieved relating to case again, production and prosecutorial results to the Vertical Enforcement (VE) program. Ms. Threadgill contended that in no way was there any intent to be overly critical of VE, but part of any healthy organization is to identify and recognize opportunities for improvement and change. The Enforcement Program believes VE has been beneficial for certain types of cases. In the case of Interim Suspension Orders, the early involvement of Deputies in a case has proved invaluable. However, it is disconcerting to hear the 203% increase in criminal referrals being accredited to VE when the VE enforcement manual expressly prohibits deputies from being involved in criminal cases.

The senior staff continues to meet every quarter with HQE senior staff to resolve problems and identify areas of improvement.

Ms. Threadgill concluded that the Program feels that they could bring the case aging down further if some components of VE were modified so that attorney involvement, which is appropriate in some, but not all cases, was limited to the cases where it proves truly beneficial. Ms. Threadgill did not want to imply that there are not positive components to VE and the Program's collaboration with HQE. However, with her being intimately involved with the operations of the Program, she

believes it would be disingenuous to report to the Legislature that something is working perfectly when there is clearly room for improvement.

Agenda Item 26 Vertical Enforcement Program Report

Prior to Mr. Ramirez's report, several of the members requested information regarding the length of time it takes for a subpoena to be activated. Mr. Ramirez explained that one of the major issues is scheduling. The length of time it takes to schedule a subpoena enforcement in any superior court whether it is Los Angeles, San Diego, or Sacramento, is always going to be a problem.

Mr. Ramirez further explained that most superior courts do not have experience enforcing subpoenas. Instead of going to a dedicated department for a writ or ex parte matters, they are sent to another courtroom where there is not experience in these particular cases. It is believed that if the appropriate entities could assign these matters to one department, it would surely speed up the process of enforcement from the judicial side.

A. Status on Statistics

Mr. Ramirez reported that they have continued to provide quarterly and monthly statistics to Board staff. In the near future, they are going to be submitting a request for statistics from the Board with regards to the statistics set from the basis of the Sunset Report. They wish to make sure that when it comes time to evaluate the VEP program, they have the same statistics and are operating from the same basis in doing a side by side comparison.

At the same time, Mr. Ramirez did want to state that the Attorney General's office did not agree with all the statements that are contained in the Sunset Report in regards to enforcement. They will review the statistics that amplify these concerns and report back to the Board at a later date.

B. HQE Organization and Staffing

Mr. Ramirez reported that there had been a vacancy in the San Diego office due to the transfer of a deputy to the Office of Administrative Law. At this time they have been able to extend an offer for employment to a former HQE attorney, Marty Hagen and he is expected to start November 1, 2012.

Agenda Item 27 Licensing Chief's Report

A. Staffing

Mr. Worden reported that there are currently only three vacancies in Licensing. This is the lowest number of vacancies since he has been the Chief of Licensing. They are currently on the process of interviewing seasonal clerks to help replace the student assistants and in the process of developing a plan to replace the retired annuitants with permanent intermittent employees. The retired annuitants were approved to continue while this is in process.

B. Program Statistics

Mr. Worden reported that in the first quarter of fiscal year 2012/2013, the consumer information unit had answered 26,022 calls. They received 1,708 physician and surgeon applications. 1,556 applications were reviewed and 1,447 licenses were issued. The Board processed 93 application at the SR2 level.

The Strategic Plan goal has been met this quarter and remains below the 45 day level. The statistics that were sent to the members on October 13, 2012, stated that U.S. and IMG application review dates were at 30 days for initial review. Mr. Worden reported that last year it was 43 days for U.S.

applications and 35 days for the IMGs.

C. Status of International Medical School Program
Mr. Worden continued that are currently 102 international schools in the pending status. There are seven self-assessment reports pending and 30 international medical schools were recognized pursuant to CCR 1314(a) (1). At this time, there has not been approval of any of the 82 schools that have self-assessment reports pending.

D. Status of Free Health Care Event Program
The regulations are complete for the free health care events sponsored program. The Board has not yet received any applications.

Public comment was received for this agenda item.

Hilma Balaian, Kaiser Permanente echoed her previous comment about a primary source verification of PTAL.

Agenda Item 28 Midwifery Advisory Council Update
Carrie Sparrevohn and Dianne Dobbs provided an update for the members.

Ms. Sparrevohn reported that the Midwifery Advisory Council (MAC) met on August 30, 2012. The MAC meeting included a lengthy discussion regarding proposed regulations surrounding the issue of physician supervision.

Ms. Sparrevohn continued that a task force had met regarding students and assistants. There continues to be a debate about what a student can and cannot do, and what constitutes an assistant. Some of the issues that were explored will need clarification in statute in order to provide students with guidelines for actions that they can take in relation to patient care.

Also discussed was the role of a midwife who has completed training, applied for licensure but, not yet licensed. Can this person continue to work under a licensed midwife as an assistant while waiting to be licensed?

Another item that requires review is the apprenticeship model. When the original midwifery practice act was signed into law in 1993, the intent was to allow for the continued route of entry through apprenticeship with the entrance of licensure coming through the challenge method. Currently, supervising midwives seem to be reluctant to have an apprentice who is not enrolled in some kind of formal school. Ms. Sparrevohn commented that if the apprenticeship model is going to be done away with completely, then regulations will need to be put into place in terms of the educational component.

One other issued that the MAC discussed was the licensed midwife annual report and its ongoing inability to adequately reflect the outcome of home births in California.

Ms. Schipske suggested that the Board receive a written list of the regulations that the MAC would like to have put into place. She encouraged the MAC to also identify a legislative sponsor.

Public comment was received for this agenda item.

Gerri Ryan, Nizhoni Institute of Midwifery commented that she would like to go on the record as supporting dual entry into midwifery. Ms. Ryan supports the education model as well so that students are well versed and understand when it is appropriate to be in a hospital.

Ms. Yaroslavsky made a motion to accept the following upcoming MAC meeting agenda items; an update on the student task force; a presentation on the data collection tool; a report from staff on moving forward with the regulatory and statutory changes to the licensed midwifery annual report; an update from legal on the responsibility of the MAC members and compliance with the open meeting act; and a discussion of Business and Professions Code Section 2514(a) on who can supervise a midwifery student; s/Schipske. Motion carried.

Agenda Item 29 Agenda Items for January 31 – February 1, 2013 Meeting in the San Francisco Area

Dr. Levine requested a presentation from Donate Life on the possibility of sponsorship of a special license plate.

An update was requested on how the Board has implemented uniform standards per the requirements of SB 1441.

There should be a discussion of what it would take for teleconferencing of Board meetings and the creation of the opportunity for comment from those remotely.

An update should be provided on the PA residency program standards.

There should be an agenda item that provides an update on BreEZe.

Agenda Item 30 Adjournment

There being no further business, Ms. Yaroslavsky made a motion to adjourn; s/GnanaDev; motion carried.

The meeting was adjourned at 2:00 p.m.

The full meeting can be viewed at:
http://www.youtube.com/watch?v=OkywZdKfPjQ&feature=BFa&list=PL6Up7Y6dOLoqwSGAmnhWAQjC6RYPIu74v

http://www.youtube.com/watch?v=R_xR91ZKYAw&feature=BFa&list=PL6Up7Y6dOLoqwSGAmnhWAQjC6RYPIu74v

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Sharon Levine, M.D., President

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Silvia Diego, M.D., Secretary

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Linda K. Whitney, Executive Director