MEDICAL BOARD OF CALIFORNIA
QUARTERLY BOARD MEETING

San Diego Marriot Mission Valley
8757 Rio San Diego Drive
San Diego, CA 92108
October 26 – 27, 2017

MEETING MINUTES

Thursday, October 26, 2017

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

Members Present:
Dev GnanaDev, M.D., President
Michelle Anne Bholat, M.D.
Judge Katherine Feinstein (ret.)
Randy W. Hawkins, M.D.
Howard R. Krauss, M.D.
Kristina D. Lawson, J.D.
Sharon Levine, M.D.
Ronald H. Lewis, M.D., Secretary
Denise Pines, Vice President
Brenda Sutton-Wills, J.D.
David Warmoth

Members Absent:
Jamie Wright, J.D.
Felix C. Yip, M.D.

Staff Present:
April Alameda, Staff Services Manager II
Mary Kathryn Cruz Jones, Associate Governmental Program Analyst
Christina Delp, Chief of Enforcement
Kimberly Kirchmeyer, Executive Director
Christine Lally, Deputy Director
Regina Rao, Associate Governmental Program Analyst
Letitia Robinson, Research Program Specialist II
Elizabeth Rojas, Staff Services Analyst
Jennifer Saucedo, Staff Services Analyst
Jennifer Simoes, Chief of Legislation
Lisa Toof, Staff Services Manager I
Kerrie Webb, Staff Counsel

Members of the Audience:
Eric Andrist, via phone

Gloria Castro, Senior Assistant Attorney General, Health Quality Enforcement Section, Attorney General's Office
Yvonne Choong, California Medical Association
Zennie Coughlin, Kaiser Permanente
Julie D'Angelo Fellmeth, Center for Public Interest Law
Louis Galino, Videographer, Department of Consumer Affairs
Shalena Garza, M.D.
Marian Hollingsworth, Consumers Union Safe Patient Project
Khadijah Lang, M.D., President, Golden State Medical Association, via phone
Susan Lauren
Kayla Matson, Center for Public Interest Law
Angela McLean, Investigator, Health Quality Investigation Unit, Department of Consumer Affairs
Michelle Monseratt-Ramos, Consumers Union Safe Patient Project
Jose Partida, Investigator, Health Quality Investigation Unit, Department of Consumer Affairs
Jessica Sieferman, Executive Officer, Board of Optometry
Anne Staveren, M.D., President of the Charles R. Drew Medical Society of Los Angeles

Agenda Item 1 Call to Order / Roll Call / Establishment of Quorum

Dr. GnanaDev called the meeting of the Medical Board of California (Board) to order on October 26, 2017, at 4:31 p.m. A quorum was present and due notice was provided to all interested parties.

Agenda Item 2 Public Comments on Items not on the Agenda

Ms. Lauren detailed her experience she had six years ago during a breast reduction operation. She explained procedures were completed without her consent. As a result of the procedures she is on SSI disability with serious health problems and hypertrophy. Ms. Lauren mentioned a case was filed against both the surgeon and the witness. The case against the surgeon was investigated and closed. Ms. Lauren commented that there is plenty of evidence of wrongdoing. Specifically, there are ten surgeons that agree that her case was below the standard of care, shows evidence of negligence, and surgical battery. Ms. Lauren stated that the case should be reopened.

Dr. GnanaDev requested that after the meeting Ms. Delp, Chief of Enforcement, contact Ms. Lauren to discuss how to proceed with her case.

Mr. Andrist congratulated the Board on the sunset extension. He added that he is sure that the Board will pat themselves on the back for accepting the status quo instead of striving to improve the Board for the protection of consumers as is directed by state law. Mr. Andrist commented that the Public Records Act is not on the agenda for the meeting, and added he had asked that it be put on the agenda a year ago at the October 2016 meeting and every meeting since. He stated that it is egregious that the topic is not taken seriously and employees of the Board are continually allowed to break the law. Mr. Andrist reminded the Board that the Board works to protect the citizens of the state, not the doctors that the Board licenses. He explained that if a staff member protects a doctor when it is known that the law has been broken, all parties are complicit in the crime. He further specified, when a doctor is let off easy and then harms patients, the Board is complicit in the crime. Mr. Andrist stated that he hopes that doctors that have sexually assaulted

their patients like Dr. Hari Reddy, who sexually assaulted four of his patients including a 15 year old girl, do not do it again. Lastly, Mr. Andrist commented that the Board should admit to being swayed by the California Medical Association (CMA). Mr. Andrist stated that the CMA's membership is composed of less than 30% of all California doctors. He added if the bulk of California doctors refuse membership, then why is CMA involved in what goes on with the Board.

Dr. Lang, President of Golden State Medical Association, thanked the Board for implementing implicit bias training. She added, this was a recommendation for something that could be done to remedy findings in the demographic study.

Dr. Staveren, President of the Charles R. Drew Medical Society of Los Angeles, stated her support of the comment made by Dr. Lang. She commented that she had attended a training by the Board at the Network of Ethnic Physician Organizations and the members are in strong support of the Board with regard to the actions that were taken.

Agenda Item 3 Approval of Minutes from the July 27-28, 2017 Meeting

Dr. Krauss made a motion to approve the July 27-28, 2017 meeting minutes; s/ Dr. Lewis. Motion unanimously carried (11-0).

Agenda Item 4 President's Report, including notable accomplishments and priorities

Dr. GnanaDev stated that he was happy that the sunset review is done. He added that it took months of hard work from the Vice President, all the staff, especially Ms. Kirchmeyer and Ms. Simoes. He commented that he is thankful to the staff and people who listened, including the Senate, the Assembly, the Governor's Office, and stakeholders.

Dr. GnanaDev stated he and Ms. Pines had calls with the Executive staff to discuss the meeting agenda and other Board projects. He added that constant communication was vital to ensure they were aware of any issues.

Dr. GnanaDev stated he and Ms. Kirchmeyer provided a presentation at the Network of Ethnic Physician Organizations Summit. The presentation provided information on medical licenses and state laws. Dr. GnanaDev stated that he presented the same information for the American College of Surgeons Chapter for the Indian physicians. Dr. GnanaDev commented that the Board does as many presentations as possible to prevent harm. He continued that it is extremely important to remember that prevention is better than discipline. The Board's goal is to make sure that people get the best and the safest health care.

Dr. GnanaDev stated that with the loss of Dr. Bishop, he asked Ms. Lawson to take over as the Chair of the Application Review and Special Programs Committee. He also asked Dr. Hawkins to join that Committee. He directed Members to the new roster under Agenda Item 4. He added if any Member wished to change committee assignments, to contact Dr. GnanaDev or Ms. Kirchmeyer.

Mr. Andrist on the phone commented that Dr. GnanaDev mentioned that he worked with everyone on the sunset review, but to Mr. Andrist's knowledge the Board did not work with patient safety advocates. Mr. Andrist also mentioned that his emails are barely responded to and issues that he has brought up in regard to the Board are not addressed. Mr. Andrist stated that the Board only worked with people that would not make it better.

Agenda Item 5 Board Member Communications with Interested Parties

Dr. GnanaDev stated he worked with everyone from doctors, to the legislature, to the American Medical Association.

Agenda Item 6 Executive Managements Reports

Ms. Kirchmeyer introduced two new members to the Board's executive team. The first, Ms. Mary Kathryn Cruz Jones who replaced Lisa Toof as the Board's administrative assistant. Ms. Kirchmeyer thanked Ms. Toof for her dedication to the Board, the Members and the public over the last several years. She also introduced the new Deputy Director, Ms. Christine Lally. Previously Ms. Lally was at the Department of Consumer Affairs (DCA), as the Deputy Director of Board and Bureau Relations.

Ms. Kirchmeyer commented that the Central Complaint Unit has decreased the time to process a complaint from 123 days at the end of the last fiscal year to 90 days in the month of September. She stated this is to be commended as the enforcement staff worked hard to reach this goal. Ms. Kirchmeyer added the Board took 466 disciplinary actions the last fiscal year, which is a significant increase. She pointed out that more actions have been taken due to the hard work of the Health Quality Investigation Unit (HQIU) and the Health Quality Enforcement (HQE) section.

Ms. Kirchmeyer stated that on page BRD 6A - 4 was the Board's fund condition, including the complete repayment of the Board's outstanding loans from the general fund. With the repayment of the loans, the Board is expected to be at the mandated fund level in fiscal year 2018/2019. Ms. Kirchmeyer added that DCA switched over to a new accounting database and the normal budget reports were not available. She added that hopefully the Board will have a 2017 update at the January meeting. She explained the Board received closing documents for the last fiscal year, which were included in the packet. Ms. Kirchmeyer pointed out the Board also received a six million dollar loan repayment and the Board will be getting a nine million dollar loan repayment in the future year.

Ms. Kirchmeyer added the Governor attached a signing message to the Board sunset's review bill, which states that the Governor's Office staff will be setting up meetings to address two issues: vertical enforcement, and the expert reviewer report. Board staff will be attending these meetings and representing the Board's position.

Ms. Kirchmeyer provided a brief update on the overprescribing of psychotropic medication to foster care children. She stated that the Board received medical releases for some parties, allowing the Board to look into four children's cases. The Board's next issue will be finding out how to move forward through the court process to obtain authorization to collect records and investigate the care and treatment that has been provided. Ms. Kirchmeyer noted it has been a long process, but there is light at the end of the tunnel in obtaining the authorization to investigate the care provided.

Ms. Kirchmeyer stated that a joint training was provided by Dr. Fishman on appropriate opioid prescribing to the Board of Pharmacy staff, specifically the enforcement inspectors, as well as Medical Board staff, and HQIU. The training was hosted by the Board of Pharmacy.

Ms. Kirchmeyer commented she attended, via teleconference and webinar, the annual meeting of the state board advisory panel to the United States Medical Licensing Examination (USMLE). She added that the panel is made up of ten state board representatives who provide feedback and input on the USMLE. Ms. Kirchmeyer mentioned that the panel heard about recent updates to the exam and a list of stakeholder issues. The members also addressed topics including the USMLE annual report. Ms. Kirchmeyer strongly encouraged any physician Board Members who may be interested in assisting with the USMLE to let Ms. Kirchmeyer know, so that she can provide the information to the National Board of Medical Examiners and the Federation of State Medical Boards (FSMB). She stated that she also attended, via teleconference, the FSMB Advisory Council in August. The council is made up of nine executive directors from across the United States, who provide input to FSMB on trends and information from each of the boards. Ms. Kirchmeyer commented that these meetings help the Board remain aware of national issues that are of importance and provide input from the California perspective. Ms. Kirchmeyer thanked FSMB for allowing the Board to participate via webinar since out-of-state travel trips have been denied.

Ms. Kirchmeyer discussed a pilot program that was established by Business and Professions (B & P) Code Section 853, entitling licensed physicians and dentists from Mexico to join a Pilot Program. She mentioned a presentation on the program was provided in October 2016. The law authorizes physicians licensed in Mexico, specializing in family practice, internal medicine, pediatrics, and obstetrics and gynecology, to practice in California for three years. Ms. Kirchmeyer stated that the Board has to issue three-year licenses to these individuals to practice in a non-profit community health center. She added the funding for the program may be received within the next month. Ms. Kirchmeyer commented that the program may complete its orientation and curriculum and provide it to the Board for review very soon. If the Board's medical consultant completes the review prior to the January Board meeting, there may be a need for an interim meeting. The meeting would be done via teleconference.

Ms. Kirchmeyer explained DCA released a new license look up system. One modification is how quickly the name search works, as well as the numerous filters now available to expedite the search.

Ms. Kirchmeyer noted that the Board may face a possible need to relocate offices to a new location in Sacramento. The Board is in the soft term of the current lease and several negotiations are occurring. Ms. Kirchmeyer continued, the Board has been working with the Department of General Services and DCA on the issue. Ms. Kirchmeyer indicated that the Board is hoping that a move will not be necessary, however, there will be more information after negotiations. Dr. Levine inquired about the new location of the new building. Ms. Kirchmeyer responded that a new location has not yet been confirmed.

Ms. Kirchmeyer informed the Members that FSMB is seeking individuals interested in serving on committees. Specifically, Dr. Krauss wanted to be nominated to the Ethics and Professionalism Committee, or any committee where his expertise could be used.

Dr. Lewis made a motion to approve the preparation of a letter for recommendation and support for the appointment of Dr. Krauss to the FSMB Ethics and Professionalism Committee; s/Dr. Levine. Motion carried unanimously (11-0).

Mr. Andrist commented on the correlation between the Board taking more disciplinary action and close monitoring of the Board. He stated that problems and issues with the Board are reported on his website. Mr. Andrist stated that BreEZe is worse with the new changes, although a benefit is that citizens can look up the information on his website. A specific issue with BreEZe is the extremely tiny font and the

inability to search for all doctors in California who are sex offenders. Mr. Andrist commented that Ms. Webb wanted to charge him $1,000 to obtain a list of all doctors who are sex offenders in California. Although he looks in BreEZe hundreds of times a day, no one has asked for his input. He mentioned that the Board brags about being collaborative, but he has not been invited to share his comments. Mr. Andrist concluded by informing the Board that he sent letters to the hotel to Ms. Kirchmeyer and that he would like them distributed to the Members.

Dr. Lewis stated that it is a shame that webinars have taken the place of the face to face interaction that is obtained at seminars. He also stated that he would have liked to serve on the FSMB Educational Committee, but not at this time. Dr. Lewis continued to explain that he believes the rise in complaints correlates with technology and the ease of online submission.

Ms. D'Angelo Fellmeth, Center for Public Interest Law, agreed that the font size is too small in BreEZe.

Ms. Hollingsworth, representing herself, spoke about how the list of administrative updates noted that the Board staff met with the CMA on interests to both parties, however the issues of interest have not been disclosed. She continued that this raises some concerns, since the meeting could be viewed as a conflict of interest. Ms. Hollingsworth added that the CMA's sole purpose is to protect the practice and the financial interest of its members, whereas the Board's purpose is to protect residents from bad doctors. She pointed out that CMA successfully blocked almost every patient safety orientated piece of legislation the past few years. The most recent examples are Senate Bill (SB) 1033 (probation notification) and Senate Bill (SB) 798. Ms. Hollingsworth noted that a point of concern is that there are Members of the Board with more than a basic CMA membership. For example, Dr. GnanaDev was a former President of CMA, has given $50,000 to CMA for an annual reward to the doctor who recruits the most members, and he sits on the board of the CMA Foundation. Ms. Hollingsworth continued that the CEO of CMA, Dustin Corcoran, also sits on the board of Dr. GnanaDev's new medical school. She also explained that Dr. Krauss has been a trustee with CMA since 2010 and that both Dr. Krauss and Dr. GnanaDev made generous contributions to CMA's political action committee in 2016. Ms. Hollingsworth added that CMA has routinely been mentioned at Board meetings when bills are reviewed. Ms. Hollingsworth concluded that the Members ask CMA what they think, which gives the impression that CMA has significant influence over the Board. Ms. Hollingsworth asked that the Board disclose what the meeting between the Board and CMA was about, since both groups have different interests at heart.

Ms. Kirchmeyer commented that the Board and CMA met to talk about the Physician Health and Wellness Program and changes that need to be done to radiologic health.

Ms. Webb commented that this meeting was a technical meeting that covered continuing medical education through radiologic health and is completed through the California Department of Public Health. Ms. Webb added that when the Board meets with CMA, upcoming agenda items are discussed. She added that consumer groups are welcome to request meetings, too.

Ms. Kirchmeyer noted that the meetings are requested by CMA.

Dr. Krauss mentioned that he would like to acknowledge the concern about the optics and the perception of his relationship with CMA. He commented that he encourages the public to speak and request information. Dr. Krauss continued, although he is a member of CMA, his trusteeship concluded in 2016

and he is no longer an officer of CMA. Dr. Krauss concluded by adding that he believes Members are deserving of trust and his priority has always been consumer protection.

Mr. Andrist asked Dr. Krauss how the Board can be trusted when the Board gives licenses back to doctors, whereas in any other profession their license would be revoked. He continued that doctors who molested patients often get their licenses back. Mr. Andrist stated that Dr. GnanaDev works in a county hospital that has been under federal investigation and his partner, Dr. Prim Reddy, is under investigation. He continued by asking how the public is supposed to trust the Board when there are people on the Board like Dr. GnanaDev. He concluded by adding that there are more complaints, but not a proportionate amount of discipline. Mr. Andrist asked if there are more complaints, why is there not more discipline.

Agenda Item 7 Update on the Disciplinary Demographics Task Force

Dr. Krauss commented that the goal of the Disciplinary Demographics Task Force is to evaluate claims of discrimination, and the findings of the California Research Bureau Demographic study, in order to proactively prevent bias in any and all processes of the Board and in actions of anyone who may be involved in the investigative or disciplinary processes.

Dr. Krauss pointed out that since the last Board meeting, the Board not only finalized its contract with the vendor to provide the implicit bias training, but held training sessions in both Northern and Southern California. Staff from the Board, the HQIU, the Attorney General's Office, and Members all were invited to attend this training. Dr. Krauss noted that there was a great turnout and most individuals required to attend the training attended. He added that any staff or Members who did not attend the in-person training will be required to take the webinar once it was completed. Dr. Krauss mentioned the Board is in the last steps to complete the webinar. He explained that the training provided specific information on the Board's enforcement process as well as information on unconscious bias. The training also walked the attendees through case studies to identify potential areas of implicit bias.

Dr. Krauss mentioned that the Board received good feedback on the training. However, as previously stated, the Board would recommend that this training be repeated every two years. He recommended that the next training be longer and provide for more information sharing.

Dr. Krauss stated that the Task Force identified certain information that should be removed from the complaint, investigation, and prosecution process. Specifically the information that will be redacted is anything that could identify the medical school that the licensee attended, or the location of postgraduate training. Dr. Krauss explained that on September 25, 2017, the Board's Executive Director sent a memo to HQIU and the AG's Office regarding this policy change. The change was implemented by the Board's staff and also staff from each of these entities. He also informed that Ms. Kirchmeyer spoke with the presiding judge at the Office of Administrative Hearings and will provide a written request to them. Dr. Krauss elaborated that the request includes this information not be added in proposed decisions.

Dr. Krauss mentioned that the Board staff continues to review its processes to determine if there are any other areas where the Board can make changes to ensure that implicit bias is not a part of the enforcement process.

On behalf of the Board, Dr. Krauss thanked stakeholders for bringing this matter to the Board's attention and for all the assistance received with this issue.

Judge Feinstein commented that while she understands the need to recognize and eliminate implicit bias, as a trial lawyer and a trial judge, the background of a witness is very relevant to how the witness is perceived by a trier of fact. Experience, fellowships, and completed levels of training is germane when assessing complaints to some degree. Judge Feinstein continued, it does not carry full weight, but it does make a difference. She noted that this is particularly true with the expert witnesses who review things. Judge Feinstein expressed her concern with things getting too sanitized, and that when weighing the facts of the case there could be automatic elimination of relevant facts and material.

Dr. Krauss agreed with Judge Feinstein, but added that for any doctor it is known that they are a doctor of medicine or doctor of osteopathic medicine and have received a degree, residency and fellowship from an accredited institution. He explained that the educational institution is redacted, and the reason being that some may have had an element of bias when looking at an applicant. This was found specifically in regard to the school attended. Dr. Krauss continued, for example, there may be a perceived difference in an applicant from Harvard Medical School versus an international school. He explained that this type of bias is what the Board seeks to remove.

Ms. Kirchmeyer reiterated that it would be identifiable that the doctor had training, but the educational institution would not be available. She added, for the medical experts, this information will not be redacted since it is presented on the curriculum vitae. Ms. Kirchmeyer stated it is not the redaction of the medical expert, it is the redaction of the respondent physician's information.

Dr. Garza asked for the raw data of the California Research Demographic Study. Ms. Webb replied that the raw data is confidential. The attendee requested the numbers without names. Ms. Webb suggested they speak after the meeting.

Dr. Staveren, President of the Charles R. Drew Medical Society of Los Angeles, inquired if there were any tools or measures to indicate the levels of implicit bias before and after the training.

Dr. GnanaDev responded that there was no tool. He continued, that the training was to make people aware of unconscious bias. Although he does agree that there would be benefits in measuring implicit bias, it would take at least five years to compile new data. Dr. GnanaDev explained that in looking at two to three years' worth of data implicit bias was not detected, but in looking at a decade's worth of data it was determined that a training would be necessary.

Dr. Krauss mentioned that he invited Dr. Staveren to help the Board develop ongoing mechanisms of testing for bias. He mentioned that testing for prejudice and bias needs to be an ongoing concern and tested over time. Dr. Krauss concluded, that the Board needs to have an open avenue for all stakeholders to work with the Board and to measure the results of what the Board is doing.

Dr. Lang commented that people receive quality training from facilities that are not listed in the top ten hospitals or programs. Dr. Lang continued that not all minorities have been given the opportunity to be admitted to the top schools due to this same bias. In the end, this too puts an unfair disadvantage on minorities.

Dr. Levine stated that training is not a guarantee to mitigate the problem. For example, the mandatory sexual harassment training that millions of Californians take every year provides evidence that training has not solved the problem. Dr. Levine stated the importance of understanding the impact of the training and tracking the consequences of both the Board's intervention in terms of training as well as change in the presentation of materials.

Agenda Item 8 Update on the Physician Assistant Board

Ms. Kirchmeyer stated the Physician Assistant (PA) Board conducted its quarterly meeting on August 11, 2017, in San Diego during the California Academy of Physician Assistants' annual conference. The next quarterly meeting would be held on Monday, October 30, 2017, in Sacramento.

Ms. Kirchmeyer continued, the PA Board members discussed how the Supreme Court of Pennsylvania decided that informed consent can only be given by the physician in the state of Pennsylvania. DCA Legal Counsel, Ms. Schieldge stated that the decision by the Supreme Court of Pennsylvania has no legal effect on the PA Board's interpretation of California law.

Ms. Kirchmeyer explained that Ms. Forsyth reported that the PA Board's budget reflected a positive 4.2% at the end of month 12. She reported investigative costs, performed by the Board, totaled $144,000. Ms. Kirchmeyer stated that it was reported that these costs rose due to both the number of complaints filed and the complexity of the complaints.

Ms. Kirchmeyer noted that Ms. Curtis, President and Chair of the Board of Directors of American Academy of Physician Assistants (AAPA), presented to the PA Board where the PA profession is now, what the AAPA envisions for the future, how the practice environment in California compares to other states, and how AAPA's new policies aim to ensure that the PA profession will continue to thrive amongst the various advancements and changes in the way that healthcare is being delivered. She stated the goal of the AAPA is to ensure that state laws and regulations allow for optimal PA utilization.

Ms. Kirchmeyer detailed that the AAPA's new policy seeks changes to laws and regulations that would emphasize PAs' commitment to team practice, with the degree of collaboration determined at the practice level. In turn, this would eliminate legal requirements for a PA to have a specific relationship with a physician in order to practice and would authorize PAs to be directly reimbursed by all public and private insurers. Ms. Kirchmeyer added this allows the PA Board to regulate PA practice, or give that authority to healing arts and medical boards with PAs as members. The adoption of the new AAPA policy in May of 2017 resulted in several questions one of which is whether the new policy would allow an inexperienced PA to practice independently. Ms. Kirchmeyer continued, that the AAPA responded that these guidelines describe a system that requires PAs to practice within the limits of their education, experience, and standard of care, and to collaborate, consult with, and refer to physicians and others as required.

Ms. Kirchmeyer mentioned that California does not meet AAPA's recommended policy that PAs be responsible for the care they provide as California regulations state that supervising physicians are responsible for all medical services provided by a PA, nor does California state law authorize direct reimbursement for PAs.

Ms. Kirchmeyer noted the National Commission on Certification for Physician Assistants (NCCPA) is currently lobbying various states for legislation to mandate that PAs retain certification through their agency in order to renew their state PA licenses. She continued, recently the State of West Virginia vetoed a bill that would have removed the current NCCPA certification requirements of completing 100 hours of continuing medical education every two years and successfully passing the NCCPA recertification exam every ten years. Ms. Kirchmeyer explained, the NCCPA believes that this veto protects patient safety and holds PAs to a higher standard. Currently, California law requires PAs to renew their license to either be NCCPA certified, or complete 50 hours of category 1 CMEs every two years. Ms. Kirchmeyer concluded, that following a lengthy discussion it was determined that the PA Board will investigate the possibility of working with a new national certifying body such as the AAPA.

Ms. Kirchmeyer noted the PA Board also discussed updating the sample Delegation of Services Agreement (DSA) that is currently available on the PA Board's website to reflect the amended laws and regulations. The DSA is provided as a sample for PAs to use along with their supervising physician.

Ms. Kirchmeyer stated the PA Board discussed the new legislative bills that could affect the health care profession. Most notable is AB 710, which would mandate one PA Board meeting every two years be conducted in rural Northern California.

Dr. Lewis stated that in light of the changes, he inquired about the scope of practice broadening for PAs.

Ms. Kirchmeyer responded that any change in scope of practice would have to be done legislatively. She continued, that she cannot speak for the PA Board, but she does think that the Board would do a good job analyzing changes in scope of practice. In the past the Board has been very careful when other scope bills have come forward. Ms. Kirchmeyer stated that when analyzing a bill, the Board should be analyzing the effects on consumer protection. She explained that she thought that the Board would oppose anything that did not lengthen training.

Dr. Hawkins inquired about a PAs third year, specifically what is taught and if it would increase the scope of practice. Although Ms. Kirchmeyer could not speak to that question herself, she did provide information that had been provided to her by the PA Board. She stated the typical PA program is about 27 continuous months and consists of the didactic (classroom) and clinical phases; graduating students will have completed 2,000 hours of supervised clinical experiences.

Dr. GnanaDev explained that there is one year of clinical rotations, whereas medical students go through two years of clinical rotations plus an additional three years of residency to get licensed. Therefore, it will be five years total in California as of 2020.

Dr. Hawkins commented that a couple of years ago it was two years of training for PAs.

Dr. Krauss stated that he hopes that the Board will continue to be concerned with patient safety and serving the public. One thing that he has enjoyed is the Board's Executive Director and her collaboration with other boards. He continued, that he is hopeful that as time goes on the Board will be nothing but collaborative. Dr. Krauss explained that he thinks that Board would hold other boards to the same standard. He looks forward to a time where the standard of care is uniform amongst all practitioners. Therefore, a licensee would perform a procedure, and that procedure would be done at the same level of quality of care as any other licensed practitioner.

Dr. Levine commented that the Board was founded in 1876 and the increased requirement for three years of post-graduate training is the first change since Flexner. Therefore, for almost a 100 years the standard for licensure had not changed.

Dr. GnanaDev adjourned the meeting at 5:55 p.m.

RECESS

Friday, October 27, 2017

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Dev GnanaDev, M.D., President
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Judge Katherine Feinstein (ret.)
Randy W. Hawkins, M.D.
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Sharon Levine, M.D.
Ronald H. Lewis, M.D., Secretary
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Members Absent:
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Jennifer Simoes, Chief of Legislation
Lisa Toof, Staff Services Manager I
Kerrie Webb, Staff Counsel

Members of the Audience:
Eric Andrist, via phone
Alicia Alarcon

Kari Broder, Arizona College of Osteopathic Medicine
Kaley Capitano, Arizona College of Osteopathic Medicine
Chris Castrillo, Deputy Director, Department of Consumer Affairs
Robert Casa, Investigator, Health Quality Investigation Unit
Gloria Castro, Senior Assistant Attorney General, Health Quality Enforcement Section, Attorney General's Office
Jenny Chang, Arizona College of Osteopathic Medicine
Yvonne Choong, California Medical Association
Genevieve Clavreul, via phone
Zennie Coughlin, Kaiser Permanente
Julie D'Angelo Fellmeth, Center for Public Interest Law
Rosanna Davis, California Association of Licensed Midwives
Adam Delgado, Arizona College of Osteopathic Medicine
Jack French, California Safe Patient Project
Spencer Funk, Arizona College of Osteopathic Medicine
Louis Galiano, Videographer, Department of Consumer Affairs
Aaron Gandid, Arizona College of Osteopathic Medicine
Shalena Garza, M.D., via phone
Mai Goh, Arizona College of Osteopathic Medicine
Taylor Gustin, Arizona College of Osteopathic Medicine
Dean Grafilo, Director, Department of Consumer Affairs
Laurie Gregg, The American Congress of Obstetricians and Gynecologists
Nadine Hammond, Arizona College of Osteopathic Medicine
Marian Hollingsworth, Consumers Union Safe Patient Project
Janelle Jackson, Assembly Member Shirley Weber's Office
Morgan Keefe, Arizona College of Osteopathic Medicine
AJ Kennedy, California Allied for Patient Protection
Heather Kirkham, Arizona College of Osteopathic Medicine
Ellen Komp, California NORML
Chia-Yuan Lee, Arizona College of Osteopathic Medicine
Mr. A. Lopez
Cristina Macky, Arizona College of Osteopathic Medicine
Thomas Marcotte, M.D., Center for Medical Cannabis Research
Mahfouz Michael, M.D.
Kayvon Moazam, Arizona College of Osteopathic Medicine
Michelle Monseratt-Ramos, Consumers Union Safe Patient Project
Hector Perez Pacheco, County Commissioner
Stephen Robinson, M.D., Society of Cannabis Clinicians, via phone
Myra Rodriguez, Investigator, Health Quality Investigation Unit
Hanna Rhee, M.D., Hometown Clinic and House Calls
Eric Ryan, Supervising Investigator, Health Quality Investigation Unit
Rujing Shi, Arizona College of Osteopathic Medicine
Jessica Sieferman, Executive Officer, Board of Optometry
Perry Solomon, M.D., Hello MD
Carrie Sparrevohn, Licensed Midwife, Midwifery Advisory Council
Quynhvy Ta, Arizona College of Osteopathic Medicine
Ariana Van Alstine

Kathy Vo, Arizona College of Osteopathic Medicine
Barth Wilsie, M.D., Center for Medical Cannabis Research
Kayla Watson, Center for Public Interest Law
Cindy Youn, Arizona College of Osteopathic Medicine

Agenda Item 9 Call to Order/Roll Call/Establishment of Quorum

Dr. GnanaDev called the meeting of the Medical Board of California (Board) to order on October 27, 2017, at 9:04 a.m. A quorum was present and due notice was provided to all interested parties.

Agenda Item 10 Public Comments on Items not on the Agenda

Ms. Jackson, from Assembly Member Webber's Office welcomed the Board to San Diego and stated if the Board needed any assistance to please reach out to their office.

Ms. Alarcon started speak about the good that Dr. Michael has done and the impact that he has made on the community.

Ms. Webb asked Ms. Alarcon to stop her comments since the case might come before the Board for their vote. Ms. Webb clarified that the Board can only hear only evidence presented at an administrative hearing. Ms. Kirchmeyer mentioned there is an appropriate opportunity to present personal testimony.

Mr. Pacheco, a county commissioner in Los Angeles for the Community Action Board as well as the Work Force Investment Board, explained the importance of community clinics. Specifically, to speak to and work with the community to address issues of diabetes and obesity. Mr. Pacheco stated that there is not enough education in underserved communities within Los Angeles and the greater area.

Mr. Lopez stated his appreciation for doctors that come to his town. He continued, there are many needs to be met and El Serano needs doctors that put their heart into their work. Mr. Lopez puts his faith into the Board to license good doctors and discipline bad doctors.

Dr. Michael stated he hopes that he and other doctors are supported by the Board.

Dr. Rhee mentioned her concern of unintended bias and discrimination against the elderly and the disabled. She mentioned it could come through in the actions and the decisions of the Board.

Mr. Andrist commented that Ms. Webb should not cut people off when discussing an open complaint. It is his understanding from the law that this is permissible. He stated that Ms. Webb is allowed to give the disclaimer that Board Members are not allowed to hear about a case, but that members of the public are allowed to speak about anything they wish to in a public meeting. Mr. Andrist continued, that under the Brown Act, under a regular session, the public has the right to speak on any item of interest to the public before or during a legislatives body's consideration of that item. He stated that this right provides a period of time for general public comments on a matter within the subject jurisdiction of the legislative body, as well as an opportunity for public comment. Mr. Andrist mentioned the speaking time the previous day was three minutes and

speakers were cut off at two minutes. For this reason, Mr. Andrist will be submitting a Brown Act complaint with video proof.

Dr. Garza spoke about the mental health of physicians and public disclosure. There were two scenarios that she discussed and requested that both be placed on the agenda for the next Board meeting. Dr. Garza stated that the first scenario is a physician with a mental illness found to be functionally impaired to the level of incompetence. She agreed that in this case it is justifiable for the Board to remove their license. However, Dr. Garza mentioned that the disclosure of information online is inappropriate and illegal. She continued to explain that it is illegal, since the Board has already protected the public to the fullest extent that it can protect the public by removing the license. Dr. Garza detailed the second scenario, a physician with a mental illness, but not found to be functionally impaired to the level of incompetence. She mentioned that the Board also cannot provide this information to the public. Dr. Garza commented that the public will discriminate against the physician. This is the exact scenario that the Americans with Disabilities Act was intended to prevent. For this reason, Dr. Garza concluded that it is the responsibility, and the obligation of the Board to protect the privacy rights of every individual including physicians. She asked that the mental health information be evaluated on an individual case basis and that a lack of resources is not a justification to break the law.

Agenda Item 11 Presentation on the Steven M. Thompson Physician Corps Loan Repayment Program

Dr. GnanaDev stated that this agenda item will be postponed until the January Board meeting, since the presenter's plane was diverted.

Ms. Kirchmeyer mentioned that open enrollment began on November 1, 2017, for the Steven M. Thompson Loan Repayment Program.

Dr. GnanaDev stressed that any doctors in underrepresented communities can apply for the loan prepayment program. In fact the program was mainly created for primary care doctors working in underrepresented areas.

Agenda Item 17 Update from the Department of Consumer Affairs, which may include Updates on the Department's Administrative Services, Human Resources, Enforcement, Information Technology, Communications and Outreach, as well as Legislative, Regulatory and Policy Matters

Mr. Grafilo commented that DCA welcomed a new Chief Deputy Director, Chris Schultz. He continued, Mr. Schultz was the Deputy Commissioner of the Community Programs and Policy Initiatives at the Department of Insurance since 2011. Mr. Grafilo explained that DCA also received a new Deputy Director of Administration, Natalie Daniels, and a new Deputy Director over Board and Bureau Services, Chris Castrillo. Ms. Daniels was a fiscal supervisor at the Judicial Council of California since 2015 and she oversees the Department's Office of Human Resources, Business Services Office, and Fiscal Operations.

Mr. Grafilo mentioned September was the second Director's quarterly meeting with board executive officers. He added that the team is very focused on ensuring DCA continues an open

dialogue with the boards and bureaus. Mr. Grafilo announced that there will be an annual meeting with all board presidents to facilitate open communication about issues that DCA's boards and bureaus face.

Mr. Grafilo mentioned that DCA released a new online license verification search for all boards and bureaus using the BreEZe platform. He continued, the license search expanded current functionality to allow the public more flexible search capabilities. Mr. Grafilo commented that the new search allows online filtering on a range of relevant data points including primary and secondary status, city, county, and license type. He added that a key focus for the new search is the user experience, performance flow, and ease of use. Mr. Grafilo concluded, that the new DCA search brings the offering closer to familiar search capabilities that are common across the internet and allow stakeholders to obtain the data that they require at their fingertips.

Mr. Castrillo introduced himself as the new Deputy Director over Board and Bureau Services. Prior to joining DCA he worked in public policy and campaign management. Mr. Castrillo explained that most recently he was a legislative advocate and worked on a variety of policy areas such as labor, higher education, youth mental health, foster care, and local government. He is establishing an office that implements goals from the strategic plan, exemplifies organizational effectiveness, and provides relevant, timely, and accurate information to all stakeholders. Mr. Castrillo mentioned new staff, Ms. Karen Nelson and Mr. Patrick Le, who began as the new Assistant Deputy Director for the Office of Board and Bureau Services. He continued, Ms. Nelson was the Chief Operations Officer at the American Leadership Forum, for Mountain-Valley Chapter since 2014. Mr. Castrillo explained that Mr. Le was the Chief of External Affairs at Covered California since 2015.

Mr. Castrillo mentioned that the DCA leadership kicked off its Future Leadership Development Program in May 2017. A meeting was held between program participants and mentors in August 2017. Mr. Castrillo explained that the last meeting was October 24, 2017, with Senator Jerry Hill. This program includes executive mentoring, customized leadership training, and project management. He also thanked Board Member, Ms. Pines, for speaking in the Future Leadership Development training in October 2017. Mr. Castrillo thanked Ms. Kirchmeyer for helping set up the event and serving on the steering committee.

Mr. Castrillo mentioned that DCA has established a pro rata work group of DCA and board executives to discuss potential improvements on how DCA communicates with boards on this issue. Pro rata is the process by which the department distributes the cost amongst its boards and bureaus to cover all DCA services. Mr. Castrillo stated that the work group held its first meeting in August 2017. The second workshop was in October 2017. He mentioned that the pro rata open house will take place in November 2017.

Mr. Castrillo detailed that DCA completed its strategic plan in July 2017. The plan was created with the assistance of SOLID. He commented that the strategic plan outlines DCA's goals and objectives for the next four years. Mr. Castrillo added that the plan is available online on the publications page of the DCA website.

Mr. Castrillo gave a few quick reminders, one being the final new Board Member Orientation Training would be in November 2017. All board members are required to take this training

within one year of appointment and reappointment to the Board. Mr. Castrillo explained that the one day training in Sacramento details the important functions and responsibilities board members. He gave an additional reminder that 2017 is the year to complete the mandatory sexual harassment prevention training for DCA. Mr. Castrillo elaborated, employees and board members are required to complete the training in 2017.

Mr. Andrist addressed Mr. Grafilo, noting that the new DCA search function is only moderately better than the old one. He added that the font is extremely tiny and difficult to read, especially for people with vision disabilities. Mr. Andrist commented that the changes do not take into consideration all consumers. He mentioned that his website that mirrors the Board's disciplinary actions, is far more consumer friendly, and the public would be wise to take a look at a functioning website. Mr. Andrist inquired why Mr. Grafilo ignores emails from consumers. He stated that he has specifically sent emails noting how the Board is breaking the Public Records Act. Mr. Andrist mentioned that since Mr. Grafilo is the head of DCA he should listen to consumers and not ignore them.

Agenda Item 12 Discussion and Possible Action on Recommendations from the Special Faculty Permit Review Committee

Dr. Bholat stated that the Special Faculty Permit Review Committee (SFPRC) held a teleconference meeting on October 11, 2017. The SFPRC reviewed and discussed Dr. Stefano Pallanti's application for a special faculty appointment with Stanford University School of Medicine.

Dr. Bholat explained that Dr. Pallanti specializes in the area of psychiatry, specifically in the area of severe comorbid psychiatric disorders. Dr. Pallanti has a long and distinguished career in psychiatry. She continued that he has held the position of a tenured Professor of Psychiatry at the University of Florence since 2001 and serves as the Chair of Education and Director of Psychiatry. His extensive portfolio of scholarly work has focused on the underlying neurobiology and treatment of major psychiatric disorders. Dr. Bholat described that he also has an excellent record of accomplishment of extramural research funding as a principal investigator from both government agencies and the industry. Dr. Bholat detailed that Dr. Pallanti has more than 180 peer-reviewed articles in journals. In addition, he has held visiting professorships at Stanford, Harvard, Mount Sinai School of Medicine, Albert Einstein College of Medicine, University of California, Davis School of Medicine, and Imperial College, London. Dr. Bholat concluded, in stating that Dr. Pallanti serves on the editorial boards of several scientific journals and has served as editor in chief for the Italian edition of the American Journal of Psychiatry.

Dr. Bholat mentioned, if approved by the Board, Dr. Pallanti would hold a full-time faculty appointment as a Professor of Psychiatry at Stanford University of Medicine. He would also provide clinical care in the inpatient and outpatient psychiatry clinic at Stanford University of Medicine along with other facilities affiliated with Stanford University of Medicine. She continued that Dr. Pallanti would provide expert leadership in the area of complex and severe comorbid psychiatric disorders. Dr. Bholat finished, stating that Stanford University of Medicine has a strong clinical need for his expertise in psychiatry and his programmatic leadership.

Dr. Lewis made a motion to approve Dr. Pallanti for a Special Faculty Permit appointment; s/Dr. Krauss.

Dr. Rhee commented that it might be time to reflect on the necessity of having Members with extensive hospital affiliations and their unintentional implicit bias might affect making decisions pertaining to other's hospital affiliations.

Motion carried unanimously (11-0).

Agenda Item 13 Update from the Application Review and Special Programs Committee

Ms. Lawson commented that the Application Review and Special Programs Committee (Committee) met at 8:30 am. Dr. Hawkins and Ms. Lawson were present and established a quorum. Ms. Lawson stated that in a closed session, Ms. Alameda presented one physician and surgeon application. The Committee made a recommendation to the Executive Director and the meeting was adjourned.

Agenda Item 14 Update, Discussion, and Possible Action on Recommendations from the Midwifery Advisory Council Meeting

Ms. Sparrevohn, cited one amendment to the report in the Board packet. Specifically, the interested parties meeting to discuss changes to the Licensed Midwives Annual Report (LMAR) tool was cancelled due to the fires in Northern California. She continued that hopefully it will be rescheduled before next year, and if not, sometime early in 2018.

Ms. Sparrevohn highlighted the American River College Midwifery Education Program that is in the process of being created; stating that it will be the second program nationally and the first of its kind in California. She commented that the program will bring a new level of academic leadership in midwifery care for California midwives and it will also open the door to midwifery students who cannot afford schools that currently offer a midwifery program. The American River College Midwifery Education Program is looking at a projected opening date of Fall, 2019.

Ms. Sparrevohn commented that approval is needed for agenda items for the December Midwifery Advisory Council (MAC) meeting. She requested approval for the following agenda items: updates on the Midwifery Task Force, Hospital Transfer Form, midwifery related legislation, the progress of midwifery assistant regulations, continuing regulatory efforts required by AB 1308, the Board's midwifery program, and the community college licensed midwifery program. Ms. Sparrevohn mentioned that in addition, she needed approval for: the updates from the task force, updates on revisions to the LMAR, and a presentation on the Open Meeting Act.

Dr. Lewis made a motion to approve the agenda items for the MAC meeting; s/ Judge Feinstein.

Dr. Hawkins mentioned that in Los Angeles there is a backlog of community college classes and availability for students to be able to sign up for classes. He inquired if this was a concern for the Midwifery Education Program.

Ms. Sparrevohn answered that at this moment there is uncertainty as to how many students will be in the program. The LMAR shows that the more licensed midwives there are, the more clients served. She continued, in looking at the LMAR and the fact that this program is significantly more affordable, it can be expected that there will be an influx of students. Ms. Sparrevohn added that a benefit of the program

is that it is designed to be at a distance, which will in turn not impact any specific community college. In addition, students can go to any community college to fulfill prerequisites like anatomy or physiology.

Motion carried unanimously (11-0).

Agenda Item 15 Update and Possible Action from the Midwifery Task Force

Dr. Bholat stated that the Midwifery Task Force met via conference call on October 5, 2017. At this time the Task Force discussed the regulations required by AB 1308 (Bonilla, Chapter 665, Statutes of 2013) and possible next steps.

Dr. Bholat provided some background information to provide context. Specifically, AB 1308 was signed in 2013 and it removed the physician supervision requirement for licensed midwives (LMs). It then required LMs to only accept clients that meet the criteria for normal pregnancy and childbirth. Dr. Bholat stated if a potential client does not meet the criteria for normal pregnancy and childbirth, then the LM can refer that client to a physician, trained in obstetrics and gynecology for examination. The LM can only accept the client if the physician examines the client and determines that the risk factors are not likely to significantly affect the course of pregnancy and childbirth. Dr. Bholat added that AB 1308 required the Board to develop regulations specifying preexisting maternal disease or condition likely to affect the pregnancy.

Dr. Bholat noted that the Board convened two interested parties meetings in an effort to develop regulations, and there was agreement on many of the proposed preexisting maternal diseases or conditions likely to affect the pregnancy, but the outlier was vaginal births after cesarean (VBAC). She stated that this is the one condition that could not reach agreement. Since both sides felt strongly about this issue, it put the Board's regulatory process at a standstill. Dr. Bholat concluded that because of this, Board staff went to the Board and asked for the Board's assistance and the Midwifery Task Force was established.

Dr. Levine stated the Midwifery Task Force met on March 6, 2017, with interested parties. At that meeting, the parties discussed the challenges created by the current language in Business and Professions Code section 2507(b)(2) which requires the physician who performs the examination to make a determination of whether the risk factors presented are likely to significantly affect the course of pregnancy and childbirth. Dr. Levine commented that the Task Force was informed that requiring physicians to make this determination puts physicians in a difficult position. At this time, it was acknowledged that this issue could not be resolved through regulations, and statutory changes would be necessary. Dr. Levine stated that proposed language was provided and discussed at the Task Force meeting. Board staff then made changes to the language based on input received at the meeting and recirculated the language on March 28, 2017. She continued, the proposed language would require a physician to assess the risk factors instead of making a determination. The LM would have to include the physician's assessment in evaluating whether the client's disease or condition would likely significantly affect the course of the pregnancy or childbirth. Dr. Levine mentioned that the LM would be held to the standard of care. The proposed language was presented to the Board on April 28, 2017, and the Board approved the language and authorized staff to submit the language to the Senate Business, Professions, and Economic Development (B&P) Committee for possible inclusion in the Board's sunset bill. She stated that Board staff did provide this language to Senate B&P staff.

Dr. Levine commented that on April 17, 2017, SB 457 (Bates) was introduced. This bill was co-sponsored by CMA and American College of Obstetricians and Gynecologists (ACOG) and would completely eliminate the sections of law that the Board's language would have amended. This bill instead would have the same requirements for attending out-of-hospital births, whether a physician, a certified nurse-midwife, or a licensed midwife. Dr. Levine stated that it would have also changed the Midwifery Practice Act to limit the LM care to out-of-hospital childbirth and prenatal, intrapartum, and postpartum care related to the out-of-hospital childbirth. This bill became a 2-year bill before the Board's Meeting on April 28 2017, so it was not brought to the Board for a position.

Dr. Levine mentioned that, since the October Board meeting is the time to discuss potential proposals for the next year, the Midwifery Task Force had a conference call with Board staff on October 5, 2017, to discuss next steps. The Task Force and staff discussed moving forward with the Board's language, but there was already a bill that would make changes to the same section of law. Dr. Levine continued that after discussion the Task Force believed the most appropriate course of action is to work with Senator Bates, the author of SB 457, her staff, and other interested parties on amendments to SB 457. Specifically, in effort to be more in line with the language approved by the Board previously, which will allow the Board to develop regulations. Dr. Levine concluded, that she would like to ask the Board to direct staff to work on amending SB 457 this year, and if this is not completed this year, staff can come back to the Board with this issue the following year.

Dr. Hawkins inquired about the difference between assessing risk and making a determination.

Dr. Levine mentioned that the concern on the part of ACOG is that a physician makes a determination as to whether or not a client's condition or disease would present a risk in a home birth. In the case that something were to happen, the physician would be liable, since it was determined that risk was unlikely. Dr. Levine concluded, changing the language to assess the risks provides an opinion as opposed to a determination, which in turn lowers the risk of liability to the physician who is not present at the time of the delivery.

Dr. GnanaDev asked Ms. Simoes why this bill was a two-year bill.

Ms. Simoes replied that it was held in committee and she believes that it may have needed more discussion. She mentioned that the Senate knew that the Board was suggesting language. Senate B & P staff already contacted the author's office and there will be an interested parties meeting. Ms. Simoes confirmed that the Board will participate.

Dr. GnanaDev asked about opposition of the bill.

Ms. Simoes responded that there was never a committee meeting held, so she cannot speak to any opposition, although she can confirm that the bill was held in Senate B & P Committee.

Dr. Levine made a motion to direct staff to work on, amending SB 457 this year and if that cannot be completed, staff can come back to the Board to address the issue the following year; s/ Mr. Warmoth.

Ms. Sparrevohn mentioned that she would like to ensure that the scope of practice for LMs does not change. Her impression is that the bill would limit the midwifery scope of practice to out-of-

hospital births and pregnancy in the postpartum period. Ms. Sparrevohn mentioned that many LMs provide care in inter conceptual years and there has been more use of LMs in community clinics, and physicians' offices. For this reason, the scope of practice needs to remain open to family planning and to hospital births. She added that it is her belief that in the future there may be a system in which an LM may be able to follow their low-risk client to the hospital for a change of venue, even if their risk has not been elevated to the point of physician care.

Dr. Levine commented that her assessment is accurate and what is stated in the bill.

Ms. Sparrevohn replied that there will be huge opposition to the bill.

Ms. Davis, California Association of Licensed Midwives, commented that there was major opposition to this bill from the midwife community and clients that midwives serve. She continued, that the bill completely changes the scope of practice for midwives and disallows the autonomy of the mother, the client, and the family to choose a care provider. Ms. Davis stated that the bill is not evidence-based and does not solve any existing problems.

Motion carried unanimously (11-0).

Agenda Item 16 Presentation and Discussion on the Board of Optometry's Emerging Technologies Outreach Campaign

Ms. Brandvein, President, Board of Optometry, provided a presentation with Ms. Sieferman, Executive Officer, Board of Optometry. She asked for a strategic partnership, an alliance, and collaboration with the Board, since together both boards can ensure consumer protection under emerging technologies, specifically in regard to corrective vision care, including prescriptions. Ms. Brandvein mentioned that there are technological and emerging technology vehicles such as online refractions and kiosks that are inside registered dispensing optician locations. She continued that the concern is that the refraction technology and test is not a comprehensive eye exam and therefore does not address the total health of the eye. Ms. Brandvein mentioned that the concern is that the consumer may be missing an opportunity to truly address the issue. She added that it addresses the symptom, and therefore the consumer is denied the ability to get to the root of the problem. Ms. Brandvein commented that if the consumer goes untreated their condition might worsen. Therefore, something that may have previously been corrected by a prescription may no longer be helpful.

Ms. Brandvein proposed a task-based team between the two boards to look at such things and evaluate increasing educational outreach on this matter. It would also include evaluating the potential for increased accountability and liability. She stated it will also determine the potential to require corporations offering these services to register with the applicable licensing board. She noted that this would give both boards the opportunity to be proactive versus reactive.

Dr. Krauss commented that Ms. Kirchmeyer has done an excellent job reaching out to other healing arts boards in DCA. He noted that he thinks that the Board can best serve the public through collaboration on these projects. Dr. Krauss noted that he would personally support a collaboration with the Board of Optometry to explore emerging technologies. He stated that he believes that this issue arises out of a national concern on the part of both optometry and

ophthalmology regarding online refractions and the ability of consumers to obtain prescription eyewear without having an examination by an optometrist or an ophthalmologist. Dr. Krauss pointed out that that DCA and its boards are committed first and foremost to consumer protection. It is also the Board's duty to suggest that laws are followed, but if or when laws or regulations may be antithetical to consumer protection, the Board might suggest new laws or regulations. Dr. Krauss added that current California law requires an optometrist or physician prescription from a California licensee for other than over-the-counter sunglasses or readers. It also requires a prescriber to be licensed in California if a prescription is filled in California or delivered to a California address. He continued, California requires a good faith examination by the prescriber. Dr. Krauss concluded, that it may be unlawful for spectacles to be provided in California with aid of an online refraction unless it is supplemented and endorsed by a good faith examination by an appropriate California licensee. On the other hand, Dr. Krauss mentioned that the laws may not fully represent consumer interest. Specifically, a headache could be a presenting symptom of hypertension, meningitis, a brain aneurysm, or a brain tumor, but it is not required that a person be checked by a physician before self-treating with Excedrin. For this reason, Dr. Krauss is uncertain if the Board is best serving the consumer interests by blocking their access to obtaining spectacles by online refraction. He mentioned at the same time he endorses the wisdom and the necessity of periodic eye examinations.

Ms. Brandvein commented that she does not want to interrupt technology. She mentioned that there is a certain presumption by the public that when a doctor signs something or they receive a formal prescription that there is something more than an output from a camera reading their eyes from either an iPad or an iPhone. Ms. Brandvein would like the public to understand what a comprehensive eye exam is and what online refractions are versus taking away the opportunity for corrective lenses, because that is not the purpose.

Dr. GnanaDev mentioned that the Board will do their best to protect the consumers and keep the cost low.

Agenda Item 18 Review, Discussion, and Possible Action on *Guidelines for Recommendation of Cannabis for Medical Purposes*

Ms. Lawson provided a little background on the guidelines. She stated that Senate Bill 643 passed in 2015 and became effective January 1, 2016. A requirement of this bill was that the Board would consult with the California Marijuana Research Program, known as the Center for Medicinal Cannabis Research (CMCR) to develop and adopt guidelines for the appropriate administration and use of medical cannabis. Ms. Lawson continued that based upon this requirement, the Board established the Marijuana Task Force.

Ms. Lawson commented that as reported previously, on February 8, 2017, the Marijuana Task Force held a meeting with interested parties to begin the development of the guidelines. The goal of the meeting was to begin the discussion for revising the Board's Statement on Marijuana for Medical Purposes. Ms. Lawson added that many interested parties attended the meeting, including representatives from medical associations, state entities, telemedicine companies, physicians who recommend marijuana, and consumers.

Ms. Lawson mentioned that after the meeting, Board staff began drafting the new Guidelines for Recommending Marijuana for Medicinal Purposes. In June 2017, Board staff met with CMCR to review and discuss a draft of the guidelines. She noted that CMCR provided extensive, valuable input based upon their expertise. Ms. Lawson stated that a final draft document was completed by Board staff and reviewed by the Marijuana Task Force.

Ms. Lawson explained that on August 30, 2017, the Marijuana Task Force held another interested parties meeting to review the draft guidelines. At this meeting, the Marijuana Task Force heard from physicians who recommend marijuana, telemedicine companies, representatives from associations, and other stakeholders. Ms. Lawson added that Board staff took the information received from the interested parties meeting and made amendments as necessary. Staff then provided another copy of the document to CMCR to receive their input. Ms. Lawson commented that CMCR made changes to the Medicinal Cannabis Agreement based upon comments received.

Ms. Lawson informed that the final document was reviewed by the Marijuana Task Force and has been provided to the Members for review. Ms. Lawson thanked Board staff, specifically Letitia Robinson, for outstanding work on the Guidelines. She also thanked the staff of CMCR who provided the Board with expertise in this matter and assisted with the guidelines. In addition, Ms. Lawson thanked every licensee, organization, public entity, and everyone else who weighed in on the guidelines and provided the much needed input into the final product.

Ms. Lawson made it very clear that the document is just as it is entitled, a guideline. The guidelines are intended to provide physicians with guidance as they recommend cannabis for medical purposes. She mentioned that the document provides useful tools that can be utilized and emphasized that they are not regulations. Ms. Lawson added that the Board has several documents on its the website that are used to assist physicians, or other allied health care providers.

Ms. Lawson added that the document, and the attachments are to be used to provide guidance to physicians. She reiterated that there is no requirement to use the attachments provided in the guidelines. If any physician is brought to the Board's attention, the Board will submit the matter to an expert reviewer and that expert will opine on whether the actions of the physician deviate from the standard of care in the community. Ms. Lawson stated that the guidelines are intended to assist physicians who recommend cannabis for patients.

Ms. Kirchmeyer briefly walked through the documents found under Agenda Item 18, pages BRD 18-1 to 18-9. She mentioned that for the most part, the Board was able to use the FSMB guidelines, with a few exceptions. Ms. Kirchmeyer pointed out that the Board's Guidelines on Prescribing Controlled Substances for Pain were also reviewed to see what information could be used. The Board's document includes a preamble and a background section. This was included since the Board thought it was important to the reader and it was also a recommendation received. Ms. Kirchmeyer continued to explain that the sections relate to the following: Physician-Patient Relationship, including the change in the law that the physician must be an "attending physician" and the Board included that definition. She detailed that there is also a section on Patient Evaluation, including the need for an appropriate prior examination, with a list of what that examinations should include. Ms. Kirchmeyer explained the next section, Informed and Shared Decision Making, which elaborates on the risks and benefits. This section also includes a Decision Tree in Appendix 1. She added that the guidelines also include a section with a Treatment Agreement. Ms. Kirchmeyer highlighted that the treatment plan should include objectives and

should be revisited regularly. The section also indicates what the written treatment plan should include. Ms. Kirchmeyer described the next section, Qualifying Conditions, which utilizes information provided directly from the Compassionate Use Act. She continued to the next section, Ongoing Monitoring and Adapting the Treatment Plan, which discusses regular assessments that need to be completed. This section is followed by Consultation and Referral, and discusses how some patients may need to be referred to another specialist, if necessary. Ms. Kirchmeyer stated that the guidelines then discuss Medical Records, which is an area that is very important for physicians to understand, since it includes information that should appear in the medical records. She mentioned that this section also included the Medicinal Cannabis Agreement, which is provided as a sample in Appendix 2. Ms. Kirchmeyer reiterated that this document is not required, rather it is a great resource for physicians who recommend marijuana to patients and it also gives a basis for discussion between the physician and the patient. She concluded that, since the California law includes a specific provision about Conflicts of Interest, there is a section specifically for this and includes the law from the Business and Professions Code.

Ms. Kirchmeyer mentioned that the Board received a comment in writing to add the definition of what cannabis can be used for, and requested that epilepsy be added to the definition. Ms. Kirchmeyer's recommendation to the Board is to not accept the request since the guidelines are very clear. She stated that the language should follow the Compassionate Use Act, which discusses other ailments where cannabis could be useful, and is a very broad definition. Ms. Kirchmeyer concluded that epilepsy is included under the broad term, and for this reason a specific citation should not be made.

Dr. Lewis inquired if the Medicinal Cannabis Agreement is something that the physician could utilize, but it does not protect the physician. He continued, what would be the purpose to use or not to use the agreement.

Ms. Kirchmeyer invited CMCR to come forward and speak more to this topic. She mentioned that it is very similar to the opioid treatment agreement that physicians and patients hold. Specifically, it is information that a physician would want to discuss with the patient.

Dr. Wilsey, from CMCR, spoke about the agreement and how it is a way that patients can see some of the harms that may occur. It may also serve as a tool for a patient to open dialogue with their physician. Dr. Wilsey added that only 2% of physicians currently prescribe cannabis. Since it is not very commonly prescribed, CMCR wanted to have a document to provide to the patient that would allow the patient to enter into a more open discussion with the physician.

Dr. Krauss added that he appreciates that the guidelines are not suggested as requirements, but that they truly are guidelines. He commended that physicians should consider using the guidelines since it fully informs the patient. Dr. Krauss mentioned that complaints and litigation may follow a physician patient interaction, and this document would provide informed consent, which is consistent with the standard of care. Although it is not a requirement, it provides a service to the physicians, since it allows physicians to develop their own informed consent.

Dr. Lewis inquired if California is the only state that calls it marijuana for medical purposes.

Dr. Wilsey stated that marijuana is a slang term.

Dr. Marcotte added that the purpose of the agreement is to facilitate a discussion among a broad range of physicians and patients. Some physicians may come with a lot of experience and knowledge, but some

physicians may be recommending cannabis for the first time and for this reason, CMCR wanted to make sure there is a clear dialogue between the patient and physician regarding the benefits and potential risks.

Dr. Bholat inquired if having a full and unrestricted license meant that any physician can write a prescription for cannabis.

Dr. GnanaDev answered yes.

Dr. Bholat mentioned that her concern is physician training. She provided an example of when a patient was admitted for lewy body dementia. She mentioned that with this particular diagnosis, the physician needs to be very careful with psychotropic medications. Dr. Bholat added that in doing research, thinking about drug interactions, physicians need to be very cautious when prescribing. The Board website ought to reflect this. She continued that physicians may prescribe cannabis trying to help, but forget that it can be a potent pain reliever.

Judge Feinstein mentioned that she is under the impression that physicians that are employed by the University of California Medical Centers are not permitted to issue medical marijuana cards. She stated that she does not understand how this could be true with the new change in the law. Judge Feinstein questioned how an entity could limit a doctor's ability to prescribe, especially given the new change in the law.

Dr. Wilsey answered that he was a physician at Veterans Administration for 17 years and he could not give recommendations for marijuana, since it is a federal agency. He added that he was not aware of the University of California having such conditions.

Dr. Levine commented that this rule comes from the contingency attached to receiving federal funds, which puts the University of California Medical Centers under the same restrictions as the Veterans Administration. Dr. Levine corrected that marijuana is not prescribed, since it is not a prescription drug. Therefore the correct term would be recommend. Ms. Kirchmeyer mentioned that this nuance is very clear in the guidelines.

Ms. Lawson added that marijuana still remains unlawful pursuant the federal law, so employers have certain restrictions on their employees about all laws: federal, state, and local.

Dr. Krauss stated that Dr. Lewis' query regarding marijuana for medical purposes versus medical marijuana is reminiscent of the United States prohibition. At that time, the only way to lawfully obtain alcohol was for a physician to obtain a US Treasury Department issued numbered prescription pad for alcohol. He expressed that he believes is that the market for marijuana for medical purposes may dry up as recreational marijuana becomes more easily available.

Ms. Kirchmeyer mentioned that she wanted to address Dr. Bholat's comment about training since it is something that has come up at the interested parties meeting. She added that since physicians have a full and unrestricted license, it is the physician's obligation to ensure that they have full and adequate training to competently follow the standard of care. Ms. Kirchmeyer noted that the only way it could be mandatory was if there was a change in legislation. Although the Board does strongly recommend that physicians receive the appropriate amount of training it is not something that is currently mandatory.

Dr. Bholat remarked that many textbooks cite psychosis to be found as a result of overusing marijuana for certain age groups. She mentioned that it is important to link resources, since marijuana is not innocuous and there needs be a clear understanding of the biological effects.

Dr. Levine mentioned that the word prescribed is used in the agreement. She added that this should be updated to recommend. She continued that the creators of the guidelines did a great job in calling out the risks for children. Dr. Levine informed that she has seen disastrous effects on young children who got into parents' sources of medicinal and recreational cannabis. For this reason, Dr. Levine applauded the inclusion of storage in a locked cabinet.

Dr. GnanaDev mentioned that typically younger physicians early in their career, or physicians closer to retirement, moonlight in marijuana clinics and make decisions that are not in accordance with California laws. Therefore, the guidelines are very helpful.

Ms. Choong, CMA, congratulated the Board on the guidelines and having such an open process for soliciting stakeholder input. The CMA had concerns about the Medicinal Cannabis Agreement as well, specifically the use of the word prescribe. Although CMA does recognize that it is a sample agreement, since the Board is attaching the agreement to the guidelines, the concern is that physicians may simply print out the agreement and put their name on it. Ms. Choong stated that if this is the case, the Board may want to look at the general structure of the agreement in terms of language and organization. CMA will submit a line by line document with their suggestions. She continued that the Board may also want to note that the agreement is optional since that is not currently indicated.

Dr. Rhee mentioned that the marijuana initiative may actually decrease emergency room visits and hospitalizations. It could also decrease billings to Medicare and Medicaid. Dr. Rhee questioned if Members did not have hospital affiliations could unintentional bias be decreased.

Dr. Garza pointed out and requested that the Board take a look at Business and Professions Code 2220.05 which reflects the prioritization of investigational and prosecutorial resources of the Board and lists excessive recommending of cannabis as number four. This is above sexual misconduct and practicing medicine while under the influence of drugs or alcohol. She inquired if it represents old-fashioned bias about marijuana.

Dr. GnanaDev mentioned that the Board will look into the matter.

Dr. Robinson, Society of Cannabis Clinicians, stated this was an organization that represents a cohort of physicians who are most familiar with the medicinal benefits of cannabis and has the longest clinical experience. Dr. Robinson applauded the Board and the Marijuana Task Force for the establishment of the guidelines, which go a long way to normalize the use of cannabis for specified medical conditions. He continued that in the past he has made presentations to the Board objecting to the more strenuous and unsupported recommendations from FSMB and applauded the Board for not incorporating those into the guidelines. Dr. Robinson recommended that the Board take a broader view of looking at the whole context of medicinal cannabis in light of the epidemiologic evidence as published in the Journal of the American Medical Association, which points out that in states that have medicinal cannabis laws, there has been a 25% reduction in deaths due to opiate overdose. Dr. Robinson suggested that part of the reluctance and discomfort with cannabis arises from the lack of training received in medical schools or residencies regarding the pervasive influence of the endocannabinoid system, which has only been discovered as a very extensive physiologic system that exists not only in humans, but in other living things. He mentioned that there is a dearth of this sort of training, which has been recently documented in an article by the chair of psychiatry at Washington University Medical

School. He concluded that the Decision Tree needs to be more in line with existing guidelines of the Board. The Board guidelines do not require patients to fail on standard therapy before medicinal cannabis is recommended.

Dr. Krauss made a motion to approve the guidelines absent the Medicinal Cannabis Agreement; s/ Dr. Lewis. Motion carried unanimously (11-0).

Agenda Item 19 Discussion and Possible Action on Legislation/Regulations

Ms. Simoes stated that the 2017 legislative session ended and the legislature will not reconvene until January 3, 2018. Ms. Simoes added that this is the first year of a two-year session, so if a bill did not pass this year, it could still come back next year. She requested that Members turn to the Tracker List Tab. The bills in green, means that the Board has taken a position and the bill has been signed into law. The one bill in orange, was vetoed by the Governor. Ms. Simoes stated that she will give a brief summary of each bill and then discuss the Board's implementation plan. She added that every implementation plan includes a newsletter article in the Board's Winter Newsletter and notifying and/or training board staff, HQIU staff, and the AG's Office.

Ms. Simoes started with Assembly Bill (AB) 40, Santiago, which requires the California Department of Justice (DOJ) to make electronic prescription drug records contained in its CURES accessible through integration with a health information technology system, beginning no later than October 1, 2018, if that system meets certain information security and patient privacy requirements. The Board's implementation plan was to include a stand-alone article in the newsletter, update the Board's website regarding CURES, and send an email blast to all physicians before the bill becomes effective on October 1, 2018.

Ms. Simoes continued onto AB 443, Salas, which expands the scope of practice for optometrists to provide rehabilitative services, provide for more independent practice, perform additional procedures, and administer vaccines. The Board's implementation plan was to do the usual newsletter article and notification to Board staff, HQIU, and the AG's Office.

Ms. Simoes stated that AB 715, Wood, was vetoed. A copy of that bill and Governor's veto message were included in the packet.

Ms. Simoes discussed AB 1048, Arambula, which becomes effective on July 1, 2018, and authorizes a pharmacist to dispense opioids as partial fills if requested by the prescriber or patient. This bill also removes the requirement that pain be assessed at the same time as vital signs. She articulated that the Board's implementation plan was a newsletter article and notification to Board staff, HQIU, and the AG's Office.

Ms. Simoes detailed AB 1340, Maienschein, which allows for an optional continuing medical education course about integrating mental and physical health care in primary care settings, especially as it pertains to early identification of mental health issues and exposure to trauma in children and young adults and their appropriate care and treatment. The Board's implementation plan was a stand-alone article in the newsletter.

Ms. Simoes described Senate Bill (SB) 241, Monning, which revises an existing law regarding the rights of patients to access and copy their medical records, making it more in line with the Health Insurance

Portability and Accountability Act (HIPAA). The Board's implementation plan was to update the Board's website regarding patients' access to medical records and frequently asked questions on this issue.

Ms. Simoes addressed SB 512, Hernandez, which requires a health care practitioner who performs stem cell therapy not approved by the United States Food and Drug Administration (USFDA), to communicate this to their patients on a notice displayed in their office. This bill requires the Board to report citations issued and discipline imposed, specifically for licensees who provide stem cell therapies, in the Annual Report beginning with the 2018-19 Annual Report. She concluded that the Board's implementation plan for this bill was to create an allegation and violation code in BreEZe to track citations issued and discipline imposed, and to report all discipline and citations in the Board's Annual Report.

Ms. Simoes explained SB 796, Hill, was a sunset bill for some of the other boards, but the position that the Board took was to require DCA's Substance Abuse Coordination Committee (SACC) to review the existing criteria for Uniform Standard number 4, regarding substance testing. The Board's implementation plan was to participate in the SACC's review of the Uniform Standard Code Section 4 criteria, and if Uniform Standard number 4 is revised, the Board will need to update the its regulations.

Dr. GnanaDev asked that Ms. Simoes provide more detail on SB 796. Ms. Simoes stated that SB 796 is the sunset bill for the Naturopathic Committee and the Respiratory Care Board. However, it has one section that stipulates that DCA reconvene the SACC that drafted the Uniform Standards. She mentioned that Uniform Standard number 4 would need to be reviewed, since emerging technologies may have changed.

Ms. Simoes moved onto SB 798, Hill, the Board's sunset bill. The bill extended the Board's sunset date for another four years, until January 1, 2022. She continued to mention that there is a signing message that states two issues were identified during the legislative process that require further review, vertical enforcement and the exchange of expert witness reports between a doctor under investigation and the Board. Ms. Simoes noted that the Governor directed his staff to work with the legislature and the AG's Office to determine what changes are needed. The Board staff will be actively working on those issues. Ms. Simoes included that there was a one year sunset date in the bill for vertical enforcement and certain Members will be attending these meetings.

Ms. Simoes listed the items that were specifically included in the sunset bill. First, the language change from the birth date renewal date to a straight two year license renewal. Second, the post graduate training requirement was moved to three years. Ms. Simoes noted, that along with this change, the Board will no longer approve international medical schools. Third, there is an update to the adverse events that need to be reported to the Board. Fourth, the Board can revise the notices required to be posted through the regulatory process to make it more consumer-friendly. Ms. Simoes added that in addition, it also allows the Board to fine for a failure to submit an 805.01 report. Lastly, it allows two Members to be appointed by the Board to the Health Professions Education Foundation (HPEF). She elaborated that the Board no longer will approve non-ABMS specialty boards, effective January 1, 2019. Ms. Simoes added that there were also technical additions to make it clear that the Board of Podiatric Medicine is its own board.

Ms. Simoes continued onto the implementation plan. The Board will work on strategic communications and outreach to licensees and interested parties on changes to the law and effective dates, including updates to the Board's website. She also mentioned that the Board will draft newsletter articles,

including stand-alone articles on post-graduate training changes, the international medical school approval changes, and the new adverse event reporting requirements. Ms. Simoes mentioned another step in the implementation plan included notifying Board staff, HQIU, and the AG's Office. Ms. Simoes explained that there will be revisions to existing regulations on the notice to consumers posting to include the new requirements and the Board will notify physicians of this change. Additionally, BreEZe changes for the two-year license will be submitted. She added that the Board will develop procedures for appointing two Members to the HPEF. Appointments will take place at the January 2018 Board Meeting. Ms. Simoes commented that in regard to the 805.01 fines, the Board will work with the CDPH to draft an all facility letter that can be distributed to health facilities. Ms. Simoes added that in terms of the postgraduate training changes will include conducting outreach to the graduate medical education programs, developing and revising application forms, and submit needed changes to BreEZe.

Mr. Andrist mentioned that there was recently a bill before the legislature, SB 1479, that dealt with harsher penalties for government agencies that break the Public Records Act. He continued that bill was never put on the agenda to be brought before the Board, even though the Board receives a plethora of requests. Mr. Andrist pointed out that he has been notifying the Board for over a year about how Ms. Webb has been breaking the Public Records Act. He stated that the bill has been suspiciously missing from every agenda since the bill was introduced. While the Governor vetoed this particular bill, the Governor wrote that he is open to future discussions about strengthening public record disclosures for all branches of California government. Mr. Andrist inquired why there are no patient safety advocates on the Board.

Ms. Simoes moved onto Agenda Item 19B, legislative proposals. She noted that existing law allows participants in the UCLA International Medical Graduate (IMG) Program to obtain hands-on clinical training. She added that the law requires the UC Office of the President to prepare a report by January 1, 2018, and would sunset the provisions that allow the hands-on clinical training on January 1, 2019. Ms. Simoes mentioned that the Board has to go through legislation this year to extend this date. The Board would again like to co-sponsor a bill with the UC Office of the President to continue the program permanently. She clarified that this means that Board staff is proposing to take out the sunset date and allow the hands-on training to be included. Ms. Simoes stated that the UC Office is going through their own approval process for this legislation, but there are no problems anticipated. She stated that technical changes will need to be made to the portions of law that refer to some sections that will be deleted as a result of the postgraduate training changes. Ms. Simoes concluded that Board staff is requesting approval to go forward with these changes this year.

Dr. Levine made a motion to approve the Board staff to go forward and co-sponsor a bill with the UC Office of the President to remove the sunset date for the UCLA IMG program, the portion that allows for hands-on clinical training; s/ Dr. Krauss.

Dr. GnanaDev mentioned that this is a great program. In fact, it gives many minority doctors coming from other countries a chance.

Dr. Rhee commented that it is wonderful that minority physicians are welcome and have an opportunity. Her specific concern is that once they are licensed there may be unintentional bias in cases that are pursued by the Board. Dr. Rhee mentioned that it might be the time for there to be doctors on the Board that do not have hospital affiliations. There may be physicians who have a different perspective, or

background who are interested in patient care, but they do not have hospital affiliations. She concluded, that the doctors that are utilized as expert reviewers may be used in another capacity.

Motion carried unanimously (11-0).

Ms. Simoes continued onto the omnibus proposals. She explained that part one is amending Business and Professions Code section 801.01(g)(2)(G) to require reporting entities to submit supporting documents for all case types, instead of only for judgments and arbitration awards. This will allow staff to confirm if the case type is being reported correctly, which in turn will ensure that public disclosures are being reported accurately.

Dr. GnanaDev asked for further explanation.

Ms. Webb answered that there are certain items posted on the Board website according to Business and Professions Code section 2027. She added that arbitration awards and judgments are posted, but settlements are not posted, unless there are a certain number within a certain period of time. She confirmed that the Board's concern is that some arbitration awards or judgments are being reported as settlements, in which case they would not be posted, but should be. Ms. Webb continued, if there are supporting documents required to demonstrate that the Board is being informed correctly, then it can be verified.

Ms. Kirchmeyer added that it might be an oversight in the drafting of the Business and Professions Code, since it is required for judgments and arbitration awards, but not settlements.

Ms. Simoes continued on to deleting Business and Professions Code Section 2424(c), which allows for the renewal of any expired physician, surgeon, or podiatrist license within six months from the date of expiration to be retroactive to the date of expiration of the license. She added that this section of the statute is outdated. Renewals are now timely and can be done online. Ms. Simoes mentioned that there is no need to allow for extra time for a renewal that could allow a physician to practice for six months with an expired license. Ms. Simoes concluded that it was a section of law that was most likely added when there were long wait times for renewals, but this is no longer the case.

Dr. GnanaDev inquired if someone is retired and would like to renew a license, is there a timeline where it is considered a new license application, or is it just a renewal. He added that his concern is that if someone does not practice for several years and wants to be a doctors again, it is not that simple.
Ms. Kirchmeyer answered that if an individual goes into retirement, they still receive a renewal notice, and they can still renew, and go through the process. This law specifically states that if an individual does not renew their license within six months they can renew during that six month time period, and it would be as if they were never delinquent during that time frame. Ms. Kirchmeyer clarified that it does not have anything to do with retirement.

Ms. Simoes described Labor Code Section 139.2(b)(3)(D), which states that a qualified medical evaluator must have the qualifications that the Administrative Director of Workers Compensation and either the Board, or the Osteopathic Medical Board, as appropriate, both deem to be the equivalent of the board certification in a specialty. Ms. Simoes added that in the past this is something that has been asked of the Board, but the Board does not deem equivalency for board certification for the Division of Workers' Compensation. For this reason, the section should also be deleted.

Dr. GnanaDev asked for further clarification and how this issue presented itself.

Ms. Kirchmeyer answered that the Board received a letter from a doctor who was trying to become a qualified medical expert for workers compensation. The doctor wrote to the Board asking that the Board help. She explained that the doctor stated that the law indicates the Board must approve him in order to be certified. Ms. Kirchmeyer stated that the Board cannot look at all the training and determine whether it is the same as board certification. Ms. Kirchmeyer recommended it be removed.

Dr. Bholat inquired if the physicians that are working with injured workers, hold a California license, and if they are regulated by the Board.

Ms. Kirchmeyer responded that the physicians doing renews for Department of Insurance and workers compensation do not have to be licensed in California.

Dr. Bholat mentioned that this might be something that needs to be investigated.

Ms. Kirchmeyer responded that this is something that the Board staff has brought the attention of the Board. She also added that this has been something that the Board has done public presentations about as well. Ms. Kirchmeyer stated that in the past, legislation has been submitted, but it has been vetoed.

Ms. Simoes added that the Board did support legislation that came through.

Ms. Kirchmeyer explained that the Board does state it is the practice of medicine, so that when the Board receives complaints, the Board ensures that the examiners are providing the standard of care when conducting the evaluations.

Dr. GnanaDev inquired why this change did not make it into the sunset bill. Ms. Simoes replied that the Board has tried to make this change, but it has been difficult to find an author. The Board has publically stated at meetings that the Board believes utilization review is the practice of medicine.

Dr. Krauss inquired if the Board has received a complaint about a physician's behavior and later found out that the Board has limited authority, since the physician does not have a California license. He continued asking if that complaint can be then forwarded to the FSMB and the state who licenses them.

Ms. Webb answered that the issue is that it is not illegal under the current law for workers compensation and insurance to use physicians not licensed in California to do utilization review. She added that there would have to be a legislative change for a report to be acted upon.

Dr. Krauss clarified that the question was not referring to if the act was lawful, but if there has been a complaint about the behavior of that a physician and the Board does not have authority, would the Board refer.

Ms. Webb responded yes. Ms. Kirchmeyer added that the main issue is not having the authority to subpoena the medical records, since it is across state lines.

Dr. Levine asked if the physicians who do independent medical review for appealed services, or denial of services are required to have a California license.

Ms. Webb responded that they are not required to have a California license, and they also do not have to release their names.

Dr. Levine responded that this is a source of great concern.

Ms. Simoes concluded stating that those are the three technical proposals that the Board staff would like to have approved to move forward with within an omnibus bill authored by the Senate Business and Professions Committee.

Dr. Bholat made a motion to approve to approve these items for the omnibus bill; s/ Ms. Lawson.

Ms. Choong commented on the omnibus proposals. Specifically, CMA's issue with the amendment related to requiring reporting entities to submit the settlement report has confusing wording in regard to the supporting documents for all kinds of malpractice case types. She asked to clarify if the amendment would expand the types of malpractice cases that are posted, or if it would give the Board additional authority to determine what a settlement is and is not. Ms. Choong mentioned that CMA would have an issue and recommend that it be taken up as a separate bill. On the next issue regarding expired licenses she stated that CMA regularly receives calls from physicians who have renewed at the last minute. Ms. Choong mentioned there is value in retaining some flexibility for a physician, so that if they do renew late they do not have to undergo a new application process. Ms. Choong continued on the issue of QMEs and determining board equivalency, CMA does understand the Board's problem, especially in light of Senate Bill 798. The Board does not have the authority to determine equivalency with regard to board certification. However this leaves a thorny problem only the Administrative Director of the division of Workers Compensation will determine board equivalency. CMA agrees they do not have the experience or the training. Ms. Choong added that in determining the solution, it may not be appropriate for omnibus and there may be a need for larger discussion, to ensure that decisions are made by the proper entity.

Ms. Simoes commented that the first part of the bill would not expand the scope of the Board. In terms of the second part of the bill, regarding renewals, there is already flexibility.

Ms. Kirchmeyer clarified that physicians would not have to submit a new application, rather they would continue through the renewal process.

Dr. GnanaDev reiterated that the most important part is that the physician cannot practice medicine with a delinquent license.

Dr. GnanaDev commented that it is his understanding on the topic of board equivalency that it was left to the AB Medical Specialties to be the agency that would give board equivalency, and not a state agency.

Ms. Simoes responded that Dr. GnanaDev's thought was correct and that was the case for advertising purposes, but this issue is related to workers compensation. She added that this is something that the Board has never dealt with until the most recent requests.

Dr. Levine responded to Ms. Choong's comment, stating that if the Board has not taken this role, and never anticipates taking this role, the language does not lessen any protection. It just removes a section of language that has never been operative and never will be operative. For this reason it does not confer additional authority to the administrator.

Mr. Andrist reminded the public that the state of California has over a 100,000 doctors and in Los Angeles alone there are over 39,000 doctors. CMA membership is only about 43,000 doctors, therefore they do not represent the majority of doctors in California.

Motion carried unanimously (11-0).

Ms. Simoes began to discuss Agenda Item 19C. She stated that the regulatory matrix includes the status of all pending regulations. Ms. Simoes detailed that the only update is that the physicians on probation regulations was filed with the Secretary of State on October 10, 2017.

Ms. Simoes then discussed Agenda Item 19D, federal regulations. The Department of Veterans Affairs (VA) has proposed telehealth regulations that are open for comments. The proposed regulations would allow VA health care providers to provide care to VA patients through the use of telehealth, notwithstanding any state laws, rules, licensure, registration, or certification requirements. Ms. Simoes explained that this means that VA physicians would have the authority to treat veterans via telehealth or telemedicine, regardless of where the patient is located. This would override the laws in California that require physicians who treat patients in California to be licensed in California. Ms. Simoes added that this would only apply to VA physicians providing care to veterans. The Board has always taken the stance that if a physician is treating a patient in California, then they should be licensed in California. Ms. Simoes stated that she is asking for approval for staff to submit comments on the proposed regulations.

Dr. Krauss made a motion to approve opposition to the VA regulations and providing a written response; s/ Dr. Lewis.

Dr. GnanaDev inquired if the doctors that work in VA clinics need a license to practice in California.

Ms. Webb responded that doctors must practice within the VA facility.

Ms. Simoes added that this expands to all locations and via telehealth.

Dr. Lewis commented that this has been happening for years, and inquired what the issue is.

Ms. Simoes clarified that the addition would allow telehealth to any veteran in California.

Dr. Krauss remarked that the Board should stand in opposition, since it is consistent with the Board's role in the protection of California consumers. The doctors that prescribe for California consumers, should be California licensees. Dr. Krauss added that not everything that the federal government asks for or legislates is necessarily in the best interest of Californians. The Board has the obligation to serve California consumers.

Dr. Lewis mentioned that he too agreed, and extended the comment to include Indian physicians that do not need to have a California license.

Ms. Kirchmeyer clarified that a veteran going to the VA hospital is seen by a doctor who does not need to be licensed, but the doctor is still under the auspices of the VA. This same VA patient can go to a clinic in California that is not under the VA administration and via telehealth, a doctor in Texas can provide care and the doctor does not have to be California licensed. Ms. Kirchmeyer noted that this is different than current law.

Dr. GnanaDev inquired if the Texas doctor needs to be a VA licensee.

Ms. Kirchmeyer responded that the doctor would still have to be a licensee in some state and a VA provider.

Dr. Garza on the phone inquired if the Board has considered the fact that the Board might be removing some of the rights of veterans. She also commented on 16 CCR, section 1358, Physicians on Probation, in which the language states that physicians on probation shall be drug screened. Dr. Garza explained that drug screening is unconstitutional unless there is a nexus between the discipline and the probation requirement. Not every physician on probation has a problem with drugs or alcohol, and it would be unconstitutional to drug screen all physicians on probation. For this reason, Dr. Garza requested that the language change from shall to may.

Motion carried unanimously (11-0).

Agenda Item 20 Vertical Enforcement Program Update from the Health Quality Enforcement Section

Ms. Castro announced HQE continues to work collegially with HQIU to address vertical enforcement cases. She mentioned that HQE looks forward to meeting with Dr. Yip for the second time to continue to collaborate with respect to vertical enforcement. Ms. Castro mentioned that this includes addressing work flows, prioritization of cases, and procedures. HQE firmly believes that hands-on Board Member activity is important to foster leadership and understanding of the Vertical Enforcement Program. Specifically, this refers to the burdens that are placed on the staff performing these important functions on the Board's behalf and also to allow the Board to understand the value that is added to the enforcement process by the joint investigation of vertical enforcement cases.

Ms. Castro noted that from time to time HQE meets with Ms. Delp on an as needed basis on case dispositions and with any other issues that Ms. Delp brings to the attention of HQE. Ms. Castro

noted that HQE also continues to enjoy working with Ms. Nicholls as they meet on a monthly basis, and as needed, to collaborate and troubleshoot issues. The Attorney General, Xavier Becerra, is extremely engaged in all client services that HQE provides to DCA including to the Board. She added that Mr. Becerra is exceedingly interested in protecting patients and in enhancing the quality of health care in California.

Dr. Rhee suggested a retrospective study or data analysis be done on certain decisions, actions, or cases that are quantitatively protecting consumers such as the elderly or the disabled.

Mr. Andrist inquired how long it takes from the time the AG's Office and a doctor agree to a stipulated agreement before the AG's Office sends it to the Board.

Ms. Castro noted that the performance marker for that function is to turn the letter around within 30 days to allow the Board consideration of the stipulation. Ms. Castro noted that there will be more information for the public in the future through Business and Professions Code section 312.2, which will be published January 1, 2018.

Agenda Item 21 Update from the Attorney General's Office

Ms. Castro reported that there is no significant litigation to report to the Board. She added that two of the most valuable Deputy Attorney Generals retired, Brenda Reyes, who had been with the HQE since 1999 and Laurie Forcucci who had been with the HQE for 12 years. Ms. Castro noted Ms. Reyes had many published cases and handled a lot of sexual misconduct cases very adeptly. Ms. Castro explained that Ms. Forcucci provided a very representation to all clients including the Board and added a keen eye to policies and procedures.

Dr. GnanaDev stated that it was never the intent of the Board to eliminate vertical enforcement, but rather the intent was to streamline vertical enforcement. He noted that the goal is to work together not against each other.

Ms. Castro responded that she will relay the sentiment to the Attorney General.

Dr. Rhee encouraged those in the AG's Office to be aware of cultural diversity amongst providers. Providers have a certain language that they speak and she would encourage the AG's Office to be aware and cognizant of cultural diversity amongst physicians.

Agenda Item 22 Vertical Enforcement Program Update from the Health Quality Investigation Unit

Ms. Nicholls explained that she would present alone, as Mr. Chriss' plane was delayed. She explained that at the last Board meeting was reported that the 7.44% pay deferential received by investigators would not be included in the investigator's CalPERS retirement calculations. Ms. Nicholls stated that HQIU has since notified that the 7.44% increase will count towards an employee's retirement.

Ms. Nicholls explained that a non-sworn pilot program was initiated within HQIU to hire non-sworn investigators to work the less serious, less complex cases. She added that this has proved a valuable program and not only has the pilot program assisted with the workload, it has provided a

mechanism to identify and develop future sworn candidates for HQIU. Ms. Nicholls stated that in addition, workload was reduced for HQIU by transferring the investigative work for the Board of Psychology and the Osteopathic Medical Board to the Investigation and Enforcement Unit (IEU). Ms. Nicholls noted that HQIU has worked extremely hard at recruiting for the HQIU vacancies. She added that in particular, a new mailing flyer has been developed for police and sheriff departments as well as the criminal justice departments at all California colleges. She reported that over 1,200 flyers have already been mailed. Ms. Nicholls added that the HQIU recruitment flyers have also been posted on DCA's Facebook page for more exposure. She mentioned the development of a new recruitment video geared toward recruiting investigators. Ms. Nicholls cited it is the first of its kind and it is posted on the blog site too.

Ms. Nicholls added that another valuable improvement is a change in how the vacant positions are advertised. Previously, positions with a final filling date were posted and then after two weeks the online application was available for review and hiring panels were organized. She added that in the meantime new applicants could not find or apply for vacancies until the hiring panel was complete. She mentioned that in this case, if candidates were still needed the job would have to be reposted, taking a few weeks. Ms. Nicholls commented that HQIU has met with DCA personnel and streamlined the process. Now HQIU vacancies are posted continuously until filled. Ms. Nicholls noted that this allows HQIU to continue to receive new applications. Ms. Nicholls stated that once enough applications are received, HQIU holds hiring panels and during this time candidates can still submit applications. She added that this allows more applications to be submitted.

Ms. Nicholls noted that there are 27 investigator vacancies out of the 77 positions. With the addition of the non-sworn investigator pilot program, there are now 17 limited-term, non-sworn investigators assisting with the caseload. In turn this brings the total vacancies down to ten. Ms. Nicholls commented that there are three more non-sworn investigators that will start, which will revise the total to 20. She announced that all the efforts with recruitment have paid off, since of the 27 vacancies, 35 sworn candidates are in background for those positions. She added that eight of them have been given conditional job offers and are just pending final clearance. Ms. Nicholls cited that 95% of candidates in this phase are successful at completing background. HQIU has selected more candidates than vacancies to ensure that if candidates drop out in the earlier phases of the background process, a backup candidate is already in place. Ms. Nicholls point out that there are 16 staff members working expeditiously on these backgrounds, and they report to the Special Operations Unit.

Ms. Nicholls commented it is vital for HQIU to focus on retaining sworn HQIU staff. She added that HQIU has recently started an official staff appreciation and recognition program called the Chief Star Program. She mentioned that this program is designed to recognize an employee for their stellar service to HQIU. Ms. Nicholls stated that any employee can nominate someone for the award for their: exceptional performance, creativity, organizational abilities, work success, and, teamwork. Ms. Nicholls applauded the program since it acknowledges employees for their hard work. The submission period runs from July 1 to November 30 and awards will be presented by the Chief in January 2018. Ms. Nicholls pointed out that HQIU is working with the Business, Consumer Services, and Housing Agency on a formal proposal for HQIU to reduce investigator workload and improve investigator retention. HQIU will be meeting with Board staff and looks forward to some major changes that will end retention problems. Ms. Nicholls

appreciates the support that the Board has given regarding pay increases and other investigator retention projects. HQIU looks forward to collaborating with the Board staff to implement more meaningful improvements.

Judge Feinstein asked if HQIU considers hiring POST certified retired police officers, sheriffs, or California Highway Patrol. Ms. Nicholls responded that HQIU has been actively recruiting. If the agency that they retire from is PERS they cannot retire and then work for HQIU since HQIU uses PERS. On the other hand, if they retired from an agency that is not PERS then they can work for HQIU. She continued, there are several police and sheriff departments that are not part of PERS, so not only has HQIU been recruiting, but also interviewing and hiring those candidates.

Judge Feinstein inquired if there is a way to hire people who retire from PERS agencies for a limited number of hours per year.

Ms. Nicholls stated that a person can be a retired annuitant, which is a part-time position with only so many hours that can be worked post retirement.

Judge Feinstein clarified, asking if this is something HQIU would do.

Ms. Nicholls replied that they do have staff that fall into this category, mostly their own investigators that have retired and come back as a retired annuitant. She also mentioned that this type of hiring is useful help. There is a website that HQIU references that lists all individuals interested in work and candidates can searched by categories. Ms. Nicholls added that HQIU was interviewing to fill the positions in Operation Safe Medicine Unit with retired annuitant investigators.

Dr. Lewis stated that he understands the difficulties of hiring, recruitment, and retention of employees.

Ms. Nicholls stated that the 7.44% is permanent, for those individuals that are topped out in their salary range for 12 months. Those individuals would get an additional 7.44% pay raise it and applied to all DCA investigators. Ms. Nicholls confirmed that the financial issue is part of it, but the other major issue is workload. Moving forward, HQIU will be focused on the workload and create an environment for the investigators where the workload is manageable and the investigators will want to stay.

Dr. Lewis inquired if the increase in the salary is for investigators, not just in HQIU, but also for competing groups.

Ms. Nicholls responded that two of the competing groups received it, the Dental Board and the Department of Insurance. However, there are several Unit 7 agencies that were not included in the pay increase, for example Department of Motor Vehicles and Social Services. Ms. Nicholls confirmed that HQIU has been recruiting with those agencies.

Dr. Lewis asked how the Board helped HQIU. Ms. Nicholls commented that the Board being supportive of the pay increase was a major help, since HQIU had been trying to achieve that for over a decade. Also the Board has been open to proposals about reducing workload.

Dr. GnanaDev added that within the strategic plan there is an objective to hold all entities accountable for timelines. He continued, that this includes investigators, expert reviewers, and the AG's Office. The Board's goal is to shorten the timelines.

Agenda Item 23 Discussion and Possible Action on Proposed Regulations Implementing the Physician Health and Wellness Program

Ms. Kirchmeyer thanked Ms. Webb for her hard work on the regulations. She explained that the documents could be found under Agenda Item BRD 23, pages BRD 23-1 to 23-16. She added that this document was compiled based upon several documents and took both time and effort to ensure everything was integrated. Ms. Kirchmeyer added that the regulations cover the law in the Business and Professions Code, the Uniform Standards, and as many comments from the interested parties meeting as could be incorporated, while still remaining in compliance with these two documents.

Ms. Kirchmeyer went over the new regulatory process since it had changed. If the Board approved the regulations, the Board would not file with the Office of Administrative Law or hold a hearing at the January Board meeting. Instead, staff would finalize the package, including drafting a Notice, an Initial Statement of Reasons, and a fiscal impact. The packet is then provided to the DCA. Ms. Kirchmeyer added that DCA will review the documents and then provide the Board with feedback. DCA will then send the regulations to the Business, Consumer Services, and Housing Agency for their review and approval. Ms. Kirchmeyer stated, once approved, the regulation package will be filed with the Office of Administrative Law and set for a hearing. Ms. Kirchmeyer added that current process if about six months, so it is anticipated that the hearing will be in either the July or October 2018.

Ms. Webb thanked all those in attendance at the interested parties meetings for their input. She added that feedback and input is welcome in case something was missed, not worded well, or a definition needed to be added. Ms. Webb commented that if DCA decides to change Uniform Standard number 4, or any of the Uniform Standards there will need to be revisions made in the future. Ms. Webb clarified that DCA has that ability to bring the SACC back together again.

Ms. Webb started with the statue that gives the Board the authority to implement the Physician Health and Wellness Program (PHWP). She added that through the statute and the Uniform Standards the current structure was created. She continued that it is broken up by definitions and the overall requirements for the PHWP. Subsections include, in general, what is required of the biological fluid testing, support group meetings, and clinical diagnostic evaluations. Ms. Webb commented that this section is quite long, but much of it is from the statute that requires the Board to comply with the Uniform Standards.

Ms. Webb commented that on page 13, there is the Report and Public Disclosure of Practice Restrictions for Participants. She added that this applies to both self-referred participants and Board referrals for those on probation. The section is directly from the Uniform Standards, which does not differentiate between self-referred and Board-referred. If there is a practice restriction, it is posted on the physician's profile. Ms. Webb mentioned that the next section is Reports of Participant Violations, Withdrawals, and Terminations to the Board and then Inquires by the Board to the Program. She reported that if there is a

major or minor violation by the self-reported physician, or the Board-referred physician it will get reported to the Board and the Board will take action as appropriate.

Ms. Webb stated that the next section is Vendor Communication with the Board. This section, includes a lot of data that the Board will be interested in receiving to ensure PHWP is doing what it is supposed to be doing, who it is helping, what services are being provided and the success of the participants.

Ms. Webb referred to page 15, External Independent Audits. This section is a requirement per the law. Audits are to be done every three years, or as requested by the Board. She clarified that the purpose is to ensure that the vendor is compliant providing services in compliance with the regulations. She noted the vendor is required to monitor any subcontractors, so that if reports are needed, the subcontractors will provide the reports.

Ms. Webb noted that the final section is Maintenance of Records. This specific section is not described in the statute or in the Uniform Standards, rather it is an FSMB recommendation. Although it is not the direct language, it does provide information for maintenance of records.

Dr. Levine inquired about the administrative process for obtaining a contractor.

Ms. Kirchmeyer answered that once the regulations go into effect, the Board will have to put together a request for a proposal that includes all requirements for the vendor. Next, there will be a bidding process. Ms. Kirchmeyer added that of major importance is that the vendor can comply with all the requirements and has the lowest bid.

Dr. Levine asked if any weight was given to previous experience with similar populations.

Ms. Kirchmeyer confirmed that this is not typical. She added that any variance would depend on the type of contract. All contracts go through the Department of General Services who directs the Board in terms of how to proceed. Ms. Kirchmeyer added that the language is inclusive of this, versus having the contract stipulate this.

Dr. Hawkins asked for the role of the Board in the PHWP.

Ms. Webb answered that the statue authorized the Board to set the PHWP into place and the Board voted to move forward with the establishment of the PHWP. It authorized the Board to develop the regulations, which are in progress, and the Board is responsible for monitoring the vendor to ensure compliance with the regulations.

Ms. Choong stated that written comments related to the draft of the proposed regulations were submitted. One concern is that the regulations do not sufficiently differentiate between those individuals that are self-referred and probation referrals by the Board. She clarified that self-referred identifies physicians who have no pending complaints or disciplinary actions before the Board. Ms. Choong continued that CMA appreciates the Board's support in helping get SB 1177 passed. She added the belief is that the intent of the bill was to create a pathway for physicians to seek assistance prior to any disciplinary action, or behaviors that would bring them before the Board. That being said, one of the biggest concerns is the regulation that practice restrictions are posted on the website. She added that while it is understood that the regulations specifically say that their participation in the PHWP will not be publicized, practice restrictions imposed by a vendor that do not have posting authority should not be permitted. Ms. Choong concluded that is it the belief of CMA that only the Board has the ability to place restrictions on a licensee that can be publically disclosed. The practice restrictions placed on them by the vendor should

not be posted on the Board's website. In addition, posting the restrictions violate the spirit of confidentiality for the participant. She confirmed that this will be a deterrent for any physician contemplating participation in the PHWP.

Ms. Choong added that the second issue is the language in the draft. Although CMA does understand that the Board needs to comply with the Uniform Standards, CMA urges the Board to work with DCA and encourage them to reconvene the SACC and to look at the Uniform Standards. In the course of stakeholder discussions, it became clear that stakeholders on all sides agree that there were problems with the Uniform Standards being out-of-date. Ms. Choong added that at this point the Uniform Standards are about seven years old and clinical practice has changed. For this reason, CMA would highly encourage that it be opened for review.

Ms. D'Angelo Fellmeth, Center for Public Interest Law, reminded the Board that the CMA drafted the bill and sponsored the bill. This bill specifically states that any program created pursuant to the bill must comply with the Uniform Standards. She added that the Uniform Standards do not differentiate between self-referred participants and Board-referred participants, and appropriately the Board's regulations do not either. She also added in regard to Dr. Hawkin's inquiry about the role of the Board, that the Board handles the vigorous oversight of the PHWP. Ms. D'Angelo Fellmeth commented that previously the program was overseen by an outside committee and the Board had no role in overseeing the program. She noted that during this time the program failed four performance audits.

Ms. D'Angelo Fellmeth also added that on BRD 23-14, section 1357.14 Vendor Communication with the Board Annual Reports, she strongly recommended adding the collection of information to be reported by the vendor to the Board for purposes of oversight. She commented that this should include the number of people in various stages in the PHWP. She also stated to include timeframes that detail when the self-referrals began the clinical diagnostic evaluation, as well as specifics on how long it took from the determination to the terms and conditions of work, length of time to detect a relapse, then from relapse to removal of work, and to the Board for a cease practice order. Ms. D'Angelo Fellmeth strongly urged the Board to look at the timeframe information that the Board required of the old diversion program and include to this in section 1357.14.

Ms. Monseratt-Ramos, Consumers Union Safe Patient Project, mentioned a few consumer protection concerns. She began by commenting on how the Uniform Standards are meant to be strict and include posting practice restrictions. It is meant to help California consumers and patients. She continued, if a substance abusing physician would like to treat their addiction, they should gladly abide by the regulations. In doing so they to protect their patients, their own personal welfare, and that of their families. Ms. Monseratt-Ramos stated that she encourages the Board to continue to defend the Uniform Standards for the California consumers, patients, and physicians.

Mr. Andrist on the phone commented that the CMA does not speak for the majority of California physicians. He inquired if he understood correctly that the CMA representative recommended that restrictions from the vendor should be hidden from the public. Mr. Andrist continued, noting that this example is what is meant that it is the CMA's intention to protect doctors instead of the consumers. For this reason, their point of view should be very limited in any consideration. Mr. Andrist also requested confirmation that the letters sent to Members had been distributed.

Dr. Krauss made a motion to authorize staff to move forward without any changes to the language and submit it through the regulatory process for review. The package will be then submitted to OAL to notice a 45-day comment period and a hearing. Staff would also be allowed to make non-substantive changes to move the process along; s/Ms. Lawson.

Dr. Levine inquired if the Board should see the changes to the data reporting requirements that Ms. D'Angelo Fellmeth referenced.

Ms. Webb mentioned that the motion does not include making any changes at this stage, but Ms. D'Angelo Fellmeth and anyone else could submit the requests during a public comment period during the hearing.

Motion carried unanimously (11-0).

Agenda Item 24 Items for January Board Meeting

Dr. Krauss requested that the Medical Cannabis Agreement be put on the agenda for January. He also asked that an update on the FSMB work group for the study of regenerative and stem cell therapy practices be added to the January meeting.

Ms. Pines requested a presentation of the disciplinary guidelines including review of proposed decisions and stipulations as a trianing for Members.

Dr. Levine recommended an agenda item be added for a subsequent meeting to hear from Dr. Ann Weinacker, a physician at Stanford who implemented an age-related competency testing policy. Specifically, this addresses hospital privileges for physicians over the age of 75.

Ms. Kirchmeyer mentioned that a Board Member requested that a physician from Stanford also talk about physician burn out.

Mr. Andrist on the phone asked that the Public Records Act be put on the agenda.

Dr. Rhee wanted to remind the Board that there are physicians that do not have hospital affiliations. In addition she pointed out that there are physicians who may not have time to maintain a practice and be able speak at the Board meetings.

Dr. GnanaDev adjourned the meeting at 12:31 p.m.

Dev GnanaDev MD — 1/18/09
Dr. GnanaDev, President — Date

Ronald H Lewis MD — 1/18/2018
Dr. Lewis, Secretary — Date

Kimberly Kirchmeyer — 1/18/18
Kimberly Kirchmeyer, Executive Director — Date

The full meeting can be viewed at www.mbc.ca.gov/About_Us/Meetings/2017