Enforcement Monitor Initial Report
Initial Findings and Recommendations

Prepared by
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ALEXANRPM
Risk and Project Management Advisory Services

For
Department of Consumer Affairs
Medical Board of California

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Enforcement Monitor Introduction

Alexan RPM Inc. (Alexan) is a Small Business Enterprise (SBE) that was founded in 2014. The formation of Alexan is the result of the principal's three decades of business experience serving government, healthcare, education, high technology and manufacturing organizations. Alexan predominantly provides a wide range of business and information technology solutions to state and local government clients. Alexan's comprehensive portfolio of services includes: executive advisory, project management, organizational and project assessments, risk management, business process reengineering, quality assurance, data management, cybersecurity, and system development support. An example of Alexan client engagements where business and technical analysis consulting services were provided include:

- California Secretary of State – CAL-ACCESS Replacement System Consulting Services
- California Department of FISCal – Fit Gap Analysis
- California Department of Health Care Services – Provider Application for Validation and Enrollment Independent Verification and Validation
- Office of Systems Integration and California Department of Social Services – Appeals Case Management System Consulting Services
- California Department of Technology – Business Model Assessment, Development, and Implementation Consulting Services

A fundamental differentiator of Alexan is their public-sector acumen and track record for helping organizations address risks and issues that impede the achievement of business objectives. Where Alexan adds value is helping organizations navigate their management and information technology needs by leveraging Alexan's structured methodologies and analysis approach.

Alexan's Monitor (Principal Auditor) for the Medical Board of California's Enforcement Program engagement is a Certified Public Accountant with thirty-five years of California state government experience. The Monitor has performed a variety of financial/performance audits for numerous state organizations where the organizations' operations relative to compliance with the applicable governing statutory/regulatory provisions were evaluated. Additionally, the Monitor has previously directed and managed a diverse audit function (performing over 400 audits), as well as technology initiatives in organizational units ranging from 20 to 300 staff. Examples of engagements where the Monitor performed as an expert auditor, or a fraud and expert witness in formal court proceedings (both criminal and civil) for the California State Controller's Office include:

- California Employment Development Department – Performed the first audit in California government conducted under the Federal Single Audit protocol.
- California Public Employees' Retirement System (CalPERS) – Identified the first significant retirement benefit spiking occurrences resulting in CalPERS initiated civil actions, and transformation of CalPERS automated systems and retirement processes for granting retirement applications.
- California Department of Health Care Services (DHCS) – Performed Medi-Cal compliance and fraud audits that fundamentally restructured the program review, approval, and payment of fee-for-service processes for Medi-Cal claims.

- California Department of Health Care Services – Women, Infants, and Children Program – Performed performance audit that ultimately resulted in restructuring of program operations at DHCS and the State Treasurers Office.
- California Department of Health Care Services – Disproportionate Share Hospital Program – Performed first audit of the federally funded Medicaid program attesting to the federal Centers of Medicare & Medicaid Services (CMS); thus allowing California's continued participation in this program.

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Executive Summary

This Executive Summary section of the Enforcement Monitor Initial Report for the Medical Board of California (MBC or board) enforcement program summarizes initial findings and recommendations. Senate Bill 806 (Roth, Chapter 649, Statutes of 2021) added Business and Professions Code (BPC) Section 2220.01, which mandates an independent enforcement monitor's evaluation of the board's enforcement efforts with specific concentration on the handling and processing of complaints and the timely application of sanctions or discipline imposed on licensees and persons to protect the public.

Alexan RPM (Alexan), the designated enforcement monitor (monitor), began conducting this evaluation on July 13, 2022, and will continue through July 5, 2023, when the Final Report is expected to be issued. The evaluation of the enforcement program includes a review of MBC's initial complaint intake and triage, and investigation by its Complaint Investigation Office (CIO); formal investigations by the Department of Consumer Affairs (DCA) Division of Investigation (DOI) Health Quality Investigation Unit (HQIU); and administrative prosecutorial actions and processes by the Office of the Attorney General (OAG) Health Quality Enforcement Section (HQE). In addition, the monitor is performing an assessment of the technology platforms used in program operations and public reporting relative to complaint administration and adjudication. Based on the work completed to date, this report identifies the monitor's initial findings and recommendations as well as strengths and weaknesses of the board's enforcement program.

Finding 1: Inadequate investigator workforce staffing, resulting in case delays, disruptions, and inconsistent investigations

Prior to July 2014, sworn investigators operated within MBC. As a result of legislation (SB 304), the DOI established its HQIU component, and sworn investigators were moved to HQIU. The monitor reviewed authorized HQIU-related positions, separations and hires over a period of eight (8) years and two (2) months (July 1, 2014, to September 5, 2022) and found high vacancy and staff turnover rates. During this 98-month period, 111 staff separations occurred. Approximately 30% of the 111 separations were due to retirements; approximately 47% transferred to other state organizations; 16% exited state service; and 7% were rejected during the probation period. Based on the monitor's inquiry with staff members, the high vacancy and turnover rate has caused delays in case completion; created disruption among investigators in managing open caseloads; and affected the quality of investigations. Additionally, the high volume of workload has reduced staff morale, leading to continued staff turnover.

The investigative process includes properly compiling and reviewing documentation supporting the facts as well as medical expert opinions to determine if the complaint should result in an actionable outcome against the licensee. When warranted, the MBC transmits completed investigations to the OAG HQE for legal review. HQE determines whether the evidence presented meets the required burden to be accepted for prosecution of an accusation. Therefore, the HQIU function is a critical component of complaint adjudication. Due to the complexity and level of effort required to perform the processes identified, a viable and sustainable workforce with nominal turnover must be maintained.

Medical complaint investigations are complex. These investigations require a high level of technical and investigative skills as well as knowledge of current investigative protocols and expertise in analyzing

complex medical procedures. Having these skills helps to ensure that investigations are accurate, well documented and defendable.

The monitor recommends increasing medical enforcement investigator compensation rates to a level equivalent to that of their counterparts with similar workloads at the Department of Justice. Additionally, the caseload assignment process should be enhanced so that the highest priority of standard of care allegations (resulting in the highest risk to public protection) are assigned to sworn investigators, while the lower priority cases (resulting in lower risk to public protection) are assigned to non-sworn staff members. Doing so will help reduce current caseload assignments to a manageable level.

Finding 2: Lack of structured collaboration between HQIU and HQE during investigation and administrative action phases

From 2006 through 2018, the Vertical Enforcement (VE) model operated based on the recommendation of the 2004/05 monitor review. Prior to VE, the Deputy in District Office (DIDO) program operated from 1997 through 2004. The intent of both programs was early coordination of the activities of attorneys, investigators and other staff members, thereby helping to ensure continuity of teamwork throughout the life of a medical investigation.

During legislative hearings in 2017, the issue of maintaining, modifying or eliminating the VE program was debated. Discussions were held and artifacts were prepared and submitted providing the VE history and divergent views for maintaining, modifying or eliminating VE. In August of 2017, legislation was passed and signed by Governor Edmund G. Brown Jr. providing a date of January 1, 2019, for the sunset of VE. This would allow for further discussion of the VE issue during 2018. While additional discussions were held during 2018, the VE statute was repealed on January 1, 2019, formally ending the VE program.

Medical standards of care cases are complex, multi-faceted and unique to each investigation and subsequent accusation phase(s). The investigation and subsequent administrative actions are inextricably linked; what occurs (or doesn't occur) in an investigation directly influences the subsequent "actionable" events. Consequently, to achieve efficient, effective and intended outcomes in these sequenced processes using distinct professional disciplines require collaborative engagement among all affected parties and entities throughout the investigation process.

The elimination of a formal collaboration process has decreased investigator and prosecutor productivity and efficiency. That is, when a completed investigation is submitted to HQE for accusation, the attorneys are seeing the case for the first time without any knowledge of investigative actions taken. That shortcoming decreases HQE attorney efficiency and effectiveness, thus diminishing their initial understanding of the case. Completed investigations are transmitted to HQE for legal review. When transmittals are missing investigative actions or relevant and/or material evidence, HQE's ability to meet its filing burden is impacted. When evidence is lacking, cases are rejected or returned for supplemental investigation in order to obtain evidence that would allow HQE to accept the matter for prosecution and recommend the filing of a disciplinary matter.

The monitor's analysis disclosed that the number of cases rejected and returned for supplemental investigation has increased since the elimination of VE. This report includes a more detailed discussion of that shortcoming.

The monitor recommends restoration of a more structured collaboration approach between HQIU and HQE, by implementing best practices for investigative and prosecutorial case management. The collaborative process could be developed by instituting a pilot program that partners HQIU and HQE offices in northern and southern parts of the state.

The parties involved in the pilot program (i.e., HQIU investigators and HQE prosecutors), will define the roles and responsibilities, the business process and procedures that will be implemented to ensure that investigators and prosecutors have clearly defined work expectations, identified deliverables and accountability. This pilot program will build a strong working relationship between HQIU and HQE staff based on trust, which is the key ingredient for successful collaboration between the two organizations. Moreover, the monitor recommends codifying this collaborative business model in a Memorandum of Understanding (MOU) to which all three organizations (MBC, HQIU and HQE) sign a formal agreement. MBC, as the administering agency of the medical enforcement program, must approve all MOU provisions.

Finding 3: Shortage of specialized medical experts

During interviews conducted in this review, representatives of all entities involved in the enforcement program stated that the medical expert review is the most critical component of case investigation. The expert determines if a departure of the standard of care has occurred. The HQE to initiate an action depends upon the expert's findings.

The monitor's analysis of the board's use of medical experts disclosed an ongoing shortage of experts in certain medical specialties. The Consultant Expert Management Application (CEMA) system, which administers both medical consultants and medical experts by specialty and availability, provides a seamless automated process for quickly identifying available specialties, as well as assigning and tracking caseloads. The system also designates several specialties that have limited availability. Moreover, HQIU's Expert Procurement Unit (EPU) analysts, who are responsible for assigning most experts, have indicated that approximately 5% to 7% of the cases require the analysts to secure such needed specialties "off-list." This requires working outside the CEMA system when searching for the needed experts.

MBC's Expert Reviewer Program staff, which is responsible for administering the medical expert program, proactively conducts outreach programs for securing additional medical experts, but has had limited success. Furthermore, EPU analysts who secure experts via the "off-list" process are often told by such experts that the program's compensation rates of $150 or $200 per hour are significantly lower than the expert market rate fees of $800 per hour. Based on the monitor's interviews with MBC and EPU staff, this disparity in compensation appears to be a major factor that impedes securing the needed medical experts.

The monitor encourages MBC to conduct a medical expert compensation rate study to determine the level of compensation needed to help hire and retain qualified medical experts. The monitor also recommends development of an outreach program to recruit specialized medical providers capable of presenting recruitment job fairs combined with outreach programs that would involve medical organizations, associations, societies, schools and other applicable entities.

The monitor found that a significant number of medical experts in CEMA are "restricted,"

a term that designates medical experts who need further guidance before they can be authorized to perform medical expert services, or a complaint has been filed with the board against the expert. Further identifying why these experts are on hold allows for developing and enhancing training specifically designed to resolve the noted deficiencies. These additional tailored training supplements should be incorporated within the established training protocols of instructor-led training (either in person or virtually).

Finding 4: Lack of sufficient funding for MBC program operations

Current and projected revenue is not adequate for sustaining medical board program operations, as well as meeting statutory obligations and stated mission and objectives. Approximately 98% of program funding is derived from biennial license renewal fees or initial license fees. However, periodic fee increases authorized via legislation have not occurred relative to increased program expenses.

Funding for the MBC program is derived from licensee fees (both biennial renewal and initial fees). The monitor analyzed the license fee structure from FY 1996 to FY 2022. Annualizing the fee adjustments over this period amounts to approximately a 1.6% increase per year. However, program operational expenses increased at a higher annualized rate. Over the past four (4) fiscal years, expenses increased 15.7%, or at an annualized rate of 3.9%. Many of these increases, such as employee salaries and benefits and billable rates for services by HQIU, OAG and OAH, are outside the control of MBC. Therefore, the 1.6% annualized fee increase places MBC in a risky financial condition and may be at risk for insufficiency in funding to pay for operating expenses.

The monitor reviewed the current MBC Fund Analysis of Program Revenues, Expenditures, and Fund Balance performed by the DCA Budget Office, and the projected fund analysis (i.e., revenues, expenditures, and fund balance) for the next four (4) years, through budget year 2025/26. Current year operations (FY 2022/23) are sustained by a $10 million loan from another program under DCA, and by a proposed loan of $12 million resulting in a projected fund balance of approximately $2.5 million.

For FY 2023/24, the $10 million loan is payable, and an additional proposed loan of $27 million would result in a projected fund balance of $4.2 million. For FY 2024/25, the $12 million loan will be repaid, and for FY 2025/26 the $27 million loan will be repaid. This will result in a projected fund balance deficit of $25 million and $44.6 million, respectively.

License fee increases have been proposed and approved by the board every year since January 2020. Legislative budget approval was requested after the board's approval. Effective January 1, 2022, the initial biennial license fee increased from $783 to $863, which was based on a proposed increase of $1,150. A licensee fee increase is again being proposed by MBC in the Spring 2023 legislative session to support current and future years' program operations. The proposed increase is based on the current and projected fund balance deficit. If such increases do not fully materialize, additional loans and/or significant reductions in program operations will be implemented.

To overcome the structural funding imbalance, the monitor recommends establishing a licensee fee funding model with automatic periodic adjustments tied to a recognized monetary barometer, such as the Consumer Price Index (CPI) or similar index. The mechanism for implementing such adjustments should be studied by MBC with participation from its key stakeholders, then proposed for legislative approval.

Additional Issues Relative to Efficient and Effective Medical Program Enforcement

The monitor has initiated the review of three (3) issues that MBC identified and submitted to the Legislature's Oversight Hearing of the Senate Committee on Business, Professions, and Economic Development on May 6, 2022. These are not identified formal findings in this report, because the essential validation and analysis testing procedures for this review are still underway. These aspects will be discussed more definitively in the monitor's Final Report.

Issue 1: "Clear and convincing proof to a reasonable certainty" vs. "preponderance of evidence"

Issue 2: No pause of the statute of limitations while issuing and enforcing subpoenas

Issue 3: Patient consent for access to medical records

The final report of the monitor may include recommendations, tailored to each identified problem, that may include additional metrics and insight for decisionmakers when considering each of these circumstances.

Review Objectives

The review objectives include the mandates per Senate Bill 806 which codifies in Business and Professions Code (BPC) Section 2220.01 that an independent monitor must be appointed to evaluate the Medical Board's enforcement functions. The monitor must specifically concentrate on the handling and processing of complaints and the timely application of sanctions or discipline imposed on licensees and persons to protect the public, which may include, but not be limited to, the following:

1. The board's disciplinary system and procedures.
2. The consistency of complaint processing and investigation.
3. The timeliness of the disciplinary process, including evaluation of the board's compliance with subdivision (b) of BPC Section 129, and BPC Sections 2220.08 and 2319.
4. Compliance with BPC Section 2229, including deviations from the Manual of Model Disciplinary Orders and Disciplinary Guidelines in the board's application of sanctions or discipline.
5. Sanctions or discipline disproportionately applied to physicians and surgeons of color.
6. Resources allocated for enforcement.
7. Any area that may lead to cost savings and greater effectiveness of the board's enforcement efforts.

Additional review objectives by the contractual scope of work for this review include:

A. Evaluating the recommendations contained in initial and final monitor reports published in November 2004 and November 2005, respectively, assessing if concerns identified then continue to exist today.

B. Evaluating the efficacy of MBC relying on separate entities, over which they have no control, to perform its critical investigatory (DOI/HQIU) and prosecutorial (DOJ/HQE) functions.

C. Evaluating the expert reviewer program ensuring the availability of adequate resources to procure, train and retain qualified expert reviewers.

D. Evaluating legislation relating to prescribing, Controlled Substance Utilization Review and Evaluation System (CURES), medical records acquisition and cooperating with the board, and identifying persistent obstacles that inhibit timely procurement of data required for an investigation of a complaint to move forward within the time frames per BPC Section 2319.

E. Evaluating public disclosure-related laws that hinder MBC's ability to communicate transparently with consumers and complainants.

Consequently, the monitor's report analyzing the MBC's enforcement process incorporates the three (3) segments of complaint, investigation, and adjudication or discipline. The monitor report is structured with the following four (4) sections: Complaint Process; Investigation and Discipline Process; Administrative and Finance; and Information Technology Systems.

Items not covered in this report will be addressed in the final report that the monitor expects to release before July 5, 2023.

SECTION 1:
COMPLAINT PROCESS

Introduction

The MBC enforcement program is organ-izationally structured into four (4) program areas that involve external state agencies:

- MBC's Central Complaint Intake Unit (CCU) conducts an initial complaint assessment and its Complaint Investigation Office (CIO) further investigates certain complaint types.
- DCA's Division of Investigation (DOI)/ Health Quality Investigation Unit (HQIU) responds to complaints requiring services of sworn investigators.
- Office of Attorney General (OAG) Health Quality Enforcement Section (HQE) represents the board's executive director in administrative actions, including those brought before the Office of Administrative Hearings (OAH). HQE recommends proposed settlement recommendations to the MBC's Panel A or B for adoption, modification, or rejection with direction to take the matter to trial. The board is the final arbiter of all such settlement recommendations.
- Office of Administrative Hearings (OAH) provides Administrative Law Judge (ALJ) services through the administrative hearing protocol, rendering proposed decisions; such decisions are then presented to the MBC's Panel A or B for adoption or modification. The board is the final arbiter of all such actions.

All complaint dispositions are tracked in MBC's licensing and enforcement database, BreEZe, complemented with the Cognos analytic reporting tool known as QBIRT (Quality Business Interactive Reporting Tool). A variety of reports are generated in QBIRT for both program management and staff personnel and public reporting. These reports are used to administer enforcement activities and for publishing a series of metrics found in the MBC Annual Report and on its website informing the public of complaint activities and outcomes. The MBC is one of 18 (eighteen) DCA boards and bureaus using BreEZe in administering its programmatic and reporting activities. The MBC Information Systems Branch (ISB) staff actively uses QBIRT, which performs comparative analysis and reporting.

Scope

The scope of the monitor review for the complaint process component encompasses items 1, 2, 3, 6, 7 and E listed in the Review Objectives section (above), including the methods of complaint intake and their evaluation for both the proper categorization of complaints (determining subsequent actions) and the timely response to complainants who are identified.

Analysis

The complaint multistep process was documented and analyzed from artifacts that MBC, HQIU and HQE supplied. This analysis was complemented with a series of interviews with management and staff members from MBC HQIU and HQE. The monitor analysis incorporated a review of the protocols, processes and procedures that each organization employed relative to the applicable Business and Professions Code (BPC) requirements.

The MBC consists of an Executive Unit, an Administrative Unit (budget, procurement, accounting, human resources and information technology), a Licensing Program, and an Enforcement Program. The Enforcement Program comprises four (4) units: Central Complaint Unit, Discipline Coordination Unit, Complaint Investigation Office and the Probation Monitoring Unit. To gain a full understanding of the MBC complaint process, the monitor documented the detailed processes

that these four units employ, as shown in the following outline:

Central Complaint Unit (CCU)

CCU Structure and Staffing:

The CCU, which is authorized with 38.5 positions, is structured as follows:

- Operations
  - A Staff Services Manager II, with three (3) Manager I staff members, supervising 29 (twenty-nine) analysts who perform initial complaint intake, assessment and complainant response functions, follow up with subsequent analysis, submit medical records requests, coordinate CCU medical consultants, and determine handoff to HQIU or CIO for subsequent complaint investigation
- Chief Medical Consultant
  - A retained medical doctor providing expert medical consultation to CCU management on complaint issues
- Expert Reviewer Program and Medical Consultant Program
  - Administers and maintains all contracted medical doctors for consulting and/or expert review services

Complaint Reporting:

The CCU processes are multi-faceted, complex and time sensitive. CCU receives approximately 10,000 (ten thousand) complaints annually, falling into two general categories:

- Voluntary
  - Received from patients, family members, interested parties, the media, or anonymous sources.
- Required Reporting[01] from:
  - Insurance companies
  - Governmental agencies self-insuring licensees
  - Licensed health care facilities/peer review body
  - State agencies
  - County coroners
  - District attorneys, city attorneys or other prosecution officials or agencies
  - Licensee or licensee's counsel

All complaints, when initially received, are recorded in BreEZe. Staff members then use detailed coding to help track a complaint's disposition throughout the complaint life cycle. Each complaint in BreEZe includes scanned documents that contain supporting information.

Complaint Classification and Valuation:

When complaints are initially reviewed, they are classified into one of the following seven (7) complaint categories that include a listing of corresponding actions performed by CCU analysts:

- Fraud
- Health and Safety
  - Allegations of excessive prescribing or sale of dangerous drugs
- Non-Jurisdictional
  - Allegations fall outside the authority of the MBC.
  - The appropriate jurisdiction is determined, and complaint is referred to the appropriate agency.
  - These non-jurisdictional complaints are then compiled and included in the annual report's Unactionable Complaint breakdown (which also includes redundant complaints and insufficient information complaints that are usually anonymous, thereby rendering staff members unable to independently corroborate).

01 Required Reporting per BPC Sections 801, 801.01, 801.1, 802, 802.1, 802.5, 803.5, 803.6, 805, 805.01, 805.8

- Gross Negligence or Incompetence
  - Allegations in this category are related to the quality of care that the licensee performs.
  - Obtain patient consent prior to requesting patient medical records from licensee; conduct subsequent follow-up for patient non-responses. Non-responses result in cessation of complaint evaluation; however, subpoena process may be employed when warranted Complainant non-responses are tracked and reported.
  - Request patient medical records from licensee with other relevant information (e.g., records from subsequent treating physician(s). With records, obtain written summary from licensee.
  - Provide licensee with a summary of the complaint allegations, thereby enabling the licensee to respond appropriately.
  - Review the obtained medical records, and refer to the appropriate CCU Medical Consultant.
  - CCU Medical Consultant evaluation determines if:
    - Complaint proceeds to DOI/HQIU for further investigation.
    - Has insufficient evidence; if so, case is closed, tracked and reported as such.
- Personal Conduct
  - Allegations of licensee self-abuse of drugs or alcohol, conviction of crime, assault, spousal or child abuse, or other infraction.
  - Cases deemed urgent are immediately referred to DOI/HQIU for investigation.
- Unprofessional Conduct
  - Sexual misconduct with patients, failure to release medical records, violations of BPC §805
  - Cases deemed urgent are immediately referred to DOI/HQIU for investigation.
- Unlicensed or Unregistered Practitioners
  - This includes both unlicensed practice and aiding and abetting the unlicensed practice by the licensee.

Complaints are received in the CCU complaint form that can be mailed, recorded online, emailed or reported by telephone. Each complaint is then coded in BreEZe by receipt type.

Program Operational Strengths within CCU

The CCU over the past three (3) years implemented procedure and process changes that improved the timeliness of acknowledging a complaint within the mandated ten (10) day statutory time frame. These changes simplified the complainant release form for securing medical records; reduced manual processes by scanning and attaching documents in BreEZe; and provided additional reports for managing the capture of complaint information via the BreEZe and QBIRT systems. These improvements include:

- Distribution of complaint intake functions among technicians and analysts
  - More efficient and timely handling of complaint caseload and backlog
- Cessation of assigning office practice and quality of care complaints by geographic region
- Cross-training of all staff members in the various complaint types
- Improved Complainant Authorization Forms
- Improved Management Reports

- Cite and Fine Inventory Report
- Matrix Reports — weekly and monthly
  - A real-time snapshot informing managers of all pending complaints by assigned staff members, with aging of each case.
- Receipt of online complaints daily; the initial report captured only single-day snapshots, but the current enhanced version displays current day plus three prior days (ensuring that no online complaints in the day filed were missed), with the average number of days to initiate (respond to complainant) tracking compliance within the 10 (ten) day response mandate.

Complainant Response by CCU (10-Day Mandate):

Relative to the CCU process improvements noted above, MBC's staff was asked to generate complaint response data for the most recent six (6) fiscal year periods. Table 1 shows that response times have dropped from a 12-day average during Fiscal Year 2016/17 to a five (5) day average in Fiscal Year 2021/22.

According to CCU management, the noted business process improvements are primarily responsible for lowering complainant response time over the last three (3) years.

Discipline Coordination Unit (DCU)

The DCU has 12 authorized positions, including one (1) Staff Services Manager 1, seven (7) Program Analysts, and three (3) support staff.

The unit processes disciplinary activities, reviews, files and serves discipline documents, and creates public disclosures. The unit coordinates all discipline cases with OAG HQE, the MBC Executive Director, and the OAH ALJ on proposed decisions, and coordinates cases for Panels A and B including board member voting.

Complaint Investigation Office (CIO)

The Complaint Investigation Office (CIO) was established in July 2014. The office is composed of a non-sworn supervising special investigator and non-sworn special investigators who conduct inquiries in cases stemming from:

- Medical malpractice settlement or judgement
- Allegations inappropriate vaccination exemptions are being issued by a physician
- Physicians charged with, or convicted of, a crime
- Physicians petitioning for a reinstatement of a license following

Table 1 – CCU Complaint Response Time

Six-Year Analysis – Average Response Time, in Days		
Fiscal Years 2016/17 to 2021/22		
Fiscal Year	**Number of Complaints Received**	**Average Number of Days to Initiate a Response**
2016/17	9,656	12
2017/18	10,927	11
2018/19	11,459	12
2019/20	10,935	12
2020/21	10,135	6
2021/22	9,973	5

revocation or surrender of such license.

The Board receives mandatory notifications of malpractice settlements or judgments, or physicians charged with or convicted of a crime from a variety of sources including insurers, county, state or federal law enforcement agencies, attorneys, and licensees.

In addition, the CIO has authorized access to the California Department of Justice, Division of California Justice Information Services providing summary arrest, detention, disposition, and personal identification information when submitted by a law enforcement agency or court in California. Such information is tracked via the use of the Criminal Identification and Information (CII) number. This is a valuable tool for the CIO when initially investigating, or monitoring pending criminal dispositions, as actions are pending throughout the stages of court actions.

The CIO incorporates a variety of investigative protocols such as obtaining medical records, conducting subject and witness interviews, and when warranted, the use of MBC medical consultants and experts in evaluating quality of care complaints.

The CIO can close its investigations once it is determined there is not sufficient evidence to support a finding of a violation of the Medical Practice Act. Some of the methods to close an investigation are: determining no violations have occurred, insufficient evidence for continuing the investigation, or the case is beyond the statute of limitation (SOL) date.

Outcomes of investigations can result in referral to:

- HQIU for further field investigation for high-profile cases or if HQIU has an active case relative to the licensee.
- HQE for administrative action/ accusation. The CIO works closely with HQE DAGs in cases it refers, including licensee petitions for reinstatement.

Additionally, CIO has established a “joint case” process with HQE. Recently CIO has utilized the “joint case” process on investigations covering corporate practice of medicine cases and fraud cases, particularly Medicaid (Medi-Cal) monetary fraud cases. DOJ’s Medical Fraud Unit refers cases to the Medical Board for investigation.

The CIO also coordinates its investigative activities with the:

- Discipline Coordination Unit (DCU) offering the issuance of a Pre-Accusation Public Letter of Reprimand.
- Citation and Fine Program, where citations and monetary fines are imposed on licensees found in violation of law or regulation; citations are not discipline, but are public records posted on the MBC website for consumers of medical services.

For the past three fiscal years (2021/22, 2020/21, and 2019/20) per MBC’s Annual Report, CIO:

- opened cases totaling 235, 200, and 383, respectively
- closed cases totaling 263, 320, and 384, respectively

Probation Monitoring Unit (PMU)

PMU Structure and Staffing:

The PMU has 22 authorized positions that are structured as follows:

- Operations
  - The unit operates from three (3) offices: Northern California, Southern California, and LA Metro. Each office is led by a Staff Services Manager I, and Inspectors II and I classifications. Each office has one support staff member.

The PMU was established in 1992 and is responsible for monitoring physicians and surgeons for compliance with their probationary terms. Probation results from a stipulated agreement or an ALJ-proposed decision based on a filed accusation. Additionally, when first licensing a physician or surgeon, probationary conditions ("probationary license") may be imposed.

The PMU staff works with several agencies and institutions, including medical schools, PACE program, biological fluid contractors, and private agencies. Additionally, the unit communicates with an OAG DAG who will assist with probation issues and review cases that the PMU recommends for further disciplinary action after a probation violation, a citation and/or fine, or a public letter of reprimand.

The monitor discipline review will encompass conducting further study of the PMU processes, the results of which will be included in the monitor's Final Report.

Summary of Complaint Activity, Investigative Actions, and Referrals for Actionable Cases

Tables 2, 3 and 4 summarize the total number of MBC Complaints, Investigations and OAG Referrals; Types of Complaint Closures by the CCU; those Received and Closed; and Processing Time frames within Phases of the Enforcement Process, respectively.[02]

Table 2 lists complaint intake and closure activities, investigations opened and closed, and cases referred to the OAG for comparative purposes. Complaints closed in a year may exceed the number of complaints received in the same year, because complaints closed could also include complaints from a prior year.

Table 3 lists complaint closure types for the past two fiscal years by percentage indicating how complaints are closed. The adoption of the QBIRT analytic tool by ISB provides for this additional detailed reporting.

Table 4 reflects the number of days to complete enforcement processing within each phase of the enforcement process.

02 Medical Board of California's annual report FY 2017/18 through FY 2021/22

Table 2 – MBC Complaints, Investigations and OAG Activities

Complaints, Investigations and OAG Activities Fiscal Year Summary					
	Fiscal Year				
CCU Complaint Activity	**2021/22**	**2020/21**	**2019/20**	**2018/19**	**2017/18**
Received	9,943	10,103	10,868	11,407	10,888
Complaints Closed:					
Closed	8,254	10,030	11,131	7,768	7.539
Refer: Cite/Fine	89	45	142	109	146
Refer: Investigation	1,019	1,049	1,630	2,142	1,736
Total Closed or Referred	**9,362**	**11,124**	**12,903**	**10,019**	**9,421**
Investigation Activity					
Opened:					
CIO	235	200	383	487	270
HQIU	814	863	1,573	1,057	1,357
Total Opened	**1,049**	**1,063**	**1,956**	**1,544**	**1,627**
Closed:					
CIO	263	320	384	477	307
HQIU	1,044	1,446	1,305	1,272	1,107
Total Closed	**1,307**	**1,766**	**1,689**	**1,749**	**1,414**
Referrals to OAG:					
From MBC	127	172	137	181	105
From HQIU	375	477	426	457	399
Total Investigations Referred	502	649	563	638	504
Probation Violation Reports	39	41	40	39	40
Criminal Actions (to Local DA)	19	25	36	39	36

Table 3 – Types of Complaint Closures by the Central Complaint Unit (CCU)

Type of Complaint Closure by Fiscal Year				
	Fiscal Year			
CCU Actions for Closing Complaints	2021/22		2020/21	
	Number	Percent	Number	Percent
Non-"Actionable" Complaints:				
Non-Jurisdictional	1,657	20.1%	2,585	25.8%
Redundant Incident	760	9.2%	1,190	11.9%
Inadequate Evidence	522	6.3%	408	4.1%
Total Non-Actionable	**2,939**	**35.6%**	**4,183**	**41.7%**
All Other Closures:				
No Complainant Response	1,656	20.1%	1,551	15.5%
Insufficient Evidence	1,331	16.1%	1,219	12.2%
No Violation	1,923	23.3%	2,702	26.9%
Other Closures	405	4.9%	375	3.7%
Total All Others	**5,315**	**64.4%**	**5,847**	**58.3%**
Total Complaints Closed	**8,254**	**100%**	**10,030**	**100%**

Table 4 – Processing Time Frames Within Phases of the Enforcement Process

Enforcement Processing Time Frames in Days (Median)					
Phase of Enforcement	Fiscal Year				
	2021/22	2020/21	2019/20	2018/19	2017/18
Complaint	55	54	111	122	58
Investigation (non-sworn)	251	283	133	127	251
Investigation (sworn)	633	585	517	502	483
HQE Accusation Filing	62	72	70	55	51
From Filing to Final Disposition	372	351	345	311	285

Complaint Intake Process Case Sample Testing

Compliance Testing Method

The monitor's compliance testing procedures are a form of quality control inspection performed using randomly selected samples from six years of BreEZe complaint case data (FY 2016/17 through 2021/22). The sample cases were examined against predetermined criteria. This process helps determine if processes, systems and rules are being followed in accordance with established standards and guidelines. The following predetermined criteria or attributes were reviewed for each complaint in the monitor's sample:

BPC Section 2220.01 Compliance Analysis:

1. Traced sample cases from system-extracted data to complaints in BreEZe to ensure existence and completeness of population data.
2. Analyzed complaint documentation within BreEZe to determine if case type classification is accurate.
3. Examined complaint intake timeline to determine compliance with the 10-day processing requirements.
4. Examined complaint file for overall processing economy, efficiency and effectiveness throughout the complaint, investigation and discipline procedures.
5. Examined complaint to determine if processes and procedures had been applied consistently during the complaint intake, investigation and discipline functions.

BPC Section 2220.08 Compliance Analysis:

1. Examined complaint file to determine if standard of care issues raised by a complaint were reviewed by one or more medical consultants or experts who had appropriate education, training and expertise.
2. Examined complaint file to determine if patient records relevant to the complaint were obtained and reviewed.
3. Examined complaint file to determine if it included a description of the care and treatment that the physician and surgeon performed. The description should include details of the medical services performed in order to assist the medical consultant or expert in determining if any deviation from the standard of care had occurred. This descriptive material may include, but not be limited to, any additional expert testimony or literature that the physician or surgeon submitted.
4. Examined complaint file to determine if board-requested information (patient records, physician statements, other facts/information) was returned within 10 working days, and if not, if complaints referred for field office investigation were supported by medical consultant evaluations.
5. Examined complaint file to determine if anything impeded the board's ability to seek and obtain an interim suspension order or other emergency relief.

BPC Section 2319 Compliance Analysis:

1. Examined complaint file to determine if no more than six (6) months on average elapsed from the time of complaint filing to completion of an investigation.
2. Examined complaint file to determine if a complex case takes no more than one year on average to investigate.

Sampling Method

The monitor performed complaint compliance testing on a random sample of complaint data (FY 2016/17 through 2021/22). The sample population consisted of all complaints extracted from BreEZe during this period. For purposes of this sample test, complaints were categorized

into seven groups: fraud, non-jurisdictional, health and safety, unlicensed/unregistered, gross negligence/incompetence, personal conduct, and unprofessional conduct. The monitor's compliance testing objective for each complaint category, by year, was to perform substantive compliance testing relative to criteria over a population size that would reduce the risk of non-compliance to a low level.

The monitor utilized a formula-driven sample generator to help ensure randomness of the sample selection within the population being tested. Random sample selection is an important tool to help ensure compliance testing integrity. This method helps confirm that test protocols are uniform and unbiased, allowing for comprehensive and consistent evaluation of the subject matter. The accuracy of the test results as reflective of the total population is enhanced by selecting a random sample from the total population.

A standard sample size was determined based on the number of complaints in the population being tested per year. For each year, complaint categories with a population greater than 200 have a sample of 40 complaints. For smaller complaint populations between 100 and 200, the sample size is 35 complaints, and for complaint populations less than 100, the sample size is 30 complaints.

After the completion of a substantial amount of sample testing, the monitor reduced the size of the unlicensed complaint category sample. This category was the last category of complaints tested and the reduction was based on the results of the samples tested in this category trending in a similar direction as the other complaint categories where a larger sample size was tested. However, further testing of cases in all complaint categories may be performed during the next phase of the monitor's review. Table 5 presents a tabulation of total complaints sampled over the six-year period.

Table 5 – Complaint Case Sample Size

Complaint Type	Case Sample Size
Fraud	200
Non-Jurisdictional	240
Health and Safety	240
Unlicensed or Unregistered	39
Gross Negligence or Incompetence	240
Personal Conduct	240
Unprofessional Conduct	125
Total	**1,324**

Tables 6 through 12 that follow represent a summary of the sample test results for each complaint type category listed in Table 5.

Complaint Sample Testing Conclusion

The monitor's compliance testing, relative to the 12 identified criteria, indicate that the complaint processes and procedures relative to complaint intake and investigation are being followed except for the items listed in Tables 5 through 12. This testing did not include adherence to discipline protocols, because the monitor's assessment of discipline processes is not complete and will continue after the issuance of this report. The sample of complaints relative to standard of care cases will be considered for testing in a subsequent discipline review. The monitor's Final Report will present the results. Additionally, future sample testing will incorporate the following two (2) scenarios:

- Complaints by highest severity level with no imposed discipline
- Complaints of death with no subsequent investigation

Complaint Tracking System Project

Relative to complaint transparency during the complaint's lifecycle, MBC is designing an automated solution (MBC Complaint Tracking System Project). The final solution, when implemented, will offer complainants the ability to access (via a secured means) the status of the complaint; thus, providing key milestone information. Depending on the progress made, this initiative may be further reviewed by the monitor prior to the issuance of its Final Report.

Table 6 – Complaint Sample Testing: Fraud

Compliance Test				
Fiscal Year	Sample Size	Number of cases in which intake exceeded 10-day requirement	Number of cases in which investigation timeline exceeds requirement	Cases for which monitor was unable to locate a file
2016/17	35	10	3	0
2017/18	35	9	0	0
2018/19	35	10	1	0
2019/20	35	6	3	4
2020/21	30	4	0	0
2021/22	30	3	0	0

Table 7 – Complaint Sample Testing: Non-Jurisdictional

Compliance Test		
Fiscal Year	**Sample Size**	**Number of cases for which intake exceeded 10-day requirement**
2016/17	40	10
2017/18	40	6
2018/19	40	11
2019/20	40	10
2020/21	40	3
2021/22	40	5

Table 8 – Complaint Sample Testing: Health and Safety

Compliance Test			
Fiscal Year	**Sample Size**	**Number of cases for which intake exceeded 10-day requirement**	**Number of cases for which investigation timeline exceeds requirement**
2016/17	40	1	8
2017/18	40	2	8
2018/19	40	7	5
2019/20	40	3	4
2020/21	40	3	3
2021/22	40	0	4

Table 9 – Complaint Sample Testing: Unlicensed or Unregistered

Compliance Test			
Fiscal Year	**Sample Size**	**Number of cases for which intake exceeded 10-day requirement**	**Number of cases for which investigation timeline exceeds requirement**
2016/17	14	3	1
2017/18	5	1	2
2018/19	5	1	1
2019/20	5	0	1
2020/21	5	0	1
2021/22	5	0	0

Table 10 – Complaint Sample Testing: Gross Negligence or Incompetence

Compliance Test			
Fiscal Year	**Sample Size**	**Number of cases for which intake exceeded 10-day requirement**	**Number of cases for which investigation timeline exceeds requirement**
2016/17	40	5	0
2017/18	40	5	2
2018/19	40	7	2
2019/20	40	4	0
2020/21	40	1	2
2021/22	40	1	0

Table 11 – Complaint Sample Testing: Personal Conduct

Compliance Test			
Fiscal Year	**Sample Size**	**Number of cases for which intake exceeded 10-day requirement**	**Number of cases for which investigation timeline exceeds requirement**
2016/17	40	5	2
201718	40	2	5
2018/19	40	1	3
2019/20	40	1	2
2020/21	40	1	3
2021/22	40	1	2

Table 12 – Complaint Sample Testing: Unprofessional Conduct

Compliance Test			
Fiscal Year	**Sample Size**	**Number of cases for which intake exceeded 10-day requirement**	**Number of cases for which investigation timeline exceeds requirement**
2016/17	25	0	0
2017/18	20	1	3
2018/19	20	0	1
2019/20	20	0	1
2020/21	20	1	2
2021/22	20	1	0

SECTION 2: INVESTIGATION AND DISCIPLINE PROCESS

Introduction

DCA established its DOI in 1961, providing centralized investigative services for the various regulatory boards, bureaus, programs, committees and commissions within DCA. Section 830.3(a) of the California Penal Code designates DOI investigators as sworn peace officers performing the full range of peace officer duties and responsibilities. DOI consists of two primary investigative units: the Investigation and Enforcement Unit (IEU) and the Health Quality Investigation Unit (HQIU), serving the boards and bureaus under DCA.

The HQIU was established in July 2014 per Senate Bill 304 (Lieu, Chapter 515); this legislation transferred all investigative staff members from the MBC to DOI HQIU. HQIU is responsible for the sworn law enforcement investigation services for the:

- Medical Board of California
- Podiatric Medical Board of California
- Osteopathic Medical Board of California
- Physician Assistant Board

The relationship between the HQIU and the MBC is codified in a Memorandum of Understanding (MOU) as executed by MBC and DCA, establishing the protocols for the investigative process, the roles and responsibilities of such, and the sharing of information between DOI HQIU and MBC. MBC funds the HQIU operations relative to its peace officers, medical consultants and support staff. For HQIU investigative work performed for the other three boards (PMB, OMB and PAB), MBC is reimbursed by these boards for the costs of such work.

HQIU operates 13 field offices statewide, in Northern and Southern California, the Bay Area, and the Central Valley.

DCA's BreEZe case management system is the system of record that HQIU uses to capture the disposition of all complaint activity throughout the complaint life cycle, from the initial receipt, through the investigation and discipline stages (if so warranted). Consequently, investigative milestone activities are tracked in BreEZe.

Additionally, a BreEZe enhancement that took effect beginning in January 2022 enabled incorporation of investigator activity time tracking; investigators record hours worked by complaint case activities. This function formally tracks investigator work for the MBC, as well as for the other three boards. Consequently, such time tracking of the investigator work for the other boards is the basis for MBC investigator cost recovery from these three (3) other boards.

OAG's HQE is one of nine (9) sections of the OAG Division of Civil Law. HQE administers disciplinary actions against state-licensed physicians and other health-related licensees, which involve both administrative and trial court proceedings. The monitor, which documented the processes of HQE's interactions with MBC, will conduct its review of the administrative actions and outcomes during the subsequent discipline process review, and will be incorporated in the Final Report from the monitor.

Scope

The scope of the monitor's investigative review are items 2, 3, 6 and 7 listed in the Review Objectives on page 5 of this report.

The investigative complaint process is inextricably linked with both the initial CCU complaint intake and evaluation and the subsequent HQE administrative actions resulting directly from investigatory outcomes. Consequently, the monitor analyzed and reported on the HQIU's investigation processes and procedures and its interactions with HQE. Strengths and weaknesses are identified within the following Analysis, Findings and Recommendations section.

Analysis, Findings and Recommendations

In order to evaluate the operational aspects of enforcement investigation relative to the above criteria including efficiency and effectiveness, the monitor obtained, reviewed and evaluated the following materials:

- DOI Policy Manual, March 2018
- DOI Best Practices for DOI HQIU Investigators, June 2019
- DOI HQIU Quality of Care Procedures, February 2020
- DOI HQIU Subpoena Process, February 2020
- DOI HQIU Prescription Case Procedures, February 2020
- DOI HQIU Impairment Case Procedures, February 2020
- MBC Expert Reviewer Guidelines, March 2022
- DOI Procedures for DOI Investigators, Appendix 1:
  - QBIRT Guide HQIU Inventory Report
  - The Cloud-based Investigator Case File Guide
  - Investigator Caseload Report Guide
  - Bloodborne Pathogen Forms
- DOI Procedures for DOI Investigators, Appendix 2:
  - Administrative and Criminal Investigator Guidelines, 2016
  - Controlled Substance Prescribing Guidelines, 2014
  - Controlled Substance Prescribing Guidelines, Pre-2014
  - Cannabis Recommended Guidelines, April 2018
  - Intractable Pain Act
  - CURES 2.0 Manual
  - CEMA Guide and Printing Instructions, September 2017
  - Marsy's Card, July 2018
  - Sexual Assault Bill of Rights, April 2018
- DOI Procedures for DOI Investigators, Appendix 3:
  - Tactical OPS Plan and Checklist
  - TR-100 – Citation Correction
  - Federal LE Participation – DCA, May 2017
  - ENF-77 – Outstanding Warrant Due Diligence, March 2014
- DOI Procedures for DOI Investigators, Appendix 4:
  - CLETS – ENF – 48 and Third-Party Notification, April 2018
  - CLETS – DOJ PPP Manual, July 2017
  - CLETS – ORI List, September 2017
  - Criminal Action Reports, December 2014
- DOI Procedures for DOI Investigators, Appendix 5:
  - Child Abuse Acknowledgement & Report (SS-8572)

The monitor conducted structured interviews with the Deputy Chief of DOI HQIU (now Chief of DOI), Field Commanders, Field Supervising Investigators, Field Investigators and former HQIU Investigators. The monitor's analysis identified investigation program operational strengths and weaknesses.

Program Operational Strengths

Strength 1: Well-Documented Policies and Procedures

HQIU has developed and implemented, as identified above in the scope, a series of detailed procedures. The procedures

provide investigative staff the direction, appropriate protocols and recommended actions for the situations encountered when conducting field investigations, and the use of district medical consultants and medical experts relative to complaints potentially resulting in administrative and/or criminal actions.

Of particular note is the Best Practices for DOI HQIU Investigators, which is a 154-page guide detailing investigative practices and techniques specifically tailored to MBC complaints. The guide is composed of 13 Sections and 22 Appendices.

1. Each of the 13 Sections outlines a specific type of medical investigation complaint, including the:
   a. Description and background of the complaint type (what it represents)
   b. Governing authorities (e.g., BPC, Health and Safety, Penal Code, California Code of Regulations)
   c. Definitions
   d. Identified resources
   e. Recommended investigative steps, identifying in very specific detail the sequenced actions to be taken during the investigation
2. Each of the 22 Appendices provides additional information, interview techniques, protocols, procedures, evidence gathering and more relative to specific investigative steps gleaned over a period of years to assist investigators in efficiently and effectively conducting their cases. Topics include: initial complaint review; medical record review; documenting previous complaints, investigations and disciplines; case file organization; dealing with medical consultants; identifying potential witnesses; timely processing of cases; reports from DMV, Civil Index and DOJ Criminal Identification and Information (CII); factors in fraud; prescription investigations; and sexual misconduct investigations.

HQIU management emphasizes "continuous improvement" in maintaining its policy and procedures manuals, and corresponding investigator training programs. HQIU is currently updating this Best Practices guide using a seasoned commander reviewing and modifying the contents consistent with current medical investigation protocols and processes, in conjunction with feedback from HQIU's Continuous Improvement Team. The draft when completed will be reviewed by supervisors and investigators before finalization.

Other procedure guides focus specifically on complaint types, including Quality of Care, Prescribing and Impairment. Additional documents present guidelines for expert reviewers and subpoena preparation and service.

Strength 2: Implementation of HQIU's "Expert Procurement Unit"

In October 2020, HQIU established its Expert Procurement Unit (EPU), thereby centralizing, coordinating and administering the medical expert reviews for all 13 investigative district offices. Prior to this, each investigator selected and coordinated medical expert reviews. However, EPU does not coordinate three types of cases: criminal, section 820 cases (evaluations due to mental or physical illness affecting competency) and cases in which the statute of limitations (SOL) will expire within 90 days or less. For each of these cases, the field investigator continues coordinating medical expert reviews.

Centralizing this unit with a dedicated team of analysts has brought consistency, uniformity and a better alignment of cases with the appropriate medical specialists available via the CEMA system. Furthermore, these EPU analysts allow sworn investiga-

tors to focus on investigative matters rather than spend time securing medical expert services. HQIU investigators, especially with vacancy rates, have significant caseloads; this alleviates investigators from performing administrative functions.

Another significant business process improvement of EPU is the quality assurance review of investigative cases before releasing the casework compiled to date to the medical expert. EPU reviews cases relative to established criteria, helping to ensure that the report of investigation (ROI) meets standards and has the necessary supporting documents. The review incorporates the following:

- ROI's Face Page, focusing on very specific criteria, including:
  - Using the current template with all headings completed
  - Ensuring that prior discipline is accurately captured, with beginning and ending time periods
  - Capturing the appropriate billing codes for the various HQIU clients (Allied Health Boards)
  - Determining if charging sections are both plausible and aligned with the type of case
- Complaint, its evidentiary items and witnesses, addressed in the ROI
- Case synopsis, properly summarizing the complaint and the investigative steps taken
- Investigation narrative, assignment of multiple investigators, actions taken, verification that BreEZe entries and Civil Index were reviewed, SOLs indicated, and that CV with redactions, and Letter of Representation attachments were included
- Complainant interview (more comprehensive than restatement of complaint)
- Medical records, including all releases and/or SDTs (including notice to consumer); medical records by patient in separate attachments; and medical records paginated. EPU handles all medical record certifications, except for subject records. Because field investigators interview the physician, determination of whether all records have been obtained at the time of the interview is important.
- Witness list (consisting of complainant, anyone interviewed, investigators who worked the case, addresses and phone numbers); witness interviews (licensee with board and address of record; critical witness secure with SAT if necessary); and subject interview (follow-up on all pertinent items, witness, relevant documents for MC review); verification that all items were addressed before submitting to expert for review and opinion.
- Verification that all attachments, property and digital files listed in evidence are properly captured and matched in Box.
- For prescribing cases, verify performance of a CURES run, certified pharmacy profiles for each patient, and attempt to interview all patients
- For sexual misconduct cases, determine if other complaints were filed at the current or a former employer; even with employment release for records, still issue SDT for records. Interviewing all who were present when the alleged incident happened is of critical importance; determine if, after the incident, reporting occurred (i.e., police report, or incident reported to others).

- For 805 cases, ensure clear understanding of all issues leading to restrictions.
- Determination if proofreading for accuracy, spelling, grammar took place, along with assurance that the case was ready for EPU, and that all witnesses were interviewed, and documents were obtained.
- Verify existence of ENF-88, EPU Referral Form, all information populated, SOL matches BreEZe; supplemental AGO requests, additional expert request (handled by EPU) v. additional investigation work, all original documents included with supplemental report.
- Box formatting, universal formatting, folders and sub-folders.
- BreEZe information updated, proper coding used, and related functions.
- EPU returns to district office addressing review comments; follow-up communication with EPU and Deputy Chief for clarifications and any additional information needed.

Implementing EPU, centralizing and coordinating medical expert reviews, and establishing a quality control review of complaint investigation reports, documentation and processes before submission to medical experts for review help to ensure consistency, adherence to policies and procedures, completeness, and accuracy relative to completed cases pending medical expert review. This is particularly important in a distributed, decentralized business operation through which in this instance 13 field offices, grouped under three (3) commanders conduct investigations throughout the state. When evaluating organizations relative to the standards of operational internal controls (i.e., ensuring that protocols are followed, thereby consistently obtaining desired outcomes), this is deemed a strong internal control.

Strength 3: Investigator Training, Mini-Academy Program

A four-week training mini-academy provides investigators a detailed review in HQIU operational protocols and a variety of specific investigative procedures and techniques on managing case portfolios; reviewing medical records; interviewing complainants, witnesses and licensees; gathering evidence; administering subpoenas and/or search warrants; understanding corporate unlicensed practices; conducting sexual misconduct investigations; conducting CURES reports and prescription drug investigations, surveillance and undercover operations; and writing investigative reports.

Class curriculums are published in advance and include detailed information on the subject matter to be presented each day. Instructors are experienced HQIU investigators, supervisors, commanders and medical consultants; OAG HQE DAGs and supervising DAGs; and deputies from the Los Angeles County District Attorney's Office. Detailed handouts capturing applicable subject matter are provided to each attendee for use as field investigation reference material.

Strength 4: HQIU Continuous Improvement Team (CIT)

HQIU implemented a process in August 2021 to continually assess investigative processes and procedures and operational protocols for recommended improvements. Monthly team meetings are held with staff members from each of the 13 field offices. Meetings are documented and recommendations are vetted and drafted, then submitted to HQIU management for review. Implemented process improvements resulting from CIT include:

- A standard "Request for Supplemental Investigation" form issued by HQE re-

questing the additional needed investigative actions for completing a case awaiting action by HQE. Prior to the adoption of this form, HQE DAGs e-mailed supplemental investigation requests; e-mails were difficult to track. Requests are now formally issued via this form, which is included in the case file.

- Working with MBC ISB, HQIU developed a monthly QBIRT report identifying all the open OAG supplemental investigation requests, by field office. This monthly report is issued to each field office supervisor who then coordinates with investigators.
- CIT suggested the update to HQIU's Best Practices Manual with a listing of topics for consideration. The update of this manual is currently underway.

Strength 5: Redaction of Information Reducing Potential Bias in Medical Evaluations

An outcome of the California Research Bureau's January 2017 study of potential bias in disciplinary actions resulted in elimination of certain information in documentation provided to medical experts when conducting reviews. Information leading to potential bias that is now redacted before submitting to the experts includes:

- CCU medical consultant memorandums
- Curriculum Vitae (CV)
- Report of Investigation
- 801 report settlements
- 805 peer reviews
- CURES prescriber report
- Transcripts of subject interviews with prohibited information
- Any other documents or attachments

All redactions are documented, helping to ensure retention of a record of what was redacted and withheld from the original material before it was submitted to the expert. The objective of this process is to help ensure that potentially biased information is removed from the package reviewed by the medical expert, thereby minimizing inherent bias in evaluations and opinions.

Program Operational Weaknesses and Recommendations

Finding 1: Inadequate Investigator Work-force Staffing, Resulting in Case Delays, Disruptions and Inconsistent Investigations

Since July 2014, when investigators were transferred to DOI's HQIU, excessive vacancies and continued staff turnover have resulted in:

- Delays in timely case completion because of an insufficiency in authorized workforce members.
- Ongoing disruptions to investigator caseloads because persistent separations require repeated caseload shifting for remaining investigators, causing increased frustration, reduction in morale and burnout.
- Heightened caseloads per investigator due to open cases being inherited by remaining investigators. This problem also leads to frustration, lower morale and burnout.
- Case rework by inheriting investigators as the open and incomplete cases are not necessarily fully documented relative to completed work with supporting evidence.
- Continuous turnover perpetuates staff frustration and morale problems.

Working with the HQIU Chief who coordinated with DOI's HR unit, the monitor obtained information relative to HQIU staff separations and hires by positions. Additionally,

comparable sworn investigator salary costs were compiled for two time periods. Finally, salary costs incurred by HQIU in hiring sworn investigators were compiled. The monitor received the information presented by HQIU HR, then analyzed, compiled and arrayed the data represented in Tables 13 through 20. The monitor's analysis of the information follows Table 20. The tables present information relative to the HQIU workforce, both sworn and non-sworn positions:

- HQIU's current 2022/23 Fiscal Year authorized staffing and existing vacancies
- Eight-year analysis of staffing turnover by position (separations and hires)
- Eight-year analysis of staffing turnover by year (separations and hires)
- Separating employees, transfers, retirements and terminations
- Salary disparity of HQIU sworn investigators to comparable state agency sworn investigators
- Cost of hiring sworn investigators

Table 13 – HQIU Authorized Positions and Vacant Positions

HQIU Sworn and Non-Sworn Staff			
FY 2022/23 – As of November 30, 2022			
Sworn Positions	**Total Approved**	**Number Vacant**	**Percentage**
Sworn Investigators	84	21	25.0%
Sworn Supervisors and Managers	18	5	27.8%
Total Sworn	**102**	**26**	**25.5%**
Non-Sworn Positions			
Special Investigators	3	1	33.0%
SSM I	1	0	0.0%
AGPA	7	0	0.0%
SSA	2	0	0.0%
OT	13	2	15.4%
Medical Consultants	24	0	0.0%
Total Non-Sworn	**50**	**3**	**6.0%**

Table 14 – HQIU Staffing Turnover by Year

Number of Separations and Hires, by Fiscal Year and by Position							
July 1, 2014, Through August 31, 2022							
Year	**Action**	**Invest**	**Sup I**	**Sup II**	**Dep Chief**	**CEA**	**Total**
2014	Separate	4	1	2	0	1	8
	Hire	0	0	0	0	0	0
2015	Separate	20	0	0	1	0	21
	Hire	5	2	1	1	0	9
2016	Separate	13	1	0	0	0	14
	Hire	10	2	1	0	0	13
2017	Separate	5	0	0	0	0	5
	Hire	5	1	0	0	0	6
2018	Separate	12	0	0	0	0	12
	Hire	32	1	0	0	0	33
2019	Separate	11	0	1	0	0	12
	Hire	11	1	1	0	0	13
2020	Separate	5	3	0	0	0	8
	Hire	13	0	0	0	0	13
2021	Separate	13	4	2	0	0	19
	Hire	10	0	1	0	0	11
2022	Separate	12	0	0	0	0	12
	Hire	9	3	1	0	0	13
Totals:	**Separate**	**95**	**9**	**5**	**1**	**1**	**111**
	Hire	**95**	**10**	**5**	**1**	**0**	**111**

Table 15 – HQIU Sworn Staff Reasons for Separations

July 1, 2014, Through August 31, 2022		
Reason for Separation	**Number**	**Percentage**
Transfer to Other State Organizations:		
Alcoholic Beverage Control	2	1.8%
Bureau of Cannabis Control	3	2.7%
CA Department of Corrections and Rehabilitation	14	12.6%
Dental Board	2	1.8%
Department of Motor Vehicles	1	.9%
Department of Justice	10	9.0%
Department of Insurance	5	4.5%
DCA DOI/IEU	15	13.5%
Total Transfers – Other State Organizations	**52**	**46.8%**
All Other Separations:		
Retirement	33	29.7%
Resigned or Left State Service	18	16.2%
Probation Rejection	8	7.2%
Total Other Separations	**59**	**53.2%**
Total All Separations	**111**	**100%**

Table 16 – HQIU Sworn Monthly Salary Compared to Other State Sworn Salaries

Comparable Monthly Sworn Staff Salaries: HQIU vs. Other Organizations			
As of April 2017			
Agency	**Salary**	**Difference**	**Percentage**
DOI/HQIU	$8,017	-	-
Other State Sworn:			
BCC	N/A	-	-
DMV	$8,017	$0	0.0%
Insurance	$8,017	$0	0.0%
ABC	$8,017	$0	0.0%
CDCR	$8,940	$923	11.5%
CDCR	$10,129	$2,112	26.3%
DOJ	$8,414	$397	5.0%

Table 17 – HQIU Sworn Staff Monthly Salary Compared to Other State Sworn Salaries

Comparable Monthly Sworn Staff Salaries: HQIU vs. Other Organizations			
As of September 2022			
Agency	**Salary**	**Difference**	**Percentage**
DOI/HQIU	$9,428	-	-
Other State Sworn Staff:			
BCC	$9,428	$0	0.0%
DMV	$9,428	$0	0.0%
Insurance	$9,428	$0	0.0%
ABC	$9,428	$0	0.0%
CDCR	$10,607	$1,179	12.8%
CDCR	$11,509	$2,081	22.1%
DOJ	$11,088	$1,660	17.6%

Table 18 – HQIU Hiring Cost Incurred When Hiring a Sworn Investigator

HQIU Hiring Cost for Sworn Staff	
Hiring Process	**Cost**
Job Posting/RPA	$471
Interview	$1,200
Background:	
Review	$4,080
Psychological	$2,392
Medical	$602
Credit Check	$66
Total Hiring	**$8,811**

Table 19 – Required Sworn Officer Training Cost Incurred Upon Hiring

HQIU Sworn Staff Training, Based on Type of Hire					
New Hire (non-sworn)		Re-Certifying		Sworn, Lateral Transfer In	
Type	**Cost**	**Type**	**Cost**	**Type**	**Cost**
Academy Fee	$4,887	Recertification Fees	$756		
Lodging, per diem	$35,952	Lodging, per diem	$4,495		
Salary During Academy	$15,573	Salary During	$5,070		
Uniform and Equipment	$668	Uniform and Equipment	$280		
FTO Salary	$2,828	FTO Salary	$2,828	FTO Salary	$2,828
Instructor Fee	$1,000	Instructor Fee	$1,000	Instructor Fee	$1,000
Total Training	**$60,899**	**Total Training**	**$14,429**	**Total Training**	**$3,828**
Plus Hiring	$8,811	Plus Hiring	$8,811	Plus Hiring	$8,811
Total Cost	**$69,710**	**Total Cost**	**$23,240**	**Total Cost**	**$12,639**

Table 20 – HQIU Cost Estimate of Hiring and Training 97 Investigators

Costs by the Type of Hire			
Type of Hire	**No. of Hires**	**Cost per Hire**	**Total Cost**
New Hire (non-sworn)	18	$69,710	$1,254,780
Re-Certifying	5	$23,240	$116,200
Lateral Transfer	72	$12,639	$910,008
Total Cost			**$2,280,988**

Summary of Analysis

- Current vacancy rate for the 102 authorized sworn investigator and supervisor and manager positions is 25%.
- Throughout the eight (8) year period:
  - 111 sworn officers separated from HQIU, and 111 individuals were hired into these positions.
  - Separations and hires were, for the most part, consistent throughout the period. Year 2017 had the lowest number of separations and hires; 2018 had the largest number of hires.
- Of the 111 individuals separating over the 8 years:
  - 52 sworn investigators (47%), transferred to other sworn investigator positions in state service; 37 of the 52 transfers relocated to seven (7) other state agencies; and 15 of the transfers stayed with DCA DOI, relocating to the IEU group.
  - 33 sworn officers (30% of the total of 111) retired. Transfers to other agencies were significantly higher than retirements.
- The monitor examined HQIU sworn investigator pay disparity with respect to other state agencies for two years — 2017 and 2022:
  - In 2017, three departments (ABC, DMV and Insurance) were at salary parity with HQIU, and two departments (CDCR and DOJ) paid salaries that were significantly higher, ranging from 5% to 26% greater.
  - In 2022, only CDCR and DOJ paid higher salaries, ranging from 13% to 22%.
- The cost of hiring individuals to fill the sworn investigator vacancies can be significantly different when recruiting new hires who need full academy training to become post-certified and sworn, in contrast to individuals who are already sworn and need re-certification or are fully certified. The cost estimate for recruiting and hiring 95 investigators over the eight-year period is approximately $2.3 million.

Given the systemic sworn investigator turnover, the monitor needed to further understand the dynamics that result in such continuous turnover, particularly given the analysis above showing that almost one-half of the separations were transfers to other investigative positions, and only one-third were due to retirement. The monitor interviewed 18 current and former HQIU staff investigators, supervisors and commanders, asking specifically about staff turnover. That inquiry determined that:

- Timely completion of an investigation is an overriding mandate, yet HQIU has continually encountered difficulty doing so due to a variety of factors not necessarily under the control of an investigator. The pressure to keep cases from aging beyond reasonable time frames is continual (some investigators used the word “relentless”), causing staff fatigue and premature burnout.
- Virtually every seasoned investigator who was interviewed stated that given the complexity, uniqueness, breadth, depth, scope, variables, hurdles and roadblocks encountered with medical enforcement investigations, investigators require three (3) to five (5) years in a position to get “your feet firmly planted” as an investigator experienced in the nuances in completing medical standard of care

cases and determining whether violations occurred. Many indicated that the learning curve is closer to five (5) years than to three (3) years.

- The continued turnover within the investigative staff, month after month, results in:
  - The reassignment of the caseloads of separating investigators to remaining investigators, causing a constant re-prioritizing of investigators' caseload queues
  - Getting up to speed on the completed work of the separating investigator, invariably causing rework and therefore additional delay
  - The continued loss of experienced investigators who have a body of knowledge that evaporates when they depart
- The continual reprioritizing of caseload — as higher priority cases come "in the door" each month, or cases run up against the statute of limitations (SOL) — shift workloads, causing the further aging of cases in an investigator's open caseload queue.
- Termination of the Vertical Enforcement (VE) model with the HQE in 2018 eliminated the collaboration between investigators and prosecutors during an investigation. VE interaction assisted in the planning and execution of an investigation. Almost all investigators who were interviewed indicated that noted problems occurred with the VE program (e.g., too much direction or control by DAGs during investigations, or interacting with too many DAGs as opposed to having one DAG assigned to each district office). However, interaction with a DAG is invaluable during an investigation as a source of advice and feedback for given situations and/or course correction. Such interactions help to ensure that time is not wasted in pursuit of unneeded investigative activities (e.g., interviews, documentation, medical records). Many investigators believe that the lack of collaboration during investigations has led to excessive investigative rework, as evidenced by the number of instances in which HQE first sees cases after completion and submission, only to return numerous cases for supplemental work.
- Excessive caseload per investigator, given the complexity of these investigations.
- Certain "hurdles" when investigating — such as lack of access to records, lack of witness cooperation that results in the issuance of subpoenas, and subsequent subpoena enforcement actions for lack of compliance — take additional time and effort, thereby increasing case aging.
- Pursuit of higher compensation was not the motivating factor for several individuals when separating from HQIU. The primary consideration for many investigators who transferred to sworn positions in other departments was finding a less stressful work environment with a more manageable caseload.

The preceding analysis documenting the 52 former HQIU investigators who transferred to other agencies over the eight (8) year period, together with the compensation differential between HQIU investigators and other departments, indicates that:

- One-half, or 26 of the 52 transferring investigators, relocated to departments in which compensation was at parity with HQIU investigator salaries.

Consequently, it may be inferred that compensation was not the issue.

- Of the remaining 26 transfers, 14 were to CDCR and 10 were to DOJ. Of the 14 investigators who moved to CDCR, the majority previously worked at CDCR; they had transferred into HQIU due to CDCR budget reductions that placed these investigators on the CDCR State Restrictions of Appointment (SROA) list, which helps departments avoid layoffs. Employees have a specific time frame to find a new job once placed on the SROA list. Consequently, return of the 14 investigators to CDCR may distort tabulation of the number transferring for higher compensation, because they returned to their original positions.

Of further significance, the 2004 Enforcement Monitor's Initial Report made reference to the 1990s period during which a 10% investigator vacancy existed, and trained MBC investigators were leaving the board for other agencies that offered higher pay and lower caseloads with less complexity.

Recommendation

In order to overcome this systemic problem of maintaining a viable sworn investigative workforce, reasonably staffed with low staff turnover and low vacancy rates, the monitor offers a twofold recommendation:

- Increase HQIU investigator compensation to be on parity with that paid at OAG.
- Reduce investigator caseloads by assigning only the highest priority cases to the sworn staff, and assigning lower priority cases to non-sworn investigators and/or analysts. While cases are currently prioritized and accordingly assigned, HQIU administrators believe that a portion of assigned cases could be conducted by non-sworn staff members (special investigators and/or analysts), thereby reducing the caseloads of sworn investigators and reducing expenditures. Consequently, the monitor recommends that MBC and HQIU should undertake a further review of caseload prioritization under BPC 2220.05 to determine if the current sworn investigator assignment can be modified. However, adding complaint investigation caseload to the current MBC special investigator and analyst staffing would likely require an increase in authorized positions.

Compensating investigators on par with OAG investigators seems reasonable, given the complexity, the varying types of standard of care cases, the breadth and depth of required investigative protocols and processes, and the potential variables introduced during investigation. Raising compensation levels will likely both increase recruitment and contribute to retention of staff members once they are hired, trained and seasoned.

Finding 2: Lack of Structured Collaboration Between HQIU and HQE During Investigation and Administrative Action Phases

The Vertical Prosecution and Enforcement (VE) model, implemented in 2006 based on the very strong recommendation of the 2004 enforcement monitor, terminated at the end of 2018. Before enacting the VE model, the "Deputy in District Office" (DIDO) program operated from 1997 to 2004. Both programs have the essential ingredient of collaboration necessary for successful, proper and timely outcomes in medical enforcement cases requiring investigation and administrative prosecution.

The monitor understands that the HQIU/HQE Vertical Enforcement (VE) model had both positive features and drawbacks. A review of the 2004/2005 enforcement monitor report provides a foundational

understanding of the VE model. Furthermore, the artifacts prepared and submitted during legislative sessions in 2017 and 2018 provide further VE history and divergent views on maintaining, modifying or eliminating VE.

Since VE's inception in 2006, there has been debate over investigative direction and control by the OAG, both when sworn investigators were under MBC (January 2006 through June 2014) and subsequently under HQIU effective July 2014.

As documented in the California Regulatory Law Reporter, Volume 23, No. 1 (Fall 2017):

- The April 19, 2017, version of Senate Bill 798 called for the outright repeal of Government Code 12529.6 (authorized VE). The analysis of this version of SB 798 supporting the proposed repeal provided: (1) there are still significant working relationship challenges between HQIU and HQE; (2) the fact that the law requires the DAG to "direct" investigations no doubt influences the team approach and may result in the expertise of both the investigator and DAG not being effectively utilized; (3) a March 2016 MBC report on VE showed that MBC has spent $18.6 million to implement the program [since 2006] providing statistical data showing the average investigative timeframe has increased.
- Both the OAG and the Center for Public Interest Law (CPIL), whose Administrative Director Julianne D'Angelo Fellmeth served as MBC Enforcement Program Monitor from 2003 to 2005, opposed the repeal of VE:
- Throughout the spring of 2017, CPIL argued that the use of VE, despite MBC staff opposition and an investigator vacancy rate that ranged from 15% to 25% from 2006 to 2014, actually lowered MBC's average investigative time frame by 30%. CPIL further advanced that VE is not the cause of soaring investigative time frames; instead, the July 2014 transfer of MBC's investigators to HQIU, while well-intended, has caused the investigator vacancy rate in HQIU to skyrocket and has had a devastating effect on the investigative case cycle time.
- In letters dated July 17 and August 25, 2017, the OAG announced its opposition to SB 798 unless amended to eliminate the repeal of the VE statute. The OAG argued that the current language in SB 798 is a serious step backward to the day before inception of the VE program when cases languished, and substandard doctors continued to practice medicine. Before the VE program was implemented, the OAG prosecuted MBC cases based on a record of medical evidence compiled in isolation by MBC investigators through a "hand-off" model with little to no coordination with the OAG's HQE attorneys charged with prosecuting these cases. Additionally, instead of repealing the VE statute, OAG suggested a pilot program whereby HQE would hire investigators and medical consultants to work "under one roof … in collaboration with OAG prosecutors, from start to finish, to prosecute complex MBC cases meriting quick intervention, such as in overprescribing, sexual abuse, repeat offenders, self-prescribing and mental incapacity investigations."

DCA's Division of Investigation (DOI) undertook a survey in March 2016 compiling investigator feedback bringing focus to the VE drawbacks, with investigators asserting that they did not have the ability to direct and control the investigation protocols and processes without clearance from the assigned Deputy Attorney General (DAG).

Because the DAG controlled the tempo of the investigation, completion times were extended due to subject interviews that required the presence of a DAG, introducing scheduling conflicts that often-added months to the timeline. In addition, investigators work with multiple DAGs within their caseloads, at times leading to confusion and inconsistencies among investigative procedures within their caseloads.

At an August 29, 2017 hearing, Senator Jerry Hill, the author of SB 798, announced his decision to eliminate the repeal of the VE language, substituting a date of January 1, 2019, for the sunset of VE. This would allow for further discussion of the VE issue during 2018. While additional discussions were held during 2018, the VE statute terminated on January 1, 2019, ending the VE model.

Since 2019, HQIU and OAG HQE have operated independently of each other. Completed HQIU investigations requiring administrative action are formally submitted to the HQE via approval from MBC's Chief of Enforcement. Under this process, prosecutors that HQE assigned are seeing the case for the first time. During interactions with the monitor, HQE management personnel discussed the multistep process for administrative action cases submitted to HQE. Prosecutors are now reviewing each case without prior knowledge of: (a) the case issues; (b) the evidence obtained, including medical records; (c) the expert's review and opinion; (d) subject and witness interviews; or (e) all other aspects pertaining to the completed report of investigation. According to HQE, this is a time-consuming first step that results in rejection of cases and their return to MBC or return of cases for further investigation, creating delays in prosecuting cases. Based on the monitor's inquiry with MBC staff, cases that are submitted near the end of the statute of limitation period and require additional investigation before an accusation can be filed are rejected and closed, as sufficient time does not exist to complete the supplemental investigation.

Table 21 provides MBC data from the OAG's Annual Reports on Accusations Prosecuted for DCA Client Agencies. For the 5 (five) fiscal years reported, the data provides:

- Accusation matters referred to the Attorney General (Referred)
- Accusation matters rejected for filing by the Attorney General (Rejected)
- Accusation matters for which further investigation was requested by the Attorney General (Returned)

The data represents cases referred to OAG based on investigations conducted by MBC's or DOI's HQIU. These investigations are of three types of MBC regulated licenses: Physicians and Surgeons; Research Psychoanalysts; and Polysomnographic Program. The data is consolidated, not differentiating case activities (e.g., referral, rejection, returned) between MBC and HQIU. The numbers presented are taken directly from the OAG Annual Reports. The percentages in the table were added by the monitor.

The MBC Annual Report also identifies case referrals to the OAG by MBC investigations or HQIU investigations for three fiscal years 2019/20, 2020/21, and 2021/22. The MBC Annual Reports separately reflect referrals for the MBC and HQUI. For this three-year period, approximately 25% of referrals were from MBC investigations and 75% were from HQIU investigations.

Additionally, from the MBC Annual Reports, referrals of Research Psychoanalysts and Polysomnographic licensee investigations over the five (5) fiscal years ranged from 0 to 2. Consequently, 99.9% of referred cases stemmed from investigations of Physicians and Surgeons.

The data from the OAG's report and percentages, as calculated by the monitor, of rejections and returns in Table 21 indicates a significant increase in OAG case rejections or returns for additional field investigation in FYs 2020/21 and 2021/22. Based on this analysis, it appears that the VE program's termination has had a material impact on referred case rejection or return. This condition suggest the need for additional collaboration between investigators and prosecutors. The monitor has not reached a final conclusion as further analysis relative to rejections and returns will be performed before submission of the final report.

Table 22 presents a tabulation of the OAG's Annual Reports on Accusations Prosecuted for DCA Client Agencies' based on HQIU investigations submitted to HQE for the: Osteopathic Medical Board of California; Physician Assistant Board; and the Podiatric Medical Board for the same five (5) year period. The rate of rejection or return for further investigation is comparable to that reflected in Table 21.

In Tables 23 and 24, information compiled from OAG's Annual Reports on Accusations Prosecuted for DCA Client Agencies indicate consistent patterns of case rejection, or returns for further investigation over the five (5) year period; however, the percentages of change are significantly lower than those submitted from HQIU investigations.

Table 23 provides case submissions to OAG from the Dental Board of California and the Board of Registered Nursing.

- For the Dental Board of California, most of the complaints received are investigated by the board's own staff or investigators, some of whom are sworn investigators. Some investigations are performed by the DOI IEU.
- For the Board of Registered Nursing, most complaints received are investigated by the board's own staff of investigators, or are referred to the DOI IEU.

Table 21 – Disposition of MBC Case Submission to HQE

Completed MBC Investigations (MBC and HQIU) Submitted to HQE for Administrative Action										
Compilation of Case Submission by Fiscal Year										
	2017/18		2018/19		2019/20		2020/21		2021/22	
HQE Actions:	No.	%	No.	%	No.	%	No.	%	No.	%
Referred	513	-	604	-	550	-	616	-	469	-
Rejected	7	1.4%	28	4.6%	77	14.0%	124	20.1%	91	19.4%
Returned	19	3.7%	32	5.3%	62	11.3%	87	14.1%	73	15.6%

Table 22 – Disposition of HQIU Case Submissions to HQE

Completed HQIU Investigations Submitted to HQE for Administrative Action										
Osteopathic Medical Board: Compilation of Case Submissions by Fiscal Year										
	2017/18		**2018/19**		**2019/20**		**2020/21**		**2021/22**	
HQE Actions:	**No.**	**%**	**No.**	**%**	**No.**	**%**	**No.**	**%**	**No.**	**%**
Referred	24	-	17	-	12	-	17	-	27	-
Rejected	1	4.2%	1	5.9%	0	0.0%	3	17.6%	5	22.7%
Returned	5	20.8%	2	11.8%	3	25.0%	5	29.4%	5	22.7%
Physician Assistant Board: Compilation of Case Submissions by Fiscal Year										
	2017/18		**2018/19**		**2019/20**		**2020/21**		**2021/22**	
HQE Actions	**No.**	**%**	**No.**	**%**	**No.**	**%**	**No.**	**%**	**No.**	**%**
Referred	24	-	25	-	19	-	25	-	24	-
Rejected	0	0.0%	1	4.0%	0	0.0%	6	24.0%	6	25.0%
Returned	2	8.3%	2	8.0%	3	15.8%	7	28.0%	6	25.0%
Podiatric Medical Board: Compilation of Case Submissions by Fiscal Year										
	2017/18		**2018/19**		**2019/20**		**2020/21**		**2021/22**	
HQE Actions	**No.**	**%**	**No.**	**%**	**No.**	**%**	**No.**	**%**	**No.**	**%**
Referred	22	-	10	-	9	-	13	-	9	-
Rejected	0	0.0%	0	0.0%	0	0.0%	1	7.7%	2	22.2%
Returned	0	0.0%	1	10.0%	2	22.2%	1	7.7%	1	11.1%

Table 23 – Disposition of DOI IEU Case Submissions to OAG

Completed DOI IEU Investigations Submitted to OAG for Administrative Action										
Dental Board: Compilation of Case Submissions by Fiscal Year										
	2017/18		**2018/19**		**2019/20**		**2020/21**		**2021/22**	
OAG Actions:	**No.**	**%**	**No.**	**%**	**No.**	**%**	**No.**	**%**	**No.**	**%**
Referred	110	-	98	-	56	-	118	-	115	-
Rejected	4	3.6%	2	2.0%	1	1.8%	2	1.7%	2	1.7%
Returned	5	4.5%	3	3.1%	6	10.7%	8	6.8%	9	7.8%
Board of Registered Nursing: Compilation of Case Submissions by Fiscal Year										
	2017/18		**2018/19**		**2019/20**		**2020/21**		**2021/22**	
OAG Actions:	**No.**	**%**	**No.**	**%**	**No.**	**%**	**No.**	**%**	**No.**	**%**
Referred	866	-	985	-	855	-	647	-	801	-
Rejected	38	4.4%	56	5.7%	48	5.6%	49	7.6%	40	5.0%
Returned	63	7.3%	66	6.7%	53	6.2%	62	9.6%	98	12.2%

Table 24 – Disposition of Board of Pharmacy Case Submissions to OAG

Board of Pharmacy: Compilation of Case Submission by Fiscal Year										
	2017/18		**2018/19**		**2019/20**		**2020/21**		**2021/22**	
OAG Actions:	**No.**	**%**	**No.**	**%**	**No.**	**%**	**No.**	**%**	**No.**	**%**
Referred	438	-	346	-	372	-	352	-	221	-
Rejected	10	2.3%	8	2.3%	9	2.4%	3	.9%	6	2.7%
Returned	20	4.6%	13	3.8%	24	6.5%	12	3.4%	11	5.0%

Table 24 presents case submissions to OAG from the California State Board of Pharmacy; most complaints received are investigated by the board's own inspectors, who are licensed pharmacists themselves.

The summary of the Vertical Prosecution recommendation in the 2004 monitor's report[03] specifies why collaboration is critical to medical investigations. The monitor considers the report's recommendation just as applicable today as it was in 2004, and highlighted (in italics) key factors in that report's collaboration model:

- *"MBC's hand-off model stands in sharp contrast to the 'vertical prosecution model' widely used in complex white-collar crime and regulatory matters."*
- "This 'hand-off' system is woefully inadequate for complex white-collar crime-type cases of the sort usually handled by MBC — where the subject is highly complex, the facts and legal issues are complicated, and the process a lengthy commitment of time and enthusiasm to achieve a sound result."
- "In many — and perhaps most — other law enforcement agencies *involved in complex matters, prosecutors and investigators work together in teams from the day a case is assigned for investigation,* in a process known as the 'vertical prosecution model' for enforcement actions. *The vertical prosecution model is based on the realization that this process is an inherently legal one:* The purpose of these complex investigations is to prepare cases for trial or other legal disposition — a function which requires legal input, and which benefits from having that guidance and assistance from its inception."
- "A number of different organizational structures or formats can be used to achieve the benefits of vertical prosecution. However, *the essential elements of any such model are early coordination of the efforts of attorneys, investigators and other staff; continuity of teamwork throughout the life of a case; mutual respect for the importance of the professional contributions of both attorneys and investigators; and early designation of trial counsel."*
- "The precise implementation of these essential elements is flexible. For example, this model is generally best implemented by an organization structure where the attorney and investigator staff are employees of the same agency. This approach can also succeed where the team members work for different organizations."

The Deputy in District Office Program (DIDO) was enacted within provisions of GC sections 12529 and 12529.5 [Attorney General, General Powers and Duties, added by Stats. 1990]. The program

03 Medical Board of California, Enforcement Program Monitor, Initial Report, published November 1, 2004, pages ES 20–24

helped HQE with its primary responsibility to prosecute proceedings against licensees and applicants within the jurisdiction of the board. The HQE assigned attorneys who assisted the board with complaint intake and investigations and in directing discipline-related prosecutions. Attorneys were assigned to assist with the evaluation and screening of complaints received through disposition. They also assisted with developing uniform standards and procedures for handling complaints and investigations.

An HQE deputy attorney general was available at each of the working offices, providing consultation and related services in case reviews with intake, investigative and medical advisory staff. Attorneys experienced in medical prosecutions know the kind of evidence necessary in establishing a viable case and what pitfalls are involved if information is not gathered according to existing law. The program's objective was to improve the quality and efficiency of investigations and prosecutions through collaboration, allowing HQE to be fully informed and a case to be sufficiently completed for subsequent administrative action.

Collaboration typically leads to efficient and effective achievement of business objectives, based on the experience of the monitor with evaluating and reporting on business models in which operations are multi-stepped, incorporating sequenced processes in which the outcome of one leads to a second, then to a third and so on. Collaboration is immutable for achieving success: when exercised, expected outcomes most often are achieved; when not, successful outcomes suffer, additional time is expended, and costs incurred rise significantly.

This is true for many business models including those in the legal, accounting, medical, engineering, construction and information technology fields. Information technology serves as a comparable example; designing, developing and activating an information technology system requires many different professional disciplines working in unison across the project's life cycle. Numerous successful implementations as well as spectacular project failures have occurred within various California government agencies. Almost invariably, the autopsies of the failed projects revealed significant breakdowns in collaboration that is required among staff members with the appropriate skillsets at designated stages of the project implementation. Simply stated, the rule of the right people, at the right time, in the right place was repeatedly violated; consequently, outcomes failed.

Recommendation

Medical investigations relative to standard of care cases are complex, multi-faceted, could be highly variable with respect to required course correction, and time-sensitive requiring consultation and rapid decision-making for varied options. Therefore, the monitor recommends the use of a "contemporaneous collaboration" process during case investigation and subsequent administrative action.

The overall collaborative goal is twofold, and is composed of a strategic component (i.e., what to do) and a tactical component (i.e., the execution, or how to do it). Strategizing among the investigator and attorney at the beginning of the case and at the critical investigative milestones will help ensure proper case direction and evidence compilation in an effective manner throughout the case life cycle.

- Therefore, the monitor recommends applying the effective protocols and processes for restoring collaboration between HQIU and HQE. For example, assigning DAGs to specific HQIU district

offices allows for effective and understood working relationships built on trust.

- With the advancement of remote communication and collaboration technology over the past two years (due to the pandemic), the monitor believes that this can be readily accommodated via Microsoft Teams, Zoom, WebEx or comparable applications, saving time and cost of physically locating individuals within district offices.
- The monitor further recommends implementation of a pilot program with two of the HQIU offices and corresponding HQE offices, establishing all working protocols and processes to the satisfaction of both HQIU and HQE, in consultation with MBC. Therefore, seasoned program management and staff members who are involved with medical investigation and litigation should be responsible for analyzing, distilling and agreeing on the collaboration methodology. The type of collaboration may vary by case type, given the variety of cases and their varying complexities. Some cases may require more extensive collaboration throughout the process, while others may require an occasional "touchpoint" meeting at key milestones.
- Additionally, the monitor recommends that once this process change is reviewed, critiqued and accepted, it should be codified to the extent and detail necessary in a Memorandum of Understanding (MOU) between HQIU and HQE; doing so will avoid placing this protocol in statute. In order to implement a viable MOU, the parties involved in the pilot program (i.e., HQIU investigators and HQE prosecutors) will need to work together to define and finalize roles and responsibilities, along with procedures and processes needed to help ensure that this agreement will hold all parties accountable. The pilot program process and the MOU will help build the needed trust for implementing a successful collaboration. The MOU structure would enable the participants to readily modify their working relationship as necessary without legislative action.
- Once the agreed-upon processes are implemented, establish the appropriate key performance indicators (KPIs) at the necessary level of specificity for tracking, monitoring, evaluating and reporting all case activities between the two organizations.

Finding 3: Shortage of Specialized Medical Experts

The opinion of a retained medical expert determines whether a standard of care complaint will result in an actionable case during the complaint's investigative phase. The opinion forms the basis of the accusation initiated by lead prosecutors with OAG HQE for cases deemed to be in violation of the standard of care. The medical expert opinion is the most critical evidential component of the actionable case. HQE's decision to accept a matter for prosecution and draft an accusation depends upon the quality and soundness of the expert's opinion, specifically whether the opinions are credible, unbiased and based on admissible evidence.

HQIU and the MBC Complaint Investigation Office CIO use retained medical experts. HQIU has implemented an Expert Procurement Unit (EPU) that coordinates most investigations requiring medical expert reviews (i.e., three case types are still coordinated by field investigators). Using the Consultant Expert Management Application (CEMA), EPU staff members determine the availability of the appropriate medical specialist for conducting the review. During interviews with MBC and HQIU

enforcement program staff members, the monitor was informed that recruitment and retention of medical experts has been an ongoing problem for several years. Various recruiting programs have been utilized with some success, but securing all the needed specialties has been problematic.

Consequently, the monitor analyzed the current availability of medical experts by extracting from the CEMA database a listing of all doctors, and their current status within the system (active or inactive). When the CEMA system was implemented in 2016, it consolidated the two legacy databases that tracked retained medical consultants and medical experts separately. MBC uses retained medical consultants in the initial complaint triage to determine if further investigative action is warranted. If the medical consultant determines that significant deviations of care standards occurred, the case is referred to investigation; during the investigation, medical experts are retained to register an opinion on the evidence that was obtained (e.g., medical records, subject interviews, witness statements).

Within the CEMA system, medical doctors are categorized as medical experts, medical experts/medical consultants (i.e., can be used in either capacity), or as medical consultants. In addition, the experts or consultants are either active (subject to a contract hold or being flagged) or are inactive (a compliant has been filed against the doctor or MBC has placed a restriction on the doctor). Tables 25 through 29 present the monitor's analysis of CEMA system data as of December 2022, which is summarized as follows:

- Of the 1,313 listed doctors, 1,012 are identified as medical experts.
- Of the 1,012 medical experts:
  - 327 (32.3%) are active with no restriction, and therefore are available for case assignment.
  - 229 (22.6%) are active and can be engaged, provided that the existing contractual arrangement is resolved; the monitor's understanding is that contract "holds" require approximately one week to mitigate.
  - Consequently, 556 of the 1,012 experts, or 54.9%, are available for complaint case review.
  - The remaining 456 experts, or 45.1%, 61 (6.0%) are active but unavailable due to restrictions and 395 (39.1) are inactive.

Table 25 – Contracted Medical Consultants and Medical Experts

Medical Consultants and Experts Administered in CEMA		
As of December 2022		
Within CEMA, Doctors are identified as: • Expert • Expert or Consultant (dual roles) • Consultant		
	Number	**Percentage**
Total Doctors in CEMA – All Classifications	**1,313**	**100%**
Experts	827	63.0%
Expert/Consultants	185	14.1%
Consultant	301	22.9%
Total Number in CEMA	**1,313**	**100%**

Table 26 – Medical Expert-Only Group, and Disposition

Status in CEMA: Active or Inactive		
As of December 2022		
	Number	Percentage
Total Experts in CEMA	**827**	**100%**
Active:		
Active – No Restriction	253	30.5%
Active – On Hold, Invalid Contract	191	23.1%
Active – Flagged	52	6.3%
Total Active	**496**	**59.9%**
Total Inactive	**331**	**40.1%**
Total – Expert Only Group in CEMA	**827**	**100%**

Table 27 – Medical Expert/Consultant Group, and Disposition

Status in CEMA: Active or Inactive		
As of December 2022		
	Number	Percentage
Total Experts/Consultants in CEMA	**185**	**100%**
Active:		
Active – No Restriction	74	40.0%
Active – On Hold, Invalid Contract	38	20.5%
Active – Flagged	9	4.9%
Total Active	**121**	**65.4%**
Total Inactive	**64**	**34.6%**
Total – Experts/Consultants in CEMA	**185**	**100%**

Table 28 – Total of All Medical Experts, and Disposition

Combined Expert Only and Expert/Consultant Designation Status in CEMA – Active or Inactive		
As of December 2022		
	Number	Percentage
Total Experts in CEMA	**1,012**	**100%**
Active:		
Active – No Restriction	327	32.3%
Active – On Hold, Invalid Contract	229	22.6%
Total Available for Expert Review	**556**	**54.9%**
Inactive – total Unavailable Experts for Review	**456**	**45.1%**
Total – Medical Experts in CEMA	**1,012**	**100%**

Table 29 – Consultant Only Group, and Disposition

Status in CEMA - Active or Inactive		
As of December 2022		
	Number	Percentage
Total Consultants in CEMA	**301**	**100%**
Active:		
Active – No Restriction	112	37.2%
Active – On Hold, Invalid Contract	54	17.9%
Active – Flagged	15	5.0%
Total Active	**181**	**60.1%**
Total Inactive	**120**	**39.9%**
Total – Experts/Consultants in CEMA	**301**	**100%**

In Table 30, the monitor further stratifies the 597 available medical experts within the 32 medical specialties used for expert reviews. Each expert is identified by a medical specialty, or multiple specialties, as identified by the medical expert. When assigning cases for expert review, the protocol is to choose a reviewer with the medical specialty that corresponds to the allegations of the complaint.

The following analysis indicates that two (2) or fewer expert reviewers are available for six (6) of the 32 specialties. Five (5) additional specialties have 3 or 4 reviewers available. Consequently, one-third (11 out of 32) of the specialties have a limited number of available expert reviewers.

Table 30 – Medical Experts, Active by Specialty

Status in CEMA – Experts Designated Available, by Specialty	
As of December 2022	
Medical Experts – by Specialty*	**Number Available**
Aerospace Medicine	1
Allergy and Immunology	4
Anesthesiology	42
Colon and Rectal Surgery	4
Dermatology	7
Diagnostic Radiology	23
Emergency Medicine	50
Facial Plastic and Reconstructive Surgery	1
Family Medicine	39
Internal Medicine	122
Neurological Surgery	8
Neurology	15
Neurology w/Special Qualification in Child Neurology	3
Obstetrics and Gynecology	44
Occupational Medicine	1
Ophthalmology	15
Orthopedic Surgery	13
Otolaryngology	9
Pain Medicine	8
Pathology – Anatomic	1
Pathology – Anatomic/Pathology — Clinical	6
Pediatrics	36
Physical Medicine and Rehabilitation	12
Plastic Surgery	14
Psychiatry	51
Public Health and General Preventive Medicine	12
Radiation Oncology	2
Sleep Medicine	1
Surgery	35
Thoracic and Cardiac Surgery	3
Urology	11
Vascular Surgery	4
Total Available	**597**

* Experts are defined as “Available” if the status is “Active – No Restrictions” or “Active – Hold Invalid Contract” as those experts may be used immediately. Additionally, the number of “Active Reviewers by Specialty” will not match the unique number of Experts and Expert Consultants as these individuals may have multiple specialties above in which they are qualified to review complaints.

HQIU's EPU Manager responsible for coordinating medical expert review engagements informed the monitor that retaining and maintaining medical experts in certain specialties and sub-specialties are continually problematic. This has made it difficult to help ensure timely assignment, review and completion of cases.

Since its inception on October 1, 2020, the EPU has independently tracked statistics relative to the activities of its five (5) analysts. As of December 1, 2022, a total of 96 cases are in the EPU; and 41 cases are in the pending expert queue, awaiting assignment. The EPU staff has compiled from its active caseload and extensive interactions with medical doctors statistics that corroborate the difficulty of securing experts over the past two years (see "off-list" discussion below). Table 31 documents the specialties in which the EPU has identified shortages of medical expert reviewers.

Table 31 – EPU Identified Medical Expert Shortages

Medical Expert Shortages by Specialty/Sub-Specialty
• **Pain Medicine/Pain Management Sub-Specialty:** ○ Internal Medicine ○ Family Medicine ○ Physical Medicine and Rehabilitation ○ Anesthesiology
• **Orthopedic Surgery:** ○ Specialists in knees, shoulders and hips
• **Correctional Medicine Sub-Specialties:** ○ Internal Medicine ○ Family Medicine ○ Obstetrics and Gynecology
• **Cardiology Sub-Specialty** (currently, zero active experts)
• **Hematology and Oncology dual certification**
• **Ophthalmology**
• **Internal Medicine** (private practice)

Table 32 – EPU Queue, Cases Waiting for Medical Expert Assignment

Average Number of Days in EPU Queue Waiting Assignment	
As of December 2022	
Analyst	**Number of Days**
Analyst 1	24
Analyst 2	59
Analyst 3	33
Analyst 4	25
Analyst 5	44
EPU Average Case Assignment Days	**35**

The EPU maintains statistics including the Average Days Prior to Expert report tracking; cases awaiting medical expert assignment by each of the unit's five (5) analysts; and calculating the average number of days per analyst caseload. Table 32 reflects the number of days during which cases remained in the EPU queue awaiting medical expert assignment.

Moreover, EPU analysts must use the "off-list" process to secure the services of a particular medical expert specialty not currently available on the CEMA active list. The EPU Manager indicated that this regularly occurs, on average, three (3) to four (4) times per month. The EPU Manager estimates that during the past fiscal year, approximately 5% to 7% of their expert review assignments result from the off-list process. The following highlights examples of EPU experiences:

- Analysts have developed various techniques in attempting to secure needed expert reviewers in underserved specialties, including soliciting colleague referrals from doctors with whom they already work; contacting doctors directly after reaching BreEZe for identified specialties; and ensuring that doctors have no potentially disqualifying element, such as open complaints or existing disciplinary actions or sanctions.
- Securing such services may require weeks or even months. When candidates are identified, analysts work directly with the MBC Expert Reviewer Program staff in securing the contract, establishing the doctor in CEMA, and other required functions. Contract issuance is typically secured within one week.
- When contacting doctors for such expert review services, analysts explain the program's protocols, including the compensation of $200 per hour (for physicians who have completed the MBC medical expert training) or $150 per hour (for physicians who have not undergone that training). Frequently, doctors are surprised about the low MBC medical expert compensation rates and often indicate that when performing equivalent services, they are compensated up to $800 per hour. Consequently, many doctors decline to participate in the expert review program.

The MBC Manager responsible for the Medical Consultant and Expert Reviewer Program described the types of remedial actions that MBC has taken to increase the availability of medical consultants and medical experts, or improve performance by such participants in the program. Table 33 lists those actions, with the dates on which they were initiated.[04]

04 Reviewed documentation provided by the MBC Manager of the MC/ER Program

Table 33 – MBC Actions for Increasing/Improving Medical Consultants and Experts

Remedial Actions Taken by the MBC MC/ER Program	
Date	**Action Initiated**
2018/20	• In-person Expert reviewer training offered twice per year, in Northern and Southern California • Training increased to four (4) time per year (2 in North and 2 in South) • In 2020, converted to virtual training four (4) times per year (quarterly)
April 2021	• Deans of all California Medical Schools contacted via letter requesting assistance advertising the MBC Medical Expert Reviewer Program and/or referring their faculty to serve as expert reviewers. • Program staff contacted professional medical societies and associations for assistance in recruiting doctors for expert reviewers.
November 2021	• Program staff updated expert reviewer guidelines; staff worked with HQIU and HQE, sharing an updated draft for review and comment. • In February 2022, revised guidelines were posted on the MBE website (Expert Reviewer tab)
January 2022	• Staff began updating Guidelines for Prescribing Controlled Substances for Pain; guidelines were last updated in 2014. Medical experts use these guidelines in conducting their evaluations.
February 2022	• Program staff and budget analyst compiled information on expert reviewer expenses, active experts, experts utilized and number of cases reviewed. They also compiled reimbursement rates for expert reviewers in California for expert reviewer tasks.
March 2022	• Program staff developed a survey of the likes and dislikes of medical consultants and experts currently active in the program, and asking if they would recommend participation in the program to colleagues. Information was compiled and submitted to Chief of Enforcement in July 2022.
Aug/Nov 2022	• Program staff working with ISB obtained an extract of licensed MDs without discipline records or complaints. This list was compared to MDs currently in the CEMA database, excluding MDs currently under contact with the program as consultants or experts. An email was then sent to all remaining MDs explaining the program and providing applications to join the program. As of November 2022, the program received approximately 300 completed medical consultant applications and 200 medical expert applications.
Ongoing	• Advertising for medical consultants and experts occurs ongoing in the MBC quarterly newsletter, identifying the needed specialties, or separately identifying the need for mental or physical evaluations.

Recommendation

Given the importance of the initial medical consultant's evaluation when determining if standard of care cases should be formally investigated by HQIU sworn investigators, and the concluding evaluation and opinion rendered by the medical expert which is the basis for an "actionable" case brought by the OAG HQE, maintaining an active group of contracted consultants and experts is a critical element of the enforcement program.

The monitor's discussions with both the MBC and HQIU management and staff indicate the insufficiency of reviewers in certain medical expert specialties and sub-specialties has been an ongoing problem for many years.

The proactive outreach and recruiting measures documented above are commendable and should be continued and expanded. The monitor recommends that when conducting such outreach, the MBC Expert Reviewer Program staff should meet personally with professional medical organizations and associations, because face-to-face presentations enhance the exchange of information, thereby strengthening the understanding of the program, reinforcing the need for such services, and creating opportunities to convince medical doctors to become consultants and experts.

As indicated by the research conducted by the MBC Expert Reviewer Program staff and the frequent feedback that EPU receives from doctors when attempting to secure such services, the financial analysis relative to market-based retained consultant and expert witness fees provides real-time information and justification for the required increase in compensation for such contracted consultants and experts. The current rates of $150 and $200 per hour are clearly inconsistent with market-based rates for such medical expertise, particularly when rendering opinions subject to scrutiny during formal administrative legal proceedings. The compensation for such services needs to approach market-based rates.

Additional Issues Relative to Efficient and Effective Medical Program Enforcement

Issue 1: "Clear and Convincing Proof to a Reasonable Certainty" vs. "Preponderance of Evidence"

MBC contends that the higher standard of proof required in California, when compared to medical board enforcement in 41 (forty-one) other jurisdictions within the nation using the lower proof standard, results in investigations that are needlessly more time consuming and costly. This was one of a series of proposals MBC submitted to the Legislature on January 5, 2022, seeking statutory changes.

On May 6, 2022, before the Oversight Hearing of the Senate Committee on Business, Professions and Economic Development, this proposal to adopt the Preponderance of Evidence standard was presented as Agenda Item #4, indicating "the board is at a significant disadvantage, in comparison to most other medical boards, when attempting to investigate and prosecute a licensee suspected of failing to properly care for their patients or otherwise act in an unprofessional manner" under the current Clear and Convincing standard. The Federation of State Medical Boards, in its "Stand of Proof Overview" study dated August 2022 indicates:

- 44 boards exclusively use the preponderance of evidence standard.
- 10 boards exclusively use a clear and convincing evidence standard.
- 2 boards use a standard that is different from the above.
- 11 boards have standards that vary according to the nature of the violation.

When differences in outcomes could be based only on supposition, such as in this

instance, the monitor didn't perform further analysis comparing MBC's enforcement adjudications to other jurisdictions. Such analysis would also require assistance from the legal profession versed in medical prosecutions and possibly from the Federation of State Medical Boards.

Issue 2: No Pause of the Statute of Limitations While Issuing or Enforcing Subpoenas

MBC contends that refusal to pause running of the statute of limitations (SOL) has a detrimental effect on investigations and subsequent actions. Delays in obtaining documentation and conducting subject or witness interviews compound efforts in compiling, analyzing and completing both investigative and subsequent administrative accusations, in part due to pressure regarding the "clock running out." MBC further indicates that such delays may be purposefully intended to do just that, letting the SOL deadline usurp the investigative process and the actionable outcomes.

An analysis of that contention could be conducted relative to jurisdictions pausing SOL deadlines for subpoena enforcement versus those jurisdictions like California that do not pause SOL; such a study could compare lengths of investigation completions and subsequent actions. Again, this would need the assistance of the investigators, prosecutors and potentially the Federation of State Medical Boards using their compilation of medical enforcement jurisdictions within their national database.

Issue 3: Patient Consent for Access to Medical Records

Without a signed release from the patient, medical records cannot be obtained from a doctor or medical entity, thereby terminating the initial complaint evaluation and any subsequent investigation incorporating a medical expert review. Subpoenas or search warrants may be executed in obtaining such records. However, without securing medical records the complaint is recorded, but suspended, with no further action taken. Consequently, the patient consent requirement may compromise MBC's mission of protecting the public relative to standard of care violations.

However, California ensures an individual's right of privacy and confidentially through statutory and constitutional protections, and has a long history of such protections.

Consequently, further analysis that identifies and quantifies if the lack of access to medical records without consent is a significant problem causing harm to the public is required. The monitor believes that such analysis could be performed; however, it would be time-consuming because individual cases would need to be correlated over multiple time periods.

SECTION 3: ADMINISTRATIVE AND FINANCE

Introduction

Professions that are licensed by the state render a "standing" to the licensed individual, assuring to the public that stated qualifications for such professions have been initially met and continue to be maintained via annual required professional education. Consequently, in administering such licensing and enforcement programs, the Department of Consumer Affairs funding model for sustaining such programs is based on licensee fees; the licensees rather than the taxpayers of the state shall underwrite the costs for the program's operations.

Scope

The scope of the monitor's work in this section is to review the sufficiency of established MBC program funding protocols; to help ensure that program operations are meeting statutory mandates; and to determine if funding objectives are viable and sustainable.

Analysis, Findings, Recommendations

After analyzing historical funding in-formation for MBC program operations, the monitor's report highlights funding deficiencies; the current MBC funding structure; components of the MBC program operations; and the forecasted budgets projections for the next four (4) years (i.e., up through FY 2025/26).

Finding 4: Lack of Sufficient Funding for Maintaining MBC Program Operations.

Current and projected revenue is not adequate for sustaining medical board program operations, as well as meeting statutory obligations and stated mission and objectives. Approximately 98% of program funding is derived from biennial license renewal fees or initial license fees. However, periodic fee increases authorized via legislation have not occurred relative to increased program expenses.

The enforcement monitor's 2004 report identified in detail funding shortages that have placed medical enforcement operations at significant risk, including a recommendation to increase license fees. License fee increases were approved in FY 2006/07. A small fee increase was approved in 2008 but offset by a fee reduction with the elimination of the Diversion Program. License fees were further increased in FY 2021/22.

A review of the board's historical budget and financial records is reflected in Table 34, which shows a summary of biennial licensing fees (renewal and initial).

Table 34 – MBC Physician/Surgeon Licensing Fee Rates, 1996 Through 2022

Biennial Licensing Fee Type and Date/Amounts Changed					
Annualized Percentage Change of Fee Increase over 26 Years					
Fee Type	1996	2006*	2022	26 Year Percentage Change	Annualized Percentage Change
Physician/Surgeon Renewal	$610	$783	$863	41.5%	1.6%
Physician/Surgeon Initial	$610	$783	$863	41.5%	1.6%

• Note: In 2006 there was a fee increase to $790, followed by another increase to $805, then followed by a decrease of $22 due to the elimination of the Diversion Program in 2008. Ultimately this resulted in the $783 fee.

Table 35, summarizing the Medical Board Fund Analysis of Fund Condition, prepared in January 2023 by DCA's Fiscal Operations, presents the Revenue, Expenditures, and Fund Balance for FY 2021/22 (actual) and projected amounts for the following four (4) years. As the fund condition analysis indicates, the current loan of $10 million payable in FY 23/24 and two proposed loans of $12 million and $27 million in FY 2022/23 and FY 2023/24, respectively, sustain current operations, delaying a projected fund deficit of $25 million until FY 2024/25. With the final loan payment of $27 million in FY 2025/26, the projected fund deficit increases to approximately $45 million. Without requested fee increases, a combination of additional loans and operating program reductions will be necessary.

Table 35 – MBC Fund Condition Projected Through FY 2025/26

Schedule of Revenue, Expenditures, and Fund Balance for FY 2021/22 (actual) and Projected Amounts for the Following Four (4) Years					
	Fiscal Year (amounts in thousands)				
Revenue, Expense, Fund Balance	**2021/22**	**2022/23**	**2023/24**	**2024/25**	**2025/26**
Beginning Balance	9,144	6,606	2,567	4,281	(25,326)
Revenues:					
Revenues (fees, permits, penalty)	63,943	66,927	67,202	67,202	67,202
Loan from Fund 0421	10,000				
Proposed Loan from Fund 0421		12,000	27,000		
Loan Repayment			(10,000)	(12,000)	(27,000)
GF transfer per EO E21/2	(2,790)				
Total Resources	80,297	85,533	86,769	59,483	41,876
Expenditures:					
Program Operations	68,788	79,124	79,143	81,517	83,963
Est. Unscheduled Cost Recovery		(1,772)	(1,772)	(1,825)	(1,825)
Supplemental Pension Payment	685	685	685	685	
Statewide Gen Admin (pro rata)	4,218	4,929	4,432	4,432	4,432
Total Expenditures	73,691	82,966	82,488	84,809	86,515
Fund Balance	**6,606**	**2,567**	**4,281**	**(25,326)**	**(44,639)**

Table 36 reflects actual personal services expenditures that the enforcement program incurred in meeting its complaint evaluation and adjudication obligations. The table also identifies program revenues. These costs constitute more than 90% (ninety percent) of annual enforcement costs and have continued to increase well above annual program revenues.

Of particular note, the medical program's OAG HQE expenses increased significantly in FY 2020/21. Effective July 1, 2019, the OAG increased its billing rates for services, as follows:

- Attorney services by 29%, from $170 to $220 per hour
- Paralegal services by 71%, from $120 to $205 per hour
- Auditor/research analyst services by 97%, from $99 to $195 per hour

However, given MBC's fund condition, the effective date was initially pushed back to September 1, 2019. The effective date of such rate increases was again delayed until January 1, 2021, aligning with the anticipated MBC licensee fee increases.

Table 36 – MBC Expenditure Analysis of Select Services Relative to Revenue

Analysis of Service Expenditures (MBC Personal Services, HQIU, HQE, OAH, Witness) Relative to Program Revenue					
Incurred Service Expenses (actual) to Total Program Revenue for Four Years, Including Service Expense Percentage Increase Over Four Years					
	Fiscal Year (amounts in thousands)				
Select Expenditures: Services	**2018/19**	**2019/20**	**2020/21**	**2021/22**	**% Change**
MBC Personal Services	16,523	16,841	16,593	18,819	13.9%
OAG HQE Services:					
Admin Cases	10,156	10,690	14,728	14,115	39.0%
Civil Litigation	1,416	1,780	2,348	2,288	61.6%
General Client Services	1,943	1,354	1,356	1,254	(35.5%)
Total OAG HQE Services	13,515	13,824	18,432	17,657	30.6%
OAH Services	1,606	1,687	2,387	2,590	5.0%
Evidence/Witness	1,949	965	2,237	2,609	33.8%
DOI HQIU Services	19,849	21,836	20,180	21,662	9.1%
Total Service Expenditures	53,442	55,153	59,829	63,337	15.7%
Program Revenue	**59,892**	**59,766**	**59,942**	**63,943**	**6.9%**
	89.2%	**92.3%**	**99.8%**	**99.1%**	-

Recommendation

Professions that are licensed by the state render a "standing" to the licensed individual, helping to ensure that the stated qualifications for such professions have been initially met, and continue to be maintained via annual required professional education. This licensing also confers a vested right to the licensee. Consequently, in administering such licensing and enforcement programs under the Department of Consumer Affairs, the funding model for sustaining such programs is based on licensee fees, and the licensees rather than the taxpayers of the state shall underwrite the costs for the program's operations. Consequently, the monitor recommends retaining this paradigm and discourages offering additional funding from other potential sources.

Furthermore, as documented above, the MBC enforcement program's funding model is structurally problematic because licensing fee increases have been inadequate relative to the program's operating expenses over this same period. Securing loans from other DCA programs to maintain operations is a short-term fix that is not a viable solution. The current fund balance projections demonstrate with clarity that license fee increases are necessary.

Without the appropriate fee increases, securing additional loans will be necessary in the short term in order to continue program operations. However, doing so is not sustainable and will result in operation reductions that may put the paramount objective of public protection at risk. Should that occur, MBC would be forced to analyze and reprioritize its enforcement program objectives to align with its annual program revenue.

Moreover, to overcome this structural funding imbalance, the monitor recommends establishing a licensee funding model with automatic periodic adjustments tied to a recognized monetary barometer, such as the Consumer Price Index (CPI) or similar index. The mechanism for implementing this should be evaluated by MBC with participation by its key stakeholders, then codified in statute.

SECTION 4: INFORMATION TECHNOLOGY SYSTEMS

Introduction

The Department of Consumer Affairs (DCA) maintains its Office of Information Services (OIS), a centralized technology group managing licensing and enforcement databases for DCA's 36 (thirty-six) entities (i.e., boards, bureaus, committee, commission, program). The OIS provides services within units by applications, enterprise technology, infrastructure, client support, enterprise project and information security. The Application Services unit develops and maintains the core licensing and enforcement platforms in DCA's portfolio, including the Consumer Affairs System (CAS), the Applicant Tracking System (ATS), BreEZe, and inLumon. The OIS' Reports and Data Governance Team provides reporting solutions and data analytics tools.

The MBC maintains its own Information Systems Branch (ISB) that establishes and maintains network infrastructure, applications, and help desk/technical support for all MBC operations and employees. The MBC ISB, in furnishing services directly to MBC employees and operations, works both independently and collaboratively with DCA's OIS, particularly with department-wide applications. It is the understanding of the monitor that MBC is one of few DCA entities operating its own information systems unit supporting its programmatic operations. This is yet another indicator of the MBC's program complexity, the varied activities relative to administering medical enforcement, and the breadth and depth of the required reporting, for the public and stakeholders, and for fulfilling the needs of internal MBC program management.

MBC launched on the BreEZe system in 2013, its case management system supporting its licensing and enforcement functions, converting from the previously used CAS system. Among DCA's 36 (thirty-six) entities, 18 (eighteen) utilize the BreEZe system, a commercial "off-the-shelf" (COTS) application[05] for administering, tracking and reporting on their respective licensing and enforcement activities.

In June 2016, MBC began using DCA's IBM Cognos Analytics, a sophisticated data analysis and reporting tool significantly enhancing the reporting capabilities of BreEZe data. DCA has named the Cognos application the Quality Business Interactive Reporting Tool (QBIRT) system. This QBIRT system is integrated with BreEZe, giving staff the ability to produce tailored reporting specific to MBC needs.

MBC's ISB developed and implemented the Consultant Expert Management Application (CEMA) in August 2017; this database combined two legacy databases, the Central Complaint Unit's Medical Consultant database, and the Medical Expert Reviewer database, resulting in one comprehensive system for managing consultants used in complaint evaluations as well as medical experts rendering opinions in HQIU investigations.

Scope

The monitor reviewed these three key applications relative to enforcement program activities — the managing, tracking and reporting on the disposition of complaints throughout their life cycle, including: initial complaint intake, medical evaluations by consultant and expert reviewers, investigations, and all subsequent actions:

- BreEZe, the "book of record" relative to the administration and disposition of all complaints: the initial receipt and evaluation, the subsequent HQIU investigative activities when warranted, and the adjudication and discipline process via the Office of the Attorney General.

05 California State Auditor, report on the California Department of Consumer Affairs' BreEZe System, Report 2014-116, dated February 12, 2015.

- QBIRT application, the companion reporting tool for BreEZe, providing the ability for staff to create advanced data compilations and reporting capabilities via programmed queries.
- CEMA system administering the medical review function performed by retained medical consultants and medical experts, organized by medical specialty and sub-specialty, their availability, and the tracking of all assigned and completed cases.

Analysis

BreEZe and QBIRT Systems

BreEZe was implemented October 2013 for all licensing and enforcement functions, superseding the CAS system. Open and closed cases were transferred to BreEZe from CAS. BreEZe adopted data attributes and schema somewhat differently from CAS and some CAS coding was maintained, thereby differentiating CAS activity in BreEZe.

The monitor's analysis focused on enforcement protocols and processes. Recording and tracking of enforcement activities throughout the complaint life cycle is sequential as processes, milestones and actions occur, is very detailed, incorporating hundreds of data attributes and dynamics as processes and/or reporting requests change; the BreEZe system captures the following:

- Complaint Source
  - Identifies case type, code type and complaint source with description under applicable BPC section, and active or retired codes; 58 codes specifically identify the type of reporting entity submitting the complaint.
- Complaint Status
  - Indicates if a case is open or closed, and identifies the current unit within MBC, HQIU, OAG processing the case; 12 codes specify case status.
- Complaint Classification
  - Identifies the type of complaint allegation (e.g. health and safety, negligence or incompetence, drug-related offense, personal conduct); 15 codes are used in assigning the type of complaint.
- Complaint Complexity
  - Identifies complaint priority per BPC 2220.05, used in conjunction with complaint classification (i.e., priority 1 to 7); 19 codes used in assigning complexity.
- Allegation Codes
  - Identifies in specificity the type of complaint allegation; of the 194 codes used in detailing allegation, 163 are currently active, and 31 codes are retired.
- Activity Codes
  - Identifies all activities taken throughout the life cycle of a complaint, detailing very specific actions, designated using 250 active codes (while maintaining 1,757 retired codes). Activity codes are continually updated by respective staff members in MBC and HQIU as complaints are investigated and processed.
- Activity Code Disposition
  - Identifies the current disposition of the activity as the complaint is processed. Activity codes are continually updated by disposition by respective staff members.
- Cost Recovery Tracking Codes
  - Identifies 13 complaint task codes with corresponding activity codes for compiling cost recovery. These

specific activities are tracked, with corresponding personal service hours, travel and other expenditures, allowing cost computations for seeking cost recovery for enforcement activities that result in discipline.

- Complaint Relation Types
  - Identifies relationships between or among complaints (i.e., associated cases, consolidated cases, companion cases), ensuring that as complaints are evaluated, investigated and acted upon, personnel performing enforcement activities are aware of and coordinate with all licensee complaints.
- Violation Codes
  - Identifies the statutory provision of each California code (i.e., BPC, CC, GC, H&S) resulting in a violation. There are 990 violation codes tracking all California code provisions.
- Discipline Types
  - Identifies the type of discipline/ suspension imposed, and the effective and ending dates; over 21 discipline codes are assigned among 15 client types.
- Additional Discipline Types
- Compliance Order Types
  - Identifies the imposed compliance order (i.e., required testing, examinations, evaluations, required testing, citations, cost recovery), with designated order of effective and end dates; over 47 codes are current in use.

With the QBIRT analytic implementation in June 2016, MBC ISB staff began re-creating historically available reports from the CAS legacy system and previously reported metrics in the board's meeting documents. Moreover, as ISB staff members enhanced their query development skills while generating additional reports, the enforcement staff made the transition from managing workload using physical files to using statistical data capturing case aging, complaint deadlines via statute of limitations (SOL) thresholds, and case priorities moving cases more expeditiously through enforcement. The compilation and reporting of complaint and enforcement activities fall within three (3) general categories:

- Mandated Reporting
- Public Request Reporting
- Management and Programmatic Reporting

Mandated Reporting

The MBC is required by BPC 2313 to annually report on a variety of initial complaint and subsequent enforcement activities, including specific outcomes of actionable complaints. This comprehensive reporting is unique to the MBC, not required of other DCA entities. In addition, DCA also requires statistical reporting for DCA's annual reporting to the Legislature and for MBC's legislative Sunset Review, which occurs typically every four years. Consequently, as indicated above, MBC has adapted in BreEZe hundreds of very granular data attributes (i.e., types and codes) enabling the specified tracking and reporting.

Consequently, over 60 (sixty) BreEZe/ QBIRT reports are used in compiling such annual reportable information. Most reports incorporate complex aging components allowing the tracking and reporting of complaint milestones, providing the dispositions throughout the stages of a complaint's life cycle (including compliant intake and evaluation, formal investigation,

actionable items, and their subsequent outcomes). In addition, approximately 24 (twenty-four) reports are required in generating the charts and narrative for MBC's legislative Sunset Report.

Over the past five (5) years, with the adoption of QBIRT and the ISB staff's continued growth of expertise in data analytics and query development, MBC's annual reports have expanded enforcement activity information, giving its public reporting more in-depth enforcement insight and comprehension. Examples of this enhanced reporting include:

- Investigations, now differentiated by the two different investigation functions, MBC's CIO unit and DOI's HQIU entity:
  - Annual cases opened and closed
  - Annual cases referred to the OAG
- Presentation of total annual complaints received
- Presentation of complaints closed by the CCU, with closure due to various reasons:
  - No response from complainant
  - No violations
  - Insufficient evidence
  - Other closures
  - Unactionable complaints – breakdown
    - No jurisdiction
    - Redundant incident
    - Inadequate evidence

Public Request Reporting

In addition to mandated reporting, the MBC annually receives hundreds of news media, public and Public Records Act (PRA) requests, which require timely response. Such requests involve recording the types of complaints received, investigations conducted and completed, or the actions taken for certain violations of law. For the most part, existing BreEZe/QBIRT reports are used in compiling such data requests, then through a manual review process redacting all data not deemed public information.

Management and Programmatic Reporting

Approximately 225 reports are used currently in the enforcement program, either for mandated reporting or for program management, or both. These are frequently updated by the ISB staff as business processes change or additional reporting is needed. Many of these program reports are customized versions, used by multiple MBC units and staff in a variety of ways, including:

- Daily and weekly reports indicating the highest priority in existing workload for the coming day or week.
- Monthly reports assisting managers in developing or modifying their workload plans.
- Exception reports that identify coding errors or records requiring further review.
- Reporting data to the public; reporting information, for pending legislation, to the Legislature.

Approximately 160 of these 225 reports are implemented to assist management in workload administration, thereby ensuring that MBC is actively engaged in medical enforcement activities; examples of such impactful reports developed with the QBIRT analytic tool include the following:

- "Matrix Report": also referred to as the Pending Caseload Report
  - Developed in mid-2020.
  - Provides managers in each unit a listing of all cases, using an aging formula sorting cases by age based on the amount of time incurred within the respective unit.

- Provides the highest priority cases (based on the MBC case priority rating per BPC section 2220.05) and the approaching statute of limitations date, ensuring that the most important cases are assigned and worked accordingly.
- Prior to the implementation of this report, units could rely only on the physical files in managing their caseloads. This report assists CCU management in placing focus on reducing caseload, specifically with attention to "high age" cases. This report also provides a summary to MBC management and board members with accurate representations of the number of cases, at their various stages, within the open case universe.

- "Average Days to Initiate a New Complaint":
  - Developed in early 2020.
  - Specifically implemented addressing CCU's mandate to initiate and acknowledge to complainant (when known) a complaint within 10 (ten) days of receipt.
  - MBC receives an average of 10,000 complaints annually, which equates to about 40 (forty) complaints each workday. The CCU intake staff had difficulty in accurate and timely management of all complaints that were filed online and in the BreEZe complaint queue. The Average Days to Initiate a New Complaint report particularly identifies "un-initiated" complaints, allowing management to quickly address complaints that will not meet the 10 (ten) requirements.
  - This report is produced weekly, covering the previous 10-day period. This report is also run monthly and quarterly, ensuring that all complaints received in the fiscal year are initiated (i.e., the complainant is contacted).
  - As documented in the complaint response analysis above, the time to respond averaged 12 (twelve) days for FY 16/17 through 19/20. Complainant response time for the past two (2) fiscal years now averages five (5) days. This report significantly contributed to the improved response time.
- "MBC OAG Referrals with Pending SOL in 30 Days or Less":
  - Identifies for MBC DCU management cases referred to OAG, but not yet accepted, within 30-day or shorter statute of limitations (SOL) deadlines. This report has improved communication between DCU and OAG, limiting the number of last-minute referrals up against SOL deadlines.
- "Pending Supplemental Investigations"
  - Developed in 2021.
  - Enables HQIU management to track supplemental investigations requested by OAG after accepting a referred case. This report assists HQIU supervisors in managing caseloads, and tracking supplemental investigative material needed to complete required information for pursuing actionable cases.
- "HQIU Cases for Disposition and Exceptions":
  - After MBC's investigative function made the transition to HQIU, tracking the disposition of all cases between MBC and HQIU became more complicated; consequently, this custom query was developed

to generate information tailored to case disposition, thereby improving information exchange and the timeliness of further case action. Moreover, this report allows for prioritizing cases.

- When HQIU completes a case (i.e., OAG referral, cite or fine referral, closure), an email message is sent to the MBC Chief of Enforcement and other staff members. HQIU completes over 1,000 cases annually, from 13 (thirteen) HQIU offices and the EPU group with a combined total of approximately 100 investigators. Because emails can be missed, or uploading of completed investigative files to BOX may be overlooked, or cases may lag while awaiting supplemental information, new BreEZe coding was implemented to track current disposition of case, where they are located, and other timely information.
- Two staff members handle the disposition of all HQIU cases; this daily report listing of cases informs staff members of the proper and timely update of coding in BreEZe when they are determining the disposition, for HQIU referral and outcome, OAG referral and outcome, or case closure. This report yields a timely daily update of all case interaction and disposition activity between MBC and HQIU.

- "Revoked/Surrendered/Deceased":
  - Developed in 2020.
  - Provides staff involved in an open case with updated respondent information, when a licensee has been revoked, surrendered, or has deceased.
  - HQIU investigations indicate that this report has improved the efficiency of open cases, informing investigators in a timely manner about any changes in the licensee's status during an ongoing investigation.
- "Closed Awaiting Criminal"
  - Developed in late 2020.
  - Provides a listing of all closed cases while awaiting the outcome of a criminal case or proceeding.
  - Actionable cases are overwhelmingly administrative, handled by the OAG for acquisition, then stipulation or formal hearing before OAH ALJs. A small number of cases are referred for criminal action, handled by the respective local county district attorney. Historically, due to the length of a criminal case, MBC would "close" its case, then periodically check the status determining if the case should be reopened, and the necessary administrative action taken (i.e., cases are not handled concurrently). This was tracked by each investigator. Due to high investigator caseload and turnover, this tracking was automated. Timely pursuit of the necessary administrative action after the criminal case outcome is important.
- "Cost Recovery Reports"
  - Cost recovery became effective January 2022.
  - Approximately 30 reports are capable of tracking and compiling incurred costs for cost recovery and reimbursement.
  - HQIU and CIO investigators compile hours worked and costs,

which are then submitted to OAG for inclusion in actionable cases.

- MBC fully funds the annual cost of HQIU operations via a Memorandum of Understanding (MOU). HQIU investigators spend most of their efforts investigating MBC cases; however, HQIU also investigates cases for three (3) Allied Health Boards. HQIU investigators "time study" reports track time spent on each case in BreEZe. Reports compile hours incurred by each board's case, imputing personal service costs. MBC then recovers costs from each of the Allied Health Boards relative to HQIU investigator cost.

Consultant Expert Management Application (CEMA)

The CEMA database system maintains both retained medical consultants and medical experts used in evaluating the standard of care complaints. MBC uses medical consultants when first triaging complaints upon intake and evaluation. If significant departures from the standard of care are identified, cases are then referred to HQIU for investigation. During the HQIU investigation, medical experts are retained in evaluating the body of evidence accumulated during the investigation (e.g., certified medical records, witness interviews). This expert evaluation relative to standard of care violations forms the basis for an administrative action by the OAG. Consequently, this medical expert review and opinion is of critical importance.

Refer to Finding 3, "Shortage of Specialized Medical Experts," in Section 2, pages 43 through 50.

Program Operational Strengths

As detailed above, expanded use of the program's three key systems (BreEZe, QBIRT and CEMA) has improved public reporting and significantly enhanced program functions by automating routines that were previously manual processes and providing reports tailored to specific program activities, allowing more insight and efficiencies in complaint intake and triage, and in tracking and monitoring complaint milestones throughout the complaint life cycle.

Having a dedicated ISB staff in the MBC program, with enhanced analytic and query development skills and a thorough knowledge of the BreEZe program data and the end-to-end complaint processes has benefited the MBC program. The ISB staff, working with MBC and HQIU, has enabled continuing development of automated routines for tracking, monitoring and reporting licensing and enforcement information.

Program Operational Weaknesses and Suggested Process Improvements

The monitor's Final Report will contain that analysis.

Appendix A: Criteria Traceability Matrix

This matrix reflects the status of completed and partially completed Statement of Work objectives as of the date of this Initial Report. Work will be completed when the Final Report is issued in July 2023.

Objectives per Senate Bill 806, as Codified in BPC 2220.01	Reference to Location in Report
The board's disciplinary system and procedures.	Final Report
The consistency of complaint processing and investigation.	Analysis completed – Refer to Sections 1 and 2, Findings 1, 2 and 3
The timeliness of the discipline process, including and evaluation of the board's compliance with subdivision (b) of BPC Section 129, and BPC Sections 2220.08 and 2319.	Section 129 completed – Section 1 Section 2220.08 completed – Section 1 Section 2319 underway – Final Report
Compliance with BPC Section 2229, including deviations from the Manual of Model Disciplinary Orders and Disciplinary Guidelines in the board's application of sanctions or discipline.	Final Report
Sanctions or discipline disproportionality applied to physicians and surgeons of color.	Final Report
Resources allocated for enforcement efforts.	Refer to Sections 1, 2, 3 and 4, Findings 1, 2, 3 and 4
Any area that may lead to cost savings and greater effectiveness of the board's enforcement efforts.	Analysis underway; several improvements that MBC and HQIU self-initiated are documented in Sections 1, 2 and 4. Additional recommendations will be offered in the Final Report.