



MEDICAL BOARD OF CALIFORNIA



QUARTERLY BOARD MEETING

**Sheraton San Diego Hotel and Marina
1380 Harbor Island, Bay Tower
San Diego, CA 92101**

Agenda Item 3

**October 23-24, 2014
MINUTES**

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

Members Present:

David Serrano Sewell, J.D., President
Michael Bishop, M.D.
Dev GnanaDev, M.D., Vice President
Howard Krauss, M.D.
Sharon Levine, M.D.
Ronald H. Lewis, M.D.
Elwood Lui
Gerrie Schipske, R.N.P., J.D.
Jamie Wright, Esq.
Barbara Yaroslavsky

Members Absent:

Denise Pines, Secretary
Felix Yip, M.D.

Staff Present:

Ramona Carrasco, Staff Services Manager I
Dianne Dobbs, Legal Counsel, Department of Consumer Affairs
Cassandra Hockenson, Public Affairs Manager
Kimberly Kirchmeyer, Executive Director
Armando Melendez, Business Services Officer
Valerie Moore, Staff Services Manager I
Regina Rao, Associate Governmental Program Analyst
Paulette Romero, Staff Services Manager II
Jennifer Simoes, Chief of Legislation
Lisa Toof, Administrative Assistant II
See Vang, Business Services Officer
Curt Worden, Chief of Licensing

Members of the Audience:

Theresa Anderson, California Academy of Physician Assistants
Kayti Buehler, California Association of Midwives
Gloria Castro, Senior Assistant Attorney General, Attorney General's Office
Yvonne Choong, California Medical Association
Genevieve Clavreul

Zennie Coughlin, Kaiser Permanente
Sara Davis, California Association of Midwives
Karen Ehrlich, Licensed Midwife
Julie D'Angelo Fellmeth, Center for Public Interest Law
Laura Freedman, Legal Counsel, Department of Consumer Affairs
Jack French, Consumer's Union
Michael Gomez, Deputy Director, Department of Consumer Affairs
Marian Hollingsworth, Consumer's Union
Troy Holmes, Investigator, Health Quality Investigation Unit
Terry Jones, Supervising Deputy Attorney General, Attorney General's Office
Saylak Lee, Midwestern University
Mitchel Mendez, Midwestern University
Carol Moss, Consumer's Union
Ty Moss, Consumer's Union
Kathleen Nichols, Supervising Investigator, Health Quality Investigation Unit
Jose Partida, Investigator, Health Quality Investigation Unit
Eric Ryan, Supervising Investigator, Health Quality Investigation Unit
Jane Zack Simon, Attorney General's Office
Carrie Sparrevohn, Licensed Midwife
Renee Threadgill, Chief of Enforcement, Health Quality Investigation Unit
Abigail Vidikar, California Association of Midwives
Brian Yi, Midwestern University

Agenda Item 1 Call to Order/Roll Call

Mr. Serrano Sewell called the meeting of the Medical Board of California (Board) to order on Thursday, October 23, 2014 at 3:55 p.m. A quorum was present and due notice was provided to all interested parties.

Agenda Item 2 Public Comments on Items not on the Agenda

Genevieve Clavreul asked the Board to make a statement on what the Board is doing in regards to the Ebola issue.

Mr. French, Consumer's Union, feels the Board should make physician disciplinary actions as readily accessible to the public as possible. He stated the Board used to make this information available in its quarterly Newsletter and included a brief description of the disciplinary action along with a link to the public documents for review. He recommended the Board return to its previous policy of including in the Newsletter a paragraph description of the physician's offense in addition to the link to the disciplinary documents. He added this would improve transparency and the ability of the public and patients to understand the nature of offenses upon which the Board takes action.

He knows the Board routinely emails a list of actions it takes on the discipline of physicians, which includes a link. Unfortunately, the link takes one to a medical board page, which is a link to BreZE, which then takes approximately six different clicks to get to the physician disciplinary record. The average consumer is confused by the new BreZE system and does not find their way to the disciplinary documents. Mr. French recommended including a direct link to the public disciplinary records in the emails that are sent out.

Agenda Item 3 Approval of Minutes from the July 24-25, 2014 Meeting

Dr. Lewis made a motion to approve the July 24-25, 2014 Meeting Minutes as submitted; s/Ms. Yaroslavsky. Motion carried.

**Agenda Item 4 Update and Consideration of Recommendations from the
Midwifery Advisory Council Meeting**

Ms. Sparrevohn, Chair of the Midwifery Advisory Council (MAC), stated the hospital transfer form is being used by the hospitals and discussions continue in interested parties meeting to determine if more information should be included on that form.

Ms. Sparrevohn stated licensed midwives (LM) continue to be challenged in the realm of obtaining drugs and testing deemed necessary for safe treatment. She added the task force on LM assistants' submitted language to the MAC based on language for medical assistants and naturopathic physician's assistants. The MAC voted to send this language to the full Board for legislative proposal in 2015. Ms. Simoes will present the LM assistant language as part of her presentation to the Board. Ms. Sparrevohn strongly urged the Board to consider the language as it is greatly needed. She pointed out the information packet for new Board Members is still in process as is certified nurse midwives (CNM) to LM licensure.

Ms. Sparrevohn stated the interested parties meeting regarding the creation of the list of medical conditions that would require an LM to refer a client to a physician for evaluation was held earlier in the month. There was good input from all parties, but no consensus was reached. It is expected that both the American Congress of Obstetricians and Gynecologists (ACOG) and the California Association of Midwives (CAM) will work on this issue prior to the next interested parties meeting.

Ms. Sparrevohn then requested Board approval for the following agenda items for the next MAC meeting scheduled for December 4, 2014: Update on the midwife assistant task force, the Board Member information task force, and the LM annual report data collection task force; an update on regulatory changes required by Assembly Bill (AB) 1308; an update on the October midwife interested parties meeting; and an update on the CNM to LM legislation.

Ms. Yaroslavsky made a motion to approve the MAC agenda items for the December 4, 2014 meeting/s; Mr. Lui. Motion carried.

Agenda Item 5 Board Member Communications with Interested Parties

Dr. GnanaDev stated he is on the American Medical Political Action Committee (AMPAC) Board and works a lot with California Medical Association (CMA), but Board issues are never discussed.

Dr. Krauss stated he sits on the Board of Directors of the California Ambulatory Surgery Association and is a trustee for the CMA. No parties have brought Board matters to him that are before the Board at this meeting.

Agenda Item 6 President's Report

Mr. Serrano Sewell reported he and Dr. GnanaDev continue to meet with the Board's Executive Staff twice a month to discuss the projects at the Board and to ensure everything is moving forward as needed. He thanked Dr. GnanaDev for being on those calls and feels they are very helpful.

Mr. Serrano Sewell announced Panel A elected a new chair, Ms. Wright and elected Dr. Lewis as Vice Chair. He congratulated Ms. Wright and Dr. Lewis, thanked Ms. Yaroslavsky for her great work as prior chair of that Panel, and stated everyone has benefited from her leadership.

Dr. GnanaDev announced Panel B voted to keep himself as Chair, and Dr. Krauss in now Vice Chair. Mr. Serrano Sewell thanked them for their work on the Panel.

Mr. Serrano Sewell announced the Executive Committee met in closed session to complete an Executive Director evaluation and will report the outcome to the Department of Consumer Affairs (DCA). He thanked the Executive Director, Ms. Kirchmeyer, for doing an outstanding job in all respects and stated she had the full confidence of the Board.

Agenda Item 7 Update and Consideration of Recommendations from the Executive Committee Meeting

Mr. Serrano Sewell stated at the Executive Committee meeting, there was discussion on a compendium of Board policies. At the previous Board meeting, Dr. Krauss had recommended, and the Board agreed, putting together a compendium of policies that can be used by staff as they review initial legislation and to assist as legislation is amended during the legislative process. Staff put together a draft compendium of policies based on input from the Members and previous experiences. At the Executive Committee meeting, Members discussed and approved the three policies as outlined on pages EXEC 4-1 through EXEC 4-5 in the Board packet. These three policies are pertaining to: 1) scope of practice, 2) continuing medical education (CME), and 3) funding for physician education. These policies will provide guidance for staff on any legislation that is received regarding these three topics. The Committee approved the policies as written with the exception to add the word "proctoring" to the policy on scope of practice.

Mr. Serrano Sewell requested a motion to approve the Executive Committee's recommendation to approve these three policies as written, including the amendment for the scope of practice and policy.

Ms. Yaroslavsky made a motion to approve the three policies; s/Dr. GnanaDev.

Dr. Krauss stated it is the Board's intention that these compendia be added to and modified over time and the purpose is so the Board's legislative advocate has positions that can be represented to the legislature between Board meetings.

Motion carried w/one abstention (Bishop).

Mr. Serrano Sewell continued with an update on the Board's committee structure, which was also discussed at the Executive Committee. In the Board's strategic plan, every other October the Board is to review the Committee Roster and identify committees that may no longer be needed. In August, he and Ms. Kirchmeyer met to discuss this issue. The recommendations from the meeting

are listed on pages EXEC 5-1 to EXEC 5-5 in the Board packet. The main goal in reviewing these committees is to find efficiencies, and to increase output from the committees. At the Executive Committee meeting, the Members approved, for recommendation to the full Board keeping the Enforcement, Licensing, Education and Wellness, and Executive Committees as standing committees and continue them for the next two years. In addition, it was recommended to make the Executive Committee comprised of Board officers (the President, Vice President, and Secretary), the immediate past president, and the chairs of the Enforcement, Licensing, and Education and Wellness Committees, which would bring the Executive Committee to seven Members. The Executive Committee also approved, to bring to the Full Board, keeping the Specialty Faculty Permit Review Committee, the Midwifery Advisory Council, the Application Review Committee, and the Special Programs Committee, as they are required by law. However, the Committee approved consolidation of the Application Review Committee and the Special Programs Committee as the duties and functions of these committees are very similar, and there is no prohibition in consolidation.

Lastly, the Executive Committee Members approved the elimination of the Access to Care/Cultural Linguistics Competency Committee and the Committee on Physician Supervisory Responsibilities. It was suggested that issues pertaining to these Committees be placed in the Enforcement or Licensing Committees as appropriate. If additional discussion is needed, it is better done through an interested parties meeting rather than within these Committees. The issue can then be brought back to the appropriate standing committee for action before coming to the full Board. The Executive Committee also eliminated the sub-committees and task forces with the exception of the Prescription Task Force.

Ms. Yaroslavsky made a motion to approve the committee changes as discussed; s/Dr. Lewis. Motion carried.

Agenda Item 8 Executive Management Reports

Ms. Kirchmeyer began by asking for approval of orders following completion of probation and orders for license surrender during probation.

Ms. Yaroslavsky made a motion to approve; s/Dr. Lewis. Motion carried.

Ms. Kirchmeyer stated she was not going to go over the summaries that are in the Board packet unless a Member had any questions. Ms. Kirchmeyer pointed out a couple of items from the summaries the Board should be made aware. She stated there was a significant increase in the number of complaints in fiscal year 13/14. This increase is being attributed to the new BreZE system. The Board received over a thousand more complaints this year than last year. The other item she wanted to point out is, over the summer, the Board hired a student assistant who interviewed licensing staff, attended a licensing fair with Mr. Schunke, scripted, and produced a video tutorial to assist applicants with the licensing process. This video tutorial is posted on the Board's website, but more importantly, is posted on each page of the online application and has a link to instructions on how to fill out that specific page of the application. This tutorial is only for the printable and downloadable version of the application; it is not for the actual online BreZE application.

Ms. Kirchmeyer announced that she and Ms. Simoes are working with the Business and Professions Committee staff of the Assembly and Senate to schedule a Board Legislative day. The Board

Members, in teams of two, along with a staff member, would meet with Legislative Members of these two Committees to provide information regarding the Board, its consumer protection roll and its functions, as well as answer any questions they may have regarding the Board. Although there is no date set at this time, it has been suggested this be scheduled to take place in February 2015. More information will be provided to the Members as soon as a specific date has been established.

Ms. Kirchmeyer noted that although the Board has been actively participating in outreach events, many of them have been in regards to fraud or senior scams. Staff would like to put together a health care outreach event. This idea was introduced to other allied health boards with a lot of interest. The idea is to have a presentation from each board to describe what they oversee and the overall importance of ensuring consumer safety. Consumers will learn where they can check to see if their health care professional is licensed and where to send a complaint. There will be more details to follow as plans come together.

Ms. Kirchmeyer added that as shown in the Board packet, the Board is now assisting with CURES registration, which took place at the Board meeting. In addition, she stated the Board will also be allowing individuals to come to the Board's office in Sacramento and to the probation offices in San Dimas and Cerritos to register. In addition, Mr. Schunke will be allowing two to three hours when possible during his outreach events.

Lastly, Ms. Kirchmeyer provided an update on the coordination with other state agencies regarding the issue of prescribing psychotropic medications to foster children. Based upon an investigative report regarding psychotropic medications, on August 25, 2014, Senator Lui sent a letter to the Board asking it to look into the inappropriate prescribing of psychotropic drugs. He wanted the Board to determine if psychotropic drugs, not approved for children, were being prescribed to them and to determine if these drugs were being prescribed without the review of the child's medical records or drug history. Senator Lui also asked the Board to identify recommendations to minimize these dangerous practices. Upon receipt of the letter, the Board began to look into the issue. Board staff first contacted the Department of Social Services (DSS) to request a meeting on this issue, which included staff from the Department of Health Care Services (DHCS). Since this meeting, the Board has become very involved in this issue. She and Ms. Simoes attended a meeting in San Francisco held by the Child Welfare Council where this issue was discussed. Board staff determined the best way to identify physicians who are inappropriately prescribing is to establish a memorandum of understanding (MOU) between the Board, the DHCS, and the DSS. A meeting has been scheduled between the Board, DSS, and DHCS to discuss this MOU.

In addition, Ms. Kirchmeyer and Paulette Romero are attending meetings on a quality improvement project that will put together guidelines for the use of psychotropic medication to children and youth in foster care. Ms. Romero will also be attending a data and tech workgroup on this issue. Once these guidelines are complete, they will be posted to the Board's website and an article will be included in the Board's Newsletter. The Board will continue to work with both agencies to obtain information necessary in order to identify physicians who may be inappropriately prescribing. Throughout this process, all stakeholders are being encouraged to report any physicians who they believe to be inappropriately prescribing to the Board.

Dr. GnanaDev thanked Ms. Kirchmeyer for what she had done in regard to the prescribing to foster children issue. He stated the real issue is that these kids need help. They need family

therapy, psychotherapy, and they need resources, all of which should come from the DSS. Those are the issues that need to be addressed, not just the type of drug that is being prescribed to these children.

Dr. Levine stated the speed of response to the Senator's inquiry was remarkable and is a great testament to the preparedness of the entire Board staff under Ms. Kirchmeyer's leadership. She was pleased that the Board staff responded by wanting to be part of the solution and not writing it off as not the Board's problem. She stated that approach was noticed by many people.

Ms. Kirchmeyer thanked Mr. Serrano Sewell for his leadership and participation in meeting with staff on this matter and assisting in providing direction as well.

Genevieve Clavreul stated she has voiced her opinion on the CURES system in the past. She is concerned about patient safety and how people can access the information and how long it is taking the system to get up and running efficiently.

Agenda Item 9 Federation of State Medical Boards Summary

Ms. Kirchmeyer referred Members to tab 9 in their Board packets. She stated the Federation of State Medical Board (FSMB) staff are planning to attend the July 2015 Board meeting to provide an update on the Federation and its activities.

Ms. Kirchmeyer stated the Interstate Compact is listed under agenda item 9C. Board staff will be providing an analysis at the January 2015 meeting on the complete Compact. Because this is an Interstate Compact, the language of the Compact as shown in 9C, must be adopted by the California Legislature precisely as written in order for the Compact to be valid. This is something that will be taken into consideration when the analysis is performed.

The Federation also sent notices that they are seeking resolutions by February 24, 2015 for their annual meeting. Ms. Kirchmeyer asked if a Member had any resolution they would like put forward, to contact her for discussion and presentation at the Board's January Board meeting for approval.

The Federation is also seeking nominations for elected officials. Information was sent to all Members regarding these positions, and Dr. Levine has decided to run for a Board of Director's position. Ms. Kirchmeyer asked for a motion to approve the preparation of a letter of recommendation and support for Dr. Levine's nomination.

Ms. Wright made a motion to approve a letter of recommendation and support for Dr. Levine; s/Ms. Yaroslavsky. Motion carried

Ms. Kirchmeyer stated the Federation is also seeking individuals interested in serving on committees within the Federation. Four Board Members have expressed interest in being appointed to a committee following the April 2015 Annual Meeting. Dr. Levine is interested in being appointed to the Ethics and Professionalism Committee, Dr. Lewis is interested in being appointed to the Education Committee, Ms. Wright is interested in being appointed to the Editorial Committee, and Dr. Krauss is interested in being appointed to the Bylaws Committee as well as any committee where his expertise would be beneficial.

Mr. Kirchmeyer asked for a motion for those letters of recommendations to the different committees.

Ms. Yaroslavsky made a motion to approve the letters of recommendations and support; s/Mr. Lui. Motion carried.

Yvonne Choong, CMA, stated that CMA would be doing an analysis on the Interstate Compact. As Ms. Kirchmeyer stated, it has to be passed in its entirety and that is an issue for the CMA. There are some inconsistencies with California standards versus what is in the Compact and there are uncertainties on how those issues are going to be resolved.

Marian Hollingworth, Consumer's Union Safe Patient Project, stated their initial review of the Interstate Compact raises concerns in four different areas. The first being the lack of requirement that the interstate commission include consumer patient representatives; second being the lack of reasonable access to public meetings of the commission; third, the lack of assurance of public access to information in the database that the interstate commission will maintain; and fourth, the lack of assurance of transparency of the investigative and disciplinary procedures of the commission. She noted they would be in touch with the Board in the future with future concerns and more detail.

Julie D'Angelo Fellmeth, Center for Public Interest Law (CPIL), stated they agree with both CMA, as well as Consumer's Union Safe Patient Project, in they also have concerns about the Interstate Compact as it is written. They have concerns about the Federation putting out this Compact without formal public comment period before releasing a final document. She stated CPIL would put their concerns in writing to the Board before the January Board meeting.

Dr. Levine noted one of the reasons she agreed to be a candidate for the Federation Board was after attending the Federation's annual meeting last year, and watching the process that occurred around the Interstate Compact and knowing that California is a large and important State, and the ability to influence this, once the Board approved it was essentially nil to make changes and recommendations, despite efforts from both Ms. Kirchmeyer and herself.

Dr. GnanaDev stated, he too was upset that California had no input on this Compact and that it has to be taken as it is presented. This Compact has to be looked at very carefully by all entities before it goes to the legislature. He is convinced that it will not happen without California's support.

Dr. Lewis stated when he looked at the different Federation committees, he was surprised at how few, if any, had representation from California. With California having one of the highest number of physicians, he was disappointed at how underrepresented California is with the Federation.

Ms. Kirchmeyer stated the Board had sent in feedback to the Federation. The one issue the Board stated was important was the fingerprinting of applicants on the Interstate Compact, which was added to the Compact for California.

Ms. Yaroslavsky stated the Interstate Compact conversation through the Federation has been going on for some time now. The issue when this conversation first began was if any Compact would meet the minimum level of what California licensure expects. She urged the entities that are doing their own analysis to think about what this means. Her concern is that California will be forced to participate once the Compact passes at the Federation level.

Agenda Item 10 Update and Consideration of Recommendations from the Enforcement Committee Meeting

Dr. Lewis provided an update from the Enforcement Committee. He stated Ms. Kirchmeyer and Ms. Zack Simon, from the AG's office provided information regarding the pain management expert reviewer policy. She stated in 2002, the Board established a policy on the review of cases involving pain management issues. At that time, the policy stated that in certain cases, the Board would require at least two expert reviewers, one physician certified in pain management, and one expert in the specialty of the physician being reviewed. Since the requirement for physicians to obtain CME has been in effect since January 2002, the Board and the Attorney General's office do not believe that policy should still be required. The Committee held a discussion regarding this matter and was seeking a motion to change the pain management expert reviewer policy to require one expert reviewer in the like specialty, rather than two expert reviewers.

Ms. Yaroslavsky made a motion to approve the change from two required expert reviewers to one expert reviewer in the specific area of practice; s/Dr. Krauss.

Dr. Bishop stated he has some concerns about this change. He feels the Board should be cautious that if the Board decides to go with a single reviewer that they are cognizant that expectations would differ between the ER physicians, the internal medicine physician, and the dedicated pain management specialist and the way they care for patients.

Dr. Krauss stated he would hope that all of the Board's reviewers are conscientious enough to know that if something should transcend, that they view as their specialty, that there would be a criticism of their colleague for having practiced without consultation.

Motion carried.

Dr. Lewis stated the Committee discussed the Board's statement on marijuana. The statement adopted by the Board on May 7, 2004, clarifies that the recommendation for marijuana by physicians in their medical practice will not have any effect against their physicians' license if they follow good medical practice. Board staff reviewed the current statement and believed that amendments need to be made to the statement, as some information is misleading and does not comport with the current law. The first series of edits pertain to the term "medical marijuana".

Although marijuana can be recommended for medical purposes, the term medical marijuana is misleading, as there is no difference between regular marijuana and marijuana used for medical purposes. Another issue with the statement is the assertion that the initial examination for the condition for which marijuana is being recommended must be in-person. The statement contradicts the Board's telehealth law. The initial examination must follow the standard of care and must provide for an appropriate prior examination. However, the law does not require this examination be in person, and could be via the telehealth system. The Committee held a lengthy discussion on this matter and is seeking a motion to direct staff to update the statement on marijuana as amended by the Committee and post the new version to the Board's website.

Mr. Yaroslavsky made a motion to direct staff to update the statement on marijuana/s; Dr. Krauss. Motion carried.

Dr. Lewis noted that the Committee received a presentation from the University of California San Diego, Physician Assessment and Clinical Education Program (PACE) staff who talked about the redesign of the PACE program from its current seven-day program down to a three-to five-day program.

Ms. Carrasco from the Board's Central Complaint Unit gave a presentation on utilization review. Ms. Carrasco reported findings, following the Board's evaluation of the utilization review complaints, for approximately the last 18 months. It was found that 58% of the utilization review complaints received alleged the review resulted in a decision that affected patients' care. The Central Complaint Unit processed these complaints as quality of care issues and attempted to secure any additional information relevant to the case and had a review performed by a medical consultant. In all cases, the consultant found no evidence that the opinions reached by the reviewer were inappropriate or outside the standard of care. At this time, staff recommends the Board continue to perform preliminary analyses of the complaints involving the utilization review with emphasis on those related to quality of care.

Dr. Lewis continued by stating Mr. Gomez, from the Health Quality Investigation Unit (HQIU), provided an update on the transition of staff to the Department of Consumer Affairs (DCA). Mr. Gomez explained the difficulties faced by HQIU in retrieving data for statistical purposes due to the BreZE database.

Dr. Lewis noted Ms. Kirchmeyer and Ms. Robinson presented the committee with information regarding the cultural background of those individuals who have had complaints filed against them, who have been investigated, and those who have had disciplinary action taken against them. Staff will consider a review of this type of data via a separate study in the future.

Dr. Krauss made a motion to move Board support for legislative action to require that a patient's evaluation by a physician for a marijuana recommendation be in-person.

Ms. Yaroslavsky made a motion to table Dr. Krauss's motion until the agenda item on legislative proposals.

Mr. Serrano Sewell agreed to table the motion until the appropriate agenda item.

Agenda Item 11 Vertical Enforcement Program Report

Mr. Gomez stated that the DCA and the Attorney General's (AG's) office was meeting on a revision to the current Vertical Enforcement (VE) manual, including looking at better protocols related to how to create efficiencies in the current process being used. Mr. Gomez stated a workgroup had been formed of several upper management from DCA as well as staff from the AG's office and Ms. Kirchmeyer. The workgroup has a partial revised document at this time. The roles of the VE team members previously did not include the medical consultants, but they are included in the newest version. The workgroup is now at the point where they will be discussing resolving disagreements in the investigation process. The goal is to have a completed draft document by the second week in December 2014. The workgroups next meeting is scheduled for October 29, 2014 in Sacramento.

Ms. Castro began by reminding the Board it has only been four months since the transition, which took place on July 1, 2014. There have been 236 cases opened under the new leadership. The rest of the cases were opened under the leadership of the Board. There are about 700 carry over cases

from the Board. She feels the carry over cases have to be completed in order to assess if HQIU are doing things better and/or differently, etc. She stated the heart of the VE is the cases and public safety. They are actively and constructively engaging in the transfer of knowledge and techniques to new management over those investigations. She believes they agree on the fact that the heart of the policy is public safety, which is achieved through high quality and efficient joint investigations. The product of their labor remains constant and focused, notwithstanding the change in leadership of the investigators, because, although the investigators are under new management, the Board is still present and demanding accountability.

Ms. Castro noted that Ms. Kirchmeyer is actively engaged in every aspect, and feels that she, Mr. Gomez and the Board are very lucky to have her Board knowledge and history involved.

In addition to the constant communication between Ms. Castro and Ms. Kirchmeyer, the AG's office is endeavoring to minimize the billable time relating to the transition, although some of the changes have resulted in additional billing, while the elementary concepts are taught to their new partners. However once those concepts are learned and they are better acquainted with each other, those billings will be reduced.

Ms. Castro stated as HQIU has become aware of the business process and the workflow with its investigators, HQIU has continued many of the technical aspects that were perfected by the Board over many years. She stated she is open-minded to new ideas for efficiencies that are being proposed by DCA's Executive staff. In the meantime, Ms. Castro's staff is following the July 2014 VE manual, which has a lot of efficiencies that she felt needed to happen and has shared those with Mr. Gomez. Discussions will begin at the next workgroup meeting.

Dr. GnanaDev thanked Mr. Gomez and Ms. Castro for coming. He requested Mr. Gomez provide a timeline by the January Board meeting. He wants to have up-to-date numbers to take to the legislature when that time comes.

Dr. Lewis requested statistics that detail the start date to the end of a case to be presented at a future Board meeting. He would like to learn what the delays are on some of the cases and to see where the delays are happening, whether it be with the AG's office or the HQIU.

Ms. Yaroslavy expressed her concerns about the relationship between the AG's office and the DCA staff that are working together.

Agenda Item 12 Update from the Attorney General's Office

Ms. Castro announced they have new hires in their Sacramento office, which is now fully staffed. Recently hired was: Demond Philson, who came from DHCS, is a former Fresno District Attorney, and prosecutor; Michael Brummel, who will be working in Fresno; Carolyn Sanin Evans will be joining their San Francisco office, and came from the United States AG's office; and Connie Broussard who will join the Sacramento office as a Supervising Deputy Attorney General.

Ms. Castro reported on the *Lewis* case that is being handled by Deputy Attorney General Edward Kim and Supervising Deputy Attorney General E.A. Jones. On September 17, 2014, the California Supreme Court granted petitioner Lewis a petition for review. The Court of Appeals had already ordered that the Board's access to CURES data was not a serious invasion of patient's privacy. That issue will be litigated in the Supreme Court. She believes CURES advances a compelling interest in

protecting the public against incompetent, impaired physicians, and if Dr. Lewis is successful in his petition before the Supreme Court and any judicial showing or good cause requirement is imposed prior to the Board being able to use CURES as an investigative tool, she believes more patient deaths could result.

Ms. Schipske asked Ms. Castro to provide more information on this case, as it came from a Board case. Ms. Castro stated that the attorney on this case is making the point that access to CURES would constitute a violation of patient privacy because the Board had to get additional records to show the medical conditions. She stated if the court does rule that it is a violation of privacy, then serious problems would occur in terms of being able to use CURES.

Mr. Serrano Sewell adjourned the meeting at 5:45pm, until the following morning, October 24, 2014 at 9:00 am.

Friday October 24, 2014

Members Present:

David Serrano Sewell, J.D., President
Michael Bishop, M.D.
Dev GnanaDev, M.D., Vice President
Howard Krauss, M.D.
Sharon Levine, M.D.
Ronald H. Lewis, M.D.
Elwood Lui
Gerrie Schipske, JP, R.N.P.
Jamie Wright, Esq.
Barbara Yaroslavsky

Members Absent:

Denise Pines, Secretary
Felix Yip, M.D.

Staff Present:

Dianne Dobbs, Legal Counsel, Department of Consumer Affairs
Cassandra Hockenson, Public Affairs Manager
Kimberly Kirchmeyer, Executive Director
Armando Melendez, Business Services Officer
Regina Rao, Associate Governmental Program Analyst
Jennifer Simoes, Chief of Legislation
Lisa Toof, Administrative Assistant II
See Vang, Business Services Officer
Curt Worden, Chief of Licensing

Members of the Audience:

Jeremy Adler, California Academy of Physician Assistants
Mohammed Aly, Center for Public Interest Law
Theresa Anderson, California Academy of Physician Assistants
Gaye Breyn, California Academy of Physician Assistants

Kayti Buehler, California Association of Midwives
Gloria Castro, Senior Assistant Attorney General, Attorney General's Office
Steve Cattolica, California Neurology Society, California Society of Physical Medicine & Rehabilitation
Yvonne Choong, California Medical Association
Genevieve Clavreul
Zennie Coughlin, Kaiser Permanente
Karen Ehrlich, Licensed Midwife
Julie D'Angelo Fellmeth, Center for Public Interest Law
Marian Hollingsworth, Consumer's Union
Troy Holmes, Investigator, Health Quality Investigation Unit
Terry Jones, Supervising Deputy Attorney General, Attorney General's Office
Christine Lally, Deputy Director, Boards and Bureaus, Department of Consumer Affairs
Carol Moss, Consumer's Union
Ty Moss, Consumer's Union
Hilary Nemchik, Senator Block's Office
Kathleen Nichols, Supervising Investigator, Health Quality Investigation Unit
Jose Partida, Investigator, Health Quality Investigation Unit
Eric Ryan, Supervising Investigator, Health Quality Investigation Unit
Laura Sweet, Deputy Chief of Enforcement
Renee Threadgill, Chief of Enforcement, Health Quality Investigation Unit
Jason Weisz, Assembly Member Atkins Office
Brian Yi, Midwestern University
Cesar Yuriar, Center for Public Interest Law
Charlene Zettel, Donate Life California

Agenda Item 13 Call to Order/Roll Call

Mr. Serrano Sewell called the meeting of the Medical Board of California (Board) to order on Friday, October 24, 2014 at 9:04 a.m. A quorum was present and due notice was provided to all interested parties.

Agenda Item 14 Public Comments on Items not on the Agenda

Genevieve Clavreul suggested including an update on what California has done in regard to the current Ebola outbreak.

Charlene Zettel, Donate Life California, thanked the Board for their public service. She also thanked the Board for being an unofficial sponsor of the Donate Life license plate. Since she appeared before the Board last, a few things have changed. They are now able to use the actual Donate Life logo, which is the national logo, as opposed to the pink dot that was originally planned. They are working on selling the 7,500 plates that need to be sold before the Department of Motor Vehicles will begin producing them.

In addition, Ms. Zettel then presented a framed photo of Ms. Kirchmeyer holding a mockup of what a personalized license plate would look like. She then encouraged everyone to go to their website and reserve their Donate Life license plate and reminded everyone that working together, we can help save lives with organ donations.

Agenda Item 15 Update from the Department of Consumer Affairs (DCA)

Christine Lally, Deputy Director of Board and Bureau Relations at DCA stated she, Director Kidane, Deputy Director Rhine and Deputy Director Gomez continue to meet with Ms. Kirchmeyer on a bi-weekly basis. She stated these meetings are very helpful in keeping DCA apprised of the issues that are facing the Board and where the DCA can be of assistance.

Ms. Lally then provided an update on the proposed Enforcement management position. She stated this position would be planning and organizing and directing the Board's overall enforcement program, which includes the Probation, Central Complaint, Complaint Investigation and the Discipline Coordination Units as well as providing settlement authority for the AG's office on disciplinary decisions. In May, Board staff submitted a proposal to establish the enforcement program manager position, which is a Career Executive Assignment (CEA), level A. In June, the DCA's Office of Human Resources approved the request and submitted it to CalHR. In early September and again in October, CalHR requested additional information, which DCA provided. She announced that CalHR has approved this position. The next step will be for the matter to go before the State Personnel Board for approval.

Dr. GnanaDev stated he is disappointed on how long the approval process has taken and how much work not having a Deputy Director or an Enforcement Manager has put on the Executive Director and requested a rush be put on this process, if possible. He also asked Ms. Lally if she knows when the BreZE system and the AG's office system will be able to work together.

Ms. Lally stated, she has no specific time line to offer for that interface, but she noted there was recently some questions presented on the BreZE project, specifically on the enforcement reports and when that will be fixed. She stated there is a phase 1 fix that is going to be submitted on November 7, 2014. She also wanted to make the Board aware of user group meetings that Ms. Kirchmeyer is involved in, where the enforcement staff from all the boards under DCA are providing information needed to assist in standardizing the enforcement reports. Once a consensus has been established on that, then that final fix will go into the system.

Agenda Item 16 Update and Consideration of Recommendations from the Prescribing Task Force

Ms. Yaroslavsky began by thanking Laura Sweet and Letitia Robinson for their outstanding work on the Board's version of the prescribing guidelines. In addition, she thanked every licensee, public entity, and other state agency that participated with input on these important guidelines. The Board received numerous comments on these guidelines and the document in the Board packets shows how much hard work went into it.

She stated on November 29, 2014, the Prescribing Task Force held a meeting to finalize the revisions to the Board's Guidelines for Prescribing Controlled Substances for Pain. Prior to this meeting, the Board staff had incorporated a significant amount of acquired information from other entities that participated. In addition, Board staff met with an expert in pain management, and an expert in emergency medicine. Board staff has posted information regarding these meetings on the Board's website, but also sent out over 100 emails to those who have shown interest in this topic, or whom the Board thought should be part of the process.

Dr. Bishop stated that this document is exactly what it is titled. It is a compendium of guidelines. The guidelines are intended to provide physicians with a framework to assist them as they prescribe controlled substances for pain. The document provides useful tools and links that can be used for this purpose. These guidelines are not regulations. The Board will not be going through the rulemaking process to adopt them as regulations. This document is also not intended to delineate the standard of care and simple deviation from these guidelines alone will not be a cause for discipline. The Board has several documents on its website that can be used to assist physicians and/or other allied health care providers. These documents include a statement on recommending marijuana as well as information on terminating a patient relationship. The Board also has guidelines for licensed midwives on the website. All of these documents were created to assist the individual and are not enforceable regulations, but are useful to the providers. If any physician is brought to the Board's attention, the Board will submit the matter to an expert reviewer, at which time that expert will opine on whether the physician deviated from the standard of care. This document will provide much needed guidance for physicians.

Ms. Sweet went through the guidelines in more detail. She began by thanking everyone involved who gave up their time to assist in putting these guidelines together. It was clear that despite the diverse background of the many people involved, they all had patient safety in mind.

Ms. Sweet continued by explaining the methodology used to create these guidelines. The first draft consisted of a matrix that compared and contrasted numerous prescribing guidelines for pain management. From that matrix, staff were able to include in these guidelines, topics obtained from other medical boards, government agencies, and the Federation of State Medical Boards. The later iterations came from feedback received from letters, emails, phone conversations, the provisions of medical literature, meetings with experts, and comments during public meetings. Time was spent creating a Preamble that fully set forth the intent of the guidelines, with the primary objective being improved patient outcomes and the reduction of prescription overdose deaths. Ms. Sweet pointed out that the guidelines do not mandate the standard of care and wants to assuage physicians who are concerned that deviations from these guidelines might be cause for discipline. She stated that deviation from the guidelines will occur and may be appropriate depending on the needs of individual patients. The bottom line of the Preamble is that medicine is practiced one patient at a time.

Ms. Sweet stated the next section entitled Understanding Pain is included as educational information. The California Medical Association (CMA) shared several portions of its document on prescribing opioids and staff felt this was an important topic to include in the guidelines. In this section of the guidelines, pain, sub types of pain, and commonly referenced terminology, such as addiction, tolerance, etc., are defined.

Ms. Sweet noted the next section is devoted to special patient populations, such as patients suffering from acute pain, patients seen in the emergency room, pediatric patients, pregnant patients, patients with a history of substance abuse, psychiatric patients, etc. and treatment option considerations are offered for different patient populations or scenarios.

The next section is titled Patient Evaluation and Risk Stratification. Staff and experts agree that risk stratification is critical when initiating treatment for long-term opioid therapy for chronic non-cancer pain. Also included are helpful links to tools the physician can refer to when conducting a thorough evaluation as well as assessing risk.

She continued stating the next section addresses consultation and it was another example of the great feedback received by the Board. One of the partners suggested moving this toward the beginning of the patient relationship to highlight the benefit of consultation before issues develop.

Ms. Sweet then moved on to the sections for treatment plan and objectives, patient consent, and the pain management agreement. It is recommended that the patient and physician develop treatment goals together. The document shows items that are typically listed on a typical patient consent form, recommends use of a pain management agreement, and provides samples of such.

Ms. Sweet noted staff felt the next section was very important to include. That section is titled Counseling Patients on the Risk of Overdose and Response, and was included to further support one of the objectives cited in the Preamble and that is the prevention of overdose deaths.

The next section, Initiating an Opioid Trial, was included in hopes of highlighting the recommendation that all patients who initially receive opioids for chronic acute and non-cancer pain do so on a trial basis, with specific evaluation points in order to determine if opioids should continue to be prescribed past a certain point and time. Continued opioid therapy after an appropriate trial should be based on outcome such as the patient making progress towards specific functional goals and improvement in pain status, the lack of evidence of medication misuse, abuse or diversion, etc. Ongoing patient assessment emphasizes the importance of continuous monitoring after the opioid trial is considered successful and it should continue through the duration of the treatment. Again, there are helpful links to tools to assist the physician to measure the efficacy of opioid therapy.

Ms. Sweet continued with the next section titled Compliance Monitoring. This section provides guidance on how physicians can determine if provisions of a pain management agreement are being heeded, for example, the use of a CURES report, drug testing, and pill counting. Also included in this section is information and suggestions for physicians whose patients are not complying with the pain management agreement.

The next section, Discontinuing Opioid Therapy, addresses the circumstance that might require a physician to change the course of treatment. Included are strategies for tapering and weaning patients from opioids.

Ms. Sweet stated the next section addresses medical records, which she stated is self-explanatory. She noted the final two sections, Supervising Allied Health Professionals, and Compliance With Controlled Substances Laws, suggest physicians who supervise other healing art professionals be aware of the laws governing them and those whom they supervise. The section relative to Compliance with Controlled Substances Law has a link to the actual laws.

Ms. Sweet stated there is a significant amount of information in this 24-page document and it is supplemented with as many resources as practical via the appendices or links to websites that would further assist the physician by making it easily accessible.

Ms. Sweet concluded her report by again thanking all for the assistance received while putting this important document together. She added this collaborative effort would make tremendous strides in protecting medical consumers in the State of California.

Dr. Bishop stated what a pleasure it was to work with Ms. Sweet, her staff, and Ms. Kirchmeyer on these guidelines. He added the amount of work they put in was amazing and the document is a testament to their skills and hard work.

Ms. Yaroslavsky agreed with Dr. Bishop's comments. She added these guidelines have been a long time coming and are the evidence of staff's collaborative energy and efforts, in addition to doing their regular daily jobs. She suggested sending a link to the document to those that did participate in assisting the gathering of information in the guidelines. She thanked the staff for their hard work.

Dr. Lewis also thanked everyone involved in putting this document together stating he is pleased with it. He asked who the actual intended audience is for this document stating it is such a massive and complete document, he is wondering how it is going to be distributed to the general practitioners who treat a majority of patients with chronic and acute pain. He stated physicians have to realize there are realistic expectations of patients. They need to be reminded that they cannot treat 100% of patient pain and that 30% relief is a reasonable goal for chronic pain. He asked if there is anything that can be handed out to the patient that can help them understand this and give them tips on how they, themselves, can help with their own pain management.

Ms. Sweet stated that as far as distribution of this document, there would be an article placed in the Board's next Newsletter to advise physicians of its existence. She noted the Board is also working with the California Department of Public Health (CDPH) on an informational campaign, using these guidelines as a starting point, to let people know, through articles and social media, the existence of these guidelines and other such informational documents.

Ms. Kirchmeyer spoke about a work group she is involved in with the CDPH stating they are working on a statewide initiative on the issue of the epidemic of drug misuse and abuse. She noted that CDPH has been waiting for these guidelines, so they can launch an outreach program. They have a press release that will go out as soon as the Board's release goes out. CDPH will then note where the other entities that are involved in this fit into the outreach to everyone, not just physicians. This is just the first step of a huge outreach program in the state on this issue.

Ms. Kirchmeyer announced that Board staff is working on making this document into an application that can be accessed on smart phones, so these guidelines are available anywhere at any time. She stated as far as outreach goes, these guidelines are just one of the many subjects the Prescribing Task Force has on its agenda. The next thing it will be working on is best practices. The goal is to put together a web page that is not only available to physicians, but also putting out information on best practices for the public as well.

Dr. GnanaDev thanked Ms. Sweet, Dr. Bishop, and Ms. Yaroslavsky for a wonderful job on the guidelines. He suggested another outreach option is to work with the agencies that provide continued medical education (CME) credits. They can take these guidelines and use them to create an exam to earn CME credits.

Dr. Levine stated there are three gaps between current practice and ideal practice and she feels that these guidelines are a beginning to help fill those gaps. The first gap being the "knowledge" gap and this document provides a great basis for identifying what knowledge currently exists. She stated the next gap is the "knowing" gap, meaning once the knowledge exists, getting it out, disseminating it, and insuring it is accessible to people at the point where they need the information. The last, and the hardest gap, is the "knowing/doing" gap. Therefore, incorporating

the information and making it easy to do the right thing at the point of care is not something the Medical Board can do, but by doing the first two pieces, an approach for that has been laid out.

Dr. Lewis made a motion to approved the Guidelines for Prescribing Controlled Substances for Pain as Provided in the Board Packet; s/Dr. Krauss.

Steve Cattolica, Director of Government Relations for the California Neurology Society, the California Society of Physical Medicine and Rehabilitation, and the California Society of Industrial Medicine and Surgery, stated the 800 plus members of these organizations commend the work of the Prescribing Task Force and strongly believe these guidelines will provide clarity necessary to allow physicians to practice medicine one patient at a time without undue fear of doing so. They also commend the living nature of the document that can be improved on for years to come. He stated these guidelines are only part of this issue. He stated their constituents treating injured workers face a difficult situation. The Division of Workers Compensation (DWC) recently pronounced the Board's guidelines being very consistent with those the DWC will propose as regulation. However, any inconsistency will cause all physicians to perhaps compromise because all of the DWC treatment guidelines have a long and proven track record of being misapplied by worker's compensation claims payers, primarily to control costs and access, and to identify physicians they no longer want in their provider networks. They urge the Board to anticipate the Worker's Compensation Utilization Review physicians will not authorize a controlled substance citing the DWC's guidelines. They also urge the Board to establish these guidelines, but more importantly use all of its authority and influence to assure that the phrase "very similar" be eliminated between the Board's and DWC's guidelines, in favor of the phrase that has the same meaning.

Jeremy Adler, President of the California Academy of Physician Assistants, commended the Task Force for a job well done and stated that they use the Board's current guidelines to train their physician assistants and will be adding these new guidelines into that training program.

Motion carried.

Agenda Item 17 Update on the Regulatory Hearing to Amend Title 16 CCR, Sections 1364.10, 1364.12 1364.13, and 1364.14 – Citations and Fines

Ms. Kirchmeyer stated in the Board packet is a memo providing an update on the status of these regulations. At the last meeting, it was approved that the Board would hold a hearing outside of the Board Meeting in order to expedite the regulations. A hearing was held and these regulations will be submitted to the DCA. The regulations were approved to be effective upon approval by the Office of Administrative Law (OAL). Staff hopes that these regulations would be put into effect by the end of the year

Agenda Item 18 Presentation on Fictitious Name Permits

Mr. Worden gave a presentation on fictitious name permits (FNP). The presentation included answers to questions, such as how long these permits have been around; who is and is not required to obtain one, etc. It also included the FNP requirements, program information, statistics, and information on the common sections of statute and regulation.

Ms. Yaroslavsky recommended putting the information shown in the presentation in the Newsletter on regular basis and maybe even sending this same information out with the renewal documents.

Dr. Lewis suggested included this information in the licensing fairs also.

Yvonne Choong, CMA, suggested adding the answer to the question: “What happens when a physician leaves a practice or the partnership changes?” This is a question that CMA is asked often, so she suggested it be put in the question and answer on this subject. Another issue they are having is in terms of being able to search on the Board’s website. They are unable to see which physicians are associated with which practice and she stated she hopes BreEZe will fix that issue at some point.

Agenda Item 19 Discussion and Consideration of the Proposed Regulations to Amend the Continuing Medical Education Requirements

Mr. Worden stated that at the last Board meeting the Licensing Committee had a presentation from the American Board of Medical Specialties (ABMS) about maintenance of certification (MOC) requirements. During the presentation, it was noted that the MOC requires CME. The Board has CME requirements for physicians to meet as well, however, the MOC requirements may not meet the requirements for the Board’s CME. The physicians would be doing double CME to meet the Board’s requirements. The memo in the Board packet, pages BRD 19-1 through BRD 19-3, is an outline of what the Board could do to change the regulations so that physicians that are required to do MOC would not have to complete more CME. Those changes are noted on pages BRD 19-2 and BRD 19-3.

Mr. Worden asked for a motion to direct staff to notice the amended regulatory language and hold a hearing to amend Title 16, Division 13, California Code of Regulations (CCR), sections 1337 and 1338. The amendments would allow CME approved for MOC as meeting the Board’s CME requirements.

Ms. Dobbs noted that on section 1338(d), she believes the change should read just (a), not (a) and (g).

Dr. Levine made a motion to direct staff to notice the amended regulatory language as stated in the Board Packet and amended by Ms. Dobbs and hold a regulatory hearing; s/GnanaDev. Motion carried

Agenda Item 20 Special Faculty Permit Review Committee Recommendations; Approval of Applicants

Ms. Yaroslavsky stated the Special Faculty Permit Review Committee held a teleconference meeting on August 14, 2014 and reviewed three applications: one from Stanford University for Dr. Maurice Ohayon; one from University of California San Diego for Dr. Miguel Del Campo Casanelles; and one from University of California San Francisco for Dr. Anthony T. Moore.

The first recommendation for a committee appointment was for Dr. Ohayon, who is a world-renowned scholar, and whose work is in the forefront at the field of epidemiology, encompassing sleep neuropsychiatric conditions and co-occurring disorders. In addition, he is an expert in forensic psychiatry and mental health. His skill set in complex patient evaluation, advanced psychotherapy models, and targeted psychopharmacology will significantly expand

the existing clinical programs in the Department of Psychiatry and Behavioral Sciences at Stanford University. He also holds a doctorate of science degree in mathematics and computer sciences from the University of Air- Marseille and a Ph.D. in human biology from the Claude Bernard Lyon 1 University.

Dr. Ohayon would hold a full-time faculty appointment as a Professor of Psychiatry and Behavioral Sciences. He would provide clinical care, including evaluations, psychotherapy, and psychopharmacology, in the adult outpatient psychiatry clinics in the Department of Psychiatry and Behavioral Sciences at Stanford. The Committee recommended the Board approve Dr. Ohayon for a special faculty permit.

Ms. Yarosalvsky made a motion for the Board to approve Dr. Ohayon for a Business and Professions Code section 2168.1(a)(1)(B)(5) special faculty appointment at the Stanford University of Medicine; s/Dr. Krauss. Motion carried.

The second recommendation was Dr. Del Campo Casanelles, who is the Director of the Scientific Advisory Committee of Orphanet-Spain. He is certified by the American Medical Board of Genetics and is one of Europe's foremost clinical geneticists and dysmorphologist. He is an outstanding clinician, specifically in the study of treatments and interventions for children suffering from fetal alcohol syndrome and fetal alcohol syndrome disorders. He also holds a Ph.D. in pediatrics from the Universidad Autonoma de Madrid. Dr. Del Campo Casanelles was first certified by the American Board of Medical Genetics in 1999 and his current certification is through 2019.

Dr. Del Campo Casanelles has 34 peer-reviewed research articles, is the co-author of one book, and has written chapters for five additional books. Dr. Del Campo Casanelles is the Director of the Scientific Advisory Committee of Orphanet-Spain. In addition, he is a leading contributor for a global health initiative on Fetal Alcohol Spectrum Disorders sponsored by the NIH and WHO.

Dr. Del Campo Casanelles would hold a full-time faculty appointment as an Associate Professor of Clinical Pediatrics at UC San Diego. Dr. Del Campo Casanelles would be caring for patients with dysmorphologic, genetic and teratologic conditions at Rady Children's Hospital, along with collaborating or leading clinical research projects. Dr. Del Campo Casanelles would also be providing education instruction to fellows, residents, and medical students.

The Committee recommended the Board approve Dr. Del Campo Casanelles for a Special Faculty Permit appointment.

Ms. Yaroslavsky made the motion for the Board to approve Dr. Miguel Del Campo Casanelles for a Business and Professions Code Section 2168.1(a)(1)(B) Special Faculty Permit appointment at University of California San Diego School of Medicine; s/Dr. Krauss. Motion carried.

The third recommendation was for Dr. Moore who is an international leader in pediatric ophthalmology and a renowned expert in gene therapy for inherited retinal degenerations.

Dr. Moore has over 300 peer-reviewed publications, two books and 40 book chapters. Dr. Moore received the Franceschetti Medical of International Society of Genetic Eye Disease and the Claffy Memorial Medal from the University of Sydney awards in 2003.

Dr. Moore would hold a full-time faculty appointment as a Pediatric Ophthalmologist and Professor of Ophthalmology at University of California San Francisco. Dr. Moore would provide clinical care in pediatric ophthalmology in the outpatient services and inpatient pediatric ophthalmology consultative services. He would conduct research in the field of inherited retinal degeneration along with teaching medical students, residents, and fellows both in didactic and in the clinic.

The Committee recommended that the Board approve Dr. Moore for a Special Faculty Permit appointment.

Ms. Yaroslavsky made a motion for the Board to approve Dr. Anthony T. Moore for a Business and Professions Code Section 2168.1(a)(1)(A) Special Faculty Permit appointment at University of California San Francisco School of Medicine; s/Dr. Krauss. Motion carried.

Agenda Item 21 Discussion and Consideration of Legislation/Regulations

Ms. Simoes referred the Members to tab 21 in their packets. She stated she had contacted Legislative offices in the San Diego area and invited them to attend the Board Meeting. Ms. Simoes stated the 2014 Legislative session has ended and the Legislature does not reconvene until December 1, 2014. The Governor has taken action on all the bills the Board has taken positions. This is the last year of a two-year session, which means, if a bill did not pass this year, it is dead. She stated the tracker list could be found under tab 21. The bills in pink are Board-sponsored bills and the bills in blue are bills where the Board has taken a position. All bills on the list were signed into law by the Governor. She stated she would be giving a brief summary of each bill and then discussing the Board's implementation plan. She asked the Board Members to note that the implementation plan includes a Newsletter article in the Winter Newsletter and notifying or training of Board staff.

AB 1838 (Bonilla) allows graduates of accelerated and competency-based medical school programs to be eligible for licensure in California, if the program is accredited by the Liaison Committee on Medical Education (LCME), the Committee on Accreditation of Canadian Medical Schools (CACMS) or the Commission on Osteopathic College Accreditation (COCA). The Board implementation plan is to update the Board's website, publications, and forms.

AB 1886 (Eggman) is the internet posting bill that allows the Board to post the most serious disciplinary information, which is already public information, on the Board's website as long as it remains public. The Board's implementation plan is to update the Board's website and publications, identify documents that were taken off the Board's website due to the 10-year rule and place the documents back on the website, work on processes and procedures to identify malpractice settlements over 5 years for posting and over 10 years to be available to the public if requested. In addition, send an email blast out to all physicians alerting them of this change in posting requirements and to update regulations through a Section 100 change for the citation posting changing to three years.

SB 1466 (Committee on Business, Professions, and Economic Development) was the Board's health omnibus bill and the provision that will impact the Board include making the American

Osteopathic Association-Healthcare Facilities Accreditation Program (AOA-HFAP) an approved accreditation agency for hospitals offering accredited postgraduate training programs, and also striking “scheduled” from existing law that requires physicians who perform a “scheduled” medical procedure outside of a hospital, that results in a death, to report the occurrence to the Board within 15 days. The Board’s implementation plan is to update the Board’s website, publications, and forms.

AB 186 (Maienschein) allows spouses of military personnel that have moved to California based upon active duty orders of the military spouse, and who have a physician and surgeon license in another state, to receive a 12-month temporary license if they meet the temporary licensing requirements, complete an application, and provide specified information. The implementation plan is for staff to process these temporary licenses, which would become full licenses once all of the documentation is received. In addition, to identify a licensing staff member to become the single point of contact for all temporary licenses, work with DCA on BreEZe changes, along with posting information for military spouses on the Board’s website regarding how to apply for a temporary license and the eligibility requirements.

AB 496 (Gordon) amends the existing cultural competency CME course requirement to also include information pertinent to the provision of appropriate treatment and care to the lesbian, gay, bisexual, transgender, and intersex (LGBTI) communities. The implementation plan is to notify agencies that accredit CME of this new requirement, include an agenda item at a future Licensing Committee Meeting to hear from CME accrediting organizations on how they have addressed the amended cultural and linguistic competency requirement, and to include information on the new requirement on the Board’s CME webpage.

AB 809 (Logue) revises the informed consent requirements relating to the delivery of health care via telehealth by permitting consent to be made verbally or in writing, and by deleting the requirement that the health care provider who obtains the consent be at the originating site where the patient is physically located. This act is an urgency statute, which means it took effect immediately upon being signed into law. The implementation plan is to notify/train Board staff and DCA/DOI staff, and update the Board’s website and related publications.

AB 1535 (Bloom) allows pharmacists to furnish naloxone hydrochloride in accordance with standardized procedures or protocols developed and approved by the Board of Pharmacy (BOP) and the Board, in consultation with the California Society of Addiction Medicine, the California Pharmacists Association and other appropriate entities. The implementation plan is to work with the BOP to develop standardized procedures and protocols for pharmacists to use when furnishing naloxone, bring standardized procedures and protocols to the Board for approval, and notify/train Board staff.

AB 1841 (Mullin) allows medical assistants (MAs) to hand to patients properly labeled and pre-packaged prescription drugs, that have been ordered by a licensed physician, podiatrist, physician assistant, nurse practitioner, or a certified nurse-midwife. The implementation plan is to notify/train Board staff and DCA/DOI staff, as well as update the Board’s website and publications.

AB 2139 (Eggman) requires a health care provider that makes a diagnosis that a patient has a terminal illness, to notify the patient, or when applicable, another person authorized to make health care decisions for the patient, of the patient’s right to comprehensive information and counseling

regarding legal end-of-life options pursuant to existing law. The implementation plan is to notify/train Board staff and update the Board's website and publications.

AB 2214 (Fox) enacts the Dolores H. Fox Act and requires the Board, when determining CME requirements, to consider including a course in geriatric care for emergency room physicians. The implementation plan is to include a stand-alone Newsletter article geared toward emergency room physicians and geriatric care.

SB 1083 (Pavley) authorizes physician assistants (PA) to certify claims for disability insurance with the Employment Development Department. The PA would first have to perform a physical exam under the supervision of a physician, pursuant to existing law. The implementation plan is to notify/train Board and DCA/DOI staff and include an article in the Board's Newsletter.

SB 1116 (Torres) requires the Board by July 1, 2015, to develop a mechanism for physicians to pay a voluntary contribution, at the time of application for initial license or renewal, to the Steven M. Thompson Loan Repayment Program (STLRP). The implementation plan is to update the Board's website to highlight the fact that physicians can donate more than the mandatory \$25.00 to the STLRP and provide directions on how to do so. The Board will work with DCA on needed BreZE enhancements, amend the licensing and renewal applications to include new information and provide an opportunity for them to do so on both forms, and to identify procedures for staff to process additional voluntary contributions to the STLRP.

SB 1243 (Lieu) is a sunset review bill for several boards under the DCA. In addition to the sunset review provisions, this bill also requires the DCA and of Office of Administrative Hearings to submit specified reports to the Legislature on an annual basis. The bill enhances unlicensed advertising enforcement, requires DCA to develop and offer enforcement training, and amends public meeting notice requirements. The implementation plan is to notify/train Board staff and include an article in the Board's Newsletter.

Agenda Item 21B 2015 Legislative Proposals

Ms. Simoes referred the Members to pages BRD 21B-1 through BRD 21B-3.

805 Reporting – In the Board's Sunset Review Report, the Board included information regarding a decline in 805 reporting. To address this decline in reporting, Board staff is proposing legislation that would require physicians to report to the Board when reportable actions occur within 30 days after they are finalized. This will enable the Board to ensure that peer review bodies are reporting appropriately, and ensure that the Board is aware when these actions are taken. This will allow for verification in 805 reporting.

Julie D'Angelo Fellmeth, Center for Public Interest Law, stated when she reviewed Board data, one of the things she was required to do was to determine which sources of information coming into the Board were the most reliable in enabling the Board to detect where consumer protection is at risk and stated the 805 reporting was at the top of the list. She believes the number of hospitals that are supposed to be reporting 805 reports to the Board has gone down tremendously over the years. She urged the Board to support this proposal.

Yvonne Choong, CMA, stated they have some concerns about this proposal. She noted that currently, the Chief of Staff at each hospital is responsible for reporting certain actions within 15 days and the staff reports show this reporting has declined and this change is needed. They are not convinced that it is because of under reporting by the hospitals. There are a number of reasons that could lead to under reporting, such as fewer physicians practicing in hospitals; fewer contracting arrangements between physicians and hospitals may influence this decline as well. They feel that adding another burden on to physicians to report will add confusion because of the types of reportable actions. It requires the physicians to become experts in areas that must be reported, which they believe would add an additional level of education. She suggested the Board may consider if additional outreach and education is necessary before taking the step of placing another statutory responsibility upon physicians and would appreciate the Board's consideration of these recommendations.

Marianne Hollingsworth, Consumers Union Safe Patient Project, stated the Board staff has reported a historically low number of 805 reports made to the Board. She stated they support the Board staff's legislative proposal to require that physicians in addition to 805 reporters report to the Board when reportable actions occur. However, she noted they doubt this change will have much impact unless the Board takes additional action regarding section 805 requirements.

Dr. Krauss stated it is important to look at the numbers, but it is also important how those numbers are viewed. He recommended that when statistics are presented by the Board or to the Board that the Board asks for a statistical analysis of significance.

Dr. GnanaDev suggested staff get some input from the organized medical staff section of CMA as all of the hospital medical staff is represented there. He stated he agrees with going ahead with the legislative proposal, but to work with the medical staff sections in the process.

Dr. Levine also stated that there are two parts to this. It is critically important on how the data is interpreted. She feels this legislation would provide a way to verify that the numbers are accurate and validate the information. She noted if the bill is written carefully, it should not impose substantial burden on physicians.

A motion was made to approve the legislative proposal/second. Motion carried w/1 abstention (Krauss).

Ms. Simoes noted that staff would work with all interested parties on putting together this proposal.

Midwife Assistants – This issue was included in the Board's 2012 Sunset Review Report. It has been brought to the attention of the Board that LMs need to use assistants. Currently, there is no definition for a midwife assist in statute, or specific training requirements or duties that a midwife assistant may perform. Some LMs use other LMs as assistants, while some use a midwife student who is enrolled in a recognized midwifery school and who has an official agreement with the student and midwifery school to provide clinical training to the student midwife. Other LMs use someone who may or may not have formal midwifery training. The duties that a midwife assistant performs also vary greatly from LM to LM. Board staff believes that this is a serious consumer protection issue and that legislation should be pursued to define midwife assistants and define the services they can provide. Board staff is proposing that language be pursued to ensure that midwife assistants meet minimum training requirements, the same requirement for medical assistants, pursuant to Business and Professions Code Section 2069. The statute should also set

forth the duties that a midwife assistant could perform, which should be at the same level as duties that a medical assistant could perform technical support services only. The language should also allow the Board, through the Midwifery Advisory Council (MAC), to adopt regulations and standards for any additional midwife assistant technical support services. Ms. Simoes stated the Board would need to approve this legislative proposal.

Ms. Yaroslavsky made a motion to approve the legislative proposal: s/Dr. Lewis.

Sara Davis, California Association of Midwives expressed their support for this proposal.

Motion carried.

Outpatient Surgery Settings (OSS) Legislative Proposals – Ms. Simoes reminded the Board that there are three proposals that had been previously approved by the Board and had briefly been inserted into a bill last year, SB 966, but due to the lateness of the amendment to the bill, it was decided it would be taken up this year instead. Staff has already met with Senate Business and Professions Committee staff and they plan to propose legislation this year. The proposals that have already been approved are: data reporting to the Office of Statewide Health Planning and Development (OSHPD), unannounced inspections performed by the Accreditation Agencies, and physician peer review requirements.

Mr. Serrano Sewell stated for the Board that there would be no changes in the prior approvals of those three proposals.

Ms. Simoes continued with the one OSS proposal that had not been pre-approved by the Board. She stated currently, a CMS-certified ambulatory surgical center (ASC) is considered a peer review body that is required to report specified actions to the Board. However, a CMS-certified ASC is not authorized to request peer review reports from the Board prior to granting or renewing staff privileges for a physician. Board staff is suggesting Board language that would consider accredited OSSs as a peer review body and requires these setting to report specified actions to the Board. The language would also allow both CMS-certified ASCs and OSSs to be authorized to request peer review reports from the Board prior to granting or renewing staff privileges for a physician, since they are or would be reporting these actions to the Board. This proposal would enhance consumer protection. The Board would need to approve this legislative proposal.

Dr. Krauss made a motion to support this legislative proposal; s/Dr. Lewis.

Carol Moss, Consumers Union, stated they support this legislative proposal. They encourage the Board to expand the proposal to include all ASCs in order to get a full picture of the procedures being done in California. They are concerned about the part of the proposal to pursue a legislative requirement for peer review. She stated details were not included in the documentation. They are concerned that if the Board sponsors and passes legislation to put in place peer review in OSSs, this may give patients and policy makers a false sense of security, as many of the OSSs involve only one or two physicians, or involve multiple physicians, all of who are financially invested.

Motion carried.

Technical Clean-Up (Potential Omnibus) – Ms. Simoes stated there are provisions that are technical in nature and are potential candidates for the Board’s omnibus bill, meaning the changes are purely technical and not controversial.

Ms. Simoes stated there are numerous clarifying changes for the allied health licensure sections to allow the Board to take similar discipline for these license types, as it does for physician and surgeons. The Board has recently had obstacles in taking actions pertaining to unlicensed practice, probation, cite and fine, etc. In addition, for physicians and surgeons, there are a few technical, clarifying changes that are needed related to using “M.D.,” denials, public letters or reprimand, etc. The Board would need to approve staff going forward with some technical changes.

Dr. Lewis made a motion to approve this legislative proposal; s/ Ms. Wright. Motion carried.

Medical Marijuana – Ms. Simoes noted this proposal was brought up and discussed at the Board’s recent Enforcement Committee meeting. It was suggested that there be a legislative statute change pursued to require the initial examination be made in-person prior to the physician recommending marijuana.

Dr. Levine stated she agrees there should be some clarification about what constitutes the appropriate conditions under which a recommendation for marijuana can be made. She feels the Board needs to be very careful with what that is and does not believe it should be as simple as an in-person versus a non in-person examination. She stated she supports a legislative proposal with the intent of clarifying the situations under which a recommendation for marijuana is appropriate congruent with medical practice.

Dr. Krauss agreed with Dr. Levine, but feels that goal might be a hard one to accomplish within the next legislative cycle. His concern is a physician thinks of a physician/patient relationship as a circumstance where a patient has a symptom or problem and seeks a physician’s evaluation and/or treatment. Marijuana or opioids are circumstances where the patient knows what they want and the reason that they want it, and will seek out a physician knowing that is the gateway to obtaining it. He is concerned that under existing law, people who desire to have marijuana, for whatever reason, can skype by telehealth to get a recommendation for marijuana. The recommendation as stated yesterday was to establish a Board policy position and to lobby for legislation to require that a recommendation for marijuana for medical purposes require an in-person good faith examination by a Californian licensed physician. He noted that would be something that would be easier to accomplish via legislation

Mr. Serrano Sewell stated this is a complicated issue. It covers federal, state and local municipalities and how they deal with marijuana for medical purposes. He proposed that Dr. Lewis create a working group through the Enforcement Committee to look at existing facts, existing law and be put on the next Enforcement Committee agenda for further discussion.

Dr. Bishop feels marijuana should be treated just like any other medical drug despite the emotional aspect of it, as people tend to forget there is existing law already.

Agenda Item 21C Status of Regulatory Actions

Ms. Simoes noted staff had just received notice from the OAL that the regulatory language that the Board submitted to implement SB 1441 was disapproved. However, the Board has 120 days to

make changes to the proposed regulations to address the concerns raised by the OAL. Ms. Webb is in the process of working on these changes. She announced there would need to be an interim

teleconference Board Meeting on this issue and Members will be contacted early next week seeking their availability for this interim meeting.

Mr. Serrano Sewell asked Ms. Kirchmeyer what the next steps are in getting this approved.

Ms. Kirchmeyer stated the next steps are to find out what changes OAL is requesting in order to come into compliance with their requirements. The Board staff will make the requested changes, as well as change the final statement of reasons. Then, an interim meeting will need to be held for the Board to approve those changes before it can be noticed. Once that meeting has taken place and the changes have been approved, staff will then notice it for a 15-day comment period.

Agenda Item 22 Update on the Physician Assistant Board

Dr. Bishop stated the PA Board's (PAB) website was updated recently to include an "about us" tab, which includes a history of the PAB. The page also contains a link to two historical documents regarding the creation of the PAB.

Dr. Bishop noted that recent federal regulation would transfer hydrocodone combination products from schedule III to schedule II. To ensure that licensees are aware of this change, staff is in the process of updating the website to include information about this change in law. This information will be placed on the home page under "highlights," and will be under the "licensee" tab. PAB is mirroring the Medical Board's information about this topic so the PAs will receive a similar message from both boards.

He continued stating PAB continues to work with the BreEZe team on BreEZe production stabilization issues. The main issues are with the enforcement and cashing aspects and the generation of reports in BreEZe. The licensing functions are continuing to work appropriately and are not experiencing any delay in issuing PA licenses. PAB staff are routinely attending user group meetings and these meetings are helpful to the PAB in that staff are able to share their issues with BreEZe staff and other boards in order to assist in finding solutions. The next phase of the BreEZe implementation is on-line renewals. Staff is working to develop language that will be included in the on-line renewal pages.

Dr. Bishop noted PAB continues to receive support from the Medical Board's Information Systems Branch (ISB), since many of their data processing functions are similar. ISB is able to assist staff with many BreEZe issues. PAB is very appreciative and grateful for the professional attitude and support that is provided.

Dr. Bishop stated an important bill affecting PAs' practice is SB 1083 (Pavley). This bill authorizes a PA to certify a patient's disability after performance of a physical examination by the PA under the supervision of a physician and would correspondingly expand the definition of practitioner to include a PA. The Governor signed SB 1083 and it becomes law in 2015.

He announced the next PAB meeting is scheduled for November 3, 2014.

Agenda Item 23 Update on the Health Professions Education Foundation

Ms. Yaroslavsky stated there are not any new updates to be shared. As stated at the last meeting, about \$32 million was distributed among loan repayments and scholarships this past year. The next meeting will be in early December, so there will be more to report at the next Board meeting.

Agenda Item 24 Agenda Items for the January 29 – 30, 2015 Meeting in Sacramento

Mr. Serrano Sewell announced some agenda items for the January Board meeting in Sacramento. One being a regulatory hearing on the CME requirements and a presentation by the University of California San Francisco regarding the study it performed using the Board's physician survey. He then asked Members if there were any additional item they would like added to the January 2015 Board meeting agenda.

Dr. Krauss suggested that at each quarterly meeting, the Executive Committee and the Board have a Board policy compendium update.

Ms. Wright suggested having a representative from the Office of Health Equity come and speak to the Board in regards to the specifics of what they do.

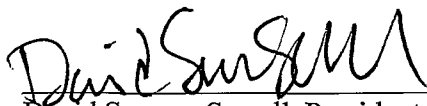
Ms. Kirchmeyer stated staff is looking into that and noted there are other entities as well that do research. She will look into those entities to see who could do such a report.

Dr. Levine suggested a presentation on the newest developments in telehealth, including where the technology is going in terms of safety, encryption, etc. She offered to assist in finding someone to attend the meeting to give such a presentation.

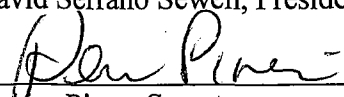
Agenda Item 25 Adjournment

Mr. Serrano Sewell adjourned the meeting at 11:38 am.

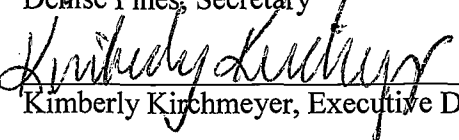
The full meeting can be viewed at http://www.mbc.ca.gov/About_Us/Meetings/2014/.



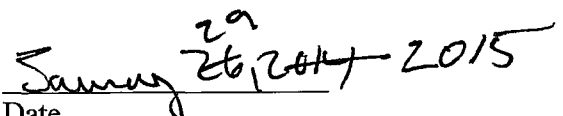
David Serrano Sewell, President



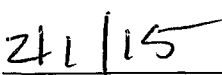
Denise Pines, Secretary



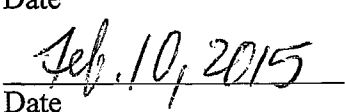
Kimberly Kirchmeyer, Executive Director



Date



Date



Date