MEDICAL BOARD
OF CALIFORNIA
Protecting consumers by advancing high quality, safe medical care.

Agenda Item 3
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Governor Edmund G. Brown Jr., State of California | Business, Consumer Services and Housing Agency | Department of Consumer Affairs

ENFORCEMENT COMMITTEE MEETING

Crowne Plaza San Jose -Silicon Valley
777 Bellew Drive
Milpitas, CA 95035
Thursday, January 18, 2018

MEETING MINUTES

Members Present:
Felix C. Yip, M.D., Chair
Michelle Anne Bholat, M.D.
Ronald H. Lewis, M.D.
Jamie Wright, J.D.

Members Absent:
Sharon Levine, M.D.

Staff Present:
April Alameda, Chief of Licensing
Mary Kathryn Cruz Jones, Associate Government Program Analyst
Christina Delp, Chief of Enforcement
Kimberly Kirchmeyer, Executive Director
Christine Lally, Deputy Director
Regina Rao, Associate Government Program Analyst
Letitia Robinson, Research Program Specialist II
Elizabeth Rojas, Staff Service Analyst
Jennifer Saucedo, Staff Services Analyst
Jennifer Simoes, Chief of Legislation
Carlos Villatoro, Public Information Manager
Kerrie Webb, Staff Counsel

Members of the Audience:
Eric Andrist
Gloria Castro, Senior Assistant Attorney General, Health Quality Enforcement Section, Department of Justice
Zennie Coughlin, Kaiser Permanente
Matt Davis, Supervising Deputy Attorney General, Health Quality Enforcement Section, Department of Justice
Rosanna Davis, L.M., California Association of Licensed Midwives
Lynn Forsyth, Executive Officer, Physician Assistant Board
Louis Galiano, Videographer, Department Consumer Affairs
Dev GnanaDev, M.D., Board Member
Randy W. Hawkins, M.D., Board Member

Andrew Hegelein, Northern Area Commander, Health Quality Investigation Unit, Department of Consumer Affairs
Stephen G. Henry, M.D., University of California, Davis
Ralph Hughes, Investigator, Health Quality Investigation Unit, Department Consumer Affairs
Todd Iriyama, Supervising Investigator, Health Quality Investigation Unit, Department Consumer Affairs
Howard R. Krauss, M.D., Board Member
Susan Lauren
Tim Madden, California Chapter of the American College of Emergency Physicians
Ken Miller, M.D., PhD, Santa Clara County, Emergency Medical Services
Kathleen Nicholls, Deputy Chief, Health Quality Investigation Unit, Department of Consumer Affairs
Denise Pines, Board Member
Jane Zack Simon, Supervising Deputy Attorney General, Health Quality Enforcement Section, Department of Justice
Mary Cain Simon, Supervising Deputy Attorney General, Health Quality Enforcement Section, Department of Justice
Kayla Watson, Center for Public Interest Law

Agenda Item 1 Call to Order/Roll Call/Establishment of Quorum

Dr. Yip called the meeting of the Enforcement Committee (Committee) of the Medical Board of California (Board) to order on January 18, 2018, at 2:05 p.m. A quorum was present and due notice was provided to all interested parties.

Agenda Item 2 Public Comments on Items not on the Agenda

Mr. Andrist stated that part of the issue with the Board's Enforcement Program is that they are patting themselves on the back for accomplishing very little. He noted that upwards of 10,000 patient complaints came to the Board and only 400 doctors were disciplined, which is only four percent. Mr. Andrist stated, when the Board protects doctors rather than protecting public safety, the public has very little recourse to appeal the Board's decisions. He stated that essentially the Board is getting away with murder in many cases. Mr. Andrist commented that when consumers try to hold the Board accountable for a Public Record Act request, the Board hides behind exemptions that are not even mandatory. He stated that the Board's attorney does not follow the laws and flat out breaks them.

Mr. Andrist added that the Board is not above the law and should not be striving to hide their actions from the public. He stated that it is against the law and it does not further the Board's mission statement of truly protecting consumers. He noted that the Board is not using public reprimands for what they are intended for, which are to be issued for minor cases where a patient is not harmed or killed by a doctor. He added that the Board needs to stop bartering down harm and death cases so that they could coddle a physician by issuing a public reprimand. Mr. Andrist noted that patients are being harmed and killed by doctors, yet the Board chooses to give the doctors a slap on the wrist rather than truly holding them accountable for their actions. He concluded by

stating that he would be illustrating this in more detail during Ms. Webb's presentation on Friday.

Agenda Item 3 Approval of Minutes from the July 27, 2017 Enforcement Committee Meeting

Dr. Lewis made a motion to approve the July 27, 2017, minutes; s/Dr. Bholat. Motion carried unanimously (4-0).

Agenda Item 4 Enforcement Program Update

Ms. Delp provided a presentation regarding the enforcement statistics for physicians and surgeons. She noted that the statistics in the presentation would not consist of any allied health licensee data. She stated that overall, the Board received more complaints than the previous fiscal year. Ms. Delp reported that 466 cases resulted in discipline for fiscal year (FY) 16-17. She stated that revocations and surrenders have increased since FY 15-16 to 168, and conveyed that almost 197 physicians were placed on probation in FY 116-17, which is also a significant increase. She stated that the Board will be implementing a budget change proposal to acquire more probation positions since there are more physicians on probation who need to be monitored.

Ms. Delp provided an overview of the Board's enforcement timeframes. She stated that the average number of days to initiate a complaint was roughly eight days within the second quarter of FY 17-18, and added that this timeframe was within the 10 day mandate to initiate a complaint. She further noted that the average number of days to process a complaint in the Central Complaint Unit (CCU) was 90 days and that this was a great improvement from the prior FY, which averaged 140 days. Ms. Delp thanked CCU staff and managers for all of their hard work. She also commented that the average number of days to complete an investigation in Complaint Investigation Office (CIO) had increased to 303 days. She explained that this was due to a special investigator taking an extended leave and subsequently left the Board, causing a vacancy in CIO. Ms. Delp stated that another special investigator reduced their hours to part-time, however the Board had filled another part-time position and is actively recruiting to fill the full-time special investigator vacancy. The average case load for a special investigator in CIO is approximately 54 cases.

Ms. Delp stated that the average number of days to complete an investigation in HQIU increased from prior fiscal years. She conveyed that Deputy Chief Nicholls will provide an update regarding the staffing at HQIU and that she will also address the increased HQIU timeline. Ms. Delp reported that the average number of days to file formal charges had improved and also conveyed that the average number of days from accusation, petition to revoke, or statement of issues to the final decision have decreased compared to last year.

Ms. Delp provided an update regarding the Board's efforts to improve the process of receiving peer review reports. She stated that Business and Professions Code (B&P) section 2220(a), requires the Board to investigate the circumstances underlying the B&P Code sections 805 or 805.01 reports within 30 days to determine if an interim suspension order (ISO) should be issued. She noted that since September 1, 2015, 234 peer review reports were submitted, and

of those cases, ISOs were not warranted for 195 cases, but 39 cases warranted an ISO. Ms. Delp stated that of the 39 possible ISO cases, 28 cases remained open, eight cases were referred to the Department of Justice, Attorney General's (AG) Office for issuance of the ISO, and three were closed with no ISO issued. She stated that in addition to complying with this section of the law, as of April 2017, the Board enhanced the 805 reporting process by creating an educational letter that is sent to entities that submit an incomplete or late 805 report. In addition to the educational letter, subpoenas are being prepared by Board staff, which request peer review documents from the entities who submitted the reports, which has expedited the investigation process. Ms. Delp reported that new BreEZe activity codes were created to track whether a case has the potential of becoming an ISO within the 30 day timeframe, and this enhancement provides the Board with the capability to track those cases throughout the whole investigation process. Since the new process began, 61 subpoenas have been prepared, executed, and served by Board staff. She noted that 22 educational letters were drafted and sent to entities advising them that the peer review report lacked sufficient information to comply with the law and stated that 10 peer review reports were being reviewed for prosecution of civil penalties.

Regarding the expert reviewer program, Ms. Delp noted that training will take place on September 22, 2018, at the University of Southern California Medical School (USCMS) and the program is working to secure a training date with the University of California San Diego (UCSD), which would work in conjunction with the October 2018 Board Meeting. Ms. Delp noted that a new midwife brochure was developed to recruit midwifery experts. She added that Board staff attended a Midwives Alliance of North America conference where the new brochure was distributed, and that Board staff also attended the Academy of Family Physicians to encourage more physicians to become expert reviewers. Ms. Delp concluded by stating that the Board will be looking at attending more meetings throughout the 2018 calendar year to assist recruitment efforts.

Ms. Delp noted that from July 1, 2017 to December 31, 2017, 37 new physicians have joined the expert reviewer program. After review of the Board's analytics, it was determined most experts joined the program in response to information on the Board's website. She noted that out of the 37 new experts, four were recruited in the specialties of pain management, hair restoration surgery, pathology, and psychiatry.

Dr. Lewis asked if the next expert reviewer training site had been selected.

Ms. Delp stated that USCMS had been confirmed as a training site, but the Board is currently trying to obtain approval from UCSD, and the Board's hearing room in Sacramento is also being considered as a potential training site.

Dr. Lewis requested that Ms. Delp publish a list of training sites and forward it to each Board Member once the dates were confirmed.

Ms. Delp responded stating that she will forward the list to the Board Members' personal emails or she will publish the locations on the Board's website.

Dr. Lewis asked Ms. Delp if the hourly rate for the expert reviewer program is still the same.

Ms. Delp stated that the hourly rates have not changed.

Dr. Lewis commented that if the Enforcement Program is unable to meet all of the demands that the Board Members request of it, that he would ask Ms. Delp to let the Board know. It is the Program that has to do the work. He noted that he understands that Ms. Delp has some staff vacancies, which limits resources and wants her to be comfortable saying no to requests if the Program cannot fulfill what the Board is asking.

Dr. Bholat suggested categorizing the 10,000 consumer complaints by type of action Dr. Bholat remarked that if she were a healthcare consumer who called the Board, the question would be -- what are the limitations of the Board? She added that this goes back to the peer review process, which is what the health systems are responsible for and what they are doing about some of those issues. Dr. Bholat asked Ms. Delp if the Board is able to categorize the aforementioned 234 peer review cases to show where they came from, such as acute care hospitals or post-acute care hospitals, to show what the challenges are from these reports.

Ms. Delp replied that the last annual report showed the total number of 805 and 805.01 peer review reports and noted that 60 of those reports were submitted by healthcare centers, no reports were received from surgical centers, 19 were submitted from healthcare service plans, and 12 from medical group employers. She explained that the annual report does break down each of the cases and categorizes them accordingly.

Ms. Kirchmeyer stated that during the strategic planning meeting, the timelines for each of the different categories were discussed. She noted that the Board does have information on where those cases are coming from and what each complaint is about. She added that the biggest categories were gross negligence and incompetence, followed by unprofessional conduct. She noted that the Board can identify the cases received however, Board staff have never looked at the individual cases for timelines, such as what types of complaints took the longest. Ms. Kirchmeyer stated staff could gather this information.

Dr. Bholat stated that in order to move forward, the Board needs to look at where the complaints are coming from and what the Board is doing about them. She suggested that this will help guide the Board in their educational pursuits, which will benefit both physician trainees and practicing physicians.

Ms. Kirchmeyer explained that the disciplinary actions are broken down by type, and stated that when Board Members request resources and statistics, these requests do not impede upon Ms. Delp or her staff from completing their work. Ms. Kirchmeyer added that the Board's Information Systems Branch (ISB), runs those statistics and requesting more statistics would not impact Board staff from processing cases.

Ms. Hollingsworth asked why the number of investigations are down 200 from the last fiscal year and why the number of complaints increased by almost 1000. She stated that the Board only investigated 15 percent of those complaints received in the past year and asked why those numbers have fluctuated and why the number of complaints investigated last year were 19 percent. Ms. Hollingsworth stated that her second question is who decides whether a complaint goes to investigation and whether the person making the decision is a medical doctor or has

medical training. She added that a doctor is not used in the complaint process unless a case goes into investigation.

Ms. Delp explained that B&P Code section 2220.08 states that Board complaints are reviewed by a medical consultant in the CCU process. If the medical consultant, who is in the same specialty as the subject physician, determines the case does not require a referral to investigation, then the case is closed. She added that the medical consultant looks at the facts of each case, such as the complaint materials, the medical records, and any other relevant information that has been gathered to make a determination. Ms. Delp added that as far as who decides whether a complaint goes to investigation, the medical consultant makes that determination and CCU refers the case to the field for further investigation.

Mr. Andrist asked what if the medical consultants who made those determinations are wrong. He stated that legal lawsuits often require six medical experts and they do not always agree with one another. He added the Board is relying on one person to make that determination and the public does not know their qualifications. He commented that when a member of the public inquires about the medical consultant's qualifications, the Board hides behind their public record exemptions. Mr. Andrist asked, what if that consultant's determination caused that investigation to be closed.

Ms. Delp explained that each of the medical consultants must meet the qualifications, not have any complaint history on their record, and have the same education and training as the subject physician. She further noted that when a medical consultant is given a case, they are asked to look at the circumstances of the case to determine if they have the experience to review the case.

Mr. Andrist stated that just because those medical consultants are qualified, it does not mean they are always correct when making the decision to close a complaint. He referred to his previous statement concerning how legal lawsuits often require six medical experts that disagree with each other on the facts of a case. He noted that the Board is simply relying on one expert with no recourse or accountability for the public to question whether that person is qualified. Mr. Andrist explained that each complaint should be seen by at least a minimum of three medical experts. He asked why the Board would allow one person who could end up being wrong, to close a complaint. He stated that this is why the Board's complaint numbers are at four percent and added that the Board has too many legitimate complaints that have been closed. Mr. Andrist commented that there have been cases of death and the Board has closed those complaints. He added that these experts are wrong and there is no accountability or appeal process for the public.

Agenda Item 5 Update on the January Enforcement Collaboration Meeting

Dr. Yip presented an update on the Enforcement Collaboration meeting held on January 8, 2018. He stated that staff from the Board, HQIU, and the AG's Office were in attendance. He stated that some of the enforcement topics discussed included, ongoing investigations, such as medical exemptions, unlicensed practice of medicine, and overprescribing cases; investigations approaching the statute of limitations; evidentiary issues regarding investigations; and the revision of current policies regarding panel proceedings. Dr. Yip

noted that the attendees worked together and a consensus was reached on all issues. He added that the enforcement statistics exhibited in Ms. Delp's earlier presentation were also discussed and he was happy to report that the time it takes the Board to pursue disciplinary action after receiving a complaint has decreased from 1034 days to 980 days, which is a significant improvement. He commented that the working relations among all partied is very cooperative and everyone has provide the best consumer protection possible with the limited resources that they have.

Agenda Item 6 Presentation on the Health Quality Investigation Unit Investigation Process, including the Vertical Enforcement Process

Mr. Hegelein and Mr. Davis provided a presentation about how Board investigations are conducted using the vertical enforcement (VE) and prosecution protocol. Mr. Davis stated that VE has been in the law since 2005, and a new protocol was implemented in 2015, which would be the main focus of the presentation. He noted that the VE team is comprised of the Board's Executive Director and the Chief of Enforcement and that they have ultimate authority on the direction and the disposition of each investigation. He commented that other VE team members include HQIU Investigators, Supervisors, Commanders, and a Deputy Chief, and from the AG's office, a primary Deputy Attorney General (DAG) who is assigned at the beginning of the investigation, a lead prosecutor, and a Supervising DAG. Mr. Davis added that lead prosecutors are on-site legal counsel liaisons who are housed in the HQIU field offices and participate in case reviews that are conducted on a quarterly basis. He stated that the AG's Office has five offices, staffed by seven SDAGs, and 52 line DAGs.

Mr. Hegelein stated that HQIU has 13 field offices throughout the State of California, and there are 77 sworn investigator positions, 25 medical consultants, and 18 management positions consisting of supervisors, commanders, and a deputy chief. He commented that one of the reasons there are so many offices throughout the state is to comply with the 75 mile requirement to serve a subpoena on a party to produce records or to appear for testimony. He noted that the average number of cases assigned to an investigator is 40 or more, where an ideal case load would be between 15 and 18 cases. Mr. Hegelein stated that an investigator's role is to identify, locate, and contact complainants, witnesses or patients, identify what evidence is needed and how to obtain it, and identify what leads to pursue and what information may be used to support each case. The information that is useful for each case includes video recordings, police records, prescription logs, calendars, depositions or other statements. He added that investigators conduct their own surveillance, do undercovers, collect email, phone, text, and bank records, corporate documents, and credentialing files and protocols. He stated that in order to collect this information, it is necessary to use subpoenas (SDT), which are a time consuming component of any investigation. The medical consultant assists by identifying additional patients, especially with cases involving over prescribing allegations and also selects the appropriate expert reviewer for each case.

Mr. Davis stated that the role of the DAG involved in the investigation is to render legal advice and determine legal sufficiency of evidence, to draft and propose accusations for filing after the investigation is complete, and ultimately prosecute the administrative case. He explained the DAGs engage in interim legal matters such as emergency actions, which include ISOs, Penal

Code (PC) section 23 appearances, and subpoena enforcement functions to facilitate acquisition of medical records.

Mr. Hegelein stated that cooperation, consultation, and communication (three C's) are paramount components of the VE model. He expressed that all members of an investigation must get along in order for the VE model to work and to benefit public protection. The investigators regularly communicate with a variety of assigned DAGs to discuss the status of their mutual investigation. He noted that in order to facilitate movement on all cases, HQIU performs quarterly case reviews with a lead prosecutor. He conveyed that each member of the investigation team contributes their expertise to benefit the client's ultimate mission of public protection. He concluded that the Senior Assistant DAG, Deputy Chief, and executive Board staff have regular meetings to address and resolve procedural or legal questions that arise.

Mr. Davis stated that the AG's office collaborates with investigators on behalf of the Board as part of their investigative function. He explained the AG's office identifies and directs the acquisition of testimonial and physical evidence and this function permits the AG's office to properly guide the Board's Executive Director on legal matters, including whether to file an accusation or whether a complaint should be dismissed for lack of evidence. He noted that the AG's office advises on potential expert reviewers, and evaluate the expert's opinions. Mr. Davis stated that Board cases, in his opinion, are some of the most complex in the Department of Consumer Affairs, as there are voluminous medical records to be reviewed, complex medical issues investigated, and there are vigorous defenses in those cases. He added that many licensees hire defense attorneys who are vigorous in their defense.

Mr. Hegelein stated that disagreements and conflicts generally arise in two areas; during the investigation with respect to the acquisition of evidence and at the conclusion of the investigation when a disposition needs to be decided. He added that since the disposition process was changed on July 1, 2017, there have been no situations where disagreements or conflicts have been brought to the Board. Mr. Hegelein stated, individuals from both agencies do their best to resolve issues as they arise, utilizing managers and supervisors to keep conflicts from being raised to the Board. He noted that the Senior Assistant DAG and the Deputy Chief of HQIU meet monthly to discuss and resolve any issues.

Mr. Hegelein stated once the case arrives at the field office it is uploaded to the "cloud" system so both the AG's office and field offices can review the evidence to determine if the case is urgent. The field office supervising investigator analyzes the case to prioritize and determine its urgency. Thereafter, the case is assigned to an investigator based on many factors, including whether the investigator already has a pending or handled a previous case regarding the same physician, the volume of the investigator's current case load, and case load complexity. He added that supervisors must consider each investigator's experience or where the physician is located since some field offices cover a large geographical area.

Mr. Davis stated that when a case arrives in the field, the supervising investigator, prosecutor, and primary DAG determine whether the case warrants an urgent or interim action. He noted that these actions include PC 23s, petitions for mental examinations, and ISOs. Mr. Davis added that in order to identify the potential for harm, seasoned investigators, DAGs, and medical consultants rely on training and experience to make those determinations. He noted

that if the case is not identified as urgent, it follows the protocol, which involves an investigator providing an initial plan called an IPPR (Investigation Plan and Process Report). Mr. Davis stated that the plan is updated and amended as the case progresses and the information is shared in the "cloud" system. After the case is reviewed, the investigation proceeds into evidence collection and the evidence collection portion of the investigation includes interviewing the complainant, the patient, and witnesses, such as nurses, patient family members, doctors, etc.

Mr. Hegelein noted that investigators gather valuable information about patients and the physician and undercover phone calls and office visits may be used to elicit information for sexual misconduct and general office conduct cases, including allegations of unlicensed practice of medicine. Mr. Hegelein stated that in regards to the aforementioned situations, it is imperative that the investigators are able to articulate their observations in a report so that an independent reader is able to paint a mental picture.

Mr. Davis stated that if the field is unable to acquire patient records either by failing to obtain a release or the physician does not respond to the subpoena, the field will request subpoena enforcement by the AG's office. He stated that in the event the field has to initiate subpoena enforcement, civil litigation is used which could stall urgent cases. He noted that in many cases, without medical records the field cannot investigate the case. Mr. Davis stated that recent court decisions have made it easier for the field to access medical records in the interest of public protection.

Mr. Hegelein stated attention to detail is especially important for impairment and sexual misconduct cases because an investigator must build a rapport with the victim. Mr. Hegelein stated that obtaining evidence could take weeks. For example, a medical facility has 30 days to produce medical records and only a sworn investigator has the authority to take possession of an original prescription from a pharmacy. With an increasing number of patient cases that involve gathering information from multiple pharmacies, each pharmacy must be visited to retrieve the original prescriptions and interview the pharmacist.

Mr. Hegelein stated for cases involving allegations of drug and alcohol impairment, the investigators collect the physician's biological fluid or hair samples to determine whether or not the physician is safe to practice medicine. He noted that in addition to collecting evidence from the physician directly, the investigators build their cases by interviewing multiple witnesses, obtaining a declaration if necessary, conducting surveillance or doing undercover operations, and having their evidence reviewed by a medical professional.

Mr. Davis stated that physician interviews are a critical portion of the investigation and it is the physician's opportunity to tell their side of the story. He noted that a physician interview is a critical evidence gathering opportunity for the investigators and the DAGs. Mr. Davis stated that the individuals involved in the physician interview are the investigator, medical consultant, primary DAG or the lead prosecutor, the physician, and the physician's attorney.

Mr. Hegelein stated that with most cases, after the interview, a meeting is held with the individuals involved with the investigation and a decision is made about sending the case to an expert. He conveyed that the expert reviewer is another important aspect of the investigation

and what the expert finds, determines how the case proceeds. The medical consultant, investigator, and DAG work closely to identify the appropriate expert within the subject's specialty.

Mr. Davis stated that there are often questions that arise as to why is takes so long to prosecute a physician. He commented that the short answer is, due process. He stated that if the field went into a criminal case as a result of a PC 23, the field cannot obtain bail conditions or release conditions until there has been evidentiary conditions revealed in the criminal case. He added that it often does not occur until the preliminary hearing however, the field may find out about the physician's conduct during the arraignment.

Mr. Davis stated that there could be a long window between the arraignment and the preliminary hearing where the field is unable to obtain PC 23 relief until there is an evidentiary basis at the preliminary hearing. He noted that this is why it takes time to suspend a physician from their practice. Mr. Davis also stated that the same process goes for ISOs. The licensees have a vested property right in their license and with that comes due process rights. He noted that the field has to create an evidentiary showing before an ISO can be issued. The field needs to prove that the subject physician violated the Medical Practice Act, or suffers from a mental or physical illness, to show they are an imminent threat to the public. He noted that the case needs to be wrapped up by the time an accusation is filed because Government Code section 11529, which governs ISOs, requires that when the ISO is obtained, an accusation has to be filed within 30 days, and a hearing has to be held within 30 days of filing the notice of defense.

Mr. Hegelein stated cases that are investigated with clear alleged criminal activity, are worked without parallel VE. He noted HQES does not monitor criminal investigations or review search warrants. Mr. Hegelein stated that once the investigator, supervisor, and DAG deem that an investigation is complete, the case is referred to the Board's Chief of Enforcement, Ms. Delp, with a recommended disposition from HQES. He noted that the recommendation will either be to close the case, refer the case to the AG's office for prosecution, refer it for a citation and fine, or issue a public letter of reprimand. Mr. Hegelein added that Ms. Delp reviews all cases and works directly with the assigned DAG for a final disposition.

Mr. Davis stated that upon receipt of the email from the HQIU investigator inquiring whether the investigation is complete, the HQES prosecutor evaluates the evidence to see if it is sufficient enough to meet the extremely high burden of clear and convincing evidence. He noted that after the reply has been received, and three days have elapsed, the supervising investigator has the investigative report signed, and sends the case electronically to the Board.

Dr. Bholat asked if the Board were to look at the variations from each case that was processed smoothly, such as sexual offender cases or quality of care cases, what would be the timeline for each of those cases. She stated that Mr. Davis mentioned earlier that there were road blocks encountered during each case, such as private attorneys and scarce resources. She noted that she felt it would be important to understand those obstacles since it would be difficult to move those cases forward with such limited resources. She stated that it would be beneficial to create a map that illustrates what the timelines are and the roadblocks that stand in the way of each case.

Mr. Davis stated that each case is different and different roadblocks emerge at different times. He noted that it would be very difficult to come up with a general number for overprescribing cases because sometimes HQIU receives the records immediately and sometimes the HQIU is in a protracted nine month fight in superior court.

Dr. Bholat suggested that if HQIU were to do performance improvements, those variations in cases would be important to know and those issues would be something to address in the future.

Ms. Castro stated, because of due process, the field does take the necessary amount of time to process cases correctly. She added that processing cases correctly entails making sure the evidence is of the best quality so it could stand up in court. Ms. Castro noted that evidence cannot be hearsay, innuendo, and anonymous complaints. She added that there are factors that cause variations in a case, but it is difficult to categorize each case into something as simple as incompetence.

Dr. Lewis stated that the public believes the process should be processed quickly, but there are a lot of factors that impede the progress of a case and the presentation put it into perspective. He commented that he does not believe the public is aware of the complicated nature of the investigation process.

Ms. Castro stated that she hopes there is a mutual understanding that there are three key individuals in each case, which include the investigator, medical consultant, and the DAG. She noted that each of these individuals brings their own training, qualifications, and experience to each case. She added that the investigation process is a team effort which is aimed at providing quality outcomes to each case and enforcing public protection is paramount.

Mr. Andrist stated that he loved how the public comments were ignored when it would incriminate the Board. He added that he failed to understand the concept of holding meetings to make older cases move quicker. He commented that there are open cases that prove that concept is simply not true. Mr. Andrist added that the most recent case that will be discussed on Friday took place four years from the time the accusation was filed. He noted that it took 58 weeks after the accusation was filed for the Board to finally notify the family just days before Christmas after waiting for four years. He added that this ruined the family's holiday because the Board gave the doctor who killed their son a public reprimand instead of real discipline. Mr. Andrist stated that this case did not end up based on its own merits as Ms. Castro previously stated. He noted that this case ended with bartering between the doctor and the AG's office. He commented that Judge Feinstein commented at a past meeting that if those were criminal cases they would be thrown out of court for taking too long. Mr. Andrist noted that another case he observed on the Board's website regarded another physician who had an accusation filed in August 2012 and a second accusation filed on December 2017. He stated that this physician has two simultaneous accusations, the first one being 285 weeks, which equates to five and half years. Mr. Andrist stated it appears the Board is not doing a very good job moving older cases along. He noted that as he adds more cases to his website, he will be able to detail the Board deficiencies. Mr. Andrist stated that currently he has over 1,200 doctor disciplines on his

database, which covered all of 2016 to present. He noted that this information is easily accessible and no one will be charged to obtain this information.

Agenda Item 7 Future Agenda Items

Ms. Lauren requested that the license of the physician who mutilated her be revoked in the interest of public safety. She added that she was informed by President GnanaDev in October that enforcement staff would contact her regarding her complaint but she only received a phone call yesterday from the Board. Ms. Lauren stated that she was medically recommended for a breast reduction as a solution for pain and she did not go into surgery for weight loss. She noted that she was healthy, muscular, and worked out daily.

Ms. Webb interjected and reminded Ms. Lauren she cannot talk to the Board about a pending complaint. She noted that the Board Members need to base their decisions on evidence that comes before them and not on comments that come into a Board meeting.

Agenda Item 8 Adjournment

The meeting was adjourned at 3:25 p.m.

The full meeting can be viewed at http://www.mbc.ca.gov/About_Us/Meetings/2018/