MEDICAL BOARD OF CALIFORNIA

QUARTERLY BOARD MEETING

Embassy Suites
150 Anza Boulevard
Burlingame, CA 94010

Agenda Item 3

Thursday, February 6, 2014
2:30 pm – 6:00pm

Friday, February 7, 2014
9:00 a.m. – 4:00 p.m.

MEETING MINUTES

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

Members Present:

Sharon Levine, M.D., President
Michael Bishop, M.D.
Silvia Diego, M.D., Secretary
Dev GnanaDev, M.D.
Ronald H. Lewis, M.D.
Elwood Lui
Denise Pines
David Serrano Sewell, J.D., Vice President
Jamie Wright, Esq.
Felix Yip, M.D.
Barbara Yaroslavsky

Members Absent:

Howard Krauss, M.D.
Gerrie Schipske, R.N.P., J.D.

Staff Present:

Dianne Dobbs, Legal Counsel, Department of Consumer Affairs
Cassandra Hockenson, Public Information Officer
Kimberly Kirchmeyer, Interim Executive Director
Armando Melendez, Business Services Analyst
Regina Rao, Associate Governmental Program Analyst
Kevin Schunke, Licensing Outreach Manager
Jennifer Simoes, Chief of Legislation
Renee Threadgill, Chief of Enforcement
Lisa Toof, Administrative Assistant II

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
Long Do, California Medical Association
Karen Ehrlich, Licensed Midwife
Julie D'Angelo Fellmeth, Center for Public Interest Law
William Ferguson, Center for Public Interest Law
Jack French, Consumer's Union
Faith Gibson, California College of Midwives
Mike Gomez, Department of Consumer Affairs
Donna Gray-Bowersox, Department of Health Care Services
Anne Heard, M.D., Department of Health Care Services
Gail Jara, California Public Protection and Physician Health
Christine Lally, Department of Consumer Affairs
Mona Maggio, Board of Optometry
Carole Moss, Niles Project and California Safe Patient Project
Ty Moss, Niles Project and California Safe Patient Project
Katrina Peters, M.D, Golden State Medical Association
Michelle Monseratt Ramos, Consumers Union Safe Patient Project
Harrison Robbins, M.D., California Academy of Cosmetic Surgeons
Bruce Tarzy, M.D., Department of Health Care Services
Rick Waltman, Center for Public Interest Law

Agenda Item 1 Call to Order/Roll Call

Dr. Levine called the meeting of the Medical Board of California (Board) to order on February 6, 2014, at 2:40 p.m. A quorum was present and due notice was provided to all interested parties.

Agenda Item 2 Introduction and Swearing in of New Board Member

Dr. Levine introduced, welcomed, and swore in Mr. Elwood Lui.

Mr. Lui stated that it was his pleasure to be a part of the Board and to serve the public and is happy to have been appointed by the Governor.

Agenda Item 3 Public Comments on Items not on the Agenda

Public comment was heard on this agenda item.

Dr. Katrina Peters, President of the Golden State Medical Association, stated that her association is part of the National Medical Association which is one of the largest and oldest organizations organized of primarily African-American physicians in the country. She stated a number of their members around the state have expressed concerns that African-American physicians have been targeted and have received discipline from the Board in higher numbers than other comparable physicians in the state. The organization wants to address this issue, but has no effective way of doing so without the assistance of the Board. The organization is not certain if these concerns are fact or perception. Dr. Peters is hoping to get some assistance from the Board to answer that question. She added even if the organization's physicians are not being treated differently, it is important to have as many working and active physicians as possible and if there is anything the organization can do to help keep and return as many physicians to active duty, the organization is willing to work with the Board to help that take place.

Faith Gibson, a licensed California midwife, stated there is an item that should be added to the next Midwifery Advisory Council (MAC) meeting. The item has to do with the newly passed law that took effect on January 1, 2014, that includes the ability for the MAC to move the current licensed midwifery reporting system to the Midwives Alliance of North America system. There is a peer review publication that was recently released from the Journal of Midwifery and Women's Health. There are statistics from 2004 through 2009 all of which include prospectively logged information and includes all of the California midwives.

Yvonne Choong, California Medical Association (CMA), stated that the CMA recognizes the important role that medical consultants and expert reviewers serve in working quality of care complaints and acting as clinical experts to assess whether a licensee has acted with negligence or incompetence in the provision of patient care. The Board has routinely requested assistance from CMA in recruiting reviewers and consultants and CMA has provided that assistance. In that process, there have been some issues that have emerged which require clarification from the Board, and she asked this be placed on a future meeting agenda.

She specifically asked for information on the extent to which an expert witness opinion can be revised by the Board staff and whether there is a requirement that the expert concur with those changes before the report is finalized and used as evidence in a disciplinary case.

She also asked if a physician relinquishes his/her future ability, upon termination of an employment or consulting relationship with the Board, to serve as an expert witness for the defense in cases that appear before the Board. She inquired as to whether physicians who serve as expert witnesses for the defense are expected to disclose past work on behalf of the Board.

She asked for clarification on if a former medical consultant or expert reviewer is retained as an expert on behalf of a licensee, can action be taken against the physician's license if the Board disagrees with or believes that the physician has provided improper expert witness testimony.

Finally, she inquired if prospective consultants and expert reviewers are being made aware of these issues, prior to agreeing to provide services to the Board. If not, CMA believes that this should be included as part of the expert reviewer training under development.

Ty Moss, co-founder of Niles Project, speaking on behalf of the Consumers Union California Safe Patient Project stated they are pleased to see that the Board has begun offering teleconferencing to allow all public participation at meetings. The agenda for the Education and Wellness meeting held earlier today had instructions on how to participate via teleconference. There is some concern that those instructions can serve to reduce public participation at the Board meetings. The instructions stated that there would be a limited amount of time available for those on the teleconference line. After that time limit, no further comments would be allowed. Consumers Union feels that these restrictions are extreme and can run counter to the intentions of the Bagley-Keene Act. Mr. Moss stated that it is believed that with these limitations there will not be an overwhelming amount of teleconference participation.

Agenda Item 4 Approval of Minutes from the October 24-25, 2013 Meeting

Dr. Lewis made a motion to approve the October Meeting Minutes as submitted; s/Ms. Yaroslavsky. Motion carried.

Agenda Item 5 Presentation on Health Care Fraud and Abuse: Preventative Strategies in Program Integrity

Dr. Tarzy, Dr. Heard, and Ms. Gray-Bowersox, from the Department of Healthcare Services (DHCS), shared with the Board a presentation regarding preventative strategies to avoid health care fraud and abuse. The presentation offered examples of issues such as errors, inefficiencies, abuse and fraud. The presentation also provided examples of how "con artists" work and what physicians can do on a regular basis to prevent being a target of fraud.

Dr. Levine asked if DHCS offers an advice line or a place for physicians who are contemplating accepting an offer to call for advice to see if it is legitimate or if it is a red flag.

Dr. Heard stated that there is not an actual advice line to call, however, DHCS's provider enrollment unit has online information that can assist physicians with certain situations and certain specific issues.

Dr. Lewis thanked the DHCS staff for the presentation and asked about their pre-enrollment review. He understood that DHCS goes out to the site and inspects the facility and asked if the DHCS has any information that could be provided to physicians as an educational tool.

Dr. Heard stated that this is a change for the DHCS and it would like to be able to offer the continuing medical education (CME) credit for the DHCS web-based training so that physicians could receive credit for the education.

Dr. Yip stated that most Medi-Cal enrollees are already enrolled in an HMO plan, and asked if that would switch the target audience in the future, as most of those would be under a similar HMO/IPA plan, their expenditures face capitation and the room for abuse is probably less in Medi-Cal.

Ms. Gray-Bowersox stated that when deciding to do a review or an audit, DHCS uses a number of analytics. Some of the issues will be addressed by the new training modules that cross all payment types and reach all payer sources. DHCS started module two first specifically to include information about prescribing and some of the problems and red flags that physicians need to be aware of. DHCS is not trying to teach physicians how to practice, but to help them understand what the problems and pitfalls are.

Dr. Tarzy stated that the problems in managed care are different and DHCS will eventually have a managed care module.

Dr. Levine asked if the training modules will be live webinars or self-study modules.

Dr. Tarzy responded stating that the modules will be videotaped so that each individual would be able to go through it at his/her own pace. There will be questions that they have to answer before they can move on to the next part of the video, similar to the CME method.

Agenda Item 6 Board Member Communications with Interested Parties

Dr. Bishop stated that he worked with DHCS in regards to the presentation that was provided.

Ms. Yaroslavsky stated that she met with the Los Angeles County Medical Association.

Agenda Item 7 President's Report – Dr. Levine

Dr. Levine gave an update on the status of the Board's Strategic Plan stating that it will be finalized and brought back to the board at the next Executive Committee Meeting, which will be held sometime in late March or early April. The Strategic Plan will then be brought to the full board at the May Board meeting. Staff is working with Department of Consumer Affairs' (DCA) staff to finalize the tasks that need to be completed.

Dr. Levine stated that she has continued to meet with Board staff every two weeks to discuss projects and to provide any assistance she can to insure that things move smoothly. As Vice President of the Board, Mr. Serrano Sewell has agreed to participate in these calls as his schedule allows.

Dr. Levine stated that the American Board of Internal Medicine is now the second of the American Board of Medical Specialties (ABMS) boards to have eliminated any date on board certification. In addition, those who hold certification will be required to participate every year in a certain set of activities in four separate categories to maintain their board status as certified. If those who are board certified do not complete those activities within a year's time, the

certification is not lost, but one cannot be considered "board certified" until the courses are completed. Per the ABMS, all boards will be moving in this direction. Dr. Levine also stated that the Federation of State Medical Boards (FSMB) is beginning a process to look at Maintenance of Licensure's, which is a framework for continuous professional development (CPD) for those physicians who are not otherwise engaged in their CPD through their board certification. There is a pilot program being worked on in Colorado. The idea is for those physicians who have never been board certified or never will be in the future to participate in CPD.

Dr. Levine then referred the members to page 7A-1 and 7A-2 in their packets. Those pages consist of an updated Committee Roster. Dr. Lewis and Ms. Wright have agreed to join the Licensing Committee, Dr. Krauss has joined the Enforcement Committee and Dr. Lewis has joined the Application Review Committee. Dr. Yip is now chair of the Special Faculty Permit Review Committee, Mr. Lui has joined the Access to Care Committee/Cultural and Linguistic Competency Committee, and Dr. Krauss joined the Education and Wellness Committee. Dr. Levine is no longer on the Education and Wellness Committee. Mr. Lui has also been added to Panel B.

Dr. Levine proposed to the Board that a two-member Editorial Committee be established to review the non-recurring articles that are placed in the Newsletter to ensure articles are appropriate for what the Board wants to be promulgating. The two Members that will make up this committee are Dr. Levine and Ms. Pines. Board staff has expressed concern that they do not have sufficient clinical knowledge to ensure the articles are appropriate for the Newsletters.

Dr. Levine suggested that she and Ms. Pines work with staff on developing some policy guidelines around what goes in the Newsletter.

Dr. Levine reminded the Members that if anyone is interested in joining any particular committee to let Ms. Kirchmeyer or herself know.

Dr. Levine then asked for a motion to create an Editorial Committee.

Dr. Diego made a motion to create an Editorial Committee; s/Yaroslavsky. Motion carried.

Agenda Item 8A Interim Executive Director's Report

Ms. Kirchmeyer referred the Members to page BRD 8A-1 through 8A-13 to find a report that includes a staffing report, administrative update, BreEZe update, budget update and the attached documents for those items.

Ms. Kirchmeyer stated that at the end of the fiscal year, the Board is projected to be at 4.3 months reserve. This number is close to the Board's mandated limit for its fund condition, which is between two and four months. The Board's vacancy rate is currently at eight percent, however, taking into consideration those that are in background or pending hiring dates, the Board's vacancy rate is five percent.

Ms. Kirchmeyer noted that during a recent call with the DCA executive management team it was stated that the Business, Consumer Services, and Housing Agency is requesting a monthly report identifying the vacancy rate for all boards under the DCA. The Board is in line with what is expected for all state agencies.

In regards to budget change proposals (BCP), Ms. Kirchmeyer announced that the Governor's Budget that was released on January 10, 2014. The Board's BCP for five additional positions in enforcement, the BCP for BreEZe costs for next year, and the BCP for the transfer of the funding to DCA for investigators were all placed in the Governor's Budget.

The Board had also requested an additional position in the enforcement unit to perform the duties by Ms. Threadgill and to be the liaison between the DCA, Division of Investigations (DOI) and the Attorney General's Office. That position was also placed in the Governor's Budget. Ms. Kirchmeyer recently met with the Legislative Analyst's Office to discuss the BCPs. After explaining the need for them and the Board's workload, there were no concerns. The BCP's should move forward to budget hearings in March or April.

In regards to the BreEZe project, as expected, the learning curve for staff has impacted both the licensing and enforcement units. Staff has found several defects that will need to be fixed in the future, however, at this time, staff is using several workarounds in the system. As a result, the processing time in both licensing and enforcement has increased. One important issue right now is that reports cannot be run to show workload and processing times. This is a priority at this point to be sure that licensing and enforcement functions are working properly. Another issue that has come up is the fact that staff cannot provide an FTP file to organizations that request this information. Staff has written the interface report for the license verification system, but it needs to be put into production. The goal is to have it completed by the end of February 2014.

Ms. Kirchmeyer thanked the Information Systems Branch (ISB) for assisting with taking calls, making address changes, and assisting licensees in renewing their licenses. ISB is also writing up the change requests that are needed for submission to DCA while also launching the Board's new website. Ms. Kirchmeyer recommended that everyone take a look at the new site and offer input.

Since there are new Board Members and current members that will be up for reappointment within the next few months, Ms. Kirchmeyer explained the differences between a Governor's appointment and a Senate or Assembly appointment. A Governor's appointment must be confirmed by the Senate within one year of the date of the first Oath of Office and one year from the expiration date of reappointment. The Senate confirmation usually begins with a list of questions from the Senate Rules Committee staff regarding Board activities and personal opinions and goals pertaining to the position on the Board. Each member must answer these questions and submit them to Senate Rules Committee by the deadline noted. The next step is, the Member will be contacted to set up an interview. Those interviews will either take place in person or via teleconference. After the interview, the appointment will be set to be heard at the next Senate Rules Committee meeting where most often the Member is not required to appear, but can be asked to do so. Once the appointment passes through the Senate Rules Committee it then goes to the Senate floor. The appointment will then be taken up on the floor of the Senate, and then be officially confirmed upon passage from the floor. Ms. Simoes monitors all of these steps, provides information to the

Members, and works with the Senate Rules Committee staff should questions arise or to determine the status of a Member's confirmation.

In addition to the Senate process, a member has to go through a reappointment process. The Member only has 60 days from the expiration date to be reappointed if he or she is a Governor appointment. If a member is not reappointed by that time, the member can no longer serve on the Board. The Member may want to contact the Governor's Appointments Office to inform them of his or her desire to be reappointed. Members can serve two full terms on the Board.

For Senate and Assembly appointees, there is no Senate confirmation process, but there is a reappointment process through each of the appointing authorities, Senate Pro Tem and the Speaker of the Assembly. If a Member would like to be reappointed, the Member should contact those offices directly and make them aware of his or her interest in reappointment. The difference between these two processes is that the Senate and Assembly appointees have one year from their expiration date to be reappointed, or can no longer serve on the Board.

Ms. Kirchmeyer then gave a brief update on the outcome of the teleconferencing that was used at the two meetings prior to the Board meeting. She stated that it went very well and even had someone on the phone the day before that offered some good feedback on what could make it better for today's teleconference meeting. However, as stated in Ms. Kirchmeyer's written summary, the cost to do the teleconferencing that was provided previously was not accurate. For the two meetings, the Board ended up with nine callers on the phone; five yesterday and four today. With the cost that was quoted, these nine calls cost the Board approximately $1,089.00 as each reserved line that is not used costs $5.00 per line.

Public comment was heard on this agenda item.

Yvonne Choong, California Medical Association (CMA) commended the Board staff for coming up with a quick fix for the license verification system. It has been a problem for CMA, as an association, to verify that their members are in good standing with the BreEZe system. CMA looks forward to seeing the emergency release at the end of the month.

Dr. Peters, President of the Golden State Medical Association, thanked the Board for opening the meetings to teleconferencing for those who would like to comment but cannot participate in person.

Michelle Monserrat-Ramos stated that she participated in the prior meeting via teleconference and felt it worked and was handled very well. Ms. Ramos said she promoted the teleconference via social media with a lot of interest and a lot of positive responses.

Agenda Item 9A Federation of State Medical Boards

Ms. Kirchmeyer noted that the Board has been providing a lot of feedback to the FSMB on its draft policies and reports. Feedback was provided, based on Member's comments and some subject matter expert's comments, to the FSMB report on the electronic health records and its policy on telemedicine. Feedback was also provided on the National Practitioners databank guidebook, which was forwarded to the Board by the FSMB. The most recent document that the

Board provided feedback on was a draft document on the interstate medical licensure compact. There have been several federal bills introduced that lead to national licensure or removing the fact that the physician has to be licensed in the state where the care is happening. In an effort to keep state licensure, the FSMB, at its last meeting, approved a plan to look into the feasibility of doing an interstate compact to assist in expediting licensure. A task force was initiated and they recently finalized their draft report of what an interstate compact would look like. At this time, the report was just to determine if an interstate compact is feasible, which based upon the report, it is. This will be a topic of discussion at the FSMB meeting in April. Ms. Kirchmeyer offered to forward the report to any Member who requested a copy.

Overall, the biggest concern in the report was the approval process for medical education. The Board only recognizes and approves certain schools. The information for the compact is not at the same standard as California. Also, although the report reads that a physician cannot have a conviction, it does not require fingerprints to ensure there has not been a conviction. There is no requirement for a state board to enter into a state compact. If that was something the Board decided to do, it would have to go through the legislative process. Ms. Kirchmeyer will continue to follow this and keep the Board Members updated on the status as it proceeds.

The FSMB also notified boards of a risk evaluation and mitigation strategy (REMS) grant to provide educational programming and extended release on long acting opioid analgesic prescribing. The FSMB will award grants to state medical boards to conduct free live seminars for licensees in their respective states. The grant program will provide funding to award up to 25 grants in the amount of $10,000 to individual boards who complete the application process. The curriculum will be provided to the boards to support the programs that will be offered free to the physicians. In order to receive a grant, the Board will need to secure a minimum of 250 prescribers to participate in the program and has to provide the three-hour training between April 1st and December 31st. Ms. Kirchmeyer would like to apply for a grant in California and in order to do so would need approval from the Board. The Board would also have to work with the DCA to determine if there are any restrictions for the Board receiving this type of grant. Ms. Kirchmeyer requested a motion to move forward with this process.

Ms. Yaroslavsky made a motion to move forward with the grant application process; s/Dr. Lewis. Motion carried.

Agenda Item 9B Approval of Recommendation for FSMB Committee

Dr. Levine noted that Ms. Wright requested to be considered for the Editorial Committee of the FSMB. Her nomination had to be submitted by February 1, 2014. Dr. Levine stated she felt comfortable nominating Ms. Wright on behalf of the Board, contingent on taking a vote of the full board at this Board meeting.

Ms. Yaroslavsky made a motion to nominate Ms. Wright for the FSMB's Editorial Committee; s/Dr. Yip. Motion carried.

Agenda Item 10 Update on Transition of Investigators to the DCA Pursuant to Senate Bill 304

Ms. Kirchmeyer gave a brief update on the transition from the Board's perspective side. She noted that since the last Board meeting, Board and DCA staff have held eight formal meetings and several informal meetings regarding the transition of investigators to the DCA. Board and DCA staff have had a meeting with Ms. Castro regarding the transition and vertical enforcement. The items that have been discussed at these meetings have been: Information Technology (IT) issues, a memorandum of understanding (MOU) between the Board and the DCA, contracts, space, purchasing, billing for the affiliating healing arts boards and other topics that need to be discussed for the transition. The DCA is working on an MOU that will cover the issues that have been discussed and should be included in an MOU. Once the draft MOU is completed, it will be sent to Board staff for review. Some of the areas that Ms. Kirchmeyer requested be placed in the MOU include: the cost, how payment or reimbursement will be made, how the Board is billed, IT equipment and services that will be retained at the Board, information regarding assistance from the new unit on Board matters such as presentations, expert reviewer programs, etc., identification of statistics that will need to be provided by DCA, that Board staff will be able to obtain statistics from the BreEZe system based upon information entered by investigators, agreement that the work being performed by all individuals transferring will only be for Medical Board work or work within the affiliated healing arts boards that the Medical Board currently performs investigations for, sharing of expenditure information, information on the asset forfeiture account, and the process of sending cases. Ms. Kirchmeyer stated that Mr. Gomez and Ms. Threadgill have been visiting district offices to meet with staff.

Mr. Gomez provided an update on the SB 304 transition plan that was provided to the Board at the October Board Meeting. At that time, the plan was a high level milestone process that was identified for the implementation of SB 304 and the transition of the Board investigators to the newly created Health Quality Investigations Unit (HQIU) at the DOI. Discussions in October and November were setting the foundation for the transition plan. He stated there is a two year moratorium on the co-location of the HQIU and DCA offices until an assessment can be made on the coordination of the lease expirations, the work and case load areas and which area would be best to serve the consumers of California. Mr. Gomez stated that when the documents read "complete," it does not mean finished, but means that the milestone planning has been met for that component.

In the current month, the DOI and DCA introductions have begun at the Deputy Chief level to begin identifying areas of operational gaps, equipment needs, etc. Mr. Gomez stated that he took it upon himself to learn the work of the Board investigators, by meeting with the investigators, reading the Vertical Enforcement (VE) manual, and attending the four-day long narcotics and pharmaceutical investigation training course that the Board provided. Mr. Gomez stated that these opportunities gave him a chance to meet almost all of the Boards investigators.

Mr. Gomez stated that the talent and passion that these investigators have for the work they do and protecting consumers is by far unequal to any other law enforcement he has seen. He stated that the transition planning is going well and thanked Ms. Kirchmeyer and Ms. Threadgill for helping him to understand the nuances of the work that the investigators do.

Ms. Threadgill thanked Mr. Gomez for taking the time to visit each of the district offices in Southern California and for answering the questions from the staff in each office.

Ms. Yaroslavsky asked Mr. Gomez how often the Board will be getting updates on how this program is progressing and what type of information the Board will be receiving in those updates.

Mr. Gomez responded stating that in the first meeting, the discussion was about what they hope is going to happen. Mr. Gomez offered to report back to the Board as often as Ms. Kirchmeyer and/or the Board requested.

Ms. Kirchmeyer noted that knowing exactly how often and what to report may be a bit premature and believes there needs to be an Enforcement Committee meeting to identify what type of information is needed.

Ms. Yaroslavsky stated her concern is that the Board needs something specific to look at to say whether this is a better system or not. The Board needs to be able to check the metrics on that.

Dr. Lewis requested that at the next Board meeting Mr. Gomez provide the Board with some benchmarks/deliverables.

Mr. Gomez stated that those cannot be provided at the next Board meeting as the transition does not take effect until July, but there will be some updates at the July Board meeting.

Dr. Lewis asked Mr. Gomez if there has been a meeting in regards to staff and titles, etc.

Mr. Gomez stated that is something that CalHR handles and he has no say in those matters.

Mr. Serrano Sewell confirmed that the Enforcement Committee will take these issues up at its next meeting, and report back to the Board.

Agenda Item 11 Enforcement Chief's Report

Ms. Threadgill asked for a motion to approve seven orders, restoring licenses to clear status following completion of probation.

Ms. Yaroslavsky made a motion to approve seven orders to restore licenses; s/Dr. Levine. Motion carried.

Ms. Threadgill directed the Members to page 11B-1 and asked if there were any questions regarding the executive summary.

Ms. Threadgill continued stating the Enforcement Program continues to be extremely busy. Although staff has been unable to extract reports from the BreEZe system, workarounds are being done and staff is manually tracking case load inventory and case age which is time consuming and a challenge.

Operation Safe Medicine saw quite a bit of press on a case where an unlicensed practitioner was convicted of ten felonies, including the unlicensed practice of medicine, grand theft, false impersonation and attempted grand theft. This was a complicated investigation in that the

subject claimed to be able to treat terminal illnesses, such as AIDS and cancer. Investigators performed an undercover operation where the Board's operative presented a history of cancer and recurrence of cancer. The unlicensed person was arrested and a search warrant was executed.

In another case, an investigator from the Sacramento District Office was responsible for the arrest of another unlicensed person who operated an ultrasound business called "Med-Ex Express Diagnostics." This individual used the ultrasound to make the diagnosis of a medical condition. Meanwhile, Operation Rx arrested another individual and conducted three more search warrants since the last Board meeting.

Ms. Threadgill stated staff had another successful expert reviewer training. Dr. Yip and Mr. Gomez also attended this training.

In November, members of the Enforcement staff conducted an Enforcement boot camp in response to inquiries from the Legislature regarding what the Board's investigator's do. This boot camp provided an overview of the investigation process, and then presented several case studies from the inception of the case to the conclusion including the challenges that arose during the course of the case.

In January, the Board's training unit put together twenty-four hours of POST approved training for investigators state wide. Even the most seasoned investigators found the training to be very informative.

Agenda Item 12 Vertical Enforcement Program Report

Ms. Castro announced that a new Deputy Attorney General (DAG), Mr. John Hatchet, was hired from the Fresno AG's District Office. He will be working in the Board's Sacramento Office.

Ms. Castro stated that her staff continues to be called upon by Ms. Kirchmeyer on a regular basis to attend the Board's trainings. Supervising Deputy Attorney General Mr. Robert Bell presented at the medical expert reviewer training in November, 2013. Deputy Attorney General Edward Kim from the Los Angeles office attended the Prescribing Task Force meeting.

The newest Supervising DAG, Judith Alvarado will be participating in Medical Consultant interview training.

Ms. Castro reminded the Board that she meets with Ms. Kirchmeyer bi-weekly to discuss cases. Several of the recent conversations have been in regard to the transition of the investigators. On a monthly basis, Ms. Castro's staff supplies reports to the Board.

Ms. Castro reported on two significant legal cases and stated these cases are in the court of appeal and involve subpoena enforcement matters.

In the first case, *Whitney vs. Montegut*, the Attorney General petitioned the Los Angeles Superior Court for an order compelling compliance of a subpoena seeking medical records of several patients based on evidence of overprescribing. The Superior Court agreed, but the

physician appealed the court decision and challenged the sufficiency of the declaration of good cause and the Los Angeles County Superior Court's jurisdiction over the physician. This decision will assist when physicians do not want to provide records, as there is now a published decision.

The second case is also a subpoena enforcement case that was at the trial court. Dr. Chiarottino is questioning the Board's ability to review CURES absent good cause. The Board is being defended on that issue and advocating for public protection and the government's right to look at these important records.

Ms. Castro stated that the reason she brings these cases to the Board's attention today is to show that they are working very hard on subpoena enforcement cases. As mentioned prior, vertical enforcement stops if they cannot get the documents needed in a case.

Ms. Castro reported that they continue to find efficiencies in the process of reviewing their cases for prosecution and are trying to prepare for the transition as best as possible. She stated that she would like to continue the conversations on how they will be interfacing with the Executive Office upon the transition.

Ms. Castro reminded the Board that the Attorney General's Office gets involved in investigation at three critical junctures: first, when the subject is interviewed; second, when the expert package is sent to the expert reviewer to quickly make decisions based on the report; and third, when they make the final recommendation to the Board as to what should be done with the case.

Public comment was heard on this agenda item.

Long Do, CMA, responded to the two cases that were discussed by Ms. Castro. He noted that both cases involved the use of the CURES database and CMA did file amicus briefs in both cases in favor of positions taken by the physicians. They filed the briefs because they believe that, though the CURES database can be used for very good purposes, the way it was used in those particular cases posed a threat to patient privacy. Mr. Do wanted to be sure the Board understood that there was another side to those cases.

Ms. Castro indicated that her office has responded to both of the filed amicus briefs and that CMA has been very prolific in all of the court of appeal cases lately.

Agenda Item 13 Review of Responses to Public Comments and Consideration of Revised Regulatory Language Regarding Uniform Standard for Substance-Abusing Licensees

Ms. Webb referred the Members to agenda item 13 in their packets and thanked everyone for their comments and noted that many constructive comments were received.

Ms. Webb stated that the reporting requirements under SB 1441 have now been included, but under new regulatory sections so that they are not part of the disciplinary order; however, this makes it clear that the Board will be complying with the reporting requirements. There are additional parts of the standards that are now in separate regulations, as they are directives to the

Board about what to do. There are other Uniform Standards that are not appropriate for the Board to include at this time, such as the section that refers to vendors, except for specimen collectors.

Ms. Webb noted that since the changes have gone up on the website, a comment was received from Ms. Fellmeth that included a request for two modifications. The first pointed out that the beginning of the regulations included the phrase "if ordered," giving the impression there was some flexibility in all of the requirements. Ms. Fellmeth's request was to strike the phrase "if ordered" which appears on page BRD 13-4 section (c). Ms. Webb stated she felt that was an appropriate recommendation. The other area that Ms. Fellmeth asked the Board to consider changing is in regard to the major violation consequences of a licensee. This language is on page BRD 13-16 section (8) (b). Ms. Fellmeth asked that rather than lay out the penalties as a number of options, that it be rewritten to combine (8)(b)(1) and (8)(b)(2) to read as one action. Ms. Webb again felt that was an appropriate change, consistent with the Uniform Standards, and suggested that change be approved.

Ms. Yaroslavsky made a motion to direct staff to take all steps necessary to complete the rulemaking process, including noticing the modified text approved here today for an additional 15-day public comment period. If after the 15-day public comment period no adverse comments are received, authorize the Executive Director to make any non-substantive changes to the proposed regulations before completing the rulemaking process, and adopt them at California Code of Regulations, Title 16, Division 13, Article 4, sections 1361, 1361.5, 1361.51, 1361.52, 1361.53, 1361.54, and 1361.55 of the proposed regulations with the modified text. Dr. Lewis seconded the motion.

Public comment was heard on this agenda item.

Ms. Fellmeth, Center for Public Interest Law, stated that Ms. Webb and Ms. Dobbs have done a terrific job of revising the regulations substantially so as to vastly reduce the omissions and inconsistencies between this regulation and the uniform standards.

Michelle Monserrat Ramos, Consumers Union Safe Patient Network, thanked the Board staff for all the work that has been done and stated many of the concerns that she had listed as part of her comments have already been addressed. She added concern that uniform standard number four gives the Board discretion to reestablish a testing cycle, or taking any other disciplinary action, if the Board finds or has suspicion that a licensee has committed a violation of a Board's testing program who has committed a major violation. While the current draft regulation gives the Board broad discretion to require testing and impose disciplinary action, Consumers Union believes it is important that language be included to assure that the Board and physicians fully understand that even in the event of suspicion, the Board has these powers. The Consumers Union feels this is a consumer protection provision.

Ms. Monseratt Ramos stated that in describing major violations, Uniform Standard 10 does not include failure to complete a Board-ordered program. Board staff argued that it is not necessary to include this in the regulations because the Board no longer has a diversion program. However, the Board will be requiring that licensees participate in certain programs, for example, the language that reads "if the Board requires the licensee to participate in group support

meetings." Since the draft regulations contemplate the Board requiring participation in certain activities, the regulations should be clear that failure to participate is a major violation as described in the Uniform Standards.

Christine Lally, DCA read a brief statement stating that the DCA acknowledges the Board's efforts in modifying its regulations to fully comply with the Uniform Standards. She stated the rewrite is well organized, and thanked the Board and staff for taking the time to rewrite it. She specifically commented on Uniform Standards 13, 14 and 15. Most of the provisions in Uniform Standard number 13, pertaining to requirements for lab testing locations and specimen collectors have been reflected in this rewrite. DCA agrees that because the Board does not have a diversion program, none of the provisions of Uniform Standard numbers 14 and 15, pertaining to private diversion vendor program requirements, apply to the Board at this time.

Ms. Webb responded to Ms. Monseratt Ramos's comments stating that her first suggestion was not understood and requested some clarification.

Ms. Monseratt Ramos reiterated her concern in regards to if the Board finds or has suspicion that a licensee has committed a violation of a Board's testing program it is a major violation.

Ms. Webb stated that concern is already covered in the current language and referred Ms. Monseratt Ramos to the proper section of the standards.

Dr. Levine then restated the current motion including the amendments that Ms. Webb read in response to Ms. Fellmeth's comments.

Dr. Levine called the vote. Motion carried.

Agenda Item 14 Update on Health Professions Education

Ms. Yaroslavsky stated that the Health Professions Education Foundation (HPEF) had a very successful year with a new Executive Director. In 2013, out of 153 applications, approximately one-third of the applicants received awards. To put that into perspective, out of the $27 million dollars that was requested, they awarded $9 million dollars.

In 2012, they had 87 applicants, 30 were awarded. HPEF has gone to an on-line application in an effort to assist with outreach. The cost of medical tuition is not going down so HPEF is doing all that it can to partner with the state and stakeholders in the underserved communities.

Agenda Item 15 Update on the Committee on Physician Supervisory Responsibility

Dr. Bishop stated that he chaired the meeting in Ms. Schipske's absence and the first item that was discussed was regarding medi spas or medical spas. This item was brought to the Committee to allow for discussion whether or not the term med spa, medi spa, medical spa or other like names should be defined in statute. Ms. Simoes provided the Committee with background information that is currently available on the Board's website. A medical or medi spa is not a facility that is currently licensed and regulated in California; however, individuals who work in medical or medi spas that perform procedures are licensed and regulated in

California. The purpose of defining a medical spa in law would be to license and regulate this type of facility. The Committee took public comment on this item and discussed the many issues surrounding medical or medi spas. The Committee decided not to go forward with recommending that the Board pursue a statute change at this time, but directed staff to research possible advertising language and what other states are doing in relation to defining a medical or medi spa. The Committee Members were uniformly in agreement that any facility that has medi or something of similar nature in its name should be subject to licensure and regulation in California. The Committee believes that the term medical, medi, medEx, etc., has a connotation that the public may confuse with providing medical care and they feel strongly that this should be pursued aggressively. The Committee also had a presentation on Fictitious Name Permits (FNP) which was given by Mr. Worden. Mr. Worden went over the purpose of an FNP, related laws and regulations, and the FNP requirements and process. Mr. Worden also provided the Committee with FNP program information and statistics. The Committee found the presentation very informative.

Ms. Webb discussed the outcome of a case on the supervision of Certified Registered Nurse Anesthetists. Ms. Webb explained that federal regulations provide a state's Governor to have discretion to make a determination, on behalf of the state, to opt out of the physician supervision requirement, for Medicare purposes, if it is consistent with state law among other things. Ms. Webb explained the process that must completed for the state's Governor to opt out of the supervision requirements. Ms. Webb then explained that in June 2009 Governor Schwarzenegger exercised his discretion under federal law and opted California out of the federal physician supervision requirement. Ms. Webb went over the subsequent lawsuits challenging this matter which were not successful.

The Committee then discussed future agenda items and put the following items on the agenda for the next Committee meeting: 1) Directed staff to collect data on how many medi spas there are in California and how many of those have FNP. 2) Have a presentation by a liability carrier on medi spas. 3) Directed staff to draft language regarding advertising by medi spas, possibly in the corporations' code. Board staff will work with the Chair and Committee Members for the date and location of the next meeting.

Agenda Item 16 Update on the Education and Wellness Committee

Ms. Yaroslavsky stated there was very positive feedback from the Consumers Union, Safe Patient Project with regard to the Board's effort to teleconference the meeting. Ms. Simoes presented an action plan for SB 380. This bill was signed into law in 2011and was sponsored by the California Academy of Preventative Medicine. At the July 17, 2013 Education and Wellness Committee meeting, informational presentations were made by a working group of interested parties on nutrition and lifestyle behavior for prevention and treatment of chronic disease. At that time, staff was directed to draft an action plan that would identify the best vehicle to provide this information to physicians and to identify available resources and an evaluation tool for physicians to use regarding this information. The proposed action plan included designing and maintaining a web page that could be a clearing house of information for physicians and consumers related to chronic disease prevention. The Board would work with other state agencies to promote this web page on their websites to get the information out. At least two articles on this subject per year will appear in the Board's Newsletter, and survey monkey will

be set up as an evaluation tool. This action plan was approved. The following goals and mission statement of the Education and Wellness Committee were approved:

1. Educate the public on the Board's mission, so they can play an active role in their own health care.
2. Educate physicians on the Board's current laws and regulations, and how they impact their practice.
3. Educate physicians and the public on maintaining an overall healthier lifestyle, including the prevention and treatment of disease.
4. Inform stakeholders regarding changes in the delivery model of health care.
5. Review and monitor the Public Affairs' Office strategic plan to ensure goals and objectives are being met.

The Board's Public Affairs Manager, Ms. Hockenson, presented a report that included outreach and media inquiries and upcoming events that the Public Information Office will be participating in. Ms. Hockenson also presented a proposal that the Board engage in social media, specifically starting with a Twitter account. FAQs were provided that included information on other state boards that engage in Twitter, as well as a copy of social media guidelines that are currently used by DCA. The Committee approved the Board to begin engaging in a Twitter account.

The next committee meeting will include a presentation by California Department of Public Health (CDPH) on the California wellness plan that is being released soon.

Dr. Levine asked for a motion to adjourn the meeting.

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

Meeting adjourned at 5:25 p.m.

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Friday February 7, 2014

Members Present:

Sharon Levine, M.D., President
Michael Bishop, M.D.
Silvia Diego, M.D.
Dev GnanaDev, M.D.
Ronald H. Lewis, M.D.
Elwood Lui
Denise Pines
David Serrano Sewell, J.D., Vice President
Jamie Wright, Esq.
Felix Yip, M.D.
Barbara Yaroslavsky

Members Absent:
Howard Krauss, M.D.
Gerrie Schipske, R.N.P., J.D.

Staff Present:

Dianne Dobbs, Legal Counsel, Department of Consumer Affairs
Cassandra Hockenson, Public Information Officer
Kimberly Kirchmeyer, Interim Executive Director
Armando Melendez, Business Services Analyst
Regina Rao, Associate Governmental Program Analyst
Kevin Schunke, Licensing Outreach Manager
Jennifer Simoes, Chief of Legislation
Renee Threadgill, Chief of Enforcement
Lisa Toof, Administrative Assistant II
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
GV Ayers, Senate Business and Professions
Gloria Castro, Senior Assistant Attorney General, Attorney General's Office
Yvonne Choong, California Medical Association
Genevieve Clavreul
Alicia Cole, Consumers Union, Safe Patient Project
Phillip Coffman, San Francisco Department of Public Health
Zennie Coughlin, Kaiser Permanente
Dianne Dobbs, Legal Counsel, Department of Consumer Affairs
Julie D'Angelo Fellmeth, Center for Public Interest Law
Long Do, California Medical Association
Karen Ehrlich, L.M., Midwifery Advisory Council
Jack French, Consumer's Union Safe Patient Project
Faith Gibson, CA College of Midwives
Michael Gomez, Department of Consumer Affairs
Patricia A. Gonzalez, UC Davis
Virginia Herold, Board of Pharmacy
Steven Kelly-Reit, Kaiser Permanente
Kim Kreifeldt, California Academy Physician Assistants
Christine Lally, Department of Consumer Affairs
Khadijah Lang, M.D., Charles Drew Medical Society
Mona Maggio, Board of Optometry
Lisa McGiffert, Consumer's Union
Greg Mennie, California Academy Physician Assistants
Tina Minasian, Consumers Union Safe Patient Project

Michele Monserratt-Ramos, Consumer's Union Safe Patient Project
Carol Moss, Consumers Union Safe Patient Project
Cathryn Nation, M.D., University of California
Alison E. Price, Licensed Midwife
Debra N. Puterbaugh, Institute of Feminine Arts
Harrison Robbins, M.D., California Academy of Cosmetic Surgeons
Deborah Rotenberg, Planned Parenthood Affiliates of California
Bob Sachs, P.A., Physician Assistant Board
Suzan Shinazy, Consumer's Union Safe Patient Project
Carrie Sparrevohn, L.M., Midwifery Advisory Council
Taryn Smith, Senate Office of Research
Laura Thomas, Drug Policy Alliance
Roderick Vitangaul, Kaiser Permanente
Rick Waltman, Center for Public Law
Brian Warren, California Pharmacists Association
Mary Helen Ybarra, Health Professions Education Foundation

Agenda Item 17 Call to Order / Roll Call

Dr. Levine called the meeting of the Medical Board of California (Board) to order on February 7, 2014, at 9:10 a.m. A quorum was present and due notice was provided to all interested parties.

Agenda Item 18 Public Comments on Items not on the Agenda

Alicia Cole, Consumer's Union Safe Patient Project, stated she feels that the Board should make the investigative process more transparent to patients. Patients are at a disadvantage currently when the Board informs a complainant that their case does not constitute a violation, but fails to provide the expert consult report and the investigative file to the patient. Physicians are offered the opportunity to appeal the case to an outside entity, but patients are offered no such opportunity. The Board should consider patients who have submitted complaints as a valued resource for important information. When the Board feels that relevant information is missing from a case file, the Board should reach out to and consult with the patient complainant to determine whether the patient can share further information that would be helpful to fully understand a case. The Board is urged, prior to closing a case to notify the patient as to why the Board feels their case does not constitute a violation. If the patient is still not satisfied and wishes to pursue the case, they ask that the Board offer the opportunity for the patient to appeal to an outside entity. Consumers would like the Board to require a report from staff regarding the criteria used for deciding to close the case, as well as the type of information the medical board expert consultants give the Board when they recommend closing a case. Consumers Union would also like to know how often physicians are late in submitting medical records and how often they are fined.

Agenda Item 19 Regulations – Public Hearing

Dr. Sharon Levine opened the public hearing on the proposed regulations to amend Section 1399.541 in Article 4 of Division 13.8 of Title 16, California Code of Regulations, as described in the noticed published in the California Regulatory Notice Register and sent by mail to those on the Board's mailing list.

Current law permits a physician assistant to act as a first or second assistant in surgery under the supervision of an approved supervising physician. This rulemaking will permit a physician assistant to act as a first or second assistant in surgery without the personal presence of a supervising physician, if the supervising physician is immediately available to the physician assistant.

Immediately available is defined as able to return to the patient without delay upon request of the physician assistant or to address any situation requiring the supervising physician services. Dr. Levine stated that the date was February 7, 2014 and the hearing began at approximately 9:15 am.

Dr. Levine stated that the purpose of this hearing is to receive oral testimony concerning the regulatory proposal just described and as described in the notice.

Dr. Levine informed the Board that two letters and one email were received and provided to the Members. She then asked Ms. Webb to continue with discussion on the items that were received.

Ms. Webb began with the email from Ms. Ruth A. Fox, M.D. Ms. Fox's issue was that the physician assistant can perform procedures without the physical presence of a physician. Ms. Webb stated that her recommendation is that the Board not accept this comment nor make changes based on this comment.

The next comment was received from the California Hospital Association asking the language be amended to match the definition of Centers for Medicare/Medicaid Services (CMS) where immediately available means physically present, interruptible, and able to furnish assistance and direction throughout the performance of the procedure.

Ms. Webb feels the Board's definition of immediately available and interruptible is sufficient to describe the relationship that needs to occur between the physician and the physician's assistant and would not recommend accepting this comment.

The next letter was from the California Academy of Physician Assistants, which was a letter of support.

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

Greg Mennie representing the California Academy of Physician Assistants spoke in support of the proposed regulation. He was asked to join a surgical team because of a decline in the general surgeon work force. Over the last few years, the PAs have tried to help out in the surgery aspect. Today's surgeons are feeling the increasing demand of workload. His

experience over the past 20 years is that PAs are very capable of working with all physicians in all settings, across all spectrums of the health care system. The clarification in this regulation really will help create better availability of the supervising surgeons and more flexibility in their work day. It would be very helpful for PAs to have clear direction as far as supervision and allow them to serve surgeons in a fashion that can be beneficial to everyone in the system.

Teresa Anderson, Public Policy Director from the California Academy of Physician Assistants, spoke in support of these regulations. She stated the clarification will enhance patient safety.

Kim Kreifeldt, a practicing physician assistant in San Diego, stated she is in full support of the updated and clarifying changes to section 1399.541. She requested that this language be adopted as it would end the differing interpretations among the facilities concerning the personal presence of the supervising physician. By adopting the new language and clearly defining "immediately available," this resolves the ambiguity while maintaining patient safety. She thanked the Board for the opportunity to voice her strong support to amend section 1399.541 and for bringing regulations in line with the current medical community standards.

Dr. Levine stated that since there were no further public comments, the hearing was officially closed and was then opened for Board Member discussion.

Mr. Serrano Sewell asked for some clarity on "immediately available". Ms. Webb read the language directly from the proposed regulation which identifies "immediately available" as: "able to return to the patient without delay upon the request of the physician assistant or to address any situation requiring the supervising physicians' services."

Dr. Levine stated that this definition does not include telephonically available.

Dr. Diego expressed her concerns about the definition of the word "or" in the language. She was concerned that during surgery, the physician may instruct the PA on what to do, rather than physically return to the patient.

Ms. Yaroslavsky suggested replacing "or" with "in order to."

Dr. Bishop stated there are times where the PA may just have a simple question that can be addressed without the physician physically returning to the patient. Dr. Bishop noted that if the language is changed to try and strengthen it, it could create more confusion.

Ms. Yaroslavsky expressed her concerns with the two different perspectives, one from the medical side and the other from the legal side.

Dr. Levine asked if replacing the word "or" with the word "and" would solve this issue without changing the intent of the language.

Mr. Lui noted he feels that adding the word "and" would not be helpful, as the way this language now reads, it means the PA can request the physician return, which overrides the physicians decision. He believes the language is better without the "and".

Dr. Bishop agreed with Mr. Lui's statement and believes the language as it reads now is acceptable.

Dr. Levine suggested taking the word "or" out entirely.

Mr. Lui stated he believed that would work well.

Dr. Yip noted that he has no problem with the removal of the word "or," but would like to hear public comment in the future on how to enforce the language.

Dr. Levine then asked for a motion.

Ms. Yaroslavsky made a motion to direct staff to take all steps necessary to complete the rulemaking process, including preparing the modified text with the deletion of the word "or," for an additional 15-day comment period. If after the 15-day comment period, if no adverse comments are received, authorize the Executive Director to make any non-substantive changes to the proposed regulations before completing the rulemaking process and adopt California Code of Regulations, Title 16, Division 13.8, Article 4, Section 1399.541.

Dr. Lewis Seconded the Motion. Motion carried.

Agenda Item 20 Update on Physician Assistant Board

Dr. Bishop stated that at the last Physician Assistant Board (PAB) meeting, Mr. Sachs was re-elected as the President and Charles Alexander was elected as Vice President for 2014.

Dr. Bishop stated that mandatory reporting requirements for physician assistants (PAs) were discussed at the meeting. There are several types of professional reporting requirements for PAs and the employer such as Business and Professions Code Section 800 series, hospital suspensions and discipline, self-reporting convictions, etc. Reporting certain medical conditions of patients such as abuse or diseases also needs to be reported. The PAB requested that staff develop a fact sheet to include PA mandatory reporting requirements and update the PAB's website to show this information. Dr. Bishop stated the current voluntary exam regarding PA laws and regulations is available on the PAB's website. The current voluntary on-line examination contains 10 questions. These questions have not changed since it was placed on the website several years ago. The DCA Office of Professional Examination Services has identified approximately 20 additional questions.

The PAB is scheduled for on-line applications in April 2014 and on-line renewals in August 2014. The PAB spent much of the meeting reviewing and updating the strategic plan. The PAB's strategic plan was last updated in November, 2009. The PAB has developed new objectives for the plan. A draft plan of the PAB will be presented at the February 24, 2014

meeting. At this same meeting, the PAB will review and possibly update the current vision, mission, and values.

Dr. Bishop stated that the most important issue at this point is to respect and maintain the number of PAs available in California.

Agenda Item 21 Update from the Department of Consumer Affairs

Ms. Lally gave an update on three projects that DCA is working on. One being the implementation of SB 304 and the transition of the Board's investigators. Another is the BreEZe system and correcting some of the defects that have been discovered in the system, including the inability to produce reports. DCA is also working with Ms. Kirchmeyer on the CURES system implementation, which is the California Prescription Drug Monitoring program. Ms. Lally stated that DCA staff is in correspondence with Ms. Kirchmeyer and Board staff on a daily basis working on these issues. All three projects have their challenges, but the close working relationships that have been established have created a good flow of communication.

Ms. Lally announced that on behalf of DCA's Director, Denise Brown, she was asked to convey to the Board today her appreciation to Ms. Kirchmeyer for her extreme dedication and great leadership on all three of these projects, especially on SB 304, assisting in making that transition as smooth as possible. Ms. Lally stated that it is a pleasure to work with Ms. Kirchmeyer and the staff of the Board with the free flow of information and the willingness to share with DCA.

Ms. Lally welcomed Mr. Elwood Lui to the Board and congratulated him on his recent appointment. She reminded all Members that there is required training that needs to be taken as a new Board Member and also particular forms that are required as well, such as the Form 700.

Dr. Levine noted that the Board is also aware of the efforts and hard work that Ms. Kirchmeyer and the Executive Staff have done and appreciates it as well.

Ms. Kirchmeyer then thanked Ms. Lally for her assistance and willingness to meet with her and staff to help with those same issues.

Dr. Levine asked Ms. Lally how long DCA anticipates the design phase of the CURES system. She stated she understands that DOJ is responsible for this phase. Ms. Lally confirmed that this is a DOJ responsibility and that DCA is assisting with the Feasibility Study Report. This is a report that gets put forward to the Department of Technology showing what the project looks like, the timelines, etc.

Dr. Levine asked if the CURES system and the BreEZe system will funnel into the same IT department.

Ms. Lally stated that they will not this early in the game.

Ms. Kirchmeyer noted that with the way the legislation was written, it states that the Board has to allow the process of applying to the Board or renewing a license, to also be able to tie into the CURES system. At some point in the future, that is going to have to be addressed.

Dr. Levine thanked Ms. Lally for always attending the Board's meetings.

Agenda Item 22 Update on Activities of the Board of Pharmacy

Ms. Herold announced that the Board of Pharmacy will be working closely with the Medical Board on SB 493, which requires both Boards to work together on protocols. There is one on hormonal contraception and one for nicotine replacement products. She was hoping to have a draft protocol for the Medical Board Members before the next Board Meeting, but it does not look like that is going to happen. The new target is July, as those protocols also have to be approved by the Board of Pharmacy Members, too. The first meeting on this is scheduled for February 12, 2014. Ms. Herold and Ms. Kirchmeyer will work together so that the Medical Board Members can be kept updated during the development stage, not just at the final stage.

The Board of Pharmacy will be discussing the CURES system during their next Drug Abuse Committee meeting since the Board of Pharmacy has the same mandate that requires all licensees be signed up with CURES by January 1, 2016. The Board of Pharmacy is going to work with the DOJ on an interim measure to try and help get pharmacists signed up, so they can access the data from CURES. The Board plans to start at the Senior Pharmacist level in each pharmacy and get them enrolled and put in the system. They can then access the reports from CURES. The goal is to have some kind of cross over in the future.

Ms. Herold noted that they are working on implementing SB 294 which deals with sterile compounding, where a pharmacy does high risk compounding with an inhalation product, an eye administration product, or an injectable. It is now required that the pharmacy is specifically licensed by the Board of Pharmacy, and they are subject to an unannounced inspection, if they are buying outside of California or in California. The implementation date for this is July 1, 2014, but they are doing the hospital inspections now.

Ms. Herold added that federally, there is a new track and trace law that will be tracking prescription drugs as they move through the supply chain. The law preempts the legislation that California has. The FDA is developing a new outsource structure for large compounders that are neither manufacturers nor pharmacies. This is a three-year trial project after which legislation will be needed to make it permanent.

The Board of Pharmacy has approved a pilot study with University California San Diego (UCSD) to experiment with a method of drug delivery to patients where they can pick up their prescriptions from a vending like machine after they have been counseled. This is available in the employees' workplace at the Sharp Hospital in San Diego. The protocol for the research study is being completed and it is believed that the Board of Pharmacy will approve the protocol at the next meeting.

Dr. Yip asked Ms. Herold what is the current procedure for a Worker's Compensation claim doctor's office dispensing medication, and whether they have to be licensed by the Board of Pharmacy.

Ms. Herold stated that physicians under Business and Professions Code Section 4170 have the right to dispense to their own patients from their office.

Ms. Yaroslavsky asked if there is anything taking place to promote that March is Prescription Abuse Awareness Month.

Ms. Herold stated one of their Board Members offered some radio time for a Public Service Announcement and they will be taking advantage of that opportunity.

Agenda Item 23 Update on Prescribing Task Force

Dr. Bishop announced that the next task force meeting is scheduled to take place on February 19, 2014, at DCA headquarters in Sacramento. Due to the efforts of Ms. Kirchmeyer, there are both national and international experts who have agreed to attend. The task force will be looking into changing the prescribing practice guidelines for California physicians.

Dr. Yip asked for clarification on under what circumstances a pain management contract is required.

Ms. Webb stated that it is on a case specific evaluation basis. The medical experts look at the totality of the circumstances and determine if there was a departure.

Dr. Levine noted that under the new prescribing guidelines, there will be some information about when a contract is appropriate.

Agenda Item 28 Update on and Consideration of Recommendations from the Midwifery Advisory Council (MAC)

Ms. Sparrevohn stated that the last MAC meeting was December 5, 2013. Discussed at that meeting was the impending changes brought about by AB 1308. There was also an interested parties meeting that same day, and it was clear after those two meetings that there are issues that will require the Board to create regulations. One issue is creating a list of conditions that will require a physician referral from a licensed midwife, and the second is creating a form for hospital transfers. They are both expected to be agreed upon by interested parties.

Since that meeting, the working group for the creation of the reporting form is identifying the components and the form should be available to submit to Board staff by the end of February. The working group for creation of the list of conditions for referral has agreed to use the list that is already contained in the standard of care, with the exception of vaginal birth of cesarean which is still in negotiation between the parties and it is hopeful that an

agreement will be made before the next interested parties meeting. Also at the last meeting, Karen Ehrlich gave a report on statistics of the past 5 years for licensed midwives, which essentially have remained the same over the years. The amount of hospital births the licensed midwives are attending has had a significant rise and the caesarean section rate has remained less than 10%, which is significantly less than the national average of over 30%.

Faith Gibson, LM, and James Byrne, M.D. have agreed to work on creating an information packet that can be presented to new Board Members explaining what licensed midwives are, what they do and how the Members can best support their work.

Ms. Sparrevohn asked for approval for future MAC agenda items for the next meeting. She stated an update is needed from the California Association of Midwives on how midwives are doing with their ability to obtain drugs and devices as dictated by AB 1308. A report from staff is expected on the issue of midwife assistants and what services can be performed by an unlicensed person. The Office of Statewide Health Planning and Development (OSHPD) will give an update on reporting statistics and how the system is working. A task force will be set up to possibly change the data set as dictated by AB 1308 to become more in line with what is being collected nationally by the Midwives Alliance of North America. A staff report is needed on how the challenge mechanism will look going forward after 2015. There needs to be an update on moving forward with regulatory changes and how that process is proceeding. A staff report is requested on how midwives can accept certified nurse midwifery schools as schools that are accepted for midwifery licensure.

Ms. Yaroslavsky made a motion to approve the request for agenda items for the next MAC meeting; s/Lewis. Motion carried.

Agenda Item 24 Presentation on the *National Association of Optometrists & Opticians (NAOO) v. Harris* Litigation

Dr. Levine stated that the Board is responsible for the oversight of registered dispensing opticians.

Mr. Lui announced for the record that he represented Lenscrafters affiliations in the Supreme Court of California prior to becoming a Board Member.

Mr. Terrazas and Ms. Schneider, DOJ, thanked the Board for inviting them to provide an update on the *NAOO v. Harris* litigation.

Mr. Terrazas stated that this update is in regards to a case that does impact one of the Board's programs which is the Registered Dispensing Opticians (RDO) Program. This program was involved in litigation that challenged the regulatory schematic dealing with the allowable and prohibited relationships between RDOs and optometrists. The core issue happens to be whether or not there is any element of commercial control over the clinical judgment of the optometrists, since it is the optometrists that write the prescription, which is the pathway for eye glasses. Mr. Terrazas and Ms. Schneider have prepared a history of the litigation to help the Members understand where the case is. They are actively engaged with most of the major stakeholders in the industry to make sure they understand the business

operation models and are reviewing those for compliance and non-compliance with California's regulatory scheme.

Ms. Schneider began the presentation with a historical recap of eye care in California, beginning in 1903 when optometry became a profession in California. The history portion of the presentation included goals, commercial practice restrictions, legislation and regulations that have come to be over the years. It also included the history of the litigation.

Mr. Terrazas stated that they wanted to provide Members the background since litigation has been going on for so long. The bottom line is that the state regulatory scheme that outlines allowable and disallowable relationships between the retail commercial side and the clinician has been upheld. The US Supreme Court is now declining to exercise jurisdiction leaving intact the Ninth Circuit District Court of Appeals decision that says California laws are constitutional. This places a lot of operational business models at risk in California. These companies are now in discussions with DOJ in regards to demonstrating what their operational business models are and if they are not in compliance, how they are going to bring them into compliance. If these companies do not bring their models into compliance, the Board will be involved in any enforcement activity if needed for those RDOs in violation. If the optometrists do not bring their models into compliance, the enforcement then falls to the Board of Optometry.

Dr. Levine asked Mr. Terrazas if DOJ is certain, at this point, that the practices of the companies described are all illegal. Mr. Terrazas stated that they are in discussion with these companies presently and they have been very forthcoming in providing proprietary information for an in depth analysis to be done on how they actually operate.

Dr. Levine asked Mr. Terrazas if the Board will receive the results of their determinations. Mr. Terrazas stated that the Board will eventually, as they will be involved in any enforcement action needed.

Ms. Yaroslavsky asked if a national organization can own a free standing place where a consumer can go to receive an eye check-up and glasses and what is the current law for this type of situation.

Mr. Terrazas stated that the law does not allow an RDO to hire or control an optometrist.

Ms. Yaroslavsky asked if independent optometrists have the ability to examine and dispense in the same location if they own the business.

Mr. Terrazas stated that optometrists can do that today.

Ms. Yaroslavsky asked what the new model is that people are looking to achieve.

Mr. Terrazas stated that the goal is to have co-habitation between the optometrist and the RDO and to have the relationships between the two be appropriate and not prohibited, so there is no undue influence by the commercial interest to the optometrist.

Ms. Wright asked Mr. Terrazas for clarification as to what their process is going to be. She understands it to be that they will conduct an investigation, but will they then ask that a consent decree be entered into, or does it come before the Board for the Board to enforce.

Mr. Terrazas stated that it would only come to the Board for enforcement if they have reached an impasse where it has been determined that there is a violation of the law; then DOJ will ask the Board to step in for enforcement.

Ms. Kirchmeyer stated that for the past several years, the Board has received complaints regarding RDOs that were in violation of the law in that they had an optometrist and RDO co-joined. With this particular litigation, the Board was enjoined from taking any action against this complaint. Since this litigation has resolved, the Board is now allowed to take action, but it gave a limited amount of time for the RDOs who had been in violation, to meet with the AG's Office and try to come into compliance with their practice models, the AG's Office is now working with those entities and the Board can now begin to pursue cases that are in violation of the law as the enjoinment has been lifted. However the AG's Office is continuing to work with entities to help bring the practice models into compliance. However, if RDOs are not in compliance, the Board will go through the disciplinary process and the Board could revoke the registration. These cases will come to the Members through their voting and Panels as usual.

Dr. GnanaDev asked who actually licenses the Opticians who work in these entities.

Ms. Kirchmeyer stated that there are different types of licenses under the RDO program. There is the Registered Dispensing Optician (RDO), the bricks and mortar building, which is basically like an establishment license. There is also the Spectacle Lens Dispenser (SLD), the Contact Lens Dispenser (CLD), and the Non Resident Contact Lens Dispenser (NRCLD). All of those fall under the Board's jurisdiction.

Dr. Levine stated that the reason this item was put on the agenda is because several of the Members were unaware that this was part of the Board's purview.

Dr. Yip thanked Mr. Terrazas and Ms. Schneider for the very informative presentation and asked that staff create a detailed memo showing the history, the background and the stats for education for when one of these cases does show up for voting.

Dr. Levine requested that the Board Members get a copy of the presentation after the meeting.

Agenda Item 25 Update on Licensing Outreach/Education Program

Mr. Schunke announced that he participated in an event at Kaiser in the Los Angeles area at the main hospital, which brings together all the residents from Kaiser Facilities in Los Angeles. He also participated in an event at UCLA due to a request from the residents asking for a licensing fair.

Mr. Schunke stated that he has made most of his travel plans for 2014 for the events scheduled through November. He will be meeting with approximately 2200 unlicensed residents as they begin the licensing process. Much of his time during the last couple of months has been spent helping hospitals and applicants navigate through the BreEZe system and getting them information that is no longer available online.

Ms. Yaroslavsky asked what kind of feedback he was getting from those at the events in regards to the new BreEZe system. Mr. Schunke stated that the licensing part of the system is working well, but the rest of the system for the hospitals and applicants is a bit challenging.

Ms. Kirchmeyer stated that the individuals do not have the ability, at this time to get in and check the status of their application like they used to be able to do. This is something that Mr. Worden and his staff are working on with DCA to get the look up working. The other issue is, in the past, the applicant would be able to provide their ATS number and their passwords to the hospitals to enter the system. That is no longer going to be available to them.

Ms. Yaroslavsky expressed her concerns regarding how long it is going to take to get the new system to work accordingly.

Dr. Levine asked staff to prepare a catalog from a functionality perspective identifying where the gaps are and what the anticipated date of release is for the fixes of those gaps. She asked that this be brought back to the next Board Meeting.

Ms. Yaroslavsky stated that she would like to know when it will be working as originally planned and what the implication is on staff. She liked the idea of a unique identifier number and stated this should be examined.

Ms. Kirchmeyer stated it was originally anticipated to take about six months before staff would be processing applications in the time frame as they were before BreEZe.

Dr. GnanaDev suggested to Mr. Schunke that when he spends time with thousands of residents during the licensing fairs that he also spend some of that time sharing enforcement information as well, such as what to do to stay out of trouble.

Mr. Schunke reported that there have been several times where he has taken the opportunity to have a sit down with several students at one time, and discuss all parts of what the Board does in a Question and Answer type session.

Ms. Yaroslavsky suggested that the Board Members get a list of Mr. Schunke's travel dates and locations and recommended Board Members in that area attend a licensing fair.

Public comment was heard on this agenda item.

Karen Ehrlich suggested doing a You Tube video of the things that Mr. Schunke assists applicants with at the licensing fairs. It would be a great public source of information.

Agenda Item 26 Licensing Chief's Report

Mr. Worden stated the licensing program has faced some challenges in the second quarter of the fiscal year as licensing has had staff out for various reasons, including extended leaves, and position vacancies. However, the most challenging has been the implementation of the new BreEZe system. Part of that challenge is that staff is having to enter additional information that did not have to be added before.

Mr. Worden then referred members to pages BRD 26A-4 and BRD 26A-5 for the licensing program statistics. Many of the statistics are not available at this time due to not being able to obtain reports from the new system. He then pointed out some statistics that were reported by manual count: the consumer information unit/call center received 8,542 call back requests which is 2.2 times higher than the previous quarter; the number of physician licenses issued was 849 for the quarter which is a decrease of 598 licenses from the previous quarter; and a decrease of 415 licenses compared to last year at this time.

Mr. Worden gave a brief update on the BreEZe system stating that prior to BreEZe, the Board had a system that allowed applicants to check the status of their application. This option is not currently available which has added to the large increase in phone calls. Staff is working with DCA to get that resolved. Currently, with the learning curve, the additional information required in the system, and workarounds, it is taking twice as long to process applications in BreEZe than into the previous system. With a lot of staff ingenuity and lots of overtime, staff has been able to review applications for both the US and IMGs within forty-five days. Their next challenge is the backlog of the incoming mail.

Mr. Worden stated that BreEZe has been a challenge and one thing that has been determined to help is for each staff person to have two monitors. Some information being entered into BreEZe is taken from the Accredited Council for Graduate Medical Education (ACGME) website, which can be cut and pasted, but having to switch back and forth between screens is confusing and time consuming. They are also looking into having one touch screen monitor for each staff member.

Mr. Worden stated there is currently a resolution the Board approved identifying a passing score for the United State Medical Licensing Examination (USMLE) exams. The USMLE used to provide a scaled two digit score. The USMLE now provides a three digit passing score. Therefore, a resolution is needed from the Board to accept the FSMB's and USMLE's determined passing score as the Board's. Mr. Worden also requested that staff be permitted to begin the regulatory process to correct this issue.

Mr. Worden asked for a motion for a resolution to adopt the FSMB and USMLE minimum passing score as the Board's passing score for all steps of USMLE's physician and surgeon licensing exam.

Dr. GnanaDev made a motion to adopt a resolution accepting the FSMB and USMLE minimum passing score as the Board's passing score for all steps of the USMLE; s/Ms. Yaroslavsky. Motion carried.

The second motion is for the Board to authorize staff to proceed with the rulemaking process to either amend an existing regulation or to add a new regulation to address the minimum score for licensing examinations.

Dr. Lewis made a motion to authorize staff to proceed with the rulemaking process to either amend an existing regulation or to add a new regulation to address the minimum score for licensing exams; s/Ms. Wright. Motion carried.

Ms. Yaroslavsky expressed her concerns about staff burn-out with so many hours being worked.

Ms. Kirchmeyer stated that the deadline for concept papers is coming up, so she will see how much staff is needed with the new system, taking into consideration that much of it is a learning curve. She will determine if a Budget Change Proposal (BCP) needs to be put forward for additional licensing staff or maybe temporary help in the interim time.

Ms. Yaroslavsky suggested seeing if there was any additional information that could be put on the website as far as BreEZe is concerned to assist in maybe cutting down the high volume of calls.

Mr. Worden stated that is being looked into already.

Ms. Kirchmeyer stated that ISB staff have taken a lot of the calls, and they are looking at what can be put together for FAQs. Staff recently posted some helpful hints on the website to assist people through the BreEZe system. These hints are mostly for lookups and renewals.

Agenda Item 27 Update on the Outpatient Surgery Setting Task Force and Consideration of Recommendations

Dr. GnanaDev reported that on January 22, 2014, the Outpatient Surgery Setting (OSS) Task Force held an interested parties meeting regarding the proposed amendments to the OSS statutes and regulations. This meeting was held at the Board's headquarters in Sacramento and was video conferenced with three Board offices. Mr. Serrano Sewell participated from the San Jose office. The OSS task force provided interested parties with language and reasons for the recommended changes to the statutes and regulations and requested input on these changes. At the October, 2013, Board Meeting, the task force was authorized to move forward with its recommended changes after receiving and considering input from the interested parties at the January 22nd meeting. Based upon the comments from the interested parties, the OSS task force determined that the legislative changes could move forward. Therefore, the language for these changes was provided to Senate Business and Professions (B&P) Committee and Senator Lieu. Due to a very tight deadline to get the changes into the B&P, the task force was unable to submit all the changes, but will continue to work on getting the other changes made in the future. The task force recommended changes were as follows: 1) providing some clean up language to section 1248.15 (a)(2)(d); 2) changing section 1248.3(a), to require initial certification accreditation to be valid for only two years

instead of three; 3) section 1248.35 (b)(2) requiring inspections, after the initial inspection, to be unannounced. This language has been provided to the B&P Committee staff. In addition to the above changes, the task force determined that the Board needed to make some conforming changes to the regulations based upon the recent legislative changes, specifically those needed to be made to section 1314.4 of the California Code of Regulations, Title 16. No comments requiring modification of these adjusted changes were received at the interested parties meeting; therefore staff will begin the regulatory process to make these conforming changes. The specifics of these changes can be found in the Board Packet, page BRD 27-9.

Dr. GnanaDev added that at the interested parties meeting, there were two of the suggested amendments that received a significant amount of comments. The suggested amendment that received the largest number of comments was the deletion of section 1248.15(a)(2)(c)(3). This deletion would have removed one of the methods under which an OSS can be accredited. Based upon the comments received, the task force has determined that more discussion is needed. The other amendment that received significant input was a change to the section 1248.15(a)(6)(b)(i), which requires peer review for all physicians in an OSS, even if there is only one physician performing procedures in that OSS. The interested parties requested the Board provide more clarification and also provide a definition of peer review. The task force discussed the comments received and modified that section based on those comments. Dr. GnanaDev stated those changes were listed on page BRD 27-4 in the Board Packet.

Dr. GnanaDev indicated the new requirement would state all physicians who perform procedures for which accreditation is required in an outpatient surgery setting are required to have peer review evaluations as defined in the Business and Professions Code Section 805(a)(1)(a) including outpatient settings that only have one physician. He further added for the purpose of this section, a peer review party consists of a California licensed physician who is qualified by education and experience in performing the same type of procedures, who may or may not have privileges at that outpatient setting.

Dr. GnanaDev asked for a motion to approve the proposed amendment regarding peer review requirements for physicians in OSS.

Ms. Yaroslavsky made a motion to approve the proposed amendment; s/Dr. Yip. Motion carried.

Public comment was heard on this agenda item.

Tina Minasian, Consumers Union Safe Patient Project, stated that Consumers Union is disappointed and concerned about how few and minor the proposed changes are by the OSS task force. They urge the Board to apply rigorous oversight, maximum transparency and wise policy direction in the case of these surgery settings and their accrediting agencies. She specifically requested: 1) full disclosure of information to support informed patient decisions; and 2) maximum protection through high accreditation standards. At the October 2013 Board Meeting, it was asserted that requiring peer review at OSSs would make unnecessary a Consumers Union Safe Patient Project recommendation requirement that

physicians performing surgeries that require general anesthesia in OSS's be board certified and also have hospital privileges for the specialty surgical procedures they are performing in OSSs. According to a side by side, distributed at the Board's July meeting, only one of the four Accrediting Agencies (AA) required board certification. Apparently the other agencies allow the physician owners to create their own rules regarding who can perform which surgeries. Consumers Union urges the Board to add as requirements a board certification and hospital privileges. The Board should be aware that the peer review system does not do a good job in protecting consumers and should not be relied upon to ensure patient safety in OSSs. At the interested parties meeting, Board Member Serrano Sewell raised questions regarding what the Board could undertake to have confidence that AAs are doing their job conscientiously.

Carol Moss representing Consumer's Union stated that lapses in infection control at OSSs put patients at risk. The Board should ensure that AAs are required to ensure that OSSs are following prevention standards as established by the national experts, such as the CDC and CMS. Additionally, the law should require all OSSs to report on health care acquired infections that occur in patients. This could require a 30 to 90 day follow-up with patients. Several states already have laws requiring OSS's to report their infection rate.

Dr. Levine reminded everyone that the OSS task force will continue to meet and work on other aspects of amendments that were not able to be put into the most current version of the bill.

Agenda Item 29 Consideration of Legislation/Regulations

Ms. Simoes referred the members to page BRD 29A-1in their packets, which is the status of regulatory actions, and asked if Members had any questions. Ms. Simoes moved to 2014 legislation. Ms. Simoes stated that the 2014 legislative session has started and the introduction deadline is February 21, 2014. A 2014 legislative calendar was included in the packets. Ms. Simoes stated that this calendar shows the legislative deadlines for the year. The two-year bills are in blue on the tracker list, and will not be discussed at this meeting. Ms. Simoes stated that only two bills will be discussed at this meeting, AB 1535 – Bloom and SB 500 – Lieu.

AB 1535 (Bloom) allows pharmacists to furnish naloxone hydrochloride in accordance with standardized procedures developed by the pharmacist and an authorized prescriber acting within the scope of his or her practice or in accordance with standardized procedures or protocols developed and approved by the Board of Pharmacy and the Board. This bill would require a pharmacist to complete a training program on the use of opioid antagonists that consists of at least one hour of approved continuing education on the use of naloxone hydrochloride, before furnishing it.

Ms. Yaroslavsky made a motion to support this bill; s/Dr. Lewis. Motion failed. (4-5)

Dr. GnanaDev asked about the protocols that are to be approved by both the Board and the Board of Pharmacy.

Ms. Simoes stated this requirement is similar to the bill that Ms. Herold had mentioned earlier in her report. Protocols would have to be approved by the Board and the Board of Pharmacy. The two boards would create those protocols together and then they would come to the Board for review and approval.

Dr. GnanaDev asked if there was any opposition to this bill.

Ms. Simoes stated there is no opposition at this point, and that there is generally support for bills that increase access to naloxone hydrochloride because of the lives that it has saved.

Ms. Yaroslavsky mentioned there was some great media recently in the Los Angeles media markets supporting this drug. It is getting a lot of positive feedback.

Public comment was heard on this agenda item.

Yvonne Choong, CMA, stated that CMA has not taken a position on this bill but is concerned that this bill currently lacks language that would provide safeguards against it being construed to allow pharmacists to dispense prescription drugs without a prescription.

Brian Warren, California Pharmacists Association, one of the Co-Sponsors of this bill, stated that they have received support from the Health Officers Association of California, which is a group of physician health officers from various jurisdictions throughout the state, as well as the California Society of Addiction Medicine. The association is scheduled to meet with CMA to discuss their concerns.

Dr. GnanaDev stated that this drug is a less dangerous drug, but how and when it is administered is a big concern. Details really need to be worked out because it can have serious side effects, but can also be a miracle drug if administered appropriately.

Dr. Bishop stated concerns because this is not necessarily a safe drug. He does not want anyone to get the impression that this drug is easy and safe to administer. It requires significant training and understanding of how the drug works.

Dr. Lewis stated that it is a safe drug and he supports the bill in principal but has concerns that even with proper training that pharmacists may be giving this drug out to people who may share it with others. He felt there should be a lot more thought process put into this before moving ahead with it.

Laura Thomas, Deputy State Director, Drug Policy Alliance, thanked the Board for considering this bill, as they are one of the sponsors. She stated it is part of their effort to be sure that California does a better job of addressing the significant epidemic of accidental drug overdose. It is the leading cause of accidental death. This type of pharmacy access is a program that is currently in place in Washington State and Rhode Island where they have developed protocols for it.

Dr. Phillip Coffman, an internist and infectious disease clinician at the University California of San Francisco and the San Francisco Department of Public Health stated he has been

doing work on opioid overdose prevention and the role of naloxone for quite some time. This drug has been distributed for over 20 years to people who might witness an opioid overdose in various places around the world. It use started in the United States around 1996 it really started picking up in the 2000's and in San Francisco since 2003 under the Department of Public Health. There was a publication a couple of years ago that documented 50,000 people trained in using naloxone and over 10,000 reversals, which means about 99.5% are successful.

He stated the safety concerns around this drug are minimal with the doses that tend to be used today. The withdrawal effects are pretty mild and most distribution programs collect data on what the side effects are after administering it. They are finding that the withdrawals are not as violent and/or severe as they were when being administered by paramedics where the doses were much higher. Most use an intranasal formula that has a much lower dosage than the intravenous dosage. He has helped clinics start up prescribing naloxone and one of the barriers is the time that physicians have to demonstrate how to administer it, etc. He feels that pharmacists are in a better position to do that, and he supports this bill, as it takes the pressure off the physicians and helps pharmacists contribute to the discussion and service.

Dr. Robbins stated his concerns about this drug possibly becoming an over-the-counter drug as it would then not have any type of follow-up care required.

Karen Ehrlich, a grandmother whose grandson died of an accidental overdose two years ago, appreciated the Board's concerns about the safety of this drug, but this drug is a benefit to the people and their loved ones who might suffer because of these accidental overdoses.

Dr. Lewis made a motion to support this bill in concept pending interested parties meetings and further discussion on the bill; s/Ms. Wright. Motion carried.

Ms. Simoes moved to the next bill, SB 500 (Lieu) and stated this bill would require the Board to update its pain management guidelines every five years, beginning July 1, 2015. It would require the Board to convene a task force to develop and recommend the revised guidelines to the Board and would allow the task force to consult with specified entities when developing the revisions to the pain management guidelines.

Ms. Simoes stated at the April 25, 2013 Enforcement Committee Meeting, the committee established a prescribing task force. This task force was convened to define best practices related to prescribing controlled substances and to revisit the pain management guidelines to address the serious problem of inappropriate prescribing. The task force had its first meeting on September 23, 2013, and discussed corresponding responsibilities of physicians and pharmacists for prescribing and dispensing. The next prescribing task force is scheduled for February 19, 2014. At that meeting the discussion will focus on revisions to the pain management guidelines. This bill would quantify the work that the Board has already begun to address the important consumer protection issue of inappropriate prescribing. The Board has identified revising these guidelines as an important tool to help combat inappropriate prescribing.

Ms. Simoes pointed out this bill will ensure that the pain management guidelines are revised and reviewed in a consistent, on-going manner to provide appropriate guidance to physicians who are prescribing pain medication.

Ms. Yaroslavsky made a motion to support this bill; s/Dr. Lewis. Motion carried.

Ms. Simoes gave a brief update of the legislative proposals that had already been approved by the Board. There are three bills that will be included in the B&P Committee omnibus bill. The first proposal is to include the American Osteopathic Association Healthcare Facilities accreditation program as an approved accreditation agency for hospitals offering accredited postgraduate training programs. The second proposal is to strike the word "scheduled" from existing law in B&P code section 2240. Lastly a proposal related to physician availability that would allow the Board to adopt regulations for all clinical settings, not just those performing elective cosmetic procedures using laser and impulse light devices.

The Board also approved going forward with legislation that would eliminate the 10-year posting requirement in existing law in order to ensure transparency to the public. In the Senate B&P's background paper it was recommended that this change be made. However, SB 304 did not include that language. Assembly Member Eggman, member of the B&P Committee, has agreed to carry this legislation.

Ms. Simoes stated that language will also be included in Senator Lieu's bill SB 500 that will reverse the *Capen vs. Shewry* decision and will allow OSSs to obtain clinical licensure from the California Department of Public Health (CDPH). This will not be a mandate or requirement, but an option. This bill will include some language that is sponsored by the Board and some language that will be sponsored by CDPH. Ms. Simoes also stated she will be working with Senate B&P staff, G.V. Ayers, on the peer review language that the Board approved; to see if that can possibly go into that bill as well.

Dr. GnanaDev stated that he is concerned with the language that states that physicians would be able to choose to either be licensed by the CDPH or accredited by the Board. He is concerned that this will cause more confusion for the consumer in regard to whom they need to contact with a complaint.

Dr. Levine stated that the long term goal is independent of whom owns it, the standards will be the same, whether they are licensed by CDPH or accredited by the Board.

Dr. Bishop stated that he agrees with Dr. GnanaDev that the Board hears from consumer groups that when they have a complaint, they have no idea who to go to and this will add another level of confusion.

G.V. Ayers, Senate B&P Committee, stated that it is an issue of concern for them as well. They understand the issue of clarity and are seeking to resolve those concerns. Amendments and new language may be needed.

Dr. Bishop stated that Dr. GnanaDev and Board staff has done a lot of work looking at all of the accreditation agencies and hopes that work has not been a waste of time and would like to have the work join with this new possible language.

Tina Minasian, Consumers Union Safe Patient Project, has concerns that if a physician is turned down for licensure by CDPH, he will apply for accreditation at the Board and may be accepted. This type of situation is very concerning to consumers.

Ms. Simoes continued with her update stating that the Board approved going forward with legislation that would require a respondent to provide the full expert reviewer report and to clarify the time frames in existing law for providing the report. This is an issue that was brought up in the sunset review report and SB 304 did originally include language that would have addressed this. However, after many meetings with CMA and the legislature on amendments, the language was pulled from SB 304. Ms. Simoes has been unable to find an author for this bill, since CMA stated that there are no amendments that they feel are appropriate.

Yvonne Choong, CMA, stated she would like to address two parts of the legislative proposal. It is their belief that in last year's negotiations with the Board on the expert witness issue, they made their concerns clearly known with respect to the changes that were being made to the expert witness proposal. CMA feels that it skews the balance towards the prosecution rather than the physician and believes the time frame that a physician has to prepare the expert witness defense is inconsistent with the Board's burden of proof as required under the Medical Practice Act for due process. They also have concerns about removing the 10-year posting requirement, since that language was put in as part of a prior sunset review process, where concerns were about leaving information up on the website that is potentially ambiguous to consumers about the competency of their physician.

Dr. Robbins, a member of the Board's Physician Supervisory Committee, stated that the Board is in the process of omitting a huge segment of OSS facilities and that segment is responsible for a good percentage of surgical procedures. The exception to the requirement for accreditation that is given to OSSs is only to those that operate under local anesthesia. They are not required to be accredited at the present time and there has been no discussion on how these will be included.

Ms. Simoes continued her report stating that the Board raised the issue of accelerated three-year, competency based medical school as a new issue in its sunset report. In an effort to reduce nationwide shortage of primary care doctors, there is a movement toward accelerated three-year curriculum. This curriculum would allow medical students to receive the same amount of education in a concentrated, modified year round education schedule. There are some California medical school programs that are proposing and/or considering competency based tracks for students that excel and progress at a faster rate. Some of these accelerated programs will not meet the requirements of existing law, and legislative changes are needed in order to accommodate changes in medical education to license graduates from the accelerated curriculum programs. All of these proposed programs are going through review and approval for accreditation through the Liaison Committee on Medical Education (LCME), which accredits all U.S. Medical Schools, or the Committee on Accreditation of

Canadian Medical Schools, which accredits Canadian medical schools. Board staff has met with staff from the University of California, Office of the President and discussed the need for legislation to accommodate the accelerated three-year medical school programs. Board staff has drafted language that would allow for these programs to meet the licensing requirements only if they are accredited by the LCME or the CACMS. These applicants would then meet the minimum medical education requirements. Staff is requesting approval from the Board to co-sponsor legislation with the UC to allow for the accelerated three-year competency based medical school programs if the UC also co-sponsors this legislation. Assembly Member Bonilla has expressed interest in authoring this legislation.

Ms. Yaroslavsky made a motion to approve this legislative proposal; s/Ms. Wright.

Dr. Levine clarified that current California law requires a specific number of weeks to qualify in a curriculum based program.

Ms. Yaroslavsky expressed her concerns about not wanting this legislation to push California's institutions to go to a shorter period of time.

Public comment was heard on this agenda item.

Catherine Nation, M.D., Associate Vice President of Health Sciences with the University of California, Office of the President, responded by stating that within California and within the U.S. medical school community, the four-year curriculum that is overseen by the LCME will remain as it is currently. This three-year curriculum is attractive for those students who wish to go into primary care, for example, which offers them the opportunity to miss a year of school and fees. Dr. Nation stated that these programs would be small, but attractive to many.

Dr. Diego asked if the core of the education continues, and that the things that are elective or maybe can be bypassed are the things being shaved off to shorten to curriculum.

Dr. Nation said that was part of the way these programs work for most schools. She stated an assessment process is conducted, for example, the UC Davis proposed program is looking to admit a small number of students, who are interested in primary care. Students at UC Davis who know they want to go into primary care would be allowed to essentially save them a year of school as well as a year of fees.

Dr. Diego asked if the students would still be eligible to be licensed in other states as well.

Dr. Nation stated that it is for the graduates of LCME-accredited medical schools across the US and would give them the path to residency training and licensure in California provided they have graduated from an LCME-accredited medical school.

Ms. Kirchmeyer stated that this is not just for the individuals in California, as there is a program in Texas and one in New York. This legislative change would allow a graduate pf a approved accelerated program at an LCME- accredited medical school to be able to apply for licensure in California, which is the goal.

Sarah Brady, Ph.D., Assembly Member Bonilla's office, stated that Assembly Member Bonilla urges the Board to support the three-year competency based medical school programs and is very interested in authoring the bill.

Dr. Levine called the vote. Motion carried.

Agenda Item 31 Presentation on Postgraduate Training/Residency Programs

Dr. Nation began her presentation by comparing context in terms of state needs. California, by comparison to the rest of the country, was part of the focus. The presentation discussed existing workforce challenges, medical education and residency training, Graduate Medical Education (GME) financing along with some budgetary and workforce challenges.

Dr. Nation stated that estimates suggest that California will face growing shortages of physicians in the coming years. The demand for doctors and health care services will increase as the population ages, as more consumers become insured, and as growing numbers of providers retire.

Dr. Nation reported that California is ranked as the 13th fastest growing state in the nation and the state's population is increasing in age and diversity. Our workforce is aging with more than 30% of California physicians at age 60 or older, which is the second highest percentage in the country.

Dr. Nation reported that California has a small medical education system in comparison to its population. There are approximately 6,500 students enrolled in California's 11 medical schools. On a per capita basis, California has a statewide medical school enrollment of 18 students per 100,000 population, which ranks third lowest in the nation.

Dr. Nation stated that in 1997, Congress capped the number of residency slots for which teaching hospitals could receive Medicare GME funding. Those limits have not been changed since then, with only a few exceptions.

Dr. Lewis asked if there are any types of advocacy groups that have partnered with UC that could assist in mentoring these residents and act as supervising physicians for these programs.

Dr. Nation stated that this is becoming a crisis as the reliance on clinical preceptors increases. The pressures in terms of practice are squeezing out the opportunities for students across the state. Supervising a medical student will slow down a physician's practice. Mentoring is the heart and soul of their PRIME program and mentorship by community-based physicians.

Dr. Levine reminded the Board that what prompted this conversation is the 30% increase in medical education slots over that last 10 years, however a much smaller increase in graduate medical education slots due to the cap put on the training programs in 1997 and Medicare

not having the funds to change that. So, the gap is growing and squeezing out IMGs. Alternative sources of funding are going to be necessary to close that gap.

Ms. Yaroslavsky asked if there is any expectation or national initiative going forward that will require Medicare to increase funding.

Dr. GnanaDev responded, stating that it is an initiative of AMA to increase the GME slots, but congressional resistance is stating that Medicare should not be the only one who funds medical education. One solution is to work with the community hospitals to create primary care residency programs and do it in such a way that one can get to the maximum in five years so that the Medicare cap is reached.

Dr. Bishop stated that the crisis that is currently taking place is not something that was unknown for years, yet somehow, has now become a crisis. He stated he is concerned that the quality part of things is missing and that caution needs to be taken.

Ms. Wright asked Dr. Nation what UC is doing in the area of there not being enough doctors per capita for high density, lower income areas.

Dr. Nation stated that this issue is the prime focus of their Urban Underserved PRIME Program. This program is small, but focuses on the needs of the poor, the homeless, the drug addicted etc., who are in urban locations, but where physicians may be concentrated in the suburbs and there may not be a path to care offered. Their residents rotate through several different facility sites such as county facilities, Veterans Affairs (VA) facilities, and student clinics in underserved, underfunded, and underinsured areas. Dr. Nation added that there is a cultural competency element for all medical school programs and a requirement of the LCME.

Agenda Item 30 Agenda Items for May 1-2, 2014 Meeting in Los Angeles Area.

Dr. Levine asked Board Members and members of the public if there were any agenda items they would like added to the May meeting agenda. Seeing none, Dr. Levine stated that if anyone thinks of anything within the next month to communicate with Ms. Kirchmeyer. Dr. Levine then asked for a motion to adjourn into closed session.

Ms. Yaroslavky made a motion to adjourn into closed session; s/Dr. Lewis. Motion carried.

Meeting was adjourned into closed session at 1:20 pm.

Agenda Item 32 Closed Session

Agenda Item 33 Open Session

Meeting reconvened from closed session at 4:15 pm, with Dr. Levine announcing that the Board had concluded the interviews for the permanent Executive Director for the Board. The Board offered the position of the Executive Director to Ms. Kirchmeyer who has been

serving as the Interim Executive Director since June 2013. This offer is pending the approval of the Director of DCA, Ms. Brown per SB 304.

Dr. Levine thanked all of the candidates for their patience in the process and congratulated Ms. Kirchmeyer stating that the Board Members look forward to working with her for at least the next five years.

Dr. Levine adjourned the meeting at 4:18 pm.

_____	_____
Sharon Levine, M.D., President	Date
_____	_____
Silvia Diego, M.D., Secretary	Date
_____	_____
Kimberly Kirchmeyer, Interim Executive Director	Date

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