



# MEDICAL BOARD OF CALIFORNIA

## QUARTERLY BOARD MEETING



Embassy Suites San Francisco Airport  
250 Gateway Blvd.  
South San Francisco, CA 94080

**July 28-29, 2016**

### MEETING MINUTES

**Thursday July 28, 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., Vice 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.  
Ronald Lewis, M.D.  
Brenda Sutton-Wills, J.D.  
David Warmoth  
Jamie Wright, J.D.  
Felix Yip, M.D.

**Members Absent:**

Sharon Levine, M.D.  
Denise Pines, Secretary  
David Serrano Sewell, President

**Staff Present:**

Liz Amaral, Deputy Director  
Christina Delp, Chief of Enforcement  
Dianne Dobbs, Legal Counsel, Department of Consumer Affairs  
Susan Houston, Staff Services Manager II  
Kimberly Kirchmeyer, Executive Director  
Regina Rao, Associate Government Program Analyst  
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

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**Members of the Audience:**

Teresa Anderson, California Academy of Physician Assistants  
 Andrew Angelantoni  
 Emily Bentley  
 Jessica Bucher  
 Eric Carlile, Kaiser Permanente  
 Gloria Castro, Senior Assistant Attorney General, Attorney General's Office  
 David Chriss, Chief, Division of Investigation, Department of Consumer Affairs  
 Genevieve Clavreul via Teleconference  
 Long Do, California Medical Association  
 Gene Dorio, M.D., via Teleconference  
 Karen Ehrlich, Licensed Midwife  
 Eileen Ellis  
 Julie D'Angelo Fellmeth, Center for Public Interest Law  
 Louis Galiano, Videographer, Department of Consumer Affairs  
 Bridgette Gramme, Center for Public Interest Law  
 David R. Grube, M.D., Compassion and Choices  
 Christina Hildebrand, A Voice for Choice Advocacy  
 Ralph Hughes, Investigator  
 Kaleem Joy, Licensed Midwife  
 Christine Lally, Deputy Director of Board and Bureau Relations, Department of Consumer Affairs  
 Janice Miller  
 Carole Moss, Consumers Union Safe Patient Project  
 Ty Moss, Consumers Union Safe Patient Project  
 Kathleen Nicholls, Deputy Chief, Department of Consumer Affairs  
 Vic Sandoval, Supervising Investigator, Health Quality Investigation Unit  
 Leonard Saputo, M.D.  
 Jane Zack Simon, Supervising Deputy Attorney General, Attorney General's Office  
 Marlene Smith

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

Dr. GnanaDev called the meeting of the Medical Board of California (Board) to order on July 28, 2016, at 3:15 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**

Dr. Saputo discussed a law that effects all physicians who practice oncology. He noted that it is a felony in the state of California to practice any type of medicine to treat cancer with the exception of radiation, chemotherapy or surgery. So, with that, he stated the Department of Public Health has the right to come to any physician who is practicing any other types of approaches and make a criminal allegation.

Dr. Saputo referred the Members to a handout he had provided, a copy of Assembly Bill (AB) 592 that was put into law back in 2005. He noted the bill stated that any physician can practice any therapy they want as long as the mainstream approach is offered as a first choice, including the physician performing a proper physical exam and history and not doing any harm to the

patient. He noted that the means are there to regulate physicians who do anything wrong, in any field of medicine.

He stated the Department of Public Health law is unnecessary, and it interferes with physicians in California being able to practice the way they want to under the laws and regulations of the Board. He asked the Board to support legislation, to take that particular section out of Department of Public Health's jurisdiction. He noted he understands there is not a bill introduced yet, but, if the intent of the Board is there, he felt it would make it much easier to find someone in the Assembly to author this type of bill.

Ms. Miller stated that in June of last year, Senator Pan clarified the intent of Senate Bill (SB) 277 to the California State Senate before voting. The law included an amendment allowing California physicians to write medical exemptions for vaccinations. It stated that family medical history could be considered to determine if the vaccination is appropriate for the patient. Ms. Miller noted that even as the bill was pushed through the legislature, Senator Pan was aware of the CDC whistleblower who had come forward with the admission of fraud, eroding the public confidence in the vaccine program.

Ms. Miller stated that on a separate occasion, Senator Ben Allen had specifically said that physicians should not be sanctioned or impacted by using their discretion for granting a medical exemption for anyone who has a legitimate concern. She noted that SB 277 does not contain a provision that allows school districts, health departments or anyone else to reject a physician's medical judgment, however, it is happening. She stated these actions, not only violate SB 277, but may also be violating many other state and federal laws.

Ms. Bucher stated in June 2016, Dr. Dean sent out a letter to all schools, superintendents, principals and child care center directors, directing them to send all medical exemptions for a "comprehensive review" of each exemption for the purpose of data collection and compliance with SB 277 criteria. She noted that when Governor Brown signed SB 277 into law, he specifically stated the Legislature amended the bill to exempt a child from immunizations whenever a child's physician concludes that there are circumstances, including, but not limited to, family history for which the physician does not recommend immunization. With that information, Ms. Miller felt that there was no need for Dr. Dean to perform a comprehensive review of these exemptions as she was not the child's physician. She felt Dr. Dean should not be burdening the schools or anyone else with any additional steps, as the child's physician had already concluded that the medical exemption was warranted.

Ms. Hildebrand, A Voice for Choice Advocacy, stated often when one speaks to a physician about vaccinations, it becomes a taboo subject for a consumer or patient. She stated most physicians stated that vaccines are safe and effective, however, there are children and adults who are injured by vaccinations. She stated the CDC's vaccine schedule of 72 doses by the age of 18 had never been tested in its entirety to see if it was completely safe. Ms. Hildebrand stated there are two issues that are of great concern to her that she would like the Board to look into further. The first being that the insurance companies had been giving kick-backs to physicians to have children be fully vaccinated by the age of two. She noted there were upwards of \$400 dollars or more being kicked back to the physician for every child that was fully vaccinated by or before the age of two. She stated that fact tells her that the physician does not look at the risks or benefits of the vaccinations in many cases, but at their bottom financial line. Ms. Hildebrand stated her next area of concern was that there was no recourse for those who do get

injured, or have some reaction from vaccinations. Under the vaccine compensation act, one had to have had a anaphylactic shock or have died from the vaccine to qualify for any type of compensation. She noted another concern she had was there are many physician's practices who are now turning away patients because they are not fully vaccinated.

Mr. Angelentoni stated he had a bachelors in science degree and some experience in how to gather evidence for a hypothesis. He spoke of recent advances in the knowledge of how repeated immune activation due to aluminum adjuvanted vaccines may cause injury including autism. He noted that it was commonly thought that vaccination injury is limited to soreness of the arm, a slight fever, and in those rare cases some paralysis or even death. He stated that most people felt that autism is not caused by vaccines. He noted that the recent research by Cal Tech, UC Davis and other groups have provided the biological mechanism behind vaccine-induced autism. The work is showing how first maternal immune activation increases interleukin 6 (IL6), which is strongly pointing to the biological mechanism. Mr. Angelentoni noted that it had long been known that infection during pregnancy causes autism and schizophrenia, though it was not the actual infection, but the mother's immune reaction to the infection that caused it. In 2005, John's Hopkins showed that most brains of autistic individuals that were autopsied were inflamed. In 2009, Cal Tech tested the theory that purposely elevating IL6 would cause inflammation. It was found the mice exhibited autistic behavior. He stated that in 2014, Cal Tech partnered with UC Davis and performed the same experiments with monkeys, with the same end results.

Ms. Bentley stated that other groups corroborated the maternal immune activation work. UCLA published its work with mice and stated that IL6 is necessary and sufficient for producing autism in offspring. The New York Institute for Basic Research also performed the same type of experiments and found that IL6 caused autistic behavior in post-natal mice. She stated that the evidence showed that IL6 would cause autism. She noted that aluminum adjuvanted vaccines also raise IL6 levels, and up to 60% of vaccines on the CDC infant and childhood immunization vaccination schedule include aluminum adjuvant. The aluminum activates the immune system and without it, the body would not recognize the weakened antigens and would not create the necessary antibodies. She noted vaccine adverse reactions could stimulate enormous IL6 production in the brain in the same amount that has caused brain damage in experimental animals. The study supposedly disproving the link to autism considered only the Measles, Mumps and Rubella (MMR) vaccine. Aluminum vaccines have not been studied, with the exception of Hepatitis B, which is also strongly associated with autism. She stated vaccine promoters are using the MMR studies to argue that all vaccines have been proven safe, but this is dishonest and misuse of the science. She noted vaccines are different and the MMR does not contain aluminum.

Dr. Dorio, licensed physician, stated he has witnessed an HMO hospital not provide standard of care to their patients. The current chief medical officer (CMO) of this hospital, who is also a hospital administrator and a California licensed physician, changes policies and procedures resulting in the death of patients. In addition, he has witnessed physicians place their elder patients on hospice, just for the benefit of their organization's financial needs. He stated there is continual denial of patient care by California licensed physicians employed by insurance companies, and they have not been held accountable for their practice of medicine under the guise of utilization review. He stated he sensed the Board might recognize that utilization review would fall under the practice of medicine, but noted it seemed to him that the Board is awaiting the Legislature to define its legal jurisdiction. Since the highest priority of the Board is

to protect the public, the Board should not be waiting for the slow legislative process. Dr. Dorio noted any new laws will have fingerprints of lobbyists and special interest groups forcing the Board to continually clarify complicated wording through legal counsel. He noted the Medical Practice Act might provide a legal tool to fulfill the Board's fiduciary responsibilities for the purpose of appropriate patient care. He stated that section 2718 may allow oversight of licensed physicians who are not practicing the standard of care. He requested the issue be discussed as the public confidence in physician medical decision making is deteriorating due to business intervention. The unscrupulous and often immoral practice of medicine influenced by profit must be deterred. Other than the Board, there is no other agency that wields the power to make this happen. He noted he would like to see the Board put this item on a future agenda for discussion or for a committee to work on this particular issue.

Ms. Ellis stated she would like to see SB 277 be reformed, as the rights of her children and her rights as a mother are being violated. She noted her family has significant history of auto immune dysfunction as well as neurological dysfunction. Because of this history, they are concerned about aluminum vaccines, the body's challenges in processing it, and the effects it has on children's developing bodies when given multiple vaccines at one physician's visit. Due to these concerns, the family made a decision to vaccinate their children on a delayed, one at a time schedule. Ms. Ellis noted that by maintaining SB 277 in its current form, the state of California is violating her children's rights. Ms. Ellis asked the Board to work to adjust SB 277 in consideration of families like hers.

### **Agenda Item 3      Approval of Minutes from the May 5-6, 2016 Meetings**

*Dr. Lewis made a motion to approve the May 5-6, 2016 meeting minutes as written; s/Dr. Krauss. Motion carried unanimously. (12-0.)*

### **Agenda Item 4      Presentation on the End of Life Option Act**

Dr. Grube gave a presentation on the End of Life Option Act (Act). His presentation included the goals of ABX2-15, the sources, the end of life care and the role licensees play. Dr. Grube explained the physician components and responsibilities, as well as a comparison between the California Act and Oregon's Death with Dignity Act.

Dr. GnanaDev thanked Dr. Grube for his presentation and then asked if a poll had ever been taken to see what percentage of physicians would be willing to participate in this option.

Dr. Grube stated there had been many polls taken on similar subjects, but in Oregon, none have been done on this particular subject matter.

Dr. GnanaDev also asked if Dr. Grube had heard of any incidents where someone else used the drugs rather than the patient.

Dr. Grube responded that the drugs that are used are not opioid-type drugs, so they had not had an issue with that.

Ms. Wright asked how one would reconcile the ethical duty that the physician has as to ensure that the patient is truly terminal with no chance of survival, when there is a possibility they may actually survive.

Dr. Grube stated there is no way for a physician to say exactly how long a patient will live, and these patients are very, very sick. In addition, they most often have three physicians involved in the decision. Sadly, often times, the physician tends to over predict how long a patient has to live. He noted that if a physician has any doubt whatsoever about a patient's severity, a prescription should not be written.

Mr. Warmoth thanked Dr. Grube for coming and giving this very helpful presentation. He then asked if Dr. Grube knew of any mistakes in the California or Oregon law that the Board should watch for and be aware of.

Dr. Grube stated his response to the question was a personal response, not one of the Oregon Medical Board. He stated he felt that the inability of citizens of Oregon to access this law in some areas needed to be reviewed. There are some patients that are suffering terribly but the areas they live in have no sources to assist them with this law, which means they would have to travel to a different town to find a source to assist them, which is often difficult.

Dr. Krauss asked if Dr. Grube had seen any unexpected issues in any of the states where this Act was practiced.

Dr. Grube stated there were six in Oregon over the past 18 years, many years ago. He stated there were six individuals who had taken the fatal medication, but did not die. Each of the cases were looked at to discover what happened. Dr. Grube stated, for example one person had taken the fatal medication incorrectly; in another case, it was taken with a dairy product; and another person had taken it while taking a high dose of laxatives. He noted that in Oregon, there had not been any other issues, such as coercion, misuse of the medication, etc.

Dr. Lewis stated there were two hospitals in Palm Springs. One of those hospitals has informed staff they will not permit anyone on staff to participate in such a program. He noted he is having trouble understanding why someone might feel that way.

Dr. Grube stated he felt that many physicians think about themselves over what a patient's needs are. He had seen that same reaction in several of the medical facilities in Oregon where they had been against the program, but they now hold a neutral stance. Dr. Grube felt that more physicians are seeing that seriously ill patients get to the point where they have no dignity left and intolerable suffering, so they are starting to understand better.

Dr. GnanaDev stated that The California Hospital Association (CHA) is advising its members to not participate in the program, however, he felt it is because California is one state where physicians cannot be directly employed by the hospitals, unless they are a public entity like a federal, state or county hospital. He noted that hospitals cannot participate in the program, but physicians in independent practice can.

Dr. Grube mentioned that Compassion and Choices has a platform called Doc to Doc, where a physician in California can call a 1-800 number and ask questions about the Act.

Dr. Grube's full presentation can be viewed on the Board's website under July 2016 Board Meeting, Agenda Item 4.

### **Agenda Item 5      President's Report, including notable accomplishments and priorities**

Dr. GnanaDev noted that Mr. Serrano Sewell was unable to attend the meeting due to a longstanding commitment, so he would be providing the President's Report. He noted that since Mr. Serrano Sewell could not be attend the meeting, Mr. Serrano Sewell provided a written report that could be found on pages BRD 5-1 and 5-2. Dr. GnanaDev noted that some of the highlights of Mr. Serrano Sewell's report included a few of the Board's accomplishments over the past two years, including the Board's Legislative Day, which he stated, he had the privilege of being a part of. He stated that on May 11, 2016, he and seven other Board Members visited with a variety of Legislators to educate them on the Board and its roles and functions. Several of them agreed to provide outreach about the Board to constituents via their social media and websites. Dr. GnanaDev thanked the Members for their participation.

Dr. GnanaDev noted that Mr. Serrano Sewell also talked about his three top priorities in his report, which included interim suspension orders, a physician health program, and public outreach.

Finally, Mr. Serrano Sewell discussed the Patient Notification Task Force and how the Board will move forward on the issue of patient notification of physician's on probation. He noted that Ms. Kirchmeyer would provide more information during her report and that it is also in her written report.

Mr. Serrano Sewell stated the Board takes this issue very seriously and that the Board will take up different issues and ideas that have come from the task force in the appropriate standing committee.

Regarding Board committees, Mr. Serrano Sewell stated in his report that he felt it would be prudent to await the election of new officers prior to assigning members to any of the committees. He noted the new Board president would work with Ms. Kirchmeyer to review committees that needed appointments and would make assignments within the next month. If any member was interested in a certain committee or in changing committees, he told them to let Ms. Kirchmeyer know.

Dr. GnanaDev then stated that over the last quarter, he and Mr. Serrano Sewell had had several calls with Board staff to discuss issues and projects at the Board as well as the Board's agenda.

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

There were no Board member communications with interested parties reported.

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

Ms. Kirchmeyer stated she would not be going over the reports in detail unless members had any questions, but would bring a few items to their attention. She referred the members to pages BRD 7A-5 in their packets, which was the Governor's budget that passed in June and included the Board's budget for FY 16/17. She noted on page BRD 7A-6, the Board's fund condition indicated the Board's fund reserve was projected to be at 3.6 months at the end of the fiscal year and below the mandate in FY 17/18. She noted the Board had not received month 13 reports, so the budget had not been finalized for FY 15/16. She stated once those reports are completed, they will identify where the Board's fund reserve is at the end of the fiscal year. She stated she was happy to report the Board's Budget Change Proposals (BCPs) to hire additional staff in the Central Complaint Unit (CCU) and to increase the Board's expert reviewer funding had been approved in the Governor's budget. Ms. Kirchmeyer then noted the fund condition shown on page BRD 7A-6 identified the additional BCPs that were approved and showed a loan repayment of \$6 million dollars in the next fiscal year.

Ms. Kirchmeyer then noted pages BRD 7A-18 and 7A-19 provided an update from the executive officer of the Board of Pharmacy. Ms. Kirchmeyer stated she had recently given a Medical Board update at the Board of Pharmacy meeting and that they would continue their collaborative efforts and continue to update each other's boards.

Ms. Kirchmeyer referred the Members to pages 7B-8 to 7B-17, where they could locate the finalized enforcement reports, and the updated vertical enforcement (VE) reports. She noted these reports would now be included in each of the enforcement report updates at each quarterly Board meeting. She noted that staff tried to use the same data markers for the reports from the Board's old database system to the BreEZe system. However, she noted her concern that the report is not pulling the same data markers, which was why there was a jump on the report on page 7B-8 in the packets. She felt that was one of the reasons for the increased time frames, but also noted that there was also an increased number of complaints, as well, since the transition to the new system. Ms. Kirchmeyer stated the reports are gathering the information they want to show and that is the time in the CCU, from the time a complaint is received to the time it is closed. She noted the difference between the data on page 7B-9 versus the data on 7B-10 and 7B-11 is due to the fact that staff now wants to measure the investigation process time frame separately for sworn staff through the Health Quality Investigation Unit (HQIU) versus the time frames for the non-sworn staff at the Board. Ms. Kirchmeyer stated the report also shows the length of time it takes to file an accusation. She noted that this report is not comparing the same data pre and post BreEZe because staff could now look at cases that are truly AG referrals for accusation, where before BreEZe, staff would also look at cases that went for a public letter of reprimand (PLR) to the Board for processing. These reports truly show just AG timeframes.

Ms. Kirchmeyer noted on the licensing side, the Board issued 222 more licenses this fiscal year, than in the prior fiscal year. In addition, the Board received 913 more applications in the same time frame.

Ms. Kirchmeyer stated the Board had made a major push at the end to get individuals registered for CURES. Staff had sent weekly emails to physicians who had not registered and even had a countdown clock on the Board's website. She noted that staff had received a significant number of calls the last two weeks leading up to the deadline. Staff assisted where they could and contacted DOJ directly in order to assist those they were unable to help. Ms. Kirchmeyer stated that as of Monday, July 25, 2016, there were 71,491 individual physicians registered in the CURES 2.0 system. In addition, there are approximately 32,000 prescribers and dispensers who were in CURES 1.0, but had not yet updated their systems to the newest 2.0 system. Ms. Kirchmeyer noted these numbers showed the outreach by the Board and other interested parties truly had an impact on registrants. She thanked the California Medical Association (CMA) for their extra push in these last days to get individuals registered. Ms. Kirchmeyer stated she was currently working with the DOJ to identify those who have a DEA to prescribe, but were not yet registered. She noted, once those individuals were identified, an email and possibly a post card would be sent to them informing them of the need to register into the CURES 2.0 system. She stated the Board had also included a CURES FAQ section in the most recent Newsletter, based on many of the calls that had been received by staff. Ms. Kirchmeyer added that from June 25, 2016 – July 25, 2016, there were over 161,400 patient activity reports requested from the CURES system. She stated this number showed that registration into CURES had made a huge impact on the physicians who have been using it.



Ms. Kirchmeyer stated that, as reported at the last Board Meeting, she had been working with the University California, Davis (UCD) and the DOJ to send a survey regarding the CURES 2.0 system to all physicians whose licenses expired in November, 2016. The survey would be attached to the November renewal notice being sent out in August. She stated the survey will be asking how the CURES 2.0 system is working and any problems they are experiencing, as well as any suggestions for improvement. She reminded the Board this survey is part of a study on opioids and grant work being done by the California Department of Public Health (CDPH) and the DOJ.

Ms. Kirchmeyer then referred the Members to pages BRD 7E-1 – 7E-15, which included not only an update from the executive director of the Health Professions Education Foundation, but also the Stephen M. Thompson Loan Repayment Program Annual report.

Ms. Kirchmeyer stated in regard to the update on the issue of prescribing psychotropic medication for foster children, the Board had received additional information from DHCS and DSS on June 13, 2016. She stated the additional information received was not exactly what the Board had requested based upon the expert's review and request, but it was the only information that was able to be provided from the two systems. She stated that additional information had been provided to the Board's expert pediatric psychiatrist and hoped to have a response from that expert in August. Staff is hopeful that the additional information provided will allow the expert to identify if there are any physicians who are inappropriately prescribing, so the Board can continue through the enforcement process and obtain medical records. Ms. Kirchmeyer again encouraged those physicians who are working within the system to contact the Board right away if they see someone who is inappropriately prescribing to foster children. She noted that Ms. Delp was scheduled to do a 15-minute presentation at the next Quality Improvement Project meeting on the Board's enforcement process and how to make a complaint. Board staff have established a shortened version of a complaint to where someone working within the system can contact Ms. Delp or Ms. Romero directly to file a complaint rather than the standard process with all of the documentation. This process was established to encourage those working within the system to file a complaint when appropriate.

Ms. Kirchmeyer stated that as of that morning, the ability to subscribe to a change in a licensee's primary license status was activated. This means an individual can go into the BreZE system and sign up to receive notification when a licensee's primary status changes. This was a subject of discussion at the Patient Notification Task Force meetings.

As for the Federation of State Medical Board (FSMB) update, Ms. Kirchmeyer noted that the Board's FSMB representative had changed to Dr. Steingard, who is from the Arizona Osteopathic Medical Board and will be the Board's new liaison.

Ms. Kirchmeyer then referred the members to pages 7A-3 and 7A-4 regarding the Patient Notification Task Force. She noted that after discussions with the board president and vice president, it was determined that the issues from the task force would be pursued under the appropriate standing committee. She stated the information regarding these issues are listed on the two pages. She noted the outreach and website changes will be pursued within the Public Outreach, Education, and Wellness Committee. The signage and changes in legislation to allow the Board to require more information on the sign a physician must post will be pursued through the Board's sunset report. She then stated the possible change to the disciplinary guidelines to have an optional condition that would require a physician to notify their patients that they are on

probation will be studied under the Board's Enforcement Committee. She noted that while the change to add this condition could be done through the standard regulatory process, the mechanics of how that notification would occur is something that needs to be looked into and fully discussed with all interested parties.

Ms. Clavreul stated she feels that many physicians do not know how to use CURES.

**Agenda Item 8      Discussion on Collaboration with the Osteopathic Medical Board of California, Board of Registered Nursing, Board of Pharmacy and Physician Assistant Board.**

Ms. Kirchmeyer noted that at the last Board meeting, a member requested that Board staff look into meeting with the Board of Registered Nursing (BRN) and the Board of Pharmacy (BOP) on issues of mutual concern. She stated this collaboration is very similar to what is occurring at the national level, where they are looking at successful team building, new practice models and communication ethics. Ms. Kirchmeyer stated she felt that not only should the Board collaborate with the BRN and the BOP, but also with the Osteopathic Medical Board and the Physician Assistant Board. She stated this would be a great opportunity to bring the boards together to work on issues that impact each one of the boards. Ms. Kirchmeyer stated she had already contacted the executive officers of each of the boards and they are excited to meet. She was in the process of setting up a meeting for some time in August. She noted that some of the issues up for discussion are collaborative care, telemedicine, CURES usage and the opioid epidemic. Ms. Kirchmeyer stated once these boards get the communication amongst themselves started, she thought it would be a good idea for a couple of members from each of the boards to meet. She felt some outcomes of these meetings could be education on certain issues and the united front on such issues as opioid misuse and abuse. She stated that once the initial meeting takes place, she would provide the members with an update. She stated this is an exciting opportunity and noted the director of the Department of Consumer Affairs had also offered to attend and assist in any way necessary to move this collaboration forward. Ms. Kirchmeyer noted that working together would also enhance consumer protection.

Ms. Clavreul stated she would like to be kept informed of the team approach and would like to be part of the public participation, if appropriate.

**Agenda Item 9      Update on the Sunset Review Process**

Ms. Kirchmeyer noted that on July 8, 2016, the Board received the sunset report questionnaire, which could be found on pages BRD 9-1 through 9-15. She noted that per a memo from the legislature, this process allows the legislature to review the laws and regulations pertaining to the Board and evaluate its programs and policies and to also determine if the Board operates and enforces its regulatory responsibilities and is carrying out its statutory duties. The memo stated this process also ensures the fiscal management practices and financial relations with other agencies are being met. It stated that boards are also evaluated on key performance measures and targets related to the timeliness of enforcement actions and other necessary efforts to serve the needs of California consumers while promoting regulatory efficiency and effectiveness. Ms. Kirchmeyer stated the report form must be completed by December 1, 2016. She stated the first part of the report will provide an overview of the Board's current regulatory program and the latter sections focus on responses by the Board to particular issues raised by the Board or issues raised during the sunset oversight review. The report serves as a basis for the background paper

legislative staff will prepare. She stated the Board was informed that the Senate Business and Professions Committee will announce the dates for sunset oversight review hearings in early 2017. Board staff has put together a matrix identifying who is responsible within the staff for the questions within the report and their due dates. Ms. Kirchmeyer stated Ms. Robinson will lead the drafting and compiling of all of the information in order to complete the document.

Ms. Kirchmeyer stated she would be working with the Board president to identify a two-member task force to assist staff with the completion of the sunset review report. She hoped to present a draft report at the October Board meeting. However, it may be necessary to hold an interim teleconference meeting in November to finalize the report, due to the lateness of the report and the later due date. She noted that since many of the questions from the 2012 sunset report just need updated information added, this interim meeting may not be necessary. She wanted to provide the members plenty of time to review the report and provide comments.

Ms. Moss recommended the Board raise the following issues with the legislators in the sunset review report: improvements to patient safety in outpatient surgery settings (OSS); outreach by the Board related to physician discipline needs to be changed; changes to the Board's statute of limitations laws and increasing reports of actions taken by hospitals and clinics in the Business and Professions Code section 805:1 reporting. In addition, when the OSSs were removed from reporting to the Office of Statewide Health Planning and Development (OSHPD), data regarding procedures was eliminated. She recommended that the OSSs under the Board's jurisdiction report a standard and robust set of data to OSHPD. OSSs are required by law to report adverse events to the Board and the law authorizes the Board to fine physicians who fail to report these events in a timely manner. Ms. Moss recommended the Board post the adverse event reports that are received from OSSs, along with any fines assessed, on the Board's website. Ms. Moss requested that on the revised signs for physicians' offices, the Board add notification of who the Board is and how they can be reached, as not many people know that this Board is the governing body.

**Agenda Item 10      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 announced a change in the DCA's executive team. She noted that in late June, Governor Brown appointed Jeffrey Mason as DCA's new chief deputy director. Mr. Mason had been with DCA since 2013 serving as Chief of the Bureau of Security and Investigative Services and most recently he served as Deputy Commissioner for the Bureau of Real Estate.

Ms. Lally added that in May, Governor Brown appointed a new Deputy of Legislation, Mr. Adam Quinonez, who previously served as Deputy Director of Legislation for DCA. She noted that DCA is excited to have them both on board in their new positions.

Ms. Lally stated the SOLID training and planning solutions unit is specifically dedicated to the DCA's organizational development and offers a wide array of services to all of DCA's boards and bureaus. SOLID recently held their second brown bag gathering on July 20, 2016. She noted these meetings provide an opportunity to strengthen networking among the DCA's executives as well as time to discuss crosscutting issues and receive peer input on challenges

facing the workplace. She noted these meetings also provide DCA with feedback on other leadership activities they can provide their executives. Ms. Lally stated at the last brown bag gathering, they announced a new program, titled, Future Leadership Development Program. They believe it is critical to enhance the skills of the next generation of executives at DCA. She noted this program has three components: the first being specialized training, the second being mentoring opportunities from the executive team as well as other executive officers, and a group project to assist boards and bureaus in addressing common challenges. The group project gives staff the ability to build new skills and knowledge as well as interact and collaborate with higher peers from other boards. Ms. Lally noted there would be a steering committee of executive officers that will assist the DCA with this new program. They look forward to implementing this program by the end of 2016.

Ms. Lally stated DCA had already launched the program titled “The Employee Career Empowerment and Mentorship Pilot.” The pilot mentors submit profiles that include short biographies, their availability for mentorship, and the topics they are willing to discuss. The SOLID team posted the profiles on the intranet and staff review the profiles and schedule meetings with the mentors. Ms. Lally stated in early 2017, SOLID would conduct an evaluation of the pilot program to look for possible improvements and to determine if it should be expanded. She stated there were currently eight DCA boards and programs participating in this pilot.

Ms. Lally then announced that SOLID had also launched a “lunch and learn” class series. This is a new component of the DCA Connect training series to encourage staff within various classifications to engage one another in interesting topics. These sessions are held once a month during one hour lunch breaks. She noted that in a roundtable setting, DCA employees learn from one another through active listening, effective communication and understanding another’s view point. Topics have included, “What Does Professionalism Mean to You,” and, “Change Your Perspective, Change Your Life.” Ms. Lally added the next lunch and learn is scheduled for August 2, 2016, and is titled, “Honoring Cultural Diversity.”

Ms. Lally stated that SOLID was also assisting Director Kidane and staff on DCA’s new strategic plan that will cover the years 2017 through 2019. She announced that they would be soliciting input from stakeholders, board members, executive officers and all employees of the DCA to help identify DCA’s goals for the next two years. Ms. Lally stated an electronic survey would be sent out to all in late August, and she would appreciate everyone’s feedback to assist in improving DCA’s services and oversight.

Ms. Lally stated the Board continued to see a high volume of online applications submitted in May and June 2016, where the Board received over 8,886 applications online. For applications requiring payment, this represents approximately 58% of the total Board application volume for that period. She added that renewals continue to make up a majority of the Board’s applications received online. In May and June 2016, there were 8,251 renewals received online and 98% of those renewals were renewed the same day, which she stated showed incredible efficiency. Ms. Lally noted that as of that week, DCA had processed over \$208 million dollars via the BreZE online system since the Board went live in October of 2013. She added since the Board went live, it had processed over \$1 million dollars via the BreZE system.

In regard to BreZE maintenance, Ms. Lally stated for calendar year 2015, there was an average of 73 fixes that were deployed in the BreZE scheduled maintenance releases and since the

launch of release two of the system in January 2016, there have been an average of 167 fixes deployed in each scheduled maintenance release. She noted that scheduled maintenance releases occur every 6-7 weeks for the boards and bureaus and 161 changes occurred just recently. The next scheduled maintenance release will happen in September 2016.

Ms. Lally gave an update on the BreZE license lookup survey. She noted DCA is currently conducting a survey to collect public feedback on the “verify a license” feature that is available on the BreZE page. She requested that Board members share this feature with stakeholders and encourage them to participate to assist DCA in potential needed updates to the feature. The survey began on July 1 and is scheduled to end on August 31. Currently, DCA had received over 5,000 responses to the survey. The responses received so far have been very positive and are providing constructive criticism.

### **Agenda Item 11      Update, Discussion and Possible Action on Recommendations from the Enforcement Committee**

Dr. Yip stated at the Enforcement Committee Meeting, Ms. Delp provided an enforcement update stating that training with the Office of Administrative Hearings (OAH) will be held in September, October and November 2016, regarding emergency room procedures, co-morbid patients and fitness for duty violations. At the conclusion of the training, Board staff will have provided six training sessions to the administrative law judges. Ms. Delp reported that the Central Complaint Unit (CCU) has decreased the average number of days to process complaints from 162 days to 146 days and management continues to identify ways to streamline the complaint process. Dr. Yip noted that Ms. Delp also reported that the Enforcement Program currently has six vacancies and plans to hire new staff are ongoing. Vacancies should be filled by September 30, 2016.

Dr. Yip added that Ms. Robinson gave an update on the Demographic Study reporting that she and Ms. Kirchmeyer met with the California Research Bureau (CRB), who is conducting the study. The CRB stated they should be ready to present findings of the study at the October Board meeting, and that Dr. Krauss had been actively involved in the process. Dr. Yip noted that Ms. Delp also gave a presentation on the Expert Reviewer Program’s Recruitment Plan to recruit more experts. The plan included a 3-stage plan that includes updating the Board’s website and newsletter as well as creating a recruitment brochure and public service announcement to entice more physicians to participate in the program. Dr. Yip noted that Ms. Delp announced two expert reviewer trainings are scheduled, one on October 8, at UC San Francisco, and another on November 5, 2016, at UCLA.

Dr. Yip reported that Ms. Castro from the Attorney General’s, Health Quality Enforcement (HQE) Section gave an update on the VE process, and the committee was pleased to hear that her staff works tirelessly, and with passion.

Dr. Yip noted that Mr. Chriss and Ms. Nicholls from the HQIU provided an update on what efforts are being made to hire more sworn investigators. They are in the process of hiring non-sworn investigators and investigator assistants to handle the less complex cases. He noted the Board of Psychology and Osteopathic Board cases will be investigated by the staff in the Investigation and Enforcement Unit on a temporary basis until additional staff is hired.

Dr. Yip continued stating Ms. Delp and Ms. Houston gave a thorough presentation on the actions the probation staff takes when a probationer violates a condition of his or her probation and the time frames that staff has to act on those violations.

Dr. Yip stated Committee members requested a presentation on quality indicators and quality assurance efforts and how to improve the process.

Ms. Wright requested the Enforcement Committee ask staff to look into the comments made in regard to physicians receiving kickbacks for vaccinations, and also requested that someone from Senator Pan's office come and speak on some of the issues that were heard from the public at the meeting in regard to SB 277.

Ms. Moss stated she had spoken earlier at the Enforcement Committee in regard to the Board amending the guidelines to require physicians on probation for serious issues to inform their patients of their probationary status. She recommended that the patient notification requirement include physicians who are ordered on probation more than one time. She also recommended that the Board demonstrate its commitment to public safety by amending its disciplinary guidelines to require, as a standard condition, a physician whose probation is associated with a certain serious violation and practice restrictions be required to disclose their probationary and practice restrictions to their patients. She felt the Board should amend the current disciplinary guidelines to make patient notification an optional condition in all probation cases. An effective process should be developed to ensure the enforcement of the disclosure of this requirement.

#### **Agenda Item 12      Update from the Attorney General's Office**

Ms. Castro announced the San Francisco office has a new deputy attorney general (DAG), Mr. Keith Shaw comes from the Sonoma County District Attorney's Office.

Ms. Castro stated she continues to meet with Ms. Delp and Ms. Kirchmeyer regularly to discuss possible improvements in all of the processes. She stated she and her staff were there to assist in any way they can with the Sunset Review Report as it pertains to their role in the Board's enforcement and licensing functions.

Ms. Castro noted that SB 467 had been enacted into law in B&P code section 312.2 and would require the AG's office to file annual reports with the legislature regarding their performance metrics. She noted the metrics that will be measured include subsequent averages for important milestones in the life of the administrative cases they work. She noted they welcome the transparency and accountability and the report will apply to every DCA client and agency, commission, board and also apply to the licensing section in their office. Ms. Castro noted the first report will be filed in January 2017 for statistics related to FY 15/16. With the enactment of SB 467, the AG's office joined with the OAH in their mutually beneficial responsibilities in the process of consumer protection.

#### **Agenda Item 13      Update on the Physician Assistant Board**

Dr. Bishop noted that recently Governor Brown appointed Jennifer Carlquist to the Physician Assistant Board (PAB). He added Ms. Carlquist had been an emergency room physician assistant (PA) at the Community Hospital of the Monterey Peninsula since 2013 and at other locations since 2009.

Dr. Bishop stated the online version of the PA application for licensure had been added to BreZE on June 17, 2016. He noted the new licensing application had enhancements and features that would streamline the process for applicants.

In regard to CURES, Dr. Bishop noted that all practitioners had been required to register by July 1, 2016. In order to obtain that, the PAB had updated its website with a countdown calendar and also sent an email notification blast to all subscribers reminding them of the CURES registration deadline.

Dr. Bishop stated that the California End of Life Option Act (Act), had become effective June 9, 2016. The PAB has developed an information bulletin for PAs regarding the Act. The bulletin stated that specific requirements of the Act could only be performed by the patient's attending physician and not delegated to a PA. The bulletin had been posted to the PAB's website.

In regard to the rulemaking to repeal Title 16, California Code of Regulations (CCR) section 1399.531 and 1399.532, at the April 18, 2016 Board meeting, there was general consensus that the PAB may wish to examine repealing regulations addressing the *curriculum requirements for an approved program for primary care physician assistants* and *requirements for an approved program for the specialty training of physician assistants*.

The PAB currently delegates authority to the Accreditation Review Commission on Education for the Physician Assistants (ARCPA) to approve PA training programs. Dr. Bishop added post-graduate specialty PA training programs approved under section 1399.532 provided training to licensed PAs to enhance their current skills. The PAB does not issue an additional license to individuals who participate in specialty PA training programs.

Additionally, he noted, since post-graduate specialty PA training programs are training licensed PAs and those students are subject to the same requirements as licensees who had not participated in a post-graduate specialty program, the PAB believed that there was no need to continue to approve those types of programs. After discussion on this item, the PAB voted to repeal these sections.

In regard to another regulation, 16 CCR section 1399.540(b), *Delegation of Services Agreement, Electronic Signatures*, the PAB continued to discuss the now wide-spread practice of the use of electronic signatures in patient records and other documents utilized in the medical environment. The PAB recognized that electronic signatures allowed for the more efficient use of medical practitioners, thus improving patient care.

Dr. Bishop noted that at the PAB's April meeting, members voted to request that staff develop proposed amendments that would include the use of electronic signatures in the Delegations of Services Agreement for possible initiation of a rulemaking file to amend the regulation. Legal counsel reported that they continue to research the use of electronic signatures to assist in drafting amendments.

Dr. Bishop stated that though this seems like a simple process, it is actually very complicated, especially in emergency departments where a single PA might be supervised by more than one physician. It can become very complex to clearly identify who the responsible physician is.

Dr. Bishop noted at the Enforcement Committee meeting, there was a presentation by the Health Professions Education Foundation (HPEF) regarding scholarship and loan repayment programs offered to health care students and recent graduates, including PAs.

Dr. Bishop stated at a recent PAB meeting it was noted that the State of Georgia had recently passed legislation providing tax deductions for physicians who served as a community based faculty physician for a medical core clerkship provided by the community based faculty. In other words, physicians who served as a preceptor for the education of mid-level health care providers such as PAs. The PAB discussed the possible need for tax incentives for PA preceptors. This clinical instruction may come from other PAs or physicians who are not generally paid for their time, but may receive CME credit for being preceptors. Therefore, it is often difficult to find health care providers to be preceptors because they are not financially reimbursed. He noted to further explore this concept, the PAB would hold stakeholder meetings to determine if there was a need to seek legislation.

Dr. Bishop stated the next PAB meeting was scheduled for October 24, 2016.

#### **Agenda Item 14 Election of Officers**

Dr. GnanaDev asked for nominations for Board secretary. Dr. Krauss nominated Dr. Lewis. No other nominations were made. Dr. Lewis agreed to act as Secretary of the Board. ***Motion carried unanimously. (12-0)***

Dr. GnanaDev then asked for nominations for vice president. Dr. Krauss nominated Denise Pines. No other nominations were made. ***Motion carried unanimously. (12-0)***

Dr. GnanaDev then asked for nominations for president. Dr. Krauss nominated Dr. GnanaDev. No other nominations were made. Dr. GnanaDev agreed to act as President of the Board. ***Motion carried unanimously. (12-0)***

**Dr. GnanaDev adjourned the meeting at 5:35 p.m.**

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**Friday, July 29, 2016**

#### **Members Present:**

Dev GnanaDev, M.D., Vice 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.  
 Ronald Lewis, M.D.  
 Brenda Sutton-Wills, J.D.  
 David Warmoth  
 Felix Yip, M.D.

#### **Members Absent:**

Sharon Levine, M.D.  
 Denise Pines  
 David Serrano Sewell  
 Jamie Wright, J.D.



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**Staff Present:**

Liz Amaral, Deputy Director  
 Christina Delp, Chief of Enforcement  
 Dianne Dobbs, Legal Counsel, Department of Consumer Affairs  
 Susan Houston, Staff Services Manager II  
 Kimberly Kirchmeyer, Executive Director  
 James Nuovo, M.D., Medical Consultant  
 Regina Rao, Associate Government Program Analyst  
 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:**

Lorraine Amel, M.D., Dean of International Affairs, UNIBE  
 Teresa Anderson, California Academy of Physician Assistants  
 Eric Carlile, Kaiser Permanente  
 David Chriss, Chief, Division of Investigation, Department of Consumer Affairs  
 Long Do, California Medical Association  
 Karen Ehrlich, Licensed Midwife  
 Julie D'Angelo Fellmeth, Center for Public Interest Law  
 Louis Galiano, Videographer, Department of Consumer Affairs  
 Fred Gardner, O'Shaughnessy's Journal of Cannabis in Clinical Practice  
 Bridgette Gramme, Center for Public Interest Law  
 Faith Gibson, Licensed Midwife, California College of Midwives  
 Christina Hildebrand, A Voice for Choice Advocacy  
 Craig Leader, Investigator, Health Quality Investigation Unit  
 Carole Moss, Consumers Union Safe Patient Project  
 Ty Moss, Consumers Union Safe Patient Project  
 Marcos Nunez, M.D., Dean, UNIBE  
 Christine Lally, Deputy Director of Board and Bureau Relations, Department of Consumer Affairs  
 Catherine Nation, M.D., University of California, Office of the President  
 Kathleen Nicholls, Deputy Chief, Health Quality Investigation Unit  
 Stephen S. Robinson, M.D., Society of Cannabis Clinician  
 Mark Scarlett, Supervising Investigator, Health Quality Investigation Unit  
 Carrie Sparrevohn, Licensed Midwife, Midwifery Advisory Counsel  
 Jane Zack Simon, Supervising Deputy Attorney General, Attorney General's Office

**Agenda Item 15      Call to Order/Roll Call**

Dr. GnanaDev called the meeting of the Medical Board of California (Board) to order on July 29, 2016 at 9:04 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**

Ms. Hildebrand stated she was concerned about a medical exemption pilot program that had been introduced by the Santa Barbara County public health director, which was also being copied by both Sacramento and Marin counties. She noted the program consisted of them collecting all of the medical exemptions from all of the schools and reviewing them. She stated there had been a teleconference on May 13, 2016, which the Board staff attended, to identify suspicious medical exemptions and how to report those suspicious physicians. She added that her concern was in Governor Brown's signing statement, he specifically stated that it was at the discretion of the physician to give vaccination exemptions. She asked the Board to put a stop to those who are seeking out the physicians who are giving exemptions and realize there is a logical, legitimate reason for them to give those exemptions.

**Agenda Item 17      Regulations – Public Hearing – Consideration and Possible Action on Proposed Regulations: Midwife Assistants**

Dr. GnanaDev stated this was the time and place set by the Board to conduct a public hearing on proposed regulations to implement, interpret, or make specific section 2516.5 of the Business and Professions (B&P) Code related to midwife assistants. The Board was considering changes to Division 13 of Title 16 of the 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.

The Legislature adopted B&P Code section 2516.5 to permit licensed midwives and certified nurse-midwives to use midwife assistants in their practices. Section 2516.5 sets forth some minimum requirements for midwife assistants, references standards for medical assistants established by the Board pursuant to B&P Code section 2069, and indicates that the "midwife assistant shall be issued a certificate by the training institution or instructor indicating satisfactory completion of the required training." The section, however, did not specify such details as what the training entails, who could conduct the training, and who could certify that a midwife assistant meets the minimum requirements. These details had been left to the Board to establish via regulations. Additionally, the section authorized midwife assistants to "perform additional midwife technical support services under regulations and standards established by the Board."

Dr. GnanaDev stated accordingly, the purpose of the proposed rulemaking was to further define B&P Code section 2516.5 to make specific the requirements for midwife assistants, the administration of training of midwife assistants, and the requirements for certifying organizations. These regulations were necessary for consumer protection to ensure that midwife assistants had the proper training and supervision.

He noted for the record, the current date was July 29, 2016, and the hearing was beginning at approximately 9:14 a.m.

Dr. GnanaDev asked that persons who wished to testify please fill out a speaker's slip, available at the table in the back of the room.

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 these six standards.

Dr. Gnanadev asked the Board's Staff Counsel, Kerrie Webb, to offer opening comments.

Ms. Webb noted the Board had not received any comments on the proposed regulations, however, she did have one small non-substantive change, which was under section 1379.04 related to training in infection control. She recommended that the Center for Disease Control (CDC) Guidelines for Infection Control in Healthcare Personnel be identified as from 1998 and be incorporated by reference, so that the document being referenced is clarified.

Dr. GnanaDev then called on Ms. Sparrevohn who completed a request to testify concerning this proposed regulation.

Ms. Sparrevohn waived her request to speak.

Dr. GnanaDev stated that since no one else wished to speak, the hearing concerning midwife assistants was closed at 9:19 a.m.

*Dr. Lewis made a motion to adopt the language with the proposed amendment to clarify the guidelines from the CDC and authorize staff to make any non-substantive changes that are needed to complete the rulemaking file for submission to the Office of Administrative Law (OAL) for formal adoption; s/Dr. Krauss. Motion carried unanimously. (11-0.)*

## **Agenda Item 18      Presentation on Medical School Curriculum and Changes**

Dr. Nation provided a high level overview on medical education for the State of California. She began by noting that California has a relatively small medical education system when compared to its population and geography, and that per capita, California has a statewide medical school enrollment that is the third lowest in the nation. She added there were approximately 7,000 students enrolled in the state's 12 medical schools. Dr. Nation stated there are three additional entities scheduled to open medical schools in California within the next three to four years.

Dr. Nation noted the Accreditation Council for Graduate Medical Education (ACGME) is responsible for the accreditation of GME programs throughout the U.S. There are 27 ACGME accredited specialty programs that lead to initial board eligibility and certification, and that roughly 100 accredited subspecialty programs are recognized by the ACGME.

Dr. Nation stated that California has 878 ACGME accredited residency training programs. She added 375 of them are specialty programs and have 8,800 residents, and the remaining 503 of them are subspecialty programs and have 2,100 fellows. She stated these programs are run by 84 different sponsored institutions, such as Kaiser Permanente, University of California (UC), and private medical schools and centers, and Children's Hospitals and community-based programs.

Dr. Nation also discussed challenges for GME, such as fiscal, workforce, access to GME training and resident well-being. She also talked about some recently established medical education initiatives, such as innovative educational tracks that supplement core curriculum,

new global health and clinical research academic tracks, and new curriculum integrating the student into a healthcare team emphasizing team-based training to address health disparities.

Dr. Nation's full presentation can be viewed on the Board's website under the July 2016 Board Meeting, Agenda Item 18.

Dr. GnanaDev thanked Dr. Nation for her presentation. He stated his concern was that the last UC school was created back in 1967, so it took 45 years to create another UC school. He added there are still only 36% primary care physicians at UC schools and in many community hospitals, like San Bernardino, they are 40% over the cap. Dr. GnanaDev asked if by doing so are the programs losing talent because students end up in medical schools or training programs all over the world. He stated in Chicago and New York about 30% of those students are California students. He further asked what the UC system will do to increase medical school and postgraduate positions to take care of the California population.

Dr. Nation stated there is not a simple answer for this question. She stated the practical reality is that California has had a very long reliance on migration and it had been a strategy at a state level to save resources. She added that the state relied on students returning for their families and communities. She stated that there were devastating budget cuts and the professional degree programs were disproportionately cut. Not just health professions, but business, law, etc. She stated the UC had a plan to grow the enrollment within the existing schools. The UC's first effort was to call for enrollment growth through PRIME, by adding about a 10% increase as a strategy for expanding access. She added about one-third of the 350 PRIME slots receive support. The other two-thirds were not funded. Rather than close those programs, the UC got into state funded enrollments, different strategies by different campuses. She said that now that they have moved forward with Riverside, they will look at the central valley. She said they have PRIME enrolled and UC Riverside started, but not at the pace or the size they would have wished.

### **Agenda Item 19      Discussion and Possible Action on Legislation/Regulations**

Ms. Simoes referred the members to their legislative packets and the tracker list. She noted on the tracker list, the bills in blue were bills the Board had already taken positions on and even if the bill had been amended, the amendments would not affect the Board's position. She stated these bills would not need to be discussed at this time. The bills in pink were the Board's sponsored bills, and the bills in green would require discussion and a position.

Before moving on to the tracker bills, Ms. Simoes mentioned some bills that had died since the last meeting. AB 2507 (Gordon), the telehealth access bill, died on the Assembly Appropriations suspense file. The two scope bills, SB 323 (Hernandez) related to nurse practitioners, and SB 622 (Hernandez) related to optometrists, both died in the Assembly B&P Committee. SB 1033 (Hill), regarding patient notification for physicians on probation, died on the Senate Floor.

**AB 2745 (Hill)** Ms. Simoes began with the Board's sponsored clean-up bill. She noted that this was the bill that would make clarifying changes to existing law to assist the Board in its licensing and enforcement functions. She noted this bill was moving along with no opposition and would be heard in Senate Appropriations the following week and would probably be put on consent, so it was moving forward.

**SB 1039 (Hill )** Ms. Simoes stated this was the bill that included provisions to clarify that the Board of Podiatric Medicine (BPM) is its own board and is completely separate from the Board. Ms. Simoes stated the BPM revisions had been removed from the bill, but per Senator Hill, this issue would be addressed in the Board's Sunset Review.

**SB 1478 (Sen. B&P Comm.)** Ms. Simoes stated this bill was the health omnibus bill that would delete outdated sections of the B&P Code that were related to the Board and that it is moving forward with no opposition.

**AB 1244 (Gray).** Ms. Simoes stated this was a new bill for the Board and would specify the circumstances in which a medical provider must be suspended from participating in the workers' compensation system. Upon suspension, the administrative director (AD) of the Division of Workers' Compensation (DWC) must notify the relevant licensing, certification, or registration board, including the Medical Board. She noted this bill would also require the director of Department of Health Care Services (DHCS) to notify the AD of the DWC if a medical provider is suspended from the Medi-Cal program. She noted that this notification from DHCS was already required to be provided to the Medical Board.

Ms. Simoes noted the bill would create a suspension process for medical providers who commit serious crimes or are involved in fraudulent activity that was modeled after the suspension process for Medi-Cal, including requiring notification to the appropriate licensing board. She stated this bill would ensure that the Board is notified when a physician is suspended by the DWC, which would help to ensure consumer protection. The bill would also provide for communication between the DWC and DHCS, which would also help to protect consumers.

*Dr. Lewis made a motion to support this bill; s/Dr. Krauss. Motion carried (9-0-2 Bholat and Lawson).*

**AB 1306 (Burke)** – Ms. Simoes noted this bill would subject certified nurse-midwives (CNMs) to the anti-kickback and referral prohibitions in B&P Code section 650.01 and the exemptions in 650.02 and would add an exemption for a referral to a licensed alternative birth center or nationally accredited alternative birth center.

She added the bill would now require the BRN to create and appoint a Nurse-Midwifery Advisory Committee (Committee), similar to the Board's Midwifery Advisory Council (MAC), which would consist of CNMs in good standing with experience in hospital settings, alternative birth center settings, and home settings; a nurse-midwife educator, as specified; a consumer of midwifery care; and at least two qualified physicians, including an obstetrician that has experience working with nurse-midwives.

Ms. Simoes stated the bill would authorize a CNM to manage a full range of primary gynecological and obstetric care services for women from adolescence to beyond menopause. She noted these services include, but are not limited to: primary health care; gynecologic and family planning services; preconception care; care during pregnancy, childbirth, and postpartum period; immediate care of the newborn; and treatment of male partners for sexually transmitted infections, utilizing consultation, collaboration, or referral to appropriate levels of health care services.

She noted the bill specified the settings that a CNM can practice in without physician supervision. Most of those settings are the ones overseen by the CDPH.

Ms. Simoes noted the bill would allow a CNM to be employed in these settings; however the entity shall not interfere with, control, or otherwise direct the professional judgment of a CNM.

She added the bill would only allow a CNM to attend normal and low-risk pregnancy and childbirth in the home setting when certain conditions apply.

Ms. Simoes stated that if a potential CNM client meets all of the conditions, but has had a prior caesarean delivery, and the woman still desires to be a client of the CNM, the CNM shall provide the woman with a referral for an examination by a physician trained in obstetrics and gynecology. A CNM may assist the woman in pregnancy and childbirth only if an examination by a physician trained in obstetrics and gynecology is obtained and, based upon review of the client's medical file, the CNM determines that the risk factors presented by the woman's condition do not increase the woman's risk beyond that of a normal, low-risk pregnancy and birth. A CNM may continue care of the client during a reasonable interval between the referral and the initial appointment with the physician.

Ms. Simoes again stated the bill has been significantly amended and the amendments address the concerns previously raised by the Board. The bill now would require two physician members on the Committee, is very restricted on what types of patients a CNM can accept, and requires a physician examination for patients that have had a prior caesarean delivery. She added that although the CNM is allowed to make the determination regarding the risk factors for patients that have had a prior caesarean delivery, the CNM is still held to the standard of care and subject to discipline if that standard is not met. Although this bill does not include a ban on the corporate practice of medicine for CNMs, the type of settings where CNMs are allowed to work without physician supervision are limited, and for the most part they are licensed facilities overseen by the CDPH. She added that although this bill now includes parameters on independent CNM practice, this bill does expand the scope of a CNM to include primary health care as part of the gynecological and obstetric care services that a CNM can provide. Ms. Simoes noted if the reference to primary health care is removed, Board staff believes this bill has the necessary protections in place to ensure consumer protection.

Dr. Hawkins asked Ms. Simoes about scope of practice and what primary care involves.

Ms. Simoes stated it includes primary health care and does not define what primary health care involves, but before it was more related to CNM functions, and primary health care was not included. Staff had read it as there is a broader range of services than what a CNM could provide now.

***Dr. Lewis made a motion to oppose the bill unless amended with the clarification of primary care and including the corporate ban practice; s/Dr. Bholat.***

Ms. Kirchmeyer stated that in looking at the bill language, the only amendment staff feels strongly about is the primary health care addition. She stated that staff recommended taking a neutral if amended position, and only go neutral if they remove the primary health care notation out of the bill.

Dr. GnanaDev asked Ms. Simoes where in the bill is the corporate bar protected.

Ms. Simoes stated one of the things that had been mentioned to her is that licensed midwives do not have physician supervision, nor do they have the corporate ban on practice of medicine.

Ms. Sparrevohn stated she is not certain how the language around prior caesarean sections for a home birth serves anyone. It looked like it required the CNM to send the woman for a referral with a

physician, but then the CNM still determines whether or not that woman is eligible based on her risk factors for a VBAC, and with that it puts an additional burden on the woman to pay for and obtain the physician consultation. In addition it puts a burden on the physician when it is not his client and yet it would still ultimately be determined by the CNM as to whether or not this particular woman's risk factors are such that she could still safely attempt a vaginal birth at home. She stated the licensed midwife bill, AB 1308 did not specifically state that they had to get a physician consultation for a prior caesarean delivery. Ms. Sparrevohn stated she was really questioning the language in the CNM bill as to whether it would actually help anyone.

Ms. Kirchmeyer added that from the licensee population, the OB/GYN's, the reason they would want them to go to a physician is that at least then, they would have education as to the risks of VBAC, even though the CNM gets to make that final determination.

Dr. Bishop stated he agrees with Ms. Kirchmeyer and that also offers a second opinion from someone who has more training and education in that specific field.

***Motion carried. (10-1, Ms. Sutton-Wills)***

**SB 482 (Lara)** Ms. Simoes stated this bill would require a prescriber to access and 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 remains part of the patient's treatment. She added the bill would require a health care practitioner to obtain a patient's controlled substance history from the CURES database no earlier than 24 hours before the medication is prescribed, ordered, administered, furnished or dispensed. This bill would define "first time" to mean the initial occurrence in which a health care practitioner intends to prescribe, order, administer, furnish or dispense a controlled substance to a patient and has not previously prescribed a controlled substance to that patient.

Ms. Simoes stated the bill would specify that the requirement to consult the CURES database does not apply to a health care practitioner in certain circumstances as specified in the bill.

Ms. Simoes noted the bill would specify if CURES is not consulted by the health care practitioner because one of the exemptions applies, the practitioner shall document the reason he or she did not consult CURES in the patient's medical record.

She stated it would specify that if a health care practitioner knowingly fails to consult the CURES database, he or she shall be referred to the appropriate state professional licensing board solely for administrative sanctions, as deemed appropriate by that board.

She stated the bill would specify that is not operative until six months after DOJ certifies that the CURES database is ready for statewide use. DOJ would be required to notify the Secretary of State and the Office of Legislative Counsel of the date of that certification.

Ms. Simoes stated the Board believes CURES is a very important enforcement tool and an effective aid for physicians to use to prevent "doctor shopping." Requiring all prescribers to consult the CURES system will allow prescribers to make informed decisions about their patient's care. The bill would also ensure that the CURES system will have the capacity to handle this workload before the bill becomes operative.

Ms. Simoes noted, however, that the bill was amended and now includes one very broad exemption, which weakens the requirements in the bill. In addition, this bill would make it very hard for the Board to take any administrative action for physicians who do not comply with the requirements of this bill.

Dr. GnanaDev stated he felt the biggest problem with the opioid abuse and overdose issue is the chronic pain management. He noted that people should not have to put up with pain. It needs to be balanced. He noted concern with the two broad exemptions in the bill, knowingly and exceptional.

Dr. Bishop stated that those two words end up being the “dueling experts.” He stated he did not feel any legislation can anticipate every possible circumstance, so there has to be some sort of word to give some flexibilities. Yet it could allow someone to avoid discipline if the Board could not prove it. Dr. Bishop recommended leaving that determination to the executive director and/or the Board’s enforcement chief if those words would be detrimental when it comes to case processing time, or requiring many more expert analysis.

Ms. Kirchmeyer noted that her opinion as well as legal counsel’s opinions are that those words would cause a lot of problems with cases and they felt they should be clarified.

Dr. Bholat stated that there is no way to possibly know all of the circumstances, but to keep in mind that as busy primary care physicians, who would be seeing a lot of patients, they have to realize that the emergency room serves as the primary care homes for many people. She stated that in general, she supports the comments of her colleagues.

Dr. Krauss stated he would really like to see this bill pass during this legislative session, so he wished the Board could take a position of support, with suggested amendments. He added he thought it would be best to give Ms. Simoes some leeway to work with the authors to change the language without jeopardizing the passage of the bill.

***Dr. Lewis made a motion to support the bill with suggested amendments; s/Dr. Bholat.***

Mr. Do, CMA, stated their position on the bill is oppose unless amended. He noted there are other parts of the bill that they have issues with, however, the exemptions is not one of them. They felt the bill must avoid creating barriers to appropriate care for the many conditions treated by Schedules II, III, and IV drugs and felt the exemptions as drafted meet that balance. Mr. Do stated there are many regulations that can get in the way of appropriate medical care and the exemption of “exceptional circumstances” would cover the broad array of situations where a duty to consult could get in the way of necessary medical care. The Board staff suggestion was to delete the exceptional circumstances exemption, but that does not seem to coincide with the comments that staff has made, that there is some clarity needed over the words exceptional exemption. He felt those words could be teased out through the enforcement process and/or other means, so he felt it was not necessary to delete the entire exemption, especially when that exemption serves as a useful function as many of the Board members have recognized. Mr. Do suggested the Board reject any staff recommendation to suggest that that exemption be deleted.

Ms. Gibson stated that CURES is a web based program and that everyone knows what happens when the internet stops working or cell phone service does not work. She suggested maybe making the language more specific for example, if one cannot get on-line for more than 30 minutes.



Ms. Simoes stated that the Board would continue to be in support of the bill, and the author would not necessarily take all of the suggestions that the Board had however, she would continue to work with the author's office, but felt the word "exceptional" as discussed was pretty broad. She stated her plan was to work with the author to see what type of language can be used to make it easier for the Board to implement if they were to have to enforce it.

Ms. Clavreul stated many physicians do not know what the CURES system is and/or how to use it.

***Motion carried unanimously. (11-0)***

**SB 1174 (McGuire)** Ms. Simoes stated this is the bill related to prescribing psychotropic medications to foster children and the data being provided to the Board through the existing data usage agreement (DUA). She stated the last version of the bill had been more broad and that the information requested through the DUA would eventually be added. She noted that Dr. Levine had requested a sunset date be added to the bill to ensure the Board would not continue this information on an on-going basis if it was not useful to the Board. The amendment in the bill to address this request was that the Board could work with DSS and DHCS to revise the type of data needed, if necessary.

Judge Feinstein noted that she felt the way the bill was currently written, it was not going to produce any information that was going to be helpful in identifying physicians who either should not be prescribing psychotropic medication or who are abusing the right to prescribe it to children. She felt as if this was a county issue that had been put on the Board and the data being collected is not going to be of any assistance. Judge Feinstein said she felt it should have a sunset date of three years as she believed that nobody will be satisfied with the outcome of this data in the end. She felt the Board should take an oppose position unless there is a sunset added to the language, but she did agree with the need for this area to be looked at closer.

Ms. Sutton-Wills asked if the Board could ask for the report itself to have a sunset, rather than the whole bill.

Ms. Simoes stated she could certainly offer that option. The data report would be part of the Board's annual report to the Legislature. She also noted that the author wanted to make the sunset date of 20 years, as they state that it would take quite a bit of time to determine the importance of the data. Ms. Simoes stated that maybe a five year sunset would give staff time to see if any red flags are found and actually result in disciplinary actions.

Ms. Sutton-Wills also asked if the report would include the opportunity to address the effectiveness of the data.

Ms. Simoes noted the number of disciplinary actions would give the Board an idea of the effectiveness of the data, because the expert reviewer finds red flags in the data, the complaint process would begin and proceed accordingly from there.

Ms. Webb suggested the Board set a short sunset date, even with the understanding that it will take time to go through the court process to get medical records on foster care children. Staff does not even know if they will be able to identify practitioners that should be looked at more closely, based on the data being received. Ms. Webb stated that so far, the little bit of data that had been received was not helpful in the ways they had hoped. She added that the sunset date would not have to put an end to the whole process, but would at least give staff the opportunity to see if it had been successful.

Judge Feinstein stated she was not certain if when Ms. Simoes spoke of the court process, she was referring to the confidentiality of the needed records.

Ms. Simoes stated that staff had been told by DSS that because the foster parents are not the custodian of those medical records, staff would have to go through the court process to get those records.

Judge Feinstein stated that the department in each county should have those records, and wondered if perhaps an artificial obstacle is being created to getting the records. A legislative bill should authorize the release of medical records. The DSS should not be putting the burden elsewhere, because everyone that is in foster care is a dependent of a particular county.

Ms. Kirchmeyer stated that the Board had the de-identified patient information for the child, in the reports that staff received. Then, once the expert identifies that they believe a particular child is being inappropriately prescribed to, that is when staff would have to go back through the court process to obtain those medical records. Ms. Kirchmeyer added the Board does not have the authority, in any statute currently to be able to gather medical records. Staff would have to have patient authorization, or guardian approval to get any medical records in the state. According to DSS, the state, or perhaps the county that child is in, owns those medical records and staff would have to go through the court process to petition to obtain copies of them. She stated the Board should not oppose the bill since we are getting data. The bigger concern is that we do not want to receive data that will take a lot of staff time and then not be useful.

***Dr. Lewis made a motion for the Board to take a support position if amended to include a sunset date of 3-5 years; s/Dr. Hawkins. Motion carried unanimously. (10-0 Krauss absent)***

**SB 1177 (Galgiani)** Ms. Simoes stated the Board took a support position on this bill previously. This bill would authorize establishment of a physician health and wellness program (PHWP) within the Board. It would be administered by a third party administrative entity. Ms. Simoes stated this bill had been amended several times in hopes to make it stronger and more in compliance with the Uniform Standards to address the opposition's concerns.

Ms. Simoes noted that pursuant to the request of a Board member at the last meeting, a legal review of the provisions in the bill was completed regarding the bill's compliance with the Uniform Standards. It was found that a clarifying amendment may be needed in B&P Code Section 2340.6(c) to make it clear that confidentiality shall not apply if a physician is not in compliance with the conditions and procedures in the agreement. This technical amendment will ensure that the bill is in compliance with the Uniform Standards. Board staff can work with the author's office and committee staff to ensure this technical amendment is made.

Ms. Simoes stated this bill needs to have the following language added to 2340.6(c); any oral or written information reported to the Board shall remain confidential and shall not constitute a waiver of any existing evidentiary privileges under any provision or rule of law, however, confidentiality regarding the physician's and surgeon's participation in the program and related records, shall not apply if the Board has referred a participant as a condition of probation or if the physician or surgeon withdraws or is not in compliance with the conditions and procedures in the agreement.

***Dr. Lewis made a motion for the Board to keep their support position on SB 1177, with the understanding that Ms. Simoes would work with the author and sponsors to make the amendments discussed; s/Dr. Krauss.***

Mr. Do, CMA, stated that CMA is the sponsor of SB 1177 and appreciates the Board's support position as well as staff's recognition that the concerns that remain are technical in nature and are hopeful that they can address any of those concerns over any technical issues with the bill.

Ms. Gramme, CPIL, stated that several pieces of reform legislation had been enacted and mirrored many of CPIL's recommendations. She noted CPIL continues to oppose SB 1177, as they believe it is not necessary, and felt that a substance-abusing physician who is having problems and truly wants to be reformed is not going to seek assistance from the Board that could take their license away. She stated they really believe there are additional concerns and did not feel that SB 1177 complied with all elements of the Uniform Standards. She stated CPIL strongly urged the Board to take a closer look at the bill and oppose the bill unless it is amended appropriately.

***Motion carried. (7-0-4 Feinstein, Hawkins, Warmoth, Yip)***

**Agenda Item 19 B. – Federal Legislation – Enhancement of Use of Telehealth Services in the Military Health System.** Ms. Simoes referred the members to the handout under tab 19 in the Board packets. She stated the bill would, for the purposes of reimbursement, licensure, and professional liability, redefine the practice of medicine for providers serving veterans, as occurring at the location of the provider, rather than the location of the patient. She stated the Board has always believed that the practice of medicine occurs where the patient is located, rather than where the provider is located. This patient-centered model is the nationwide standard that ensures that state medical boards have the legal capacity and practical capability to regulate physicians treating patients within the borders of their state. She noted the Board had previously opposed similar legislation and had written letters to Congress expressing the Board's opposition.

Dr. GnanaDev stated the Board's belief had been where the patient is located is where the physician should be licensed. There should be no telehealth from a physician in another state as there is no consumer protection in that method.

***Dr. Krauss made a motion to approve staff to write letters expressing the Board's opposition and concerns regarding this federal legislation; s/Dr. Lewis. Motion carried unanimously. (11-0.)***

**Agenda Item 19 D. - Status of Regulatory Actions.** Ms. Simoes referred the Members to the matrix in the Board packet.

Dr. Krauss thanked Ms. Simoes for the excellent work that she has been doing on behalf of the Board. He added that she has been an exceptional voice representing the Board as well as the people of California.

**Agenda Item 20      Discussion and Possible Action on the Universidad Iberoamericana (UNIBE) Medical School Application for Recognition**

Mr. Worden stated that at the November 2015 Board meeting, the Board had approved staff to do a site visit to the UNIBE medical school. He noted the site team consisted of Dr. Lewis, Dr. Nuovo, Ms. Dobbs and himself. He referred the members to pages 20-1 through 20-14 to review the reports. Mr. Worden stated there were two representatives from the school, Dr. Marcos Nunez, Dean of the Medical School, and Dr. Lorraine Amel, Dean of International Affairs in the audience should the Board have any questions for them.

Dr. Nuovo, Associate Dean of Graduate Medical Education at UC Davis, and Board medical consultant stated site visits are a lot of work, not just for the site team, but for the school, as well. It requires the school to conduct intensive background work to get all of the documents together. It also entails organizing the right people for the site team to meet with during the visit. Dr. Nuovo thanked the site team and the school personnel for participating in the visit and for doing an outstanding job.

Dr. Nuovo then gave a PowerPoint presentation of photos taken during the site visit that included pictures of several of the school's senior members of leadership that they met with and a brief description of the topics that were discussed with those members. The presentation also included photos of the site team's six-hour tour of the hospital/clinical facilities.

Dr. Nuovo stated that after review of the information and documentation provided by the school during the site visit, the team determined that UNIBE was in substantial compliance with the requirements of B&P Code sections 2089 and 2089.5 and CCR, Title 16, Division 13, Section 1314.1. The site visit team recommended recognition of the UNIBE program by the Board, retroactive for UNIBE students who matriculated on or after January 1, 2009.

Dr. Hawkins asked Dr. Nuovo's opinion on the school's cultural competence.

Dr. Nuovo stated it was very impressive - one of the most impressive he has seen at any site visit.

Dr. Bholat asked, in terms of the graduating classes, where did the percentage of students go for residency and what percentage is primary care and what percentage goes into specialty care.

Dr. Nunez stated that 80% of their students wanted to come to the United States. He noted some stay in the country, and some go to Europe and South America. Dr. Nunez stated that about 20% of those who graduated would choose family medicine, surgery or OB/GYN. He noted they were trying to promote family medicine with the government due to the salary issues. He noted that approximately 70-80% go into specialty care.

***Dr. Hawkins made a motion for the Board to recognize UNIBE to be in substantial compliance with the requirements of B&P Code sections 2089 and 2089.5 and CCR, Title 16, Division 13, Section 1314.1, and extend recognition to students who matriculated UNIBE on or after January 1, 2009; s/Dr. Lewis. Motion carried unanimously. (10-0 Yip Absent)***

#### **Agenda Item 21      Update from the Application Review and Special Program Committee**

Dr. Lewis gave the update on Dr. Yip's behalf stating the Application Review and Special Program Committee held a teleconference meeting on June 22, 2016, at 8:30 a.m., and reviewed the Kaiser Permanente Oakland Medical Center's request for a spine surgery fellowship program pursuant to B&P Code section 2112. He stated he and Dr. Yip were present during this meeting. Mr. Worden presented Kaiser Oakland's request for the fellowship program to the committee. After discussion of the request, a motion was passed to recommend to the Chief of licensing approval of the request for one fellow per year.

**Agenda Item 22      Discussion 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.**

Ms. Webb stated this agenda item consists of a regulatory package that was reviewed and approved at the last Board meeting. However while under review, staff decided it was important to add another citable offense, which is under Health and Safety Code section 120370(a). This code relates to a physician providing a parent or guardian of a child a written statement indicating that the physical condition of the child or the medical circumstances relating to the child are such that immunization is not considered safe.

*Dr. Hawkins made a motion to direct staff to prepare the necessary regulatory documents to submit to the Office of Administrative Law to formally notice the proposed regulatory amendments and schedule a hearing on the rulemaking to amend Title 16, Division 13, Chapter 2, Article 6, CCR Sections 1364.10, 1364.11, 1364.13 and 1364.15 to include Health and Safety Code 120307(a) in addition to those changes already approved by the Board; s/ Mr. Warmoth. Motion carried unanimously. (10-0)*

**Agenda Item 23      Discussion and Possible Action of Proposed Regulations Update the Manual of Model Disciplinary Orders and Disciplinary Guidelines, amending Title 16, Division 13, CCR Section 1361**

Ms. Webb stated this agenda item consists of a rulemaking package the Board had already approved, and in working to finalize it, staff found some issues that needed to be resolved for internal language consistency throughout and some provisions that are in the current language were left out of the noticed language in error. Ms. Webb noted that for transparency purposes, it needed to be noticed for a 15-day comment period.

*Dr. Krauss made a motion to allow the Board to make the corrections that are outlined in the Board Packet memo, to send it out for a 15-day comment period and if no substantive, or negative comments are received on these specific re-noticed items, that the Board authorizes staff to make non-substantive changes and finalize the rulemaking package for submission to the Office of Administrative Law; s/Dr. Bholat. Motion carried unanimously. (10-0)*

**Agenda Item 24      Update on the Interim Suspension Order (ISO) Study**

Ms. Kirchmeyer stated that at the last Board meeting, Mr. Serrano Sewell had requested an update on the ISO study and recommended policy changes. She noted that on pages BRD 24-1 through 24-4 was an update on actions taken to date. She noted that several of these recommended improvements had either been completed or started. She stated a few of the recommendations were still being worked on before being implemented. Ms. Kirchmeyer noted that although all of the recommendations had not been implemented, there had been several significant improvements from fiscal year 14/15 to fiscal year 15/16. She highlighted a few of those improvements, including the number of ISOs increased 157% from 14 to 36 between those two years. In addition, the length of time it takes to obtain an ISO decreased by 150 days. Also, the overall suspensions or restriction orders increased from a total of 52 to 84 for all types of restrictions.

Ms. Kirchmeyer stated that Board staff would continue to work with the AG's Office and the HQIU to implement all of the recommendations and an update will be provided at a future Board meeting.

### **Agenda Item 25      Update on the Outreach Campaign**

Dr. Lewis provided an update on the "Check Up On Your Doctor's License" campaign. He noted the activities update could be found on pages BRD 25-3 through BRD 25-7. He stated the Board's Office of Public Affairs had been busy working on the outreach campaign and had been very successful in getting the word out to patients in the entire State of California. Dr. Lewis stated that at a prior meeting, he had announced that a tutorial was being prepared, which was now completed and on the Board's website, as well as on You Tube. He added this tutorial walks the patient through the steps needed to check on a physician's license.

Dr. Lewis noted that the "Check up on Your Doctor's License" brochure had been translated in to Spanish and would be available soon.

Dr. Lewis added that a message encouraging state employees, vendors and contractors to "Check up on Your Doctor's License" appeared on the bottom of all state warrants for the month of June 2016, which had reached nearly 439,000 individuals. He also noted that in April 2016, an issue of the California State Retiree Publication featured an article and an image of the Board's brochure and had reached nearly 34,000 state retirees. Dr. Lewis announced that in May 2016, the County of San Bernardino posted the same information on its website which had reached nearly 2.2 million individuals. Also, in May, Tulare County's health department had agreed to post the Board's message on a Twitter account and also on Facebook throughout the year and that this same information would be added to the "Spotlight" section of their website. In addition, the county of Tulare had created a network of digital signs that would appear throughout the county on buildings and the Family Resource Center as well as family clinics. They stated they would carry the Board's message and a small article would be appearing in Tulare County Newsletter in the future and had the potential to reach nearly 466,000 individuals.

Dr. Lewis stated that also in May, Monterey County Health Department had posted an article about the Board's outreach campaign on its website and had also promised to post on social media as well, which would potentially reach over 430,000 individuals. He added that in Orange County, the health care agency published a ½ page write up in its June employees newsletter which reached 3,000 agency employees. He noted that in June, Contra Costa County had started running the Board's message on its cable TV bulletin board which was available to all county residents and had the potential to reach 11 million individuals. Also in June, the Los Angeles County Department of Health Services had begun posting the Board's information on its patient resources section which would potentially reach 10.12 million individuals. Kern County indicated they would immediately start sharing the Board's information on its social media sites. Stanislaus County Health Services posted the same information on its website. Fresno County had begun to run a feature on its internet for the Board's outreach campaign targeting a readership of 7,000 county employees. He added that in San Francisco, the Department of Public Health had also posted the Board's information on its website and through social media. He noted that CalPERS would soon be running an article about the Board's outreach campaign in its next quarterly newsletter, "Perspective," which was mailed out to members' homes and was posted on its website, which would include an audience of 1.7 million

members. CalPERS would also be posting a bulletin on its intranet site, which had the potential to reach 2.9 million CalPERS employees.

Dr. Lewis noted that Board staff wrote an article for CalSTRS which would be published in several of their publications with a readership of 900,00 people.

Dr. Lewis stated that based on the successful outreach by the Board, it's messaging had been placed in publications that had a capacity to reach 17 million Californians. He noted that he was very pleased with the work that had been done by staff and that they would continue to do outreach to various cities, counties, unions and other large community organizations. He added that staff was working on completing another public service announcements and hoped to have it completed by the October 2016 Board meeting.

Dr. Hawkins asked Ms. Kirchmeyer if there was a count of how many hits the website had seen.

Ms. Kirchmeyer referred the members to the public affairs outreach update that was emailed to them previously, but also stated that ISB is implementing a QR code soon that would assist the Board in knowing where the hits are specifically coming from on the website. She added that in May there had been 160,000 hits on the Board's website, but in June, there had been 220,000 hits, so it had increased by 60,000 hits between May and June, and there had been an increase of about 20,000 hits on the licensing verification part of the website.

**Agenda Item 26      Discussion on the Process to Revise the Statement on Marijuana for Medical Purposes, Marijuana Recommendation Guidelines, and a Policy on Physician Use of Marijuana**

Ms. Kirchmeyer reminded the members that as of January 1, 2016, Senate Bill (SB) 643 required the Board to consult with the California Marijuana Research Program, known as the Center for Medical Cannabis Research (CMCR) on developing and adopting medical guidelines for the appropriate administration and use of cannabis. She noted that at the last Board meeting, a member requested that the Board review the two policies that were adopted by the Federation of State Medical Board. (FSMB). The first being the Model Guidelines for the Recommendation of Marijuana in Patient Care, and the other regarding a physician's use of marijuana. Ms. Kirchmeyer referred the members to pages 26-1 and 26-2 in their Board packet where they would find the Board's most recent statement on recommending marijuana for medical purposes. This statement had been used as the Board's guidelines for recommending marijuana. Additionally, on pages BRD 26-3 through BRD 26-16, were the FSMB's recently adopted model guidelines. Ms. Kirchmeyer stated that in order to implement SB 643, the Board would need to begin to review the current statement or guidelines to determine if changes needed to be made. She noted the best way to begin this process was to develop a two-member task force to review the FSMB's guidelines and the Board's current statement and see if any changes were necessary. Ms. Kirchmeyer added that this task force could hold interested parties meetings to discuss the issue and work with the CMCR to obtain their input on the guidelines. She asked that if any member were interested in being on this task force, to let her know so she could discuss it with the Board president. Ms. Kirchmeyer stated once the Board President identifies the two-member task force, meetings would be scheduled to discuss the next steps to proceed further on the issue.

Ms. Kirchmeyer stated the other issue that had been raised at the previous Board meeting was a physician's use of marijuana and a policy on that issue. She noted that on pages BRD 26-17 through BRD 26-50, members would find the FSMB's Essentials of a State Medical and Osteopathic Act. She stated the FSMB uses this document to guide states and to amend existing medical practice acts for the development of consistent standards. Based on discussion of the FSMB's marijuana workgroup, it was determined that rather than have a separate policy on a physician's use of marijuana, that subsection D of the Essentials document would be amended. This subsection pertains to actions where a board should be able to take disciplinary action against a licensee. Section 19 of subsection 19 had been amended to add marijuana to the list of substances that impair a physician's ability and could lead to disciplinary action. Although the task force may want to look into the issue of a physician's use of marijuana, in looking at the FSMB's handling of the issue, and looking into the B&P Code Section 2239, she felt the Board already had a law that would allow it to take action should a physician's ability to practice be impaired by the use of marijuana. Therefore, the task force may want to use the existing law regarding this issue, similar to what the FSMB recommended rather than develop a new policy. She noted once this task force is developed, more information will be provided on future steps for this task force and future interested parties meetings will be scheduled.

Ms. Kirchmeyer stated she had received one written comment that morning, that she was unable to print out, in regard to this agenda item. It was regarding the in-person evaluation prior to the recommendation of marijuana for medicinal purposes. She added that this comment would be forwarded to all of the members.

Dr. Robinson, Member of the Society of Cannabis Clinicians (SCC), read a statement that his board submitted to the editors of the Journal of American Medical Association (JAMA) in response to the FSMB's publication of their guidelines. The statement was in response to an online version of a JAMA article, that had been published on June 16, 2016, by Dr. Chaudhry, et al., entitled "Medical Board Expectations for Physicians Recommending Marijuana." Dr. Robinson stated that the SCC members had monitored cannabis use by tens of thousands of patients treating numerous medical conditions. He noted the SCC had two concerns; one concern was regarding conflicts of interest. The article stated that physicians should "not be associated, in any way," with a dispensary or cultivation center. He added this wording was far more restrictive than the actual policy ratified by the FSMB. He noted it would impede physicians wishing to collaborate with dispensaries to research which specific cannabinoid-terbinoid ratios were effective. He stated an association, for research purposes, would not involve a financial interest on the physician's part, and should not be prohibited.

Dr. Robinson stated another concern SCC has was that the article states "state medical and osteopathic boards advise their licensees to abstain from the use of marijuana for medical or recreational purposes while actively engaged in the practice of medicine." He stated that provision did not appear in the model guidelines developed by the FSMB workgroup adopted as policy by the FSMB House of Delegates in April, 2016. He noted that the use of medical cannabis has a lower addiction potential than alcohol or opiates. The proposed policy to disallow such usage is scientifically unsupportable.

Mr. Gardner commented on Ms. Kirchmeyer's statement in regard to physicians inappropriately prescribing psychotropic meds for foster kids, and that the Board's mantra is that a complaint from someone in the loop such as a social worker is obviously a better basis for pursuing an investigation than an algorithm of the kinds being proposed by the FSMB. These algorithms



involve a number of patients a physician approves marijuana use for and the number of plants approved. He stated there is an ongoing stigma around cannabis. Physicians receive no training about it in medical school and a majority are very reluctant to recommend or discuss it with their patients. The physicians who are willing to recommend it are a relatively small group. They get an inordinate number of patients. With the use of the algorithm, they get investigated. Sometimes the investigator wants to make a case and pursues it with great zeal, so it is a very dangerous, slippery slope. Mr. Gardner urged the Board to take a close look at what its approving. He stated the Board should be asking the Federation why this campaign is being pushed and why time and money is being spent on this.

Dr. Perry Solomon stated one of the proposals in the FSMB's model, under the patient evaluation section, the first few words are "a documented in-person medical evaluation." As a chief medical officer at a telehealth platform organization that provides remote live HIPAA-compliant cannabis evaluations to patients from all over California, he has seen this modality help thousands of patients. These physicians are able to perform evaluations of patients who are housebound and unable to obtain transportation to see physicians. He stated he had been thanked many times for offering this type of service. He noted that telehealth had opened the door for so many people all across the country that previously had no access to health care or treatment. He stated telehealth care is now mainstream health care and there should be no reason that cannabis evaluations should be excluded.

#### **Agenda Item 27      Update on Improvements and Potential Changes to the Vertical Enforcement Program**

Ms. Kirchmeyer noted that at the last meeting, a member had requested an update on the implementation on the VE report findings and recommendations. She referred the members to page BRD 27-1 to BRD 27-3 in the Board packet, which included a copy of the report that had been adopted in February and released in March 2016. She stated page 27-11 showed the Board's four recommendations for the VE model. She added that recommendations one through three would require legislation in order to make the changes and implement them. She noted that recommendation number one pertains to the section of law that states that the investigator shall be "under the direction but not the supervision of the Deputy Attorney General." The Board felt this language could interfere with the investigators and attorneys being a true team and therefore the language should be amended. However, it could only be done through a legislative change. She noted that recommendation number two would allow some of the Board's cases that do not get sent to the HQUI to be worked in a VE model which would include cases that are completed by the Board's non-sworn in-house investigators within the Complaint Investigation Office (CIO). Although there may be a way to do this without legislation, to make it clear to the AG's Office, the language would need to be amended.

Ms. Kirchmeyer added the third requirement also would need a legislative change due to the fact that the investigators are no longer employed by the Board. The entire VE model is outside the Board's specific authority as it is now overseen at the AG's Office and the DCA, therefore the law should be changed to state that the DCA shall perform the duties required by the Government Code section 12529.6(e). She added the report was provided to the Legislature along with the recommendations. She noted that she had testified at the sunset hearing regarding VE and had gone over the recommendations.

Ms. Kirchmeyer noted that she and Ms. Simoes had met with the Business and Professions committee staff to discuss VE and the Board's recommendations. She added, to date, no language had been introduced to change the language that was requested to be amended. However, she stated that meetings were still being arranged and there was a possibility that changes to the language could be made this year. She noted that if no language was brought forward this year, this issue could be part of the sunset process.

Ms. Kirchmeyer stated that recommendation four states the DCA and the AG's Office should utilize the joint VE manual and develop additional strategies and procedures to assist the investigators and attorneys to further improve the VE model. She noted that DCA and the AG's Office had recently done joint training on 805 peer review investigations for both attorneys and investigators. The AG's Office and the HQUI will also be setting up subject interview training. She noted in addition, a new case disposition form had been developed that had been assisting in the investigation closure and/or transmittal process. She added Board staff would continue to meet with legislative staff and DCA to seek the legislative changes need to implement the recommendations in the report.

Judge Feinstein asked if there were any statistics available about who the investigator might be and who the DAG might be on complaint cases and whether or not that stays consistent throughout the whole process.

Ms. Kirchmeyer stated that are no statistics available in that area, however, she stated that the way the VE model has been implemented is there is a lead prosecutor who is out in the field and handles a lot of work on the case, and there is the primary deputy, that actually tries the case.

Ms. Fellmeth stated in the spirit of full disclosure, in her November 2004 report, as the enforcement monitor for the Board, she and her team had recommended the Board use the VE model of investigating and prosecuting its complex cases. She noted she had submitted a letter to the Board registering several concerns about the report and the data in the report that had resulted in the four recommendations in the report, and those concerns had not been addressed. She noted the first concern is that the report only uses data that comes from the BreEZe system, which has not proven reliable. Secondly, the report only shows median case processing times, and the reporting of median case processing time does not fully reflect long problematic delays, nor does it adequately measure quickly resolved matters. She added the language in the current report did not correct that problem. Ms. Fellmeth stated that the third concern is the report states that the VE has not sped up the enforcement process. That complaint ignores the fact that the earlier involvement of the DAG is necessarily going to result in the early closure of minor or non-meritorious cases. The data presented in the report does not reflect what may be higher quality decision making about which cases to pursue and which cases to drop. She noted the VE model is being blamed for problems that have occurred since the transfer of the investigators to DCA. She stated that since 1990, they have felt that the proper place for the investigators is in the AG's Office, Health Quality Enforcement Section so that they can truly function as a team with the attorneys, who specialize in the Board's complex matters. She noted they would oppose any changes to the statute if it affects the ability of the prosecutor to direct the investigation.

**Agenda Item 28      Agenda Items for the October 27-28, 2016 Meeting in the San Diego Area**

Dr. GnanaDev announced that the October meeting may require the Board to meet on Wednesday afternoon, October 26 in order to review the Sunset Report.

In addition, there would be two regulatory hearings, a presentation by Dr. Bholat on the UCLA International Medical Graduate Pilot Program, and any updates from committees and task forces.

**Agenda Item 29      Adjournment**

Dr. GnanaDev adjourned the meeting at 12:55 p.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/>