



MEDICAL BOARD OF CALIFORNIA

Protecting consumers by advancing high quality, safe medical care.

Agenda Item 3

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Gavin Newsom, Governor, State of California | Business, Consumer Services and Housing Agency | Department of Consumer Affairs

WebEx Online

August 13 - 14, 2020

MEETING MINUTES

Thursday, August 13, 2020

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

Members Present:

Denise Pines, President
Dev GnanaDev, M.D.
Randy W. Hawkins, M.D.
Howard R. Krauss, M.D.
Kristina D. Lawson, J.D.
Ronald H. Lewis, M.D., Vice President
Laurie Rose Lubiano, J.D.
Asif Mahmood, M.D.
Richard E. Thorp, M.D.
Cinthia Tirado, M.D.
Eserick "TJ" Watkins
Felix C. Yip, M.D.

Staff Present:

Aaron Bone, Chief of Legislation and Public Affairs
Valerie Caldwell, Associate Governmental Program Analyst
Charlotte Clark, Information Technology Supervisor I
Dalia Demian, Associate Governmental Program Analyst
Sean Eichelkraut, Information Technology Manager I
Jenna Jones, Chief of Enforcement
Jacoby Jorgensen, Staff Services Manager, I
Nicole Kraemer, Information Technology Associate
Sheronnica Little, Information Technology Supervisor I
Natalie Lowe, Information Technology Specialist I
Larissa Nguyen, Information Technology Associate
Marina O'Connor, Chief of Licensing
William Prasifka, Executive Director
Regina Rao, Associate Governmental Program Analyst
Letitia Robinson, Research Data Specialist II
Elizabeth Rojas, Staff Services Analyst
Alexandria Schembra, Associate Governmental Program Analyst
Lisa Toof, Staff Services Manager I
Reji Varghese, Deputy Director

Carlos Villatoro, Public Information Officer II
Kerrie Webb, Staff Counsel

Members of the Audience:

Bob Andersen
Eric Andrist, The Patient Safety League
Curtis Boyd
Peter Bretan, M.D., California Medical Association
Joseph Cachuela, California Medical Association
Alejandra Campoverdi
David Carr, Attorney General's Office
Gloria Castro, Attorney General's Office
Vincent Chee, California State Assembly
Yvonne Chong, California Medical Association
Sarah Conley, Physical Therapy Board
Richard Costigan
Rosanna Davis, California Association of Licensed Midwives
Matt Davis, Attorney General's Office
Phil Deters, Attorney General's Office
Julianne Fellmeth
Adam Francis, California Academy of Family Physicians
Faith Gibson, Midwifery Advisory Council
Ana Gonzalez, Attorney General's Office
Latrice Hemphill, Attorney General's Office
Theresa Henderson
Marian Hollingsworth, The Patient Safety League
Carrie Holmes, Board and Bureau Relations
Aubrey Jacobsen, Legislative Affairs
Anne Jurach, Office of Statewide Health Planning and Development
Jason Kaiser, Physical Therapy Board
Jen Kamel
Mary Kathryn Cruz Jones, Department of Consumer Affairs
Wendy Knecht
Chi Kohlhoff
Dwayne Ladd
Susan Lauren
Rachelle Leblanc, Attorney General's Office
Faith Lee, California State Senate
Andrew Linn
Danny Martinez, California Pharmacists Association
Shlomo Melmed, M.D., Cedars-Sinai
Rebecca Mitchell, Naturopathic Medicine Committee
Adrian Mohammed, California Medical Association
Michele Monserratt-Ramos, Consumer Watchdog
Kathleen Nicholls, Deputy Chief, Health Quality Investigations Unit
Thomas Ostly, Attorney General's Office
Ryan Perez, Department of Consumer Affairs
Christine Rhee, Attorney General's Office
Hanna Rhee, Black Patients Matter

Michelle Rivas, California Pharmacists Association
 Gezel Saheli
 Rehan Sheikh, Physicians for Fairness
 LeAnna Shields, Attorney General's Office
 Jessica Siefertman, Veterinary Medical Board
 Jane Simon, Attorney General's Office
 Barbara Smith
 Robyn Strong, Office of Statewide Health Planning and Development
 Ryan Tacher, Legislative Affairs
 Dara Thompson
 Elnie Vannatim
 Pamela Walls
 Karolyn Westfall, Attorney General's Office

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

Ms. Pines called the meeting of the Medical Board of California (Board) to order on August 13, 2020 at 2:00 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

Ms. Lauren asked Board members if they viewed the video she sent via email. Ms. Lauren stated that California passed legislation for liposuction guidelines, but there is no data behind it. Ms. Lauren listed complications from liposuction and provided statistics from the Los Angeles coroner between the years 1999 and 2019. Ms. Lauren spoke of her negative personal experience with Dr. Saul Berger and her complaint against the doctor with the Board.

Ms. Rhee requested the Board to address the corruption of the licensing and discipline process. Ms. Rhee commented that the HQUIU uses racist tactics to ruin the careers of doctors and expressed her thoughts of Chief David Chriss.

Mr. Andersen commented that 65 years ago, the Food and Drug Administration approved Hydroxychloroquine as safe. Mr. Andersen listed several doctors who documented early prescribing of Hydroxychloroquine as an effective treatment for COVID-19. Mr. Andersen spoke of politicians and doctors who claim Hydroxychloroquine is a solution to COVID-19 and alternately of groups that want to prevent these solutions.

Mr. Francis commented on the issues residency programs and residents are having with the amount of time to process postgraduate training licenses (PTL), X waivers, Death Certificate Project, and applications.

Dr. Bretan welcomed Dr. Tirado, Mr. Prasifka, and all other new staff. Dr. Bretan commented on how critical it is to work well together, especially during the current pandemic. Dr. Bretan spoke of the risk doctors put themselves in, along with their families, working on the frontlines, and that they continue to offer quality care despite the obstacles they face. Dr. Bretan commented that the California Medical Association (CMA) advocates for physicians and their patients, including those that are low-income and those that do not speak English. Dr. Bretan

commented that CMA has made public service announcements to encourage the public to wear masks and has recently partnered with the state of California to organize personal protective equipment (PPE) drive-thru events. Dr. Bretan stated that he looks forward to working with the Board in our mission of patient protection and regulating the practice of medicine.

Mr. Andrist welcomed Mr. Prasifka. Mr. Andrist stated that the public could hear the closed session from earlier in the day and commented on what he heard. Mr. Andrist commented on Dr. Lewis' presentation during Board meetings, along with a subpoena from Kim Kirchmeyer, and asked for people to come forward to expose what's wrong at the Board. Mr. Andrist stated he has submitted complaints on behalf of The Patient Safety League and they have either gone unanswered or have been closed. Mr. Andrist commented on a Public Records Act (PRA) request for a doctor that has been investigated for criminal activity and how Mr. Andrist has been told he is abusing the online complaint system.

Agenda Item 3 Approval of Minutes from the May 7, 2020 Quarterly Board Meeting

Ms. Pines asked for a motion to approve the minutes from the May 7, 2020, Board meeting.

Dr. Lewis moved to approve the meeting minutes/S: Ms. Lawson

Dr. Krauss commented that he would like certain wording deleted, as he does not recall using those words. Mr. Watkins commented on a correction to be made that referred to his title.

Ms. Pines asked for additional comments from the Board members. Hearing none, Ms. Pines asked for comments from the public.

Ms. Rhee commented that it is important to include public comments in the minutes.

Mr. Andrist commented that the minutes are often wrong. Mr. Andrist also commented that Ms. Hollingsworth was having difficulty logging in to the Board meeting.

Ms. Pines asked the host if Ms. Hollingsworth was in the meeting. The host replied that there are multiple users connected but he cannot identify who they may be.

Ms. Pines asked Ms. Caldwell to take the roll.

Motion carried 12-0

Agenda Item 4 President's Report, including notable accomplishments and priorities

Ms. Pines introduced the newest member of the Board, Dr. Tirado. Ms. Pines gave a brief background of Dr. Tirado and performed the swearing in.

Ms. Pines commented that some committees have been reorganized based upon recent appointments to the Board. Ms. Pines commented that if any member had an interest in a committee, or would like to change their committee assignment, to contact her or Mr. Prasifka.

Ms. Pines stated that the Board offices have reopened to the public as of June 15, 2020. Ms. Pines shared that information can be found on the topics of restoring a medical license to active status, staffing changes, consumer concerns, pending legislation, frequently asked questions, and administrative actions can be found on the Board's website and in the newsletters.

Ms. Pines welcomed Mr. Prasifka, Mr. Varghese, and Mr. Bone to the Board's executive unit.

Ms. Pines asked for questions and comments from the Board members. Hearing none, Ms. Pines asked for comments from the public.

Mr. Andrist thanked Mr. Watkins for his patient advocacy, commenting that he hopes Dr. Tirado works toward the same advocacy. Mr. Andrist questioned if the Board was going to have public meetings for Sunset Review rather than holding private meetings with the CMA.

Agenda Item 5 Board Member Communications with Interested Parties

Ms. Pines stated that she spoke with the Department of Surgery at Stanford University about health equity.

Dr. Krauss stated that he received a telephone call from Dr. Melmed at Cedars-Sinai discussing AB 2273.

Ms. Pines asked for comments from the public.

Mr. Andrist commented that Ms. Hollingsworth is still having difficulty getting into the meeting.

Ms. Pines asked the host if there was someone assisting him with people not able to access the meeting. The host replied that there is not WebEx support for the various devices people can use to log in, but there are instructions on the agenda. The host stated he will work with the Help Desk for assisting anyone having trouble.

Agenda Item 6 Executive Management Reports

Mr. Prasifka began with the Administrative Summary, acknowledging the challenges at the Board, along with other organizations, due to the pandemic. Mr. Prasifka stated that the Board has had to reinvent itself but that the activity levels remained strong and favorable.

Mr. Prasifka reported an 11% vacancy rate. Mr. Prasifka also mentioned that staff has established a wellbeing group that is meant to be a forum for input on employee morale and a way to bring concerns to management.

Mr. Prasifka stated that an amendment was received yesterday for the budget analysis and fund condition that corrected technical problems from the previous report and also included changes from the May revision for the overall state budget. Mr. Prasifka commented that these changes were not a large change, but instead a marginal change that effected the Board's

financial condition at the end of the year resulting in a 3.2 month reserve rather than a 2.5 month reserve.

Mr. Prasifka stated the fund analysis indicates there will be a significant structural imbalance over the next several years. Mr. Prasifka commented that the Board will not receive a fee increase, which was taken into account in the budgetary analysis, and solidifies the structural imbalance going forward. Mr. Prasifka commented that staff will need to operate more efficiently with the tight financial position.

Mr. Prasifka commented that the Board supports the state's fight against COVID-19 and spoke of the Board's staff following social-distancing and mask-wearing policies. Mr. Prasifka stated that a member of staff tested positive for COVID-19, the staff member self-quarantined, the Department of Consumer Affairs (DCA) was notified, the offices were professionally cleaned, and the staff member has since returned to work with no further infections.

Mr. Prasifka commented on the waivers issued in response to COVID-19, including the waiver for nurse-midwife supervision being extended to October 11, 2020, and the PTL waiver being extended to August 31, 2020.

Mr. Prasifka commented on the remote work options given to Board staff, along with the challenges that came along. Mr. Prasifka spoke of the Board's ability to increase telework options for employees by increasing the number of laptops and increasing bandwidth.

Moving on to the Enforcement Program Summary, Mr. Prasifka commented on the slow-down of enforcement activities at the Board as well as other organizations. Mr. Prasifka reported that there has not been a shut-down of enforcement, which was maintained through telework options for staff.

Mr. Prasifka reviewed the Enforcement Unit's graphs, noting the high amount of complaints received. Mr. Prasifka commented that the expert review program is at the heart of what the Board does, and that there will be monitoring, training, and recruiting of new experts. Mr. Prasifka stated that the Central Complaint Unit has managed to reduce the average time of managing complaints during this difficult time to work due to COVID-19. Mr. Prasifka commented that as the times continue to rise, it is staff's priority to get the times down.

Mr. Prasifka reviewed the new graphs included in the Board material, which are intended for easier viewing and understanding and welcomed feedback from Board members.

Moving on to the Licensing Program Summary, Mr. Prasifka noted that the main issue is an increase in licensing applications along with an increasing in processing time for the applications. Reviewing the graphs that show an increase in processing time, Mr. Prasifka stated that the increase in applications occurred during a time when staff were transitioning to telework due to COVID-19, noting that much of the application processing is paper-based and acknowledged that getting the processing times down is a priority.

Mr. Prasifka commented on ways that Board staff have been trying to reduce the processing times, including reallocating staff from other units to assist in the Licensing Unit, filling two vacant licensing positions, reaching out to applicants and institutions, prioritizing applications

with an August 31st deadline, and reaching out to DCA. Mr. Prasifka stated that the Board has identified the problems, and the solutions lie in investing in a paperless and automated process.

Mr. Prasifka reviewed the update from the Federation of State Medical Boards (FSMB), stating that they have establish a workgroup on emergency preparedness. Mr. Prasifka commented that the FSMB is an important resource for the Board and that they are working with external stakeholders to identify strategies to ensure the integrity of health professionals during a national emergency.

Mr. Prasifka reviewed the update from the Physician Assistant Board (PAB), noting that they are having similar issues that the Board is having due to COVID-19. Mr. Prasifka stated that the PAB is seeking their own fee increase, but overall they are in a strong financial position.

Ms. Pines asked how many COVID-related complaints the Board has received and, in general, what the complaints tend to be about right now.

Mr. Prasifka replied that 526 complaints are regarding COVID. Of those complaints, they include doctors who are giving opinions or making public statements about COVID, high prices for tests, claims of fraud for making false statements or offering false cures, and physicians and physician offices not wearing masks or complying with social distancing requirements.

Ms. Pines asked about the use of BrEZe in the Licensing Unit and if that system is an automated, paperless system.

Mr. Prasifka responded that renewals are paperless. However, new applications, analyzing credentials, and reviewing test results are paper-based. Mr. Prasifka commented that there is a new portal where these items can be submitted and reviewed on the computer and there is more work being done to develop the system. Mr. Prasifka reiterated that the new application process is too paper-based.

Dr. GnanaDev commented that the Licensing Committee can meet to discuss the licensing issues. Dr. GnanaDev also commented that the increase in PTL applications will be a reoccurring issue each year after the third year residents graduate, so a solution will be needed for the surge in applications. Dr. GnanaDev stated he was glad to see the change in graphs. Dr. GnanaDev asked when the Board will be paying the Attorney General's Office (AGO) the new fee for attorneys and paralegal.

Mr. Prasifka replied that the new fee took effect on July 1, 2020. Mr. Prasifka stated the fees were delayed for a year, originally to take place last year, and the fee was anticipated.

Dr. GnanaDev commented that he expects to hear how we are working more efficiently at the next Board meeting.

Ms. Lubiano asked about staff productivity with 6% of the staff working as contact tracers. Ms. Lubiano also asked about the number of licensing applications and licenses issued this year compared to last year.

Mr. Prasifka responded that the Board is facing significant resource constraints, which is identified in the need for the fee increase. Mr. Prasifka commented that we are in full partnership with the State of California in dealing with COVID-19. Mr. Prasifka stated that, moving forward, the Board is going to have to do more with less. Mr. Prasifka commented that in order to have efficiency gains, the Board is going to have to invest in licensing, go paperless, and deal with matters online as much as possible. Mr. Prasifka commented that there are contradictory trends in licensing, with a recent surge in applications, but an overall decrease in applications. Mr. Prasifka continued that revenue projections have fallen flat, which is a consequence for the Board and the medical professions in California. Mr. Prasifka commented that staff has begun to look carefully at licensing numbers.

Mr. Watkins asked about the approval of the fee increase.

Mr. Prasifka replied that we have not yet received the fee increase. Mr. Prasifka continued that the fee increase was not rejected, it has just not yet been approved, and that the Board was told it would be discussed at a later date.

Mr. Watkins asked what ideas staff have come up with to do more work with less resources along with pushing for the fee increase

Mr. Prasifka commented that more about this will be discussed during Sunset Review. Mr. Prasifka explained that in for enforcement, we are going to have to actively manage the complaint process at every stage more than we've done before, along with coming up with other ways of resolving complaints. Mr. Prasifka commented that the Board will do everything we can to defend the fee increase, explaining that the fee increase is what is needed to be an efficient and independent organization which would benefit the people in California, and that a plan is still being developed.

Mr. Watkins thanked Mr. Prasifka for his optimism. Mr. Watkins explained that the last time there was a fee increase in 2005, the Board gave up the ability to recover costs. Mr. Watkins continued that based on the past, a fee increase won't go down without a fight, and we need to be prepared to negotiate for it.

Ms. Pines asked for any other questions and comments from the Board members. Hearing none, Ms. Pines asked for comments from the public.

Ms. Rhee thanked Mr. Prasifka for his explanations. Ms. Rhee commented that the Board spends too much money on targeting physicians of color. Ms. Rhee encouraged the Board to reach out to patient advocate groups when working together.

Mr. Francis thanked Mr. Prasifka for his detailed report. Mr. Francis reminded the Board of the significant backup of PTL applications and expressed his frustration, asking the Board to resolve the outstanding issues.

Mr. Andrist thanked Mr. Prasifka for his positive outlook. Mr. Andrist commented about Sunset Review, saying the Legislature will be convinced that the Board needs more money to do its job properly if it utilizes and works with the public. Mr. Andrist commented that there are problems within the Board regarding the Public Records Act.

Agenda Item 7 Discussion and Possible Action on 2021 Proposed Board Meeting Dates

Mr. Prasifka shared that the material presenting the dates show two options for the set of dates.

Ms. Pines asked Board members if anyone had any problems with either set of dates.

Dr. Krauss commented that he was available for all dates in the first set, but only three dates from the second set.

Dr. Thorp moved to approve the first set of dates/S: Ms. Lawson

Ms. Lawson requested that future meeting locations be held in the Fresno or Bakersfield area.

Ms. Pines agreed, saying that when the Board is not restricted on traveling, we will look at other locations for Board meetings.

Ms. Pines asked for comments from the public.

Ms. Rhee commented that her comments have been missed after she emailed in that she had a comment.

The host replied that members of the public should request to comment through the Q&A window in the WebEx event, and that the Webmaster email is not monitored during Board meetings.

Mr. Andrist commented that there are still problems with members of the public getting into the meeting and commenting. Mr. Andrist commented that he did not know the full set of meeting dates. Mr. Andrist also commented that many cities should be considered for meeting locations, including Burbank.

Ms. Monserratt-Ramos reiterated Ms. Lawson's comment about having Bakersfield be a location for Board meetings.

Ms. Pines asked Ms. Caldwell to take the roll.

Motion carried 12-0

Agenda Item 8 Presentation on Naturopathic Physicians

Ms. Pines began with an introduction of Dr. Thompson and Ms. Mitchell, including their education and professional experience.

Dr. Thompson thanked the Board for the opportunity to present. Dr. Thompson stated that the purpose of the presentation was to inform the Board about naturopathic medicine in California,

including what naturopathic medicine is, what naturopathic doctors (ND) do, and the education of NDs.

Dr. Thompson explained that there are currently 22 states, the District of Columbia, Puerto Rico and the US Virgin Islands that have licensing laws for naturopathic physicians. Dr. Thompson explained the naturopathic philosophies are to do no harm, identify and treat the cause of a problem rather than treating the symptoms, educate patients, treat the whole person instead of just treating one problem, and prevention.

Dr. Thompson continued with what NDs do, including prescribing drugs and botanical medicines, childbirth attendance, offering nutritional and physical therapy, and providing health and lifestyle counseling.

Dr. Thompson reviewed the standards and educational requirements for an ND and went through a typical four-year program. Dr. Thompson discussed the Naturopathic Physicians Licensing Examination (NPLEX), explaining that it is a case-based, three day exam.

Ms. Mitchell continued the presentation. Ms. Mitchell discussed the elective examinations for the NPLEX, stating that the minor surgery exam is case-based and the pharmacology exam is not case-based.

Ms. Mitchell stated that the Naturopathic Medicine Committee rarely receives complaints about licensed NDs. Ms. Mitchell continued that, at the time the presentation was created, there were only 62 active enforcement cases.

Ms. Mitchell explained that unlicensed naturopaths are a big problem in California, explaining that a naturopath is not the same as an ND.

Ms. Mitchell stated that most malpractice insurance companies issue the same policy to NDs as they do for other healing arts professions. Ms. Mitchell commented that the malpractice insurance costs for NDs are usually lower due to the low risk factors.

Ms. Mitchell concluded the presentation with the scope of naturopathic medicine, including minor office procedures and independent prescribing rights.

Dr. Hawkins commented about the philosophy of NDs, explaining that all good physicians should have the same philosophy. Dr. Hawkins asked if there was a type of person that seeks an ND, and if they are reimbursed by medical insurance.

Dr. Thompson replied that there is currently limited insurance reimbursement for NDs. Dr. Thompson also explained that patients would choose an ND if they have not gotten better through a conventional physician, prefer a more natural approach, or prefer an ND's area of specialty.

Dr. Lewis asked if there was any information on physicians holding dual licenses.

Ms. Mitchell answered that several NDs are dual licensed.

Dr. Lewis asked if allopathic doctors would practice naturopathic medicine because they have an interest and may have taken classes but are not licensed.

Ms. Mitchell responded that there are physicians that are licensed in both areas.

Dr. Mahmood asked about the schools available in California and the exams to get into those schools. Dr. Mahmood also asked if there were specialty programs available.

Ms. Mitchell responded that students have to take and pass the NPLEX to become licensed in any of the regulatory states. Dr. Thompson commented that the MCAT is not currently available. Dr. Thompson continued, explaining there are schools in multiple states, such as California, Oregon, Washington, and Arizona. Ms. Mitchell continued, stating that there's a school in Canada, along with other locations. Dr. Thompson commented that NDs can take extra training and become certified in specialty programs.

Dr. Krauss commented that the DCA has about 20 different healthcare professional boards and that the boards should collaborate more and work together since they all share a common goal. Dr. Krauss asked what the top challenges are.

Dr. Thompson replied that it is their goal to collaborate. Dr. Thompson commented that some challenges include unlicensed practitioners and that the California scope is not commensurate with any of the other licensed states, explaining that the scope of practice in another state is much broader than it is in California. Ms. Mitchell agreed with Dr. Thomson's comments. Dr. Thompson added that insurance coverage is a big issue for their licensees.

Ms. Pines asked for additional comments from the Board members. Hearing none, Ms. Pines asked for comments from the public.

Ms. Rhee commented that other advocates cannot access the Board meeting. Ms. Rhee commented that the presenters failed to mention how naturopathic medicine would benefit underrepresented minority patients.

Ms. Walls asked what kind of changes there will be in the future for COVID-19 testing in underserved areas.

Agenda Item 9 Presentation on Medical Assistants

Ms. Webb began by explaining what medical assistants (MA) are, saying they are unlicensed, however, they are able to engage in activities that would normally require a license due to the Medical Practice Act's exceptions. Ms. Webb continued that MAs are required to be at least 18 years old, can perform non-invasive routine services, and have to be under the supervision of a licensee. Ms. Webb explained that the supervisor must physically be on the premises while the MA is performing the authorized procedures.

Ms. Webb stated that MAs have to operate with specific authorization, which has to be in writing. Ms. Webb explained that specific authorization can be obtained either through patient-specific orders or through standing orders.

Ms. Webb continued, giving the two different pathways for training, on-the-job training and formal education. Ms. Webb explained that on-the-job training can be performed by registered nurses, licensed vocational nurses, physician assistants, or qualified MAs.

Ms. Webb stated that MAs are not allowed to perform invasive procedures, and that MAs are required to have at least 10 hours of training before they can administer injections or perform venipuncture procedures. Ms. Webb explained that there are additional specific requirements that also have to be met, including going over California law and regulations for MAs and receiving training for infection control.

Ms. Webb reviewed the scope of practice for MAs and what they can and cannot do, including performing noninvasive procedures, obtaining appropriate authorization, having supervision, not interpreting test results, and collecting patient data.

Dr. Krauss commented that a colleague of his was frustrated when the compliance department advised against an MA making entries in the room with the doctor and patient. Dr. Krauss asked if MAs can scribe and if there is additional certification needed.

Ms. Webb responded that MAs can take notes and is within their scope of practice. Ms. Webb commented that the law allows it but the health systems may not authorize it.

Dr. Krauss clarified what he meant by *scribe*.

Ms. Webb confirmed that MAs can lawfully scribe.

Dr. Hawkins asked how an MA becomes a qualified MA.

Ms. Webb replied that there are different pathways, but they must get certified by a Board-approved certification agency.

Dr. Yip commented that, in the past, MAs were not allowed to perform indwelling catheterization and asked if this were still true.

Ms. Webb confirmed that it is still true.

Ms. Lubiano asked if MAs are authorized to perform a patient intake, take that information to the physician, and bring back the doctor's diagnosis to the patient, acting as that of a liaison.

Ms. Webb confirmed that is permissible with specific authorization from the physician.

Ms. Lubiano also asked if MAs are obligated to inform patients that they can see a doctor, should they want to, if the doctor was not presently in the room.

Ms. Webb commented that her question is not addressed in law or regulation but that would be good practice.

Dr. Yip commented that it's also good practice for medical offices to give employees, including MAs, this kind of training.

Ms. Pines asked if, with the introduction of new bills to expand the scope of medical assistants, MAs must be certified in the future.

Ms. Webb replied that she is not aware of any bills this year that are seeking to expand scope, and that she has not heard a lot of push to get MAs certified.

Mr. Watkins asked if a physician assistant (PA) can perform MA work.

Ms. Webb confirmed that they can, as PAs are authorized supervisors.

Ms. Pines asked for additional comments from the Board members. Hearing none, Ms. Pines asked for comments from the public.

Ms. Rhee commented that being an MA is a wonderful opportunity for younger people, especially underrepresented minorities, but she thinks MAs should be certified.

Mr. Andrist commented on the visuals being used in presentations and advocates not being able to access the meeting.

Ms. Walls asked if it was alright for an MA to be dismissed by the doctor if the patient is uncomfortable with a specific procedure.

Ms. Webb commented that the public comment period is a time to make comments on the agenda item and is not a back-and-forth discussion between Board members and the public.

Agenda Item 10 Discussion and Possible Action on Legislation/Regulations

Mr. Bone began by explaining that due to COVID-19 the legislature reduced the amount of bills they are considering this year. Mr. Bone continued, explaining that several bills in this Board meeting's agenda were heard in policy committees and some were amended, which have since been distributed.

Mr. Bone summarized Assembly Bill (AB) 890, Wood. Mr. Bone explained that this bill creates two pathways for nurse practitioners (NP) licensed by the Board of Registered Nursing (BRN) to practice without physician supervision. Mr. Bone explained that previously, the bill established separate licensing boards to regulate NPs, but now creates a committee to advise the BRN. Mr. Bone continued, stating the bill adds additional requirements for an NP to practice independently and indicates when they must consult with a physician.

Mr. Bone stated that the Board has an opposed position on this bill.

Dr. Hawkins commented that one of the problems with an opposition position is that there is a shortage in California and this bill would fill the gap. Dr. Hawkins commented that he was not sure why the Board opposed and asked if the changes satisfied why the Board opposed.

Mr. Bone responded that the Board expressed concerns with NPs moving into this area of unsupervised care. Mr. Bone continued that the amendments to the bill were not satisfactory, instead they furthered the purposes of the bill to allow independence to NPs.

Dr. Krauss commented that his ongoing concern with this bill is that if any healthcare profession is going to have their scope expanded, a better definition of supervision and training in an interim period is needed. Dr. Krauss continued that he would like to consider that in future scope bills and have the Board collaborate with other healthcare practitioner boards. Dr. Krauss also commented that with scope expansion, he wants to avoid circumstances where unequal access to high quality healthcare is created. Dr. Krauss stated he wasn't sure this bill adequately protects the public and he continues to oppose AB 890.

Dr. Thorp commented that his concern with this bill would create a committee within the BRN rather than having a separate licensing board, which would be much less transparent, and asked why they would want a committee rather than a separate licensing board. Dr. Thorp also commented that he would be opposed to AB 890.

Mr. Bone commented that the bill previously established a separate board, but there were concerns that that would present financial challenges to the BRN through loss of revenue.

Dr. Lewis made a motion to oppose AB 890, Wood/S: Dr. GnanaDev

Ms. Pines asked if there were public comments.

Ms. Rhee commented that she continues to see the same issues with Board members in that there is no mention of supporting underrepresented minority groups.

Ms. Pines asked Ms. Caldwell to take the roll.

Motion carried 12-0 (Oppose)

Mr. Bone introduced AB 1710, Wood. Mr. Bone explained that this bill would allow authorized pharmacists who have completed required training to independently initiate and administer any Food and Drug Administration (FDA) approved vaccine to a person three years of age or older.

Mr. Bone continued that under current law, pharmacist are able to administer FDA approved vaccines that are considered to be routine by the Centers for Disease Control and Prevention (CDC). Mr. Bone explained that this bill expands the pharmacist's authority to any FDA approved vaccine. Mr. Bone noted that this bill is currently in the process of being amended to limit the scope of this authority to COVID-19 related vaccines.

Dr. Thorp expressed his concern with the broad scope of the bill. Dr. Thorp spoke of younger children who need specific vaccination approaches, pharmacies not being able to provide for these considerations, and pediatricians being specifically trained for these approaches. Dr. Thorp's recommendation is oppose unless amended.

Dr. Lewis commented that his concern is that we do not know where the COVID-19 vaccine is headed and agreed that the bill was too broad. Dr. Lewis opposes the bill unless amended.

Ms. Lubiano also shared her concern with the broad nature of the bill. Ms. Lubiano commented that the age ranges, different conditions of patients, and the counseling of risks associated would be better suited for physicians who have their patient's history.

Mr. Bone commented that current law states that specially trained pharmacists can administer routine vaccines to individuals age 3 and older, and that this bill would change the vaccines administered from routine vaccines to any FDA approved vaccine.

Dr. Mahmood asked if pharmacists would be the ones making the decision for who needs a vaccine or if a physician would have to prescribe it.

Mr. Bone stated that current law prescribes the authority that a pharmacist could have if they receive certain training, complete an immunization training program endorsed by the CDC, be certified in basic life support, and comply with state and federal record-keeping and reporting requirements. Mr. Bone continued that if pharmacists meet these requirements, they may independently initiate and administer a routine vaccine to anyone age 3 and older. Mr. Bone commented that this bill is in the midst of being amended to limit the scope to only COVID-19 vaccines, but the language is not available yet, as this was something that was verbally committed to in committee over the weekend.

Dr. Krauss commented that one of the problems with this bill is that the Board meets quarterly and that the bills are always in flux. Dr. Krauss continued that one option would be not to take a position on the bill since it is still changing, and another option is to support if amended to include only COVID-19 related vaccines. Dr. Krauss commented that there is a concern about getting hundreds of millions of people vaccinated quickly, so it makes sense to have this in pharmacies.

Dr. Mahmood commented that there is no need to take multiple actions, the Board should wait to see what amendments will be made and then take a position.

Dr. Krauss commented that by the time the Board has its next meeting, the bill will have passed.

Ms. Pines commented that she agrees with Dr. Krauss and a decision should be made now to have an official record from the Board. Ms. Pines asked Dr. Thorp if his position of oppose unless amended is specific to COVID or if there was other terminology he wanted to add.

Dr. Thorp commented that Dr. Krauss may have convinced him to rethink his position. Dr. Thorp continued that the administration of a COVID-19 vaccine may be difficult to do in physician offices. Dr. Thorp stated his position is to support if amended to limit to just COVID-19 vaccinations.

Dr. Lewis stated that we don't know where COVID is going, agreed that we need all hands on deck to administer a COVID vaccination, but that we don't know if further requirements will be

needed once we get a vaccine. Dr. Lewis asked Mr. Bone what Assemblyman Woods and his legislative staff were saying about this bill and COVID.

Mr. Bone replied that they described it as a way to have a rapid deployment of the vaccine and that pharmacists have sufficient amount of training.

Dr. Lewis asked Mr. Bone about the certification program that pharmacists must take to administer vaccines.

Mr. Bone replied that this is current law, and that he was not sure if there was a certification.

Dr. Hawkins asked if this bill was only about a COVID-19 vaccination.

Mr. Bone replied that, as the bill is written, it is about any vaccine, but the bill is in the process to be amended to limit it to COVID-19.

Ms. Pines confirmed that the Board's position is to support the bill if it is amended for only COVID-19.

Dr. Lewis asked Mr. Bone if the Board would be notified if there are changes put in writing.

Mr. Bone confirmed and commented that this is the last Board meeting before the end of legislative sessions.

Dr. Thorp made a motion to support AB 1710, Wood if amended to only COVID-19 vaccines/S: Dr. Krauss

Ms. Pines asked if there were public comments.

Mr. Martinez commented that the California Pharmacists Association is the sponsor of AB 1710 and he is asking the Board to support this bill. Mr. Martinez commented that they did agree to limit the bill to COVID vaccines, but that the language is not in print. Mr. Martinez continued that there are some issues with legislative council drafting the amendments but it is being worked on. Mr. Martinez commented on the ability of pharmacists to administer vaccines and reiterated the authority they have had since 2013. Mr. Martinez mentioned the schools that pharmacists attend require their students to be certified in providing immunizations.

Ms. Rhee commented that underrepresented minority communities and rural areas would benefit from this bill.

Ms. Walls commented that a vaccine should not be given to a three year old and that pharmacists should not have that authority.

Ms. Pines asked Ms. Caldwell to take the roll.

Motion carried 11-1 (Support if amended; Lubiano opposed)

Mr. Bone introduced AB 2004, Calderon. Mr. Bone explained that AB 2004 would require the Board to implement a pilot program to explore and develop methods using blockchain technology to provide secure, private, and portable access to COVID-19 and other test results. Mr. Bone commented that over the weekend, the author of this bill indicated his intent to amend the bill to eliminate the Board's involvement in the program, placing the responsibility with the Government Operations Agency. Mr. Bone stated that the bill's language does not yet reflect these changes, so Board staff recommends an oppose unless amended position.

Dr. GnanaDev made a motion to oppose AB 2004, Calderon unless amended to remove the Board's involvement/S: Dr. Lewis

Ms. Pines asked if there were public comments. Hearing none, Ms. Pines asked Ms. Caldwell to take the roll.

Motion carried 12-0 (Oppose unless amended)

Mr. Bone introduced AB 2273, Bloom. Mr. Bone explained that AB 2273 would allow qualified individuals to obtain a special permit from the Board authorizing them to practice medicine in an academic medical center (AMC). Mr. Bone explained that current law allows physicians who do not qualify for licensure in California to obtain a special permit to practice medicine in an approved medical school or hospital. Mr. Bone continued that these permits allow physicians to practice medicine in conjunction with postgraduate training they are obtaining as a visiting fellow or to provide full or part-time instruction to students as a member of the faculty at a medical school.

Mr. Bone reviewed some of the amendments made to the bill since the May Board meeting, including adding two permit programs that are also only available to medical schools, adding an AMC representative to the special faculty permit (SFP) review committee, removes the requirement that the Board to approve AMCs, and the AMC must assume responsibility for the applicants they are sponsoring for the SFP program. Mr. Bone continued with amendments requested by Senator Pan, including requiring AMCs to have an affiliation agreement with an accredited medical school.

Mr. Bone concluded, offering a summary that this bill would grant AMCs access to the same special permit programs that are currently only available to approved medical schools.

Dr. Krauss asked about the criteria of training a minimum of 250 residents and postdoctoral fellows, if those are ACGME accredited residency slots.

Mr. Bone commented that he does not specifically see that.

Dr. Krauss commented that there are a large number of fellowships that have no accreditation, nor ACGME approval, and that he does not want to see a plethora of AMCs cropping up that may not have approved residency and fellowship programs. Dr. Krauss asked how many AMCs there are presently in California and how big of a problem will this be, mentioned Cedars-Sinai's affiliation with UCLA, along with other hospitals. Dr. Krauss mentioned his phone call with Dr. Melmed and his concern with Dr. Pan's amendment. Dr. Krauss

commented that he would like to hear Dr. GnanaDev's opinions on this bill since he works with SFPs.

Dr. GnanaDev commented that there are not that many hospitals with 750 beds and he is not sure why that is a requirement, unless it is just for one entity's benefit. Dr. GnanaDev stated that he supports Dr. Pan's amendment. Dr. GnanaDev commented that this bill needs some work but that he leans toward supporting it.

Mr. Bone replied to Dr. Krauss' earlier questions, commenting that there are three facilities that would meet the qualifications and offering language from the bill regarding residents and postdoctoral fellows.

Dr. Krauss commented that he would rather see those specified as ACGME accredited residency and fellowship slots.

Dr. GnanaDev made comments regarding hospital affiliations and the number of beds, saying that is why he thinks this bill only applies to Cedars-Sinai, or to just one institution.

Ms. Lawson asked Dr. GnanaDev if his suggestion is to expand the definition of the AMCs that would be permitted.

Dr. GnanaDev responded that if we are going to expand, reduce the number of beds so that it benefits more institutions.

Dr. Mahmood commented that he agrees with Dr. GnanaDev.

Dr. Krauss asked Dr. GnanaDev to suggest a motion on this bill since he has knowledge in this area.

Dr. GnanaDev commented that he would prefer not to include a bed count and expanded on his thoughts on keeping the affiliation requirement.

Dr. Krauss asked if that meant he supports the bill if amended to remove the hospital bed requirement.

Dr. GnanaDev agreed and that he wants to preserve the affiliation with a medical school, adding that the program was intended to recruit researchers.

Ms. Lawson asked about the criteria to have research students at the hospital facilities rather than AMCs.

Dr. GnanaDev commented that there are research students conducting research and he doesn't know why the author wants that connection with a medical school.

Dr. Krauss commented that the language of the bill as amended by Dr. Pan does require the university affiliation. Dr. Krauss asked if Dr. GnanaDev thinks it is too restrictive in terms of having the hospital bed requirement and asked if there is a number of beds that should be assigned or if that requirement should be removed altogether.

Dr. GnanaDev commented that with the 250 resident requirement there should be 400-500 beds.

Dr. Krauss commented that he would support this bill if it was amended to remove the hospital bed requirement.

Mr. Bone commented that Dr. Pan's amendment is not yet in the bill, he has just asked for that from the author. Mr. Bone also commented that the more AMCs that would qualify for the bill equates to a potential cost increase for the Board due to increased applications.

Dr. Krauss commented that he would now support this bill if it was amended to require the university affiliation and to remove the hospital bed number requirement.

Dr. Krauss made a motion to support AB 2273, Bloom if amended to remove the hospital bed count and require AMCs to have an affiliation with an approved medical school/S: Dr. GnanaDev

Dr. Thorp commented that he is concerned about the increased cost to the Board. Dr. Thorp asked if there is a reason the Board would want to see this expanded.

Ms. Lawson asked why the Board would not be interested in making the position available, and that this would be a way to provide the best access to care.

Dr. GnanaDev commented that a solution would be to have one member assigned to the SFP committee instead of having a member from every AMC.

Mr. Bone clarified the motion, which is support if amended to remove the bed count and to require AMCs to have an affiliation agreement with an approved medical school.

Ms. Pines asked for comments from the public.

Dr. Melmed commented that the current rule allows approved medical schools to avail themselves of the SFPs and that this restriction limits the flexibility of independent AMCs. Dr. Melmed further commented on the restrictions, including recruitment and administrative processes. Dr. Melmed commented on Senator Pan's amendment request, saying that it would allow any of the accredited California for-profit medical schools to enter into an agreement, jeopardizing the treatment and care of citizens if an affiliation with a medical school was canceled.

Ms. Walls commented that this bill is needed in California and is feasible.

Ms. Rhee commented that Cedars-Sinai provides quality care if you are white and also commented on an African-American patient that died after giving birth there.

Ms. Lawson asked if the maker of the motion would consider removing the medical school affiliation requirement.

Dr. Krauss commented that he is persuaded by Dr. GnanaDev's opinion and asked if he was persuaded by Dr. Melmed's comment.

Dr. GnanaDev commented that he agrees with Dr. Melmed but that he doesn't feel it is a priority. Dr. GnanaDev commented that he is ok with removing the medical school affiliation requirement but that he thinks there should be one member assigned to the SFP committee.

Dr. Krauss revised his motion.

Dr. Krauss made a motion to support AB 2273, Bloom if amended to remove the hospital bed count and to restrict the AMC representation of the SFP committee to one member/S: Dr. GnanaDev

Mr. Bone asked for clarification on the non-university affiliated AMC member.

Dr. Krauss commented that Dr. GnanaDev's concern was the number of AMC members for the SFP review committee.

Dr. GnanaDev commented that the wording *non-university* doesn't need to be included.

Ms. Pines asked Ms. Caldwell to take the roll.

Motion carried 12-0 (Support if amended)

Mr. Bone summarized AB 2478, Carrillo. Mr. Bone explained that this bill requires the Board to conduct a study on increasing the pool of international medical graduates. Mr. Bone continued that the Board adopted an oppose position during the May Board meeting and the bill has not been amended since then.

Ms. Pines asked for comments from Board members.

Dr. Thorp made a motion to oppose AB 2478, Carrillo/S: Dr. Mahmood

Ms. Pines asked for comments from the public.

Ms. Rhee commented that she does not have any information on this bill.

Ms. Pines asked Ms. Caldwell to take the roll.

Motion carried 11-1 (Oppose; GnanaDev abstained)

Mr. Bone introduced Senate Bill (SB) 1237, Dodd. Mr. Bone explained that this bill allows certified nurse-midwives (CNM) to attend low-risk pregnancies and provide prenatal, intrapartum, and postpartum care without the supervision of a physician. Mr. Bone stated that the Board adopted a support position during the May Board meeting. Mr. Bone commented that earlier this week a representative of the American College of Obstetricians and Gynecologists stated they no longer oppose this bill. Mr. Bone continued with amendments made to the bill, including clarifying the conditions of independent practice for CNMs, such as

when they transfer a patient to the care of a physician, requiring oral and written patient disclosures, and requiring patient data reporting for births outside of a hospital setting.

Dr. Hawkins made a motion to support SB 1237, Dodd/S: Mr. Watkins

Ms. Pines asked for comments from the public.

Ms. Rhee applauded the Board for supporting this bill.

Ms. Davis spoke on the restriction this bill creates for access to care for both CNMs and patients. Ms. Davis commented that the practice of legislating pregnant bodies needs to stop. Ms. Davis asked the Board to take the time to read the language in the bill rather than relying on the marketing and talking points of the authors and sponsors.

Ms. Kamel agreed with Ms. Davis' comments and reiterated that this bill will not include access to care. Ms. Kamel commented that while the Californians for the Advancement of Midwifery supports the independent practice of all midwives, this bill does not achieve that, and asked the Board to oppose this bill.

Ms. Walls commented that being pregnant is a serious situation and she opposes this bill.

Dr. Hawkins asked for clarification on Ms. Davis' comments, specifically, his concern is for underserved women not falling into a low-risk category, therefore not having access to care. Dr. Hawkins commented that he was not sure why the speakers stated this bill would not provide access to care.

At Dr. Hawkins' request, the host put Ms. Davis back on for comment.

Ms. Davis commented that midwives are trained in a very specific scope of practice and this bill greatly reigns in that scope, and that some of the scope restrictions are arbitrary. Ms. Davis spoke on the requirement of written agreements with physicians in order to provide care. Ms. Davis commented that in her experience, physicians either don't want to enter into written agreements with midwives or are restricted to do so. Ms. Davis also stated there is concern with the detailed reporting requirements and reporting information.

Ms. Pines asked if, after hearing these comments, there was another position to put on the table or if the Board wanted to move forward with the support position.

Dr. Hawkins commented that it does not change his motion.

Ms. Pines asked Ms. Caldwell to take the roll.

Motion carried 12-0 (Support)

Mr. Bone introduced SB 1474, Committee on Business, Professions and Economic Development. Mr. Bone explained that this is an omnibus bill that includes four items at the request of the Board. Mr. Bone commented that this bill also contains provisions from other DCA licensing boards. Mr. Bone stated that this bill also includes a section that prohibits

anyone regulated by a licensing board from including within a contract for consumer services a provision that prevents a consumer from filing a complaint or participating in an investigation of that board. Mr. Bone commented that Board staff recommend a support position for the provisions in this bill.

Dr. GnanaDev asked if this bill applies to the Board for the next year.

Mr. Bone commented that no, the Board is up for Sunset Review next year.

Dr. Krauss made a motion to support SB 1474, Committee on Business, Professions and Economic Development/S: Ms. Lawson

Mr. Bone asked if the support position was only for the four items requested by the Board or does the support position also include the provision that would restrict consumer complaints.

Dr. Krauss commented that he would not want to do anything to restrict consumer complaints, so his motion is to support.

Ms. Pines asked for comments from the public.

Ms. Rhee commented that she agrees with not wanting to restrict consumer complaints.

Mr. Francis commented that this bill would make small adjustments to the language for postgraduate training licenses. Mr. Francis commented that he is concerned with how this will effect patient care and requested the Board work with staff to amend the language or delay the implementation to address issues that he previously brought up regarding moonlighting, the Death Certificate Project, and X waivers.

Ms. Pines asked Ms. Caldwell to take the roll.

Motion carried 12-0 (Support)

Mr. Bone explained the matrix for the status of pending regulations. Mr. Bone asked if any Board members had questions. There were none.

Ms. Pines commented that the last agenda item scheduled for today, discussing the Sunset Review, is an important topic and there will be a lot of discussion. Being late in the evening, Ms. Pines moved this agenda item to tomorrow.

Ms. Pines adjourned the meeting at 6:32 p.m.

Friday, August 14, 2020

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

Members Present:

Denise Pines, President
Dev GnanaDev, M.D.
Randy W. Hawkins, M.D.
Howard R. Krauss, M.D.
Kristina D. Lawson, J.D.
Ronald H. Lewis, M.D., Vice President
Laurie Rose Lubiano, J.D.
Asif Mahmood, M.D.
Richard E. Thorp, M.D.
Cinthia Tirado, M.D.
Eserick "TJ" Watkins
Felix C. Yip, M.D.

Staff Present:

Aaron Bone, Chief of Legislation and Public Affairs
Valerie Caldwell, Associate Governmental Program Analyst
Charlotte Clark, Information Technology Supervisor I
Dalia Demian, Associate Governmental Program Analyst
Sean Eichelkraut, Information Technology Manager I
Jenna Jones, Chief of Enforcement
Jacoby Jorgensen, Staff Services Manager, I
Nicole Kraemer, Information Technology Associate
Larissa Nguyen, Information Technology Associate
Marina O'Connor, Chief of Licensing
William Prasifka, Executive Director
Regina Rao, Associate Governmental Program Analyst
Letitia Robinson, Research Data Specialist II
Elizabeth Rojas, Staff Services Analyst
Alexandria Schembra, Associate Governmental Program Analyst
Lisa Toof, Staff Services Manager I
Reji Varghese, Deputy Director
Carlos Villatoro, Public Information Officer II
Kerrie Webb, Staff Counsel

Members of the Audience:

Gregory Adrian
Alexandra Alvarez, Attorney General's Office
Austin Anderson
Eric Andrist, The Patient Safety League
Daron Atkin
Claudia Breglia
Joseph Cachuela, California Medical Association
Alejandra Campoverdi

Rustin Cashel
Gloria Castro, Attorney General's Office
Joanna Chikwe, M.D.
Yvonne Chong, California Medical Association
David Chriss, Attorney General's Office
Sarah Conley, Physical Therapy Board
Rosanna Davis, California Association of Licensed Midwives
Matt Davis, Attorney General's Office
Mihir Desai
Phil Deters, Attorney General's Office
Colten Dillinger
Sandra Fajardo
Julianne Fellmeth
Austin French
Faith Gibson, Midwifery Advisory Council
Ana Gonzalez, Attorney General's Office
Latrice Hemphill, Attorney General's Office
Marian Hollingsworth, The Patient Safety League
Carrie Holmes, Board and Bureau Relations
Diane Holzer
Ester Hotova
Jen Kamel
Mary Kathryn Cruz Jones, Department of Consumer Affairs
Karen Kim
Patricia King
Michaela Knaggs
Susan Lauren
Rachelle Leblanc, Attorney General's Office
Henry Lewin
Andrew Linn, M.D.
Soren Madsen
Adrian Mohammed, California Medical Association
Michele Monserratt-Ramos, Consumer Watchdog
Jean Muller
Thomas Ostly, Attorney General's Office
Tristan Pham
Zachary Radwanski
Christine Rhee, Attorney General's Office
Hanna Rhee, Black Patients Matter
Rehan Sheikh, Physicians for Fairness
LeAnna Shields, Attorney General's Office
Jane Simon, Attorney General's Office
Carrie Sparrevohn
Ryan Spencer
Mark Staz, Federation of State Medical Boards
Mariha Syed

Agenda Item 12 Call to Order/Roll Call/Establishment of a Quorum

Ms. Pines called the meeting of the Medical Board of California (Board) to order on August 14, 2020 at 9:00 a.m. A quorum was present and due notice was provided to all interested parties.

Agenda Item 13 Public Comments on Items not on the Agenda

Ms. Lauren spoke of surgical assault and medical malpractice. Ms. Lauren commented on the experience she had with Dr. Saul Berger and her claim that he medically disabled her. Ms. Lauren also spoke of the case she had against Dr. Saul Berger.

Ms. Rhee commented on members of the public not being able to access the Board meeting yesterday. Ms. Rhee stated that she will be using harsh language to describe corruption when hearing updates from the AGO and from the HQIU. Ms. Rhee commented that statements from her hearing were altered.

Mr. Andrist asked if anyone took what he said yesterday to heart and did some research on the information he provided. Mr. Andrist spoke on the actions of Board members and correlated it to the reason only 4% of complaints end in discipline. Mr. Andrist commented on Board and staff comments during meetings.

Ms. Hollingsworth welcomed Mr. Prasifka to the Board. Ms. Hollingsworth shared her thoughts on the Board favoring doctors' rights and reputations and taking up to three years to complete investigations and resolve complaints. Ms. Hollingsworth requested a status update on the Death Certificate Project.

Ms. Davis commented on behalf of Ms. Gibson, as she was having trouble getting into the meeting. Ms. Davis commented on vaginal births after caesarean (VBAC) procedures, the use of Pitocin, and the association of uterine stimulants with uterine ruptures.

Ms. Gibson commented that she would continue where Ms. Davis left off since she was able to access the meeting. Ms. Gibson commented on women laboring naturally and the increased benefits associated with it.

Agenda Item 14 Presentation on Federation of State Medical Board's Policy on Physician Sexual Misconduct

Ms. Pines began with an introduction of Dr. King and Mr. Staz, including their professional background.

Dr. King noted that in 2006 the FSMB adopted a policy on physician misconduct, with 2016 being a turning point, commenting on a series of printed stories on sexual misconduct. Dr. King stated that following these stories, the FSMB issued a statement of no tolerance for sexual misconduct, citing their 2006 policy. Dr. King commented on of sexual misconduct cases and the shortcomings of the reporting and investigation processes, leading to a reevaluation of FSMB's policies, forming a workgroup, and making improvements.

Mr. Staz spoke of FSMB's workgroup approach, noting their annual meetings, receiving input from state medical boards, and identifying key issues. Mr. Staz commented that some of the key issues identified were barriers to reporting, the need for transparency, training, remediation, and the treatment of complaints.

Dr. King spoke on the need for a cultural change in medicine to eliminate harassment and sexual misconduct. Dr. King commented on the need for transparency to justify regulatory decisions and provide sufficient rationale to support them. Dr. King also commented on complaints, explaining that the boards work on a complaint system, the need to communicate how to complete a complaint, and the reasons why they are important.

Mr. Staz commented on reporting, including the ability to levy fines against hospitals for not report sexual misconduct, peer review processes, building stronger hospital reporting requirements, and whistleblower protection. Mr. Staz explained investigations, speaking on the review of complaints, imposing limitations, and training. Mr. Staz commented that discipline is appropriate during the remediation process and revocation of a license for serious forms of misconduct is needed to protect the public.

Dr. King spoke on education, saying that education and training on professional boundaries and physician sexual misconduct should be provided during medical school, residency, and during their practice to remain current in their knowledge of professional expectations.

Mr. Staz commented on implementing the recommendations from the workgroup meetings.

Dr. King thanked the members of the workgroups.

Dr. Krauss thanked Mr. Staz and Dr. King and commented that the FSMB creates a lot of valuable work. Dr. Krauss asked if the FSMB has looked at whether medical schools, postgraduate training programs, and medical boards do an adequate job of investigating the ethics of applicants prior to their granting of admission or licensure.

Mr. Staz commented on the importance of assessing medical students and residents on their ability to identify boundary issues, addressing them appropriately, and the ability to screen out any potential issues before they enter practice. Mr. Staz commented that they are at a preliminary level of assessing these issues.

Dr. King commented that medical schools struggle with this topic but environments that are free of harassment allow students to understand that misconduct is unacceptable.

Dr. Thorp thanked Dr. King and Mr. Staz and commented on the difference between practice monitors and chaperones. Dr. Thorp asked if the FSMB has considered the practicality of how to implement either a practice monitor or chaperone system.

Mr. Staz replied that the FSMB has heard a great deal of the impracticality of establishing those types of systems and spoke of the barriers. Mr. Staz noted that they have, however, seen it work in different jurisdictions.

Dr. Thorp asked if Mr. Staz was speaking of monitoring after an abhorrent behavior has been identified. Dr. Thorp clarified that he was speaking in terms of trying to prevent it from happening during the daily practice. Dr. Thorp commented that this is a process that needs to be addressed in its inception.

Dr. King commented on growing an environment free of harassment, clinicians thinking about the impact of their behavior on every single patient, and professionalism.

Mr. Watkins thanked Dr. King and Mr. Staz. Mr. Watkins asked about a cultural shift to become more transparent and encourage a culture of reporting complaints.

Mr. Staz responded with FSMB's policy and definition of sexual misconduct, stating that it has been revised to define it as being along a spectrum, commenting that there are different types of misconduct. Mr. Staz commented that any incidence of sexual misconduct, no matter where it lies on the spectrum, are worthy of the state medical boards' attention.

Dr. Yip asked if there were any state boards that have mandatory continuing medical education (CME) for professional boundaries and ethics.

Dr. King answered that there are just a couple state boards that have requirements for sexual misconduct CME.

Mr. Staz commented that there are greater number of boards that have an ethics and boundaries CME requirement, but just a couple have a requirement for sexual misconduct CME.

Dr. Hawkins asked if there was any discussion on how far back educating physicians on sexual misconduct went.

Mr. Staz commented that there were not discussions about how far back to go, saying that all students are allowed in medical school and there is not a survey to decide on background and personality types that are most appropriate for ensuring a culture of professionalism and patient safety.

Dr. King commented that this is not just the culture of medicine but also the culture of our society. Dr. King also commented that this could be the start for FSMB to look into making changes that could influence societal changes.

Ms. Lubiano asked about the connection between physician sexual misconduct and drug and alcohol use.

Mr. Staz commented that this topic is acknowledged in FSMB's policies and in work group meetings.

Ms. Lubiano asked if there are specific, proactive, ways that are outlined for state boards to conduct effective outreach.

Dr. King commented that there are not specific items, but that they have discussed using multiple approaches for outreach rather than just one way. Dr. King commented that there are some examples given in their report.

Mr. Staz commented that, in the policy recommendations, there are different types of ways given that should be useful for patient resources, including what to expect during an exam and what is and isn't normal.

Dr. Mahmood commented and expanded on Dr. Hawkins question, saying many people experiment with drugs or alcohol in college, which would impact their ability to attend medical school if they were tracked back to that age. Dr. Mahmood commented that all of these issues should be addressed at the same time, before they can be penalized.

Mr. Staz commented that respecting boundaries can be taught at an early age and that education in preventative measures is an important aspect in all of these areas discussed.

Dr. GnanaDev thanked Dr. King and Mr. Staz. Dr. GnanaDev commented about performing personality tests at medical school.

Ms. Pines asked for comments from the public.

Ms. Rhee commented that the studies discussed during the presentation should have been done long before now and commented on the corruption within medicine and the medical boards. Ms. Rhee also made comments on whistleblowers and patient advocate groups being subpoenaed.

Ms. Pines reminded public commenters to stay on the topic of the agenda item.

Mr. Andrist commented that he has brought sexual assault cases to the attention of the Board with little to no enforcement of discipline.

Ms. Hollingsworth thanked the FSMB for their presentation. Ms. Hollingsworth commented about doctors that have been disciplined or arrested in other states for assault and how the Board gives lesser disciplines. Ms. Hollingsworth commented that the Board's attitude toward misconduct is alarming.

Agenda Item 11 Discussion and Possible Action on Sunset Review

Mr. Prasifka explained the Sunset Review process and stated that new issues will be identified today that staff believe should be included in the Sunset Review, and that agreement and consent will be asked of Board members. Mr. Prasifka also commented that other issues from Board members should be discussed during this time.

Mr. Prasifka commented that the fiscal position of the Board and the need for a fee increase were touched upon yesterday. Mr. Prasifka continued, saying fiscal issues are at the center of the challenges facing the Board, making it only natural to look at the Board's enforcement side of activities since that consumes a significant amount of the Board's resources.

Mr. Prasifka stated that the Board should look at both sides of the equation, that being revenues and expenditures. Mr. Prasifka commented on the increase in costs, with the AGO and HQUI being outside of the Board's control. Mr. Prasifka spoke of a series of proposals for enforcement, which includes the need to reexamine our approach to enforcement between sworn and non-sworn investigators along with adversarial and non-adversarial methods, raising the standards in enforcement, and possibly more that will be brought forward during the November meeting.

Mr. Prasifka stated that staff has already started comprehensive medical examiner reviews in the early stages of the investigation process. Mr. Prasifka commented that investing early helps to better manage cases in all the stages of investigation. Mr. Prasifka spoke of learning from mistakes, learning how to improve, and local complaint resolution, for example, between doctors and patients. Mr. Prasifka commented that the Board should work harder to build a culture of open disclosure of non-adversarial remediation, where appropriate, which will raise standards of practice. Mr. Prasifka stated that there is no simple solution and no one change that can give us our desired outcome, but would like to focus on building continuous improvement and deliver better outcomes for the medical profession and for the public. Lastly, Mr. Prasifka stated he would like to hear from Board members on ideas that they have.

Ms. Pines asked if Mr. Prasifka had a particular recommendation based on the financial information that submitted for review.

Mr. Prasifka replied that staff is looking for direction from Board members in what they would like to see in terms of enforcement. Mr. Prasifka commented that the Board needs to get costs under control. Mr. Prasifka stated that the Board has a responsibility to protect the public and a responsibility to adjudicate each case on its merits. Mr. Prasifka commented that the Board should be able to meet its financial responsibilities with the ideas brought forth.

Dr. Hawkins asked Mr. Prasifka about his experience in prior jobs in relation to this sunset review process.

Mr. Prasifka replied that Sunset Review is the Board's opportunity to look for improvements and he is aware that the Board could be absorbed into DCA if the Sunset Review doesn't pass.

Dr. Hawkins asked Mr. Prasifka how he felt about the preparation going into Sunset Review.

Mr. Prasifka commented that he understood that coming into his position would be challenging.

Dr. GnanaDev asked how the Board could realistically go about improving the enforcement program, including being more efficient.

Mr. Prasifka commented that we should look at what we can control, rather than what we cannot control. Mr. Prasifka explained that staff has begun that process by reviewing files at an early stage with medical reviewers to determine which cases should go to an expert evaluator. Mr. Prasifka continued, that just by doing something that simple, but significant, that intervention is giving us a better handle of managing cases going forward. Mr. Prasifka commented that enforcement has to look at each stage of the process that we can control and

how we can do work more effectively. Mr. Prasifka stated that he has a high degree of confidence that the Board can do better.

Mr. Watkins commented that he has thought about ideas and recommendations that he would like the Board to consider. Mr. Watkins spoke of a cultural shift from being adversarial to being inclusive and expansive. Mr. Watkins also spoke of bringing sworn investigators back to the Board from DCA. Mr. Watkins continued with his ideas, commenting on reigniting the conversation of recovering costs from physicians for investigations. Mr. Watkins stated that the Board needs better experts and the best leaders for all of the different units in order to be more efficient.

Dr. Lewis commented on the location of the HQIU at DCA and asked if the increase in enforcement timelines is related, saying it creates another layer between the AGO and the Board.

Mr. Prasifka commented that if there is a desire to bring HQIU back to the Board it will require legislation, but if HQIU is brought back to the Board, we would still face the same challenges that were outlined earlier. Mr. Prasifka spoke of what the Board would do differently in enforcement, having to recalibrate the relationship, proportion, and types of cases assigned to sworn versus non-sworn investigators, and how cases would be effectively managed.

Dr. Yip thanked Mr. Prasifka for his energy and new ideas. Dr. Yip shared his ideas, including a peer process for cases that the Board reviews and cost recovery. Dr. Yip also commented on the idea of an in-house attorney to mediate in cases of local complaint resolution, saying we could control the costs through a fixed salary rather than an hourly rate for the HQIU investigators. Dr. Yip commented on the need to properly train experts.

Dr. Mahmood commented on the Board's expert physicians, along with cost recovery. Dr. Mahmood agreed with the ideas and comments made.

Ms. Lubiano commented that improving training for the Board's experts is important. Ms. Lubiano also commented on the Board's opportunity for automation, saying there are several ways to create efficiencies, such as in the complaint process and licensing timelines.

Dr. Yip commented on the BreEZe system and being able to view the licensing and complaint process.

Mr. Watkins asked what the risk is for the Board at Sunset Review. Mr. Watkins commented on the complaints received about the Board at the last Sunset Review and how we could mitigate those complaints through tangible examples and showing cooperation.

Dr. Thorp commented that this is a crucial time for the Board, saying that a common comment heard is the Board is not advocating for patient safety. Dr. Thorp spoke of considering ideas from outside of the Board in order to do a better job. Dr. Thorp commented that the Board's job is two-fold, patient safety and preserving the profession.

Ms. Pines recognized and acknowledged the Board members' comments and ideas. Ms. Pines said that recommendations can be made from the ideas brought forth.

Dr. Yip commented about the recommendations Mr. Watkins mentioned involving both physicians and consumers.

Dr. GnanaDev commented about streamlining the recommendations and the possibility to have a separate Board meeting to only discuss Sunset Review.

Ms. Pines commented that there are six recommendations to move forward with.

Dr. GnanaDev commented that Ms. Pines has experience the Board can use from the last Sunset Review and also commented on the importance of the Sunset Review to the Board's future.

Mr. Watkins commented that, since the last Sunset Review, there are new ways that people are approaching the Board, saying that it carries more weight and the Board must be confident that we can deliver on what we bring forward.

Ms. Webb clarified that a motion should be made to indicate that the Board is authorizing a task force with Board staff to move forward with the recommended Sunset Review items.

Dr. Yip moved to approve the Sunset Review recommendations/S: Dr. GnanaDev

Ms. Pines asked for comments from the public.

Ms. Rhee thanked herself and Black Patients Matter for the Sunset Review ideas that Mr. Prasifka spoke of.

Mr. Andrist commented that all Sunset Review ideas need to proceed, rather than pick and choose. Mr. Andrist spoke of continual complaints that the Board has had. Mr. Andrist also commented that he and Ms. Hollingsworth have already written a report for the Board regarding Sunset Review and agreed with Mr. Prasifka and Mr. Watkins' ideas. Mr. Andrist spoke of his new ideas for Sunset Review.

Ms. Hollingsworth commented that she was optimistic after hearing Mr. Prasifka's Sunset Review ideas. Ms. Hollingsworth commented that she does not agree with prior comments made about the purpose of the Board. Ms. Hollingsworth requested that advocates be included in stakeholder meetings.

Ms. Gibson commented on the increased use of letters of public reprimand. Ms. Gibson also commented on language used in reports for complaints, saying that, as an expert reviewer, they are not always written clearly.

Ms. Monserratt-Ramos spoke of the responsibility the Board has to protect the public. Ms. Monserratt-Ramos commented on drug and alcohol impaired physicians. Ms. Monserratt-Ramos also commented that she agrees with other advocates in that members of the public should be invited to Sunset Review meetings, and that their ideas and comments should not be dismissed.

Ms. Pines asked Ms. Caldwell to take the roll.

Motion carried 12-0

Agenda Item 15 Presentation on Vaginal Birth after Caesarean Section by Licensed Midwives

Ms. Pines introduced Ms. Breglia and gave a brief background of her experience.

Ms. Breglia began the presentation with statistics of maternal and neonatal risks from repeat Caesarean deliveries. Ms. Breglia also gave statistics of the California vaginal birth after Caesarean (VBAC) rate along with data of birth rates and VBAC rates with licensed midwives (LM).

Ms. Breglia continued with the education and training for LMs, including California requirements. Ms. Breglia discussed the Midwifery Education and Accreditation Council and North America Registry of Midwives in relation to exams and competencies for LMs.

Ms. Breglia discussed California regulations specific to VBAC. Ms. Breglia also discussed midwives' practice and role in prenatal care, labor, and birth. Ms. Breglia reviewed studies on VBAC performed at homes with LMs and VBAC performed at hospitals.

Dr. Hawkins commented on Ms. Breglia's data about women who are transferred to hospitals and give birth via VBAC. Dr. Hawkins asked if that means the LMs are just more cautious and also asked about the process of having a physician available at a hospital.

Ms. Breglia explained that the law requires hospitals to have physicians available for laboring women. Ms. Breglia also explained that laboring women are usually transferred to hospitals when they become high risk. Ms. Breglia discussed the difficulty in finding physicians and hospitals to accept late-term pregnant women who were previously under the care of an LM.

Dr. Thorp commented on the positive statistics for VBAC and asked if LMs are allowed to perform VBACs at home under current law.

Ms. Breglia commented that LMs aren't restricted from it.

Dr. Thorp asked if the California and American Colleges of Obstetrics and Gynecology are supportive of LM's practice without physician supervision.

Ms. Breglia replied that they've allowed it because it had never been workable due to liability issues.

Dr. Thorp asked why malpractice companies would not want obstetrics and gynecology doctors assisting LMs.

Ms. Breglia commented that she believes it's the fear of increased liability, saying the medical model of care does not see home births as safe.

Dr. Lewis asked if a woman who wants to have a home birth has better access to an LM than on obstetrician.

Ms. Breglia answered, "Yes".

Dr. Lewis asked if that meant their prenatal care was better.

Ms. Breglia again answered, "Yes".

Dr. Lewis asked about a scenario where an LM has not established a working relationship with a physician or hospital and is assisting in a home birth when the situation becomes high risk.

Ms. Breglia commented that midwives generally practice within a certain area, so they tend to have a relationship with local hospitals. Ms. Breglia continued, saying they put together an emergency care plan, which includes hospital information, and transportation is usually initiated before a complication manifests and the hospital is contacted.

Dr. Lewis commented that it seems malpractice insurance companies would welcome this type of prenatal care.

Mr. Watkins commented that the medical model is profit driven and that LMs are on the outside of that system, saying that the intentional consequence is that LMs got better at their practice. Mr. Watkins also commented on the relationship and communication between LMs and their patients.

Ms. Breglia thanked Mr. Watkins and agreed with him.

Ms. Lubiano asked to confirm a statistic given during the presentation.

Ms. Breglia confirmed the statistic.

Ms. Lubiano asked what *success* meant when Ms. Breglia spoke of success rates.

Ms. Breglia replied that it means a vaginal delivery without uterine ruptures and the outcomes were good.

Ms. Lubiano asked if the work of LMs is covered by health insurance.

Ms. Breglia commented that they get paid by out-of-network rates by PPOs and that very few midwives, if any, are in HMO networks, and Medi-Cal covers LMs.

Ms. Pines asked for comments from the public.

Ms. Rhee commented that the presentation was informative but she is disappointed that there was no mention of black mothers.

Ms. Davis commented that the managed care health plans do not have LMs, CNMs, or birthing centers in their networks and they are working with policy makers on those issues. Ms. Davis also commented on black and brown maternal health issues, saying many Medi-Cal beneficiaries cannot access LMs.

Ms. Sparrevohn commented that the 2019 LM annual report will contain a separate section for reporting of VBAC, saying there will be more information available than in previous years. Ms. Sparrevohn stated that there is no data collected for ethnicities and that it would be helpful to have that information.

Ms. Gibson commented that the American College of Obstetricians and Gynecologists has rejected the premise of home births. Ms. Gibson also commented on medical malpractice insurance for LMs and the obstacles faced.

Agenda Item 16 Discussion and Possible Action on Recommendations from the Special Faculty Permit Review Committee

Dr. GnanaDev presented an SFP application for Peter James Goadsby, M.D. from the University of California, Los Angeles (UCLA). Dr. GnanaDev spoke of the applicant's area of expertise, professional history, and awards received. Dr. GnanaDev stated that, if approved by the Board, Dr. Goadsby will hold a full-time faculty position as Professor of Neurology at David Geffen School of Medicine at UCLA. Dr. GnanaDev noted that the Special Faculty Permit Review Committee (SFPRC) recommends approval of Dr. Goadsby for an SFP at UCLA. Dr. GnanaDev asked if there were any questions from the Board. There were none.

Dr. Krauss moved/S: Dr. Lewis

Ms. Pines asked for public comments. Hearing none, Ms. Pines asked Ms. Caldwell to take the roll.

Motion carried 12-0

Dr. GnanaDev presented another SFP application for Juan Carlos Martinez Camarillo, M.D. from the University of Southern California (USC). Dr. GnanaDev spoke of the applicant's area of expertise, professional history, and awards received. Dr. GnanaDev stated that, if approved by the Board, Dr. Martinez Camarillo will hold a full-time faculty position as Associate Professor of Clinical Ophthalmology at UCLA. Dr. GnanaDev noted that the SFPRC recommends approval of Dr. Martinez Camarillo for an SFP at USC. Dr. GnanaDev asked if there were any questions from the Board. There were none.

Dr. Krauss moved/S: Dr. Mahmood

Ms. Pines asked for public comments. There were no comments for this agenda item.

Ms. Pines asked Ms. Caldwell to take the roll.

Motion carried 12-0

Agenda Item 17 Update on the Health Professions Education Foundation

Dr. Hawkins explained what the Health Professions Education Foundation (HPEF) is and what they do, and read their mission statement. Dr. Hawkins shared that he and Dr. GnanaDev sit on the HPEF board and that HPEF is located within the Office of Statewide Health Planning and Development (OSHPD). Dr. Hawkins commented that Governor Newsom appointed Marko Mijic as the new Acting Director at OSHPD and Dr. Nuriel Moghavam as President of the Board of Trustees. Dr. Hawkins reviewed loan and scholarship programs.

Dr. Hawkins asked everyone to spread HPEF's information, invited the public to attend HPEF meetings, and shared HPEF's website.

Ms. Pines asked for comments from the Board members. Hearing none, Ms. Pines asked for comments from the public. There were no public comments.

Agenda Item 18 Discussion and Possible Action on Appointment of a Member to the Health Professions Education Foundation

Ms. Pines stated that Dr. Hawkins would like to be reappointed as a member to HPEF. Ms. Pines asked for a motion.

Dr. Lewis moved/S: Dr. GnanaDev

Ms. Pines asked for Board member comments.

Dr. GnanaDev commented that Dr. Hawkins does an amazing job and is the one to take the notes.

Ms. Pines asked for public comments. Hearing none, Ms. Pines asked Ms. Caldwell to take the roll

Motion carried 12-0

Agenda Item 19 Discussion and Possible Action to Amend Title 16, California Code of Regulations, Sections 1337 and 1379.26 Regarding Continuing Education Programs Offered by the Board

Ms. Webb explained that this proposal is to allow the Board to grant CME credits for programs offered by the Board. Ms. Webb commented that this is important for physicians and LMs who attend the Board's expert training. Ms. Webb also noted a change in the California Association of Midwives name, which would be updated in section 1379.26 of the code. Ms. Webb spoke of the proposed changes and asked for a motion.

Dr. Yip moved/S: Dr. Mahmood

Dr. GnanaDev asked to clarify how a section of the report reads.

Ms. Webb clarified and commented that the wording error is only in the summary, not in the actual proposal.

Dr. Krauss commented that when the FSMB became a CME granting organization, Board members were not allowed to have FSMB reimburse them for expenses incurred while attending their meetings. Dr. Krauss asked, if the Board becomes a CME granting organization, would that interfere with the ability of the Board to reimburse physician Board members for expenses incurred for Board meetings.

Ms. Webb responded that this is a different scenario than with the FSMB.

Ms. Pines asked for public comments. Hearing none, Ms. Pines asked Ms. Caldwell to take the roll

Motion carried 12-0

Agenda Item 20 Presentation on the Standard of Care

Ms. Pines introduced Ms. Castro and summarized her professional history at the AGO.

Ms. Castro explained that the presentation is a high-level overview of the standard of care for physicians in California and provided links for additional information and resources. Ms. Castro continued, saying that the determination of standard of care is critical in enforcement cases.

Ms. Castro commented on the general duty of care and described the general standard of care. Ms. Castro explained that the medical standard of care can also be referred to as the standard of practice, and explained that care between physicians and patients can be long or short term, and can happen in all the various aspects and scenarios of medical care. Ms. Castro explained that the standard of care can evolve over time as science and medical advancements evolve, but that the standard of care applies to the applicable time period.

Ms. Castro reviewed the definitions of gross negligence, simple departure, repeated negligent acts, and incompetence. Ms. Castro also reviewed the elements of expert testimony and the expert opinion foundations and the role the Board has in physician disciplinary outcomes and regulations applicable within the standard of care.

Ms. Castro explained that the Board considers and votes on proposed decisions issued by administrative law judges (ALJ) and issues the final decisions.

Dr. Thorp asked for clarification on terms used during the presentation, saying Ms. Castro spoke of on one standard of care as well as the standard of care that is determined by the medical experts and ALJ.

Ms. Castro commented that there is only one standard of care that matters for decision making and it is decided upon by the presentation of opinions.

Mr. Watkins asked if repeated negligent acts means with one patient or with multiple patients.

Ms. Castro responded that it could be both, and explained that multiple simple departures each stand alone.

Mr. Watkins asked about the applicable standard of care being determined by the community standard of care and the variables given by the different experts.

Ms. Castro commented that the experts are required to have experience in the areas of the physicians that are being judged. Ms. Casted also commented that the standard of care is not higher in university settings than it is in the country, for example, and that the standard of care is in the middle, saying the expectation is physicians are not required to go above the standard and are not allowed to go below the standard.

Mr. Watkins commented that he thought the standard of care was science-based, but it appears to be very experience-based and is subjective.

Ms. Castro commented that the standard of care can evolve and that the standard is judged at the time of the incident and is the same no matter the location.

Dr. Krauss commented that many people think the practice of medicine is a science, but instead it is an art. Dr. Krauss also commented that in the practice of medicine there is subjectivity, which is why the standard of care is not a science but rather a community standard.

Dr. Lewis asked for clarification on a phrase used during the presentation *under similar circumstances*.

Ms. Castro explained that is has to do with doctor-patient interaction, the time and place, and what was at the physician's disposal to use. Ms. Castro gave an example of a doctor in the country with few resources nearby and a doctor in a large hospital both have the same standard of care to recommend the same tests or procedures for patients with the same symptoms or test results.

Dr. Hawkins asked how the death of a patient or a bad outcome is not always disciplined.

Ms. Castro explained that experts must look several factors, including if it made sense for the patient to undergo the procedure, if the patient is in a worse state or has less of a quality of life after the procedure, and if the physician assessed risks and benefits associated with the procedure. Ms. Castro commented that the experts assess if the harm matches the departure from standard of care. Ms. Castro explained that the discipline process of the Board has a preventative component, as well.

Mr. Watkins commented that the information given in Ms. Castro's explanations does not get communicated to the public, which has to do with a lot of the complaints the Board received. Mr. Watkins commented that this may be something the Board can remedy by having this information available.

Ms. Castro commented that there are resources available on the Board's website with this information, they just have to be searched for and read. Ms. Castro also commented on the trainings that are available for the experts as well as Board members.

Ms. Pines thanked Ms. Castro.

Ms. Castro thanked the Board and Board staff and commented on an August 9, 2020, article regarding the standard of care for treating COVID-19 patients.

Ms. Pines asked for comments from the public.

Ms. Rhee shared her thoughts on the AGO lowering the standard to find an expert to agree with physicians.

Mr. Andrist shared his thoughts on the AGO having their own version of standard of care along with his personal experiences.

Ms. Hollingsworth commented that the standard of care is the personal opinion of the experts.

Ms. Monserratt-Ramos wondered how someone could die in a California hospital without the death being investigated. Ms. Monserratt-Ramos commented that she has previously requested material for the public so they know what is needed when filing a complaint.

Agenda Item 21 Update from the Attorney General's Office

Ms. Castro welcomed new staff to the Board and introduced new staff at the AGO. Ms. Castro reviewed the fourth quarter of fiscal year 2019/2020 within the AGO and the Office of Administrative Hearings (OAH), and commented on new ways staff worked due to the pandemic.

Dr. Yip asked if it were possible for the deputy attorneys general to speak with patients regarding their cases in order to increase the understanding of the process.

Ms. Castro responded that they do what they are able to in discussing cases with patients while respecting the attorney-client privilege. Ms. Castro commented that the AGO is there to help where they can to create more confidence and efficiency.

Mr. Watkins asked how staff is coping with their workload during COVID-19.

Ms. Castro commented that they are coping excellently, saying that with staff working at home, the work output has not been effected.

Mr. Watkins commented that many of the cases he reads are short of the guidelines and there seems to be more reprimands. Mr. Watkins commented that the memos he reads coming from the AGO seem to need more sensitivity to the people who were affected, saying that it reflects the attitude of the AGO staff.

Ms. Castro commented that she reviews most of the stipulation letters that go to the Board and they may come across the way Mr. Watkins sees it because it is a legal correspondence. Ms. Castro assured Mr. Watkins that her staff does not have compassion fatigue. Ms. Castro welcomed suggestions to improve the letters, giving an example of a victim impact section.

Mr. Watkins commented that, while he understands it is a legal document, it does not have to include lessening the people who were impacted. Mr. Watkins spoke of a culture change in order to be better and do better.

Dr. Hawkins asked what the effect would be of improved compensation for lawyers within the AGO.

Ms. Castro commented that the hourly rate has not been increased in 12 years and the compensation continues to be below what is accepted for prosecutors. Ms. Castro also commented on the recent state furloughs. Ms. Castro stated that it does not affect her ability to hire and recruit qualified people.

Ms. Pines asked for comments from the public.

Mr. Andrist commented that he does not feel sorry that the hourly rates were not increased. Mr. Andrist also commented on a case involving sexual misconduct from a physician and the outcomes involving the lesser guidelines for discipline, as well as not answering questions from the public regarding this case and others.

Ms. Rhee gave her opinions of Ms. Castro. Ms. Rhee also commented on not hearing from Ms. Lawson. Ms. Rhee called for voluntary medical experts rather than compensating them.

Agenda Item 22 Update from the Health Quality Investigation Unit

Mr. Chriss commented that the HQIU has two investigator vacancies and spoke of SB 425, allowing the HQIU to hire three sworn investigators to handle sexual misconduct cases. Mr. Chriss reviewed the cases the HQIU has completed versus received for fiscal year 2019/2020. Mr. Chriss commented on recommendations and processes to streamline completion times for cases.

Ms. Pines asked for comments from the Board members. Hearing none, Ms. Pines asked for comments from the public.

Ms. Rhee gave her opinions of Mr. Chriss. Ms. Rhee commented that the money given to Mr. Chriss' department is not accounted for.

Dr. Hawkins commented that the times of completion have not changed given the low vacancy rate Mr. Chriss mentioned, and asked what the Board can expect.

Mr. Chriss commented that older cases that have recently closed make the closed-case averages increase. Mr. Chriss continued, saying that more staff are closing cases and the numbers look high, but as they gain additional staff the case completion times will go down.

Agenda Item 23 Update from the Department of Consumer Affairs

Ms. Holmes welcomed Mr. Prasifka and Mr. Varghese, commenting that she is also new to DCA and gave a brief background of her work history. Ms. Holmes gave an update of new executive staff at DCA. Ms. Holmes commented on new budget reports, improving timelines and transparency of regulations, and process improvements and efficiencies in the investigation process.

Ms. Holmes commented DCA's altered work schedules and plans due to COVID-19. Ms. Holmes also commented on waivers issued since COVID-19.

Ms. Pines welcomed Ms. Holmes and asked for comments from Board members. Hearing none, Ms. Pines asked for public comments.

Ms. Rhee introduced herself to Ms. Holmes and commented on Ms. Kirchmeyer.

Agenda Item 24 Election of Officers

Ms. Pines asked for nominations for President. Dr. Krauss nominated Ms. Pines.

Ms. Pines accepted the nomination.

Ms. Pines asked for public comments.

Ms. Rhee commented that if she could nominate and vote, she would also vote for Ms. Pines.

Ms. Pines asked Ms. Caldwell to take the roll.

Nomination supported unanimously (11-0, Lawson absent).

Ms. Pines nominated Dr. Lewis for Vice President.

Dr. Lewis accepted the nomination.

Ms. Pines asked for public comments.

Ms. Rhee commented that she respects Dr. Lewis and voiced her concern about his health.

Ms. Pines asked Ms. Caldwell to take the roll.

Nomination supported unanimously (11-0, Lawson absent).

Ms. Pines asked for nominations for Secretary. Dr. Hawkins nominated Dr. Krauss.

Dr. Krauss accepted the nomination.

Ms. Pines asked for public comments. Hearing none, Ms. Pines asked Ms. Caldwell to take the roll.

Nomination supported unanimously (11-0, Lawson absent).

Agenda Item 25 Future Agenda Items

Dr. Krauss would like an update on telehealth regulations, a review of the outcomes of the SFP program, and a review of the expert witness quality assurance program.

Dr. Hawkins would like an update on PTL and the Death Certificate Project.

Dr. Yip would like a discussion on licensee malpractice insurance.

Ms. Lubiano would like an update on telehealth.

Mr. Watkins would like to build on the sexual misconduct presentation and would also like a presentation from an addiction specialist in the area of substance abuse disorders.

Dr. Thorp would like a discussion on defining the standard of care in relation to treating intractable pain and pharmacies' treatment of these patients.

Dr. Mahmood would also like a discussion on intractable pain and the lack of physicians willing to provide pain management.

Ms. Pines asked for public comments. Hearing none, Ms. Pines adjourned the meeting.

Agenda Item 26 Adjournment

Ms. Pines adjourned the meeting at 3:06 p.m.