



# MEDICAL BOARD OF CALIFORNIA

## QUARTERLY BOARD MEETING



Sheraton Mission Valley – San Diego  
1433 Camino Del Rio S.  
San Diego, CA 92108

**October 27-28, 2016**

### MEETING MINUTES

**Thursday October 27, 2016**

*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 Bholat, M.D.  
Michael Bishop, M.D.  
Judge Katherine Feinstein (ret.)  
Randy Hawkins, M.D.  
Howard Krauss, M.D.  
Kristina Lawson, J.D.  
Sharon Levine, M.D.  
Ronald Lewis, M.D., Secretary  
Denise Pines, Vice President  
Brenda Sutton-Wills, J.D.  
David Warmoth

**Members Absent:**

Jamie Wright, J.D.  
Felix Yip, M.D.

**Staff Present:**

April Alameda, Staff Services Manager II  
Liz Amaral, Deputy Director  
Christina Delp, Chief of Enforcement  
Dianne Dobbs, Legal Counsel, Department of Consumer Affairs  
Kimberly Kirchmeyer, Executive Director  
Regina Rao, Associate Government Program Analyst  
Letitia Robinson, Research Specialist  
Elizabeth Rojas, Staff Services Analyst  
Jennifer Saucedo, Business Services Officer  
Jennifer Simoes, Chief of Legislation  
Lisa Toof, Administrative Assistant II  
Kerrie Webb, Legal Counsel

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Curt Worden, Chief of Licensing

**Members of the Audience:**

Teresa Anderson, California Academy of Physician Assistants  
 Eric Andrist , By phone  
 Gloria Castro, Senior Assistant Attorney General, Attorney General's Office  
 David Chriss, Chief, Division of Investigation, Department of Consumer Affairs  
 Yvonne Choong, California Medical Association  
 Zennie Coughlin, Kaiser Permanente  
 Karen Ehrlich, Licensed Midwife  
 Julie D'Angelo Fellmeth, Center for Public Interest Law  
 Jack French, Consumers Union Safe Patient Project  
 Louis Galiano, Videographer, Department of Consumer Affairs  
 Lucila Gojny, Health Quality Investigation Unit, Department of Consumer Affairs  
 Bridgette Gramme, Center for Public Interest Law  
 Holly Harris, Consumers Union Safe Patient Project  
 Ed Hollingsworth, Consumers Union Safe Patient Project  
 Marian Hollingsworth, Consumer Union Safe Patient Project  
 Ronald Johnson, National Association for the Advancement of Colored People  
 Christine Lally, Deputy Director of Board and Bureau Relations, Department of Consumer Affairs  
 David Liu, Midwestern University, Arizona College of Osteopathic Medicine  
 Lisa McGiffert, Consumers Union Safe Patient Project  
 Kathleen Nicholls, Health Quality Investigation Unit, Deputy Chief, Department of Consumer Affairs  
 Jose Partida, Investigator, Health Quality Investigation Unit, Department of Consumer Affairs  
 Aaron Rochester, Midwestern University, Arizona College of Osteopathic Medicine  
 Rauf Sadiqi, Midwestern University, Arizona College of Osteopathic Medicine

**Agenda Item 1            Call to Order/Roll Call**

Dr. GnanaDev called the meeting of the Medical Board of California (Board) to order on October 27, 2016, at 2:05 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. Hollingsworth stated she felt that any Board Member should recuse themselves from voting on cases if there is even a perceived conflict of interest to avoid any question of impropriety. She suggested that in the case of a possible conflict of interest, the Board should have a plan in place to have a substitute from a different panel to vote on a matter, especially when the Board knows ahead of time there is a potential for a Member to be absent.

**Agenda Item 3            Approval of Minutes from the July 28-29, 2016 Meetings**

Mr. Warmoth noted a possible error in the minutes under agenda item 4, End of Life Option Act. He noted that he had asked Dr. Grube whether or not there had been any unforeseen problems, and the minutes read that Dr. Grube saw a problem in the Oregon Act. Mr. Warmoth stated he was to understand that Dr. Grube's comment was a problem in the California Act, in that unlike Oregon, California requires an independent physician review, which limits Californians who live in rural areas being able to take advantage of this law. Ms. Kirchmeyer

stated she thought the comment was covered, but staff would review the tape and make any necessary edits.

*Dr. Krauss made a motion to approve the July 28-29, 2016 meeting minutes with Mr. Warmoth's comments, if necessary, upon review of the webcast; s/Dr. Lewis. Motion carried unanimously (12-0).*

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

Dr. GnanaDev said it was his first Board meeting as President, and thanked the Board for electing him as President. He noted that he takes the role very seriously and would work further with staff to further the Board's mission of consumer protection. He stated that Mr. Serrano Sewell had done a terrific job in leading the Board on several significant issues and he hoped to continue the good work that he began.

Dr. GnanaDev stated that looking forward to the next year, there were some issues that he would like to make a priority. The first issue being the continued fight against misuse and abuse of opioids, which has led to an epidemic of overdose deaths in California and the nation. He noted the Board had done a significant amount of work in this area, including pursuing proactive compliance, but he feels there is always more that can be done. He stated he would be asking the Prescribing Task Force prior to the January meeting for a brainstorming session for future steps for the Board in this area. He noted the staff had been very involved in the statewide workgroup led by the California Department of Public Health (CDPH), and he looked forward to having an update at a future meeting on this issue.

Dr. GnanaDev noted that as a physician, he felt that a significant part of this issue was physician education and he will assist in identifying physician groups and opportunities where the Board can provide presentations regarding this issue and educating physicians on the Guidelines for Prescribing Controlled Substances for Pain.

#### **Agenda Item 5      Discussion and Consideration of Committees and Task Forces Make-Up**

Dr. GnanaDev stated the Board's strategic plan stated the Board should review its committees, subcommittees, and task forces every two years to determine if any changes need to be made. He asked Ms. Kirchmeyer to briefly go over each committee and its purpose. He stated that since there had been a significant number of changes to the committees during the last year, no changes may need to be made, but he wanted to provide the Members the opportunity to review the current committee structures.

Ms. Kirchmeyer referred the Members to tab 5 in their Board packets. She stated that currently the Board has six standing committees, one Council, and five two-member Committees or Task Forces that are specific to a certain issue. The standing committees include the Executive Committee, whose purpose is to oversee the administrative functions of the Board. This Committee also receives updates to the strategic plan and conducts the Executive Director evaluation. She noted this Committee could also meet to view pending legislation if necessary on an emergency basis.

Ms. Kirchmeyer stated the next standing committees were the Enforcement and Licensing Committees. She noted those two committees were established to provide expertise and advice to staff regarding either enforcement or licensing. She added each of those committees were tasked with identifying improvements and efficiencies, as necessary, to improve each of the different processes.

Ms. Kirchmeyer stated the last standing committee not required in law, is the Public Outreach, Education, and Wellness Committee, which assists in the Board's outreach plan by providing guidance to staff and overseeing the communication to licensees and the public regarding the Board.

Ms. Kirchmeyer stated the next two committees are required in law. The first was the Application Review and Special Program Committee, which reviews applications for licensure and for special program applicants where the Board can exercise discretion pursuant to the law. She added that Committee provides recommendations to the Chief of Licensing, who was the final decision maker. She noted the next committee is the Special Faculty Permit Review Committee. She added that the Committee, which is made up of two Board Members and a representative of each medical school in California, reviews applicants pursuant to Business & Professions (B&P) Code section 2168 and provides a recommendation to the Board for final approval.

Ms. Kirchmeyer added that the Midwifery Advisory Council (MAC) was also a mandated entity that provides advice to the Board and guides discussions regarding licensed midwives. She noted that the MAC provides recommendations to the Board for final approval.

Ms. Kirchmeyer concluded by noting there was an additional committee and task forces currently that were created by the Board for specific purposes. Those groups include the Editorial Committee, which reviews the Board's Newsletter articles; the Marijuana Task Force, which will be working on the Board's guidelines for recommending marijuana for medical purposes; the Prescribing Task Force which works to identify a proactive approach to the issue of opioid misuse and abuse; the Sunset Review Task Force which reviewed the draft report and provided guidance to the staff; and finally, the newest task force, which is the Midwifery Task Force which will be an advisory body for staff regarding regulations pertaining to licensed midwives.

Ms. Kirchmeyer noted that there were currently no recommendations from staff to make any changes to these committees or task forces and requested that the Board approve them as shown in the Board packet.

Mr. French stated he appreciated the balance of public members and physicians in the committees.

***Dr. Krauss made a motion to approve the Committees and Task Forces as shown in the Board packet; s/Dr. Lewis. Motion carried unanimously (12-0).***

## **Agenda Item 6      Board Member Communications with Interested Parties**

Dr. GnanaDev noted he meets with a number of people at the state level, but makes it a strict rule to keep the Board issues out of the discussions.

## **Agenda Item 7      Executive Management Reports**

Ms. Kirchmeyer stated she would not be going over the reports in detail unless Members had questions, but did have several things she wanted to bring to the Board's attention. She then directed the Member's attention to page BRD 7A-4, which was the Board's fund condition. She stated it included information showing complete repayment to the Board of the outstanding loans to the General Fund. She noted the document indicated the Board's reserve was projected to be at 4.7 months at the end of the current fiscal year, if the loan is repaid as projected. She stated, however, if the loan was not repaid as projected, as shown on page BRD 7A-5, the Board would be at 3.6 months reserve at the end of the current year. Ms. Kirchmeyer added that without the loan repayments, the Board would be at the lowest mandated level in fiscal year (FY) 17/18. She noted that with the loan paid, the Board would not be expected to be below that level until FY 19/20. Ms. Kirchmeyer stated that, as noted at the last Board meeting, the closing fiscal documents had not been received by the meeting date, so the budget information on page 7A-6 shows the final budget for FY 15/16. She added that it was important to note that the Board spent three million dollars more this FY, then in the prior FY. She noted this increase was due to three significant factors. The first factor was that there was \$1 million more spent in personal services, which was due to the decrease in the vacancy rate, an increase in the overtime line item, as well as an increase in staff benefits due to the vacancy rate decrease. Ms. Kirchmeyer added that in addition, the Board had several blanket positions that had been filled, including the Complaint Investigation Office (CIO). Another factor of the additional spending was an increase of \$1.4 million in Departmental pro-rata. A large portion of that increase was due to the BreZe project. She added that the other large increase was a \$1.1 million increase in the Attorney General (AG) spending compared to the prior year.

Ms. Kirchmeyer noted the final budget shown on page BRD 7A-7, was the Health Quality Investigation Unit (HQIU) for FY 15/16. She noted that while the HQIU underspent in the personal services category, their operating expenses were increased and therefore their spending was comparable to the prior year.

Ms. Kirchmeyer noted that on page BRD 7A-8, was the Board's budget for FY 16/17, which had increased due to the AG spending for the reports required by Senate Bill (SB) 467, the additional position in the enforcement unit, and the increase in the expert reviewer line item. She added the Board staff would be carefully reviewing the budget this year to ensure they are in line with the projections.

Ms. Kirchmeyer also noted there was going to be a change of reporting in disciplinary action shown in the Newsletter. She noted that in the Summer 2012 Newsletter, the Board had changed the way it reported information regarding disciplinary actions against physicians. Page BRD 7A-20, contained a sample of what the prior Newsletter included, which shows a significant amount of information, including the reason for taking action and what the specific penalty was. She stated that in early 2012, staff recommended changing the way of reporting, as the ability to link directly to the disciplinary documents had become available, allowing the public to read the complete document to see what action was taken and the reason for that action. In addition, it would decrease the amount of staff time to develop the report. Therefore, beginning in Summer 2012, the Board changed the reporting to the example on page 7A-18, which identifies what the new reporting page looks like. Ms. Kirchmeyer noted that over the past few years, staff had received requests from both consumers and the public, as well as physicians to revert back to the previous way it reported this information. The physicians stated

they were not able to tell why someone got into trouble and were not able to see where problems could arise. So, with that, the Board started in the summer of 2015 to include a synopsis of what each physician did, but did not include it with the specific physician. She noted that after discussion with interested parties, Dr. GnanaDev, and Ms. Pines, the Board will be reverting back to the earlier version of how the information is reported, beginning in the Winter 2017 Newsletter. Ms. Kirchmeyer added that since staff had already begun to include the synopsis, the workload increase would not be significant.

Ms. Kirchmeyer then reported on a new pilot program that was being discussed for implementation. She noted that B&P Code section 853 had become effective in January 2003, with the passage of AB 1045. She stated that this section of law implemented the Licensed Physician and Dentists from Mexico Pilot Program. This law authorized 30 physicians licensed in Mexico, specializing in family practice, internal medicine, pediatrics, and obstetrics and gynecology (OB/GYN) to practice in California for three years. She noted the Board had to issue a three-year license to those individuals to practice in a non-profit community health center. She added these physicians were to be licensed in good standing and board certified in Mexico. These physicians had to have passed a board review course and those in family practice had to have 50 live births documented. Ms. Kirchmeyer added the physicians had to complete a 6-month Board-approved orientation program. She noted they must have also participated in an adult English as a second language class and must, after having received their license, complete 25 continued medical education (CME) hours per year. Also, upon issuance of the license, the physician had to complete a six-month externship at the health center. That externship program has to be in affiliation with a California Medical school that is in good standing.

Ms. Kirchmeyer noted that complaints against these physicians would follow the same process as California licensed physicians. She stated the facility where these physicians practice, had to have quality assurance protocols and either be accredited by the Joint Commission or have protocols similar to those required by Joint Commission. She added that the law further stated that once those physicians had met the requirements, they could be placed in a pool of candidates for recruitment by non-profit community health centers in certain areas throughout California. Ms. Kirchmeyer stated the Board has oversight review of both the implementation and evaluation of the program. She added that the law stated this program shall not be implemented until funding for this program has been established by non-profit and philanthropic entities. She noted the Board must report to the legislature every January on this program once it is in existence. Ms. Kirchmeyer added that for the past 13 years, there had been several discussions regarding the program, but the funding had never been available. After recent discussions, it appeared the funding may be forthcoming. Ms. Kirchmeyer stated the interested parties whom have wanted to start the program had met with the Board, the Governor's Office, the Department of Finance (DOF), and the Department of Consumer Affairs (DCA). She added the Board currently had requested authority for a position to run this program, should the funds become available. Ms. Kirchmeyer stated she was bringing this program information to the Board as the current Members were unaware of it, since the bill had passed in 2003. Ms. Kirchmeyer added that, should the funds become available, the Board staff would begin to implement the program and would also have to work with a medical consultant to review the orientation and externship program. She stated an update on the status of the program would be provided at the January Board meeting.

Dr. Lewis asked if a physician under this program was disciplined for a violation of the law, and gets a five or seven year probation, but the program is to last only three, how that would be handled.

Ms. Kirchmeyer responded that that physician would be removed from the program and that a physician on a waiting list would be able to join the program at that point.

Dr. Lewis asked if any type of discipline would be included in the annual report to the Legislature.

Ms. Kirchmeyer stated it would be included and would also be considered when evaluating the program.

Dr. Levine stated that if this program is implemented, it would be a rare opportunity to prospectively look at the type of data that needed to be captured in order to evaluate the program. She stated that the data capture needed to be put in place ahead of time.

Ms. Kirchmeyer then gave a brief update on the CURES program noting that there were currently over 74,000 physicians currently registered in the program. She stated that staff continued to work with the Department of Justice (DOJ) to identify physicians who have a DEA to prescribe, but had not yet registered. She noted once those physicians have been identified, notifications would be sent reminding them to register. Ms. Kirchmeyer stated that from September 15 through October 15, 2016, there had been 193,000 reports requested by physicians, which is approximately 32,000 more than reported at the last Board meeting. She noted she would be working with staff and DOJ in putting some additional information on the Board's website regarding the CURES program and how to use it, once registered. Ms. Kirchmeyer stated the Board continued to work with the University of California, Davis (UCD) and DOJ on a survey regarding the CURES 2.0 system that was sent out to all physicians whose licenses expire in November. The survey asked physicians how CURES 2.0 had been working for them and asked if any problems had been noticed.

Ms. Kirchmeyer then noted she had been invited to attend the first National Governor's Association Opioid State Action Network call. During the call, an individual from Wisconsin discussed their guidelines that they had just approved in July, 2016. She noted there was also a representative from Massachusetts who discussed a recent bill that passed in that state putting restrictions on the amount of opioids that could be prescribed. She stated these calls would be focused on best practices between states and was a great way to learn what is taking place in other states, as well as what barriers other states are facing on the opioid misuse and abuse issue.

Ms. Kirchmeyer directed the Member's attention to pages BRD 7E – 1 through 3, which provided a brief update of the Health Professions Education Foundation and the Stephen M. Thompson Repayment Program annual report.

Ms. Kirchmeyer then noted that in her report she had provided an update on the Board's coordination with state agencies regarding the psychotropic medications for foster children. As stated, the Board received the expert report from the Board's pediatric psychiatrist who identified numerous physicians who may be overprescribing psychotropic medication. She noted the Board had requested assistance from the Department of Social Services (DSS) in obtaining the records for the patients of the identified physicians. Ms. Kirchmeyer stated she

would be following up with DSS to check on the status of the request. She noted, one item that had come up is that many of the children are no longer in foster care due to their current age. In those cases, the Board would have to locate those individuals to obtain authorization to receive their medical records. She noted that if the Board could not get that authorization, it would have to have enough evidence to subpoena the records. Ms. Kirchmeyer then referred the Members to BRD 7F, pages 1 through 11, which is a portion of the report from the Bureau of State Audits (BSA) that was released in August on the issue. She noted those pages also included the Board's three recommendations as well as the Board's response to those recommendations, and the Board's 60-day response to that audit report.

Ms. Kirchmeyer stated that on September 30, 2016, as a State Board Advisory Panel member of the Federation of State Medical Boards (FSMB), she had the opportunity to visit the USMLE headquarters in Philadelphia, where their annual meeting was held. She noted the members heard about recent updates to the USMLE, received information on how individuals are reported to the boards if they had irregular behavior during an examination, and reviewed a list of stakeholder issues. The members also discussed topics included in the examination and reviewed the USMLE annual report. Ms. Kirchmeyer noted the highlight of the meeting, was the opportunity to observe the USMLE, part 2, clinical skills examination. She noted she was quite impressed with how organized the exam was. She stated there had been recent talk about eliminating this part of the examination, but after observing it, she felt stronger than ever that this examination is necessary and should not be eliminated. Ms. Kirchmeyer added that this examination is the only time that the physician receives an evaluation of his or her communication skills, as all other examinations are computer-based. She added the USMLE uses standardized patient encounters during this portion of the examination process. She noted she was pleased that California is able to be on this panel. Ms. Kirchmeyer then encouraged any physician Members who are interested in assisting with the USMLE, to let her know and she would provide that information to the National Board of Medical Examiners and the FSMB.

Ms. Kirchmeyer added that she had received notice from the FSMB stating they were seeking nominations for elected officers. She noted the FSMB is also seeking individuals who are interested in serving on committees within the Federation. She noted she had only heard from Dr. Krauss who had asked to be considered for the Ethics and Professionalism Committee, as well as any other committee where his expertise may be beneficial. Ms. Kirchmeyer stated that if none of the other Members wished to be nominated for a committee, she would like to ask for a motion to approve the preparation of the nomination and recommendation letter of support for the appointment of Dr. Krauss to the Ethics and Professionalism Committee with the FSMB.

***Dr. Lewis made a motion to approve the Executive Director to prepare the nomination and recommendation letter of support for the appointment of Dr. Krauss to the Ethics and Professionalism Committee; s/Dr. Levine. Motion carried unanimously (12-0).***

Ms. Kirchmeyer then announced some upcoming retirements. The first being Mr. Kevin Schunke, who will be retiring November 10, 2016, and also Ms. Oseto who had retired the previous week. She noted the Board is currently recruiting to fill those two positions. She then stated that Mr. Worden would be retiring in December 2016. She noted he had been with the Board for nine years in different positions, and most recently as the Chief of Licensing. She stated that words could not express the amount of work that Mr. Worden had done for the Board and for her personally.



Dr. GnanaDev stated his disappointment in losing Mr. Worden as the Board's Chief of Licensing, as he stated he had never met a more dedicated and passionate person when it comes to the Licensing Program, than Mr. Worden.

Ms. McGiffert stated she is pleased to see that the reporting summary of information regarding disciplinary actions against physicians in the Newsletter is reverting back to the old method. She stated a few recommendations regarding the summaries. She noted they would like them to be standardized and written in a patient friendly, clear and understandable language. She asked that they include the reason the physician was disciplined, as well as any practice restrictions on that physician's license, as well as the length of probation, when it is a probation case. Ms. McGiffert noted that in addition to this information being placed in the Newsletter, they would also like to see these summaries included in all communications to the public regarding disciplinary actions, for example, prominently displayed on the top of the page of the physician's profile page on the BreEZe website, and also in the email notifications that are sent out.

**Agenda Item 8      Update from the Department of Consumer Affairs, which may include Updates pertaining to the Department's Administrative Services, Human Resources, Enforcement, Information Technology, Communications and Outreach, as well as Legislative, Regulatory and Policy Matters**

Ms. Lally provided an update on the DCA Director's Meeting that was held on September 7, 2016 with the board presidents and executive directors. She noted that in May, the DCA Assistant Chief Council, Tamara Colson, was appointed as the Assistant Chief Council of the Bureau of Medical Cannabis Regulation. She added that in August, Governor Brown appointed Ryan Marcroft to DCA as the new Assistant Chief Council. Mr. Marcroft came from the DOJ.

Ms. Lally then announced a recent change to the regulatory process. She stated that a review and approval of the Fiscal Impact Statement is required for all proposed regulations prior to submission of the Notice to begin a rulemaking package to the Office of Administrative Law (OAL). She noted that since 2009, the Business, Consumer Services and Housing Agency (Agency), had waived that requirement for all boards within DCA. Ms. Lally stated that given the number of rulemaking packets disapproved by OAL, citing issues of clarity and necessity, the Agency has decided to rescind this waiver effective September 7, 2016. She stated that prior to submitting any regulatory packets to OAL, all DCA boards must submit them to DCA and Agency for review and approval. The rulemaking packages are to be submitted to DCA's legislative and regulatory review unit. Ms. Lally stated that DCA would remain committed to reviewing them timely and making sure that the transition goes as smoothly as possible.

Ms. Lally gave a brief update on the North Carolina vs. Federal Trade Commission legislation as included in SB 1194. She noted SB 1194 was sponsored by Senator Hill and contained several provisions to address the anti-trust issues presented by the North Carolina Board of Dental Examiners vs. Federal Trade Commission decision that came out in 2015. She stated DCA had worked with the Senate B&P Committee and various stakeholders to clarify the proposed regulation review process with the DCA's Director. She noted that at the Assembly Committee hearing on August 25, 2016, Senator Hill decided to pull this bill from consideration during the legislative session. Senator Hill stated he had wanted to convene further stakeholder meetings to discuss concerns raised during the committee hearing.

Ms. Lally then noted that on October 4, 2016, the Little Hoover Commission released their report titled "Jobs for Californians. Strategies to Ease Occupational Licensing Barriers." She stated this report called for a comprehensive review of the state occupational licensing system, asserting that it increasingly stood in the way of employment and upward mobility, especially for former criminal offenders, veterans, military spouses and those who are foreign trained and educated. The issue of reciprocity, issuing a license to an applicant licensed in another state, is also addressed in the report. She noted that Director Kidane had recently issued a memo to all boards and bureaus regarding the report and requested feedback from board members and executive officers by November 1, 2016.

Ms. Lally stated that on July 13, 2016, DCA held its first annual sunset review briefing with boards that are scheduled to go under review in 2017. She noted this briefing focused on reviewing sunset review timelines and the template provided by the B&P Committee. She added the intent of this briefing was to assist the boards with understanding the sunset review requirements, provide guidance from executive officers that have been through the process and to make the boards aware of all of the resources available at DCA, such as the legislative and budget offices to assist in completing the report.

Ms. Lally reported that the morning of October 27, 2016, DCA hosted its annual distributed cost review and open house for executive officers, bureau chiefs and board presidents in Sacramento. All programs received an overview of DCA's budgeting process and pro-rata cost distribution. She stated that following the presentations, attendees had the opportunity to visit with DCA's individual units in order to learn more about services they provide and to meet the managers of each unit. Also at the meeting, attendees were provided an updated version of the DCA guide, titled, "Distributed Costs and Services," which outlined the budget process, how the costs are distributed to the boards and the services provided by DCA. She added that an electronic version of the guide would be distributed to all board members in the upcoming weeks.

Ms. Lally then reminded the Members of the required Board Member Orientation Training (BMOT) and noted that the last one for this calendar year was scheduled for November 16, 2016, in Sacramento.

Ms. Lally stated there would be two BreZE releases, one on November 16, 2016, and the other on January 11, 2017. These releases will update system changes requested by the Board. She noted that since January 2016, 68 Medical Board system change requests had been resolved with an additional six set for resolution with the two upcoming scheduled software releases. Ms. Lally added that as of October 14, 2016, there were 61 outstanding requests from the Board for system changes that are not yet scheduled for resolution in an upcoming software release.

Ms. Lally noted that DCA's Office of Information Services had been working with the State Department of Technology to migrate email services to an Office 365 model. The current email platform will be retired in October 2017. She added the new model includes enhanced features such as increased inbox storage, and some social networking to allow collaboration between departments.

Ms. Lally stated that SOLID offered its third brown bag gathering for its executive officers and bureau chiefs. The agenda included an overview of psychologically safe work places, building a work philosophy, a peer panel and an update on the future leadership development program.

Ms. Lally announced the DCA was developing a new strategic plan for 2017 through 2019 and one of the components of that planning process was a survey of the stakeholders. She noted the survey would be distributed to all stakeholders, including board members, in November 2016.

Dr. GnanaDev asked Ms. Lally if the Board would be charged for the extra work that DCA will now be tasked with, with the new regulation process.

Ms. Lally stated the Board would not be charged extra as it would be part of the pro-rata costs.

Dr. GnanaDev then asked Ms. Lally to let the Little Hoover Commission know that one out of every eight physicians in the country have a California license, so the Board is not obstructing, they are just trying to protect the consumer.

Dr. Levine stated she attended the DCA BMOT recently and it has significantly improved from the last one she took several years ago. The materials used at the training were very well done and extremely informative and she believed they should be made available to the public at some point, so they can learn more about exactly what it is that DCA does.

Dr. Levine noted that the Board has decades of data about disciplinary actions that if that data was available in a way that it could be queried, she felt it would enable the Board and the state to do some predictive analytics on individuals who come before the Board at the time of licensure or re-licensure and at the time of disciplinary action. She stated the current system being used is not capable of doing the type of data capture needed to do predictive analytics and would like to try and find a way to merge the data that is available into the BreEZe system to assist in the process.

### **Agenda Item 9      Review, Discussion and Approval of the Sunset Review Report**

Ms. Robinson referred the Members to agenda item 9 in their Board packets. She stated that at the July Board meeting Ms. Kirchmeyer had provided a detailed overview of the sunset review process and that staff from all units had completed their particular sections of the report. The report has been reviewed and approved by Dr. GnanaDev and Ms. Pines. She noted that once the draft report was approved by the Board, with any suggested changes and/or additions, Board staff would then finalize the report and to submit it to the Legislature by December 1, 2016. Ms. Robinson stated that this report would serve as a basis for the background paper that the Legislative staff will prepare. A sunset oversight review hearing will be held in early 2017.

Ms. Robinson noted a few things about the report. She stated it had four parts and attachments. Part 1 provided information on physicians and made up most of the written report. Parts 2, 3, and 4 were comprised of the other allied health professions. She noted that it was organized according to the 12 subject categories (or sections) of questions provided in the sunset review survey document prepared by the Senate Committee on Business, Professions and Economic Development.

Ms. Robinson stated that the report was written in narrative form so the questions were not included. Section 12, Attachment E contained a copy of the sunset review questions. In addition to providing the

requested attachments in section 12, supplementary attachments had also been included as specified throughout the report.

Ms. Robinson added the report contains various data charts. She noted that the data may not match the DCA's or the Board's annual report data due to the methodology used in getting the information and due to further verification of statistics. She stated she would go over the report by each section giving

some highlights and ask for any questions or suggested changes after each section summary.

Ms. Robinson began with Part 1. She noted that Section 1 provided the background and description of the Board and regulated professions and it included improvements made by the Board since the last sunset review.

Ms. Robinson stated that as required, Section 2 contains results of the Performance Measures and Customer Satisfaction Survey conducted by the DCA. She noted that it also contained results from the applicant, Newsletter, and website user surveys conducted by the Board. She noted that the Performance Measures are posted on the DCA's website on a quarterly basis and the FY 15/16 4<sup>th</sup> quarter report is found in section 2 and the rest of the quarterly reports are in Section 12, Attachment M.

She noted that when the Board notified a consumer that their complaint had been closed, information on how to complete the consumer satisfaction survey was included. She noted the Board continued to receive a low response rate despite many changes for improvement in disseminating the survey and currently, the Board receives about 8,000 complaints per fiscal year and the highest number of responses was 92 in FY 12/13.

Dr. Levine stated she would like to see the form letters that go out in regard to a complaint being closed be more specific to each case rather than just stating code sections or using the standard closing form letter language.

Ms. Kirchmeyer spoke on Section 3, stating that the Board's current reserve would be at 3.6 months reserve at end of FY16/17, which is below the statutory requirement. She stated that in this section, the expenditures by program component could be found as well as the budget distribution and revenue and reimbursements. She added this section also included staffing issues such as vacancy rates, reclassification, and staff development.

Ms. Robinson noted that Section 4 is comprised of the Licensing Program information and data. She noted this section primarily had information on physicians but also discussed information about fictitious name permits, special faculty permits, medical assistants, outpatient surgery setting accreditation, and specialty board certification. She noted that with regard to physicians, the Board was currently meeting its mandate of informing an applicant within 60 working days of receipt of an application whether the application is complete. She added the total active licensed physicians had increased from 135,208 in FY 12/13 to 141,967 in FY 15/16. She stated this section discussed cycle times, timeframes for application review and licensing performance barriers, improvements made to the Licensing Program, school approval process, and continuing medical education requirements.

Dr. Bishop suggested adding data regarding age breakdown for the physician population in order to understand the current workforce and physicians at retirement age.

Ms. Robinson continued with Section 5 stating it is comprised of the Enforcement Program information and data. She noted the total complaints had increased from 7,459 in FY 12/13 to 8,679 in FY 15/16. She added this section also provided some notable statistics for the Board for the last three years (FY 13/14 to FY 15/16). Some additional topics discussed included enforcement performance targets and expectations, proactive complaints, mandatory reporting, and citation and fines.

Ms. Robinson moved on to Section 6, which contained the Board's public information policies.

It also discussed the Board's website and posting of meeting materials and minutes, and information on complaint disclosure policies, posting accusations, and disciplinary actions. She stated this section also listed information that is available to the public, and the Board's consumer outreach and education efforts.

Ms. Robinson noted that Section 7 discussed the Board's online practice regulation. She stated the Board actively investigates complaints regarding inappropriate online practice and that the Board had seen an increase in the number of complaints regarding the use of telehealth. She added that with future advances in technology, including applications available on electronic devices, this would continue to be an issue that the Board needs to be vigilant about to ensure consumers are protected.

Dr. Levine suggested including a phrase in this section stating that online practice is more than just telehealth. It could be electronic communication and/or video visits, too.

Ms. Robinson moved on to Section 8, that discussed workforce development and job creation efforts by the Board, such as efforts to inform potential licensees of the licensing requirements and the licensure process by conducting licensing workshops and licensing fairs, among other things.

Ms. Robinson continued with Section 9, which discussed current issues such as the BreZE system, Consumer Protection Enforcement Initiative regulations and the Uniform Standards for Substance-Abusing licensees. She noted the Uniform Standards regulations were approved in 2015. However, with the passage of SB 1177 this year, the Board would be implementing a Physician Health and Wellness Program, and due to the implementation of this program, the Board's Uniform Standards regulations would need to be amended to accommodate the requirements of this new program.

Ms. Robinson stated that Section 10 discussed Board action and responses to prior sunset issues. She noted that this section included the 39 issues that were addressed in the last Sunset Report. There were 20 Board recommendations and 19 committee recommendations. Many of the recommendations required the Board to provide information to the committees, others were approved through legislation. She noted that with regard to issue 8 which stated "*Should the requirement for the MBC to approve non-American Board of Medical Specialties be eliminated,*" the Board's 2016 response stated that the Board's last sunset review bill, Senate Bill 304, included language to amend B&P Code section 651(h), which would have fully addressed the issue, but that those amendments had been pulled out in committee due to opposition. Issue 8 further stated that the same concerns that prompted the Board to raise this issue during the 2013 sunset review process still existed, and the Board asked that this issue be resolved by adopting the Board's proposed amendment to B&P Code section 651(h).

Ms. Kirchmeyer noted that most of the new issues in the Sunset Review Report had been approved at the May Board meeting, however, there had been some new issues added or some changes made to those that had already been approved in Section 11. One of those new issues was the postgraduate training. The Board had initially approved the request to increase the postgraduate training. She stated that in the Sunset Report, it is suggested that the Board require three years of postgraduate training, no matter the school the applicant graduated. She noted that one additional caveat to this was that the Board would have to be able to offer a training license. With that, staff would be working on some language where a training license would be available for individuals coming into postgraduate training here in California. Ms. Kirchmeyer stated that if an individual has three years of postgraduate training, the current process of the Board recognizing medical schools should be eliminated. The Board would remove the recognition of medical schools, and use the world directory from the ECFMG for medical schools that are outside the United States.

Dr. Bishop noted he felt that three years of postgraduate training was the right option, however, he thought that the end result at some point should be that the applicant should also be board-eligible as a licensing criteria.

Dr. GnanaDev stated that one of the problems with any school recognition process was that the recognizing agencies would approve almost anything, which is the reason California had its own recognition process. He felt that three years of postgraduate training takes care of that. Dr. Levine stated that this would now put the burden on the residency programs to be sure that their candidates meet the requirements to practice.

Ms. Kirchmeyer continued noting that the next two items on outpatient surgery settings had both been previously approved by the Board. One was for data reporting and the other was to revamp the adverse event reporting. She noted that the Board would be holding meetings on those two issues to look at possible language revisions.

Ms. Kirchmeyer stated changes to the consumer notice had been approved already, as well. She added the Board wanted to change the notice to include better information for the consumers on the notice.

Ms. Kirchmeyer stated the next section was on licensing enhancements. She added the licensing staff had done a review of current programs and had found that some programs were no longer necessary. This issue would just be licensing cleanup.

Ms. Kirchmeyer noted that the next issue regarding physician reentry at initial licensure had not yet come to the Board. This would cover an individual who was either coming to California to become initially licensed and had been out of practice for five years or more for whatever reason, had been licensed in another state, or was coming back from a cancelled license to now be licensed in California. She noted that staff is requesting that a new license type be established that would be known as a "limited education permit." This would allow these impacted physicians to come to California and take the training that they need before they can then get a full and unrestricted license. She felt this would help physicians, but would also protect consumers.

Dr. GnanaDev asked who would be responsible for this type of training.

Mr. Worden responded, stating it is done through one of the medical schools, but he is not sure how it works with the ACGME standards. He stated he could see this being a system where it would be limited to certain teaching hospitals who have the staff to do the training and who had the capability of direct oversight. Mr. Worden noted there is currently only one place that can do this type of training and it is in Texas.

Dr. GnanaDev asked if the Texas teaching hospital got approval from the ACGME.

Mr. Worden noted that the Texas program was not an ACGME approved program; however it was accepted by them. He noted the Texas program was a very limited program, through the K-Star program. He stated the K-Star offered a 90-day permit to physicians for re-training in the skills they need for the practice they are going to do.

Dr. GnanaDev stated that the ACGME discouraged any type of non-ACGME accredited schooling, so he asked how the Texas program was approved.

Mr. Worden stated he wasn't sure, but would look into the details and get back to Dr. GnanaDev with that information.

Dr. GnanaDev stated the limited education permit was a great idea; however, he would like to have more details on such a program and make sure that all of the requirements would be met before agreeing to it.

Dr. Bholat asked Mr. Worden what benefit to the public would be with such a program, as well as any unforeseen consequences that could arise.

Mr. Worden stated the benefit to the public would be there are physicians who had had a license at one point, who had taken a break from practicing for whatever reason, like raising their children, as an example, who were ready to come back into practice, but they would need to refresh their skills before doing so.

Dr. Bholat then asked Mr. Worden what types of physicians he felt were most likely to use this type of program.

Mr. Worden stated he had seen physicians from all specialties looking to come back into practice after a hiatus.

Ms. Kirchmeyer continued with the new issues in the Sunset Report stating that another item that had been added was the Board of Podiatric Medicine authority language cleanup proposal that had been submitted to the Legislature. She noted that although the bill had not passed, Senator Hill had stated that this issue should be added to the Board's sunset review report. She noted this issue was added to the Sunset Report to show how important it was that this change takes place.

The next item that Ms. Kirchmeyer discussed was the Board panel membership. She noted that currently the law stated that each panel should be made up of seven members and if there is a full complement of members, the Board president cannot sit on a panel. She noted however, there is another section of law that stated that the panels cannot have more public members than physician members and the way the Board is apportioned currently, it makes the Board unable to follow that law. She noted that the Board should have the law changed to where it would remove the language that states that the Board president cannot sit on a panel.

Ms. Kirchmeyer continued with the enforcement enhancements. She noted this had been discussed briefly at the prior meeting, but no details had been brought forward. She added the first recommendation was regarding sexual offenses. As currently written, the law requires the Board to proceed through the disciplinary process to revoke a physician's license when that physician has to register as a sex offender. However, the law also states that these physicians should have their licenses promptly revoked. She noted this recommendation would change B&P Code section 2232, and would allow for prompt revocation of the license. The physician would then have to come back through a separate hearing process, if they wished to challenge the revocation.

Ms. Kirchmeyer stated the next issue is a recommended change to B&P Code section 2225, regarding medical records requested by the Board.. She noted that due to a recent legal case,

the language for this section needed to be rewritten with additional clarification that the term medical records include psychiatry records.

Ms. Kirchmeyer stated the last new issue for enforcement was a simple change needed in the Government Code section 11529. It currently states an accusation must be filed after an interim suspension order, but the language needed to be changed to read an accusation and/or a petition to revoke probation.

Ms. Kirchmeyer then moved on to Part II, which covered the Midwifery Program. She stated the first section covered background and a description of the program, fiscal and staff issues, and the licensing and enforcement programs. She noted the total licensed midwives had increased from 297 in FY 12/13 to 365 in FY 15/16. Ms. Kirchmeyer stated that in January 2014, the scope of the licensed midwives (LM) had significantly changed, when AB 1308 (Bonilla, Chapter 665, Statute of 2013), eliminated the requirement for physician supervision and authorized an LM to attend cases of normal births as specified. It also authorized an LM to directly obtain supplies and devices, obtain and administer drugs and diagnostic tests, order testing, and receive reports that are necessary to the practice of midwifery.

Ms. Kirchmeyer referred the Board to page 226, which contained the enforcement program section. She stated she needed the Board's input on an issue that arose due to AB 1308, which required a hospital reporting form of a transfer to the hospital from a planned home birth. The Board counted these as complaints in the reports, but that may not be appropriate. She requested the Board's thoughts on if this information should be noted separately in the reporting, as doing it the current way, it made it look like the complaint number rose significantly, when in actuality, many of those numbers are reports rather than complaints.

Dr. GnanaDev stated he preferred that those forms be reported separately and not as a complaint, since it may discourage individuals from sending those forms to the Board, knowing it could be looked at as a complaint rather than just the reporting of an event.

Ms. Kirchmeyer noted that those reports would be removed from the complaints section and noted separately for the Sunset Report.

Ms. Robinson continued with Part III which was the Polysomnographic Program. She stated this part included background and a description of the program, licensing program, and enforcement program information. She added that the Polysomnographic Program registers individuals as polysomnographic trainees, technicians or technologists. She also stated that in April 2012, the Board had begun accepting applications for the Polysomnographic Program. Ms. Robinson added that initially, the Program received an influx of applications, and that during the first two years, there had been a steady increase in the number of applications received. She noted however, that since that time, the number of applications received had leveled off and had maintained a consistent volume. Active polysomnographic registrations in FY 15/16 were 60 trainees, 79 technicians, and 572 technologists. Ms. Robinson concluded with Part IV, the Research Psychoanalyst Program. This part includes background and a description of the program, licensing program, and enforcement program information. She noted that the Legislature enacted the regulation of research psychoanalysts (RP) under the jurisdiction of the Board in 1977 and that currently, the total active RP registrations had decreased from 91 in FY 12/13 to 82 in FY 15/16.



***Dr. Lewis made a motion to approve the Sunset Report with any suggested amendments, authorize staff to make any non-substantive changes and also to delegate the Board President and Vice President to sign off on the final version before submission to the Legislature by December 1, 2016; s/Dr. Krauss.***

Dr. Levine stated that having been through the prior sunset review, she noted that this Sunset Report is very well done. She added it is clear and concise and the Board can go to the hearing with their head held high.

Ms. Hollingsworth recommended the Board request that the Legislature make changes to state law to change the boards' statute of limitations. She noted the statute of limitations, when filing complaints against physicians, in current law is convoluted, unfair and creates barriers to patients' ability to participate in the complaint process. She stated that often patients who have been harmed by physicians do not know where to file a complaint or there is a delay due to the patients recovering from the actual harm. She noted that currently the statute of limitations is seven years from the date of the event leading to a person's complaint; however, there is another conflicting condition. Once the Board learns of an incident, the statute of limitations allows only three years until an accusation has to be filed. She recommended that the Board be required to notify patients when another party files a complaint about a patient's case. Ms. Hollingsworth also noted that when the statute of limitations has run out, even when the Board has found cases of extreme departure of care, those complaints are closed, and the physician continues to practice without discipline. She noted that in the current sunset review report, it is stated that the Board was forced to close over 150 cases due to the statute of limitations running out. She stated that the Board should recommend the statute of limitations be changed to provide a fair and predictable process for patients who wish to file complaints.

Ms. McGiffert recommended that the outpatient surgery settings (OSS) under the Board's purview be required to report a standard and robust set of data to the Office of Statewide Health Planning and Development (OSHPD). She noted that this type of information used to be a requirement, but since a court decision in 2007, the data collection had been removed and there has been no way of tracking what surgeries are being done in these settings. She also noted that OSSs are required to report adverse events to the Board, and the Board is authorized to fine OSSs who fail to report these events in a timely manner. Ms. McGiffert requested that the Board's website listing for the OSS include the adverse event reports from that setting along with any fines assessed to them.

Ms. McGiffert noted another issue in the Sunset Report was that staff was recommending that the Board be given authority to issue penalties for entities that fail to file required B&P Code Section 805.01 reports. She stated she strongly supported that recommendation and urged the Board to pursue the authority in order to increase the likelihood of the Board being notified early in such findings.

Mr. Hollingsworth agreed that the Board should request that the Legislature make changes in state law to address the following issues via the sunset review process. He stated that currently physicians are required to post signs in their offices telling consumers that physicians are regulated by the Board. He noted that he would like to see the signs changed to clearly state that the Board is where patients can file complaints against the physician and look up the physician's history. He also noted that he would like to see the Board seek authority to post all malpractice information on the physician's BreZE profile indefinitely.

Ms. Ehrlich thanked the Board for the consideration of changing the hospital transfer forms from being considered a complaint. She noted AB 1308 was created to create data only, not to be a back door to investigations.

Mr. Andrist stated he filed a complaint with the Board about his disabled sister, and the Board reviewed and closed the case. He noted it had been reopened and then after being reviewed by a medical expert, was closed a second time. He stated his concerns about what the qualifications are for these medical experts and what if they are wrong in their decisions. He noted that he had never seen a survey that the Board stated they send out to people who had filed complaints and neither had another complainant he had spoken with regarding this survey. He also stated the Board was in violation of the Public Records Act and he would be providing more information.

*Motion carried unanimously (12-0).*

#### **Agenda Item 10      Update of the Demographic Study, including progress and timeline**

Ms. Robinson provided a brief update on the demographic study. She noted that she had provided an update on the study at the July Enforcement Committee meeting, and it was expected at that time that the California Research Bureau (CRB) would have their findings to Board staff to share at this meeting. She added that in September, staff had again met with CRB, and after that meeting, the CRB had requested additional information and additional data from the Board. She stated that information was provided to the CRB in September and they were currently in the process of finalizing the report. Ms. Robinson noted that on October 21, 2016, the CRB had contacted her stating the draft report was complete and in its final internal review and should be ready for Board review in early November. She stated it is currently scheduled to be brought to the Board at the January 2017 Board meeting in Sacramento.

#### **Agenda Item 11      Special Faculty Permit Review Committee Recommendations – Approval of Applicant**

Dr. Bholat stated the Special Faculty Permit Review Committee held a teleconference meeting on September 29, 2016, and reviewed the outcome of the faculty permit survey that was submitted to the Licensing Committee at the May 2016 meeting. She added that it was determined that the special faculty permit program did not need any changes at that time. She noted the committee also reviewed one application for an applicant from the University of California, San Francisco (UCSF). Dr. Bholat then explained the applicants' credentials, qualifications and experience. She stated Dr. Sano would hold a full time faculty appointment as a professor of surgery at UCSF, if approved for the special faculty permit appointment by the Board. She stated Dr. Sano would engage in the practice of pediatric cardiac surgery at UCSF and their affiliated hospitals, teaching cardiothoracic surgery fellows participating in teaching conferences, and resident rounding. Dr. Sano would also serve as a principal investigator of a multi-center trial of stem cell auto transplants in pediatric patients at UCSF.

*Dr. Bholat made a motion for the Board to approve Dr. Sano for a B&P Code section 2168.1(a)(1)(b), special faculty permit appointment at the UCSF; s/Dr. Krauss. Motion carried unanimously (12-0).*

**Agenda Item 12      Update from the Application Review and Special Programs Committee**

Dr. Bishop stated the Application Review and Special Programs Committee met at 1:30 pm, and had reviewed three physician and surgeon applicants. He noted that he and Ms. Lawson were in attendance, which provided a quorum. He stated that Mr. Worden had presented three applicants to the committee, who in turn made recommendations to the chief of licensing for each of the applicants.

**Agenda Item 13      Update on the Outreach Campaign**

Dr. Hawkins provided an update on the “Check up on your doctor’s license” campaign. He stated he was pleased to announce that the Board had continued its work on this campaign since the last Board meeting and had had continued success in its endeavors. He added that the “Check up on your doctor’s license” tutorial had been completed and had been posted on the Board’s website and on YouTube. Dr. Hawkins stated the tutorial walks individuals through the steps to check up on their doctor’s license. He noted that the Spanish version of the tutorial had recently been completed and is posted to the Board’s website and YouTube. The campaign brochure had also been translated into a Spanish version and both the Spanish and English versions are handed out at different outreach events. Dr. Hawkins added the campaign message was printed on the bottom of all State warrants for June 2016 reaching over 439,000 individuals. He noted that another announcement will go out on the March 2017 warrants, as March is National Consumer Protection month. He stated that CalPERS had run a short article on the Board’s outreach campaign in its fall 2016 version of their “Perspective” newsletter which is delivered to members’ homes and also available on their website. He noted that CalPERS will also be posting a notice on their intranet website regarding the campaign. They also provided a link to the Board on their open enrollment page in September and October.

Dr. Hawkins stated that CalSTRS ran a news brief on the campaign in the summer 2016 edition of their retired teachers publication, and also ran an article in their “Connection” publication. He noted that he was very pleased with the Board work on the campaign and staff will continue to reach out to counties, cities, unions and other large entities and legislative offices on the campaign. Dr. Hawkins added that since the tutorial has been completed, staff would begin working on its next public service announcement for the campaign and hopes to have it completed by the January Board meeting.

Dr. Levine suggested perhaps contacting the California Association of Health Plans to see if they would be interested in including the Board’s campaign information in their materials, as well.

**Agenda Item 14      Update on the Physician Assistant Board**

Dr. Bishop gave an update on the Physician Assistant Board (PAB). He stated that their last meeting had been held on October 24, 2016, in Anaheim. He thanked Ms. Carrasco and the Board’s enforcement program staff for their assistance in a presentation on the recruitment and training of medical consultants. He noted that it had been brought to the attention of the PAB members that consultants must have a valid license, no recent complaints and be board certified. He stated the PAB would be looking into the question “Should the consultant who performs an initial review of a complaint be a physician assistant (PA)?” Dr. Bishop acknowledged Dr.

Sachs for being re-appointed as President and Mr. Grant as Vice President of the PAB for 2017. He stated that as a member of that Board, he felt that they were strong, positive choices.

Dr. Bishop then noted that SB 1083 (Pavley, Chapter 438, Statutes of 2014), must be implemented by January 1, 2017. He noted that this bill would allow PAs to sign disability forms for the Employment Development Department (EDD). He added that this bill had been implemented and PAs could now register online.

Dr. Bishop stated that the PAB discussed the law that allows the PAB to establish, by regulation, a retired status for PAs, who were not actively engaged in practice as a PA, or any other activity that requires them to be licensed by the PAB. He noted the PAB did not currently have a retired status for PAs. He stated the PAB members had approved the revised language for retired status, and staff had been instructed to move forward with the regulatory process.

Dr. Bishop then noted that the PAB had discussed possible action to amend regulations regarding the license renewal and reporting infractions. He added that in prior meetings, concerns had been raised whether the \$300.00 threshold for reporting infractions was too low and the PAB had approved language to move forward with the regulatory process to increase the threshold to \$500.00.

Dr. Bishop added that the Education and Workforce and Development Advisory Committee discussed the possibility of possible legislation to offer tax deductions for preceptors. He said it had been noted that California had currently, 13 accredited PA programs and the national average of preceptors required for teaching students in these programs who are paid for instructing these students is 33%, however, in California, it is much less. He added that in California, most instructors are not paid preceptors, which makes it hard for recruitment. He noted that Georgia had recently passed legislation providing \$1,000 per student up to two students per year for a \$10,000 tax savings to preceptors. He stated that after a long discussion between PAB members and stakeholders, PAB unanimously approved contacting the Senate Select Committee on Health Care Work Force regarding tax deductions for preceptors.

Dr. Bishop concluded his report by stating that PAB currently charges a fee of \$25.00 for the initial application of a PA, and it had been determined that at the next PAB meeting, staff would provide the members an analysis to show how much it actually costs to process an initial application. He noted that since the fees were currently in statute, at the next meeting, the PAB would discuss changing the statute to increase the initial license application fee.

**Dr. GnanaDev adjourned the meeting at 5:34 p.m.**

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**Friday, October 28, 2016**

**Members Present:**

Dev GnanaDev, M.D., President  
Michelle Bholat, M.D.  
Michael Bishop, M.D.  
Judge Katherine Feinstein (ret.)  
Randy Hawkins, M.D.  
Howard Krauss, M.D.

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Kristina Lawson, J.D.  
 Sharon Levine, M.D.  
 Ronald Lewis, M.D., Secretary  
 Denise Pines, Vice President  
 Brenda Sutton-Wills, J.D.  
 David Warmoth  
 Jamie Wright, J.D.

**Members Absent:**

Felix Yip, M.D.

**Staff Present:**

April Alameda, Staff Services Manager II  
 Liz Amaral, Deputy Director  
 Christina Delp, Chief of Enforcement  
 Dianne Dobbs, Legal Counsel, Department of Consumer Affairs  
 Kimberly Kirchmeyer, Executive Director  
 Regina Rao, Associate Government Program Analyst  
 Letitia Robinson, Research Specialist  
 Elizabeth Rojas, Staff Services Analyst  
 Jennifer Saucedo, Business Services Officer  
 Jennifer Simoes, Chief of Legislation  
 Lisa Toof, Administrative Assistant II  
 Kerrie Webb, Legal Counsel  
 Curt Worden, Chief of Licensing

**Members of the Audience:**

Zane Ahmed, Midwestern University, Arizona College of Osteopathic Medicine  
 Eric Andrist, By phone  
 Alisha Bajwa, Midwestern University, Arizona College of Osteopathic Medicine  
 Ryan Bakhit, Midwestern University, Arizona College of Osteopathic Medicine  
 Chase Bartholomew, Midwestern University, Arizona College of Osteopathic Medicine  
 Gloria Castro, Senior Assistant Attorney General, Attorney General's Office  
 David Chriss, Chief, Division of Investigation, Department of Consumer Affairs  
 Yvonne Choong, California Medical Association  
 Zennie Coughlin, Kaiser Permanente  
 Alicia Cryer, Midwestern University  
 Karen Ehrlich, Licensed Midwife  
 Kalil Farhat, Midwestern University, Arizona College of Osteopathic Medicine  
 Julie D'Angelo Fellmeth, Center for Public Interest Law  
 Jerome De Vera, Midwestern University, Arizona College of Osteopathic Medicine  
 Ronnie Ebar  
 Renee El-Khoury, Midwestern University, Arizona College of Osteopathic Medicine  
 Duncan Fraser, Investigator, Health Quality Investigation Unit, Department of Consumer Affairs  
 Jack French, Consumers Union Safe Patient Project  
 Louis Galiano, Videographer, Department of Consumer Affairs  
 Maji Ghulam, Midwestern University, Arizona College of Osteopathic Medicine  
 Bridgette Gramme, Center for Public Interest Law

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Holly Harris, Consumers Union Safe Patient Project  
 Ed Hollingsworth, Consumers Union Safe Patient Project  
 Marian Hollingsworth, Consumer Union Safe Patient Project  
 Adriana Hu, Midwestern University, Arizona College of Osteopathic Medicine  
 Lisa McGiffert, Consumers Union Safe Patient Project  
 Kathleen Nicholls, Health Quality Investigation Unit, Deputy Chief, Department of Consumer Affairs  
 Mansi Panchal, Midwestern University, Arizona College of Osteopathic Medicine  
 Ludmila Parada, By phone  
 Michael Paulino, Investigator, Health Quality Investigation Unit, Department of Consumer Affairs  
 Paul Riluli, Midwestern University, Arizona College of Osteopathic Medicine  
 Eric Ryan, Supervising Investigator, Health Quality Investigation Unit, Department of Consumer Affairs  
 Carrie Sparrevohn, Licensed Midwife, Midwifery Advisory Council  
 Jason Wong, Midwestern University, Arizona College of Osteopathic Medicine  
 George R. Wu, Midwestern University, Arizona College of Osteopathic Medicine  
 Weica Xie, Midwestern University, Arizona College of Osteopathic Medicine  
 Kenneth K. Yam, Midwestern University, Arizona College of Osteopathic Medicine

**Agenda Item 15      Call to Order/Roll Call/Establishment of a Quorum**

Dr. GnanaDev called the meeting of the Medical Board of California (Board) to order on October 28, 2016 at 9:08 a.m. A quorum was present and due notice was provided to all interested parties.

**Agenda Item 16      Public Comments on Items not on the Agenda**

No public comments were heard.

**Agenda Item 17      Regulations – Public Hearing – Consideration and Possible Action on Proposed Regulations amending Title 16, Division 13, CCR Sections 1364.10, 1364.11, 1364.13, and 1364.15 related to Citable Offenses, Citation Disclosure, and Citation and Fine Authority for Allied Health Professionals**

Dr. GnanaDev stated this is the time and place set by the Board to conduct a public hearing on the proposed regulations to implement, interpret, or make specific sections 125.9, 148, 2027, 2227, 2228, 2229, and 2234 of the B&P Code. As stated the Board is considering changes to Division 13 of Title 16 CCR as described in the notice published in the California Regulatory Notice Register and sent by mail or electronic mail to those on the Board's mailing and subscribers' lists.

Dr. GnanaDev noted for the record, the current date was October 28, 2016, and the hearing was beginning at approximately 9:13 a.m.

He stated that licensed midwives and polysomnographic technologists, technicians, and trainees are licensed/registered and regulated by the Board, but are not currently covered by the Board's citation and fine regulations. This proposed rulemaking would add licensed midwives and polysomnographic technologists, technicians, and trainees as licensees registrants to whom the Board may issue citations with orders of abatement and fines when these allied health care professionals violate statutes or

regulations. In addition, this proposed rulemaking also proposes additional conforming changes, and some technical changes to improve the clarity of the regulations at issue, as described in the notice.

Dr. GnanaDev asked that persons who wished to testify please fill out a speaker's slip. He noted the purpose of the hearing was to receive oral testimony concerning the regulatory proposals described in the notice. He added the regulations must comply with six legal review standards and testimony should address only those six standards. Dr. Gnanadev asked the Board's Staff Counsel, Kerrie Webb, to offer opening comments.

Ms. Webb stated there had been no written comments received by the deadline, so with that, if anyone wanted to comment at the meeting, this was their opportunity to do so.

No public comments were heard.

Dr. GnanaDev stated that since no one wished to speak, the hearing concerning the Board's citation and fine program was closed at 9:16 a.m.

*Dr. Lewis made a motion to approve the regulations as provided and approve the Executive Director to make any non-substantive changes necessary to complete the regulatory package and submit it to the Office of Administrative Law for finalization; s/Dr. Levine. Motion carried unanimously (13-0).*

**Agenda Item 18      Regulations – Public Hearing – Consideration and Possible Action on Proposed Regulations on Requirements for Physicians on Probation, amending title 16, Division 13, CCR Section 1358**

Dr. GnanaDev stated this was the time and place set by the Board to conduct a public hearing on proposed regulations amending Title 16, Division 13, CCR Sections 1358 relating to regulations on requirement for physicians on probation.

He noted for the record, the current date was October 28, 2016, and the hearing was beginning at approximately 9:17 a.m.

He then summarized noting the public hearing was on the proposed regulations to implement, interpret, or make specific sections 2227, 2228, and 2229 of the B&P Code. The proposed amendments eliminate obsolete language from the regulation and clarify that probationers are required to bear the costs and be in compliance with all terms and conditions of the order placing them on probation.

Ms. Webb stated there had been no written comments received by the deadline, so with that, if anyone wanted to comment at the meeting, this was their opportunity to do so.

No public comments were heard.

Dr. GnanaDev stated that since no one wished to speak, the hearing concerning physicians on probation was closed at 9:19 a.m.

*Ms. Wright made a motion to approve the regulations as provided and approve the Executive Director to make any non-substantive changes necessary to complete the regulatory package and*

*submit it to the Office of Administrative Law for finalization; s/Dr. Levine. Motion carried unanimously (13-0).*

**Agenda Item 19      Presentation, Discussion and Possible Action on the University of California, Los Angeles, International Medical Graduate Pilot Program**

Dr. Bholat thanked her colleagues for giving her this opportunity to present this innovative program. She stated that the program was an idea of hers and Dr. Patrick Dowling of the UCLA Department of Family Medicine, where she served as Executive Vice Chair. Dr. Bholat said that there are four important points that she believed the training that the physician workforce in under resourced communities should include to create role models and mentors. She added that increasing the workforce in those conditionally under resourced communities where poverty is inversely related to the number of practicing physicians, is what they want to address with this program. Another point she noted was that developing new residency programs in those areas

was a long term strategy knowing that many of those trained in an area would remain in the area both for sub-specialty and primary care. She then noted that they were interested in developing a community environment through strategic public health initiatives that would raise the community's health. Dr. Bholat then provided the background and history on the program and explained the current status of those who attended the program. She explained to the Members that this was just a pilot program and was scheduled to end in 2019.

Dr. GnanaDev stated that since this program would end January 1, 2019, there was a need for the Board to work with the UC System to extend the law to a later date.

Dr. Bholat confirmed that was correct.

Dr. Hawkins gave accolades to the collaboration of the program to work with underserved communities and the foresight to try and contribute to a solution for these communities. He then asked Dr. Bholat what some of the impediments were for physicians to stay in the area after they went through the entire system.

Dr. Bholat stated she felt that as professionals, one wants to stay intellectually stimulated and not having a group of physicians and other professionals that are able to raise the level of knowledge could be a big impediment.

Dr. Krauss congratulated Dr. Bholat on the program and asked, given the clear success of this program, if there were discussions with other UC campuses for the potential of expanding the program.

Dr. Bholat stated they had places at UC Davis (UCD) and UC San Diego (UCSD) that were working towards different models of the program and trying to take the proof of concept to practice. She believed that the biggest challenge was people do not want to fund medical education. She stated she was also working with philanthropic groups to try and get them to invest, and if they have an alumni association, she reminds them that it is good to start giving back. She stated that people are not making the effort to invest in education, which is a major concern not just to her, but to everyone on the Board.



Dr. GnanaDev then asked for a motion to approve staff to begin working with UC Office of the President to seek legislation to extend the program.

*Ms. Sutton-Wills made a motion to approve staff to begin working with UC to seek legislation to extend the program; s/Dr. Levine. Motion carried unanimously (13-0).*

**Agenda Item 20      Vertical Enforcement Program Update from Health Quality Investigation Unit**

Mr. Chriss noted that at the last meeting, it had been reported that HQIU had a plan to mitigate the investigator vacancy rate by supplementing investigator staff with eight limited term, non-sworn special investigator positions in San Bernardino. He noted they were pleased to announce that on October 3, 2016, they had eight special investigators begin work in the San Bernardino field office. He added that during the week of October 17, 2016, a mini academy was held in specific case related training and was provided to the new investigative staff. Mr. Chriss stated they also had three, vacant limited term special investigator positions in their Valencia field office as well as four limited term investigator positions in the Sacramento office. He stated interviews were held on October 17, 2016, for the Valencia field office and three candidates were selected. He noted they should be able to begin work within 30 days. Mr. Chriss then stated that interviews for the Sacramento positions would be taking place on November 1, 2016.

Mr. Chriss noted that also at the last meeting, they reported that HQIU was advertising for two limited term investigator assistant positions, one in Pleasant Hill and one in Sacramento. He added the investigative assistant position in Pleasant Hill was hired and began working on October 17, 2016, and the Sacramento position had been selected and was anticipated to start work within 30 days. He noted they are still continuing to recruit and interview for their sworn vacancy positions. He stated they were recruiting from other law enforcement agencies, law enforcement retirement associations, colleges and police academies.

Mr. Chriss stated that as the Board knows, part of the retention problem is inadequate pay. He added that they currently have an HQIU retention pay proposal being evaluated by California department of Human Resources (CalHR). He noted they had been recently asked to supply supplemental data to the proposal and that they had provided the information to CalHR in October, 2016. He noted that retention pay is crucial for them to attract and retain qualified applicants, and that they were hopeful for a positive response from CalHR to address the issue.

Mr. Chriss then stated that as of November 1, 2016, their Division of Investigation (DOI) training unit would be re-organized, which included creating an HQIU specific specialized training unit. He noted the new unit would be responsible for developing and implementing HQIU specific case training for investigators statewide. He stated it would also be responsible for the field training officer program for new investigators and oversee the supervision of the newly hired special investigators. Mr. Chriss added that the HQIU staff had participated in the Expert Reviewer Training that was held on October 8, 2016, in San Francisco and would be participating in the upcoming trainings as well. Mr. Chriss stated that joint training and subject interviews is being held for all HQIU investigators, medical consultants and deputy attorney generals (DAG) from the Health Quality Enforcement (HQE) section of the Attorney General's (AG) Office on November 2, 2016, in northern California and November 9, 2016 in southern California.

Mr. Chriss added the HQIU continues to communicate with the AG's Office regarding process improvements and modifications to existing policies to streamline processes and improve investigative timelines. He noted that even with the many challenges the staff has been facing, they were continuing to complete exemplary work. He added investigators from the Cerritos, San Dimas, Glendale and OSM offices received the 2016 U.S. Attorney's Office law enforcement awards for their outstanding work on the Operation Fright Night criminal cases. Those awards were presented to them on October 21, 2016, in Los Angeles. Staff had also received awards from the Food and Drug Administration (FDA) for their outstanding team work. He stated that Operation Fright Night targeted retail stores that sold cosmetic and decorative contact lenses without prescriptions. He noted that undercover investigators purchased the lenses and found that some of them had been contaminated with pathogens that were known to cause eye injury, blindness, and potential loss of the eye. He added that under California law, retailers must be licensed as a physician and surgeon, optometrist or a registered dispensing optician, or pharmacist. Mr. Chriss stated he was proud of the outstanding quality work the HQIU had been performing even with the challenges of increased case load.

Mr. Chriss stated the solutions that had been put in place would decrease vacancies and case loads and improve investigative time lines.

Ms. Wright asked Mr. Chriss what additional things the Board could do to support their retention pay efforts.

Mr. Chriss stated the HQIU funding needed to be increased, and requested the Members meet with staff with any additional recommendations to make that happen along with their continued support.

Dr. Lewis stated that since the Board has no direct connection with CalHR, he felt the only thing they could do is ask the question about how staffing is affecting the productivity and through those types of issues and discussions, there is hope that someone in CalHR or the proper authorities hears that and maybe that will help with the recruitment and retention pay issue. Dr. Lewis suggested, changing the job classification may provide them with a higher salary and help get the investigators to stay with the HQIU.

Mr. Chriss stated the job classification suggestion had already been given to the DCA's HR unit and those discussions have been taking place with CalHR. He also noted that the retention pay proposal looked to be a faster route to get the same outcome and he felt that there had been positive steps along the way. He believed they were close to receiving a decision, one way or the other.

Dr. Lewis asked how the staffing issue has affected productivity.

Mr. Chriss stated as the vacancies increase, the remaining staff had to work additional cases, as the work load does not diminish, which in turn makes the timelines increase. He noted that the reason they had to hire non-sworn special investigators is because they are able to be hired more quickly, with no background or academy needs.

Ms. Kirchmeyer added that as of July 2016, the investigators received a 3% increase in salary, so if the investigators were to get retention pay, the Board would have to increase their HQIU line item in the Board's budget, which in turn could lead to a fee increase for physicians. It is

an unusual situation, since the Board pays the HQIU staff's salary as opposed to paying an hourly rate, as some other Board's do.

Ms. Nicholls noted that part of the initial proposal was explaining that the Board was already paying the extra money already. She noted that with the retention issue, there is a lot of money going into hiring additional staff, training and the academy costs, and then people get into the position, stay a short time, and then leave because of the salary issues. So, if the pay was increased, the training and academy costs would be reduced since there would be fewer vacancies.

Judge Feinstein stated she had come to the Board with a different perspective as a retired judge. She felt that justice delayed is justice denied, so she had become concerned, when going through the discipline cases and finding cases of physician misconduct from 2012. She noted that people can be harmed between then and now with the case still open. She asked what HQIU needed to clean up the backlog and be able to move cases forward more quickly.

Mr. Chriss stated that sworn peace officers do not apply as readily to these positions because of the pay, which is why they had put other provisions in place to assist in cleaning up the backlog. He noted the end goal is to get more pay for the investigators and then attract individuals with the needed skill sets and training to these positions. He stated that once those individuals are hired, that would reduce the timelines.

Judge Feinstein asked what percentage of differential pay increase was requested in the proposal.

Mr. Chriss noted the request was for 18%, however, what CalHR and the DCA agree on could be different.

Judge Feinstein asked what he believed the time frame would be to get the case backlog caught up, once the investigators were hired, trained and in place, if the proposal is approved.

Mr. Chriss stated there is no way to know at this point, however, in the meantime, the non-sworn staff that had been recently hired would be working on these cases, which would help in expediting the process and decreasing caseloads.

Ms. Nicholls then stated that the caseloads are really the key to the solution and typically a reasonable complex caseload is about 10-15 cases per investigator. She added that currently, the investigators are at approximately 40 cases each. She noted that as soon as they can get more staff hired and they stay at HQIU, those caseloads would decrease.

Dr. Levine asked Mr. Chriss what Dr. GnanaDev should say when he goes to the sunset hearing in regard to the difference in case loads and case completions from the time of the transition of investigators took place and from the previous sunset hearing in 2012.

Mr. Chriss stated he would be more than happy to attend the sunset hearing with Dr. GnanaDev and provide the history and explanation of the issues.

Dr. Levine stated that it is not the history that she was speaking of; she is asking from 2012 to 2016, what the Legislature would see in terms of statistics. She noted that her comment was not

a criticism, but an assessment of what would be expected in terms of the outcome of the legislature action that transferred the investigators to DCA.

Mr. Chriss stated that the timelines over the past years have gone significantly higher and that it had been due to several factors, with the most significant one being the retention issue.

Dr. Levine asked Mr. Chriss to give the Board some statistics to show where they are today compared to 2012.

Mr. Chriss noted that the vacancy rate at HQIU has been as high as 38%, which drove the case completion times up significantly. It took a period of time to put the current provisions in place. He stated that with the recent hiring of staff and with the staff beginning the first part of November, 2016, this will bring the vacancy rate down to 17%. He added that it would take some time after the new hires, to see a decrease in the case timeframes but stated he was confident that these newest changes and additions will make a difference and improve productivity.

Dr. Levine then asked for a timeframe to see a difference with these new positions and additions.

Ms. Nicholls stated to give a rough picture currently, HQIU has 28 sworn vacancies. If each of those 28 people were working a case load, that would be a significant help in the timelines.

Mr. Chriss noted that the ideal case load is about 10-15 cases per investigator and each time an investigator leaves to go to a higher paying position, that person's caseload, which is currently over 40 cases, gets distributed to the remaining staff, which would make it increasingly difficult to keep timelines down.

Dr. GnanaDev stated he understands that there is a large vacancy rate, which makes it difficult, but there has to be a better way to process things that can assist in getting the case loads through the process more quickly.

Dr. Bishop stated he heard this same response, the same badgering of people, yet he felt it was not HQIU's fault. He noted the system had been broken from the start, and continued to be broken. He added the answer had been clear for many years and it had been stated at every meeting which is the vacancy rate. He recommended inviting some of the Legislators to sit in on the next meeting so they can actually hear the public's concerns, the Member's concerns and the staff's concerns. He noted that the transition of the investigators made no difference at all and if anything, made things worse for the public.

Ms. Wright asked Mr. Chriss to answer her next question as if she were a Legislator rather than a Board Member. She asked why has nothing changed between 2012 and 2016.

Mr. Chriss stated that as mentioned, there are the pay retention and vacancy issues, but noted they had been working with the AG's Office on ways to help streamline the processes as well. He added that the vertical enforcement system was a part of the problem. Mr. Chriss noted that they had been working with AG's Office diligently to reduce the timelines and streamline the process as much as possible under existing law. He noted that they had made four adjustments to the vertical enforcement system since January 2016, but existing statute does not allow them

to make further changes that would be helpful. He stated they would appreciate any type of assistance from the AG's Office or any type of assistance that might change some of the language in the statute.

Ms. Kirchmeyer provided statistics from the Board's Annual Reports stating that in FY 12/13, the Board was at 260 days for the investigation process, in FY 13/14 the Board was at 245 days. After the transition took place in July 2014, the process statistics showed 310 days, and for FY 15/16, the statistics showed 426 days. Ms. Kirchmeyer noted that she, Mr. Chriss, and Ms. Nicholls had a meeting recently and discussed the changes that HQIU was making with the non-sworn positions going into the quasi-sworn positions and how the non-sworn would be taking over the less complex cases, which would be a lot of the work load. She felt the value of having those individuals learning the enforcement and investigation process, who already have the law enforcement background, could then, if they are the best qualified candidate, be transferred into a sworn position at a later date. She noted that one benefit to this would be that these individuals would be currently working for the Board on cases, during the time of the background process, which is something the Board has never had in the past. Ms. Kirchmeyer added that the plan that they discussed at their meeting, if it comes to fruition, would definitely be a big improvement in assisting in the timeline reduction. She stated she had been impressed with their most recent plan and that it is the best plan she had seen in quite some time.

Ms. Nichols added that another statistic that they are proud of is, even with less staff currently than they had last year, they had issued 37 interim suspension orders (ISOs) in FY 15/16 where as in FY 14/15, there were only 14 issued. So that had more than doubled with less staff.

Ms. Hollingsworth asked that in regard to the backlog of cases, does transferring a case to a different district office actually help to decrease the timelines?

Ms. Nicholls responded noting that they monitor cases daily and do often transfer cases to others to be sure the workload is equal for everyone.

Ms. Hollingsworth stated that her case was transferred to the HQIU's San Bernardino office due to staffing shortages in San Diego, and it still took three years and two months, which was over 1,100 days. She stated the staffing shortages seemed to be a chronic complaint over the past two and a half years that she had been following the Board and encouraged the Board to work with the Legislature to get the HQIU what they need to hire more staff. Ms. Hollingsworth also noted that in regard to statutes, complainants have a seven-year statute for some cases and a three year statute in other cases. It would be helpful to both the consumer and the Board if there was a time limit put on them so that complainants' cases can be expected to be closed in a certain window of time. She felt this would also help the Board gain the confidence of the consumers, because currently there is not a lot of confidence in the systems being used.

Julie D'Angelo Fellmeth stated she had been attending Board meetings for 30 years and have heard this exact problem repeated for those 30 years. She stated the Center for Public Interest Law had sponsored dozens of bills to make major changes to the Board's enforcement program, one of them being SB 2375 (Presley) from 1990. She noted that SB 2375 included intent language that the people who investigate cases for the Board should be paid the same as special agents from the DOJ, which are the investigators employed directly by the AG's Office. Ms. Fellmeth stated that is one of reasons they had pushed all along to have the investigators

transferred to the DOJ, so that they would be paid equally. She urged the Board to express to the Legislature the vision from 1990.

**Agenda Item 21      Vertical Enforcement Program Update from the Health Quality Enforcement Section**

Ms. Castro congratulated Dr. GnanaDev for being elected as President of the Board and stated that he always seemed to have a fine balance between his duties to the profession and his duties to the public. She noted that she felt that he and Ms. Kirchmeyer were a very strong team, especially going into the Sunset Review process. She also stated that the AG's Office was committed to assisting in any way possible during the Sunset Review process.

Ms. Castro stated the HQE section agrees with the mission and intent of the legislation establishing the Vertical Enforcement (VE) program, notwithstanding the challenges of not being implemented as envisioned and the subsequent fragmentation. She noted her staff had always been very passionate about the VE program and the protection it provides the public by involving the attorney to ensure the high quality of the evidence produced to be used in the disciplinary prosecution of the physicians. She noted that the vast majority of her staff had worked on the Board's cases before the VE was implemented 11 years ago, including herself. With that, she felt that VE is the most superior way to investigate these life and death cases. She added that the prior model of lawyers and investigators working in silos did not work well for this licensed profession. She stated that with HQIU removing two of their other clients, they hope to see some investigations moving forward and stated they are very supportive of Mr. Chriss' and Ms. Nicholls' initiatives to create the non-sworn units in Valencia and San Bernardino. She believed it would create a pipeline of commitment and training, such that once they are trained they could seamlessly move into the sworn positions. Ms. Castro added that she and her staff would assist in training to help reduce timelines and also would do their part in the subject interview training. They are assisting by identifying cases that do not require a DAG to attend a subject interview.

Ms Castro stated that more recently, supervising DAG Mathew Davis contributed to the collegial and productive pursuit of quality investigations. She then thanked Laura Gardhouse, Supervising Investigator, who put together the subject interview training. She added that Mr. Davis also assisted in the annual Board expert reviewer training and thanked Ms. Delp and Ms. Kirchmeyer for allowing them to participate in that training.

Ms. Castro then stated that she had shifted all of her lead prosecutors, sending more of them into the field. She noted that with the anticipated issues that will be arising within the next six months, she had decided to re-assign her DAGs, one to each office. She added they would begin pleading cases as soon as possible. She then stressed to the Board that she, Mr. Chriss and Ms. Nicholls are always identifying high priority cases. Those cases are noticed to the public as soon as possible.

Ms. Castro added that in addition to shifting the lead prosecutors, they continue to seek avenues for collaboration and improvement with HQIU. She noted they had begun identifying cases that were going to trial where investigators as part of their training, can attend to see prosecution. She added that they are also exploring efficiencies with subpoenas, having legal review in addition to Ms. Nicholls' review. She stated they had created a pilot project that would

hopefully start at the end of November. This project would assist HQIU investigators to be able to expedite the subpoena service and subpoena enforcement process.

Dr. GnanaDev stated that these timelines had to be decreased as it is unfair to both the consumers and the physicians.

Judge Feinstein asked Ms. Castro to bring back some statistics on how many cases start and end with the same investigator and the same DAG, because if that is not occurring, it is not VE.

Ms. Castro stated that the VE program they use is not the same as the VE program as envisioned by the Legislature. She noted the enforcement monitor recommended the same VE model that was used in the AG's office in the Bureau of Medi-Cal Fraud and Elder Abuse and the process that is at the California State Bar, which was VE where both investigators and the attorneys work for the same entity. She stated they were given that option more than 10 years ago, when they requested the investigators be moved to the DOJ, and that did not happen. Ms. Castro added that there had been another suggestion made, that she personally did not agree with, and that was to remove the investigators from the Board and transfer them to the Department of Investigation (DOI) at the DCA. She added that since that took place, it took them further from VE than they already were. She noted that the VE program was supported by previous AGs and that it is a hybrid VE program and as the Board's attorney, she could only do what the VE program allows her to do. Ms. Castro added that she knew that the VE as written had been interpreted by Mr. Chriss and Mr. Kidane from DCA as well as the current AG, Ms. Harris, and herself. She added that the VE does speak to all efficiencies and was excited to state that she and Ms. Nicholls had taken an already inefficient program and improved it. She stated that the biggest issue is, again, the vacancy issue.

Dr. GnanaDev thanked Ms. Castro for being so open and honest and saying the same things that the Board has been feeling.

Dr. Lewis also thanked Ms. Castro for her passion on this issue and stated it was the first time he had actually heard her explain to the Members the essential root of the problem with the current VE program. He added that the investigators are doing a lot of good work and not getting the pay they deserve. He stated that CalHR and the legislature needed to hear this and make a change to either their classifications or give them a better salary to get them to want to stay doing what they love.

Ms. Parada commented that the current VE program is not working at all and stated she was told her husband's case had been sent to the AG's Office for disciplinary action, when several months later, she was told her case was closed due to insufficient evidence. She noted that she had sent several letters to the AG's Office, requesting more details on why the case had been closed, with still no response.

Mr. Andrist requested that an agenda item be added to a future meeting to discuss how Board staff can continue to break the laws of the California Public Records Act (CPRA). He stated that the fundamental rules of the CPRA are that government records shall be disclosed to the public upon request unless there is a specific reason not to do so. He added that most of the reasons for withholding a disclosure of record are set forth in specific exemptions contained in the CPRA, which also provides a general balancing test by which an agency may withhold records from disclosure if they can establish that non-disclosure clearly outweighs the public

interest in disclosure. Mr. Andrist stated that in the CPRA manual from the AG's Office, it clearly states two important things: 1) when an agency withholds a record because it is exempt from disclosure, the agency must notify the requestor of the reason for withholding the record and; 2) the agency should provide a sufficient explanation of the reasons for withholding records so that the public can decide whether or not to challenge the agency withholding the information. He stated that Government Code section 6253(d), stated that nothing in these chapters shall be construed to permit an agency to delay or obstruct the inspection of copying a public record and Government Code section 6253(a), stated any reasonable portion of a record shall be available for inspection by any person requesting the record after deletion of the portion that are exempt by law. He stated that Board staff uses this Code as a blanket refusal to refuse documents in their entirety instead of redacting the portions of the documents that are exempt and sending the rest, which was in violation of the law. He stated he had filed at least a dozen CPRA's with the Board and only a couple had been fulfilled, and those that were fulfilled were done with errors. He added that the agency has ten days to respond to a CPRA and yet he stated he could account for a number of CPRAs that were not responded to timely or had not been responded to at all. Mr. Andrist again asked that the CPRA matter be put on a future agenda for further study and insisted the law be followed.

#### **Agenda Item 22      Update from the Attorney General's Office**

Ms. Castro stated they had two new DAGs in the San Diego office. The first was Ms. Luzan who came to the AG's Office with a great deal of success in pharmaceutical case experience. She stated they hope to put that experience to good use on overprescribing cases. The second hire was Mr. Mejia, who has three different state bar licenses and comes from a New York prosecutor's office. She then noted that she was in the process hiring six paralegals into the HQE section and stated they would all be assisting with the reliability, completeness and accuracy of the AG's data collection in compliance with SB 467 or B&P Code section 312.2.

#### **Agenda Item 23      Update, Discussion and Possible Action of Recommendations from the Midwifery Advisory Council Meeting**

Ms. Sparrevohn stated the last Midwifery Advisory Council (MAC) meeting had been held on August 18, 2016, and included the selection of a new licensed midwife, Ms. Holzer, to fill a seat on the MAC that had been vacated by Ms. Ehrlich. She highly recommended Ms. Holzer for the Board's approval. She stated the meeting also provided the MAC with updates on the efforts to craft regulations required by AB 1308, for which they created a task force to assist in the development of a list of conditions requiring a referral to a physician for consultation prior to the midwife continuing care for a particular client.

Ms. Sparrevohn then asked the Board for approval of the following agenda items at the next MAC meeting scheduled for December: task force update, update on regulatory efforts required by AB 1308, update on hospital transfer forms, update on Midwifery Task Force, update on related legislation expected to be introduced or followed next year, update on the midwifery program, update on progress of midwifery assistant regulations, report from California Association of Licensed Midwives on new Quality Care Program and discussion and decision on 2017 MAC meeting dates.

***Dr. Levine made a motion to approve the stated MAC meeting agenda items; s/Mr. Warmoth. Motion carried (11-0: Feinstein and Lewis absent from vote).***



**Agenda Item 24 Discussion and Possible Action on Midwifery Advisory Council Appointments**

Mr. Worden stated that at the August 18, 2016 MAC meeting, there were four applicants that had applied for the vacant seat on the MAC. The MAC voted to approve Ms. Holzer for appointment to the vacant seat on the MAC. Mr. Worden asked for a motion to approve Ms. Holzer for the MAC.

*Dr. Levine made a motion to approve Ms. Holzer's appointment to the MAC; s/Dr. Bholat. Motion carried (11-0:Feinstein and Lewis absent from vote).*

**Agenda Item 25 Discussion and Possible Action on Legislation/Regulations**

Ms. Simoes stated that the 2016 legislative session had ended and the Legislature would not reconvene until December 5, 2016. She noted the Governor had taken action on all bills that the Board had taken positions on and that this was the last year of a two-year session, so if a bill had not passed this year, it was officially dead and would need to come back through as new legislation. She then referred the Members to tab 25 in their Board packets. She noted that in the tracker list tab, the bills in pink were Board-sponsored bills and the bills in green were bills where the board had already taken a position. Ms. Simoes noted that all bills on the list had been signed into law by the Governor, so the Board would be discussing all of the bills on the tracker list. She noted that she would only be giving a brief summary of each bill and then explaining the Board's implementation plan. She also noted that every implementation plan would include an article in the Winter Newsletter and the notification and/or training of Board staff, DCA HQIU staff, and the AG's Office.

Ms. Simoes began with **AB 1244 (Gray)** stating the bill specified the circumstances in which a medical provider must be suspended from participating in the workers' compensation system and also ensured that the appropriate licensing board was notified of the suspension. It also provided for communication between various state agencies, among other provisions. The Board's implementation plan was to reach out to the Administrative Director of the Division of Workers' Compensation (DWC) to establish a process for the Board to receive suspension information from the DWC.

Ms. Simoes stated **AB 2024 (Wood)** would authorize, until January 1, 2024, a federally certified critical access hospital (CAH) to employ physicians and charge for professional services. The CAH could only employ physicians if the medical staff concurred by an affirmative vote that employing physicians was in the best interest of the communities served by the CAH and that the CAH did not interfere with, control or otherwise direct the professional judgment of a physician. She added the bill required OSHPD, on or before July 1, 2023, to provide a report to the Legislature regarding the impact of CAHs employing physicians and their ability to recruit and retain physicians between January 1, 2017 and January 1, 2023, inclusive. She noted this bill required the CAHs to also submit reports to OSHPD on an annual basis. The Board's implementation plan was to update the Board's website.

Regarding **AB 2744 (Gordon)** Ms. Simoes specified that the payment or receipt of consideration for advertising, where a licensee offers or sells services through a third-party advertiser (e.g., Groupon), should not constitute a referral to patients that is prohibited in existing law and the Board's implementation plan was to update the Board's website.

Ms. Simoes stated **AB 2745 (Holden)** was the Board-sponsored bill that made clarifying changes to existing law to assist the Board in its licensing and enforcement functions. She stated she would go over those changes if the Members would like, but that it had been discussed previously.

Dr. GnanaDev stated there was no need as they had discussed this bill previously.

Ms. Simoes continued stating the Board's implementation plan was to update the Board's website, revise the LPL application, develop appropriate reinstatement forms for allied health licensees, add violation codes to the BreEZe system, and to make other necessary changes to BreEZe related to probation fees.

Ms. Simoes stated **SB 482 (Lara)** would require a health care practitioner to consult the CURES database to review a patient's controlled substance history before prescribing a Schedule II, III or IV controlled substance for the first time to that patient and at least once every four months thereafter, if the prescribed controlled substance were to remain part of the patient's treatment. Ms. Simoes noted that after an interested parties meeting and a meeting with the author's office a few of the Board's concerns were included in the bill. The bill now defined "first time" to mean the initial occurrence in which a health care practitioner intended to prescribe, order, administer, furnish or dispense a Schedule II, III, or IV controlled substance to a patient and had not previously prescribed a controlled substance to that patient. The Board's implementation plan was to include a stand-alone article in the Board's Newsletter once the bill becomes effective, which would not be until six-months after the DOJ certifies that the system was running properly, update the Board's website, send an email blast to all physicians before the bill became effective, and work with physician associations/organizations to provide information to physicians.

Ms. Simoes stated **SB 1160 (Logue)** included the provisions that were contained in SB 563 (Pan), which the Board supported. The bill would make a series of significant, wide-ranging changes to the DWC operation and utilization review (UR) processes, approval of UR processes, fraud prevention, and lien filing and collection. She stated that the provisions that were previously included in SB 563 and that impact the Board ensured that physicians involved in authorizing injured worker medical care on behalf of the employer and/or payor were not being inappropriately incentivized to modify, delay, or deny requests for medically necessary services. She added the bill included many other provisions and that the Board's implementation plan was to only do the usual Newsletter article and notification to staff, DCA and the AG's office.

Ms. Simoes stated **SB 1174 (McGuire)** added to the Board's priorities, repeated acts of clearly excessive prescribing, furnishing, or administering psychotropic medications to children without a good faith prior exam and medical reason. She noted the bill also required the Board to confidentially collect and analyze data submitted by the DHCS and the DSS, related to physicians prescribing psychotropic medications to foster children. She noted that the Board did request a three- to five-year sunset date be included in this bill to allow the Board to determine if the data provided was useful to the Board in assisting with identifying physicians who may be inappropriately prescribing. Senator McGuire instead included a 10-year sunset date, but also included language to require the Board to do an internal review in five years, which would consider the efficacy of the data in relation to the Board's investigative and disciplinary actions and would allow the Board to revise its data review procedures, if necessary. She stated the Board's implementation plan is to meet with DHCS and DSS to work out the details of the Data Usage Agreement (DUA) to ensure the Board receives the required data and can review it on a quarterly basis beginning January 1, 2017; identify additional pediatric psychiatrist consultants that can perform the initial data review and identify possible inappropriate prescribing for further review; formalize the process with DSS for requesting authorizations for medical records for de-identified foster youth so these investigations are not delayed; and amend the Board's Annual Report to

include complaints, investigations, and disciplinary actions taken as a result of the data review and subsequent investigation.

Ms. Simoes stated **SB 1177 (Galgiani)** authorized the establishment of a Physician and Surgeon Health and Wellness Program (PHWP) within the Board. The PHWP would provide for early identification of, and appropriate interventions to support a licensee in the rehabilitation from substance abuse to ensure that the licensee remained able to practice medicine in a manner that would not endanger the public health and safety. She noted the bill authorized the Board to contract with a private third-party independent administering entity to administer the program. She added the Board's implementation plan was to:

- Include several stand-alone articles about the PHWP in the Board's Newsletter;
- Hire the Associate Governmental Program Analyst position – the first task for the position will be to develop regulations (est. date of completion to hire – January 2017);
- Submit a change request for BreEZe to add a public secondary status code modifier;
- Develop regulations (with input from interested parties meetings) to specify the requirements for the administering entity, including communication from the administering entity to the Board, and shared services for the administering entity to pay the Board for administration costs from participant fees;
- Update regulations for the Board's Disciplinary Guidelines and Uniform Standards (which would be one regulatory package with administering entity regulations – estimated regulatory hearing at the October 2017 Board Meeting – the other deadlines would depend on when these regulations are adopted);
- Issue a request for proposals (RFP) once regulations are adopted, to select an administering entity and include the requirements in the regulations in the RFP process;
- Adopt regulations, once the administering entity was selected, to set the fee for participants, which must cover all of the administering entity's fees and any costs to the Board for administering the program;
- Work with the administering entity to establish a process for filing complaints when the program notified the Board of any participants that withdrew or who did not comply with the program requirements (including the Uniform Standards); and
- Update the Board's website with information about the new program.

Ms. Simoes added that the earliest estimated date for the PHWP to be operational would be mid 2018.

Ms. Simoes stated **SB 1189 (Pan and Jackson)** would require that a forensic autopsy be conducted by a licensed physician and surgeon and required that the results of a forensic autopsy only be determined by a licensed physician and surgeon. The Board's implementation plan was to update the Board's website to include information on the requirements of the bill.

Ms. Simoes stated **SB 1261 (Stone)** would delete the California residency requirement for voluntary status licenses and would allow an out-of-state individual to apply for a California license and ask for it to be put in voluntary status. In addition a California licensee who resided out of state could request that his or her license be placed in voluntary status. These options would result in the initial license fee and/or subsequent renewal fees being waived. She noted that in order to be issued a voluntary status license, a licensee must certify to the Board that the sole purpose of his or her license is to provide voluntary, unpaid service. The Board's implementation plan was to update the Board's website regarding voluntary status licenses and to update the Board's voluntary status license application and initial license application.

Ms. Simoes stated **SB 1478 (Sen. B&P Comm.)** had been the vehicle by which omnibus legislation was carried by the Senate Business, Professions and Economic Development Committee and that the bill would delete outdated sections of the B&P Code that are related to the Board. She added the bill also clarified that the annual fee for the CURES shall not be applied to licensees in retired or inactive status. She noted the Board's implementation plan was to submit a request for changes to BreEZE to exclude the CURES fee from physician renewal transactions when the physician was retired or inactive and update the Board's website to specifically note that CURES fees would not need to be paid by licensees with a license in retired or inactive status.

Ms. Simoes stated that there would not be any new legislative proposals since any proposed legislation would be included in the Board's Sunset Report under new issues with perhaps the exception of the proposal to remove the sunset date of the UCLA IMG program.

Dr. Krauss thanked Ms. Simoes for the great work that she does and stated that she is making the Board more influential and interactive with the Legislature to assist in furthering the Board's mission of public protection. He stated to Ms. Simoes that if there was anything she felt the Board could do to assist her, to please let Ms. Kirchmeyer know, as he felt that Ms. Simoes was an incredible, valuable resource for the Board. Dr. Krauss stated that with regard to SB 1177, he stated he has always been a strong advocate for it to fill the void of the failed diversion program, but he had respected the opposition of there being a PHWP. He felt the opposition did not intend that the Board should not be concerned about the PHWP, but respected CPIL's and consumers' concerns for safety. He encouraged them to submit suggested written guidelines from their point of view, since the Board shares the same interest of consumer protection. He stated he would like to include them in the process of putting together the regulations.

Ms. Simoes stated that she agreed and that is one of the purposes of there being an interested parties meeting that would get everyone's thoughts and concerns during the creation of the regulations.

Dr. GnanaDev stated holding an interested parties meeting was a great plan.

Ms. Fellmeth stated the implementation plan for SB 1177 in the Board documents was perplexing to her. She noted the bill did not create a program for monitoring substance abusing physicians, nor did it require the Board to create such a program. She added what it did do is simply authorize the Board to create a program, which gave the Board a very serious decision to make. She stated that the first step had to be for the Board to decide if it even wants to create a program. Ms. Fellmeth stated that the Board needed to take serious steps to avoid the problems that were identified in the last program. She added she felt the second step should be to determine how the Board will oversee the program to be sure that it complies with the law, the Uniform Standards, and that it would actually protect consumers from substance-abusing physicians. She reminded Members that the last program had not been overseen by the Board, but by an outside committee controlled by the CMA, and the California Society of Addiction Medicine (CSAM), for the vast majority of the existence of the program. She noted that once those steps take place, then the Board should hire staff, and do the contracting process for the outside vendor. She noted that the Board needs to be sure and operate the program with transparency, deliberation and determination to avoid the problems that the old program experienced and CPIL is available to help the Board do just that.

Ms. McGiffert stated in regard to SB 1177, that throughout the process of this legislation her concern has been that this program will be another diversion program. She added that it was up to the Board to be certain that it does not become a diversion program. She stated that means that if the Board is

reviewing a complaint that includes a problem with the standard of care or perhaps harm to a patient and includes substance abuse issue as well; if the decision is made to send that physician to a diversion program, then that is diversion. If the Board takes official action that would be public information, and that action includes sending the physician to the program, that would not be diversion. She felt the two were very distinctive, as the second example means that the public would have access to information that they should have about a physician. She noted that the bill states that this program would be an early intervention program and urged the Board to treat it as such. She stated they were also concerned about the program strictly following the Uniform Standards.

***Dr. Krauss made a motion for the Board to establish and implement a PHWP per SB 1177; s/Dr. Lewis.***

Ms. Wright asked Ms. Kirchmeyer if she felt a task force should be formed to discuss and establish the regulations for the program.

Ms. Kirchmeyer stated that the current plan was staff would hold interested parties meetings and that Ms. Webb and Ms. Dobbs would be the ones to lead this project since they would be looking at the Uniform Standards in great detail to be sure the regulations follow those standards closely. The new regulations would identify how this entity would have to comply with each standard and how they would be reporting to the Board on each of them. She added that once that language is put together in a rough draft, it would be brought back to the Board for their review and discussion. Ms. Kirchmeyer reminded everyone that since DCA has new rules about the regulatory process, it will lengthen the upfront time to get the language together to bring to the Board.

***Motion carried unanimously (13-0).***

Ms. Simoes drew Members' attention to BRD 25B-1 noting that the chart shows the status of pending regulations. She asked if any Members had any questions on the pending regulations. No questions were presented from the Members.

Ms. Sparrevohn asked for clarification on why it would take 6-12 months from the date of final adoption of regulations by the Board to get it to DCA for approval to move forward to OAL.

Ms. Webb stated the process is lengthy and she could provide the process to Ms. Sparrevohn.

**Agenda Item 26      Agenda Items for the January 2017 Meeting in the Sacramento Area**

Dr. GnanaDev asked Members if they had any specific agenda items that they would like put on the January agenda. No items were presented.

**Agenda Item 27      Adjournment**

Dr. GnanaDev adjourned the meeting at 11:37 a.m.

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Dr. GnanaDev, President

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Date

\_\_\_\_\_  
Dr. Lewis, Secretary

\_\_\_\_\_  
Date

\_\_\_\_\_  
Kimberly Kirchmeyer, Executive Director

\_\_\_\_\_  
Date

The full meeting can be viewed at <http://www.mbc.ca.gov/AboutUs/Meetings/2016/>