MEDICAL BOARD OF CALIFORNIA

QUARTERLY BOARD MEETING
Mission Inn
3649 Mission Inn Avenue
Riverside, CA 92501

Thursday October 24, 2013
12:30 p.m – 5:00 p.m.

Friday, October 25, 2013
9:00 a.m. – 3:30 p.m.

MEETING MINUTES

Due to timing for invited guests to provide their presentations, the agenda items below are listed in the order they were presented.

Members Present:
Sharon Levine, M.D., President
Michael Bishop, M.D.
Dev GnanaDev, M.D.
Howard Krauss, M.D.
Ronald H. Lewis, M.D.
Denise Pines
David Serrano Sewell, J.D., Vice President
Gerrie Schipske, R.N.P., J.D.
Jamie Wright, Esq.
Felix Yip, M.D.
Barbara Yaroslavsky

Members Absent:
Silvia Diego, M.D., Secretary
Phil Tagami

Staff Present:
Veronica Alva, Investigator
Susan Cady, Staff Services Manager II, Central Complaint Unit
Dianne Dobbs, Legal Counsel, Department of Consumer Affairs
Cassandra Hockenson, Public Information Officer
Kimberly Kirchmeyer, Interim Executive Director
Kathleen Nicholls, Supervising Investigator II
Amy Pikschus, Investigator
Dino Pierini, Business Services Officer
Regina Rao, Associate Governmental Program Analyst
Kevin Schunke, Licensing Outreach Manager
Jennifer Simoes, Chief of Legislation

Laura Sweet, Deputy Chief, Enforcement
Renee Threadgill, Chief of Enforcement
Lisa Toof, Administrative Assistant II
See Vang, Business Services Analyst
Kerrie Webb, Legal Counsel
Curt Worden, Chief of Licensing
Natalie Zellmer, Investigator

Members of the Audience:
Alan Alvord, Division Presiding Administrative Law Judge, Office of Administrative Hearings
Theresa Anderson, California Academy of Physician Assistants
Gloria Castro, Senior Assistant Attorney General, Attorney General's Office
Yvonne Choong, California Medical Association
Zennie Coughlin, Kaiser Permanente
Julie D'Angelo Fellmeth, Center for Public Interest Law
Long Do, California Medical Association
Jack French, Consumer's Union Safe Patient Project
Karen Ehrlich, L.M., Midwifery Advisory Council
Michael Gomez, Department of Consumer Affairs
Dolores Green, Riverside County Medical Association
Awet Kidane, Department of Consumer Affairs
Christine Lally, Department of Consumer Affairs
Khadijah Lang, M.D., Charles Drew Medical Society
Lisa McGiffert, Consumer's Union
Michele Monserratt-Ramos, Consumer's Union Safe Patient Project
Jim Peterson, San Bernardino County Medical Association
Alison E. Price, L.M.
Deborah Rotenberg, Planned Parenthood Affiliates of California
Bob Sachs, P.A., Physician Assistant Board
Suzan Shinazy, Consumer's Union Safe Patient Project
Carrie Sparrevohn, L.M., Midwifery Advisory Council
Taryn Smith, Senate Office of Research

Agenda Item 1 Presentation on Information Technology and Healthcare – Mr. Goldman

Glenn Albright, Ph.D. and Ron Goldman with Kognito Interactive, provided a presentation on interactive training simulations that enable health providers to master their communication and interviewing skills in an effort to change the behavior of patients when the provider interacts with them. Kognito built this program based on research in neuroscience, social cognition, and adult learning theory. This program is an online CME-approved course that teaches doctors and nurses to recognize when a patient's physical ailments are masking underlying substance abuse or mental health disorders and how to use motivational interviewing skills to integrate behavioral health into the treatment plan while building the patients motivation to adhere to it.

Agenda Item 2 Call to Order/Roll Call

Dr. Levine called the meeting of the Medical Board of California (Board) to order on October 24, 2013, at 2:05 p.m. A quorum was present and due notice was provided to all interested parties.

Dr. Levine announced that Agenda Item 18 will be postponed until Friday, October 25, 2013.

Dr. Levine stated that she wanted to take a moment and share with everyone that Dr. Janet Salomonson passed away on September 10, 2013, after a brief illness and after returning from a medical mission she was conducting in South America. She stated that Dr. Salomonson was a very talented plastic surgeon and a valuable member of the Board. She did a lot of charity work with children in Central and South America and across the world. Her charitable work was dedicated to children who had cleft palates and other facial deformities that were remediable with plastic surgery. Dr. Salomonson served on the Board from 2006 to July 2013 and she made enormous contributions to the Board. Dr. Levine noted that for those who would like to make a contribution in memory of Dr. Salomonson, either Faces of Hope or Rotoplast have been designated as the recipients of donations in her memory.

Agenda Item 3 Approval of Minutes from the July 18-19, 2013 Meeting

Ms. Yaroslavsky made a motion to adopt the meeting minutes as is; s/Dr. GnanaDev. Motion carried.

Agenda Item 4 Introduction and Swearing in of New Board Members

Dr. Levine introduced, welcomed, and swore in our three new Board Members: Dr. Howard Krauss, Dr. Ronald Lewis, and Ms. Jamie Wright.

Agenda Item 5 Public Comments on Items not on the Agenda

Public Comment was heard on this agenda item.

Jim Peterson and Dolores Green with the San Bernardino and Riverside County Medical Associations welcomed the Board Members and staff to the city of Riverside on behalf of both Medical Associations. They stated that the Inland Empire has approximately 4,000 practicing physicians and the two medical associations represent a little over 50% of them. However, the Empire is also impacted by a shortage of physicians, so they were very happy when Assembly Bill 1288 passed requiring the Board to give priority to physicians who are applying to work in the medically-underserved areas.

Mr. Peterson and Ms. Greed added that their associations have also held CURES registration and are also offering education to physicians on opioid risk management. They added that

they have a successful health information exchange with about 9 million patient's information in that exchange.

Suzan Shinazy, Consumer's Union Safe Patient Project, stated the Consumers Union would like to work with staff on the new website portal, BreEZe. They are finding it not very user friendly to consumers. Ms. Shinazy stated that several aspects are quite confusing and she believes it will deter people from using the site. She noted that Consumer's Union would be willing to assist in making improvements and offered to test the site and provide feedback to assist in making it more user-friendly.

Dr. Khadijah Lang, President of the Charles R. Drew Medical Society, thanked the Board for what it has been doing and brought a concern to the Board from their members. The concern is being brought forward in hopes to get some resolution on the matter. She stated the Society is noticing a large number of African-American physicians in the Los Angeles area having disciplinary actions taken against their licenses. There is a concern that the investigators are possibly targeting physicians of lower profit margins because they do not have the adequate resources for appropriate defense when accusations are made. They feel that, in the interest of promoting what a great job the investigators are doing, the investigators are targeting physicians that are representing underserved populations with more aggressive pursuits. The Society would like to know how to get statistics on how many African-American physicians have been accused and have had disciplinary actions taken against their licenses over the past five to ten years. If that information is not available by racial breakdown, they requested a geographical breakdown of the Los Angeles area.

Dr. Levine then introduced and welcomed the following individuals: Awet Kidane, Chief Deputy Director, Department of Consumer Affairs (DCA); Christine Lally, Deputy Director of Board/Bureau Relations, DCA; Michael Gomez, Deputy Director of the Division of Investigation, DCA; and Taryn Smith, Senate Office of Research.

Agenda Item 6 Presentation on the Interim Suspension Order Process – Division Presiding Administrative Law Judge Alvord

Dr. Levine introduced and welcomed Division Presiding Administrative Law Judge (ALJ) Alvord. Judge Alvord provided a detailed explanation on the Interim Suspension Order (ISO) process and laws. Judge Alvord began with an update on current activities at the Office of Administrative Hearings (OAH). He stated that the Board's ISOs represent about one third of the ISO cases heard at OAH. Typically, the cases come to OAH via a phone call from a Deputy Attorney General (DAG) who has an ISO that is ready to be filed. These cases have to be given priority on OAH's calendar, so they are put on calendar as quickly as possible. The DAG speaks to a Presiding ALJ or calendar clerk to determine if the date being requested by the DAG for the hearing is available. OAH tries to accommodate the requested date. The required documents are served and filed with the OAH. ISOs are the only cases that are allowed to be placed on OAH calendars without all of the required paperwork.

Judge Alvord explained that ISO cases have three opportunities for a hearing. There is an ex parte hearing that is held within 24-hours' notice, a noticed hearing that can happen with 15-days' notice, and a hearing on the accusation filed after the issuance of an ISO. All of these hearings will receive priority calendaring, unless those timelines are waived by the parties to the matter.

Dr. Levine asked if each request for an ISO involves all three types of hearings.

Judge Alvord stated that some ISO cases may only involve two hearings. The Board has the option to seek an ex parte ISO if it is concerned about public safety and wants to get the hearing on calendar within a 24-hour time frame.

Judge Alvord stated that there are two code sections that deal with ISO cases held before OAH. Business and Profession Code (B&P) section 494 and Government Code section 11529. Under B&P section 494, ALJs can suspend a license or impose licensing restrictions when the licensee has engaged in acts or omissions violating the law or has been convicted of a substantial crime and permitting the licensee to continue engaging in their licensed practice would endanger the public health, safety, or welfare. In order to issue a suspension or restriction, these requirements have to be met. These cases require 15 days' notice unless serious harm to the public would result before the hearing could be held. In those instances an ex parte hearing request can be pursued. However, if an ex parte ISO is issued, a noticed hearing must take place within 15-20 days.

If the hearing on the ISO does not take place within 20 days, the ISO would dissolve automatically by operation of law. The licensee does have the option to waive time so the hearing can sometimes happen later if there is a waiver. At the ISO hearing, the licensee can be represented by an attorney, have a record made of the proceedings, present affidavits or other documentary evidence, and can present oral argument. B&P section 494 does not have a specific authorization to receive testimony at the ISO hearing.

ALJs are required to make a decision and issue an order within five business days following the closure of receipt of evidence. ALJs often issue orders the same day or within just a few days. The ALJ may suspend the license or impose license restrictions, including biological fluid testing, supervision, remedial training, or other types of practice limitations depending on the evidence and the issues.

The standard of proof in these cases is *preponderance of the evidence*, which is different from an accusation case which requires *clear and convincing evidence*. The decision issued on an ISO is a final decision, not a proposed decision, and it is not submitted to a board/agency for adoption. Under B&P section 494, the ALJ decision, although final, is subject to the filing of a writ in Superior Court.

The ALJs have the flexibility to modify or expand an ISO at any time. After the ISO is issued, the board/agency is required to file an accusation within 15 days and the hearing on the accusation has to be held within 30 days after receipt of the notice of defense. If the board/agency does not comply with these time lines, and there has not been a waiver of time,

the ISO will be dissolved by operation of law. Under B&P section 494, if the licensee does not comply with the ISO's terms, that non-compliance could become a separate cause for discipline that the board/agency might bring against the licensee.

The other code section that relates specifically to the Medical Practice Act (MPA) is Government Code (GC) section 11529. The procedures and requirements of this code section are slightly different than B&P section 494. Under GC section 11529, an ALJ can suspend a license or impose restrictions when the licensee has or is about to engage in acts or omissions violating the MPA or is unable to practice safely due to a mental or physical condition. The Executive Director is required to prove that permitting the licensee to engage in the profession will endanger the public's safety, health and welfare. These cases also require 15-days' notice and also have a provision for an ex parte hearing if serious injury would result to the public before the matter can be heard with the 15-days' notice. The ALJs can and do hear these cases within a 24-hour period. If an ex parte suspension order is issued, the noticed hearing has to be scheduled within 15-20 days. The licensee has to be notified, and the failure of that hearing taking place within those time lines, unless waived, also results in dissolution of the ISO by operation of law.

The licensee's rights at these hearings include the right to be represented by council, to have a record made of the proceedings, to present affidavits or other documentary evidence, and to present oral argument. GC section 11529 specifically allows the ALJ discretion to permit testimony at the ISO hearing. The ALJ will grant the ISO if there is *reasonable probability* that the petitioner will prevail in the underlying action and that the likelihood of injury to the public in not issuing the order, outweighs the likelihood of injury to the licensee in issuing the order. The standard and burden of proof is the same as a preliminary injunction under the Civil Code.

GC section 11529 states the ALJ must issue a written decision within 15 days of the ISO hearing on the accusation and the decision must include findings of facts and conclusions articulating the connection between the evidence and the decision. The Board must file an accusation within 15 days of the issuance of an ISO and a hearing must be held within 30 days of the filing of a notice of defense by the licensee. Once the ALJ issues a proposed decision after the hearing on the accusation, the Board must issue its decision within 15 days after receiving the decision from the ALJ or the ISO can be dissolved.

ISOs issued under GC section 11529 are also final orders and are not reviewed by the Board, but they are subject to review if a writ is filed in Superior Court.

Judge Alvord stated that one of the things that OAH looks for during ISO hearings is press coverage. The ALJs pay close attention to the notices to be sure they were served properly, whether enough time has been given, and they make decisions quickly about whether to allow witnesses to testify or not, since it is a discretionary matter.

Ms. Yaroslavsky asked for clarification between B&P section 494 and GC section 11529.

Judge Alvord stated that the B&P Code section 494 applies to all licensed professionals. GC section 11529 is specifically designed for violations of the MPA.

Ms. Yaroslavsky asked how the Board determines which code section to use. Judge Alvord stated that decision is made by the DAG.

Dr. Lewis asked for clarification on a statement that Judge Alvord had made earlier in his presentation in regards to data that shows that approximately 50% of the cases are settled due to increased settlement authority.

Judge Alvord responded stating that OAH reviewed the number of cases that are filed versus cases that resulted in a hearing and proposed decision and approximately 50% of the cases filed actually go through hearing to decision. OAH has observed in the past six to nine months that many boards have been less willing to deviate from their disciplinary guidelines. This impacts how quickly the cases can get to hearing since more hearings are being held.

Ms. Yaroslavsky asked when Judge Alvord believes the OAH will have a full staff of ALJs.

Judge Alvord stated they are currently recruiting to fill all of the vacancies that OAH is approved to fill. They should be fully staffed within the next three to four months.

Dr. Levine asked for clarification on some terms Judge Alvord used earlier in his presentation. One term being “preponderance of evidence,” another being “clear and convincing evidence,” and the third being “evidence consistent with preliminary injunction.”

Judge Alvord explained that “preponderance of evidence” means that the evidence is more likely than not. This term applies to an ISO issued under B&P section 494. “Clear and convincing evidence” is the standard for a physician in an accusation case when the issue is whether to revoke the license, suspend the license, or put the physician on probation. The evidentiary standard the petitioner must meet is clear and convincing, which is a higher standard. It is very close to a “reasonable doubt” standard that one would see in a criminal case. The language of GC section 11529 says that the standard burden of proof is the same as a preliminary injunction under Civil Code of Procedures section 527.

Dr. Levine stated the Board gets asked why an ISO that is sought is not granted, and asked Judge Alvord to discuss some of the top reasons why an ALJ would not grant an ISO.

Judge Alvord explained that there are several factors that are looked at when an ISO is brought to an ALJ. The ultimate outcome is complete suspension of the license, although many cases do not result in a suspension, but result in practice restrictions. The ALJ’s duty is to weigh the evidence and determine what public protection requires in the short term until the case can be heard on the merits of the accusation. The evidence is limited in those cases based on declarations, documents, and oral arguments. The ALJ does a balancing act of the public safety need versus the physician’s right to practice. The challenge is to guarantee public protection without going overboard.

Mr. Serrano Sewell requested that at a future Board meeting the Members be provided with a breakdown of numbers showing how many ISOs were requested by a DAG and how many were actually granted versus those that were denied.

Dr. Bishop returned to Judge Alvord's prior statement regarding the increasing reluctance on the part of the Board to deviate from the disciplinary guidelines, which may mean the Board is doing a better job. He pointed out, however, that in some instances, by the Board obtaining an earlier settlement, this may assist the Board in monitoring the physician's practice earlier than waiting for a hearing and helps obtain consumer protection sooner.

Judge Alvord stated that the OAH offers opportunities to settle, especially with cases that will take longer. The ALJs routinely set an early settlement conference and offer parties to discuss settlement options with one of the settlement judges. The issue of what authority is given to the DAG in that case is between the Board and the Attorney General's (AG) office.

Public Comment was heard on this agenda item.

Long Do, California Medical Association (CMA), stated CMA's position was that the burden of proof for the ISO process under GC section 11529 is "clear and convincing" evidence, which is a higher standard and the same as during the accusation stage.

Agenda Item 7 Board Member Communications with Interested Parties – Dr. Levine

Ms. Wright reported that she had a meeting with the Charles Drew Medical Society, who brought some concerns to her that were forwarded to the appropriate staff and have also been discussed at this meeting.

Dr. GnanaDev noted that he routinely talks with CMA, but does not discuss Board issues.

Ms. Yaroslavsky reported that she met with staff and the Los Angeles County Medical Association (LACMA) to work on opportunities for further collaboration and engagement in education.

Ms. Pines stated that she also participated in the LACMA meeting with Ms. Yaroslavsky.

Dr. Krauss reported that he had lunch with Senator Lieu on non-Board issues; however, the subject of Senate Bill (SB) 62 was raised. Dr. Krauss asked the Senator if he would be willing to meet with Board staff to discuss new language to get the mechanism to require coroners to report opioid deaths to the Board and the Senator was receptive to having that meeting.

Agenda item 8 President's Report – Dr. Levine

Dr. Levine reported that in her role as President of the Board, on August 12, 2013, she met separately with Senator Lieu, Assemblywoman Bonilla, and Assemblyman Gordon to discuss

SB 304, which is the Board's Sunset Bill. It was passed by the Legislature and signed by the Governor. It authorizes the Board to continue for another four years. In addition, Dr. Levine testified in front of the Assembly Business, Professions, and Consumer Protection Committee on August 13, 2013, on SB 304. Her testimony has been provided to all of the Board Members.

Dr. Levine has met with Ms. Kirchmeyer and the Executive Staff every two weeks to discuss on-going work with the Board to assure that staff has what they need from her and to offer her support and assistance in the efforts to continue to accelerate and improve the performance of the Board.

Dr. Levine noted that in an effort to ensure adequate time for conversation at Board meetings, the Board has implemented a small change in proceedings. In the past, staff has provided verbal reports during the Board meeting. In an effort to provide more time for conversation, questions, and answer, the reports will be written and provided in the Board materials. Key points will be highlighted and statistics will be attached to an executive summary. When the Chiefs provide the Board with their update at the Board meeting, they will focus on those key points and answer any questions, but the full update will now be provided in the Board materials.

Agenda Item 8A Committee Appointments – Dr. Levine

Dr. Levine directed Board Members to their packets for an updated Committee Roster. It was reported that Dr. Diego agreed to Chair the Licensing Committee, which will meet after the first of the year. She added that the new Board Members will be sent the details of what each Committee is responsible for and the frequency of the meetings to find out which Committee each Member would be willing and to serve on in the future. The Application Review Committee is in need of an additional member at this time and the Special Program Committee is in need of two members.

Dr. GnanaDev announced that Panel B voted to make him Chair and Ms. Pines Vice Chair.

Ms. Yaroslavsky announced that she will continue to be the Chair of Panel A and Dr. Lewis will be Vice Chair.

Agenda Item 9 Interim Executive Director's Report – Ms. Kirchmeyer

Ms. Kirchmeyer directed Members to their packets for the Interim Executive Director's Report. This report includes a staffing report, an administrative update, a BreEZe update and a budget update with the attached documents. Ms. Kirchmeyer stated that at the end of the last fiscal year, the reserve was at 5.4 months, but is expected to be at 4.1 months at the end of this fiscal year.

Ms. Kirchmeyer wanted to update the Board on the BreEZe project. She stated this project is a replacement of the legacy enforcement and licensing databases. This new system went live on October 8, 2013, and there have been a few glitches. At this point, the new system does not have the functionality as originally identified; however, the system is still being worked on and will have

fixes made for the next six to eight months. The Board does expect that the end product will have all the bugs worked out and will be providing both staff and the public a system that meets the needs of both.

Ms. Kirchmeyer stated that at the February Board meeting, the Board will have a presentation by Linda Schneider from the AG's office regarding a recently completed lawsuit entitled the *National Association of Optometrists and Opticians v. Harris*. This lawsuit was filed based upon B&P section 655 and 2556 which prohibits business and financial relationships between optometrists and registered dispensing opticians. The courts upheld the constitutionality of these two sections. While the lawsuit was pending, neither the Board of Optometry nor the Medical Board, who oversees registered dispensing opticians, could pursue enforcement action based upon these sections. However, there is no longer a moratorium against the enforcement of those two code sections. The AG's office is working with several dispensing opticians to see if they will voluntarily bring their business models into compliance. Dr. Levine and Board Executive Staff heard a presentation from Ms. Schneider which fully explained the laws and history on this issue and both believe it would be beneficial for the Members in the future. In the meantime, this lawsuit has been resolved.

Dr. Levine stated, for the new Members, that the Board is responsible for the oversight of the registered dispensing opticians and enforcement actions are under the Board's purview.

Ms. Kirchmeyer announced that the Board has worked with Purdue to obtain a list of their physicians in region zero. The Board has also received a list of CVS physicians who they suspect may be overprescribing. Staff has been analyzing those lists and determining the appropriate action for the future. Both lists will be treated as complaints and are considered confidential and will not be provided to anyone. As the data is analyzed, it is being determined if these physicians are physicians the Board is already aware of or if a new complaint needs to be opened and reviewed for possible disciplinary process.

Ms. Kirchmeyer noted that she and Board staff have a meeting scheduled October 31, 2013, with the California Department of Public Health (CDPH) regarding the implementation of SB 304 and the new adverse event reporting for ambulatory surgery centers or outpatient surgery settings. Staff will also discuss with them some interpretations of law regarding outpatient surgery settings to ensure everyone is on the same page. A discussion about the adverse event reports that CDPH has received within that past year will also take place.

At the last Board meeting, Ms. Kirchmeyer had reported that she and the Board staff had met with the California Correctional Health Care Services (CCHCS) regarding the tubal ligation issue and the investigative report. She stated that another meeting was held with the CCHCS to further discuss this issue. Since that time the Board has received a list of patient inmates and staff will be looking into those cases; however, that information will be kept confidential.

Ms. Kirchmeyer announced that the Board has been asked by the Assembly Business, Professions, and Consumer Protection Committee staff to provide an "Enforcement Camp," which will be basically "Enforcement 101." This camp will take place on Wednesday, November 6, 2013. The

Board feels it is very important for the legislative staff to understand fully how the enforcement process works when reviewing and analyzing any bill that would pertain to the Board.

Public Comment was heard on this agenda item.

Yvonne Choong, CMA, commented on the BreEZe update in regards to the physician renewal system being taken off line. CMA has received some calls from physicians who had been caught in the system transition. The California Hospital Association (CHA) has also received some calls from physicians with the same issues. She stated that in conversations with Board staff, she brought to staff's attention the issue of how physicians are notified about such changes. She understands that the physicians were emailed and that the notification of the changes was posted on the Board's website. She noted that CMA and CHA are offering their assistance in publicizing any future changes that will affect physicians.

Agenda Item 10 Request Approval to Obtain an Attorney General Legal Opinion Regarding Medical Assistant Scope of Practice – Ms. Webb / Ms. Kirchmeyer

Ms. Kirchmeyer stated that on June 26, 2013, a letter was received from Stephanie Nunez, Executive Officer of the Respiratory Care Board (RCB) requesting the Board revise its Frequently Asked Questions (FAQ) for medical assistants. Ms. Nunez requested that the revision include a question and answer stating that medical assistants cannot perform any level of pulmonary function testing. Based on this letter, the Board requested a medical consultant review the letter and request from Ms. Nunez. The medical consultant did not agree with this request stating that medical assistants could perform some of the testing that the RCB was saying they could not. Therefore, the Board's legal counsel, Ms. Webb, reviewed the matter. Upon Ms. Webb's review, it was agreed that a legal opinion from the AG's Office should be sought. Since this issue is between two boards under the DCA, the opinion would be more appropriate coming from the AG's office.

Ms. Webb referred the Board to the memo on this agenda item in the Board materials. She stated that the memo identifies the statutes and regulations that apply to medical assistants. Ms. Webb stated that upon review, it appears that the basic screening test for pulmonary function are similar to other functions that medical assistants are specifically permitted to do. Ms. Webb believes that if a medical assistant can perform the basic level pulmonary function screening tests safely and appropriately it would create a barrier to care to force a patient to go to a respiratory care therapist, especially when there is no specific prohibition in the statutes or regulations against them doing this testing.

Ms. Webb stated that if Members agree that the basic level of screening cannot be done by a medical assistant then staff should be instructed to put the proposed FAQ on the Board's website. However, if the Members want to have this reviewed and get an opinion from the AG's Office, then there needs to be a motion to that effect by the Board.

Dr. GnanaDev stated that he does not feel that basic screening tests are any more difficult than a basic electrocardiogram, and believes that the medical assistant should be able to perform these tests, under the supervision of a physician, physician assistant, or nurse practitioner.

Dr. Levine agreed with Dr. GnanaDev and stated this is standard practice in every primary care office for management of mild and moderate asthma.

Ms. Yaroslavsky commented that the Board has always had the rule that if one has been trained to do it and it falls within the parameters of supervision or direct instruction from a physician that it can be done.

Public Comment was heard on this agenda item.

Dr. Lang, Charles Drew Medical Society, asked if this would just be a legal review or if physician opinion would also be sought.

Dr. Levine, stated that should the Board determine a legal opinion is needed, the matter would be referred to the AG's Office for review and it would need to analyze the matter as necessary.

Deborah Rotenberg, attorney with Planned Parenthood Affiliates of California, requested that the Board review its FAQs regarding medical assistants. Planned Parenthood believes the FAQs are severely outdated and are noticing that other regulatory entities are weighing in on the scope of practice for medical assistants in a way that may be inconsistent with what the Board would support. Planned Parenthood employs medical assistants, trains them in their clinics, and relies on them. Planned Parenthood strongly supports the Board revisiting the FAQs regarding medical assistants.

Ms. Yaroslavsky made a motion to refer this matter to the AG's Office to seek a legal opinion; s/Wright. Motion carried.

Agenda Item 11 Federation of State Medical Boards – Federation of State Medical Boards – Dr. Levine / Ms. Kirchmeyer

Ms. Kirchmeyer reported that in July, the Federation of State Medical Boards (Federation) Board of Directors approved its final policy entitled *"Model Policy for the Use of Opioid Analgesics in the Treatment of Chronic Pain."* This new policy will supersede their 2004 policy. It provides guidelines to help physicians who prescribe opioid analgesics to do so in full compliance with state and federal regulations, accepted clinical practice, and in a manner that is safe and reduces risk. The Federation also adopted a policy entitled "*Model Policy on Data 2000 and Treatment of Opioid Addiction in the Medical Office."* These two policies provide important guidance for clinicians as the medical community continues to face the challenges of treating chronic pain while confronting the public health threat of opioid misuse, abuse, and addiction. The Federation sought input from state boards' experts in pain medicine and a diverse group of stakeholders and national professional organizations. The Board's Prescribing Task Force will be reviewing these two newest policies when revisiting the Board's pain management guidelines.

The Federation also continues to work on the interstate compact for medical licensure and on October 7, 2013, a press release was issued regarding moving forward with eight consensus principals used to shape a model compact. They established an expanded interstate compact task force made up of representatives from state medical boards, the Federation, and consultants from

representatives in expertise in state compacts. They have finalized a set of recommendations for the initial framework for an interstate medical licensure compact for states to provide input. In general, these compact recommendations envision a compact model that would maintain state authority and control, establish high standards for physician eligibility, ensure a well-coordinated and fairly-applied system of oversight in discipline. An effective interstate compact must include a cooperative system of information sharing and rapid adjudication of disciplinary issues between states. The Federation is beginning the drafting phase for a compact.

Dr. Levine gave a brief description of what an interstate compact is for the new Members, so they would understand why it is so important to get the interstate compact completed.

Ms. Kirchmeyer continued stating that the Federation is working on a newly-introduced federal bill. On September 10, 2013, representatives Devin Nunez and Frank Paloni introduced HR 3077, entitled "*The Telemedicine for Medicare Act of 2013*." The bill allows a Medicare provider licensed in one state to treat any Medicare beneficiary in another state via telemedicine without requiring additional state licensure where the patient is located. Under this legislation, the provider would remain under the jurisdiction of the state medical board where he/she is licensed for the purposes of discipline, effectively eliminating the requirement for the physician to be licensed where the patient is located. To date, the bill has 17 bi-partisan co-sponsors and now that the Federal Government shutdown has ended, it is expected there will be a strong push for the House of Representatives to pass this legislation. Ms. Simoes and Ms. Kirchmeyer will be working with the Federation to reach out to Congressman Nunez's office and other California offices on this issue to help them understand the issues surrounding enforcement under this model.

The Federation also has a notice and is seeking resolutions by February 24, 2014 for their annual meeting. If any Member has any resolutions they would like to submit, let Ms. Kirchmeyer know so the idea can be discussed, developed, and put forward at the February Board meeting for approval.

Dr. Levine wanted to clarify that one of the challenges for a physician is that the standard has always been that the practice of medicine is where the patient is and every state has varying requirements around what constitutes safe medical practice and one concern is jurisdiction shopping. The state that has the fewest requirements and the weakest enforcement would be the state physicians would go for licensure. If there are no prohibitions against practices across state lines, it really binds the hands of state in terms of ensuring that physicians are practicing up to the standards that the state has promulgated through legislation.

Ms. Kirchmeyer stated that the Federation is seeking nominations for elective offices. The information has been sent out to all Members regarding these positions and to date, Ms. Kirchmeyer has had no responses from anyone who would like to run for office at this time. The Federation is also seeking individuals who are interested in serving on Committees within the Federation. Two Members have stated their interest in being appointed to a Committee. Dr. Levine and Dr. Krauss are both interested in being appointed to the Ethics and Professionalism Committee. In addition, Dr. Krauss is interested in being appointed to any special committee that may be convened in relation to advocacy, government affairs, and policy. Ms. Kirchmeyer asked for a motion to approve the preparation of a letter of recommendation and support for Drs. Levine and Krauss to the Ethics and

Professionalism Committee and Dr. Krauss to any special committee established by the Federation in those areas.

Dr. GnanaDev made a motion; s/Dr. Yip. Motion carried.

Agenda Item 9B Consideration of 2014 Board Meeting Dates

Dr. Levine referred Members back to Agenda Item 9B to discuss and confirm the 2014 Board meeting dates. The first two meeting dates were approved at a previous Board meeting. The proposed dates for the end of 2014 are July 24-25, 2014, in Sacramento and October 23-24, 2014, in San Diego. Dr. Levine asked for a motion to approve the July and October dates.

Dr. GnanaDev made a motion to approve the dates as stated; s/Ms. Yaroslavsky. Motion carried.

Agenda Item 12 Update on the Enforcement Committee – Dr. GnanaDev

Dr. GnanaDev stated that the first agenda item was a presentation by Ms. Kirchmeyer, Mr. Gomez and Mr. Kidane regarding the transition of the Board's investigators to the Division of Investigation (DOI) at DCA per SB 304. Mr. Gomez provided a chronology of the transition plan and both he and Mr. Kidane indicated they would be reporting progress of the transition at each quarterly Board meeting. The Board was provided charts and an explanation on how the transition will take place.

Dr. GnanaDev stated the Committee then received a presentation by Ms. Sweet, which included the accomplishments of the Enforcement Program over the past six years. Despite the numerous obstacles, such as furloughs, hiring freezes, and other challenges, the Enforcement Program had some impressive productivity gains, including a 351% increase in criminal referrals, 100% increase in license suspensions and restrictions, a 39% increase in completed investigations and a 36% increase in referrals to the AG's Office. In addition, there was a decrease in investigation time lines by 15%.

Dr. GnanaDev stated the Committee agenda item to discuss suggested improvements to the Enforcement Program and review of Member survey results, was deferred to a future meeting due to the transition of the investigators to DCA. Then the Board can make specific suggestions and solutions for improvement.

Ms. Sweet also provided a progress update on the Prescribing Strike Force, Operation Rx. Operation Rx is currently investigating 27 cases, and since the last Board meeting, four physicians and one physician assistant have been arrested, with criminal charges pending. Staff has completed three search warrants, fifteen undercover operations and procured over 2000 physical prescriptions as part of these investigations. There are numerous search warrants in the planning stages. Ms. Sweet explained how overprescribing allegations are fraught with challenges because of the sheer volume of materials needed for prosecution. Ms. Sweet also gave an update on the next Expert Reviewer Training, which is scheduled for Saturday, November 2, 2013, at UC San Diego. Ten hours of CME will be provided to participants who attend the training and complete the sample expert opinion. Dr. GnanaDev encouraged Board Members to attend this meeting if at all possible.

The Committee was then provided an update on the Probation Monitoring Unit by Ms. Cady. Currently there are 561 physicians on probation. During the past two fiscal years, 58% of the probationers have successfully completed probation. The most common violations leading to probation are gross negligence and incompetence, including inappropriate prescribing violations. Ms. Cady gave a presentation that focused on several conditions most commonly ordered as part of probation, including the clinical training requirement and biological fluid testing.

Dr. GnanaDev requested Ms. Kirchmeyer, Mr. Kidane, and Mr. Gomez provide a brief update to all Board Members on the presentation that was given at the prior day's Enforcement Committee meeting. Ms. Kirchmeyer provided information in regards to how the transition of the Board's investigators is going to impact the Board, its processes, and vertical enforcement. The Board Members were asked to reference the documents found under the Enforcement Committee section of the Board materials. Mr. Kidane and Mr. Gomez went over the transition plan and provided some background on the DOI.

Public Comment was heard on this agenda item.

Lisa McGiffert, Consumer's Union Safe Patient Project, stated that staff had recommended during the Sunset Review process that the Board accept a proposal for physicians who are on probation to notify and inform their patients when they are on probation. The Board did not agree to that recommendation, but Consumer's Union believes it was a strong recommendation and the Board should reconsider its decision. They have discovered that in the regulations, everyone gets informed except the patient. The hospital or any facility where the physician works, the chief of staffs, etc., are notified, but the patients are not. Consumer's Union is finding that typically consumers do not know who the Board is and do not know to check the Board's website for the status of their physician, especially if it is someone they have seen regularly for some time. Consumer's Union is recommending that the Board amend the guidelines to set a standard condition of probation that requires physicians, who continue to see patients, to be required to inform the patients in some way that they are on probation. Consumer's Union is open to working with the Board to find ways to make that happen. They would like this issue to be put on the next meeting agenda for discussion.

Agenda Item 13 Enforcement Chief's Report – Ms. Threadgill

Ms. Threadgill asked for a motion to approve fourteen orders following completion of probation and three orders for license surrender during probation.

Ms. Yaroslavsky made a motion to approve the orders; s/Dr. GnanaDev. Motion carried.

Ms. Threadgill referred the members to the Board materials for the Chief of Enforcement's Executive Summary that included an update and observations made regarding statistics. She asked Members if there were any questions in regards to the summary.

Ms. Threadgill stated that on October 3, 2013, she attended Dr. Yip's "grand rounds" presentation at the University of California, Los Angeles - Harbor facility. Following the presentation, Ms. Threadgill took Dr. Yip to the Cerritos district office to talk with staff members.

She then reminded the Board that at the July Board meeting she reported that the DCA was doing an audit of the Board's evidence accounts. The DCA concluded the audit and has provided staff the opportunity to respond to the draft report. Staff will respond by the end of October and the final report will be provided to the Members.

Ms. Threadgill announced that the Board is currently in the process of advertising to fill the non-sworn investigator positions in the Central Complaint Unit. These positions were received as part of the Consumer Protection Enforcement Initiative (CPEI).

This new non-sworn unit is designed to relieve sworn investigators from high caseloads. It is anticipated that this unit will result in fewer cases being sent to sworn investigators for investigation, thus, lowering investigator caseload. Historically, it has been found that lower caseloads result in reduced case time lines.

Ms. Threadgill then introduced and thanked the investigators who were in attendance at the Board meeting, which included Kathleen Nichols, Supervising Investigator II and Investigators Natalie Zellmer, Amy Pikschus, and Veronica Alva.

Dr. Levine read from Ms. Threadgill's Executive Summary report the following improvements this fiscal year in comparison to fiscal year 11/12:

- Average number of days from the complaint received by the Board to complaint closed or sent to investigation decreased by 23 days; and
- Average days from receipt of complaint, to investigation, to closed or referred for action decreased by 106 days.

Dr. Yip thanked Ms. Threadgill for attending his presentation and for taking him to a district office where he learned a lot and he encouraged other Board Members to do this in the future at some point.

Agenda Item 14 Vertical Enforcement Program Report – Ms. Castro

Ms. Castro, Senior Assistant Attorney General, introduced herself for the new Board Members and stated the Health Quality Enforcement Section (HQES) of the AG's Office is charged, legislatively, to investigate and prosecute disciplinary actions of the Board's licensees.

Ms. Castro announced that a new supervising DAG, Judith Alvarado, was hired in the Los Angeles office. She added that HQES hopes to fill the Supervising DAG in Sacramento soon. The HQES continues to fill vacancies statewide.

Ms. Castro reported that she and Ms. Kirchmeyer continue to have their bi-weekly meetings to discuss any issues on an ad-hoc basis and have an open line of communication. Ms. Kirchmeyer knows that she can contact them anytime, and will get a response quickly.

This same level of interaction also takes place with Ms. Threadgill and Ms. Sweet. They often discuss cases and dispute cases on different issues and are always available to each other.

The next quarterly meeting between the Board and HQES staff is scheduled to take place on November 7, 2013. In response to the Board's request for the AG's Office to have more uniformity between cities in how the vertical enforcement model (VE) is administered, the lead prosecutors meet once a month to discuss issues and the SDAGs meet every other week.

HQES continues to reconcile unpled cases and is providing a list of them on a monthly basis to Ms. Kirchmeyer. HQES staff works with Board staff to reconcile lists to make sure all cases are accounted for and moving through the process. They provide statistics as needed and requested to assist the Board.

Ms. Castro reported the HQES is excited to pair up with the DCA and they will do everything possible to ensure a seamless transition. Ms. Castro stated that the VE model has been institutionalized and is no longer a pilot. Over the past seven years, the AG's Office and the Board have refined what it means to manage cases through the VE process so cases are done efficiently. Throughout this process, it has been envisioned that the AG's Office is in charge of directing, but not supervising, the investigators. They are looking forward to the joint assignment between the DCA investigators and the DAGs. They have had a long history of positive interactions with the DOI, as HQES works with DOI investigators already. Ms. Castro stated that Mr. Gomez and she are very cognizant of the fact that the Board will hold them accountable for the performance metrics.

Dr. GnanaDev thanked Ms. Castro for the willingness to work together and understanding the Board's expectations.

Agenda Item 15 Update on Licensing Outreach/Education Program – Mr. Schunke

Mr. Schunke stated that he is the Board's liaison to the teaching hospitals, clinics and medical schools around California. He assists medical students in learning how to get licensed. His outreach covers two venues. During orientation, he provides general oversight of the licensing program and process in California. This occurs from the middle of June to the beginning of July. Throughout the rest of the year, Mr. Schunke travels to teaching hospitals around the state together with an individual who can perform fingerprinting, a photographer, and a notary to assist the residents start the licensing application process. He meets with approximately 2,200 residents who are just starting the application process and conducts an initial review of their application to be sure that the application is filled out correctly.

Ms. Yaroslavsky recognized and thanked Mr. Schunke for all that he does as it assists in many different aspects of the licensing program and keeps applications coming in correctly, which allows the licensing staff to complete applications in a timely manner.

Agenda Item 16 Licensing Chief's Report – Mr. Worden

Mr. Worden began by thanking his staff for continuing to do an outstanding job this quarter. Currently, licensing has four vacant positions, which have been advertised. Interviews have been done to fill several of these positions.

Mr. Worden referred Members to the Board materials as he briefly went over the Licensing Program statistics. He stated that the licensing unit did not meet its goal performing initial reviews of all physician applications within 45 days of being received for one week during the thirteen-week quarter, nor did the mail get processed as timely as normal. The number of staff working on BreEZe testing had a significant impact on not meeting the desired goals.

Mr. Worden reported on how the BreEZe system has affected the Licensing Program. BreEZe went live on October 8, 2013, at which time the licensing subject matter experts started testing the system to determine if the system was stable enough to have staff begin working in the system. One problem that has been identified is that when the data transfer took place several fields did not transfer correctly and/or completely. Staff has been working to get the missing information added and/or corrected. The Information Services Branch (ISB) staff has offered outstanding service and assistance since the go live date. The Consumer Information Unit (CIU) is also doing an outstanding job since the go live date, as the phone calls and emails have increased tremendously.

Agenda Item 17 Update from the Outpatient Surgery Settings Task Force; Consideration and Possible Action – Dr. GnanaDev/Mr. Serrano Sewell

Dr. GnanaDev reported that on September 30, 2013, he and Mr. Serrano Sewell met with staff in Oakland to discuss the Outpatient Surgery Settings (OSS) Program. There were two main objectives: 1) review staff's proposed revisions to the OSS website pages; and 2) review current statutes and regulations regarding the OSS accreditation requirements for possible statute changes to enhance consumer protection.

The Task Force Members reviewed staff's proposed changes to the Board's OSS Program website pages and made some suggestions to provide further clarity to consumers. Staff is working on these recommendations.

The Task Force Members reviewed Health and Safety Code (HSC) section 1248.15 and identified some subsections that may need to be revised through a statute change and/or clarified through regulations. The Task Force Members recommended deleting the least stringent method of qualifying for accreditation, since this method of qualification does not provide adequate consumer protection.

The Task Force Members also reviewed HSC section 1248.35 and identified some subsections that may need to be revised through a statute change and/or clarified through regulations. The Task Force Members are recommending unannounced inspections of the OSSs.

The Task Force Members reviewed California Code of Regulations (CCR), Title 16, Division 13, section 1313.4 and determined that two of the subsections are no longer valid as a result of recent statute changes. This section needs to be amended accordingly.

The Task Force Members are also considering requiring the initial accreditation of an OSS to be for no more than two years. This would require a statute and/or regulatory change.

The Task Force Members identified that consumer protection may be enhanced if all accredited OSSs have mandatory peer review of procedures performed, regardless of how many practitioners are at an OSS.

The Task Force Members reviewed the issue of requiring all physicians who perform procedures in an OSS to have hospital privileges at a local community hospital for the same procedures that are being performed at the OSS. The Task Force Members do not believe this is necessary. Many physicians who currently use an OSS do not have hospital privileges as they do not perform procedures that require stays for longer than 23 hours. The proposed new peer review requirement, requiring all physicians to be subject to peer review on a regular basis, and the deletion of the third method of accreditation would address these concerns.

Mr. Serrano Sewell thanked the staff for convening this meeting at a mutually agreeable time and location. He and Dr. GnanaDev had a good discussion about what the next steps should be. The first and foremost step should be to conduct an interested parties meeting. This meeting is crucial as it will allow stakeholders to voice their concerns. Once those concerns are heard, the Task Force may change its position, but these are the initial thoughts. Ms. Serrano Sewell stated he is concerned about the number of required inspections and does not feel it is satisfactory. There are some OSSs that have good internal standards and could serve as a model for others to follow.

Mr. Serrano Sewell stated the Task Force Members reviewed the issue of requiring all physicians who perform procedures in and OSS to be board certified by an American Board of Medical Specialties (ABMS) affiliated board in the specialty of the procedures being performing at the OSS. Currently many physicians who are very well trained and qualified to perform procedures in OSS are not board certified. The Board does not license physicians by specialty or require certification to become licensed. The proposed new peer review requirement, for all physicians to be subject to peer review on a regular basis, would help address concerns regarding physicians safely performing procedures in an OSS.

Ms. Yaroslavsky thanked both Mr. Serrano Sewell and Dr. GnanaDev for the work they are doing on this important issue. She is concerned that since the Task Force determined that physicians do not need to have privileges at a hospital, that doctors who need to be able to transfer patients from an OSS will not be able to if they do not have transfer privileges.

Dr. GnanaDev stated that to be accredited, they have to have a transfer agreement with the hospital or have a transfer agreement with a physician with hospital privileges who can take care of that patient when they are transferred. Without the transfer agreement with the hospital or the physician, an OSS could not be accredited by the Board's accrediting agencies based upon the recommended changes.

Another concern that Ms. Yaroslavsky had was in not requiring board certification by an ABMS board.

Dr. GnanaDev responded by stating there are two different areas where that becomes difficult to implement if the Board were to make this requirement. One area is in rural areas, where procedures in the hospitals do not even require board certification. They base the physician's qualifications on

training, experience, and peer review. The second area is that many physicians practice area do not require board certification or hospital privileges, as there is no reason for them to do so because they are covered by their agreement with a hospital and/or their agreement with other surgeons. If the physician does not have board certification, it does not mean that they do not have the qualifications to perform a procedure.

Ms. Webb stated that in current law with regards to accreditation requirements, there are three possibilities currently: 1) to have a written transfer agreement with a local hospital; 2) to permit surgery only by a licensee who has admitting privileges at the local hospital or a written agreement with a physician who has admitting privileges; and 3) to submit a detailed procedural plan for handling medical emergencies to the accreditation agency at the time of accreditation (which the Task Force is proposing to be eliminated). The accreditation agency has to approve the procedural plan, and no reasonable plan shall be disapproved by the accreditation agency.

Dr. GnanaDev stated that the Task Force felt that the third option is a weak option that does not provide consumer protection and that is why the recommendations is to eliminate it.

Dr. GnanaDev asked for a motion to authorize staff to hold an interested parties' meeting regarding proposed changes to statutes and regulations impacting the OSS Program.

Ms. Yaroslavsky made a motion to approve the Task Force recommendation to hold an interested party meeting; s/Dr. Yip. Motion carried.

Dr. GnanaDev then asked for a motion to authorize the OSS Task Force Members, after the interested parties' meeting, to direct staff to draft proposed language to amend current statutes regarding OSSs to improve consumer protection.

Ms. Yaroslavsky made a motion to authorize the Task Force to direct staff to seek legislative changes; s/ Dr. Krauss. Motion carried.

Dr. GnanaDev also asked for a motion to authorize the Task Force Members to direct staff to draft proposed language to amend existing regulations and/or draft new regulations within the California Code of Regulations, to further clarify existing and/or new statutes pertaining to OSSs.

Ms. Yaroslavsky made a motion to authorize the Task force to direct staff to begin any regulatory process needed for regulation amendments or additions; s/ Dr. Krauss. Motion carried.

Lisa McGiffert, Consumer's Union Safe Patient Project, stated they look forward to working with the Board on this subject and participating in these meetings. They would really like to see the full history of the OSSs online for people to review. They understand that there is no legal authority to do that, but some of the clinics do provide that information, and for those that do, they would like to see that information posted on the Board's website. They would also like to see the Board's website to be the place where information is collected about the OSS, such as adverse events relating to the OSS and also links to disciplinary actions of any physicians present in the OSS. With regard to the OSSs, they believe that the people operating these clinics need to be board certified. On a

consumer's level, that shows a certain level of competency. In addition, they believe that there are some things that these OSSs should have to report to the Board and to the accrediting agencies, including deaths occurring in the OSS, transfers to hospitals, and other significant things, such as adverse events. They would also like to see some support from the Board to change the law that requires OSSs to submit information to the Office of Statewide Health Planning and Development (OSHPD), so that the volume of information and the types of procedures being done in the OSSs is being collected.

Dr. GnanaDev stated that there were several other issues that were discussed at the Task force meeting, including being transparent. The Task Force wants to be sure that all the information about the OSSs as authorized by law will be on the website. The Board will likely be the only entity that posts that much information on its website and he wants to make sure it is very transparent.

Dr. Bishop agrees that safety in these OSSs is very important; however, he believes that one misconception is that if someone is board certified there can be a guarantee of patient safety. He noted that most of the physicians that are disciplined are board certified. That alone does not give consumers any measure of certainty. The key here is that the accreditation agencies do what the Board and the law requires of them in order to ensure the physicians in an OSS meet the high standards in terms of their training and skills.

Dr. Levine noted that the move from board certification to maintenance of certification will in the future provide a much better guarantee of continued competence and professionalism.

Agenda Item 19 Update on Physician Assistant Board – Dr. Bishop/Mr. Sachs

Dr. Bishop introduced Mr. Bob Sachs, President of the Physician Assistant (PA) Board, and thanked Mr. Sachs, Mr. Mitchell, and the staff from the PA Board for their warm welcome and help during his first PA Board meeting.

Dr. Bishop reported that the most recent activity at the PA Board was to look at the Manual of Disciplinary Guidelines which was updated in 2007. The Board staff identified changes that needed to be made to update the guidelines. Additionally, the uniform standards for substance abusing healing arts licensees (SB 1441) are to be incorporated in the guidelines. At the August 2013 meeting, the PA Board approved the proposed regulatory language and directed PA Board staff to proceed with the rulemaking process.

The PA Board's strategic plan was last updated in November, 2009. The DCA has encouraged boards who have not updated their plans recently to do so. PA Board Members and staff will be working with the DCA SOLID training office to review and update the plan. Currently, SOLID staff is conducting a stakeholder survey and will interview PA Board Members to assist in identifying the PA Board's strengths, weaknesses, opportunities, threats and future trends impacting the PA profession.

Dr. Bishop continued his update stating the PA Board recently updated its "What is a PA?" consumer information brochure. Additionally, a regulatory proposal to implement AB 2699, free health care events requirements as required by the B&P section 901, was approved by the Office of

Administrative Law in August, 2013 and became effective October 1, 2013. Dr. Bishop added that the DCA has rolled out the new BreEZe system for health care boards. The PA Board has converted all license and enforcement records to BreEZe and began using the system on October 8, 2013.

Agenda Item 20 Consideration of Regulatory Proposal to Revise Physician Assistant Scope of Practice (CCR, Title 16, Division 13.8, Section 1399.541) – Dr. Bishop / Mr. Sachs

Dr. Bishop referred the Board Members to agenda item 20 in the Board materials. The proposed language to amend Title 16 of the CCR section 1399.541 regarding the personal presence of the physician, while a PA acts as a first or second assistant in surgery, is included. In 2011, concerns were raised that the existing regulations did not reflect current medical community standards. Under the existing regulation, the PA may act as first or second assistant in surgery under the supervision of a supervising physician. To reflect the current community standards, this proposal would clarify that a PA may so act without the personal presence of the supervising physician if the supervising physician is immediately available to the PA. "Immediately available" will be defined as able to return to the patient without delay upon the request of the PA, or to address any situation requiring the supervising physician's services. In July 2013 the PA Board staff shared the revised draft language with the Medical Board staff and legal counsel to anticipate any concerns the Medical Board Members may have. None were identified.

At the August 2013 PA Board meeting, PA Board Members voted to approve the proposed language and submit the proposal to the Medical Board. It should be noted that the proposed language is similar to and modeled after a recent Medical Board regulatory proposal regarding physician availability for mid-level practioners, including PAs, to perform elected cosmetic procedures, 16 CCR section 1264.50. This regulation was approved by the Medical Board earlier in the year. The term "immediately available" will be standardized, familiar and understood by supervising physicians and PAs.

Dr. Bishop noted that one non-substantive change will need to be made to the text. This proposal should strike the word "approved" as a modifier to the supervising physician. This change is made to reflect a 2002 change of the law permitting any licensed physician to act as a supervising physician for a PA. This change would only conform to existing law.

Dr. Bishop stated that consumer protection is assured because the term "immediately available" is precisely defined and will ensure that the PA is appropriately supervised. Additionally, amending the regulation will not reduce consumer protection because the supervising physician will be immediately available to provide assistance to the PA. Ultimately, the supervising physician is responsible for the care that is provided by the PA.

Dr. Bishop made a motion, on behalf of the PA Board, that the Medical Board consider this regulatory proposal and direct staff to begin the rulemaking process to adopt the proposed language; s/Ms. Yaroslavsky.

Mr. Sachs reported that the PA Board did what the Medical Board Members asked them to do last year, which was to discuss the language with Medical Board attorneys and staff. He stated that what is before the Board Members today is the outcome of those discussions. He believes that the proposed language is very workable and still protects the consumer. The language still requires the supervising physician to delegate the procedures that the PA is going to be performing.

Dr. Krauss asked Mr. Sachs if there is a body of law that dictates how much of the procedure a PA may do, especially in a circumstance where the surgeon may not be physically in the room. He is concerned this change may be inviting a circumstance for two or three contiguous operating rooms to each have a PA in them with a single supervising surgeon. His next concern is to draw the Members' attention to the Board's prior discussion regarding whether or not a surgeon in an OSS should be required to be board certified and how it may conflict with what the Board is now considering in allowing PAs to do more as a potential primary surgeon. Dr. Krauss just wants the Board to be consistent in the standards that are set for medical care.

Dr. Levine asked for a point of clarification. She believed the language stated "first assistant." Mr. Sachs confirmed that it does read, "first or second assistant." The situation that Dr. Krauss mentioned, could take place. The surgeon could begin a case in the next room while the PA was closing a case.

Dr. Lewis stated that he is uncomfortable with opening this up as it could have negative repercussions. For example, today the Board allows first assistants in certain procedures, but what happens in the future? The Board has seen this issue with some of the recent Senate bills that have been introduced. Dr. Lewis wants assurance for consumer protection.

Mr. Sachs then stated that PAs are dependent practitioners and can only practice in California with supervising physicians and are very proud of the team concept.

Ms. Kirchmeyer offered some additional clarification by reading what the current law reads and then read what the amended language would be.

Dr. Krauss asked if there is a conflict in terminology in saying that one can be an assistant surgeon when the primary surgeon is not in the room.

Dr. GnanaDev responded stating that the primary surgeon has to be in the room during the most crucial part of the procedure. He believes that this new language clarifies the requirements better and is consistent with current medical standards.

Public comment was heard on this agenda item.

Theresa Anderson, Public Policy Director for the California Academy of Physician Assistants, stated that this issue is significant to many of their members and they urge the Board's support for this regulatory change. She asked that it be moved forward to a regulatory hearing where interested parties can provide information to address this issue.

Dr. Bishop clarified that the motion is to ask that the Medical Board consider this regulatory proposal and direct staff to begin the rulemaking process to adopt the proposed language.

Motion carried w/two abstentions (Dr. Krauss and Ms. Wright).

Dr. Levine adjourned the meeting at 5:30 p.m.

****

Agenda Item 21 Call to Order / Roll Call

Dr. Levine called the meeting of the Medical Board of California (Board) to order on October 25, 2013 at 9:10 a.m. A quorum was present and due notice was provided to all interested parties.

Members Present:
Sharon Levine, M.D., President
Michael Bishop, M.D.
Dev GnanaDev, M.D.
Howard Krauss, M.D.
Ronald H. Lewis, M.D.
Denise Pines
Gerrie Schipske, R.N.P., J.D.
David Serrano Sewell, J.D., Vice President
Jamie Wright, Esq.
Felix Yip, M.D.
Barbara Yaroslavsky

Members Absent:
Silvia Diego, M.D., Secretary
Phil Tagami

Staff Present:
Veronica Alva, Investigator
Susan Cady, Staff Services Manager II, Central Complaint Unit
Dianne Dobbs, Legal Counsel, Department of Consumer Affairs
Cassandra Hockenson, Public Information Officer
Kimberly Kirchmeyer, Interim Executive Director
Kathleen Nicholls, Supervising Investigator II
Amy Pikschus, Investigator
Dino Pierini, Business Services Officer
Regina Rao, Associate Governmental Program Analyst
Kevin Schunke, Licensing Outreach Manager
Jennifer Simoes, Chief of Legislation
Laura Sweet, Deputy Chief, Enforcement
Renee Threadgill, Chief of Enforcement
Lisa Toof, Administrative Assistant II

See Vang, Business Services Analyst
Kerrie Webb, Legal Counsel
Curt Worden, Chief of Licensing
Natalie Zellmer, Investigator

Members of the Audience:
Theresa Anderson, California Academy of Physician Assistants
Gloria Castro, Senior Assistant Attorney General, Attorney General's Office
Yvonne Choong, California Medical Association
Genevieve Clavreul
Zennie Coughlin, Kaiser Permanente
Julie D'Angelo Fellmeth, Center for Public Interest Law
Long Do, California Medical Association
Jack French, Consumer's Union Safe Patient Project
Karen Ehrlich, L.M., Midwifery Advisory Council
Michael Gomez, Department of Consumer Affairs
Virginia Herold, Board of Pharmacy
Awet Kidane, Department of Consumer Affairs
Christine Lally, Department of Consumer Affairs
Khadijah Lang, M.D., Charles Drew Medical Society
Lisa McGiffert, Consumer's Union
Michele Monserratt-Ramos, Consumer's Union Safe Patient Project
Alison E. Price, L.M.
Deborah Rotenberg, Planned Parenthood Affiliates of California
Bob Sachs, P.A., Physician Assistant Board
Suzan Shinazy, Consumer's Union Safe Patient Project
Carrie Sparrevohn, L.M., Midwifery Advisory Council
Taryn Smith, Senate Office of Research
Mary Helen Ybarra, Health Professions Education Foundation

Agenda Item 22 Public Comments on Items not on the Agenda

Genevieve Clavreul spoke about an issue of patient abandonment by a particular doctor in Pasadena, California.

Ms. Webb asked Ms. Clavreul to not speak in specifics about this case as it may, at some point, come before the Board, but said she could speak in generalities.

Ms. Clavreul asked what could be done about a physician who abandons a patient and falsifies letters about that patient.

Dr. Levine responded by stating that filing a complaint with the Board is the proper way to handle this situation.

Agenda Item 25 Update on Activities of the Board of Pharmacy – Ms. Herold

Ms. Herold announced that there is legislation that will have the Board of Pharmacy (BOP) do inspections of all hospitals in and out of the state or any other pharmacy out of state that ships sterile compounding products into the State of California. This will ensure that for any medication shipped into California the facility will have been inspected by the BOP.

Ms. Herold stated currently some hospitals under an accreditation process are doing sterile compounding without being inspected directly by BOP. Starting in July, that accreditation process has been removed and now requires annual inspections by the BOP if they are doing high risk sterile compounding. The Board has redefined sterile compounding so that it includes injectables, eye administration or inhalation therapy products. They are adding four inspectors to their staff for this particular function.

Ms. Herold stated she is pleased to announce that the BOP and the Medical Board will be collaborating again on two protocols based upon new legislation that was enacted this year. The fact sheet on emergency contraception, which a pharmacist is required to provide when distributing emergency contraception, has been completed. The protocol was approved in February. The fact sheet is being translated into six different languages and is available on the BOP website. Pursuant to Senator Hernandez's bill that provided additional duties for pharmacists to perform, the BOP and the Medical Board have been asked to collaborate on the development of protocols for hormonal contraception therapy and smoking cessation products. The BOP is going to begin this process with a meeting in December, asking Ms. Kirchmeyer to attend so the boards can collaborate on these protocols.

Ms. Herold continued with information on electronic pedigree, which is the process by which each sellable unit of drugs is marked to identify where it has been, and every change in ownership. This is done so that someone cannot buy or sell drugs illegally without there being some observation or risk of being caught. The intent is to safeguard the supply chain. The requirements for manufacturers begin in January 2015, where 50% of the products sold in California have to be serialized and the remaining 50% in January 2016. The pharmaceutical supply chain, which includes manufacturers, wholesalers, pharmacies, and physicians, are not actively involved, but there is federal legislation pending that would pre-empt these requirements. A vote is expected next week.

The BOP has a regulatory hearing at its next Board meeting that will impact when manufacturers ship product directly to the physician for administration. These are typically the more expensive, high risk drugs. The wholesaler actually does the paperwork and ends up owning the product, but never possesses the product. The new regulation will leave out the wholesaler and will provide a very secure method of distribution, thus eliminating many issues that have arisen.

The BOP continues to work on the patient-centered label regulations, which standardizes the requirements on a prescription label, such that the information that patients sees is always in the same format. The label requirements include the name of the patient, name of drug, its strength, instructions on usage, and purpose of the prescription. The BOP committed to

evaluating those label requirements in regulation by December 2013. That process has been completed with just a few modifications to the requirements. The BOP will consider these changes at its next meeting. One of the recommendations is to increase the size of the font. Right now the requirement is 10-point, and the new requirement will be 12-point.

Dr. Levine asked how the electronic pedigree will affect the samples that drug company representatives leave with the physicians' offices.

Ms. Herold stated that as long as they are distributed from the physician's office and not from a pharmacy, it will have no affect at all.

In regards to the BOP's inspections of the hospitals, Dr. GnanaDev asked how these visits were going to take place, i.e. will those visits be planned with CDPH, will they be separate, and will they be unannounced.

Ms. Herold stated the BOP plans to inspect separately and unannounced.

Agenda Item 26 Update/Follow Up from Joint Forum to Promote Appropriate Prescribing and Dispensing – Ms. Kirchmeyer and Ms. Herold.

Ms. Kirchmeyer informed the Members that staff is still planning to have another joint forum with the BOP on prescribing issues. It will take place in middle of 2014 due to pressing issues that are happening with both boards, and will take place in Southern California. Several of the outcomes and needs for educational materials from the prior Joint Forum have been transferred to the Board's Education and Wellness Committee.

The Board has been contacted by an Assistant United States Attorney from the United States Department of Justice (USDOJ) who is working on a summit on prescription drug abuse to be held in January 2014. The USDOJ will be inviting local, state, and federal law enforcement agencies, educators, and several other interested parties to this summit. Board staff, Dr. Levine, and the BOP will be working with the USDOJ on the summit.

Ms. Herold announced that the BOP is doing all-day seminars with the Drug Enforcement Administration (DEA) and giving pharmacists six hours of continuing education to attend. The goal is to have pharmacists become familiar with the different kinds of drug diversion schemes that the DEA enforces. The seminar will discuss prescription drug abuse, the sheer quantity of drugs that are moving through the drug supply, and its impact on public health. The BOP will then discuss corresponding responsibility, which states it is the pharmacist's obligation to review the prescription to be sure that it is not harmful to the patient and it is otherwise legitimate.

Ms. Herold also announced that Saturday, October 26, 2013, is Drug Take Back Day. There is a link on both BOP and the Medical Board website with the details and locations.

Agenda Item 23 REGULATIONS – PUBLIC HEARING

Dr. Sharon Levine opened the public hearing on the proposed regulations to amend Section 1361 of and add Section 1361.5 to 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 would implement, interpret, or make specific sections 315, 315.2, and 315.4 of the Business and Professions Code pertaining to the Uniform Standards for Substance-Abusing Licensees.

Pursuant to these sections the DCA was required to establish Uniform Standards regarding substance-abusing licensees, focusing on the areas of intake and how licensees are monitored after they are placed on probation. This rulemaking will incorporate the Uniform Standards for Substance-Abusing Healing Arts Licensees, as required by law, by proposing to add the standards for a licensee who is placed on probation due, in part, to a substance abuse problem; allowing the Board to impose more restrictive conditions to protect the public. Dr. Levine stated that the date was October 25, 2013; the hearing began at approximately 9:35 a.m.

Dr. Levine informed the Board that written comment was received by several entities. Dr. Levine stated the Members had received those comments for review prior to the meeting. Dr. Levine stated that it is her understanding that staff has recommended amendments to modify the language as presented in the Board materials. She added that after legal counsel provides the staff's recommendations, she would call on those persons who want to testify. The amended language Ms. Webb will be going over was posted on the Board's website on October 11, 2013, with the Board meeting materials. She then asked Ms. Webb to please go through the amendments.

Ms. Webb directed the Members to the Board materials beginning on page BRD 23-22; the first page of the amended proposed regulations. She noted that there are some grammatical changes, but she would be focusing on the substantive changes that are in the language. On page BRD 23-23, subsection (2)(C) currently reads "***be randomly drug tested***" and the recommendation is to change it to "***random biological fluid testing***."

On page BRD 23-24, subsection (2)(F), the following should have been included in the original language, "***No licensee shall be returned to practice until he or she has at least 30 days of negative biological fluid tests***."

On page BRD 23-25, subsection (4)(A), the sentence "***The Board may impose participation in group support meetings***" was deleted.

On page BRD 23-26, subsection (B)(i), "***be randomly drug tested***" and will be changed to "***random biological fluid testing***."

Under subsection (B)(1)(ii), the word "***Drug***" has been replaced with "***Biologic fluid***". Also added to that same section was the sentence "***Prior to vacation or absence, alternative biological fluid testing location(s) must be approved by the Board.***"

In subsection (iii), there is a change to "***biological fluid testing***."

In subsection (iv), there is a change to "***biological fluid testing***" and in the last part of that section an addition of "***Licensee shall be tested on the date of notification as directed by the Board.***"

In subsection (vii), the wording is changed to "***the licensees shall contract with a laboratory or service approved in advance by***", provided that the "***laboratory or service***" meets all the following standards.

On page BRD 23-27, subsection 6, clarification was provided that the entity shall process and analyze the specimen and proved legally defensible test results to the Board within seven (7) "***business***" days of receipt of the specimen. Also added "***The Board will be notified on non-negative test results within one (1) business day and will be notified of negative test results within seven (7) business days.***"

Under subsection (6)(A), language was added to state "***if any, and workplace monitor, if any***."

On page BRD 23-28, the two changes on that page just clarify the change to "***biological fluid***" testing as well as the final change on page BRD 23-29.

Dr. Levine then called on those persons who wished to testify concerning this proposed regulation.

Julie D'Angelo Fellmeth, Administrative Director of the Center for Public Interest Law (CPIL) at the University of San Diego School of Law, stated she served as the Medical Board Enforcement Monitor from 2003 to 2005 and that CPIL supports this regulation as long as it is significantly amended to be consistent with the Uniform Standards regarding substance-abusing healing arts licensees in the version dated April 2011. She stated she submitted detailed written testimony on October 22, 2013, but would like to provide some background information. She stated that five years ago, in 2008, the Legislature recognized two things. She stated the first was that a substance-abusing health care licensee who is allowed to practice is the most dangerous person out there. Even a moment of impairment can cause irreparable harm to a patient; however, no health care licensing board had established meaningful rules or standards to govern the handling of substance abusing licensees. The Board had a diversion program that diverted substance-abusing licensees away from the disciplinary track and into a monitoring program. That program failed five performance reviews during its 27-year history. The Board unanimously voted to abolish that program in July of 2007. Other boards had diversion programs, the administration of which were outsourced to a private for profit corporation. Some boards do not have diversion programs at all, they attempt to deal with substance-abusing licensees via their enforcement process, which is public. There were no consistent or uniform standards or rules to which participants in these programs or staff of these programs were held.

Ms. Fellmeth stated that Senator Ridley Thomas authored SB 1441, which passed and was signed in 2008, and required the DCA to set up a Substance Abuse Coordination Committee to draft uniform and specific standards in 16 specified areas which "each healing arts board shall use in dealing with substance-abusing licensees whether or not the board chooses to have a formal diversion program." The uniform standards were finalized in April of 2011 and can be viewed on the DCA's website. She added that it is the Board's job to now adopt a regulation that requires the Board to use these regulations in cases involving substance abuse without deviation. In further review, she has found 12 additional omissions or inconsistencies, and have detailed them in her written comments, dated October 22, 2013.

Yvonne Choong, California Medical Association, stated that she had submitted written comments and wanted to give some general comments. She noted that the CMA's comments request clarification. The CMA understands the need for promulgating these regulations, however, there are certain aspects of the proposed amendments that it believes need further clarification in order for a physician to properly comply with, and for the Board to appropriately enforce, those provisions. These items are detailed in the submitted comments. While the CMA recognizes that the Board has been directed by the DCA to promulgate regulations to implement these standards, they want to note that the SB 1441 standards were not adopted pursuant to a standard regulatory process. They are not regulations. The Board is vested with independent authority to promulgate and adopt regulations that serve to strengthen the Medical Practice Act. CMA wanted to remind the Board of its independent authority and responsibility to evaluate these proposed regulatory amendments to ensure it is really appropriate in the context of existing law and practice and in some cases. The CMA applauds the Board's effort to try and look at what the standards require and how they actually fit into what makes sense for physicians.

Michelle Monserrat Ramos, Consumer's Union California Safe Patient Project, stated they support the proposed amendments as long as the full uniform standards are incorporated into the regulations. She stated she felt the need to remind the Board that people have died. She speaks on behalf of the Consumer's Union and advocates on behalf of a specific person. His name was Lloyd Monserrat and he was 36 years old when he died. His surgeon chose crack cocaine over his own personal welfare and the welfare of his patients. The Legislative Counsel, the Office of the Attorney General, and the DCA each issued opinions equivocally stating that the finalized SB 1441 uniform standards are mandatory. They must be used by the healing arts boards in dealing with substance-abusing professionals. However the Board's amended proposed regulations of October 25, 2013, contain omissions. They clearly do not reflect uniform standards as required by law. SB 1441 was explicit that the uniform standards must be adopted regardless of whether or not a board has a diversion program. The fact that the Board does not have a diversion program is not an excuse for failure to adopt any of the uniform standards. The Board should amend the current proposed regulations to include all elements of the uniform standards as required by law.

Ms. Monserrat Ramos added that some of the important elements the uniform standards that have not been included in the current draft regulations include information in uniform standard number four. She stated it failed to specify the requirement of random drug testing for the first year of probation and failed to include requirements of public reporting regarding physicians who tested positive for substance abused and who failed to appear or call in for testing on more than three occasions. She stated the regulations also did not state anything regarding failing to pay testing

costs, or a person who has given an invalid specimen, and 16 other data requirements. In addition, she stated information from uniform standards ten, twelve, thirteen, fourteen, fifteen and sixteen were not included, which required important reporting requirements including an annual report to the Legislature and the DCA.

The legislature sent the Board a letter and a long to-do list of tasks they need to fulfill to show they are meeting their mission and protecting the public. Implementation of the full uniform standards was on that list.

Dr. Levine stated that since there were no further public comments, the hearing was closed. She then stated that due to the number of comments and the timing of when they were received, she recommended that the Board direct staff to prepare a summary of each of the comments and provide a response to the comments for discussion at the next Board meeting. She also recommended that staff be directed to redraft the language and incorporate both the staff's recommended changes and those changes that were meritorious based upon recommendations both in writing and verbally today. Dr. Levine stated that this is a work in progress and edits are going to be necessary. Staff will need time to analyze the comments and provide the Board with recommended edits to the language. The new language will come back before the Board at the next board meeting for review and approval. With the Board's approval at the next meeting, the new language will then be posted for a 15-day comment period. If no new negative comments are received, then the proposed regulation will move forward in the rulemaking process. If negative comments are received, the Board will have an interim meeting next spring to consider the comments and proposed amendments.

Mr. Serrano Sewell made the motion to direct staff to prepare a summary of the proposed comments, a response to those comments, and to amend the language as necessary based upon those comments; s/Ms. Yaroslavsky. Motion carried.

Agenda Item 24 Update from the Department of Consumer Affairs – Ms. Lally

Ms. Lally, Deputy Director of Board and Bureau Relations with the DCA, stated that on behalf of Denise Brown, Director of DCA, she wanted to applaud the Board, Ms. Kirchmeyer, and Board staff for their leadership and partnership to implement the BreEZe project and SB 304. She said that both of these things remind her of a quote that she has in her office that reads, "It's not going to be easy, but it's going to be worth it." She wanted to acknowledge the Board and Board staff's immense investment in both of these projects. She stated she knows that it has been a severe strain on Board staff in preparing for the meeting on SB 304 and they have been nothing but gracious and helpful. Her deepest and sincerest thanks go out to the Board and staff for all of the hard work.

Ms. Lally then welcomed the newest Board Members and stated that in 2013 everyone must complete Sexual Harassment Prevention Training, even if one had taken it last year. Also, the Board Members are required to take the New Board Member Orientation Training (BMOT) and Ethics Training. The BMOT is required to be taken within one year of the assuming office and the Ethics Training is required to be completed with 6 months of the assuming office and then every two years thereafter. The last reminder she wanted to discuss was regarding the Form 700. This form is required to be completed within 30 days after the appointment date and then annually

thereafter. The annual forms are due by April 1st of each year. Lastly, she pointed out that a Form 700 is required when a Member leaves office and is due within 30 days of the departure.

Dr. Levine thanked Ms. Lally for keeping the Board apprised of what is going on at other boards and for supporting the Board Members.

Agenda Item 18 Update on Health Professions Education Foundation – Ms. Yaroslavsky/Dr. Diego

Ms. Yaroslavsky began by introducing Mary Helen Ybarra, a member of the Health Professions Education Foundation (HPEF) Board. Ms. Ybarra serves on several community boards as well as the Corona Fire Safety Committee, the greater Corona Hispanic Chamber of Commerce, the Corona NORCO PTA Community Affairs, and several other organizations. She has also received numerous awards from the Riverside/San Bernardino community. She was recognized as the 71st Assembly District Woman of the Year at the Capitol for extensive volunteer and advocacy work through the district over the past 25 years. She has also received a certificate of Congressional Honor from the Honorable Conglomerate 44th Congressional District.

Ms. Yaroslavsky stated that the HPEF has had a very exciting year. It has had a number of programmatic and fiscal changes, specifically, the application cycle for the 2013/2014 was extended to October 25, 2013, allowing applicants to submit their scholarship and loan repayment information electronically for the first time using a responsive electronic application. The Foundation has an application for a 14 million dollar grant from the California Endowment, which was received and included a provision to award money to 65 allopathic and osteopathic primary care physicians in the year 2013/2104. HPEF was also awarded a one-time award from the Assembly Rules Committee for 2 million dollars. It has the authority to spend another 2 million dollars for the mental health loan assumption program. The HPEF also is making community health workers and medical assistants eligible professions, and has placed them into the allied health scholarship and loan repayment program. The passage of AB 565 has added primary care physician owned and operated medical practices as an eligible practice setting for the Steven Thompson Loan Repayment Program. The passage of SB 21 is the establishment of the UC Riverside Medical School, and, in conjunction with the health facilities of its medical residency program, will assist medical students to be eligible for the Physician Retention Program and also the Steven Thompson Loan Repayment Program.

The investment of the Mental Health Wellness Act of 2013 has been chaptered and will restore the administrative fund percentage from the current 3.5% to 5.0%. The passage of SB 271, the associate degree of nursing scholarship program, has been chaptered, and in exchange for up to 10 thousand dollars in financial aid, the associate degree of nursing students will provide direct patient care in medically underserved communities in the State of California. This bill also eliminated the January 2014 sunset date of this program, so that it will continue indefinitely.

The HPEF has a new Director, Jeanette Taurus, which allows Karen Eisenhower to return to her job as Senior Director of Programming.

Dr. GnanaDev suggested looking at the area of how they can support increasing the number of primary care residencies in California. The biggest issue in primary care in California is the residency programs and when people do their residency in one area, there is a 40-60% chance of them going into practice in that area, especially primary care.

Ms. Yaroslavsky stated she would be happy to talk to anyone that she can about this issue.

Agenda Item 27 Update of Prescribing Task Force – Ms. Yaroslavsky/Dr. Bishop

Ms. Yaroslavsky thanked the staff of both the BOP and the Medical Board for the meeting held on September 23, 2013, to discuss communications between prescribers and dispensers. The meeting was well attended and had representatives from not only prescribing and dispensing communities, but also law enforcement, consumer groups, other regulatory boards and associations, other state agencies, and legislative staff. There were also representatives from the larger chain pharmaceutical companies. There were approximately 80 people that attended this all day meeting. Much of the discussion focused on identifying appropriate patient information to be shared or discussed between the prescriber and the dispenser. A presentation was made by Ms. Sweet on how pain management has evolved and the physician's responsibility in prescribing. DAG Joshua Room provided information on a recent decision adopted as a precedential by the BOP regarding the pharmacist's corresponding responsibility in assuring appropriate prescribing. The attendees formed small groups who engaged in discussion regarding information that could or should be shared. It was encouraging to know that the prescribers and dispensers in the room were not that far apart in regard to the information they felt should be shared. Topics of things they agree should be shared include the diagnosis, information on a patient's treatment plan, validation of information on the prescription, reasons for unusual prescribing, and pain management contracts. Several solutions were identified to assist in eliminating overprescribing, including educating prescribers and dispensers regarding their roles and responsibilities, HIPAA, and red flags; educating consumers about drug diversion and usage; and enhancing the CURES system. The Task Force will be meeting with other regulatory boards to develop a document for prescribers that can provide guidance and information that can be shared and educational tips. The Task Force will be scheduling a meeting between now and the February Board meeting to discuss current pain management guidelines and also focus on best practices for prescribing.

Ms. Yaroslavsky pointed out that the presentation by Ms. Sweet on the evolution of pain management was very well received. The Board received numerous requests for this presentation and it has been placed on the Board's website.

Public Comment was heard on this agenda item.

Genevieve Clavreul stated she is very concerned about what she is hearing. She has submitted information to the Board about Oklahoma's prescription monitoring program that has up to the minute tracking of prescriptions. When trying to put together a new system, she recommends looking at something that already works and clearly CURES is not working as well as it should.

Agenda Item 28 Midwifery Advisory Council – Ms. Sparrevohn

Ms. Sparrevohn, Chair of the Midwifery Advisory Council (MAC), thanked the Board for its support of AB 1308. This bill removed physician supervision from the requirements for a licensed midwife, which will open the door to more workable consulting arrangements between licensed midwives and physicians. This will, in turn, create greater consumer safety and options for women in California. Additionally AB 1308 will allow licensed midwives to legally obtain the medications, supplies, and lab tests needed to safely care for the women they serve in and out of hospitals.

Tosi Marceline was approved by the MAC for the vacant licensed midwife position on the MAC. Ms. Sparrevohn requested the Board's approval for Ms. Marceline's appointment.

Dr. Lewis made a motion to appoint Ms. Marceline to the MAC; s/Dr. Krauss. Motion carried.

Ms. Sparrevohn stated that there is a MAC meeting scheduled for December 5, 2013 and is requesting that, in addition to the on-going regular agenda items, the MAC be able to add an item to appoint a Task Force to discuss development of an informational packet for new Board Members regarding licensed midwives. This packet would be informative and allow new Board Members to understand the issues that licensed midwives face in this State. She would also like the Board to consider allowing the MAC to establish a Task Force to implement AB 1308. The MAC is expecting a report from Ms. Simoes and Ms. Webb at the next meeting on what the particular issues might be from the passage of this bill. The MAC may need a Task Force to address possible changes in the data collection set in an effort to make it similar to nationally collected data points, as required in AB 1308. She also is requesting that staff give a brief report on what the issues are surrounding patient abandonment and how that works for licensed midwives. Lastly, there are some specifics in AB 1308 that will dictate transfers of care.

Ms. Sparrevohn further stated that discussion needs to continue in regards to assistants for licensed midwives. In many areas of the State, it is not possible to have two licensed midwives go to a birth, so assistants are a really important factor in patient safety.

Ms. Ehrlich requested that the Board consider allowing the MAC to go back to four meetings a year as they have gone down to three and she feels there is plenty of work to justify going back to four.

Dr. Levine asked for a motion to allow the MAC to appoint Task Forces and add the discussed additional items to their meeting agenda.

Ms. Yaroslavsky made a motion to allow the MAC to appoint the Task Forces and to discuss the additional agenda items as requested by Ms. Sparrevohn; s/Dr. Yip. Motion carried.

Agenda Item 29 Consideration of Legislation/Regulations – Ms. Simoes

Ms. Simoes reported that she contacted Legislative Offices in the Riverside area as well as Business and Professions Committee staff to invite them to attend the Board meeting, however, they were unable to attend due to their busy schedules.

Ms. Simoes stated that the 2013 Legislative Session ended and the Legislature does not reconvene until January 6, 2014. The Governor has taken action on all bills where the Board took positions. For bills that did not pass the Legislature this year, this is the first year of a two-year session, so those bills have one more year to pass the Legislature.

Ms. Simoes then directed Members to their Legislative Packet and referred them to the Tracker List. The bills in pink were signed into law by the Governor. The one bill in Orange was vetoed by the Governor, and the bills in blue are all two-year bills. Ms. Simoes stated she would be reporting on the bills in pink and orange.

AB 154 (Atkins) allows physician assistants, nurse practitioners, and certified nurse-midwives to perform an abortion by medication or aspiration techniques in the first trimester of pregnancy. The Board will put information on this bill in its *Newsletter* and inform staff of its passage.

AB 512 (Rendon) extends the sunset date in existing law, from 2014 to 2018, for provisions that authorize healthcare practitioners, who are licensed or certified in other states, to provide healthcare services on a voluntary basis to uninsured or underinsured individuals in California at sponsored free health care events. The Board's implementation plan is to notify Board staff of the sunset extension, and ensure the Board will continue to process requests for authorizations from physicians licensed in other states until 2018.

Ms. Yaroslavsky asked Ms. Simoes to request the FSMB put this information in their newsletter as well.

AB 565 (Salas) strengthens the guidelines for selection of applicants to the Steven M. Thompson Physician Corps Loan Repayment Program and expands on the definition of practice settings for this program. The Board will put information on this bill in its *Newsletter*.

AB 635 (Ammiano) allows healthcare providers to prescribe, dispense, and issue standing orders for an opioid antagonist to persons at risk of overdose, or their family member, friend, or other person in a position to assist persons at risk, without making them professionally, civilly or criminally liable. It also extends this same liability protection to individuals assisting in dispensing, distributing, or administering the opioid antagonist during an overdose. The Board will put information on this bill in its *Newsletter* and inform staff of its passage.

AB 1000 (Wieckowski) allows patients to directly access physical therapy services and also allows physicians to employ physical therapists. The Board will put information on this bill in its *Newsletter* and inform staff of its passage.

AB 1288 (Perez, V.) requires the Board to develop a process to give priority review status to the application of an applicant who can demonstrate that he or she intends to practice in a medically-underserved area or population. The Board will develop a process for priority review status, revise the licensing application, and inform postgraduate training programs.

Ms. Yaroslavsky asked why the Board needs to prioritize anyone if licensing is reviewing within its goal. Ms. Simoes stated that this will go into effect should licensing staff fall behind at any point in the future.

AB 1308 (Bonilla) removes the physician supervision requirement for licensed midwives (LMs) and requires LMs to only accept clients that meet the criteria for normal pregnancy and childbirth, and authorizes LMs to directly obtain supplies and devices, obtain and administer drugs and diagnostic tests, order testing, and receive reports that are necessary to the practice of midwifery, among other provisions. The Board's implementation plan is to: notify LMs via letter of the changes to law; notify/train Board staff; update the Board's website with changes to the law; work with interested parties and stakeholders to develop regulations specifying any pre-existing maternal disease or condition likely to affect the pregnancy and any other regulations needed to implement this bill; develop processes and procedures for hospital reporting of each transfer of a planned out-of-hospital birth to the Board and develop a form for this reporting; place on the MAC's agenda a review of the existing reporting data elements and possible changes to coordinate with other reporting systems, including MANA; and provide outreach to new LM applicants that the challenge mechanism will no longer be available effective January 1, 2015.

ACR 40 This resolution proclaims April 9th as DMV Donate Life California Day and April as DMV Donate Life California month, which encourages all Californians to register with the Donate Life California registry when applying for or renewing their driver's license. The Board will put information on this bill in its *Newsletter*.

SB 21 (Roth) requires the UC Riverside School of Medicine to develop a program to identify eligible medical residents and to assist those residents to apply for physician programs, including the Steven M. Thompson Physician Corps Loan Repayment Program. The Board will put information on this bill in its *Newsletter*.

SB 62 (Lieu) was vetoed. This bill was vetoed for fiscal reasons, as it was identified as a State-mandated local program due to the costs to the coroners. This bill will be brought up again as part of the 2014 Legislative Proposals.

SB 304 (Lieu) is the Board's sunset bill, which includes language on a portion of the new issues from the Board's 2012 Sunset Review Report and will extend the Board's sunset date for four years until July 1, 2018. This bill also removes the sunset date from the provisions in existing law related to vertical enforcement. There are some issues that are included in this bill that are not issues raised in the Board's sunset report, including requiring the DCA director to approve the employment of the Board's selection of an Executive Director if hired after January 1, 2014, and amending existing law regarding international medical graduates who have attended a disapproved school to change the practice requirement to 12 years from 20 years. The Board's implementation plan is to: notify and train Board staff; notify interested parties; update the Board's website to reflect all new changes to law that are included in this bill; revise the license renewal form to require email addresses to be reported if a physician has one; develop a process/procedure to send out a confirmation email to all physicians on an annual basis to ensure the Board has the correct email address for each physician; develop a process/procedure to ensure that 801.01 reports are excluded from the requirements in existing law that require an upfront review by a medical expert (these reports can go directly to

investigative staff); and notify the AG's Office to seek ISOs when a licensee fails to comply with an order to compel a physical or mental examination, as this is now grounds for issuance of an ISO.

SB 305 (Lieu), among other provisions, allows all boards under DCA that require licensees to submit fingerprints, including the Board, to request from a local or state agency, certified records of all arrests and convictions, certified records regarding probation, and any and all other related documentation needed to complete an applicant or licensee investigation. This bill specifies that a local or state agency may provide these records and that a board may receive these records. The Board's implementation plan is to notify and train Board enforcement staff.

SB 352 (Pavley) allows physician assistants, nurse practitioners, and certified nurse-midwives to supervise medical assistants. The Board will put information regarding this bill in its N*ewsletter*, update information on the Board's website, and notify Board staff.

SB 493 (Hernandez) expands the scope of practice of a pharmacist to recognize an Advanced Practice Pharmacist, permits pharmacists to furnish certain hormonal contraceptives, nicotine replacement products, and prescription medications for travel, as specified, and authorizes pharmacists to independently initiate and administer certain vaccines, among other provisions. The Board's will notify and train Board staff, and work with BOP and interested parties to develop standardized procedures or protocols for furnishing self-administered hormonal contraceptives and nicotine replacement products.

SB 670 (Steinberg) authorizes the Board to inspect the medical records of a patient who is deceased without the consent of the patient's next of kin or a court order in any case that involves the death of a patient and revises the definition of unprofessional conduct, for a licensee who is under investigation, if the licensee repeatedly fails to attend and participate in an interview of the Board. The Board's implementation plan is to: notify attorneys who represent physicians; notify and train Board staff; revise existing processes and procedures regarding obtaining records for deceased patients; develop a declaration to include with the written request for a deceased patient's records; and revise existing processes and procedures for scheduling physician interviews.

SB 809 (DeSaulnier and Steinberg) establishes the Fund that would be administered by the Department of Justice (DOJ), and would consist of funds ($6 annual flat fee) collected from boards that license prescribers and dispensers, for purposes of funding and upgrading the CURES system. This bill requires DOJ, DCA, and the regulatory boards to identify and implement a streamlined application and approval process to provide access to CURES, requires the Board to periodically develop and disseminate information and educational materials and information on CURES to each licensed physician and General Acute Care Hospital (GACH), and requires prescribers and dispensers, before January 1, 2016, to submit an application to DOJ to obtain approval to access CURES information. The Board's implementation plan is to: post information on the Board's website regarding the fee increase and email physicians; notify and train Board staff; revise the renewal application form to reflect the new fee and revise the renewal letter to reflect the new fee; make necessary changes to the computer system to reflect the fee increase; work with DCA, DOJ and other regulatory boards on a streamlined application process for CURES and provide recommendations on how this application could be integrated as part of the license renewal process; work with DCA, DOJ and other regulatory boards to develop a procedure to enable healthcare

practitioners to delegate their authority to order CURES reports, and to develop an opt-out procedure for those practitioners who do not have a DEA number; provide input to DOJ and DCA on desirable capabilities of the new CURES system for the Board's enforcement program; and work with DOJ and DHCS to identify educational materials related to assessing a patient's risk of abusing or diverting controlled substances and information on CURES and disseminate to each licensed physician and GACH.

SCR 8 (DeSaulnier) proclaims the month of March, each year, as Prescription Drug Abuse Awareness Month and encourages all citizens to participate in prevention programs and activities and to pledge to "Spread the Word….One Pill Can Kill." The Board's implementation plan is to develop and identify outreach materials for dissemination in March 2014.

Public Comment was heard on this agenda item.

Genevieve Clavreul stated that she was unaware of the new CURES system being a brand new system as opposed to an upgrade to the old outdated system. She would like to see the RFP for this. Ms. Kirchmeyer stated that once the RFP becomes an actual contract, it can be found on the Department of General Services (DGS) website.

Ms. Sparrevohn, Chair of the Midwifery Advisory Council, commented that when Ms. Simoes was talking about AB 1308, that some of the Board Members might think that LMs can no longer perform "normal" births. The LMs have never been permitted by law to do abnormal care for women. What is different now is there are some items that are delineated in statute that shows what "normal" would be. The midwifery standard of care for LMs, adopted in 2005, has a fairly extensive list that was developed in conjunction with the American College of Obstetricians and Gynecologists as to those conditions that may affect a pregnancy or delivery.

Agenda Item 29B 2014 Legislative Proposals – Ms. Simoes

Ms. Simoes stated that the Board included new issues in its 2012 Sunset Review Report to the Legislature and in its 2013 Supplemental Report that were not included in SB 304. Board staff has identified the proposals that should be proposed in 2014.

Ms. Simoes stated that in the interest of consumer protection, legislation be written to require that regulations be adopted for physician availability in all clinical settings and for the Board to establish by regulation the knowledge, training and ability a physician must possess in order to supervise other healthcare providers. This item, though in the Board's Sunset Review Report was not included in any legislation in 2013.

Ms. Yaroslavky made a motion to approve this legislative proposal and for staff to seek an author; s/Dr. GnanaDev. Motion carried.

Ms. Simoes stated the Board recommended that a section be added to existing law to require coroners to report all deaths related to prescription drug overdoses to the Board. This language was contained in SB 62 (Lieu), which the Board supported, but was vetoed by the Governor for fiscal reasons. Board staff would like to continue to work with Senate Business, Professions, and

Economic Development Committee on this important consumer protection issue and seek new legislation in 2014.

Dr. Krauss stated that the Board should express its concern by either an affirmation or reaffirmation that the Members wish to explore and exploit all potential avenues of evidence of overprescribing. The public needs to know how important that issue is to the Board and that the Board needs to have some public affirmation of that position.

Public Comment was heard on this agenda item.

Julie D'Angelo Fellmeth stated there was a bill written in 1990, SB 2375 which established the first coroner reporting requirement and that provision was included in the bill at the request of the Coroner's Association as they wanted a mandated reporting requirement, but they also wanted immunity from liability for reporting. She stated that whenever a reporting requirement is established the person requiring the report is also going to want immunity from law suits for making those reports.

Ms. Wright made a motion to have staff continue to work with Senator Lieu on a bill for coroner reporting; s/Dr. Lewis. Motion carried.

Ms. Simoes stated the Board recommended elimination of the 10-year posting requirement in existing law in order to ensure transparency to the public. In the Senate Business, Professions, and Economic Development Committee's background paper, it was recommended that in the interest of transparency and disclosure of information to the public, existing law should be amended to remove the 10-year limit on how long information should be posted on the Board's website. However, SB 304 did not include language that would remove the 10-year limit on posting information.

Public Comment was heard on this agenda item.

Michele Monserratt-Ramos, Consumer's Union Safe Patient Project, stated that they support the proposal. They ask that information be retroactive and all information be posted.

Karen Ehrlich stated that a few times in the last year she has gone on the Board's website to view documents regarding public cases that were previously easily linked on the website and it would direct her to public records. It seems that option is no longer available.

Ms. Kirchmeyer responded by telling Ms. Ehrlich that this is part of the new BreEZe system and that if she would scroll down to the bottom of the page and go across the tabs at the bottom it will list public record actions. Ms. Kirchmeyer offered to walk Ms. Ehrlich through that process after the meeting.

Dr. Lewis made a motion to move forward with legislation to eliminate the 10-year posting requirement; s/Dr. Bishop. Motion carried.

Ms. Simoes stated the Board recommended amending existing law to require a respondent to provide the full expert reviewer report and to clarify the timeframes in existing law for providing the

reports, such as 90 days from the filing of an accusation. SB 304 did include language that would have required the complete expert reviewer report to be provided 90 calendar days prior to the commencement of the hearing. However, after many meetings with the CMA and the Legislature on amendments to address CMA's concerns, the language was pulled from SB 304.

Ms. Yaroslavky made a motion to move forward with legislation to require the full expert reviewer report be provided and to clarify the timeframes for providing the report; s/Dr. Krauss. Motion carried.

Ms. Simoes stated the Board recommended that existing law be amended to include the American Osteopathic Association-Healthcare Facilities Accreditation Program as an approved accreditation agency for hospitals offering accredited postgraduate training programs. This item, though in the Board's Sunset Review Report was not included in any legislation in 2013. Ms. Simoes stated this is a potential omnibus candidate.

Dr. GnanaDev made a motion to move forward with legislation to add this organization to the law; s/Ms. Yaroslavsky. Motion carried.

Ms. Simoes stated that she had two legislative proposals pertaining to the Outpatient Surgery Setting Program. She stated that per existing law, Health and Safety Code Section 1216, clinics licensed by the California Department of Public Health (CDPH), including surgical clinics, are required to report aggregate data to the Office of Statewide Health Planning and Development (OSHPD). This data includes number of patients served and descriptive background, number of patient visits by type of service, patient charges, and any additional information required by CDPH and OSHPD. Before *Capen v. Shewry*, this data was being collected for the majority of outpatient settings, as they were licensed as surgical clinics. However, when physician-owned OSSs fell solely under the jurisdiction of the Board, this reporting was no longer required, which resulted in a serious deficiency of outpatient settings data. Board staff is suggesting that the data collection requirements be put into place for accredited outpatient settings; the data required for reporting would be very similar to the data that surgical clinics are required to report to OSHPD. The Board would work closely with OSHPD on this proposal.

Public Comment was heard on this agenda item.

Lisa McGiffert, Consumer's Union Safe Patient Project stated that they supports this proposal and also urged the Board to consider adding the other areas of reporting they suggested in their written testimony.

Dr. GnanaDev made a motion to move forward with legislation to require the reporting required from licensed clinics also be required of accredited OSSs; s/Dr. Krauss. Motion carried.

Ms. Simoes stated the other proposal related to Business and Professions Code Section 2240 (a), which requires a physician who performs a <u>scheduled</u> medical procedure outside of a general acute care hospital, that results in a death, to report the occurrence to the Board within 15 days. The Board would like to ensure all deaths in outpatient settings are reported to the Board, not just those

that result from a scheduled medical procedure. Board staff suggests striking "scheduled" from existing law. This is a potential omnibus candidate.

Dr. Krauss made a motion to move forward with legislation to strike the word "scheduled" from existing law; s/Dr. GnanaDev. Motion carried.

Agenda Item 9B Consideration of 2014 Board Meeting Dates

Dr. Levine returned to Agenda Item 9B and stated that there is a concern about the February 2014 Board meeting dates being the Thursday and Friday before a holiday weekend. Members discussed moving the February meeting to February 6th and 7th instead of the 13th and 14th.

Ms. Wright made a motion to move the date to February 6-7, 2014; s/Dr. GnanaDev. Motion carried.

Agenda Item 30 Agenda Items for February, 2014 Board Meeting in San Francisco Area

Dr. Levine asked for agenda items for the February 2014 Board meeting. The following items were asked to be placed on the next agenda:

- Presentation from the Department Health Care Services regarding fraud.
- Presentation by Linda Schneider from the AG's Office regarding the Registered Dispensing Optician Program and the lawsuits that are now completed.
- Presentation from Cathryn Nation regarding graduate medical education and the status of funding residency slots.
- An update on Covered California.

Lisa McGiffert, Consumer's Union Safe Patient Project requested a discussion about notifying patients' when a physician is on probation and a discussion on the teleconferencing option for Board meetings.

Dr. GnanaDev announced that in regard to the Executive Director search, the subcommittee was unable to conduct interviews prior to this meeting. The goal is to have the subcommittee interview five to six candidates and then call an interim board meeting in late November or December to pick an Executive Director.

Agenda Item 31 Adjournment

Ms. Yaroslavsky made a motion to adjourn the meeting; s/Dr. Lewis. Motion carried.

Dr. Levine adjourned the meeting at 11:45 am.

Sharon Levine, M.D., President — Date 2/6/14

Silvia Diego, M.D., Secretary — Date 2/6/14

Kimberly Kirchmeyer, Interim Executive Director — Date 2/6/14

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