MEDICAL BOARD OF CALIFORNIA

ENFORCEMENT COMMITTEE
MEETING AGENDA

MEMBERS OF THE ENFORCEMENT COMMITTEE
Dev GnanaDev, M.D., Chair
Sharon Levine, M.D.
Gerrie Schipske, R.N.P., J.D.
David Serrano Sewell, J.D.
Phillip Tagami
Barbara Yaroslavsky
Felix Yip, M.D.

Historic Mission Inn
3649 Mission Inn Avenue
Riverside, CA 92501
(951) 784-0300 (directions only)

Wednesday, October 23, 2013
4:00 pm – 7:00 pm
(or until the completion of business)
(and if necessary)
Thursday, October 24, 2013
5:00 pm – 6:00 pm

Action may be taken on any item listed on the agenda.

While the Board intends to webcast this meeting, it may not be possible to webcast the entire open meeting due to limitations on resources.

ALL TIMES ARE APPROXIMATE AND SUBJECT TO CHANGE.
If a quorum of the Board is present, members of the Board who are not members of the Committee may attend only as observers.

1. Call to Order / Roll Call

2. Public Comment on Items Not on the Agenda
   Note: The Committee may not discuss or take action on any matter raised during this public comment section that is not included on this agenda, except to decide to place the matter on the agenda of a future meeting. [Government Code §§11125, 11125.7(a)]

3. Approval of Minutes from April 25, 2013 Meeting

4. Update on Implementation Plans for the Transition of Staff Pursuant to SB 304 – Ms. Kirchmeyer

5. Presentation Regarding Enforcement Program Accomplishments – Ms. Sweet

6. Discussion on Suggested Improvements to the Enforcement Program and Review of Member Survey Results – Dr. GnanaDev

7. Update on Operation Rx (Prescribing Strike Force) – Ms. Sweet

8. Update on Expert Reviewer Training – Ms. Sweet

9. Probation Monitoring Presentation – Ms. Cady

10. Agenda Items for February 2014 Meeting

11. Adjournment

NOTICE: The meeting is accessible to the physically disabled. A person who needs a disability-related accommodation or modification in order to participate in the meeting may make a request by contacting Lisa Toof at (916) 263-2389 or email lisa.toof@mbc.ca.gov or send a written request to Lisa Toof at the Medical Board of California, 2005 Evergreen Street, Ste. 1200, Sacramento, CA 95815. Providing your request at least five (5) business days before the meeting will help ensure availability of the requested accommodation.

Meetings of the Medical Board of California are open to the public except when specifically noticed otherwise in accordance with the Open Meeting Act. The audience will be given appropriate opportunities to comment on any issue presented in open session before the Board, but the President may apportion available time among those who wish to speak.

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For additional information, call (916) 263-2389.

The mission of the Medical Board of California is to protect health care consumers through the proper licensing and regulation of physicians and surgeons and certain allied healthcare professions and through the vigorous, objective enforcement of the Medical Practice Act, and to promote access to quality medical care through the Board's licensing and regulatory functions.

MEDICAL BOARD OF CALIFORNIA

ENFORCEMENT COMMITTEE AGENDA ITEM 3
Hilton LAX
Los Angeles Room
5711 W. Century Boulevard
Los Angeles, CA 90045
(310) 410-4000 (directions only)

Thursday, April 25, 2013

MINUTES

Agenda Item 1 Call to Order/Roll Call
The Enforcement Committee of the Medical Board of California was called to order by Dr. Reginald Low, Chair. With due notice having been mailed to all interested parties, the meeting was called to order at 1:30 p.m.

Members Present:
Reginald Low, M.D., Chair
Dev GnanaDev, M.D.
Sharon Levine, M.D.
Gerrie Schipske, R.N.P., J.D.
David Serrano Sewell, J.D.
Barbara Yaroslavsky

Staff Present:
Susan Cady, Enforcement Manager
Dianne Dobbs, Department of Consumer Affairs, Legal Counsel
Kurt Heppler, Staff Counsel
Kimberly Kirchmeyer, Deputy Director
Armando Melendez, Business Services Analyst
Regina Rao, Business Services Analyst
Renee Threadgill, Chief of Enforcement
Teresa Schaeffer, Enforcement Program Analyst
Kevin Schunke, Outreach Manager
Jennifer Simoes, Chief of Legislation
Laura Sweet, Deputy Chief of Enforcement
Lisa Toof, Administrative Assistant II
Rachel Wachholz-LaSota, Inspector III
Linda Whitney, Executive Director
Curt Worden, Chief of Licensing

Members of the Audience:
Hilma Balaian, Kaiser Permanente
Genevieve Clavreul
Yvonne Choong, California Medical Association

Zennie Coughlin, Kaiser Permanente
Karen Ehrlich, L.M., Midwifery Advisory Council
Julie D'Angelo Fellmeth, Center for Public Interest Law
Alicia Cole, Consumers Union Safe Patient Project
Jack French, Consumers Union Safe Patient Project
Marie Russell
Stephen J. Cattolica, CSPM & R; CNS
Lisa Girion, LA Times
Jill Silverman, IMQ

Agenda Item 2 Public Comments on Items not on the Agenda
Genevieve Clavreul asked that some action be taken by the Board regarding the issue of a nurse practitioner misrepresenting herself as a physician while treating her daughter.

Alicia Cole with the CA Safe Patient Project provided comment on the importance of disclosing malpractice judgments, settlements, and disciplinary history on the Board's Web site in order to allow the consumers of California to be better informed about the choices they make when they are trusting their lives and their livelihood to a physician.

Agenda Item 3 Approval of Minutes from January 31, 2013
Dr. GnanaDev made a motion to approve the minutes from the January 21, 2013 meeting; s/Mr. Serrano Sewell; motion carried.

Agenda Item 4 Update on Expert Reviewer Training
Ms. Sweet provided an update on the expert reviewer training that was held on February 9, 2013 in Irvine. She stated the training was well-attended, well-received. She also reported that a new process has been implemented which allows participants to receive additional CME credit, if they provide a sample expert opinion. This new process is yielding interesting information that will be used to enhance the next training which will take place in either October or November 2013 in San Diego.

Dr. Low commended Ms. Sweet and her team on putting together a phenomenal training.
Ms. Schipske thanked Dr. Low for recommending the Board provide this type of training.

Dr. Levine stated the training will potentially enable the Board to recruit more interested physicians into the expert reviewer program and it may also be used as a marketing tool for the Board in terms of encouraging greater participation in the program.

Agenda Item 5 Discussion and Consideration of Proposal to Increase Expert Reviewer Hourly Rate upon Completion of the Expert Reviewer Training Program
Ms. Sweet directed the Members' attention to pages 5-1 through 5-3 of their Board packet for information regarding a proposal to increase compensation for expert reviewers. Ms. Sweet provided a detailed report outlining the difficulty the Board has had in procuring experts, especially in neurosurgery cases, because of the low pay rates. Currently all experts are compensated at a rate of $150.00 per hour to review records and prepare a report, and at $200 per hour to testify. Staff recommended that a budget augmentation be prepared that would call for experts who have

successfully completed the 8 hours of training and have provided a satisfactory sample expert opinion, be compensated at a rate of $200.00 per hour for record review and report writing and $250.00 per hour for testifying for all specialties except for neurosurgery. In neurosurgery cases, staff recommended compensation be increased to $300.00 per hour for record review and report writing and $400.00 per hour for testimony. The Committee made a motion to bring this item to the full Board in order to direct staff to prepare a budget augmentation to increase expert reviewer pay according to the proposal.

Dr. Low made a motion to bring the recommendation forward to the full board; s/Dr. Levine; motion carried.

Agenda Item 6 Discussion on History of Efforts to Improve Retention by Enhancing the Investigator Classification and Consideration on Another Examination to Improve Retention

Ms. Threadgill directed the Members' attention to pages 6-1 through 6-5 of their Board packet for information regarding this item. Ms. Threadgill provided an outline of the historical efforts the Board has made to improve the retention of investigators. She stated it is remarkable how long the Board has been trying to get higher pay for investigators (commensurate with other state agencies) and how unsuccessful these attempts have been. Ms. Threadgill also reported on her most recent effort to ask the DCA to submit a request to the DPA for pay differentials for Training Officers, Range masters, Defensive Tactics Instructors and other formal training assignments. As of this date, this request remains unanswered.

Ms. Threadgill stated staff is recommending the Board seek training officer differentials for staff when engaged in training activities such as: field training officer, range master, defensive tactic instructor, and other formal training assignments; seek geographic pay differentials for living in high-cost areas such as Los Angeles; and work with the DCA to amend the specifications for the investigator classification series to expand the subject areas of the degrees accepted for admission to the examination.

Dr. Low asked for a motion to bring the recommendation to the full Board to direct staff to work with DCA to amend the specifications for the investigator classification series to expand the subject areas of the degrees accepted for admission to the examination and to request pay differentials.

Dr. GnanaDev made the motion to bring the recommendation to the full Board; s/Ms. Schipske. Motion carried.

Agenda Item 7 Discussion of Priorities Established in Business and Professions Code section 2220.05

Ms. Cady provided a power point presentation on the priorities established under Business and Professions Code Section 2220.05 noting that the law was established in 2003 and identifies priorities for the Board's investigative and prosecutorial resources.

Agenda Item 8 Discussion of Workers' Compensation Utilization Review Process; Investigation of Complaints

Ms. Cady and Mr. Heppler provided a brief overview of the Utilization Review Process and the Board's obligation to investigate complaints against physicians who participate in utilization review activities. Ms. Cady explained the Board receives a very small percentage of complaints regarding physicians who perform Utilization Review (UR). She stated that historically the Board declined to investigate this type of complaint if it was determined the physician had no direct involvement in the patient's care and treatment, and was only making a decision about whether the procedure or treatment would be covered as medically indicated or necessary. Staff suggested that the Board continue its established policy of performing a preliminary analysis of each new complaint. If the complaint involves a UR issue, Board staff should inform the complainant to pursue their appeal options.

Following a lengthy discussion by the Members, a motion was made to recommend to the full Board that it reaffirm that UR IS the practice of medicine and direct staff to develop guidelines and identify any legislative amendments that may be required in order for the Board to take action on cases when UR results in the practice of substandard medical care.

Public comment was provided for this agenda item.

Stephen Cattolica, California Society of Physical Medicine & Rehabilitation, provided public comment and stated that the problem facing the Board that needs to be addressed is the Board's jurisdiction over a license when a patient experiences any harm as a direct result of the licensee's denial of care. He requested the Board quickly and unequivocally reaffirm its jurisdiction over the medical decisions made by California licensed physicians and surgeons who conduct URs. He also requested that the committee recommend to the Board that it create a plan to direct enforcement staff to implement enforcement oversight over these decisions that have adverse effects over injured workers.

Ms. Yvonne Choong provided comments and stated the CMA would support Mr. Cattolica's request that UR is the practice of medicine and should be enforced as such.

Genevieve Clavreul spoke in support of the position that UR is the practice of medicine.

Julie D'Angelo Fellmeth, Center for Public Interest Law, provided comments in support of the position that UR is the practice of medicine. She stated the bottom line is the Board is the only body in California that has authorization over a physician's license and suggested that the Board identify how to get this information from other agencies such as Department of Industrial Relations.

Dr. GnanaDev made a motion to recommend to the full Board that it reaffirm that Utilization Review IS the practice of medicine and direct staff to develop guidelines and identify any legislative amendments that may be required in order for the Board to take action on cases when utilization review results in the practice of substandard medical care; s/Dr. Levine; motion carried.

Agenda Item 9 **Establishment of a Task Force to Develop and Address Best Practices Related to Prescribing Controlled Substances to Relieve Pain and Examine MBC Guidelines**

Dr. Low gave an update on the growing problem regarding the prescription drug overdose "epidemic" facing the Board. Dr. Low reported the Board co-sponsored the Pain Summit that was held last month in San Francisco that was hugely successful and included various presentations from a variety of experts relating to prescription drugs. Dr. Low explained that historically, the pendulum has swung back and forth on this issue. In the 1990s, it was thought that drug laws were too restrictive and therefore patients were being under-medicated and their pain was not being relieved. The legislature in answer to this concern, enacted new laws, one of which was Business and Professions Code Section 2241.5, known as the Intractable Pain Treatment Act. The Act states, in part, that no physician or surgeon shall be subject to disciplinary action for prescribing, dispensing or administering dangerous or prescription controlled substances when certain criteria are met. That criteria is generally encompassed in the Board's pain management guidelines. Dr. Low stated this is an issue that has been on opposite sides of the prescribing spectrum for years and it is time for the Board to look at how to address the problem to determine whether changes need to be made to the Board's investigations and policies to make certain they comport with the changing times.

Dr. Low suggested a task force be convened to further define the best practices as it relates to prescribing controlled substances and to revisit the pain management guidelines to see if there are additional guidelines that can be added (or removed) to address this very serious problem and ask for volunteers to work with staff.

Public comment was provided for this agenda item.

Ms. Choong thanked the Board for taking the initiative to establish this task force and stated that CMA would like to participate in the process. She continued with CMA has already developed a fairly substantial database of resources, academic journal articles and other resources on this area precisely looking at whether or not guidelines need to be developed. CMA is also developing a white paper this summer, that takes a look at best practices for physicians who are engaged in pain management and would like to share these resources with the Board.

Dr. Low suggested that more importantly the Board must include the primary care physicians that take care of the patients because many pain medicine physicians expect the primary care physicians to prescribe chronic pain medications.

Ms. Choong agreed that there is a problem trying to work out at what point the primary care physician refers to a specialist, particularly for physicians who rarely prescribe pain medications.

Genevieve Clavreul responded that she has been very involved in the issue of chronic pain and opiate use and that she has written two papers, one named The Great Opiate Debate of 2012 and one on chronic pain. She also stated that she was available to participate on the task force in any measure available.

Mr. Serrano-Sewell made a motion to establish a task force on prescribing and that it include interested parties; s/Schipske. Motion carried.

Members of the task force include: Ms. Yaroslavsky and Dr. Bishop.

Agenda Item 10 Discussion of MBC Efforts to Implement SB 1441 Uniform Standards

Ms. Cady presented a thorough historical review of the Model Disciplinary Guidelines and rulemaking process as it related to the implementation of the Uniform Standards set forth in Senate Bill 1441. Following the presentation a discussion by the Members ensued. Dr. Low asked for a motion for staff to institute rulemaking procedures in order to adopt the Uniform Standards set forth in SB 1441, and to direct legal counsel to draft a response regarding action taken by the Board.

Public comment was provided for this agenda item.

Alicia Cole of the Consumers Union Safe Patient Project thanked the Committee for supporting the Uniform Standards and urged the Committee to adopt them completely and immediately by coming into compliance with the requirements of SB 1441.

Julie D'Angelo Fellmeth, Center for Public Interest Law, recommended the Board adopt a regulation that says the following: In reaching a disciplinary decision involving a substance abusing licensee the Board shall comply with the Uniform Standards adopted by the substance abuse coordination committee in April 2011 which are hereby incorporated by reference.

Mr. Heppler respectfully suggested the Committee recommend to the full Board that the Board immediately commence the rulemaking process to adopt the Uniform Standards set forth in SB 1441 in regulation at the next Board meeting. The Committee may want to recommend the following language: "In any disciplinary decision involving a substance abusing licensee the following shall apply." This language would take out the discretionary authority of the Board.

Ms. Schipske made a motion that the Committee recommend to the full Board that it direct staff to begin the rulemaking process to implement SB 1441 Uniform Standards. In addition, that the Board direct Counsel to draft appropriate response reflecting the actions taken by the Committee; s/Mr. Serrano Sewell. Motion carried.

Agenda Item 11 Agenda Items for July 2013 Meeting

No agenda items were heard.

Agenda Item 12 Adjournment

There being no further business, the meeting was adjourned at 3:43 p.m.

The full meeting can be viewed at www.mbc.ca.gov/board/meetings/Index.html

MEDICAL BOARD STAFF REPORT

DATE REPORT ISSUED: October 10, 2013
ATTENTION: Members, Enforcement Committee
SUBJECT: Transition of Medical Board of California (Board) Investigators Pursuant to Senate Bill (SB) 304
STAFF CONTACT: Kimberly Kirchmeyer, Interim Executive Director

REQUESTED ACTION:

This report is intended to provide information to the Members on the transition of the Board's investigators, medical consultants, and support staff to the Department of Consumer Affairs' (DCA) Division of Investigation (DOI), Health Quality Investigation Unit (HQIU). No action is needed at this time.

BACKGROUND AND ANALYSIS:

On October 3, 2013, Governor Brown signed SB 304, the Board's Sunset Review bill. This bill made a number of changes to the Board's statutes; however, one of the most significant amendments was the movement of the Board's investigators (peace officers), medical consultants, and all support staff for these positions to a new unit within the DCA, DOI. The amended pertinent sections of law are as follows (italics added for emphasis):

Section 159.5 of the Business and Professions (B&P) Code was amended to read:
"(a) (1) There is in the department the Division of Investigation. The division is in the charge of a person with the title of chief of the division.
(2) Except as provided in Section 160, investigators who have the authority of peace officers, as specified in subdivision (a) of Section 160 and in subdivision (a) of Section 830.3 of the Penal Code, shall be in the division and shall be appointed by the director.
(b) (1) *There is in the Division of Investigation the Health Quality Investigation Unit. The primary responsibility of the unit is to investigate violations of law or regulation within the jurisdiction of the Medical Board of California, the California Board of Podiatric Medicine, the Board of Psychology, the Osteopathic Medical Board of California, the Physician Assistant Board, or any entities under the jurisdiction of the Medical Board of California.*
(2) The Medical Board of California shall not be charged an hourly rate for the performance of investigations by the unit.
(3) This subdivision shall become operative on July 1, 2014."

Section 160.5 of the B&P Code was amended to read:
"(a) …
(b) (1) *All civil service employees currently employed by the Medical Board of California of the Department of Consumer Affairs, whose functions are transferred as a result of the act adding this subdivision shall retain their positions, status, and rights pursuant to Section 19050.9 of the Government Code and the State Civil Service Act* (Part 2 (commencing with Section 18500) of Division 5 of Title 2 of the Government Code). *The transfer of employees as a result of the act adding this subdivision shall occur no later than July 1, 2014.*
(2) *The transfer of employees pursuant to this subdivision shall include all peace officer and medical consultant positions and all staff support positions for those peace officer and medical consultant positions.*"

Section 2006 of the B&P Code was amended to read:
"(a) Any reference in this chapter to an investigation by the board shall be deemed to refer to a joint investigation conducted by employees of the Department of Justice and *the Health Quality*

Investigation Unit under the vertical enforcement and prosecution model, as specified in Section 12529.6 of the Government Code.
(b) This section shall become operative on July 1, 2014."

As indicated by these statutory amendments, the Board's investigative staff (including investigators, medical consultants and support staff) will be transferred to the DCA no later than July 1, 2014. The bill also states that all civil service employees will retain their current position, status, and rights.

This new HQIU will perform investigations for the Board, the Osteopathic Medical Board, the Board of Podiatric Medicine, the Board of Psychology, the Physician Assistant Board, and any other entity under the jurisdiction of the Board (e.g. Licensed Midwife Program, Registered Dispensing Optician Program, etc.). The Board's investigative staff currently perform investigative services for all these boards/entities so this is just a continuation of the current functions of the Board's investigators.

The amendments also specifically state that the Board cannot be charged an hourly rate by the HQIU. This language was specifically added because the Board's previous analysis had indicated that the transition of the positions to the DOI could lead to a significant fiscal increase due to the hourly rate charged by the DOI. At the Assembly Business and Professions Committee hearing, Dr. Levine testified that the transition of the investigators should be cost neutral, or should not result in an increase in the Board's expenditures. The bill went through several amendments, but ultimately stated that the Board could not be charged an hourly rate.

Lastly, although the bill transferred the investigations of the Board to the HQIU, it retained the vertical enforcement and prosecution model (VEP), which requires a joint investigation by the HQIU and employees of the Department of Justice, Health Quality Enforcement Section (HQES).

ANALYSIS OF THE TRANSITION:

The Board staff, in consultation with the DCA, is in the preliminary stages of the implementation of SB 304 and the transition of the investigative staff. Although the specific details of the transition have not been completely identified, discussions have begun and a high-level timeline has been developed by the Executive staff at the DCA (Attachment A). In addition, DCA has established a Transition Team, of employees from both the DCA and the Board, to work out the details needed to ensure a smooth transition for the Board, the staff, and all involved parties. Some of the specific details that need to be discussed include the review of contracts, leases, and databases/computer systems needing to be moved from the Board to the DCA; meeting with labor unions to discuss the transition of the employees; continued development of a budget for the DOI, HQIU and the billing process; etc. The DCA Executive staff and the Board staff have already met several times to discuss the implementation plan and will continue to do so throughout the course of the next eight months.

The attached flowcharts (Attachments B and C) provide a picture of how the enforcement process will change due to the transition. The first chart, Attachment B, identifies the current investigation process. As identified in the chart, the entire investigation and prosecution of a case remains with the Board and the Attorney General's (AG) Office. The second chart, Attachment C, identifies how the investigation process will be moved to the HQIU. It is important to note, that the Board's Central Complaint Unit, whose function is to initiate and triage complaints received prior to sending the complaint to investigation, will remain at the Board. This means the Board will retain control of receipt and triage of all complaints and will also be the decision maker as to whether an investigation is warranted. Once a

determination is made to investigate the matter, it will be referred to the HQIU for investigation. It will then be under the control of the DCA/HQIU to complete the investigation via the VEP.

Attachments D and E identify how the VEP will change with the transition of the investigators to the HQIU. Attachment D is the current process with the investigators under the authority of the Board. Attachment E identifies how the VEP process would change with the investigators being transitioned to the HQIU. Once the HQIU receives an investigation request from the Board, the case will need to be jointly assigned to a Deputy Attorney General in the AG's Office and a HQIU investigator. At the completion of the investigation, the HQIU and the AG's Office will determine the appropriate disposition of the investigation, e.g. closure, referral to the AGO for the filing of an Accusation, referral to citation and fine, referral to the Board for a pre-accusation public letter of reprimand, etc.

Currently, once an investigation is completed, the case proceeds through one of the avenues identified above for disposition (see Attachment B for specific details). However, with the transition of the investigators to the DCA, the investigation and outcome of the case must be forwarded to the Board for review and concurrence with the suggested disposition. If this does not occur, the Board would not have any authority over the outcome of the case. Therefore, Board staff must review the case disposition and determine whether the action taken by the HQIU and the AG's Office is warranted. If questions/concerns arise, then staff will need to discuss the matter with the AG's Office and HQIU. If the Board staff agrees with the outcome, the case will continue through the enforcement process.

In addition to the review of the case dispositions, there are several other functions that are performed by either the Chief of Enforcement, the Deputy Chief, or the Supervising Investigator IIs that can no longer be performed by these individuals as they will no longer be employees of the Board. These functions include, but are not limited to, attending statewide informal conferences after an appeal by a licensee on a citation and fine case, offering and negotiating a public letter of reprimand, providing settlement authority to the AG's Office during settlement negotiations, overall review and assessment of the Enforcement Program, etc. In addition, the monitoring and tracking of criminal actions will also no longer be completed by the investigative staff and will need to be performed by Board staff. The Board will be establishing a position to perform these duties.

Although the Board's investigative staff will be transitioned to the DCA, the remaining enforcement staff will be retained by the Board. This includes the aforementioned Central Complaint Unit (responsible for initiation and triage of complaint), the Discipline Coordination Unit (responsible for the processing of administrative documents and Board Panels), the Probation Unit (responsible for monitoring physician placed on probation), and the proposed Non-Sworn Special Investigative Unit (responsible for performing desk investigations). The duties and functions of these positions should remain as is. See Attachment F for a proposed new organization chart identifying the Board's new Enforcement Program after the transition of the Board's investigative staff. (Attachment G provides an organization chart reflecting the Board's Enforcement Program prior to the transition.)

IMPACT TO BOARD DISCIPLINARY ACTION/OVERSIGHT:

As can be determined based upon the attached flowcharts, the roles and responsibility of the Board Members in the review of disciplinary cases remains unaffected by the transition of the investigative staff to the DCA. Once the investigation is completed and the case is transferred to the AG's Office, the Board staff will monitor that case, the Executive Director will sign any pleading that is drafted, and the Board Panels will continue to vote on all proposed disciplinary actions. The Board will remain in

control of which cases are referred for investigation and will have the ability to review the recommended case disposition after an investigation is completed. The only thing that will now be outside of the Board's control will be the actual investigation of the case. This portion of the enforcement process will now be under the control of the DCA, just as currently the administrative process (filing the accusation and the subsequent hearing process) is under the control of the AG's Office and the Office of Administrative Law.

Although the Board will no longer have the authority over the investigative process, the Board will continue to receive statistical data on the length of time it takes to perform an investigation. The HQIU will use the BreEZe system to enter data on the progress of an investigation. Board staff will run reports from the BreEZe system in order to provide statistics to the Board. The current reports (once developed in the BreEZe system) will continue to be run on a monthly basis and the data will be provided to the Board at its quarterly meeting.

As previously stated, the DCA staff and the Board staff will continue to meet to ensure the transfer of the positions proceeds in a manner that is not disruptive to staff, licensees, or the consumers. The only way this can be done is through communication and collaboration by all parties involved.

Attachments
Attachment A – Timeline
Attachment B – Enforcement Process Prior to SB 304 Passage
Attachment C – Enforcement Process After to SB 304 Passage
Attachment D – VEP Process Before SB 304
Attachment E – VEP Process After SB 304
Attachment F – Proposed Enforcement Program Organization Chart After SB 304
Attachment G – Current Enforcement Program Organization Chart Before SB 304
Attachment H – DCA, DOI, and HQIU Organization Charts

*Proposed SB 304 Implementation Plan

October 2013

1. Appear at the Medical Board of California's (MBC) next board meeting and jointly present a proposed transition plan.
2. Establish with MBC and Department of Consumer Affairs (DCA) budget staff the details of the budget in implementing SB 304.
3. Transition Team is created (DCA executive staff and MBC staff).

November 2013

1. Begin joint meetings with MBC, Health Quality Enforcement Section (HQES) of the Attorney General's (AG) Office and the Division of Investigation (D of I) regarding briefing on Vertical Enforcement Prosecution (VEP).
2. Identify Transaction areas:
   - Facilities (if any)
   - Human Resources (HR)/Personnel
   - Budgets and Contracts
   - Expectations of AG's Office/HQES
   - Review current organization charts and begin discussion on proposed charts
   - Information Technology (IT) needs (databases, case management)
   - Internal and external communication
3. Begin information sharing with unions.

December 2013

1. Continue VEP discussion and enforcement manual orientation.
2. Request delegation from California Department of Human Resources (CalHR) to meet and confer with affected labor groups.

January 2014

1. SB 304 becomes law and transfers the MBC peace officers, medical consultants and support staff to D of I effective July 1, 2014.
2. Governor's Budget for FY 2014/15 is introduced. Preparation for budget hearings begin.
3. Transition team continues to meet and also meets with HQES to define implementation of VEP in the SB 304 model.
4. Begin town hall meetings with employees, unions and stake holders.
5. Continue information sharing meetings with unions.

February 2014.

1 Attend MBC's regular meeting to provide update.
3 Develop plan for the transition of IT, facilities, contracts and other administrative support components.
4. Initiate joint (D of I/MBC) senior management introductions and facilitate internal communication meetings.
5. Continue MBC and D of I field office town hall meetings.
6. Formal meet and confer (after Governor's Budget).

*****Proposed Plan is Subject to Change

March 2014

1. Continue town hall meetings with MBC and D of I field offices.
2. Continue information sharing meetings with unions.

April 2014

1. Review and determine need for revisions or amendments to the current VEP manuals of the MBC and HQES.

May 2014

1. MBC and D of I field office town hall meetings will be completed.
2. FY 2014/15 budget hearings begin.
3. Implement IT system access for D of I's management (case management systems).
4. Attend MBC's regular meeting and provide update.

June 2014

1. FY 2014/15 Budget Bill enacted to reflect appropriate budget authority.
2. Continue information sharing meetings with unions, if necessary.

July 2014

1. MBC investigators, support staff and medical consultants become employees of D of I.
2. Initiate a plan to have monthly conference calls or quarterly meetings with HQES leadership.
3. Report to MBC on the transition and provide enforcement statistics.

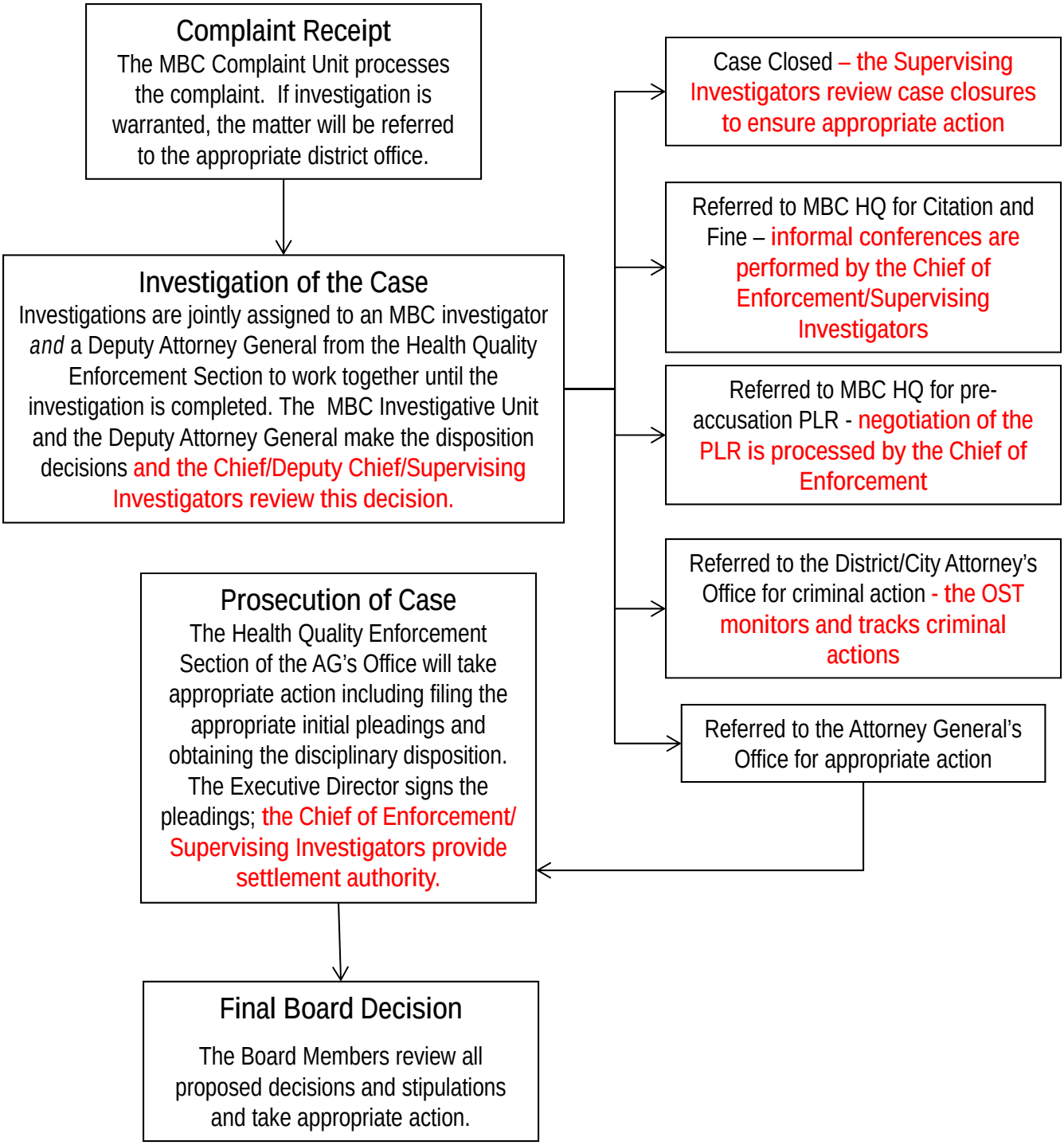
October 2014

1. Provide enforcement statistics to MBC at regular meeting.

Attachment B

Enforcement Process Prior to Senate Bill 304 Passage

Medical Board of California

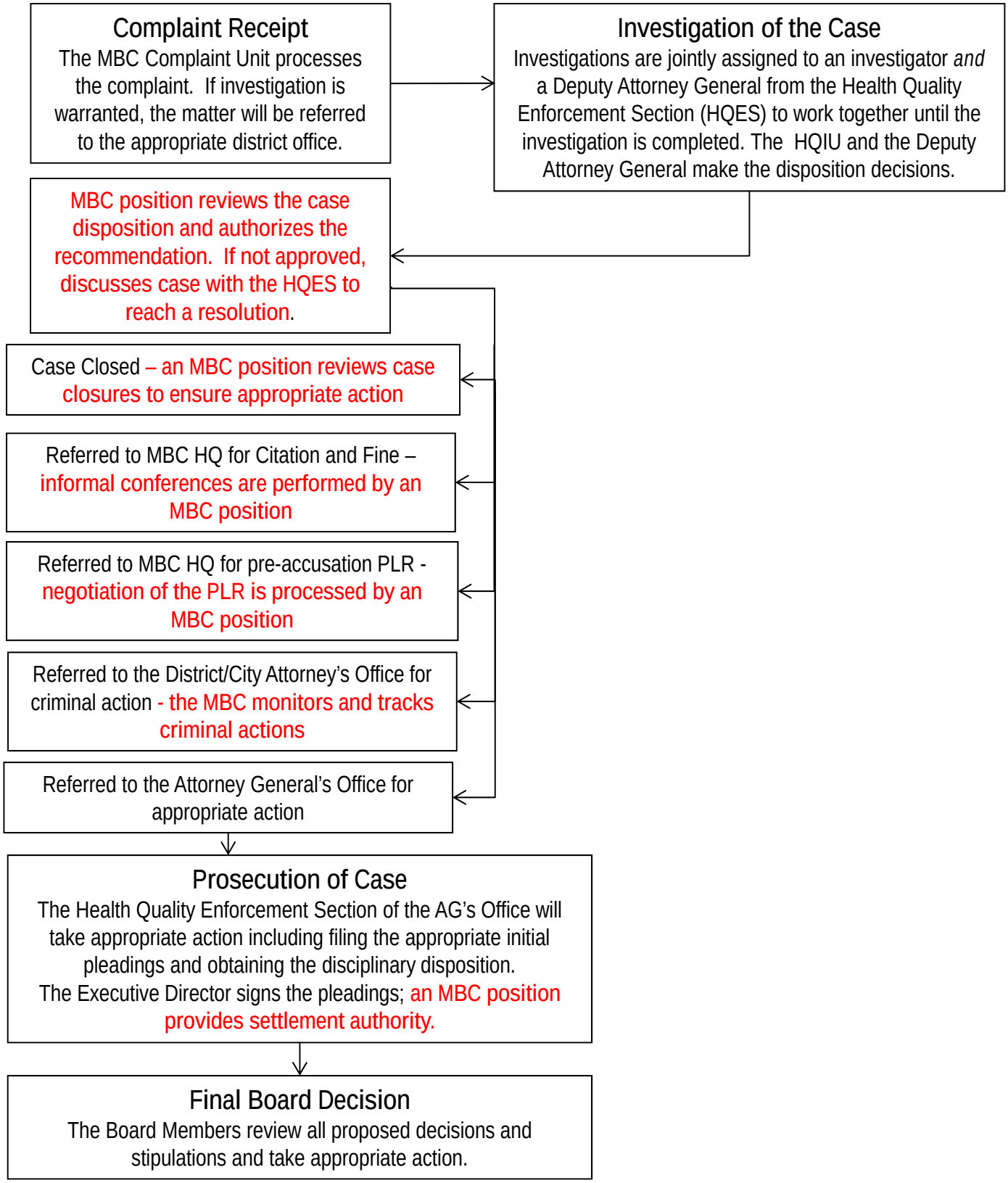


Enforcement Process After Senate Bill 304 Passage

Attachment C

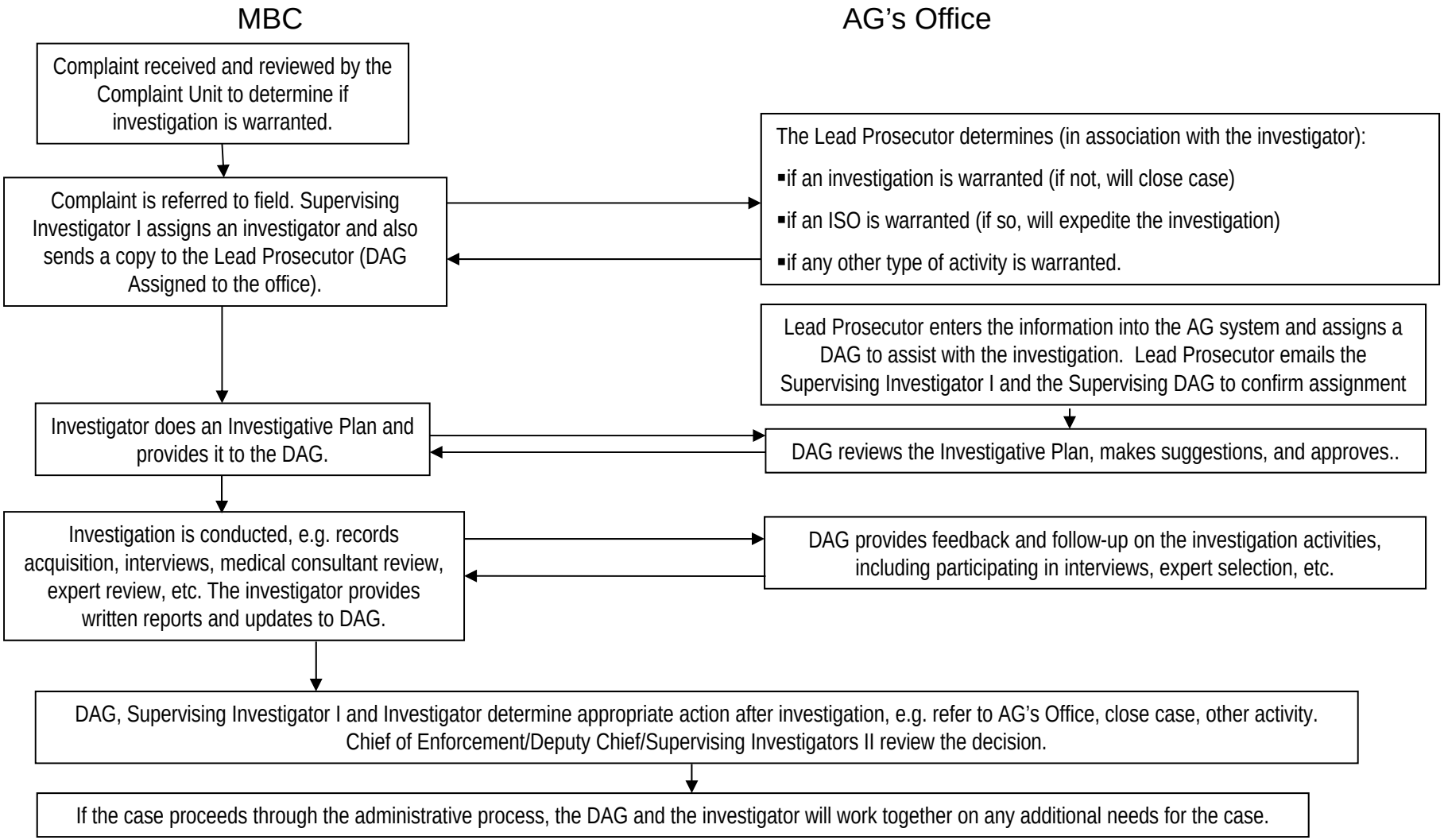
Medical Board of California

Health Quality Investigation Unit



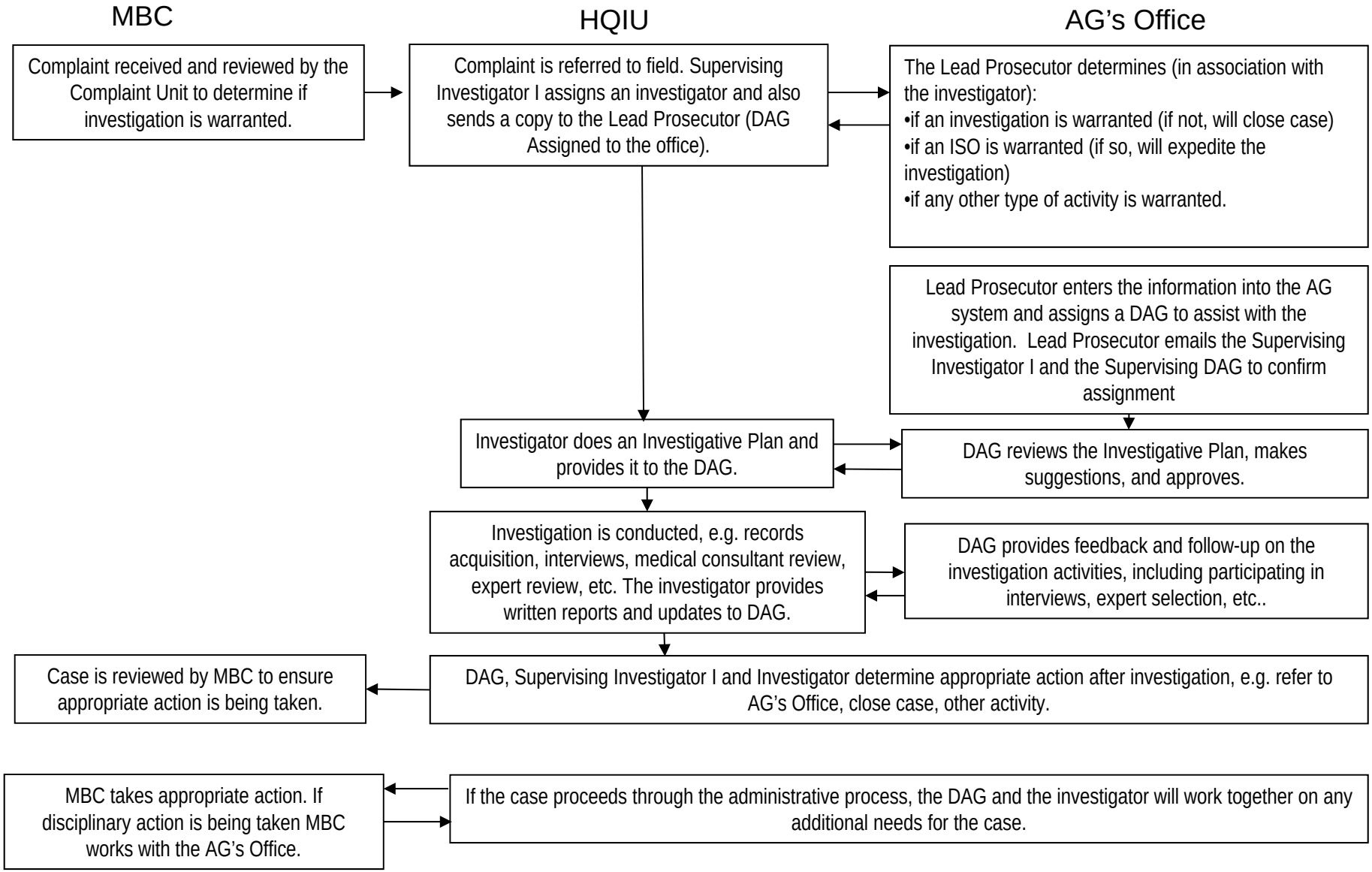
Vertical Prosecution Process Before SB 304

Attachment D



Vertical Prosecution Process After SB 304

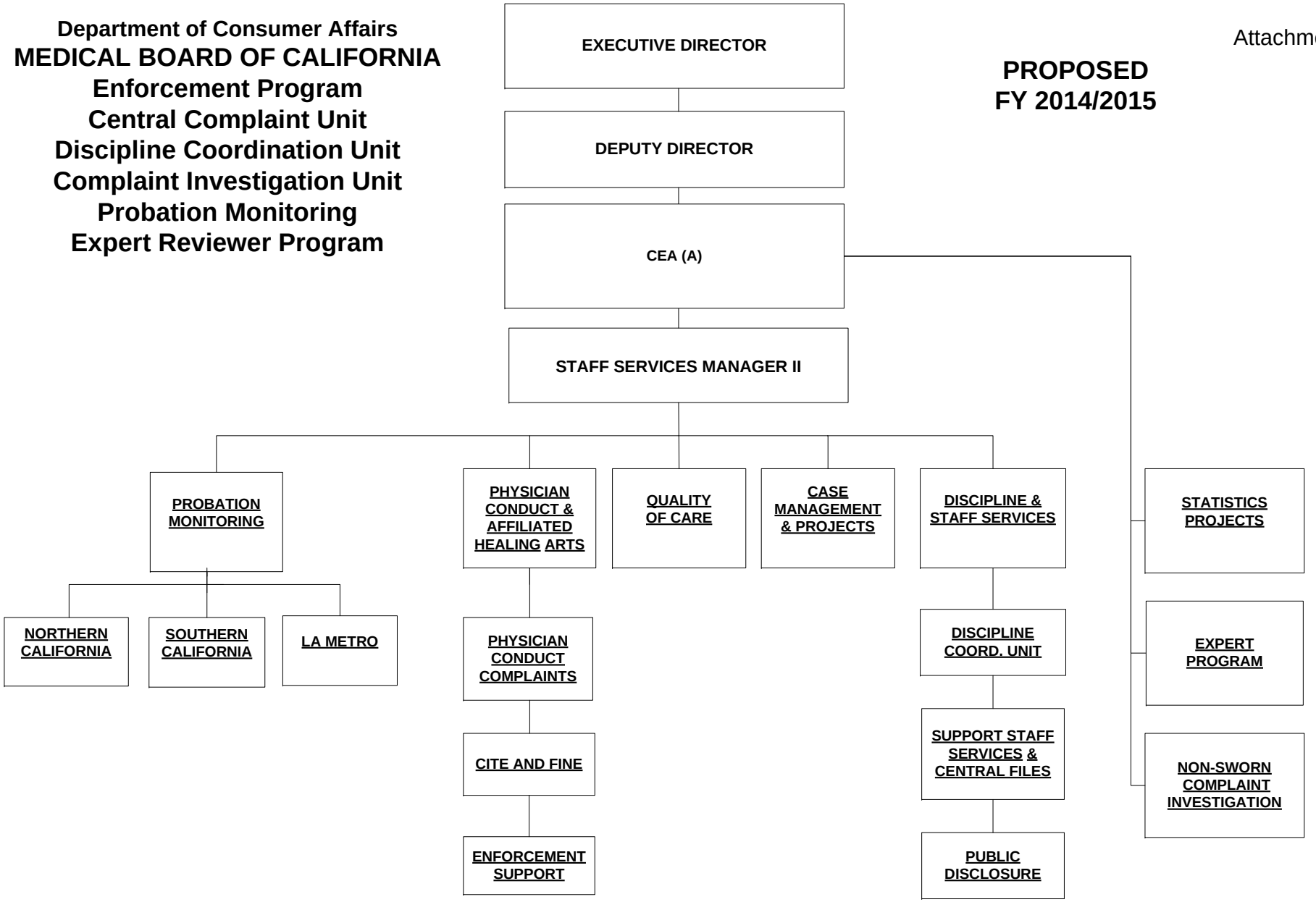
Attachment E



Attachment F

Department of Consumer Affairs
MEDICAL BOARD OF CALIFORNIA
Enforcement Program
Central Complaint Unit
Discipline Coordination Unit
Complaint Investigation Unit
Probation Monitoring
Expert Reviewer Program

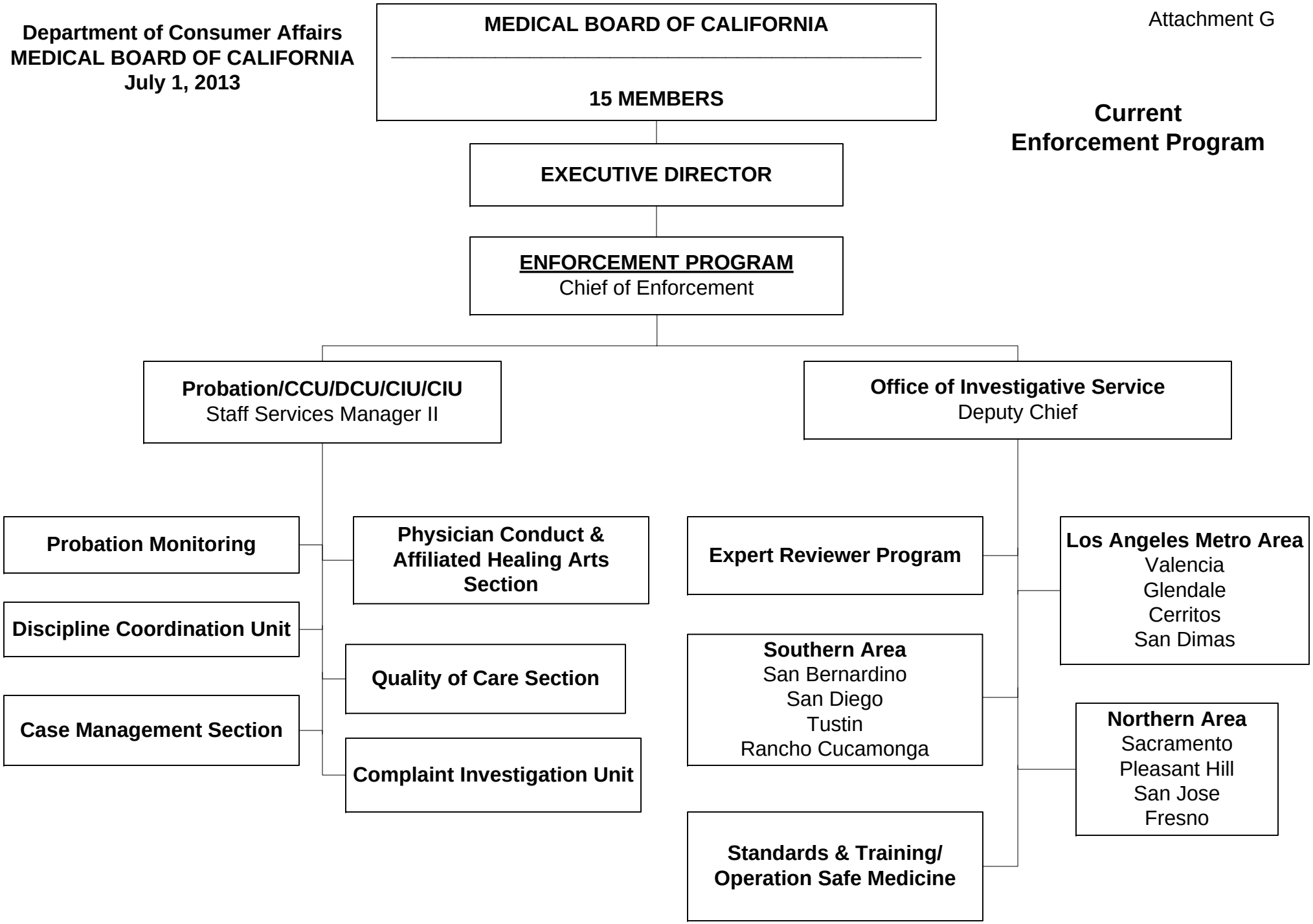
PROPOSED
FY 2014/2015



Attachment G

Department of Consumer Affairs
MEDICAL BOARD OF CALIFORNIA
July 1, 2013

Current Enforcement Program



Department of Consumer Affairs
October 2013
FY 13/14

Denise Brown
Director
Exempt

Awet Kidane
Chief Deputy Director
Exempt

Equal Employment Opportunity Office
Latania Robinson
Manager

Internal Audit Office
Vacant
Chief

Information Security Office
Walter Durette
Chief

Communications Division
Russ Heimerich
Deputy Director
Exempt

Public Affairs
Lisa Stratton
Manager

Publication, Design & Editing
June Vargas
Manager

Consumer Information Center, Correspondence and Outreach
Jennifer Willis
Manager

Division of Legislative & Policy Review
Tracy Rhine
Deputy Director
Exempt
Justin Paddock
Assist. Deputy Director
Exempt

Legal Affairs Division
Doreathea Johnson
Deputy Director
Exempt
Don Chang
Assist. Chief Counsel
Exempt

Board and Bureau Relations
Christine Lally
Deputy Director
Exempt

Bureaus

Bureau of Automotive Repair
Exempt, BAR Chief
Exempt, BAR Assist. Chief
Exempt, BAR Assist. Chief SMOG Check
CEA, BAR Deputy Chiefs (2)
Cemetery & Funeral
CEA, Cemetery & Funeral Chief
Bureau of Electronic & Appliance Repair, Home Furnishing & Thermal Insulation
Exempt, BEARHFTI Chief
Bureau for Private Post Education
Exempt, BPPE Chief
CEA, BPPE Deputy Chief
Bureau of Real Estate
Exempt, BRE Commissioner
Exempt, BRE Chief Deputy Commissioner
Exempt, BRE Assistant Commissioner, Legal Affairs
CEA, BRE Assistant Commissioner of Enforcement
CEA, BRE Chief Auditor
CEA, Licensing & Admin. Services
CEA, BRE Subdivisions
Bureau of Real Estate Appraisers
Exempt, BREA Chief
CEA, BREA Deputy Director Licensing, Enforcement & Admin. Services
Bureau of Security & Investigative Services
Exempt, BSIS Chief

Arbitration Certification Program
Telephone Medical Advice Services
Professional Fiduciaries Bureau
Complaint Resolution Program

Boards/Committees/Commission

Executive Officers, Committee & Commission Members – ALL EXEMPT

Board of Accountancy
CEA, BOA Chief of Enforcement
Acupuncture Board
Architects Board
Athletic Commission
Board of Barbering & Cosmetology
Board of Behavioral Sciences
Board of Chiropractic Examiners
Contractor's State License Board
CEA, CSLB Chief Deputy Registrar
CEA, CSLB Chief of Enforcement
CEA, CSLB Chief Info. Officer
CEA, CSLB Chief of Licensing
CEA, CSLB Chief of Legislation
Court Reporters Board
Dental Board
Dental Hygiene Committee
Board of Guide Dogs for the Blind
Landscape Architects Technical Committee
Medical Board of CA
CEA, MBC Assist Exe. Director
CEA, MBC Chief of Enforcement
CEA, MBC Chief of Licensing
CEA, MBC Chief of Legislation
Naturopathic Medicine Committee
Board of Occupational Therapy
Board of Optometry
Osteopathic Medical Board
Board of Pharmacy
CEA, BOP Assistant EO
Physical Therapy Board
Physician Assistant Committee
Board of Professional Engineers, Land Surveyors & Geology
Board of Podiatric Medicine
Board of Psychology
Board of Registered Nursing
Respiratory Care Board
Speech-Language Pathology and Audiology & Hearing Aid Dispensers
Structural Pest Control Board
Veterinary Medical Board
Board of Vocational Nursing & Psychiatric Technicians
CEA, BVNPT Assistant EO

Division of Investigation and Enforcement Programs
Michael Gomez
Deputy Director
Exempt

Office of Administrative Services
Sandra Mayorga
Deputy Director
CEA

Fiscal Operations
Janice Shintaku
Fiscal Officer

Business Services
Pamela Wortman
Business Services Officer

Human Resources
Jeff Sears
Personnel Officer

Professional Examination Services
Heidi Lincer-Hill
Chief

SOLID Training and Planning Solutions
Shelly Menzel
Manager

Office of Information Services
Amy Cox-O'Farrell
Deputy Director
CEA

Enterprise Technology Services
Jason Piccione
Manager

Client Device & Web Services
Jim Epp
Manager

Server, Network & Security Services
Randy Hawkinson
Manager

Application Services
Wayne Odd
Manager

Enterprise Project Services
Karamel Jett
Manager

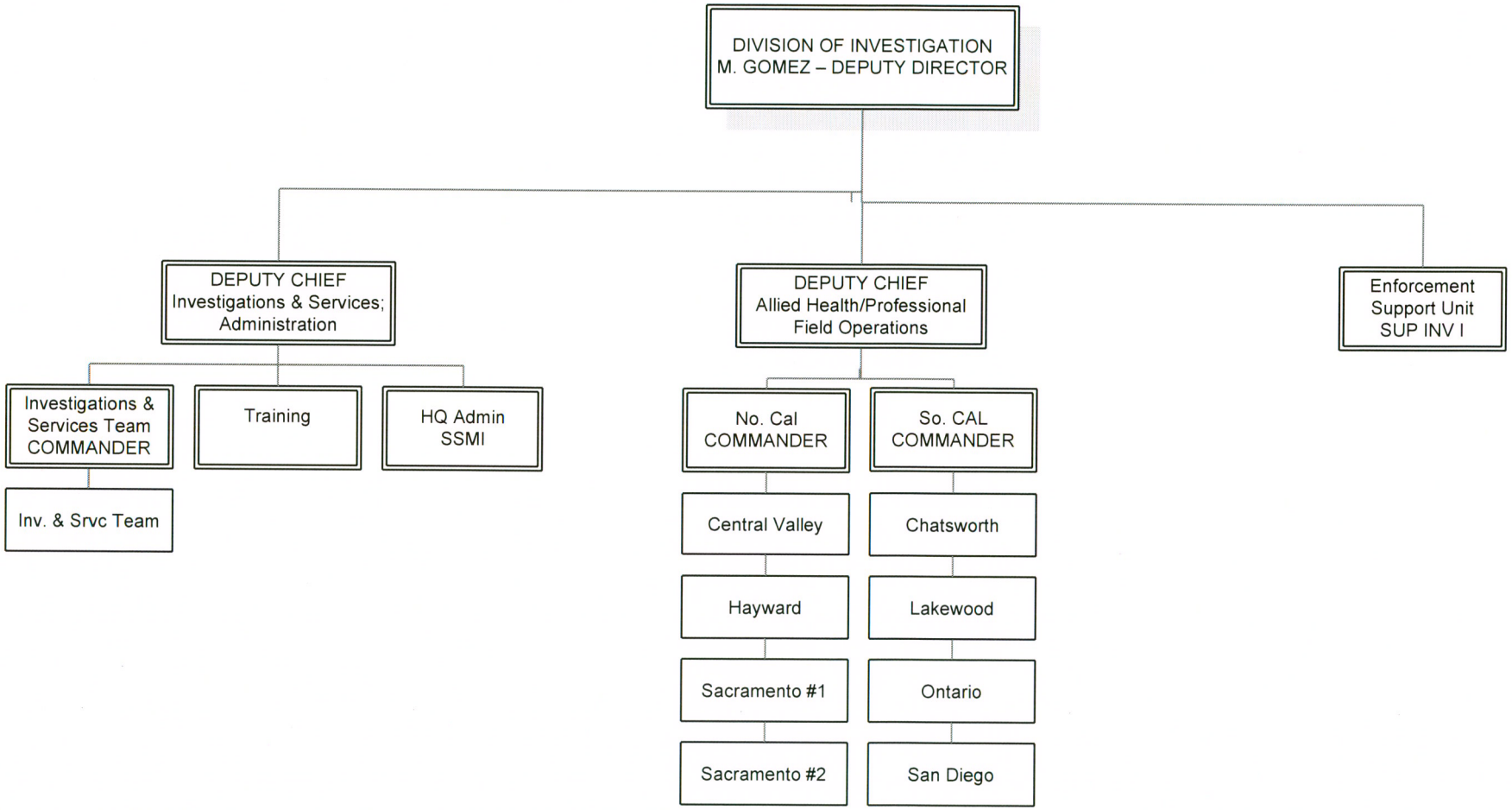
Client Services
Gerry Lobo
Manager

DENISE BROWN, DIRECTOR

JEFF SEARS, PERSONNEL OFFICER

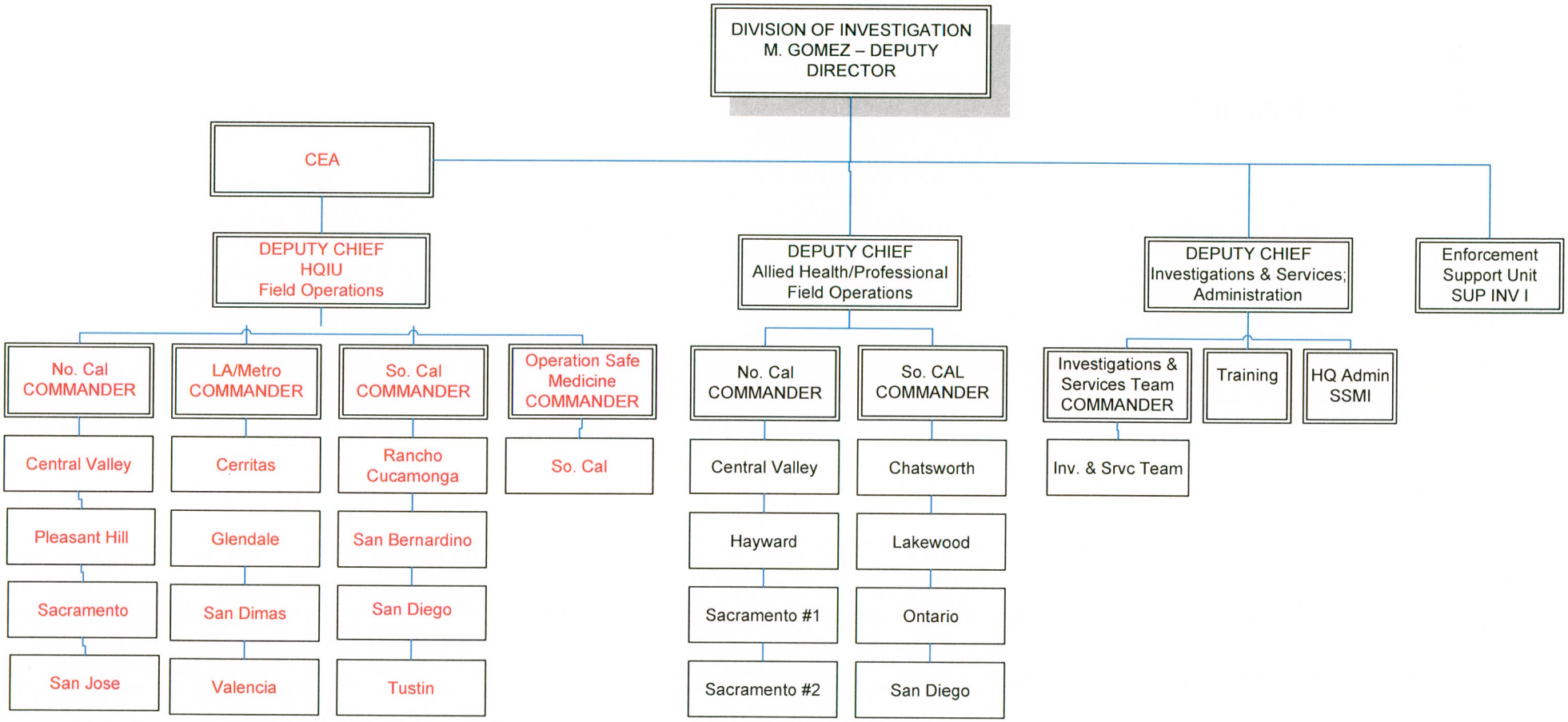
Red = Exempts / Blue = CEA's

DIVISION OF INVESTIGATION
ORGANIZATION CHART



Current-2013

DOI/MBC TRANSITION
Organization Chart



LEGEND
Red = Health Quality Investigations Unit (HQIU)
Black = Current DOI Organization

July 2014

ENFORCEMENT PROGRAM ACCOMPLISHMENTS

Between FY 06-07 and 12-13

- 351% increase in criminal referrals
- 100% increase in license restrictions/suspensions
- 70% increase in license revocations
- 39% increase in completed investigations
- 36% increase in cases referred to the AG
- 26% increase in probation violations referred to AG
- 26 % increase in overall disciplinary action
- 23% increase in cases resulting in probation
- 15 % <u>decrease</u> in average time to complete investigation

	FY 08-09	FY 09-10	FY 10-11	FY 11-12	FY 12-13
Furloughs/Mandatory Leave Plan	2 days per month, starting 2/1/09	3 days per month	1 day per month	1 day per month	1 day per month
Working Hours Lost per investigator	80	288	96	96	96
Hiring Freeze in effect?	No	No	Yes (beg. 8-31-10)	Yes (ended 11-23-11)	No
Vacancy Rate **(includes vacant positions with applicant in background on July 1 of each fiscal year)**	9%	13%	5%	17%	2%
Time at investigation (average/mean)	349/309	328/292	312/283	264/225	268/245

Challenges Vanquished

- Furloughs (total loss of 656 working hours PER investigator)
- Hiring Freeze
- Loss of vehicles
- Travel restrictions
- Contract requirement for experts: individual contract needed for every single expert (requires constant tracking)

Ongoing Challenges for MBC Investigators

- Subpoena enforcement, when needed, adds an average of 154 days to a case through no fault of the investigator – (avg. for FYs 10/11 through 12/13)
- Physician interviews add an average of 50 days to a case (avg. for FYs 10/11 through 12/13)
- VE (collaboration and review can add up to 75 days per case)
- Experts (MBC investigators service cases from cradle to grave – this includes the expert reviewer acquisition process)

Policies/Procedures Implemented to Increase Efficiency

- Aged case council
- Revised subpoena policy
- VE manual (dual collaboration with AG's office)
- Revised Model Disciplinary Guidelines (11th edition)
- Transcribing contract for medical reports and interviews
- Zero tolerance policy for late records
- Strict timelines for investigators to obtain releases, records, conduct interviews and prepare case for expert review
- Detailed statistics provided to each supervisor to track case aging and production
- Internal process changes (eliminating redundancies)

Milestones Achieved

- Full implementation of FTO program
- 13 weeks of POST –certified instruction to new investigators (above and beyond 16-week academy)
- 97 background investigations for sworn staff
- 62 hires of sworn staff
- Time Management training for all sworn staff
- 2% vacancy rate (lowest in five years)
- 1 week of POST-certified supervisor training

Milestones Achieved (cont'd)

- 8-hour, CME accredited expert training program
- Re-institution of Operation Safe Medicine
- Dual training for investigators and attorneys on medical record acquisition techniques/strategies
- Legislation to require physicians to provide certified records
- Legislation calling for physician cooperation in scheduling interviews
- Dozens of outreach efforts to hospitals' medical staff, consumers and other law enforcement entities

In Progress

- Operation RX (Prescription Strike Force)
- Statewide training specifically for over prescribing cases
- 3rd comprehensive (8-hour) expert reviewer training session

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Agenda Item 6

DATE REPORT ISSUED: October 14, 2013
DEPARTMENT: Medical Board of California
SUBJECT: Enforcement Program Survey

REQUESTED ACTION:
No action is requested. This information is being provided to facilitate discussion regarding Agenda Item 6 during the Enforcement Committee Meeting on October 23, 2013.

BACKGROUND INFORMATION:
Pursuant to a request by Dr. GnanaDev, Enforcement Committee Chair, a questionnaire was sent to the Enforcement Committee Members seeking specific examples of problems or concerns within the Enforcement Program. The intention was to receive feedback to identify specific areas of concern from the Members' perspective regarding the Enforcement Program.

SURVEY QUESTIONS:

1) Please provide constructive, critical feedback on specific issues you have found within the Enforcement Program. Please provide specific examples of problems/concerns as you see them. For example, the length of time it takes to obtain an expert review takes too long, the evaluation in the complaint unit appears to be too long, etc.

2) Please provide specific suggested solutions to the problems you have identified above. For example, the Board should reduce the length of time it offers an expert to provide a review and follow-up a few days before that, the board should ensure complaints are opened within XX days and records are requested within XX days, etc.

3) Based upon the statistics provided on the Enforcement Program at the last meeting, do you believe you are receiving the correct information to evaluate the Enforcement Program or do you have other statistics you would like to see? Please be specific as to what other measurements you would like provided.

4) Do you have any specific questions regarding the Enforcement Process where you feel you need more information to be provided by staff?

5) What barriers do you see that reduce the effectiveness of the Board's Enforcement Program? What recommendations do you have to eliminate those barriers?

6) Do you have any other specific suggestions for improvement within the Board's Enforcement Program?

PROBATION MONITORING

Probation Monitoring Caseload

Total Number of Physicians on Probation	561
• Number of Active Physicians in Practice	444
• Number issued a probationary license	87
• Number in-state but not practicing (pended)	28
• Number out-of-state (tolled)	89

Administrative cases which resulted in probation*

Gross Negligence/Incompetence includes inappropriate prescribing issues	145
Sexual Misconduct	10
Mental/Physical Illness	9
Substance Abuse	44
Fraud	13
Miscellaneous Violations (e.g., general unprofessional conduct, aiding and abetting, conviction of a crime, etc.)	90
Total	311

*Data from FY 2011/12 and 2012/13

Conditions Ordered for Gross Negligence/Incompetence

Minimum penalty: Stayed revocation, 5 years probation
NOTE: In cases charging repeated negligent acts with one patient, a public reprimand may, in appropriate circumstances, be ordered.

Maximum penalty: Revocation

1. Education course
2. Prescribing Practices Course
3. Medical Record Keeping Course
4. Professionalism Program (Ethics Course)
5. Clinical Training Program
6. Monitoring-Practice/Billing
7. Solo Practice Prohibition
8. Prohibited Practice

Physicians Required to attend PACE

Fiscal Years	08/09	09/10	10/11	11/12	12/13
PACE required	41	40	31	58	56
Suspended Until PACE is completed	7	11	14	8	10
PACE completed *with* recommendation(s)	2	4	18	24	21
PACE completed with *no* recommendation(s)	39	47	40	35	35
PACE failures	5	3	4	4	3
Total number of petitions to revoke probation filed for non-compliance with order for PACE*				17	

*Data from FY 2011/12 and 2012/13

CONDITIONS ORDERED FOR EXCESSIVE USE OF ALCOHOL (B&P 2239) or EXCESSIVE USE OF NARCOTICS

Minimum penalty: Stayed revocation, 5 years probation
Maximum penalty: Revocation

1. Suspension of 60 days or more
2. Controlled Substances–Abstain From Use
3. Alcohol–Abstain from Use
4. Biological Fluid Testing
5. Professionalism Program (Ethics Course)
6. Psychiatric Evaluation
7. Psychotherapy
8. Medical Evaluation and Treatment
9. Monitoring–Practice/Billing
10. Controlled Substances – Total DEA restriction
    Surrender DEA permit or Partial DEA restriction
11. Maintain Drug Records; Access to Records & Inventories

Total No. of Physicians with BFT Requirement		120
Total No. of Physicians Being Tested*		93
	07/2010-06/2011	07/2011-06/2012
No. of Positive Tests	160	264
No. of Positive Tests excluded because physician had a valid prescription for the medication	81	209
Total No. of Actionable Positives**	79	55
Total No. of Petitions to Revoke Probation Filed for non-compliance from FY 2011/12 and 2012/13		23

* Excludes pended/tolled probationers
**The same physician may have multiple positive tests, however, only one investigation would be opened.

Probation Completion/Outcomes *	
Probation Successfully Completed	99
Petition for Early Termination Granted	61
Total number of "successful" completions – 160 or 58%	
Subsequent discipline taken or License Surrendered while on probation	77
License Automatically Cancelled for non-practice	40
Total number of "unsuccessful" completions: 117 or 42%	

*Data from FY 2011/12 and 2012/13