Agenda Item 3

MEDICAL BOARD OF CALIFORNIA

QUARTERLY BOARD MEETING

Sheraton Gateway – LAX
6101 West Century Boulevard
Los Angeles, CA 90045

May 1-2, 2014

MINUTES

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

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

Members Absent:
Sharon Levine, M.D., President

Staff Present:
William Boyd, Investigator, Valencia District Office
Dianne Dobbs, Legal Counsel, Department of Consumer Affairs
Errol Fuller, Investigator, Glendale District Office
Kimberly Kirchmeyer, Executive Director
Erin Nelson, Business Service Analyst
James Nuovo, M.D., Medical Consultant
Regina Rao, Associate Governmental Program Analyst
Mark Servis, M.D., Medical Consultant
Jennifer Simoes, Chief of Legislation
Renee Threadgill, Chief of Enforcement
Lisa Toof, Administrative Assistant II
Tracy Tu, Investigator, Glendale District Office
See Vang, Business Services Analyst
Kerrie Webb, Legal Counsel
Curt Worden, Chief of Licensing

Members of the Audience:
Theresa Anderson, California Academy of Physician Assistants
Gloria Castro, Senior Assistant Attorney General, Attorney General's Office
Yvonne Choong, California Medical Association
Alicia Cole, Consumer's Union
Patrick Domelian, Medical University of the Americas
Karen Ehrlich, Licensed Midwife
Julie D'Angelo Fellmeth, Center for Public Interest Law
Jack French, Consumer's Union
Jodi Hicks, California Academy of Family Physicians
Tara Kittle
Lisa McGiffert, Consumer's Union
Tina Minasian, Consumer's Union
Carole Moss, Niles Project and California Safe Patient Project
Ty Moss, Niles Project and California Safe Patient Project
Danielle Nunez, Consumer's Union
William Pinsky, M.D., Ochsner Health System
Harrison Robbins, M.D., California Academy of Cosmetic Surgeons
Steven Rodger, Medical University of the Americas
Cesar Victoria, Department of Consumer Affairs

Agenda Item 1 Call to Order/Roll Call

Mr. Serrano Sewell began by recognizing a former Board Member and past President of the Board, which recently passed away, Dr. Mitch Karlan, and asked for a moment of silence. Dr. Karlan was a respected member of the Los Angeles physicians' community, and a respected instructor at the UC School of Medicine. The American Cancer Society also honored him as "man of the year."

Ms. Kirchmeyer recognized and introduced a few staff members from the local district offices, Tracy Tu, William Boyd, and Errol Fuller.

Mr. Serrano Sewell called the meeting of the Medical Board of California (Board) to order on May 1, 2014, at 4:17 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

Tara Kittle requested an agenda item for the next Board meeting. She asked that the Board establish a committee to identify physician obstacles that occur in their daily practice of medicine and propose various solutions.

Alicia Cole, Consumer's Union Safe Patient Project, requested that the Board amend the guidelines to make it a standard condition of probation that a physician who continues to see patients while under a disciplinary order, be required to inform their patients that he/she is on probation.

Agenda Item 3 Approval of Minutes from the February 6-7, 2014 Meeting

Ms. Yaroslavsky made a motion to approve the February 2014 Meeting Minutes as submitted; s/Dr. Yip. Motion carried.

Agenda Item 4 Discussion and Consideration of Queensland/Ochsner Medical School Application for Recognition

Mr. Worden introduced Dr. Nuovo from the University of California Davis School of Medicine. Dr. Nuovo gave a brief presentation on the site visit to Queensland/Ochsner Medical School that took place March 18-21, 2014. The attendees of this site visit included, Dr. GnanaDev, Mr. Worden, Ms. Webb, and Dr. Nuovo. The presentation gave an overview of what the site visit involved, as well as the areas of concern that were identified. The goal of this site visit was to address the areas of concern from the comprehensive review to determine whether the program was in compliance with Business and Professions (B&P) Code Sections 2089 and 2089.5, and California Code of Regulations (CCR) Title 16, section 1314.1. One area of concern was the application selection process, and the fact that the school was not interviewing students as part of the selection process for attendance. The Board also looked at the communication process between the University of Queensland, in Brisbane, Australia, and the Ochsner Clinical School campus in New Orleans to identify the challenges of distance and time zone. Another focus of the site visit was the process of addressing academic concerns. Prior to the site visit, staff received a report from Dr. Crawford, Head of the University of Queensland School of Medicine, stating that he reviewed and approved the interview process plan and that faculty and students from Ochsner will be involved in the interview process by the Board. With this change, Dr. Nuovo determined the process is consistent with the methods that United States (U.S.) and Canadian schools use to admit students to their respective schools and consistent with CCR Title 16, section 1314.1.

Dr. Nuovo stated he is confident that the school complies with all statutes and regulations and recommends recognition by the Board.

Dr. GnanaDev thanked the Board staff and Dr. Nuovo for their hard work and dedication to this visit. He then complimented the Ochsner Clinic and University of Queensland (UQ) for taking all of the staff's recommendations and implementing them graciously.

Dr. GnanaDev stated that the school has one of two new models of medical education. The two new models are problem-based learning, as well as the case presentation model. Both start with patient care and clinical-related activity beginning day one of medical school. Only seven schools in the U.S. use these models. He feels that the students will have a lot more training their first two years when compared to the traditional medical school.

Dr. Krauss stated that when Ochsner announced this program in 2009, the motivation was to deal with physician shortages in South Louisiana. He asked why there is a concern for California licensure.

Mr. Worden stated that this is an international school, so there will be applicants from California who will want to attend, but need to ensure the school is recognized by California prior to licensure. Additionally, other states use California's recognition process. Therefore, it is important for any international school to be recognized by the Board.

Dr. Pinsky stated that one of the goals when starting the program was knowing that there was a physician shortage in the country. Another was to increase the number of medical school graduates in the U.S. When looking at population densities and where students are coming from, California is clearly important.

Ms. Kirchmeyer added that if the Board did not go through this process and recognize these schools, those students could not apply for licensure in California.

Dr. Lewis asked if after reviewing the vitaes and backgrounds of the training faculty, were they sufficient for medical school teaching. He also asked after interviewing the students, what was learned from them concerning their relationships and education from the faculty.

Dr. Nuovo stated after reviewing all of the qualifications of the faculty that were in the packet from the University of Queensland, it was determined they were equivalent to the faculty at a U.S. school. In regards to the student interviews, Dr. Nuovo stated that he interviewed several students in several different settings in different facilities. The conversations were typical of any student in any school in that there are strengths and weaknesses in the programs, and that in general, the students were very positive about their educational experiences, and felt the faculty was very "approachable."

Ms. Yaroslavsky stated her concerns about the school's resources for the class sizes that are expected.

Dr. Pinsky stated the site team visited the schools new academic building, which includes both education and research. It also includes the classrooms and testing center. The school is a ten-hospital system and has over 200 academic titleholders. They have over 900 physicians and 42 clinics. There are no space problems for the growth of the class sizes.

Dr. GnanaDev made a motion to approve the recommendation to recognize the University of Queensland School of Medicine/Ochsner Clinical School Program (UQO)and to extend that recognition to those who matriculate at UQO on or after January 1, 2009; s/Ms. Yaroslavsky. Motion carried.

Agenda Item 5 Discussion and Consideration of Medical University of the Americas Medical School Application for Recognition

Mr. Worden stated the Medical University of the Americas (MUA) Medical School is another school that is being evaluated by the Board for recognition. Mr. Worden noted that this is the first time the Board has had a chance to evaluate this school. Mr. Worden introduced Dr. Servis as the medical expert for this school review.

Dr. Servis stated the Medical University of the Americas Medical School is a for-profit school and is based on the Island of Nevis in the Caribbean. Dr. Servis reviewed the various documents that were provided and found some areas of concern. The nine areas of concern are listed in his report. In the areas where he felt more information was needed, he requested follow-up documentation from the school. The follow-up documents that were received had addressed several of the original areas of concern. However, after careful review, five areas of concern remain. In summary, MUA may not be currently meeting certain LCME accreditation standards such as: (1) An over reliance on lecture in the preclinical curriculum and insufficient active learning pedagogies; (2) Widely geographically distributed clinical experiences between students and alignment with stated clinical competencies; (3) Unacceptable high failure and dropout rates of students; (4) Inadequate monitoring of the learning environment of students, particularly in the clinical years; and (5) Regular and comprehensive evaluation of the curriculum as a whole, tied to outcomes, and assessment from graduates.

Dr. Servis noted that MUA has active, organized, and well-designed plans to address these issues, including a thoughtful and comprehensive curricular revision with anticipated implementation after completion of planning in 12-18 months.

Dr. Servis stated further evaluation is warranted to confirm the information provided in the MUA Self-Assessment Report and the additional documentation provided by MUA. It was recommended that a site visit to MUA and some of its affiliated hospitals where students receive clinical clerkship courses be scheduled to provide the Board a full evaluation of MUA.

Steven Rodger, Chairman and CEO of R3 Education, stated that R3 Education is the enterprise that owns Medical University of Americas. He thanked Dr. Servis for his extensive and thorough work. Mr. Rodger noted that he does agree with the five areas of concern that Dr. Servis discussed, but wanted the Board to understand that these same areas were agenda items for them before Mr. Servis had written his report. In 2011, the decision was made to transfer to a competency-based program.

Ms. Yaroslavsky asked if MUA would be ready for the Board to review the school now or is it going to take time to resolve the areas of concern.

Mr. Serrano Sewell agreed with Ms. Yaroslavsky's concerns and based upon Dr. Servis' report, he feels there is a need for a site visit.

Mr. Worden recommended a site visit be conducted when the school has implemented the identified changes and the changes can be verified.

Dr. Lewis made a motion to conduct a future site visit, at a time determined by the Executive Director, and provide a report to the Board that is comprehensive and takes into account all of the relevant issues; s/Ms. Yaroslavsky. Motion carried.

Agenda Item 6 Update on the Executive Committee and Consideration of Recommendation

Mr. Serrano Sewell gave a brief update on the decisions of the Executive Committee in regard to the Board's Strategic Plan. He stated the Committee discussed each individual goal and objective in the plan. Mr. Serrano Sewell noted three amendments were made as follows: item 3.2a and 3.2d, striking the words "at least" and adding the words "two or more;" Goal 3.4, the priority was changed from Medium priority to a High priority; Goal 6.1 is changed to read, "Inform the Board and Stakeholders on the Affordable Care Act, and how it will impact the physician practice, workforce, utilization of allied healthcare professionals, and access to care for patients." The Committee also added an objective "c" under 6.1 to read, "Educate physicians on opportunities to assist patients, not within the ACA, in obtaining access to care."

Dr. Lewis made a motion to adopt the strategic plan with the above-approved changes; s/Ms. Wright. Motion carried.

Agenda Item 7 Update on the Health Professions Education Foundation

Ms. Yaroslavsky stated that the Health Professions Education Foundation (HPEF) has had a good year. With the generosity of the California Endowment, they have received quite a bit of money. The HPEF report that was handed out has a lot of information about the Steven M. Thompson loan repayment program and the goal to come up with 103 awardees with 47 alternates. The HPEF is working on the criteria. It is changing all the time, and because they had an additional amount of money this year, the regulations allowed them to go outside the normal standards of criteria. The regulations need to be changed to be more in line to meet the needs of the people of California.

Ms. Yaroslavsky urged the Board to look at the report and noted that every Federal Qualified Health Center (FQHC) received applications. The HPEF needs to do a better job on outreach, and identifying the opportunities because it is up to $105,000 dollars toward the loan repayment for a three-year commitment in underserved communities. Ms. Yaroslavsky noted that she is proud of the work of the HPEF.

Dr. Diego added there was two recipients at the meeting to receive their awards and it was nice to hear their stories. She would like to have it publicized more so that people can really understand what great work this is and the dedication these physicians have to the underserved areas.

Tara Kittle reinforced that this program is a great program to help physicians pay back their loans. She stated that this is an issue of the Board as the burden of student loans directly affects the kind of medical care and the type of medical care that physicians can actually give.

Agenda Item 8 Update from the Department of Consumer Affairs

Mr. Serrano Sewell announced that Ms. Lally from the Department of Consumer Affairs (DCA) was unable to attend this month's meeting, so there will be no update given today.

Ms. Kirchmeyer briefly noted that she is continuing to meet with the DCA Director on a bi-weekly basis, and as of her last meeting, there was nothing discussed that needed to be brought to the Board's attention at this time.

Agenda Item 9 Board Member Communications with Interested Parties

Dr. GnanaDev stated he continues to participate with the AMA, CMA, the LCME, and the AAMC. He keeps the Board issues out of discussions with these entities.

Dr. Krauss continues to serve on the Board of the California Ambulatory Surgery Association (CASA.). He and Ms. Kirchmeyer participated in CASA's last board meeting by giving a presentation. Dr. Krauss is still a trustee of the California Medical Association (CMA).

Agenda Item 10 President's Report

Mr. Serrano Sewell noted that he and Dr. Levine continue to meet with the Board's Executive staff twice a month to discuss projects at the Board and to assure that everything is moving forward as needed. Dr. Levine will be speaking at the Prescription Drug Abuse summit in San Francisco on May 7, 2014. She will be speaking on what the Board has been doing to help fight the prescription drug abuse issues.

Mr. Serrano Sewell referred the members to agenda item 10 in their packets, which refers to Committee appointments. The only change since the last meeting is Mr. Lui has been added to the Enforcement Committee and Dr. Levine has been removed from that committee.

Agenda Item 11 Executive Management Reports – Ms. Kirchmeyer

Ms. Kirchmeyer asked for a motion for approval of orders following completion of probation and orders for license surrender during probation.

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

Ms. Kirchmeyer noted that the reports under the Executive Management reports which previously included just the Executive Director's Report, now includes the Enforcement report and the Licensing report. These reports are all under agenda item 11. There will be no verbal report unless a Member has any questions concerning one of these reports.

Ms. Kirchmeyer pointed out a few items to the Members. One item is regarding the Board's outreach and video for Prescription Drug Awareness Month, which was in March. Board staff along with assistance from DCA staff produced a video. This video was narrated by Dr. Bishop. This video can be found on the Board's website and several entities have linked the video to their websites. In the upcoming weeks, staff will be filming another public service announcement (PSA) with a Gold Medalist that will have more emphasis from a consumer aspect of the overprescribing issues. Staff will continue to make PSAs to use for both consumer and physician education purposes.

Ms. Kirchmeyer stated that there have been several phone calls received regarding the Board's licensing timeframes. The Board is currently reviewing applications within 40 – 45 days from receipt of application. If all of the necessary forms and paper work are received with the application, physicians can be licensed within five days of initial review. However, only 12% of the applications are complete when first reviewed. On the day the application is reviewed, the analyst sends a deficiency letter to the applicant stating what items are outstanding. From that point, the length of time it takes for licensure depends on the applicant and the entities that need to submit documentation to the Board. It was noted that when applicants say that it took them a long time to be licensed, in most cases it is due to the applicant not getting the necessary documents back to the Board in a timely manner. The only time the Board has delays is when there is an issue with the application that needs to be reviewed at a senior staff level, such as a conviction or residency issue, etc.

Ms. Kirchmeyer stated one problem that is occurring that is not in the Board materials is the time that it is taking to provide license verification. Due to the new BreEZe system, staff has been unable to provide information to the VeriDoc system that is responsible for the 24-hour license verifications. All verifications are being conducted at the Board, which is slowing the process down. A plan is being developed to eliminate the backlog on processing these documents.

Ms. Yaroslavsky noted her frustrations with the new BreEZe system. She asked if there was any way to go back to having access to the old system to look up licensees while the new system is being modified.

Ms. Kirchmeyer stated that DCA is working with the vendor to get changes made as soon as possible. In the meantime, DCA is looking at going outside of the BreEZe system to a different look-up system that is directly housed with DCA. Staff would have more control over this system and would not be hindered by the current vendor. Ms. Kirchmeyer stated she would take the Board's concerns regarding the look-up issues back to the leadership at DCA.

Dr. Bishop asked Ms. Kirchmeyer if she believed this system would ever work the way it was intended. Ms. Kirchmeyer stated she believes the system will work once all of the defects are worked out.

Ms. Kirchmeyer then stated the Board had recently received a letter regarding physicians on probation. This letter called upon the Board to immediately drug test every physician on probation, to create a random drug testing procedure for those on probation, and to require that every physician on probation be checked in the CURES system.

Ms. Kirchmeyer reminded the Board that every physician on probation who has biological fluid testing as a condition of probation is already randomly tested. The Board does not have the authority to test if this condition is not in the order unless it has probable cause to do so. Should that cause become apparent, the Board would request the physician to voluntarily be tested or compel the physician to be tested. The Board does run a CURES report on physicians on probation if the physician has certain restrictions, such as abstaining from alcohol or drugs or has a prescribing restriction.

Ms. Kirchmeyer reported the Federation of State Medical Boards held their annual meeting from April 24 – 26, 2014. There is an outline in the packet of the presentations that were held at that meeting. One notable item not shown in the packet is the House of Delegates adopted the policy guidelines for safe practice of telemedicine. The Board submitted written comments on this policy and Board Members provided great suggestions that were included in the written comments.

Ms. Kirchmeyer asked Ms. Threadgill and her attending staff to stand. Ms. Kirchmeyer announced that due to the transition this would be the last time they attend the Board meetings as Board staff. Ms. Kirchmeyer thanked Ms. Threadgill and staff for all of the hard work they have done for the Board, all the work they will continue to do after the transition, asked them to be sure and pass this same thank you on to all of their co-workers.

Alicia Cole stated that the PSA by Dr. Bishop was well edited and very informative. She thanked the Board for their openness and honesty concerning the challenges of the BreEZe system. She stated that as a consumer group, the Consumer Union participants had a round table and went over the BreEZe system in detail and created a list of items where consumers are experiencing issues. She offered their services to the Board and DCA to work together to help work out some of the functionality issues for both the consumers and the physicians.

Julie D'Angelo Fellmeth encouraged the Board and Ms. Kirchmeyer to follow up with the DCA to shift the license look-up system outside of BreEZe. She noted that several things that are required by law to be posted and are not available on BreEZe at this point.

Tara Kittle encouraged the Board to consider putting a section on the website that is encrypted, safe and protects the public where a physician is required to look up a patient to see if they have received the same or similar type of prescription from another physician.

Jack French, Consumers Union Safe Patient Project, stated they are pleased the Board has begun offering teleconferencing to allow expanded public participation in the meetings. It is stated in Ms. Kirchmeyer's report that after this meeting, the teleconferencing services will be evaluated for efficiency and cost. Consumer's Union encourages the Board to continue the teleconferencing options to those who are unable to travel to these meetings, yet still wish to share their comments.

Meeting recessed at 6:05 p.m. until 9:00 a.m. Friday, May 2, 2014

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Friday May 2, 2014

Members Present:
David Serrano Sewell, J.D., Vice President
Michael Bishop, M.D.
Silvia Diego, M.D., Secretary
Dev GnanaDev, M.D.
Ronald H. Lewis, M.D.
Howard Krauss, M.D.
Elwood Lui

Denise Pines
Gerrie Schipske, R.N.P., J.D.
Jamie Wright, Esq.
Barbara Yaroslavsky
Felix Yip, M.D.

Members Absent:
Sharon Levine, M.D., President

Staff Present:
Dianne Dobbs, Legal Counsel, Department of Consumer Affairs
Julie Escat, Supervising Investigator I, Valencia District Office
Kimberly Kirchmeyer, Executive Director
Caroline Montgomery, Investigator, Cerritos District Office
Erin Nelson, Business Services Analyst
Regina Rao, Associate Governmental Program Analyst
Jennifer Simoes, Chief of Legislation
Jack Sun, Investigator, San Dimas District Office
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Theresa Anderson, California Academy of Physician Assistants
Gloria Castro, Senior Assistant Attorney General, Attorney General's Office
Yvonne Choong, California Medical Association
Genevieve Clavreul
Alicia Cole, Consumer's Union, Safe Patient Project
Julie D'Angelo Fellmeth, Center for Public Interest Law
Karen Ehrlich, L.M., Midwifery Advisory Council
Jack French, Consumer's Union, Safe Patient Project
D. Anthony Jackson, M.D., Black American Political Association of California
Tara Kittle
Kim Kreifeldt, California Academy Physician Assistants
Lisa McGiffert, Consumer's Union
Greg Mennie, California Academy Physician Assistants
Tina Minasian, Consumer's Union, Safe Patient Project
Michele Monserratt-Ramos, Consumer's Union, Safe Patient Project
Ty Moss, Consumer's Union, Safe Patient Project
Teresa Pena, Assembly Member Bloom's Office
Harrison Robbins, M.D., California Academy of Cosmetic Surgeons
Cesar Victoria, Department of Consumer Affairs

Agenda Item 12 9:00 a.m. Call to Order/Roll Call

Mr. Serrano Sewell called the meeting of the Medical Board of California (Board) to order on May 2, 2014, at 9:04 a.m. A quorum was present and due notice was provided to all interested parties.

Agenda Item 13 Public Comments on Items not on the Agenda

Tara Kittle commented on a public comment from the prior day's meeting, regarding a physician on probation and requiring them to notify their patients. She does not feel that if the disciplinary action was taken and the Board determined that the physician was safe to practice on probation that the physician should have to announce this to each patient.

Anthony Jackson, M.D., First AME Churches, the NAACP of California and BAPAC, discussed an American Medical Association global letter of apology that was issued in July 10, 2008. He stated this letter helped explain the racial disparities in healthcare, which still exist. He added that BAPAC and the California NAACP jointly adopted HR 4 to address these disparities. He questioned why mortality and morbidity for blacks are still disproportionately high even when social economic status and co-morbidity such as smoking, diet, drugs, are statistically accounted for. He stated that a study showed that the professional well-being of black physicians has a direct impact on the health and welfare of their patients. He requested that the matter of racial disparity in healthcare and in disciplinary actions taken be placed on the next agenda of the Board.

Rae Greulich, Consumer's Union, via teleconference, stated she feels that all California outpatient surgery centers should be required by law to report their infections to the state. She requested that the Board sponsor legislation for this to become a requirement to help protect California consumers.

Agenda Item 14 Update on Enforcement Committee

Dr. GnanaDev gave an update on the Enforcement Committee Meeting. The Committee received a presentation from Ms. Kirchmeyer on the MOU between the Board and DCA related to the transition. This MOU is an agreement between the Board and the DCA, and defines the relationship between the two parties, including the responsibilities of DCA and the Board, and the specific roles of each party during the transition.

The Committee also received an update on the progress of the transition pursuant to SB 304 from Mr. Gomez, DCA Division of Investigation (DOI). Mr. Gomez reported that town hall meetings were scheduled for the week of May 5, 2014. These meetings will include participation from all employees, the Board and DOI. Mr. Gomez reported that meet and confer sessions have occurred between DCA and affected bargaining units. Mr. Gomez stated he had completed his meet and greets with the Board's investigative staff. Mr. Gomez noted he has formed a team that includes representatives from the Board and the DCA to work on a rewrite of the Vertical Enforcement (VE) manual. This rewrite will be completed before the transition effective date of July 1, 2014.

Mr. Gomez announced the scheduled swearing in ceremonies for sworn staff. One will be held in Riverside on June 30, 2014, and one in Sacramento on July 1, 2014. Board Members are welcome to attend either ceremony.

Ms. Kirchmeyer and Ms. Cady provided a presentation on statistical reports, which included data currently received by the Board and a recommendation to simplify the data received by the by the Board after July 1, 2014. The Committee requested data on the investigation timelines and compliance of open cases in a closed bar graph format.

The Committee also received a report on data for interim suspension orders (ISOs). The data included the number of ISOs requested and granted. The Committee requested additional information regarding how long it takes to request an ISO after a complaint is received.

The Committee received clarification on the role of the medical consultants that are Board employees versus expert reviewers, which are independent, unbiased reviewers of the Board.

Agenda Item 15 Vertical Enforcement Program Report

Ms. Castro began with an update on the case of Chiarottino vs. Linda Whitney. Dr. Chiarottino came to the Board's attention in 2011. In February 2012, an investigator had identified five patients from a CURES report and attempted to procure medical records. Since that time, those records are still being requested and the Court of Appeals just recently agreed that the Board has the ability, along with other law enforcement agencies, to search CURES. Dr. Chiarottino appealed the trial court order granting the Board's petition to compel compliance with investigative subpoenas. Subsequent to that, Dr. Chiarottino submitted an argument, which was supported by the CMA. In a published decision, the Court of Appeal upheld the Board's use of CURES and found the Board was authorized to review CURES data under Health and Safety Code Section 11165.

Ms. Castro announced some staffing changes in the Health Quality Enforcement Section (HQES). She stated two of her Deputies Attorney General (DAG) would be retiring, one from the San Francisco Office, and one from the Sacramento Office. She stated there would be two new people joining HQES staff, one will be located in the San Diego office, and the other in the Los Angeles office as of June 2, 2014.

Ms. Castro noted that ProLaw was mentioned at the previous day's meeting and that the AG's office is looking for a way to provide a portal so that relevant information needed for the Board can be accessible. She stated that law firms do not traditionally allow access to the attorney-client privilege work files, but feels it is important enough to provide markers in a way that that information can be managed. It cannot be linked with BreEZe at this point, and may not ever be able to, but a work around is being developed to assist in getting the Board the information they need.

Ms. Castro stated that she and Ms. Kirchmeyer continue to meet on a regular basis. She has worked for the past year to be sure that all of her staff at HQES manages the program in a similar manner and will continue that same management style after the transition takes place.

She recommended that the Board, DOJ, and DCA staff meet prior to July 1, 2014, to be sure everyone is on the same page and to memorialize the agreements that are already in place with Ms. Kirchmeyer and Ms. Threadgill.

In regard to the VE Manual, the version that was approved by the AG's office was sent to DCA on February 14, 2014. On March 5, 2014, Ms. Castro was told that DCA is working on restructuring it. She stated the manual they have now is very detailed and structured by a continuing partnership so the case can be completed as soon as possible. Ms. Castro would like to have a joint manual that both the AG's office and DCA can use together, rather than have two different ones.

Ms. Yaroslavsky thanked Ms. Castro for her efforts and engagement in trying to make things work. She stated that she is distressed that there is no joint manual currently and encouraged Ms. Castro to strive for a joint manual to keep things running smoothly for both her staff as well as Board staff.

Dr. GnanaDev asked Ms. Castro when the CURES system might become user friendly.

Ms. Castro stated she does not have a time line, but there is a team working on it that meets every two weeks and the meetings are very robust. They are working to get it completed as soon as possible, especially since it is becoming a multi-user platform.

Ms. Kirchmeyer thanked DAG Esther La and the AG's office for its hard work on the Chiarottino case.

Agenda Item 16 Update on the Prescribing Task Force

Dr. Bishop stated on February 9, 2014, the Prescribing Task Force held its second meeting. This meeting focused on potential revisions on the Board's Pain Management Guidelines. Invitations were sent to representatives from prescribing and dispensing communities, law enforcement, consumer groups, other regulatory boards, associations, other state agencies, pharmacies, pharmaceutical companies, and legislative staff. The meeting began with a brief overview of the Board's current guidelines. Dr. Fishman, representing the Federation of State Medical Boards (FSMB), provided a presentation on the FSMB's recently issued model policy on the use of opioid analgesics in the treatment of chronic pain. Dr. Reimer followed with a presentation on the Canadian Guidelines for the Safe and Effective Use of Opioids for Chronic Non-Cancer Pain. After the presentations, the Task Force went through the policies to see what items should be considered for inclusion in the Board's revised guidelines. Members were able to receive electronic feedback from the audience. The items where consensus was not obtained were discussed with the group. The Task Force was able to review approximately half of the FSMB's policy at the meeting. The next meeting will be in June and the Board will provide draft guidelines for the Task Force and interested parties to review. Additionally, the Board received a document on prescribing opioids from the CMA that provided some valuable information that will also be reviewed. The Task Force hopes to bring the revised guidelines to the Board for discussion at the October 2014 Board Meeting.

Dr. Bishop stated after the Task Force revises the guidelines, the Task Force will review best practices for prescribing opioid medication. They want to gather as much information as possible from all interested parties and subject matter experts. The information obtained on best practices will be used to establish Newsletter articles, a website specific to best practices, outreach presentations and other educational tools for the physicians and the public.

Yvonne Choong, CMA, reiterated Dr. Bishop's comments regarding the report that CMA had put out regarding clinical guidelines. The report was developed by their internal council on scientific affairs. The intended audience was to provide clinical guidelines for physicians who are not in this specialty field. CMA would appreciate being included in the process.

Dr. GnanaDev noted that on the enforcement cases, it has been recognized that it is the primary care physicians who get into trouble with the prescription drug issue, not the pain management doctors. The goal is to educate those who are not experts at pain management to follow the guidelines.

Dr. Bishop added he feels that whatever guidelines are decided on, they have to be easy to follow by the non-pain specialists. If they are not easy to follow, many physicians may decide to stop practicing in that area, which leaves patients at a loss for where to get pain medication when it is legitimately needed.

Ms. Yaroslavsky reminded the Board that the most important issue is to protect the consumer, so the sooner a proper methodology can be agreed upon, the better. It will not only protect the consumer, but physicians, as well.

Dr. Khadijan Lang, via teleconference, expressed her concerns regarding the treatment of physicians in minority neighborhoods.

Dr. James Tucker, via teleconference, voiced his support for the comments made by Dr. Jackson and Dr. Lang.

Agenda Item 17 Review of Responses to Public Comments and Consideration of Revised Regulatory Language Amending Section 1399.541 of Title 16, California Code of Regulations - Physician Assistant Scope of Practice – Medical Services Performable

Ms. Webb referred the Members to tab 17 in the packets. The proposed regulations were sent out for a 15-day comment period, following the last Board Meeting. The word "or" was struck from the last sentence as approved by the Board. The comments received during the 15-day comment period were not specifically related to this change. Following consideration on the comments and discussions with counsel from the DCA and HQES, staff recommended further clarifying the definition of "immediately available." The proposed change would read as follows, "immediately available" means *the physician is physically accessible and* able to return to the patient, without *any* delay upon the request of the physician assistant to address any situation requiring the supervising physician's services.

Ms. Webb asked for a motion allowing staff to refer this modified language back to the Physician Assistant Board (PAB) for review and approval. If the PAB approves the modified language, it would need to be noticed for another 15-day comment period.

Dr. Lewis made a motion to approve the modified language and refer the matter back to the PAB for review and approval. Upon approval, authorize the modified language to be noticed for another 15-day comment period and if no negative comments are received, authorize the Executive Director to make any non-substantive changes to the regulations and submit the package to the Office of Administrative Law. The motion was seconded by Dr. Bishop.

Kimberly Kreifeldt, physician assistant in San Diego, stated she attended the February Board Meeting when the Board was being urged to clarify Title 16 of the CCR, section 1399.541. She stated although she was disappointed that the counsel from the DCA and HQES felt it necessary to bring it back to the Board after the comment period, after reviewing their comments, she feels that it further defines "immediately available," and believes it is a reasonable request. The current recommendation does not change the intent of what was being sought to clarify. It will further protect consumers as well as bring physician assistants in line with the current community standards. Ms. Kreifeldt stated she supports these changes and urged the Board to do so as well.

Greg Mennie stated the modified language further protects the physician assistants, the surgeons, and the patient. He thanked the Board for considering these newest changes and urged the Board's support.

Motion carried.

Agenda Item 18 Update on Physician Assistant Board

Dr. Bishop announced that in early April 2014, the PAB implemented the ability for applicants to apply on-line in the BreEZe system. The PAB is scheduled to allow licensees to submit on-line renewals in August 2014. The PAB's strategic plan was last updated in 2009. The PAB recently reviewed and updated the plan. A draft of the plan was presented to the PAB at the February 2014 meeting and Members voted to adopt the draft as its strategic plan for 2014 to 2018.

Dr. Bishop noted that the current CURES system does not have the capability to meet the current and future demands and needs to be updated. SB 809 signed by the Governor in 2013 will address funding issues and allow enhancements to the system that will better meet the needs of the users of this information. SB 809 has also created a twelve-dollar fee for physician assistant (PA) renewals. This fee started with 2014 renewals as is done with licensees of the Medical Board. Work continues on the feasibility study report (FSR) between the DCA and the DOJ, which manages the CURES system. The FSR will address multiple business objectives, including automation and improvements to the CURES system and changes that apply with the legislative mandates of SB 809. Dr. Bishop stated future

meetings would be scheduled between DCA, including the PAB and DOJ to finalize the FSR for submission to the California Department of Technology for their review and approval.

Dr. Bishop announced that a diversion fee schedule has been developed to inform Administrative Law Judges, DAGs, licensees and applicants of typical costs of participation in the PAB's diversion program. This document will also inform applicants and licensees of initial practice restrictions required by SB 1441 when entering the program. This document has also been posted to the PAB website.

Dr. Bishop noted that DCA is in the process of redesigning various boards' websites to ensure a more updated and uniform look. In late February, PAB staff met with the DCA internet team to begin implementing this new design. The new site should be on-line either late May or early June 2014. The PAB was recently informed by Medical Board staff that all of the mandatory reporting forms used to report B&P Code Section 800 series have been updated to include physician assistants. These forms are available on the Medical Board and PAB's websites.

Dr. Bishop announced that the next PAB meeting is scheduled for May 19, 2014, in Sacramento.

Agenda Item 19 **Review of Responses to Public Comments and Consideration of Revised Regulatory Language Amending Section 1361 and Adding Sections 1361.5, 1361.51, 1361.52, 1361.53, 1361.54, and 1361.55 to Title 16, California Code of Regulations - Uniform Standards for Substance-Abusing Licensees**

Ms. Webb stated there were two letters received concerning SB 1441 Uniform Standards after the 15-day comment period. One letter was received from Consumer's Union. The second was from the California Medical Association (CMA). Consumer's Union requested that language be added from Uniform Standard 4 that states the Board may re-establish a testing cycle or take any other disciplinary action if the Board has suspicion that a licensee has committed a violation of a Board's testing program.

Ms. Webb recommended leaving the current language as it is, since the current proposed language under section 1361.5(c)(3)(D) states, "Nothing precludes the Board from increasing the number of random tests for any reason, in addition to ordering any other disciplinary action that may be warranted." Further, under section 1361.5(c)(3)(C), the proposed language indicates, "The Board may order a licensee to undergo a biological fluid test on any day, at any time, including weekends and holidays."

Ms. Webb stated if the Board feels the need to order a licensee to undergo a biological fluid test and it returns negative, the Board will continue to monitor the physician. If the test returns positive, additional action will be ordered, as a positive test is a major violation.

Ms. Webb noted Consumer's Union comment is an important one, but feels the current language will cover the situation if the Board has a suspicion of a violation. She recommended no change be made to that particular section.

Ms. Webb continued with the next comment from the CMA. CMA requested the Board harmonize the use of "negative biological fluid tests" and "prohibited substance," under the proposed regulations and asked for the following amendment/addition to the proposed language under 1361.5(c)(1)(D), "or biological fluid tests indicating that licensee has not used, consumed, ingested or administered to himself or herself a prohibited substance, as defined in section 1361.51(e)."

Ms. Webb recommended that the Board adopt this proposed language as it accounts for the situation where a licensee has a positive biological fluid test, but has a valid prescription for the substance.

Similarly, CMA asked for an amendment/addition to section 1361.53(c), stating, "or negative biological fluid testing reports for a prohibited substance, indicating that a licensee has not used, consumer, ingested or administered to himself or herself a prohibited substance, as designated in section 1361.51(e),"

Ms. Webb recommended the Board adopt the proposed language in concept, but recommended a slight modification, so that the language is consistent with the proposed change to 1361.5(c)(1)(D). Thus, it was recommended that the following change be made to 1361.53(c) to read as follows:

> "(c) Negative biological fluid tests or biological fluid test indicating that a licensee has not used, consumed, ingested or administered to himself or herself a prohibited substance, as defined in section 1361.51(e), for at least six (6) months, two (2) positive worksite monitor reports (if currently being monitored), and complete compliance with other terms and conditions of probation."

Ms. Webb asked for a motion to approve the recommended changes to the proposed language to implement the Uniform Standards for Substance-Abusing Licensees and to further direct staff to notice the modified language for a second 15-day comment period. If no negative comments are received within the 15-day comment period, authorize the Executive Director to make any non-substantive changes to the proposed regulations before completing the rule-making process and adopting Title 16, California Code of Regulations (CCR), section 1361, and adding sections 1361.5, 1361.51, 1361.52, 1361.53, 1361.54, and 1361.55 with the modified text.

Dr. GnanaDev made a motion to approve the recommended changes as shown above in the requested motion; s/Dr. Lewis.

Tina Minasian, Consumer's Union, thanked Ms. Webb for working with Consumer's Union on the language for Uniform Standard 4. They are pleased the regulation incorporates the full Uniform Standards that they believe are essential tools for the Board and staff. Ms.

Minasian thanked the Board and staff for their hard work in making California consumers safer.

Ms. Choong, CMA, expressed her appreciation for the Board's consideration of CMA's comments on this important issue.

Ms. Clareval stated she had some concerns in the proposed language changes and that she would submit them to the Board during the next 15-day comment period.

Motion carried.

Agenda Item 20 Consideration of Legislation/Regulations

Ms. Simoes directed the Members to their Legislative Board packets. Ms. Simoes stated she had contacted all legislative district offices in the Los Angeles area inviting them to attend the Board meeting. On the updated tracker list, the bills in blue are either two-year bills or bills the Board has already taken a position on, therefore these bills were not discussed at the meeting. The bills in pink are the Board-sponsored bills and were discussed first. The bills in green and orange required discussion and a position at the meeting.

Ms. Simoes stated AB 1838 (Bonilla) and AB 1886 (Eggman) are both sponsored bills that have already been discussed and are continuing to move through the legislative process.

SB 1466 (Committee on Business, Professions, and Economic Development) is the Omnibus bill was to carry technical changes for all of the boards. The language would allow the American Osteopathic Association-Healthcare Facilities Accreditation Program (AOA-HFAP), as an approved accreditation agency for hospitals offering accredited postgraduate training programs. This bill will also strike "scheduled" from existing language that requires physicians who perform a "scheduled" medical procedure outside of a hospital, which results in a death, to report the occurrence to the Board within fifteen days. This bill will have an additional provision when it goes to the Assembly that will allow the Board to adopt regulations regarding physician availability in all clinical settings. The proposals were previously approved by the Board to be included in the omnibus bill, so the Board supports these revisions and a vote was not needed on the bill.

Dr. Lewis asked what is happening with AB 1838 (Bonilla) and AB 1886 (Eggman).

Ms. Simoes stated both bills have passed through their policy committees. AB 1838 had no changes, and was recently assigned to the Senate B&P Committee. AB 1886 had small amendments taken because of some concerns from the chair of the Senate B&P Committee. This bill passed out of Assembly B&P Committee and is now going to Appropriations Committee.

AB 1535 (Bloom) would allow pharmacists to furnish naloxone hydrochloride in accordance with standardized procedures developed and approved by the Board of Pharmacy (BOP) and the Board. This bill was amended since the last Board meeting to address concerns raised by the CMA. It now requires the BOP and the Board to include specific procedures in the standardized protocols to ensure education of the person to whom the drug is being furnished. It also requires procedures to

be included for the notification of the patient's primary care provider with patient consent. The amendment would require the patient receive consultation from the pharmacist and would not allow it to be waived. This bill would increase at-risk patients' access to naloxone, while at the same time, insuring standardized procedures and protocols are in place. The recent amendments further consumer protection and address many of the concerns previously raised by the Board.

Theresa Pena, Assembly Member Bloom's Office, spoke on behalf of Member Bloom thanking the Board for their support on this bill. Ms. Pena stated reducing overdose fatalities in California is a high priority of the Member and believes this bill can do just that. This bill has received lots of support with no opposition, has passed through both policy committees with unanimous bi-partisan support, and is now pending on the Assembly Floor. The Assembly Member would appreciate the Board's full support.

Mr. Serrano Sewell thanked Ms. Pena for attending the meeting, and requested she extend the Board's gratitude to the Assembly Member for his hard work on this bill.

Ms. Yaroslavsky made a motion to support this bill; s/Dr. Yip.

Dr. Bishop asked if this allows for dispensation only to the individual who is intended to receive it or family members, loved ones, etc., that would administer it.

Ms. Simoes stated this particular bill is to allow a pharmacist to dispense it to a particular person. That person would be required to receive proper education, training, etc., and follow procedures and protocols before it can be dispensed to them.

Dr. GnanaDev noted that these new amendments include several additional protections that were concerns at the last Board meeting and makes the bill much easier to support.

Motion carried.

Dr. Harrison Robbins commented on AB 916 stating this bill says that the word "board" cannot be used in advertising and patients cannot be informed of additional training if the word "board" is in a sentence the doctor is using. This seems completely objectionable and wondered if that statement has been noted, and if that is the intent of the Board.

Ms. Simoes stated AB 916, which is a two-year bill and still in the legislative process, is not being discussed at this meeting.

Lisa McGiffert, Consumer's Union stated they strongly support AB 1886 and believe that all information that is public by law should be readily available on the Board's website. They are actively supporting this bill by engaging consumers in California to support the bill. After reviewing the amendments, they feel the information should still be readily available to consumers. It is important the public know they can still get the information indefinitely.

AB 1841 (Mullin) would allow Medical Assistants (MA) to hand patients properly labeled and pre-packaged prescription drugs that have been ordered by a licensed physician, podiatrist, PA, nurse

practitioner (NP), or a certified nurse-midwife (CNM). The bill would require the properly labeled and pre-packaged prescription drug to have the patient's name affixed to the package and for the physician, PA, NP, or CNM to verify that it is the correct medication and dosage for that specific patient, prior to the MA handing the medication to a patient. This bill would exclude controlled substances. Allowing MAs to hand over these medications is a minor increase in the MAs duties and one that does not compromise consumer protection, as the physician is the one to label the medication for the patient and package the medication.

Ms. Yaroslavsky made a motion to take a neutral position on AB 1841; s/Dr. Krauss.

Dr. Lewis expressed his concern about when a prescription is dispensed to a patient; there is often a dialogue between the physician and the patient stating what the medication is for, when to take it, etc.

Ms. Simoes stated the patient would have already been consulted by the physician before the MA was given the prescription to hand to the patient.

Dr. Diego asked why staff recommended a neutral position rather than a support position.

Ms. Simoes stated the neutral position simply shows that the Board has no concerns with the language in the bill. The Board could change the neutral position to a support position if desired.

Ms. Yaroslavsky withdrew the original motion to take a neutral position on this bill.

Ms. Yaroslavsky made a new motion to take a support position on AB 1841; s/Dr. GnanaDev. Motion carried.

AB 1894 (Ammiano) would enact the Medical Cannabis Regulation and Control Act and would designate the Department of Alcoholic Beverage Control as the medical cannabis regulatory agency. However, this analysis only covers the portion of the bill related to the requirements on physicians recommending medical marijuana and the Board.

This bill would include in the Board's priorities, cases that allege a physician has recommended marijuana to patients for medical purposes without a prior good faith medical examination and medical reason. It would require physicians to perform an appropriate prior examination before recommending medical marijuana, which must include an in-person examination. This bill would not allow a medical marijuana clinic or dispensary to directly employ physicians to provide medical marijuana recommendations.

This bill would give the Board much needed enforcement tools to more efficiently regulate physicians who recommend medical marijuana. The bill expressly requires a physician to perform an appropriate prior examination before recommending medical marijuana, which must include an in-person examination. This bill would also make medical marijuana cases a priority of the Board, which will help to ensure consumer protection. It will not allow physicians to be employed by medical marijuana clinics or dispensaries, which will help to ensure that physicians are not making medical marijuana recommendations for financial, or employment purposes.

Ms. Yaroslavsky made a motion to take a support position on the provisions of this bill that impact the Board; s/Ms. Wright.

Dr. GnanaDev asked how this is different from current law.

Ms. Simoes stated that at this point, the Board has certain priorities and these types of cases are handled first. This bill would specifically add medical marijuana without a good faith in-person examination as one of those priorities. It will also make it clear that the exam has to be an in-person exam and that dispensaries cannot directly hire a physician just to prescribe medical marijuana.

Ms. Yaroslavsky noted the proliferation of the different establishments in the different communities and the idea that they can hire a physician just for prescribing medical marijuana. She feels this is a big step toward helping the communities, as well as consumers.

Dr. Krauss asked why this bill is supported by the California Cannabis Association, but opposed by several law enforcement agencies.

Ms. Simoes stated the law enforcement organizations are the sponsors of another medical marijuana bill SB 1262 (Correa), which is a little bit different from this bill. The requirements for the physicians and the Board vary between AB 1894 and SB 1262 and the law enforcement agencies chose to sponsor SB 1262 over AB 1894.

Mr. Serrano Sewell noted the author of AB 1894 is a highly respected and recognized leader in this subject matter. He has had to make some difficult decisions, some of which upset his own constituents and has taken the Board's needs very seriously on this issue. Mr. Serrano Sewell stated that pursuant to the motion, a support position would be best at this point.

Ms. Simoes stated that this bill directly ties this to unprofessional conduct, so the investigators do not have to prove that what they find during their investigation is a specific code violation.

Dr. Bishop stated his concern at the disciplinary end is the "good faith" exam and questioned if that "good faith" exam should be further clarified. Another concern was if a vote should be taken on this particular bill at this point, knowing that there is another bill coming up for discussion and vote on the same subject during this meeting.

Ms. Schipske expressed concern with the language in this bill that refers to medications that are prescribed as opposed to recommended. She would like to have further clarification shown in the bill to decipher prescribed from recommended.

Ms. Kirchmeyer noted some clarification on several concerns the Members had on this bill. She noted that when the author was going over this bill, they were looking at the biggest issues with current law that were being brought forward, and one of those was the "in-person" exam. Current law states a physician has to follow the same steps they would when prescribing any other type of medication. The author purposely put the words "in-person" in the language of the bill, knowing it was a consumer protection concern.

Dr. Yip stated he had briefly read the other bill on this subject and believes that taking a "support" position on this bill will not effect, in any way, the discussion, or outcome of the upcoming bill. Dr. Yip also asked if any physician could recommend medical marijuana or if they have to be specifically trained in that area.

Ms. Simoes confirmed any physician could recommend medical marijuana under current law. No specific certification is required at this time.

Ms. Kirchmeyer stated taking a position on this bill would not hinder any position on the other bill.

Tara Kittle feels it is atrocious that physicians can recommend any type of medication without a good faith exam and there is an underlying problem, which is the notion of marijuana in general. There is no way to prescribe an actual dosage like there would be in other medications.

Motion carried.

AB 2139 (Eggman) would require a health care provider who makes a diagnosis that a patient has a terminal illness, to notify the patient, or the patient's agent, of the patient's right to comprehensive information and counseling regarding end-of-life options pursuant to existing law.

This bill would define an agent as an individual designated in a power of attorney for health care to make a health care decision for the patient who has been diagnosed with a terminal illness. It would define terminal illness as a medical condition resulting in a prognosis of life expectancy of one year or less, if the disease follows its normal course.

Existing law requires health care providers to provide comprehensive information and counseling regarding end-of-life options only if the patient requests this information. Requiring a health care provider to notify a patient, or the patient's agent, of the patient's right to request this information seems reasonable, as the patient should know that these resources are available.

Dr. Lewis made a motion to take a neutral position on this bill; s/Ms. Yaroslavsky. Motion carried.

AB 2214 (Fox) would require the Board, when determining continuing medical education (CME) requirements, to consider including a course in geriatric care for emergency room physicians. Although the Board has historically opposed mandated CME, this bill would not mandate particular CME for physicians. This bill would only require the Board to consider a course on geriatric care for emergency room physicians. Currently, the Board does not track employment information for physicians, so the Board would not know which physicians are emergency room physicians. If the Board decides that it is important to get out information to physicians, it could include an article in its Newsletter or put information on the Board's website.

Ms. Yaroslavsky made a motion to take a neutral position on this bill; s/Dr. GnanaDev. Motion carried.

AB 2458 (Bonilla) would establish the Graduate Medical Education Fund (GMEF) to finance additional positions at residency programs in California hospitals and teaching health centers. It would appropriate $2.84 million per year for three years from the California Health Data and Planning Fund into the GMEF. It would also appropriate $24 million from the General Fund in 2014/2015 into the GMEF.

This bill would increase funding for residency slots in California, which will help promote the Board's mission of increasing access to care for consumers. This bill would also allow more physicians to receive residency training and potentially end up practicing in California.

Dr. Lewis made a motion to take a support position on this bill; s/Ms. Wright.

Dr. GnanaDev stated the Board strongly supports this bill as not enough residency programs is a problem in many states.

Ms. Yaroslavsky asked if the money pays for the training positions and where the money is being obtained.

Ms. Simoes stated $2.84 million would come from the California Health Data and Planning Fund and $25 million would come from the General Fund.

Dr. Bishop asked if this money could be used for other types of residency programs besides primary care positions.

Ms. Simoes noted criteria would be developed for distribution of the funding.

Dr. Krauss stated his understanding is that the Office of Statewide Health, Planning, and Development's (OSHPD) specific motivation is primary care in underserved areas.

Yvonne Choong, CMA, noted they are a co-sponsor of this bill with the California Academy of Family Physicians. She let the Board know that primary care will certainly be addressed when creating the details of this bill and would appreciate the Board's support vote.

Motioned carried.

Ms. Simoes stated the next bill on the tracking list SB 966 (Lieu), was amended recently to include some of the Board's outpatient-setting proposals. However, per recent contact from the author's office, this bill will not be moving forward this year. With that, this bill was not discussed at the meeting.

SB 1083 (Pavley) would authorize PAs to certify claims for disability insurance (DI) with the Employment Development Department (EDD). The PA would first have to perform a physical exam under the supervision of a physician, pursuant to existing law. PAs are

already allowed to certify temporary disability and issue disable person placards. It is reasonable to allow PAs to certify claims for DI with EDD in alignment with the PA scope of practice. The PA is still under a delegated services agreement with a physician, and as such, this bill would not compromise consumer protection.

Dr. Bishop made a motion to take a support position on this bill; s/Ms. Yaroslavsky. Motion carried.

SB 1116 (Torres) allows physicians to donate an additional $75 to the Board for the purposes of funding the Steven M. Thompson Physician Corps Loan Repayment Program (STLRP). Currently, a physician could donate more than the mandatory $25.00 to the STLRP; however, this information is not included on the initial licensing or renewal application. This bill would allow physicians to donate an additional $75, but does not mean a physician could not donate more than that amount to the STLRP. If this bill becomes law, the Board would include specific information on the ability for a physician to donate to the STLRP in any amount and would include a check box for an additional $75 donation on the initial and renewal application so physicians are aware of their ability to donate additional funding to the STLRP. This bill would further the Board's mission of promoting access to care.

Ms. Yaroslavky made a motion to take a support position on this bill; s/Wright.

Dr. GnanaDev stated the STLRP is a great program, but feels this fee is being pushed on the licensees and believes these funds should be more diversified rather than put on the licensees alone and the STLRP should find other sources of revenue.

Yvonne Choong, CMA, stated they are in opposition to this bill and proposed an amendment. CMA feels there should be some flexibility to check off another amount. They believe this bill could discourage some from donating if they do not have an option to donate less than the $75.

Motion carried.

AB 2346 (Gonzalez) would authorize the establishment of a Physician and Surgeon Assistance Program (PSAP) within the Board. The PSAP would be modeled after the State Bar's Lawyer Assistance Program and would be a voluntary and confidential program to support a physician in his or her rehabilitation and competent practice of medicine. The PSAP, if established, would aid a physician and surgeon struggling with substance abuse, mental health concerns, stress, burnout, and other issues affecting his or her productivity.

This bill would allow the Board to refer a physician into the PSAP, but neither acceptance into or participation in the program shall relieve the physician of any lawful duties and obligations under any disciplinary action. Participation in the PSAP would be disclosed if required as a condition of probation. The bill would require participants to be responsible

for all expenses related to treatment and recovery and would allow the Board to charge a reasonable administrative fee to participants for offsetting the costs of maintaining the program.

If the Board were to establish a PSAP, it would require the Board to actively engage in outreach activities to make physicians, the medical community, and the public aware of the existence and availability of the program. This bill would require the outreach to include, but not be limited to, the development and certification of minimum continuing education courses relating to the prevention, detection, and treatment of substance abuse, including no-cost and low-cost programs and materials.

Ms. Simoes stated the Board's previous Diversion Program had many issues, including the fact that the Board could not effectively and efficiently monitor substance-abusing physicians and ensure that the public was adequately protected. The Program was made inoperable because the public and the Legislature did not believe it was appropriate for the Board to be diverting physicians from enforcement and allowing them to participate in a confidential substance abuse monitoring program. Since 2008, when the Board's Diversion Program was made inoperable, the Board has taken the stance that it is the physician's responsibility to maintain sobriety and well-being. The Board's role is to monitor the physician's compliance with her or her recovery efforts, thus meeting the Board's mandate of public protection. It is not the Board's role, as a regulatory agency, to provide a confidential rehabilitation program, as these services are already widely available to physicians in California.

There would be a substantial fiscal impact to the Board to create this program in addition to the fiscal impact associated with the outreach requirements in this bill. The Board estimates startup costs alone to be at least $250,000.

Ms. Yaroslavsky noted she was present at the Assembly B&P presentation of this bill and was disappointed after having been through the previous Diversion Program situation. It was very difficult to get the program removed from the Board's oversight. This bill wants this program to be put back in the Board's oversight. She stated she cannot urge the Board enough to take an oppose position on this bill.

Dr. Krauss stated the Board cannot get away from the fact that the role of the Board is consumer protection. After reviewing the records of physicians who have not served the public in the best way, he sees that most physicians are placed on probation and find some means of rehabilitation so they can continue to safely serve the public. He believes physicians who may be impaired, for whatever reason, are fearful of entering any type of recovery program because they fear it will be reported to the Board, resulting in disciplinary action being taken against them. He feels there needs to be a physician health program. The FSMB has a document recommending physician health programs and most states have this type of program. He added that this problem cannot be ignored. He suggested rather than opposing the bill, the Board should sit down with interested parties and work to establish some type of physician health program.

Dr. Lewis stated the Board does need some type of program brought back into place and should not necessarily take an oppose position, but perhaps a neutral position. He added this would allow staff

to work on something that would take a proactive approach in the future. In the interest of protecting the public, rehabilitating physicians and being proactive to the stakeholders, the Board should look at a more neutral position on this bill.

Dr. Bishop stated there needs to be a mechanism for a doctor who wants to seek help to be allowed to do so in a protected fashion, but to also protect the public.

Dr. GnanaDev stated he supports the concept of the program, without a diversion component. He added prevention is the key. By treating the physicians early, it is preventing them from possibly harming a patient, rather than disciplining them after harm is done to a patient.

Mr. Serrano Sewell stated the Board could learn from the errors with the previous diversion program and use what did and did not work to create some sort of program that will not jeopardize patient safety and see how everyone involved can benefit from such a program.

Dr. Lewis made a motion to take a support in concept on this bill; s/Ms. Schipske.

Ms. Schipske requested a presentation by the State Bar be brought back to the Board for review, as their program has been very effective.

Tina Minasian, Consumer's Union, stated she was a victim of a physician that was in the Board's previous Diversion Program. AB 2346 will create another diversion program, only this time, not only will the physician's participation be a secret from the consumer, but a secret from the Board, with no mandatory reporting requirements. She strongly urged the Board to oppose this bill.

Julie D'Angelo Fellmeth, Center for Public Interest Law, stated they oppose this bill and strongly urges the Board to oppose it as well, or at least demand some significant safeguards to protect patients. This bill should not be associated with the Board. She added that if it should happen that this bill does fall under the Board, the Board should insist on the following: 1) the program adheres to the current Uniform Standards, as this bill does not require the use of the Uniform Standards; 2) if it is located within the Board, the program must be required to notify the Board's Enforcement Program when a participant relapses or fails to comply with the rules, as there is nothing in this bill in regard to notifying the Board; 3) if it is located within the Board, the Board should insist on a complete fiscal analysis, as there has not been one performed. The Board should also insist on a sunset date, a mandatory audit, and a provision requiring competitive bidding when contracting out to the private sector. The Board should also demand a provision that anyone who played a role in overseeing the prior Diversion Program cannot oversee this one.

Tara Kittle highly recommended the Board reinstate the Wellness Committee that used to be a part of the Board. There are many issues taking place now regarding physician wellness and its impact on the healthcare consumer. She stated much of the mess of the prior diversion program was in the eyes of the public. She added it was a failed public relations situation, as the public had misconceived notions regarding what it is like to be a physician. She feels every rehabilitated physician is good for the people of California.

Michelle Monseratt-Ramos strongly urged the Board to oppose this bill, as this bill does not mention the existence of the SB 1441 Uniform Standards. She added it keeps the program confidential from the patients as well as from the Board.

Yvonne Choong, CMA, stated she appreciates the discussion on this important bill and the Board's willingness to move to a support in concept position that will allow some time to work with the author, the Board, and other stakeholders to work together on this bill. She noted it is CMA's intent to include a financial analysis, and intends to specify the nature of the contracting arrangement. She noted for those members who are new to the Board, CMA is not asking for anything that is new to the State. Other agencies that have a diversion program in place also have a voluntary program.

Genieve Claurveul asked to Board to oppose this bill and noted monitoring and rehabilitation should be done by an outside entity and not the Board.

Lisa McGiffert, Consumer's Union Safe Patient Project, strongly urged the Board to oppose this bill. She stated this bill did not exist a week ago and has not had the proper amount of time for the public and elected officials to thoroughly review it and its implications. She noted it is not the Board's responsibility that physicians get the treatment they need. There is nothing stopping physicians from getting confidential treatment today.

Dr. Jim Hay, Chair of California Public Protection and Physician Health and past President of CMA, via teleconference, noted why the creation of a physician health program is so important in California. Most physicians believe in preventive and evidence-based medicine. The current method of dealing with physicians who have potentially apparent substance abuse, psychological, or medical problems is neither of those. This program is helpful because it identifies the problem before the physician gets the attention of their licensing board. The physician does so entirely because of confidential and supportive systems that encourages participation as opposed to enforcement only methods that discourage self-referral.

Mr. Lui noted that supporting the concept of diversion is important, but the concern is who should undertake this program. He feels a diversion program is a good thing, but the Board should not be the one to undertake this program, it should be an outside entity from the Board.

Dr. Krauss is uncomfortable with taking any position today on a bill that he believes still needs work. He is concerned about the public comment that was heard today and feels it is critical to protect the public. Some of the safeguards that were mentioned are important and should be included in more discussion. He feels there are still too many things that need to be discussed before making a decision and does not believe there is enough time in this legislative cycle to include all that needs to be included.

Dr. Lewis withdrew his original motion to support in concept.

Ms. Yaroslavsky made a motion to table this bill and have Members work with staff, and the author, to encompass all of the comments heard today and to report back to the Board at the next meeting; s/Dr. Yip. Motion carried.

SB 1258 (DeSaulnier) would require all prescriptions for Schedules II, III, IV and V controlled substances beginning January 1, 2016, to be submitted electronically and to comply with the DEA regulations. For medical practices with two or fewer physicians, and for providers in underserved rural areas, these requirements would become effective January 1, 2017. This bill would provide an exception to the electronic prescribing requirement if technological failure prevents electronic transmission of the prescription. This bill adds Schedule V controlled substances to those that have to be reported to CURES. It would allow an individual designated by a board, bureau, or program within DCA to access CURES data for investigative purposes if an application is submitted to DOJ to obtain approval to access this information. This bill would require the application to contain facts demonstrating the probable cause to believe the licensee has violated a law governing controlled substances. According to the author's office, the provision would allow designated DCA investigators to access CURES information. However, with the Board's investigators moving to DCA, this portion of the bill could be problematic.

Lastly, this bill would establish controlled substances dispensing limits. This bill would not allow a person to prescribe, fill, compound, or dispense a prescription for a controlled substance in a quantity exceeding a 30-day supply. This bill would provide an exception to this limit and allow for a 90-day supply, if the prescription is issued in the treatment of either a panic disorder, attention deficit disorder, a chronic debilitating neurologic condition characterized as a movement disorder or exhibiting seizure, convulsive or spasm activity, pain in patients with conditions or diseases known to be chronic or incurable, narcolepsy or any other condition or circumstance for which the physician determines is a medical necessity. The reason for the medical necessity must be noted in the prescription and in the patient's medical record. This bill would not allow a prescription for a controlled substance to be prescribed, filled, compounded or dispensed if another prescription for that controlled substance was issued within the immediate preceding 30 days, until the patient has exhausted all but a seven-day supply of the controlled substance from the previous prescription. This bill would also not allow a prescription for a Schedule II drug to be refilled. It now states that this section would not prohibit a patient from being issued multiple prescriptions, each for a different controlled substance, at a given time.

Ms. Yaroslavsky made a motion to support in concept; s/Wright.

Dr. GnanaDev stated this bill needs a lot of work. He feels this is micromanagement of the medical practice, which does not make sense. He added the concept is fine, but it goes beyond what should be put into legislation.

Genieve Clarevuel noted she sent a letter to the sponsors of this bill stating it is a horrible bill and the only thing good about it is the electronic prescribing part. She feels the bill is overreaching, is poorly written and will create many conflicts the way it is worded.

Yvonne Choong, CMA, said she appreciated Dr. GnanaDev's comments as CMA is taking an oppose position on this bill. The e-prescribing requirements related to controlled substances are infeasible at this time. She feels the bill is overly descriptive in determining how much a physician can prescribe. It also imposes a lot of new requirement on the CURES system at a time when it is in the process of trying to upgrade the system. They believe the intent of the bill is to curb prescription drug abuse, but that really needs to be balanced with what physicians need to do for their patients.

Motion carried.

SB 1262 (Correa) would put various licensing and enforcement requirements on medical marijuana dispensaries and cultivation facilities. It would also put requirements on physicians recommending medical marijuana and on the Board. Ms. Simoes stated the analysis only covered the portion of the bill relating to the requirements on physicians recommending medical marijuana and on the Board.

The bill would require physicians, prior to recommending medical marijuana, to meet the following requirements: have a doctor-patient relationship, conduct an appropriate prior examination of the patient to establish that medical marijuana use is appropriate, consult with the patient as necessary, and periodically review the treatments efficacy.

A physician that recommends medical marijuana would also be required to do all of the following: include a discussion of the side effects; address, in the recommendation, what kind of marijuana to obtain, including high tetrahydrocannabinol (THC) levels, low THC levels, high cannabidiol (CBD) levels, and low CBD levels; and explain the reason for recommending that particular strain. Under no circumstances would a physician be able to recommend butane hash oil. The physician must maintain a system of recordkeeping that supports the decision to recommend the use of medical marijuana for individual patients and, if recommending medical marijuana to a minor (under 21 years of age), the recommendation must be approved by a board-certified pediatrician and must be for high CBD marijuana and for non-smoking delivery.

The bill would make it unprofessional conduct if a physician recommends medical marijuana without an appropriate prior exam and a medical indication, or recommends marijuana for non-medical purposes. The bill would also subject physicians recommending medical marijuana to the laws in B&P Code Section 650.01 and would not allow a physician to accept, solicit, or offer any form of remuneration from, or to, a licensed dispenser, producer or processor of cannabis products in which the licensee or his/her immediate family has a financial interest. The bill would not allow a physician to advertise for medical marijuana physician recommendations unless the advertisement meets the requirements in the advertising section of B&P Code Section 651.

The bill would also require the Board, by January 1, 2016, to convene a task force of experts in the use of medical marijuana, to review and update, as necessary, physician guidelines for recommending medical marijuana to ensure the competent review in cases concerning the recommendation of marijuana for medical purposes.

This bill would give the Board some needed enforcement tools to more efficiently regulate physicians who recommend medical marijuana. The bill would expressly spell out what a physician must do before medical marijuana is recommended, what a physician must do if a medical marijuana recommendation is issued, and places appropriate anti-kick back and advertising restrictions on physicians who recommend medical marijuana. It also directly ties non-compliance with some of these requirements to unprofessional conduct.

The bill would require a physician to address, in the recommendation, what kind of marijuana to obtain, including high THC levels, low THC levels, high CBD levels, low CBD levels, and explain the reason for recommending that particular strain. Board staff is concerned that until medical

marijuana is regulated by the Food and Drug Administration (FDA), physicians may not know the appropriate type of marijuana to recommend, or be able to explain the reason for recommending a particular strain. In addition, the Board's physician experts that review enforcement cases may also not be knowledgeable in the appropriate, particular strain a physician should be recommending, as the FDA does not regulate marijuana at this time.

Dr. Lewis made a motion to take an oppose unless amended position; s/Dr. GnanaDev.

Dr. Krauss agreed with the motion and stated that medical marijuana is an oxy-moron, in his opinion, and then to have the prescription micro-managed is an even great absurdity. He is in full support of the oppose unless amended position.

Motion carried.

Ms. Simoes reminded the Members the regulations' matrix is in the packet on page BRD 20B-1 and asked if anyone had any questions concerning the matrix. No questions were asked.

Agenda Item 21 Special Faculty Permit Committee Recommendation; Approval of Applicant

Dr. Yip stated that the Special Faculty Permit Review Committee (SFPRC) had a telephone conference meeting on March 27, 2014. The SFPRC reviewed one application from the Stanford School of Medicine for Dr. Maria-Grazia Roncarolo. In addition to the Special Faculty Permit appointment, Stanford is also requesting the Board's approval for Dr. Roncarolo to be the Division Chief of Pediatric Translational and Regenerative Medicine. Dr. Roncarolo has been granted an extremely rare waiver due to Dr. Roncarolo's highly regarded international reputation in the field of stem cell research, gene therapy, and autoimmune diseases. It would be difficult to find another clinician-scientist of her caliber. If approved and appointed, Dr. Roncarolo would be the principal investigator of Stanford's application to the California Institute of Legion Medicine of Alpha Clinic. She would also be Co-Director at the Institute of Stem Cell Biology and Regenerative Medicine. In addition, if approved, Dr. Roncarolo would be training physician-scientists and graduate students in the Institute of Stem Cell Biology and Regenerative Medicine, Immunology, Cancer Biology, and Developmental Biology. Dr. Roncarolo would also be a mentor to pediatric residents, and pediatric hematology oncology fellows.

Dr. Yip stated the SFPRC recommends the Board approve Dr. Roncarolo for Special Faculty Review Appointment and recommends approval of the request to be the Division Chief.

Dr. Yip made a motion to approve the recommendation to appoint Dr. Roncarolo for a Special Faculty Permit Appointment at Stanford pursuant to Business and Professions Code Section 2168.1(a)(1)(A); s/Ms. Yaroslavsky. Motion carried.
Dr. Yip made a motion to approve Dr. Roncarolo to be the Division Chief of the Pediatric Translational and Regenerative Medicine pursuant to Business and Professions Code Section 2168(c); s/Ms. Yaroslavsky. Motion carried.

Agenda Item 22 Update on and Consideration of Recommendations from the Midwifery Advisory Council (MAC)

Ms. Karen Ehrlich presented this agenda item on behalf of Ms. Sparrevohn.

Ms. Ehrlich referred Members to tab 22, page BRD 22A-1and BRD 22A-2 for review of the requested MAC meeting future agenda items. The items being requested to be added to a future agenda included:

- Updates on the task forces established for midwife assistants, a Board informational packet on licensed midwives, and the licensed midwife annual report data collection tool, and
- Update on regulatory changes required by AB 1308.

Ms. Yaroslavsky made a motion to approve the requested upcoming agenda items; s/Mr. Lui. Motion carried.

Ms. Webb referred the Members to tab 22, pages BRD 22B-1 and BRD 22B-2. Ms. Webb stated that with AB 1308 (Bonilla, Chapter 665, Statutes of 2013) going into effect January 1, 2014, there were some changes made to the law affecting licensed midwives. Under B&P Code Section 2507, physician supervision was removed as a requirement for licensed midwives to practice. However, new limitations were placed on client selection. AB 1308 also removed the authority for Title 16CCR, section 1379.19, which incorporated the Standards of Care for California Licensed Midwives by reference into the Board's regulations. The document included in the packet has incorporated the necessary modifications pursuant to AB 1308. Ms. Webb stated the document will no longer be in regulation but will be guidelines for licensed midwives.

After review and consideration of the proposed changes, Ms. Webb asked for a motion to approve the Practice Guidelines for California Licensed Midwives including posting them on the Board's website, and to authorize staff to make any non-substantive changes to the document in preparation for posting.

Ms. Yaroslavsky made a motion to approve the Practice Guidelines; s/Dr. Krauss. Motion carried.

Agenda Item 23 Agenda Items for July 24-25, 2014 Meeting in Sacramento Area

Mr. Serrano Sewell reminded Members that the election of officers and the discussion of 2015 meeting dates would be agenda items at the next meeting.

Dr. Bishop requested a future agenda item on the number of years of postgraduate training required for licensure of California physicians.

Ms. Wright requested statistics on the rate of physician impairment, whether it is mental health or substance abuse, as well as options from staff on what can be done, since diversion is not an option to assist in this area.

Lisa McGiffert, Consumer's Union, Safe Patient Project, requested that the Board agendize the issue of disclosure by physicians of probation status to patients and options of ways to disclose that information. She would also like to have the statute of limitations issue put on the agenda of the Enforcement Committee or the Board.

Agenda Item 24 Adjournment

Mr. Serrano Sewell adjourned the meeting at 12:33 pm.

_____ _____
David Serrano Sewell, Vice President Date

_____ _____
Silvia Diego, M.D., Secretary Date

_____ _____
Kimberly Kirchmeyer, Executive Director Date

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