

MEDICAL BOARD STAFF REPORT

DATE REPORT ISSUED: October 10, 2013
 ATTENTION: Members, Enforcement Committee
 SUBJECT: Transition of Medical Board of California (Board) Investigators Pursuant to Senate Bill (SB) 304
 STAFF CONTACT: Kimberly Kirchmeyer, Interim Executive Director

REQUESTED ACTION:

This report is intended to provide information to the Members on the transition of the Board's investigators, medical consultants, and support staff to the Department of Consumer Affairs' (DCA) Division of Investigation (DOI), Health Quality Investigation Unit (HQIU). No action is needed at this time.

BACKGROUND AND ANALYSIS:

On October 3, 2013, Governor Brown signed SB 304, the Board's Sunset Review bill. This bill made a number of changes to the Board's statutes; however, one of the most significant amendments was the movement of the Board's investigators (peace officers), medical consultants, and all support staff for these positions to a new unit within the DCA, DOI. The amended pertinent sections of law are as follows (italics added for emphasis):

Section 159.5 of the Business and Professions (B&P) Code was amended to read:

- “(a) (1) There is in the department the Division of Investigation. The division is in the charge of a person with the title of chief of the division.
 (2) Except as provided in Section 160, investigators who have the authority of peace officers, as specified in subdivision (a) of Section 160 and in subdivision (a) of Section 830.3 of the Penal Code, shall be in the division and shall be appointed by the director.
 (b) (1) *There is in the Division of Investigation the Health Quality Investigation Unit. The primary responsibility of the unit is to investigate violations of law or regulation within the jurisdiction of the Medical Board of California, the California Board of Podiatric Medicine, the Board of Psychology, the Osteopathic Medical Board of California, the Physician Assistant Board, or any entities under the jurisdiction of the Medical Board of California.*
 (2) *The Medical Board of California shall not be charged an hourly rate for the performance of investigations by the unit.*
 (3) *This subdivision shall become operative on July 1, 2014.*”

Section 160.5 of the B&P Code was amended to read:

- “(a) ...
 (b) (1) *All civil service employees currently employed by the Medical Board of California of the Department of Consumer Affairs, whose functions are transferred as a result of the act adding this subdivision shall retain their positions, status, and rights pursuant to Section 19050.9 of the Government Code and the State Civil Service Act (Part 2 (commencing with Section 18500) of Division 5 of Title 2 of the Government Code). The transfer of employees as a result of the act adding this subdivision shall occur no later than July 1, 2014.*
 (2) *The transfer of employees pursuant to this subdivision shall include all peace officer and medical consultant positions and all staff support positions for those peace officer and medical consultant positions.*”

Section 2006 of the B&P Code was amended to read:

- “(a) Any reference in this chapter to an investigation by the board shall be deemed to refer to a joint investigation conducted by employees of the Department of Justice and *the Health Quality*

Investigation Unit under the vertical enforcement and prosecution model, as specified in Section 12529.6 of the Government Code.

(b) This section shall become operative on July 1, 2014.”

As indicated by these statutory amendments, the Board’s investigative staff (including investigators, medical consultants and support staff) will be transferred to the DCA no later than July 1, 2014. The bill also states that all civil service employees will retain their current position, status, and rights.

This new HQIU will perform investigations for the Board, the Osteopathic Medical Board, the Board of Podiatric Medicine, the Board of Psychology, the Physician Assistant Board, and any other entity under the jurisdiction of the Board (e.g. Licensed Midwife Program, Registered Dispensing Optician Program, etc.). The Board’s investigative staff currently perform investigative services for all these boards/entities so this is just a continuation of the current functions of the Board’s investigators.

The amendments also specifically state that the Board cannot be charged an hourly rate by the HQIU. This language was specifically added because the Board’s previous analysis had indicated that the transition of the positions to the DOI could lead to a significant fiscal increase due to the hourly rate charged by the DOI. At the Assembly Business and Professions Committee hearing, Dr. Levine testified that the transition of the investigators should be cost neutral, or should not result in an increase in the Board’s expenditures. The bill went through several amendments, but ultimately stated that the Board could not be charged an hourly rate.

Lastly, although the bill transferred the investigations of the Board to the HQIU, it retained the vertical enforcement and prosecution model (VEP), which requires a joint investigation by the HQIU and employees of the Department of Justice, Health Quality Enforcement Section (HQUES).

ANALYSIS OF THE TRANSITION:

The Board staff, in consultation with the DCA, is in the preliminary stages of the implementation of SB 304 and the transition of the investigative staff. Although the specific details of the transition have not been completely identified, discussions have begun and a high-level timeline has been developed by the Executive staff at the DCA (Attachment A). In addition, DCA has established a Transition Team, of employees from both the DCA and the Board, to work out the details needed to ensure a smooth transition for the Board, the staff, and all involved parties. Some of the specific details that need to be discussed include the review of contracts, leases, and databases/computer systems needing to be moved from the Board to the DCA; meeting with labor unions to discuss the transition of the employees; continued development of a budget for the DOI, HQIU and the billing process; etc. The DCA Executive staff and the Board staff have already met several times to discuss the implementation plan and will continue to do so throughout the course of the next eight months.

The attached flowcharts (Attachments B and C) provide a picture of how the enforcement process will change due to the transition. The first chart, Attachment B, identifies the current investigation process. As identified in the chart, the entire investigation and prosecution of a case remains with the Board and the Attorney General’s (AG) Office. The second chart, Attachment C, identifies how the investigation process will be moved to the HQIU. It is important to note, that the Board’s Central Complaint Unit, whose function is to initiate and triage complaints received prior to sending the complaint to investigation, will remain at the Board. This means the Board will retain control of receipt and triage of all complaints and will also be the decision maker as to whether an investigation is warranted. Once a

determination is made to investigate the matter, it will be referred to the HQIU for investigation. It will then be under the control of the DCA/HQIU to complete the investigation via the VEP.

Attachments D and E identify how the VEP will change with the transition of the investigators to the HQIU. Attachment D is the current process with the investigators under the authority of the Board. Attachment E identifies how the VEP process would change with the investigators being transitioned to the HQIU. Once the HQIU receives an investigation request from the Board, the case will need to be jointly assigned to a Deputy Attorney General in the AG's Office and a HQIU investigator. At the completion of the investigation, the HQIU and the AG's Office will determine the appropriate disposition of the investigation, e.g. closure, referral to the AGO for the filing of an Accusation, referral to citation and fine, referral to the Board for a pre-accusation public letter of reprimand, etc.

Currently, once an investigation is completed, the case proceeds through one of the avenues identified above for disposition (see Attachment B for specific details). However, with the transition of the investigators to the DCA, the investigation and outcome of the case must be forwarded to the Board for review and concurrence with the suggested disposition. If this does not occur, the Board would not have any authority over the outcome of the case. Therefore, Board staff must review the case disposition and determine whether the action taken by the HQIU and the AG's Office is warranted. If questions/concerns arise, then staff will need to discuss the matter with the AG's Office and HQIU. If the Board staff agrees with the outcome, the case will continue through the enforcement process.

In addition to the review of the case dispositions, there are several other functions that are performed by either the Chief of Enforcement, the Deputy Chief, or the Supervising Investigator IIs that can no longer be performed by these individuals as they will no longer be employees of the Board. These functions include, but are not limited to, attending statewide informal conferences after an appeal by a licensee on a citation and fine case, offering and negotiating a public letter of reprimand, providing settlement authority to the AG's Office during settlement negotiations, overall review and assessment of the Enforcement Program, etc. In addition, the monitoring and tracking of criminal actions will also no longer be completed by the investigative staff and will need to be performed by Board staff. The Board will be establishing a position to perform these duties.

Although the Board's investigative staff will be transitioned to the DCA, the remaining enforcement staff will be retained by the Board. This includes the aforementioned Central Complaint Unit (responsible for initiation and triage of complaint), the Discipline Coordination Unit (responsible for the processing of administrative documents and Board Panels), the Probation Unit (responsible for monitoring physician placed on probation), and the proposed Non-Sworn Special Investigative Unit (responsible for performing desk investigations). The duties and functions of these positions should remain as is. See Attachment F for a proposed new organization chart identifying the Board's new Enforcement Program after the transition of the Board's investigative staff. (Attachment G provides an organization chart reflecting the Board's Enforcement Program prior to the transition.)

IMPACT TO BOARD DISCIPLINARY ACTION/OVERSIGHT:

As can be determined based upon the attached flowcharts, the roles and responsibility of the Board Members in the review of disciplinary cases remains unaffected by the transition of the investigative staff to the DCA. Once the investigation is completed and the case is transferred to the AG's Office, the Board staff will monitor that case, the Executive Director will sign any pleading that is drafted, and the Board Panels will continue to vote on all proposed disciplinary actions. The Board will remain in

control of which cases are referred for investigation and will have the ability to review the recommended case disposition after an investigation is completed. The only thing that will now be outside of the Board's control will be the actual investigation of the case. This portion of the enforcement process will now be under the control of the DCA, just as currently the administrative process (filing the accusation and the subsequent hearing process) is under the control of the AG's Office and the Office of Administrative Law.

Although the Board will no longer have the authority over the investigative process, the Board will continue to receive statistical data on the length of time it takes to perform an investigation. The HQIU will use the BreEZe system to enter data on the progress of an investigation. Board staff will run reports from the BreEZe system in order to provide statistics to the Board. The current reports (once developed in the BreEZe system) will continue to be run on a monthly basis and the data will be provided to the Board at its quarterly meeting.

As previously stated, the DCA staff and the Board staff will continue to meet to ensure the transfer of the positions proceeds in a manner that is not disruptive to staff, licensees, or the consumers. The only way this can be done is through communication and collaboration by all parties involved.

Attachments

Attachment A – Timeline

Attachment B – Enforcement Process Prior to SB 304 Passage

Attachment C – Enforcement Process After to SB 304 Passage

Attachment D – VEP Process Before SB 304

Attachment E – VEP Process After SB 304

Attachment F – Proposed Enforcement Program Organization Chart After SB 304

Attachment G – Current Enforcement Program Organization Chart Before SB 304

Attachment H – DCA, DOI, and HQIU Organization Charts

*Proposed SB 304 Implementation Plan

October 2013

1. Appear at the Medical Board of California's (MBC) next board meeting and jointly present a proposed transition plan.
2. Establish with MBC and Department of Consumer Affairs (DCA) budget staff the details of the budget in implementing SB 304.
3. Transition Team is created (DCA executive staff and MBC staff).

November 2013

1. Begin joint meetings with MBC, Health Quality Enforcement Section (HQES) of the Attorney General's (AG) Office and the Division of Investigation (D of I) regarding briefing on Vertical Enforcement Prosecution (VEP).
2. Identify Transaction areas:
 - Facilities (if any)
 - Human Resources (HR)/Personnel
 - Budgets and Contracts
 - Expectations of AG's Office/HQES
 - Review current organization charts and begin discussion on proposed charts
 - Information Technology (IT) needs (databases, case management)
 - Internal and external communication
3. Begin information sharing with unions.

December 2013

1. Continue VEP discussion and enforcement manual orientation.
2. Request delegation from California Department of Human Resources (CalHR) to meet and confer with affected labor groups.

January 2014

1. SB 304 becomes law and transfers the MBC peace officers, medical consultants and support staff to D of I effective July 1, 2014.
2. Governor's Budget for FY 2014/15 is introduced. Preparation for budget hearings begin.
3. Transition team continues to meet and also meets with HQES to define implementation of VEP in the SB 304 model.
4. Begin town hall meetings with employees, unions and stake holders.
5. Continue information sharing meetings with unions.

February 2014.

- 1 Attend MBC's regular meeting to provide update.
- 3 Develop plan for the transition of IT, facilities, contracts and other administrative support components.
4. Initiate joint (D of I/MBC) senior management introductions and facilitate internal communication meetings.
5. Continue MBC and D of I field office town hall meetings.
6. Formal meet and confer (after Governor's Budget).

March 2014

1. Continue town hall meetings with MBC and D of I field offices.
2. Continue information sharing meetings with unions.

April 2014

1. Review and determine need for revisions or amendments to the current VEP manuals of the MBC and HQES.

May 2014

1. MBC and D of I field office town hall meetings will be completed.
2. FY 2014/15 budget hearings begin.
3. Implement IT system access for D of I's management (case management systems).
4. Attend MBC's regular meeting and provide update.

June 2014

1. FY 2014/15 Budget Bill enacted to reflect appropriate budget authority.
2. Continue information sharing meetings with unions, if necessary.

July 2014

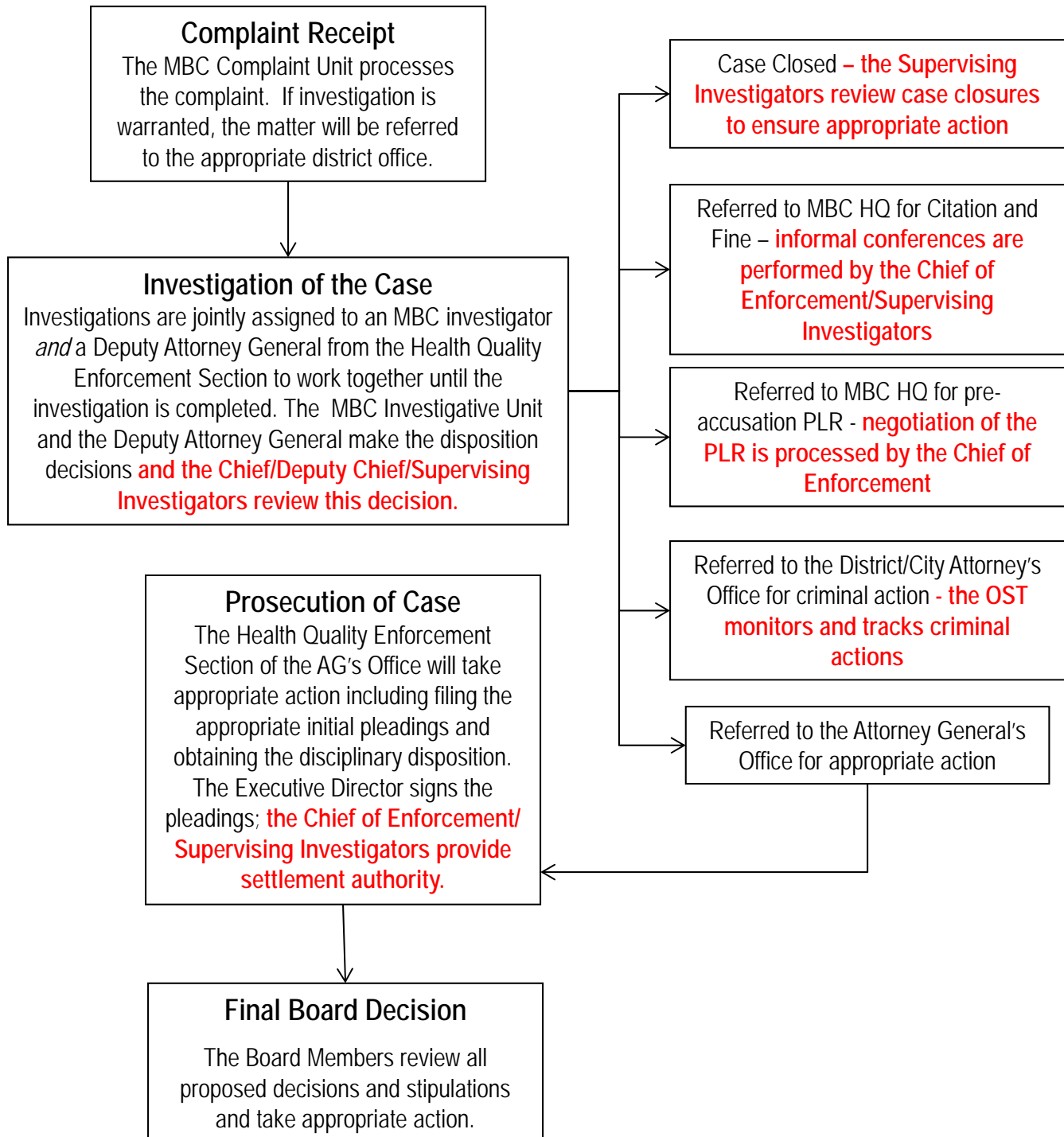
1. MBC investigators, support staff and medical consultants become employees of D of I.
2. Initiate a plan to have monthly conference calls or quarterly meetings with HQES leadership.
3. Report to MBC on the transition and provide enforcement statistics.

October 2014

1. Provide enforcement statistics to MBC at regular meeting.

Enforcement Process Prior to Senate Bill 304 Passage

Medical Board of California

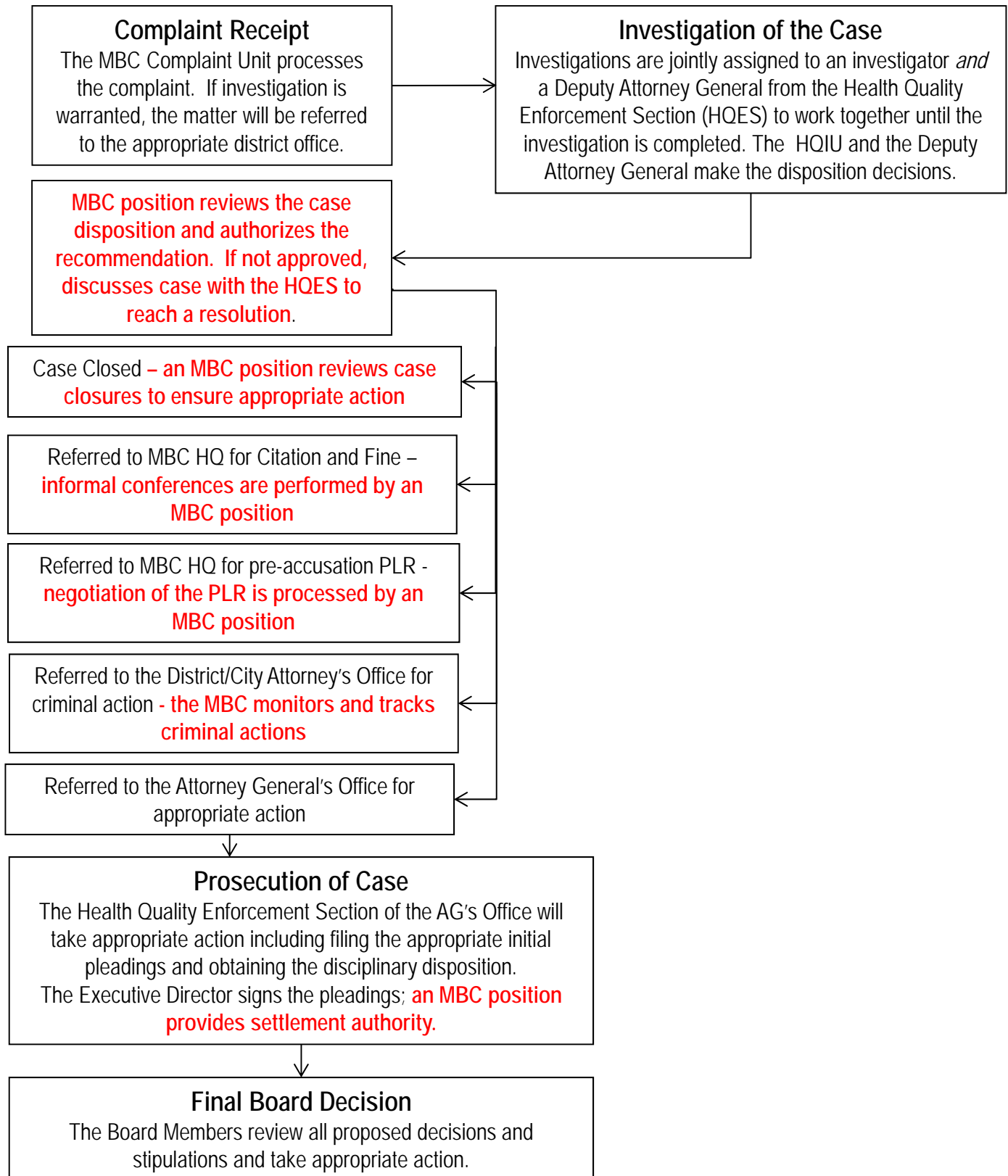


Enforcement Process After Senate Bill 304 Passage

Attachment C

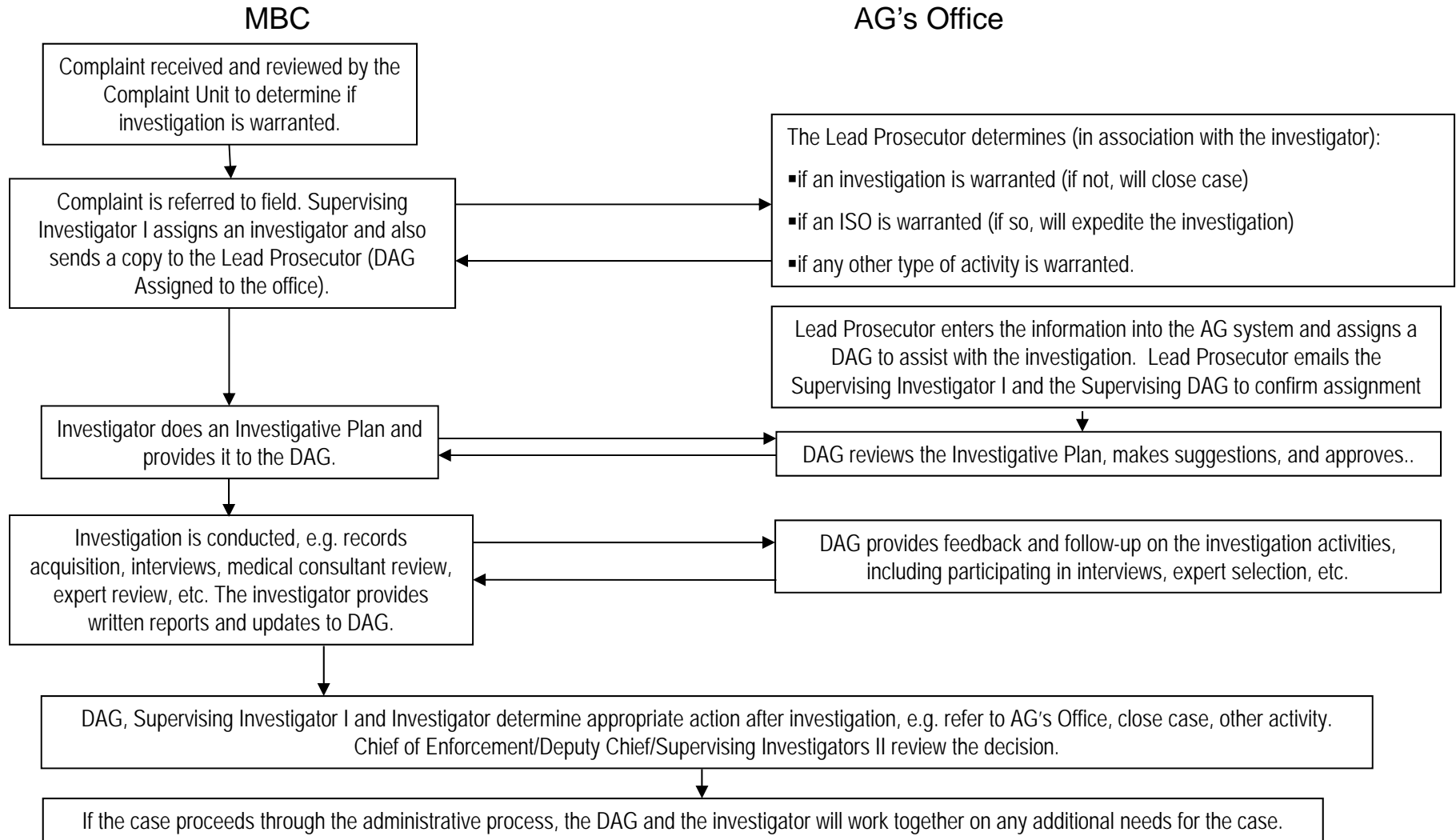
Medical Board of California

Health Quality Investigation Unit

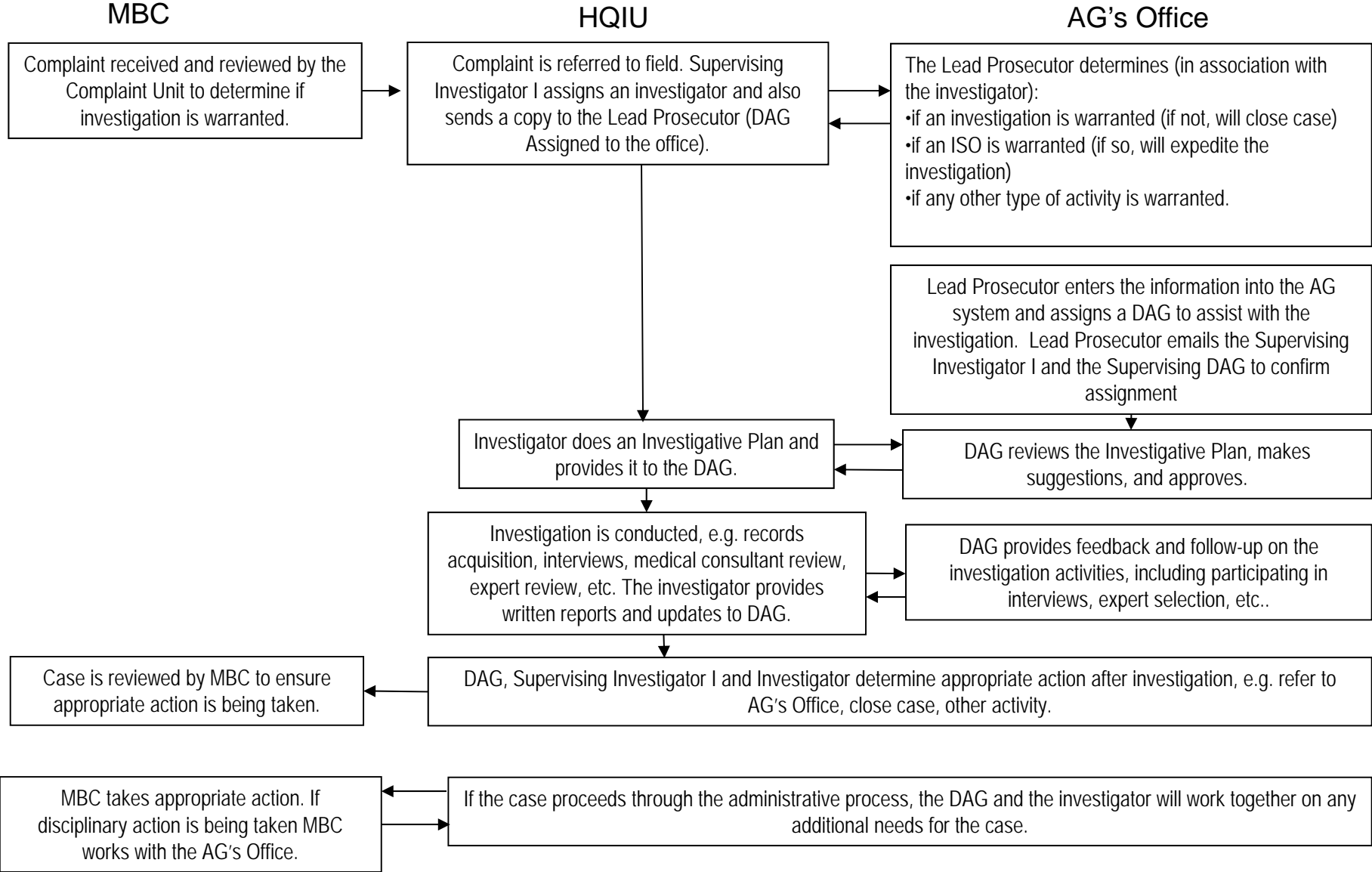


Vertical Prosecution Process Before SB 304

Attachment D

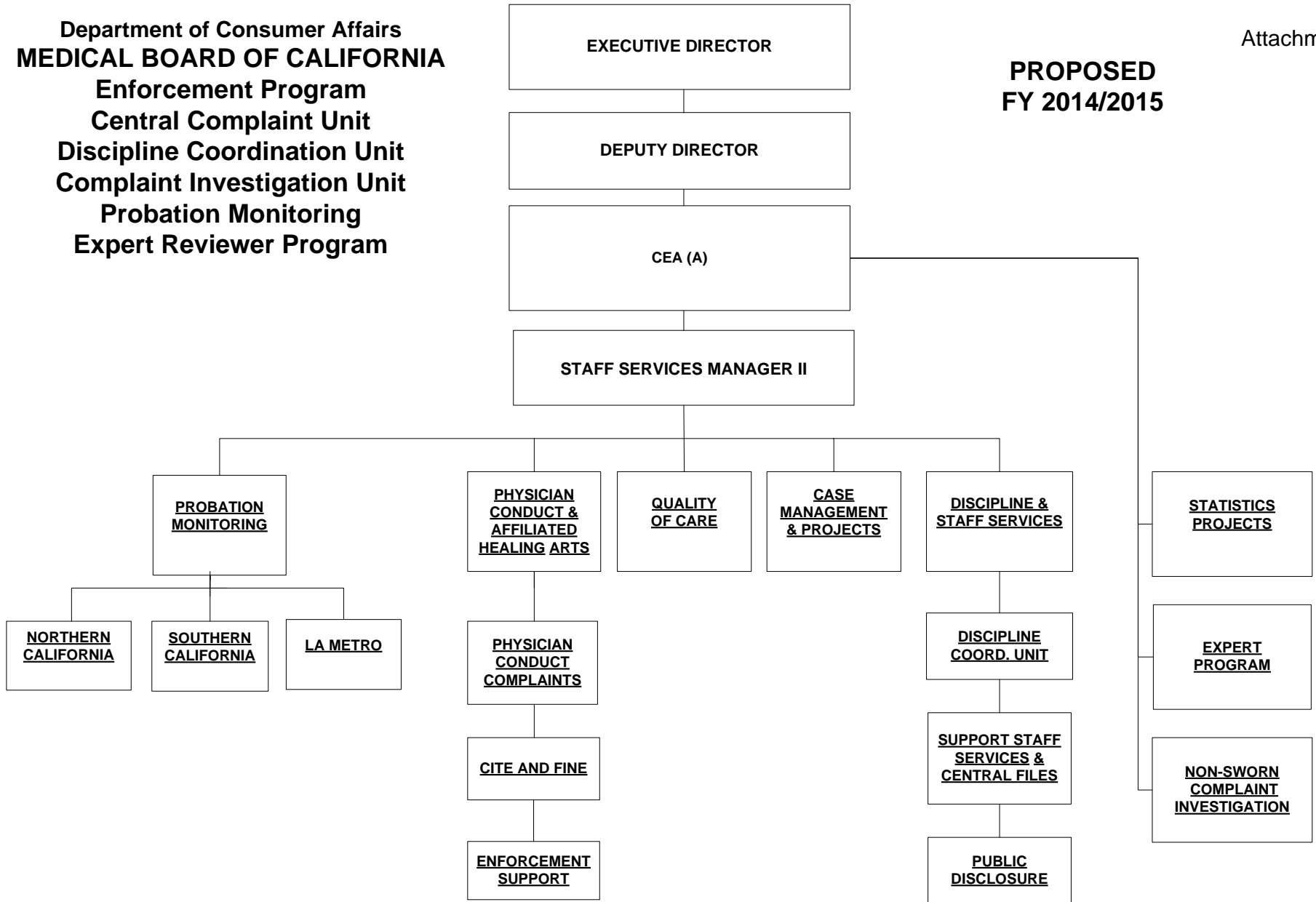


Vertical Prosecution Process After SB 304



Department of Consumer Affairs
MEDICAL BOARD OF CALIFORNIA
 Enforcement Program
 Central Complaint Unit
 Discipline Coordination Unit
 Complaint Investigation Unit
 Probation Monitoring
 Expert Reviewer Program

**PROPOSED
FY 2014/2015**



**Current
Enforcement Program**

MEDICAL BOARD OF CALIFORNIA

15 MEMBERS

EXECUTIVE DIRECTOR

ENFORCEMENT PROGRAM
Chief of Enforcement

Probation/CCU/DCU/CIU/CIU
Staff Services Manager II

Office of Investigative Service
Deputy Chief

Probation Monitoring

Discipline Coordination Unit

Case Management Section

**Physician Conduct &
Affiliated Healing Arts
Section**

Quality of Care Section

Complaint Investigation Unit

Expert Reviewer Program

Southern Area
San Bernardino
San Diego
Tustin
Rancho Cucamonga

**Standards & Training/
Operation Safe Medicine**

Los Angeles Metro Area
Valencia
Glendale
Cerritos
San Dimas

Northern Area
Sacramento
Pleasant Hill
San Jose
Fresno

Department of Consumer Affairs
October 2013
FY 13/14

Denise Brown
Director
Exempt

Awet Kidane
Chief Deputy Director
Exempt

Equal Employment
 Opportunity Office
Latania Robinson
Manager

Internal Audit Office
Vacant
Chief

Information Security
 Office
Walter Durette
Chief

Communications
 Division
Russ Heimerich
Deputy Director
Exempt

Division of Legislative &
 Policy Review
Tracy Rhine
Deputy Director
Exempt
Justin Paddock
Assist. Deputy Director
Exempt

Legal Affairs Division
Doreatha Johnson
Deputy Director
Exempt
Don Chang
Assist. Chief Counsel
Exempt

Board and Bureau
 Relations
Christine Lally
Deputy Director
Exempt

Division of Investigation
 and Enforcement
 Programs
Michael Gomez
Deputy Director
Exempt

Office of Administrative
 Services
Sandra Mayorga
Deputy Director
 CEA

Office of Information
 Services
Amy Cox-O'Farrell
Deputy Director
 CEA

Public Affairs
Lisa Stratton
Manager

Publication, Design &
 Editing
June Vargas
Manager

Consumer Information
 Center, Correspondence
 and Outreach
Jennifer Willis
Manager

Bureaus

Bureau of Automotive Repair
Exempt, BAR Chief
Exempt, BAR Assist. Chief
Exempt, BAR Assist. Chief SMOG Check
 CEA, BAR Deputy Chiefs (2)
 Cemetery & Funeral
 CEA, Cemetery & Funeral Chief
 Bureau of Electronic & Appliance Repair,
 Home Furnishing & Thermal Insulation
Exempt, BEARHFTI Chief
 Bureau for Private Post Education
Exempt, BPPE Chief
 CEA, BPPE Deputy Chief
 Bureau of Real Estate
Exempt, BRE Commissioner
Exempt, BRE Chief Deputy Commissioner
Exempt, BRE Assistant Commissioner,
 Legal Affairs
 CEA, BRE Assistant Commissioner of
 Enforcement
 CEA, BRE Chief Auditor
 CEA, Licensing & Admin. Services
 CEA, BRE Subdivisions
 Bureau of Real Estate Appraisers
Exempt, BRE Chief
 CEA, BRE Deputy Director Licensing,
 Enforcement & Admin. Services
 Bureau of Security & Investigative Services
Exempt, BSIS Chief

Arbitration Certification Program
 Telephone Medical Advice Services
 Professional Fiduciaries Bureau
 Complaint Resolution Program

Boards/Committees/Commission

Executive Officers, Committee & Commission Members – ALL EXEMPT

Board of Accountancy
 CEA, BOA Chief of Enforcement
 Acupuncture Board
 Architects Board
 Athletic Commission
 Board of Barbering & Cosmetology
 Board of Behavioral Sciences
 Board of Chiropractic Examiners
 Contractor's State License Board
 CEA, CSLB Chief Deputy Registrar
 CEA, CSLB Chief of Enforcement
 CEA, CSLB Chief Info. Officer
 CEA, CSLB Chief of Licensing
 CEA, CSLB Chief of Legislation
 Court Reporters Board
 Dental Board
 Dental Hygiene Committee
 Board of Guide Dogs for the Blind
 Landscape Architects Technical Committee
 Medical Board of CA
 CEA, MBC Assist. Exe. Director
 CEA, MBC Chief of Enforcement
 CEA, MBC Chief of Licensing
 CEA, MBC Chief of Legislation

Naturopathic Medicine Committee
 Board of Occupational Therapy
 Board of Optometry
 Osteopathic Medical Board
 Board of Pharmacy
 CEA, BOP Assistant EO
 Physical Therapy Board
 Physician Assistant Committee
 Board of Professional Engineers,
 Land Surveyors & Geology
 Board of Podiatric Medicine
 Board of Psychology
 Board of Registered Nursing
 Respiratory Care Board
 Speech-Language Pathology and
 Audiology & Hearing Aid Dispensers
 Structural Pest Control Board
 Veterinary Medical Board
 Board of Vocational Nursing &
 Psychiatric Technicians
 CEA, BVNPT Assistant EO

Fiscal Operations
Janice Shintaku
Fiscal Officer

Business Services
Pamela Wortman
**Business Services
 Officer**

Human Resources
Jeff Sears
Personnel Officer

Professional
 Examination Services
Heidi Lincer-Hill
Chief

SOLID Training and
 Planning Solutions
Shelly Menzel
Manager

Enterprise
 Technology Services
Jason Piccione
Manager

Client Device &
 Web Services
Jim Epp
Manager

Server, Network &
 Security Services
Randy Hawkinson
Manager

Application Services
Wayne Odd
Manager

Enterprise Project
 Services
Karamel Jett
Manager

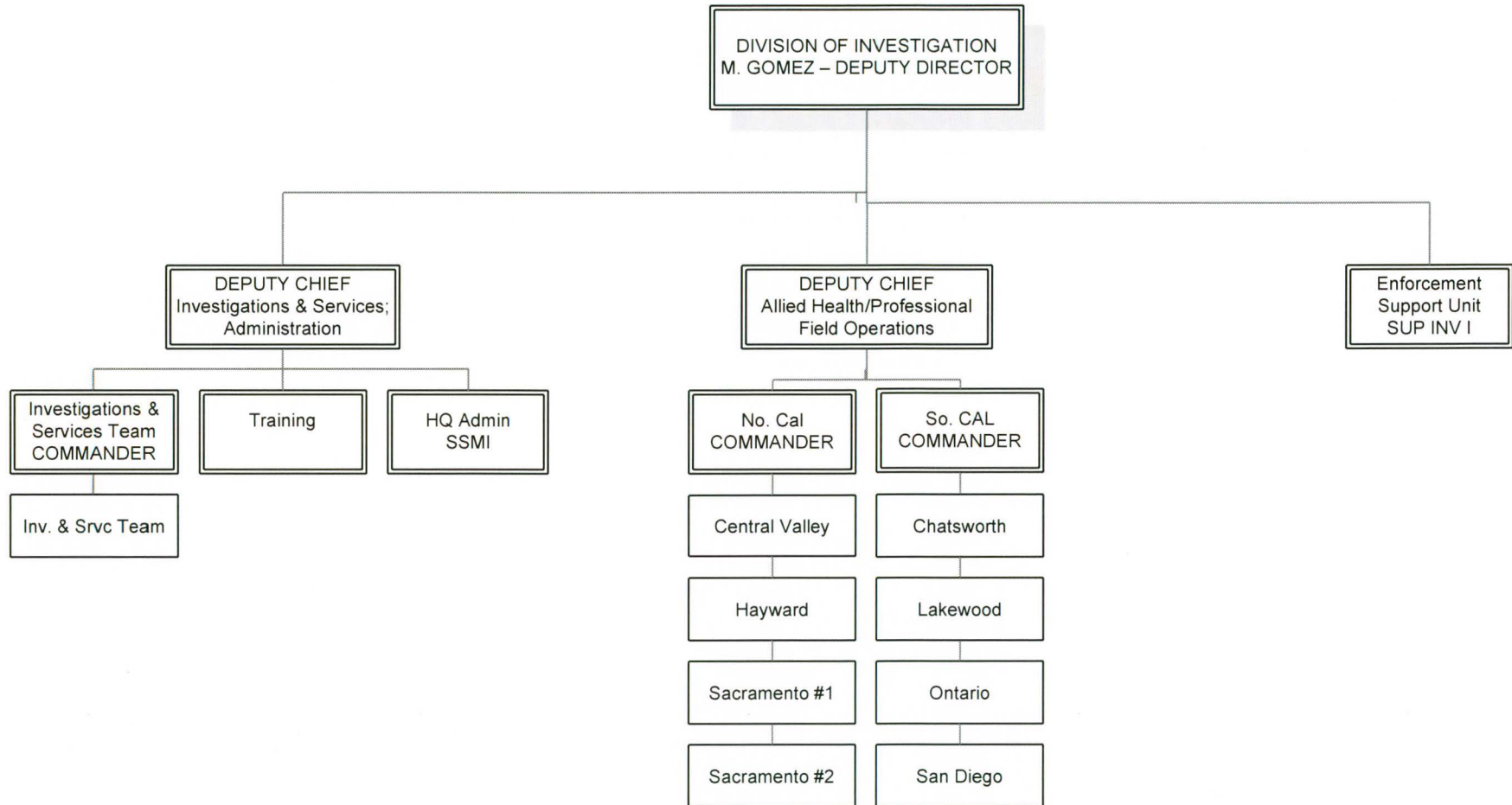
Client Services
Gerry Lobo
Manager

DENISE BROWN, DIRECTOR

JEFF SEARS, PERSONNEL OFFICER

Red = Exempts / Blue = CEA's

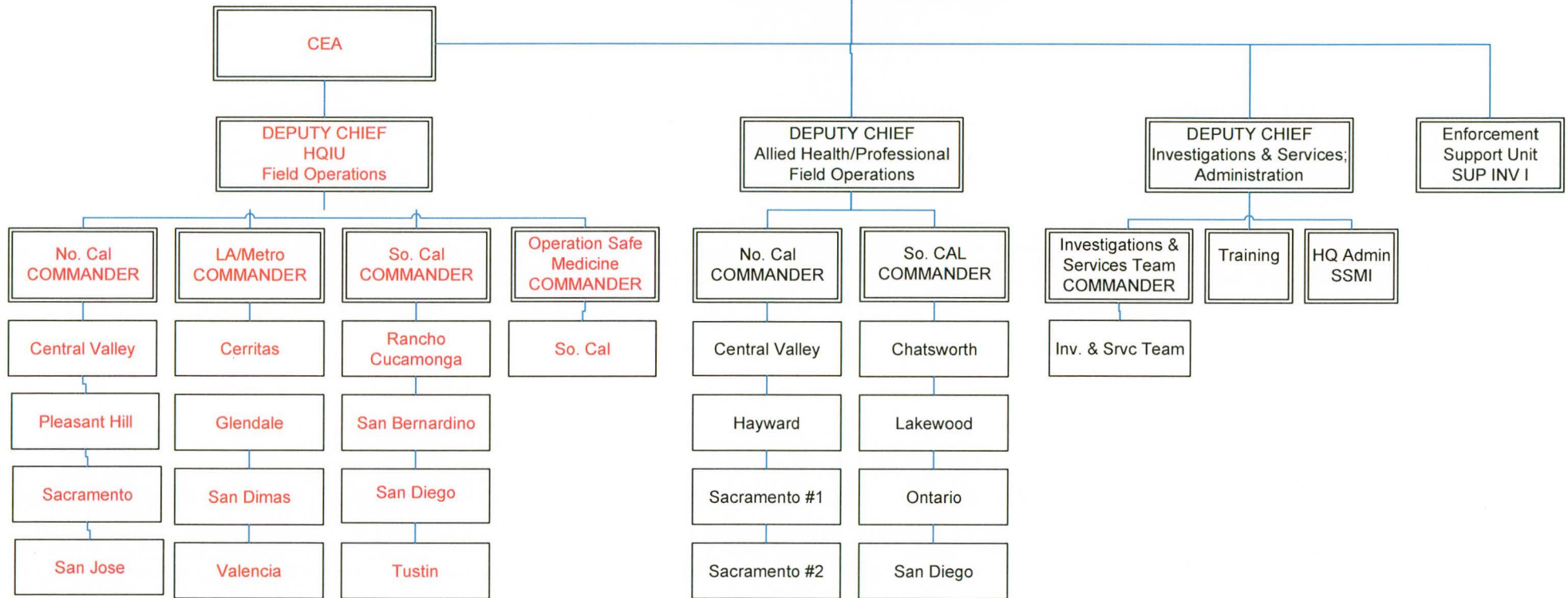
DIVISION OF INVESTIGATION ORGANIZATION CHART



Current-2013

DOI/MBC TRANSITION Organization Chart

DIVISION OF INVESTIGATION
M. GOMEZ – DEPUTY
DIRECTOR



LEGEND
 Red = Health Quality Investigations Unit (HQIU)
 Black = Current DOI Organization