MEDICAL BOARD OF CALIFORNIA

QUARTERLY BOARD MEETING

Courtyard by Marriott – Cal Expo
1782 Tribute Road
Sacramento, CA 95815

AGENDA ITEM 3

July 18-19, 2013
MEETING MINUTES

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

Agenda Item 1 **Call to Order/Roll Call**

Dr. Levine called the meeting of the Medical Board of California (Board) to order on July 18, 2013, 2013 at 1:40 pm. A quorum was present and due notice was provided to all interested parties.

Members Present:
Sharon Levine, M.D., President
Michael Bishop, M.D.
Silvia Diego, M.D., Secretary
Dev GnanaDev, M.D
Reginald Low, M.D.
Denise Pines
David Serrano Sewell, J.D.
Janet Salomonson, M.D.
Gerrie Schipske, R.N.P., J.D, Vice President
Phil Tagami
Felix Yip, M.D.
Barbara Yaroslavsky

Members Absent:
None

Staff Present:
Eric Berumen, Central Complaint Unit Manager
Susan Cady, Staff Services Manager, Central Complaint Unit
Ramona Carrasco, Central Complaint Unit Manager
Dianne Dobbs, Department of Consumer Affairs, Legal Counsel
Kurt Heppler, Staff Counsel
Cassandra Hockenson, Public Information Officer
Teri Hunley, Business Services Office Manager
Diane Ingram, Information Systems Branch Manager
Kimberly Kirchmeyer, Deputy Director
Armando Melendez, Business Services Analyst

Cindi Oseto, Licensing Program Manager
Regina Rao, Business Services Analyst
Paulette Romero, Central Complaint Unit Manager
Dave Ruswinkle, Associate Governmental Program Analyst, Enforcement
Kevin Schunke, Licensing Outreach Manager
Jennifer Simoes, Chief of Legislation
Laura Sweet, Deputy Chief, Enforcement
Kathryn Taylor, Licensing Program Manager
Renee Threadgill, Chief of Enforcement
Lisa Toof, Administrative Assistant II
Anna Vanderveen, Investigator
See Vang, Business Services Analyst
Michelle Veverka, Investigator
Kerrie Webb, Legal Counsel
Curt Worden, Chief of Licensing

Members of the Audience:
Teresa Anderson, California Association of Physician Assistants
G.V. Ayers, Consultant, Senate Business, Professions, and Economic Development Committee
Gloria Castro, Attorney General's Office, Los Angeles
Don Chang, Department of Consumer Affairs
Yvonne Choong, California Medical Association
Genevieve Clavreul
Zennie Coughlin, Kaiser Permanente
Frank Cuny, California Citizens for Health Freedom
Julie D'Angelo Fellmeth, Center for Public Interest Law
Hank Dempsey, Chief Consultant, Assembly Business, Professions, and Consumer Protection Committee
Karen Ehrlich, L.M., Midwifery Advisory Council
Karen Fischer, Dental Board
Corrine Fishman, Department of Consumer Affairs
Jack French, Consumer's Union Safe Patient Project
Julie Haskins, Anthem Blue Cross
Sarah Huchel, Consultant, Assembly Business, Professions, and Consumer Protection Committee
Christine Lally, Department of Consumer Affairs
Eduardo Martinez, California Medical Association
Tina Minasian, Consumer's Union Safe Patient Project
Michele Monserratt-Ramos, Consumer's Union Safe Patient Project
Alison E. Price, Licensed Midwife
Victoria Samper, Institute of Medical Quality
Taryn Smith, Senate Office of Research
Carrie Sparrevohn, Midwifery Advisory Council

Prior to agenda item two, Dr. Levine introduced and welcomed Ms. Christine Lally, the newly appointed Deputy Director for Board and Bureau Relations from the Department of Consumer Affairs, (DCA) and her Executive Assistant, Corrine Fishman; Taryn Smith from the Office of

Senate Research; G.V. Ayers, a consultant to the Senate Business and Professions Committee; and Karen Fisher, the Executive Officer of the Dental Board of California.

Dr. Levine then congratulated Ms. Gerrie Schipske for being chosen by the White House as a Champion of Change for Open Government. She is one of seven from across the country selected and will be honored at a ceremony next week at the White House.

Dr. Levine then announced that this meeting would be Dr. Reginald Low's last Board Meeting. He has served eight years, two terms, as a Board Member. She stated that his contributions and leadership role to the Board have been significant and that he will be missed by all. She stated that he was the Chair of the Enforcement Committee and is responsible for the tremendous work done over the last year and a half in really improving the Boards Expert Reviewer Program and implementing the excellent training program. Dr. Levine thanked him on behalf of all of the Members for his contributions.

Agenda Item 2 **Public Comments on Items not on the Agenda**

No public comment was heard on this item.

Agenda Item 3 **Approval of Minutes from the June 4, 2013 Meeting**

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

Agenda Item 4 **Presentation on Covered California – Dr. Jeffrey Rideout, M.D.**

Dr. Levine introduced Dr. Jeffrey Rideout who is currently the Senior Medical Advisor for Covered California, the State of California's Health Insurance Exchange (the Exchange). He is responsible for clinical quality, network management, delivery system reform, and clinical and network analytics related to the estimated 3-4 million eligible Californians that will seek insurance coverage through the Exchange beginning in October of 2013.

Dr. Levine asked Dr. Rideout to please cover in his remarks the implication for physicians and the role they can play in assisting their patients to understand the Affordable Care Act (ACA) and stated that the Board has the opportunity to use its communication channels to assist in that role.

Dr. Rideout stated that there has been a very large community awareness grant program, but the Exchange is also in the middle of a clinician and provider grant program, so physician organizations can decide on whether or not they want to apply for those grants so that part of the physician education exercise goes through known channels.

Ms. Yaroslavsky asked Dr. Rideout to provide any information regarding the stakeholders as well as the physicians and patient community as to where to find opportunities and information and what they should be looking for within their own practices that are now going to be covered.

Dr. GnanaDev asked Dr. Rideout to explain how the physicians are going to get paid through the Exchange program. He further asked if the Exchange is taking an approach to standardized billing and payments to and from different insurance companies.

Dr. Rideout stated that the Exchange is organizing health plans and their physicians and other provider delivery systems to supply insurance to those that are eligible, and subsidies for those who would like to buy coverage through the Exchange. The Exchange is not dictating or telling people how to create those networks or the rates that go into it. Currently, the network configurations are still with the regulators, but the actual configuration of the networks are something that is not politically available.

Dr. Rideout gave a presentation on how the Affordable Care Act (ACA) is working and how Covered California will be implementing the ACA and education of the different plan options that will be available to those who are eligible and take the opportunity to get insurance coverage through the Exchange.

Agenda Item 5 **Discussion and Consideration of Proposed Regulations to Implement SB 1441, Relating to Substance Abusing Licensees – Mr. Heppler / Ms. Dobbs**

Mr. Heppler gave the Board a brief background on the history of the Board's prior diversion program, noting that this program was not a required contracted program, but a "self-administered" program put together by the Board. There were three ways to get into the diversion program: self-referral, the voluntary option; ordered into it by a disciplinary order; or through a Statement of Understanding, in lieu of discipline.

Mr. Heppler advised the Board that if these regulations are adopted, the Board will not have a contracted diversion program nor will it have a self-administered diversion program. These standards will come into place when a licensee is disciplined. The adoption of these regulations will not bring back the former diversion program, nor will it implement a contracted diversion program. The Board will still continue to have substance-abusing licensees. There were 16 standards that were set forth by the Substance Abuse Coordination Committee (SACC), but not every one of those standards is set forth in the regulations. Standards 13, 14 and 15 deal with contracted based diversion programs, which are not applicable to the Board as the Board does not have a contracted diversion program nor a self-administered diversion program. Standard 16 instructs the Board, not a licensee to collect data. This standard is applicable to the Board; however, Mr. Heppler stated that his legal opinion is it does not have to be in regulation because it is governing the internal procedure of the Board. It does not affect a licensee. It does affect how the Board collects, reports on, and analyzes the data and will ultimately decide if the diversion program is successful or not, so he does not feel that it should be incorporated in the regulations.

Mr. Heppler announced that there is an error in one of the regulations and asked them to turn to page BRD 5-5, under subsection (5), biological fluid testing, subparagraph (i)(1), it reads: "The Board may revise the frequency, specified in section (i), upon a determination that the licensee is not currently employed in the healthcare field", and the erroneous language now reads, "the

licensee suffers from a substance use or abuse disorder, or other circumstances in which a revision of the testing frequency would not impair public protection." It should read: "the licensee DOES NOT suffer from a substance use or abuse disorder."

He continued that the balance of these regulations and standards have been adopted in the proposed regulations. With the exclusion of standards 13, 14, 15 and 16, 1 through 12 have been incorporated in these regulations. If the Board sees fit, the proper motion would be to set this matter for public notice and hearing at the next available Board Meeting.

Ms. Yaroslavsky made a motion to approve the recommendation; s/Ms. Schipske.

Public Comment was heard on this item.

Julie D'Angelo-Fellmeth, Center for Public Interest Law, went over a list of specific language in the uniform standards that she believes are missing from Mr. Heppler's draft that was presented to the Board Members.

Michele Monserratt-Ramos, Consumer's Union Safe Patient Network urged the Board to adopt staff's recommendation that the Board place uniform standards into regulatory language, rather than including them in the disciplinary guidelines and stated that Standard number 16 should be placed into regulation.

Dr. Levine stated that the motion at this point was to approve the language. However, the Board could change that motion to add some language based upon the comments, and then notice that for regulatory hearing at the October Board Meeting. After discussion, it was determined to keep the original motion and to give the Board the opportunity, as required by law, to consider all oral and written comments received at the hearing in October.

Motion carried.

Agenda item 6 **Discussion and Consideration of Teleconferencing Options for Medical Board Meetings – Ms. Schipske / Ms. Kirchmeyer / Mr. Heppler**

Ms. Kirchmeyer stated that at the last meeting, the Board reviewed four options for allowing individuals who were not physically in attendance at the Board Meeting to be able to make comments to the Board. The Board requested Ms. Kirchmeyer and Ms. Schipske discuss other options in more detail for members of the public to be able to offer public comment at the Board meetings without being in attendance. After discussion, it was determined that there are two viable options for the Board to consider.

The first option is to offer a telephone line that one could call to either make a comment to the Board or they can listen to the meeting and make comments. An individual would have the option of watching the video on webcast and calling in when they want to make a comment or listening to the whole meeting via the webcast and making comments at the appropriate time. This would be done with a moderator to monitor these callers.

The issue with this option is the time incurred to hear from all of the individuals at the meeting as well as those calling into the meeting. Legal Counsel has stated that the Board has the authority to limit the time afforded for public comment. Each speaker whether in person or on the phone would be given 2 minutes to provide his/her comment, and at the end of the comment time, the Board would then move to the next speaker. At the end of a set time (example 20 minutes), the public comment period would end. Limiting the time allocated for public comment on any agenda item is a change from the Board's current practice of just appointing time per speaker rather than for the complete public comment period.

The second option is to provide an email account where an individual watching the webcast could submit written comments or questions to a staff member who could monitor and read the comments or questions to the Board at the appropriate time. Again, the Board could impose limits to the time that it takes for these comments to be read. Per Legal Counsel, if the Board institutes time limit requirements equally for those present at the meeting and those joining remotely, regulations may not be necessary but are recommended. The Board would need to be very strict in enforcing time limits, The Board may choose to pilot one of these options at a future Committee Meeting before implementing at a full Board Meeting. The cost for either of these options is minimal, but would require staff to monitor either the phone or the computer.

Ms. Schipske thanked Ms. Kirchmeyer and staff for the time they put into finding these options. She added that she agrees that piloting one of these options at a Committee Meeting is a good way to start and see how much participation the Board gets and also how much staff time would be involved in handling the calls that are received. Ms. Schipske asked the Board to give this consideration and authorize a pilot.

Public comment was heard on this item.

Michele Monserratt-Ramos, Consumer's Union California Safe Patient Network, stated the Consumer's Union is pleased that there is a recommendation before the Board to take action to provide teleconferencing at Board meetings. They recommend that the Board apply a uniform time limit per person to people in the room and on the phone. They also recommend that the Board make the teleconferencing available for some time before making a final decision on whether the Board feels there is a need to propose an overall time limit on testimony for particular agenda items. They feel that the Board should establish an email opportunity to be used anytime the Board runs out of time for receiving oral testimony and that written comments can be emailed to the Board to be shared during the public comment period. This ensures that no one feels that there voice is being left unheard.

Jack French from San Diego stated he supports the teleconferencing that staff recommends. As a survivor of MERCA, there was a time when he could not travel to participate in meetings; with teleconferencing in place, other California's like himself can participate is the important business of the Board.

Tina Minasian, Consumers Union California Safe Patient Project, stated she also supports the teleconferencing option that staff recommends. As a survivor of medical harm, there are times

that she cannot attend Board meetings due to her injuries. With teleconferencing in place, other consumers like herself will be able to participate in important safety issues with the Board.

Ms. Schipske made a motion that the Board approve the concept to teleconferencing and allow a pilot effort to be launched with the direction of staff, to test the teleconferencing option out to see how best the Board can open up access to the meetings offsite; s/Ms. Yaroslavsky. Motion carried.

Agenda Item 7 **Board Member Communications with Interested Parties – Dr. Levine**

Dr. GnanaDev noted that he continuously talks with American Medical Association and CMA, but does not discuss Board issues.

Agenda Item 8 **President's Report – Dr. Levine**

Dr. Levine reported that since the Board Meeting in April, subsequent to the sunset review hearing, she met with previous chairs of both the Senate and Assembly Business and Professions Committee regarding the sunset review and the issues that were raised by the Committees. She spoke in great length with both Committee Chairs, both who have now been replaced. Dr. Levine will be setting up meetings to meet with both of the new Committee Chairs in the near future. She and Dr. Low presented at the Senate Business and Professions Committee hearing on SB 304. On July 2nd, Dr. Levine sent a letter to the Chairs of both Committee's providing an update on actions the Board has taken and the Board's desire to ensure that the Board is moving forward to meet every concern of the Committees and communicating clearly with the Legislature the actions being taken to ensure the Board's commitment to consumer protection.

Since the June 4th Board Meeting, Ms. Kirchmeyer has assumed the role of Interim Executive Director and she and Dr. Levine have had calls every two weeks with the Executive Team discussing issues and providing updates of Board activities, status reports, and the work of staff.

Dr. Levine announced that Senator Curran Price was elected to the Los Angeles City Council and Senator Ted Lieu has taken over as Chair of Senate Business and Professions Committee. She also announced that Assemblyman Gordon has moved from Assembly Business and Professions Committee to the Assembly Rules Committee and Assembly Member Bonilla has taken over as Chair of the Assembly Business and Professions Committee.

Public Comment was heard on this item.

Jack French, Consumer Union Safe Patient Project, urged the Board to change the policy that now states that the Executive Committee should have at least one public member within a group of five members. He feels that it is clearly the intention of the Legislature that public members be much more heavily represented in deliberations of the Board. California law requires that seven of fifteen of the Board Members be public members. He recommends that the Board set a

policy that requires all Committees have the same balance as required by the legislature for the full Board.

Dr. Levine announced some changes to the Board's Committees. Ms. Pines will be joining the Education and Wellness Committee as her background in media, marketing, communication and public education will be extremely valuable to the Board.

Dr. Yip and Mr. Tagami have both agreed to serve on the Enforcement Committee.

With Dr. Low's departure due to his term expiring, Mr. Serrano Sewell has agreed to serve as Chair of the Enforcement Committee.

Dr. Yip will also be serving on the Special Faculty Permit Review Committee with Dr. Low's departure.

Dr. Levine confirmed that Ms. Yaroslavsky and Dr. Bishop are the Members on the Prescribing Task Force and that they will be meeting sometime after Labor Day.

Dr. Levine announced that looking at the functions of the Board and after discussions with Executive Staff and the work of the Board distributed among the Committees, she would like to consolidate some of the work. Dr. Levine recommended to the Board that the Board incorporate the Budget Subcommittee, the Full Board Evaluation Subcommittee and what was the Strategic Plan Creation Subcommittee into an Organizational Effectiveness Committee which will essentially look at budget, full Board evaluation, and any necessary revisions and changes to the Strategic Plan in light of the sunset review and the work the Board has been doing subsequent to the sunset review. This will be a committee of two. Mr. Tagami has agreed to work with Dr. Levine on this Committee.

Dr. Levine then announced that Dr. Bishop was appointed by the Governor to the Physician's Assistant Board as well as being re-appointed to the Medical Board and congratulated him.

Agenda Item 9 **Interim Executive Director's Report – Ms. Kirchmeyer**

Ms. Kirchmeyer provided an update on several administrative items. She reported that she and the Executive Staff have a conference call twice a month with Dr. Levine to review the actions of the Board and to ensure that Board requests are being completed. Ms. Kirchmeyer has developed and maintains a spreadsheet which provides a status on all requests pending from the Board Members. She will be sending a monthly update to the Members on the status of items listed on this spreadsheet.

Ms. Kirchmeyer has bi-weekly meetings scheduled with the DCA Director, Denise Brown, to provide updates on the Board.

Ms. Kirchmeyer also has bi-weekly meetings scheduled with Ms. Castro of the Attorney General's (AG's) Office in order to remain up to date on items of interest to the Board and the AG's Office.

Ms. Simoes and Ms. Kirchmeyer met with legislative staff from the Senate and Assembly Business and Professions Committees to discuss the Board's sunset review and to provide an update on actions the Board has taken.

Ms. Threadgill and Ms. Kirchmeyer met with the DCA executive and personnel staff to discuss the Board's request to pursue pay differentials for the investigators. It was too late for this request to go into current negotiation discussions, but Ms. Kirchmeyer will be putting the information forward to DCA for future consideration.

Ms. Kirchmeyer stated that Ms. Threadgill has confirmed with the Office of Administrative Hearings (OAH) that an Administrative Law Judge will provide a presentation at the October Board Meeting regarding Interim Suspension Orders.

Ms. Simoes, Ms. Hockenson and Mr. Schunke met with staff from the Department of Health Care Services to discuss outreach to newly licensed physicians regarding fraud and how to prevent abuse of their license. Staff has agreed to partner with them in several ways, including putting their brochure on Protecting Medi-Cal against Fraud, Waste and Abuse into each new licensee's packet of information from the Board, coordinating outreach events, and possibly including a little blurb in Mr. Schunke's outreach to future applicants. The Department of Health Care Services will also be making a presentation to the Board at the October meeting.

Ms. Kirchmeyer announced that she, Ms. Simoes, Ms. Threadgill, Ms. Webb and Mr. Heppler met with the Receiver and his staff from the California Correctional Health Services regarding the recent investigation on female inmate tubal ligation. Ms. Kirchmeyer wanted to obtain information from them on the events surrounding the investigative report and to discuss what the Board needed in order to perform an investigation. The Board will be working with the Receiver's staff to obtain the necessary information to continue its investigation.

Regarding staffing, Ms. Kirchmeyer stated that she received notification Wednesday that the Board will be able to hire student assistants and retired annuitants. However, there is specific criteria that must be met and an approval process. The Board will be requesting retired annuitants to assist in background investigations, field training, personnel, and assistance with the BreEZe project until such time as all positions are filled. The Board is still at a 7% vacancy rate which equated to 20 vacant positions. Of those 20 positions, 11 individuals are either in background, pending a start date, or pending verification of eligibility. Therefore, the Board has only 9 positions that do not have an individual awaiting to fill the positions. This equates to a 4% vacancy rate, but there are two upcoming future retirements.

For discussion on the Board's budget, the Board's current fund condition shows that the Board's fund reserve at the end of this fiscal year is projected to be 4.3 months. The Board only has one BCP request that was approved for budget year 2013/2014 and that is for the BreEZe system.

The other approved cost is for CURES. Ms. Kirchmeyer stated that the Board would hear more on this issue from Ms. Simoes during her Legislative update and that the Budget bill included language that provided an appropriation for the new CURES system. All prescribing and dispensing licensing Boards were required to provide funding for the new system. The Board's portion was $848,000 in fiscal year (FY) 2013-2014 and $790,000 in FY 2014-2015. Ms. Simoes will discuss continued

funding for the CURES program when she discusses SB 809. The budget bill had specific language that stated the Feasibility Study Report has to be agreed upon by the DCA and the Department of Justice (DOJ). In addition, the DCA will work with the DOJ on the roles and responsibilities of each department as to the governance, development, implementation and utilization of the system. DCA has held three meetings with the affected Healing Arts Boards to discuss the current feasibility study report and the requirements for the system that DOJ is proposing. Each Board has been providing input into this process.

Ms. Kirchmeyer announced that the Board will be requesting four augmentations for FY 2014/2015. These requests include BreEZe costs; funding and position authority for an Operation Safe Medicine Unit in Northern California; funding and position authority for additional positions in the Enforcement Unit; and an increase in expert review rates, as approved by the Board. These positions and increases are necessary to continue to improve the enforcement process and reduce the complaint, investigative, and discipline timeframes.

Ms. Kirchmeyer stated that based upon these new projections, including the four future augmentations, it appears that the Board will be within its mandated two to four months reserve at the end of next fiscal year. Therefore, it is not prudent to consider any reduction at this time as previously recommended by the Bureau of State Audits.

Ms. Kirchmeyer referred Board Members to a page in their packet that shows the Board's actual expenditures as of May 31st. Although the budget is in line, she wanted to point out a couple items that may seem odd, referring to the line item for Other Items of Expense. This line item, due to its extremely low budget, shows that it is extremely over budget. Staff has reviewed the items of expense, which included law enforcement materials needed for POST, and determined that the increase this year was due to the fact the Board had a significant amount of staff attending POST. Staff will adjust the budget for this fiscal year to accurately reflect the spending in this line item so it does not continue to go over budget. Another item that is over is the vehicle operations which is indicative to the old cars and the need for repairs on them. Staff's training has increased due to the POST academy and training for BreEZe.

Ms. Kirchmeyer then discussed the budget report specifically for licensing, enforcement and the AG expenditures. She noted that the AG's Office spending is down this year. She believes it is due to the fact there are several vacant positions. Ms. Kirchmeyer stated that Ms. Castro will be providing information regarding hires during her presentation.

Ms. Kirchmeyer referred Members to a document in their packet that is in response to the strategic plan objection 5.3. This chart shows a cost comparison for the past five fiscal years for external agencies' spending. She asked that the members please note that the last column in this document for FY 12-13 is what is budgeted and also includes what was actually spent.

Ms. Kirchmeyer then gave a brief update on the BreEZe project reminding Members that this is the computer system that will replace the legacy licensing and enforcement systems. She stated that staff was notified recently that the project team is currently projecting a Go-Live date for September 17, 2013. However, in order to reach this release date the staff must complete a significant amount of testing on the new system and on the data conversion process. The Board has a significant number of

staff working on this project and this work will continue not only prior to the release date, but after the Go Live date due to the need to continue to test certain items. Ms. Kirchmeyer also reminded everyone that there will definitely be a learning curve after the system has been implemented and that staff will make every effort to mitigate this possible slowdown in productivity while the staff learns the new system and that when the system does Go Live, there will be a few days of down time. Staff will notify licensees of this, but wanted to let the Board know that physicians will not be able to renew online during this time. Staff will post this information on the Web site and do everything they can to let those who have to renew that month know that the Board is changing computer systems and it may impact their renewal so they need to renew as early as possible.

Lastly, in regards to the sunset review update, Ms. Kirchmeyer stated that Ms. Simoes will discuss the Board's Sunset Bill, SB 304 during her presentation and again reminded the Board the Senate Business and Professions Committee had 39 issues for the Board to address. Most of these issues are in SB 304. There were a few issues that were resolved and answered via the Board's response to the sunset review report submitted in April, and the Board still has a few issues that require research, studies and/or workshops to be held. Staff has prepared a spreadsheet to track these items and will continue to work toward resolution of the items that require follow-up. The Board staff will be working on these items in the next few months and will provide an update at the October Board Meeting.

Agenda Item 10 **Report on History of Business and Professions Code section 2220.7 (Gag Clause) – Ms. Kirchmeyer / Ms. Threadgill**

Ms. Kirchmeyer stated that at a prior meeting, the Board requested information on the history of the gag clause legislation. This request was made after the Board heard from a physician who was disciplined for violating this law. Ms. Kirchmeyer gave a brief summary of what the gag clause is stating section 2220.7 of the Business and Professions (B&P) Code states a physician and surgeon cannot include in a settlement any language that says the patient cannot file a complaint or cooperate with the Board, or include any language that requires the patient to withdraw a complaint. If a physician does this they are subject to disciplinary action.

In the 2003/2004 legislative cycle, Assembly Member Correa introduced a bill that would have done exactly what the Board's current law requires in prohibiting a gag clause; however, it included the prohibition for all licensees licensed by boards under the DCA, including the Medical Board. This bill passed out of the Legislature, but was vetoed by the Governor.

The following year, in 2005, Assembly Member Negrete-McLeod introduced a very similar bill for all of the DCA, however, again the bill passed out of the Legislature, but was vetoed by the Governor.

In 2006, the Board sponsored a bill which was authored by Assembly Member Negrete-McLeod to prohibit physicians from including any gag clause language in a settlement. The Board had heard from public members during public comment on the impact a gag clause can have on the Board's ability to take disciplinary action against a licensee. With the Board's mission of consumer protection, it was decided that they should request a legislative change which prohibited gag clauses. This bill was signed into law in 2006 and became effective January 1, 2007.

Ms. Threadgill stated that the Board has alleged this violation against licensees in several actions. In one case, staff found the violation as a result of a settlement report. During the investigation the existence of the confidentiality agreement was discovered when the patients attorney declined to cooperate with the release of records citing the confidentiality agreement signed by the patient when the civil case was settled. This case resulted in the issuance of a public letter of reprimand to the physician for violation of B&P Code Section 2220.7. Ms. Threadgill stated that in another case that involved sexual misconduct, the patient and the physician entered into a civil settlement agreement and again, the physician's attorney cited the confidentiality agreement provision as a barrier to unlimited production, so an accusation was filed alleging multiple violations including B&P Code Section 2220.7. Ms. Threadgill stated that this kind of agreement is against public policy. Because physicians are entering into these agreements, investigators have to work harder to get the courts to break the agreement and order the records be released.

Ms. D'Angelo Fellmeth stated that lawyers have been forbidden to use regulatory gag clauses in civil malpractice agreements for about 30 years. A 2012 bill AB 2570 introduced by Jerry Hill expanded the gag clause ban to all licensees of the DCA, so everyone is subject to this clause. She also stated that there is a difference between a confidentiality clause and a regulatory gag clause and the only thing that is banned currently is the regulatory gag clauses. The meaning of that is the clause prohibits the patient from complaining to the regulators. The confidentiality clause tends to require the plaintiff to agree not to reveal how much paid, etc. This clause is still legal.

Agenda Item 11 **Update on Health Professions Education Foundation – Ms. Yaroslavsky / Dr. Diego**

Ms. Yaroslavsky announced that the Health Professions Education Foundation (Foundation) has had a problem with the number of people it has as Members and the ability to generate a quorum. The Foundation has a new appointee to their Board, Dr. Delvekio Finley, Chief Executive Officer of the Los Angeles County Harbor UCLA Medical Center since 2011. Previously he was Vice President of operations for California Pacific Medical Center and the Associate Hospital Administrator for the San Francisco general hospital from 2006 – 2009. The Foundation entered into and signed an interagency agreement with the Assembly Rules Committee for $2 million dollars to deploy a minimum of 134 primary care practitioners throughout the State of California. They signed the first grant agreement with the California Endowment for $155,000 for administrative support. The Foundation is currently in the process of submitting a second grant proposal for $13 million dollars, which is due next month. The Foundation released their electronic application forms for the California Healthcare, Cal Reach program and have found that one new application is initiated every 11.8 minutes. The Foundation has 381 scholarships, and 709 loan repayments in progress at this time.

Agenda Item 12 **Update of Federation of State Medical Boards – Dr. Levine / Ms. Kirchmeyer**

Dr. Levine gave an update on the Federation of State Medical Board (Federation) meeting that took place in April, 2013. She reported that the theme of the meeting was the *Medical Workforce; What Regulators Need to Know Now*. A presentation was made by Dr. Sparrow, a professor from the John F. Kennedy School of Government on the Art of Harm Reduction on lessons from the world of regulatory practice. The presentation was about regulation from two difference perspectives. One which was harm

reduction and the other was, looking at regulations as a tool and an approach to improving the industry and/or enterprise that it is regulating. These are two very different approaches and there are strengths and weaknesses in each. Dr. Sparrow's conclusion being that this is not an either/or world, but that it needs to be looked at from both a consumer protection harm reduction perspective and also as regulation being an opportunity to improve the performance and public accountability of whatever enterprise is being regulated. Dr. Sparrow has written a book on the topic.

Dr. Levine stated there were three particular topic discussions that she feels is important to the Board. The first was the issue of multi-state licenses. With the growth of the telehealth industry, and the technology of telemedicine there is an interest in using this mechanism to provide health care remotely, with remotely meaning anywhere in the world. There have been two bills introduced in Congress supporting the telecommunications industry to get Congress to enact the pathway to a national license. It has been a topic of concern with all State Medical Boards as it would separate the licensing function from the enforcement function. All State Medical Boards that were in attendance of the Federation meeting opposed any support for the notion of national licensure. However, several other options were explored that states might look at to enable states to get specialty consultation from adjacent states. The notion that was approved for exploration was interstate compacts; the development of a model for example, Wyoming and Washington State to enter into an agreement for certain services and consultants whom could operate across state lines without requiring state licensure in each state. The states would work out agreements amongst themselves in regards to the enforcement function, continuing medical education, etc. Dr. Levine feels that consumer protection will be very awkward and very difficult should national licensure happen.

The second item is the pilot project that is just beginning on maintenance of licensure. The Federation is working with several interested states to pilot an effort to parallel the work being done by the American Board of Medical Specialties (ABMS) to create a process for maintenance of competency. Currently, most states have continued medical education (CME) requirements which vary from state to state. The ABMS has universally moved from lifetime board certification to time limited board certification. For some of the boards, they have moved from an exam based board certification to what is called maintenance of certification. This requires the physician on an annual basis to engage in activities in four domains which demonstrate competency, quality improvement, etc. There are a number of dimensions that have to be documented on an annual basis. Many of the boards are moving away from the once every ten years exam. There are approximately 878,000 physicians who are in active practice in the United States and 200,000 are board certified. Approximately three to four hundred thousand licensees have either let their board certification lapse or have lifetime board certification. The maintenance of licensure issue is focusing on those physicians who do not have the opportunity to demonstrate competency on an on-going basis through re-certification either through maintenance of certification or an exam. The Colorado Medical Board was interested in being a pilot because in Colorado, state law prohibits the requirement for CME, except in discipline, so the only time Colorado can require CME is if the physician has been shown to be deficient and is being disciplined by the Medical Board.

The third issue is that there has been a lot written in the policy world and medical journals about the increasingly burdensome debt that physicians are leaving training with and questioning whether the current number of years required for medical school and residency program are necessary to produce competent physicians. A number of medical schools in the country are participating in innovative

approaches to possibly combining the four years of medical school, particularly in primary care. They are looking at accelerating what is now a seven or eight year medical school training into three years of medical school and three years of graduate medical education. While the Board has no action to take at this point, the issue was raised in the sunset review that the requirements for licensure in California may need to be looked at if some of the California medical schools or US medical schools are producing graduates whose technical graduation requirements do not meet what is in current law.

Ms. Kirchmeyer stated that the Federation, the house of delegates approved the creation of the interstate compact. At this point the Federation is just exploring what it would look like and how it would come to fruition. The information has been forwarded to Ms. Kirchmeyer.

Ms. Kirchmeyer announced that she is serving on the IAMRA's physician information exchange working group. Ms. Kirchmeyer is also working with the Federation on a minimal data set.

Agenda Item 13 Update on Physician Assistant Board – Mr. Schunke

Mr. Schunke announced that Governor Brown has appointed Dr. Bishop to the Physician's Assistant (PA) Board in June and he will fill the position for the physician member. The PA Board has taken a support position on SB 352, the bill which would authorize a physician to allow a PA, Nurse Practioner, or Certified Nurse Midwife to supervise medical assistants when the supervising physician is not on site. The PA Board has finished the regulatory process for the free health care events. It has gone through the DCA and the State of Consumer Services Agency; the package has been submitted to the Office of Administrative Law and is awaiting its approval. The next PA Board meeting is scheduled for August 26, 2013.

Agenda Item 14 Update on Licensing Outreach / Education Program – Mr. Schunke

Mr. Schunke stated that in the 15 years he has been with the Board, he feels that this year has been the best due to the hard work of staff in getting the applicants licensed. There were just a few delays with fingerprints not coming through on time, but the last outstanding fingerprint result came through just recently and those applicants are now licensed. At last count, there are only four applicants who needed a license by July 1, 2013 to start their training program that have not been licensed yet. Mr. Schunke congratulated Mr. Worden and two of his managers, Ms. Oseto and Mr. Salgado, for doing what they needed to do to get people licensed as quickly as possible.

Mr. Schunke announced that he had finished orientation at all of the teaching hospitals. He will travel around the State to give a brief introduction to all the new residents in California. He will be starting in August going to licensing fairs through Northern and Southern California.

Ms. Yaroslavsky reminded the Board Members that what Mr. Schunke does is very important by being out there in the communities and making sure that the applicants get their paperwork completed in a timely fashion and that the staff at the medical schools and hospitals know what is going on and have a direct conduit to the Board. Ms. Yaroslavsky thanked Mr. Worden and his staff as well. She recommended the Board Members attend the licensing fairs with Mr. Schunke to see what he does.

Dr. GnanaDev would like to see staff do a similar outreach on the enforcement program. It would make a tremendous difference by reaching out to the doctors to assist in preventing them from getting into trouble.

Ms. Threadgill stated that enforcement has been doing these types of presentations for a number of years and frequently get requests to do presentations all over the State. Requests have also been coming to Board Members from the various parties asking whether they would like to participate in those presentations. The Enforcement Program staff can assist in putting a presentation together and co-presenting with a Board Member.

Dr. Salomonson complimented Ms. Sweet for the beautiful job she did while presenting at the plastic surgeons annual meeting. She feels it was very well received.

Dr. Levine requested that something on ways to protect your license be put into the new licensee packet. She feels that many of the new graduates see licensure as an entitlement until they have a problem.

Ms. Yaroslavsky complimented the communications staff for using the Newsletter as a tool to help educate physicians on enforcement dangers.

Dr. GnanaDev stated that this is a good opportunity to push that the number one thing of importance is patient safety and how protecting their license falls in line with patience safety.

Dr. Yip suggested that with the approval of the Board, any Board Member, in any part of the State, go to the medical schools, during first or second year, and do a talk and case study to educate students on Board experiences. He has been asked to do a talk at a local school.

Ms. Yaroslavsky stated that when one first comes out of medical school, they are so inundated with information that they need reminder courses after several years.

Agenda Item 29 **Election of Officers**

Mr. Tagami made a motion to nominate Dr. Diego as secretary; s/Ms. Yaroslavsky. Motion carried.

Mr. Tagami made a motion to nominate Mr. Serrano Sewell for Vice President; s/Dr. GnanaDev. Motion carried. Mr. Serrano Sewell agreed to serve as Vice President, but stated that he would resign as Chair of the Enforcement Committee.

Ms. Yaroslavsky made a motion to nominate Dr. Levine to continue as President; s/Ms. Schipske Motion carried.

Dr. Levine took the opportunity to recognize a very valued Board Member who served on the Board from 2004 to 2012, Dr. Shelton Duruisseau. Dr. Duruisseau played a very important leadership role in many aspects during his tenure on the Board. Dr. Levine wanted to call out specifically his contribution in convening and putting focus on what became the Physician Wellness Committee at the time the Diversion program was sunsetted. Dr. Duruisseau was an important voice is saying that the

Board needs to focus on what it can do to prevent physicians from getting into a situation where impairment puts their license and career at risk. He was instrumental in bringing experts in the field to share their expertise with the Board. He was elected Vice President at the July 2012 meeting and served in that role until his tenure ended.

Dr. Levine thanked Dr. Duruisseau for his service to the Board and presented him with a recognition plaque. Dr. Duruisseau thanked Dr. Levine and congratulated her on being re-elected as President. He thanked the Board for the work that it does and that it is a work of labor and love and stated that the Board needs to be congratulated for their commitment and dedication. He also recognized the staff as well for the work that they do in supporting the Board. He feels it is very important for the Board and the staff to work together as a team to make the Board what it is. He stated serving on the Board was probably one of the greatest things he thought he could do and he hopes that the small contributions that he made served the people of California.

Dr. Levine adjourned the meeting at 5:06 pm.

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Agenda Item 15 **Call to Order / Roll Call**

Dr. Levine called the meeting of the Medical Board of California (Board) to order on July 19, 2013 at 10:10 am. A quorum was present and due notice was provided to all interested parties.

Members Present:
Sharon Levine, M.D., President
Michael Bishop, M.D.
Silvia Diego, M.D., Secretary
Dev GnanaDev, M.D
Reginald Low, M.D.
Denise Pines
Janet Salomonson, M.D.
Gerrie Schipske, R.N.P., J.D, Vice President
Felix Yip, M.D.
Barbara Yaroslavsky

Members Absent:
David Serrano Sewell, J.D.
Phil Tagami

Staff Present:
Aaron Barnett, Investigator
Eric Berumen, Central Complaint Unit mANAGER
Susan Cady, Staff Services Manager, Central Complaint Unit
Ramona Carrasco, Central Complaint Unit Manager
Dianne Dobbs, Department of Consumer Affairs, Legal Counsel
Andrew Heglein, Office of Standards and Training
Kurt Heppler, Staff Counsel

Cassandra Hockenson, Public Information Officer
Teri Hunley, Business Services Office Manager
Diane Ingram, Information Systems Branch Manager
Kimberly Kirchmeyer, Deputy Director
Natalie Lowe, Licensing Manager
Jim Nuovo, UC Davis, Medical Consultant
Dino Perino, Business Services Officer
Monica Peretto, Investigator
Regina Rao, Business Services Analyst
Paulette Romero, Central Complaint Unit Manager
Dave Ruswinkle, Associate Governmental Program Analyst, Enforcement
Kevin Schunke, Licensing Outreach Manager
Jennifer Simoes, Chief of Legislation
Laura Sweet, Deputy Chief, Enforcement
Kathryn Taylor, Licensing Program Manager
Renee Threadgill, Chief of Enforcement
Lisa Toof, Administrative Assistant II
Anna Vanderveen, Investigator
See Vang, Business Services Analyst
Michel Veverka, Investigator
Kerrie Webb, Legal Counsel
Curt Worden, Chief of Licensing

Members of the Audience:
Teresa Anderson, California Association of Physician Assistants
G.V. Ayers, Consultant, Senate Business, Professions, and Economic Development Committee
Gloria Castro, Attorney General's Office, Los Angeles
Yvonne Choong, California Medical Association
Genevieve Clavreul
Zennie Coughlin, Kaiser Permanente
Frank Cuny, California Citizens for Health Freedom
Julie D'Angelo Fellmeth, Center for Public Interest Law
Hank Dempsey, Chief Consultant, Assembly Business, Professions, and Consumer Protection Committee
Stan DiOrio, Senator Wright's Office
Bryce Docherty, California Ambulatory Surgery Association
Karen Ehrlich, L.M., Midwifery Advisory Council
Corrine Fishman, Department of Consumer Affairs
Jack French, Consumer's Union Safe Patient Project
Julie Haskins, Anthem Blue Cross
Virginia Herold, Board of Pharmacy
Sarah Huchel, Consultant, Assembly Business, Professions, and Consumer Protection Committee
Christine Lally, Department of Consumer Affairs
Eduardo Martinez, California Medical Association
Tina Minasian, Consumer's Union Safe Patient Project
Michele Monserratt-Ramos, Consumer's Union Safe Patient Project

William Pinsky, M.D., Ochsner Health System
Alison E. Price, Licensed Midwife
Sonja Palladino, Assemblymember Bonilla's Office
Victoria Samper, Institute of Medical Quality
Taryn Smith, Senate Office of Research
Anne Sodergren, Board of Pharmacy
Carrie Sparrevohn, Midwifery Advisory Council

Agenda Item 16 Public Comments on Items not on the Agenda

Genevieve Clavreul spoke on a Workers Compensation issue she is dealing with and asked the Board who she could speak to about how to work with the physician to get the reports done in a more timely manner.

Karen Ehrlich, a licensed midwife, requested the Board have the webcasting chaptered when posted to the Web site.

Frank Cuny, California Citizens for Health Freedom thanked the Board for their action taken on SB 117, the bill that will make alternative cancer treatment legal in California. He offered to send anyone on the Board additional information on alternative treatments, if interested. He would send them the same information he is sending the Legislature.

Tina Minasian, thanked the Board for the time and efforts it has put in over the years to make such a difference in patient safety.

Agenda Item 17 Update on Education and Wellness Committee; Consideration of Committee Recommendations – Ms. Yaroslavsky

Ms. Yaroslavsky announced that the committee held the working group meeting required in SB 380. The meeting was broken down into three portions and the working group members included seven physicians that were recommended by the bills author's office and the sponsor. Julie Hopkins from the institute for Medical Quality also made a presentation. The first portion of the working group focused on the background and how changes in nutrition and lifestyle behavior help in the prevention of chronic diseases. Dr. John McDougall gave an informative presentation on the effects of diet therapy on the prevention of chronic diseases and six other physicians provided information on this matter. The next portion focused on CME and integrating prevention of chronic diseases by nutrition and lifestyle behavior changes into CME. There were some working group members who advocated for mandatory CME.

The last portion focused on the mandate in the bill that requires the Board to periodically disseminate information and educational materials, regarding the prevention and treatment of chronic disease by application of changes in nutrition and lifestyle behavior, to each licensed physician and surgeon and to each acute care hospital in California. It was discussed that there is already some good information available for physicians to use as resources and for the Board to possibly disseminate via the Newsletter or email blast. The California Department of Public Health (CDPH) has a "Let's Get Healthy, California" report and is working on a wellness plan for California. It was suggested that the Board

survey physicians to obtain information that they feel would be most useful in their practice. It was also suggested that the Board reach out to medical schools to get information on what is being taught to medical students regarding nutrition and lifestyle behavioral changes to prevent chronic disease. There was much discussion on the coordination of a campaign that the Board could be part of and collaborate with other agencies, such as CDPH and CMA. The Committee approved a task force of members to work with staff on its outcomes of this meeting. The Committee directed staff to develop an action plan and this plan will be presented at the next Education and Wellness Committee.

The Committee then revisited the issue of creating a mission statement for the Education and Wellness Committee. The following mission statement was developed: *"The mission of the Education and Wellness Committee is to actively pursue opportunities to educate the public on functions and responsibilities of the Board, to protect the public by continuing to provide updated and current information regarding the Board's laws, regulations and relevant healthcare information to physicians and the public and to encourage physicians to maintain a sound balance in their personal and professional lives so that they can offer quality care to their patients."*

Proposed goals were also discussed and the Public Affairs Manager, Cassandra Hockenson, will provide an update on these at the next Committee Meeting. An update on the public affairs Strategic Plan was provided by Ms. Hockenson as well. Social media was discussed and Committee Members were provided a copy of the IT policy from the State CIO which encourages state agencies to use social media technologies to engage their customers and employees.

Ms. Hockenson discussed the new look of the Board's press releases on the Web site, which will now be in PDF format and prominently displayed upon release on the main page. In addition, the Board has partnered with the DCA to utilize the Media Hub which provides up-to-date information to media contacts and other databases for purposes of distribution of information and press releases.

Ms. Hockenson reported that the Board participated in a successful consumer outreach event, a health fair, with the Franchise Tax Board (FTB). Thousands attended and asked questions and picked up consumer brochures about the Board. Ms. Hockenson indicated the Board has been invited to participate in several other outreach events.

The Committee received a preview of the new Web site by Charlotte Clark and Sean Heaney from the Boards Information Systems Branch. The goal of the new Web site is to be more user friendly, intuitive and informative. Input on the Web site was obtained by Committee Members and the Board staff plans on getting input from consumer groups. Ms. Schipske's recommended having her health care administration students review the site.

The next Committee meeting will be to review the goals and Ms. Hockenson will make a full presentation on social media. An action plan on SB 380 will be presented at the next meeting as well as an update on the affordable care act.

Stan DiOrio, Legislative Director for Senator Wright, author of SB 380, thanked the Board Members, particularly Ms. Yaroslavsky, for her time and assistance on implementing SB 380. He stated Ms. Simoes has been tremendous in working with the Senator's office on this bill. He stated that SB 380 was designed to try and begin a dialogue that will change the paradigm of medical care from treatment

to curing, at least in the area of chronic diseases. He made two suggestions to the Board, one being to consider keeping the working group together as an advisory body, the other being that each Member of the Board take the time to look at the Webcast of the meeting and the presentation that was made by Dr. McDougall.

Tina Minasian, Consumers Union Safe Patient Project, stated that she was unable to attend the Education and Wellness Committee Meeting but learned from the staff report that the Committee's strategic plan is to promote better outreach and communication to consumers and others. Consumers Union activists have found some Members communications and communication policies to be problematic. For a couple of years, Consumer's Union has been contacting the Board and DCA in regards to a problem with the statute of limitations. When the statute of limitations runs out on a case, it can allow a physician to continue to practice without any form of discipline. The sunset review report shows seven cases where an investigation had been completed, referred to the AG's office with a request to file an accusation against the physician, and the case was dropped because the statute of limitations had run out. It was recommended that the Board put in place communications and processes to keep this from happening to be sure that consumers are informed about the statute of limitations. She recommended that the Board staff work with the Consumer's Union Safe Patient Project to improve the Board's communication regarding its statute of limitations. She also urged the Medical Board to make clear on its web site the opportunities and rules for public participation at Medical Board meetings including how to submit written testimony to Board Members.

Agenda Item 18 **Discussion and Consideration of Queensland/Ochsner Medical School Application for Recognition – Mr. Worden / Dr. Nuovo**

Mr. Worden referred the Board Members to the preliminary review of the request by the University of Queensland/Ochsner Clinical School Program for recognition under California Code of Regulations, Title 16, Division 13, Section 1314.1(a)(2). Mr. Worden stated that the University of Queensland is already recognized by the Board pursuant to California Code of Regulations 1314.1(a)(1) as the school is owned and operated by the Government of Australia; however, the partnership between Queensland and Ochsner is not part of that recognition as the primary purpose of that program is to educate the citizens of the United States or other citizens to practice in other countries. Staff has determined that the University of Queensland/Ochsner does meet the criteria to be reviewed by the code sections and standards of 1314.1(a)(2) and the requirements of the B&P Code Sections 2089 and 2089.5. Mr. Worden noted that the staff report, as well as Dr. Nuovo's report, are both in the Members packet for review.

Mr. Worden introduced Dr. Nuovo who would present his evaluation to the Board and answer any questions the Board might have. Mr. Worden announced that Dr. William Pinsky, the Executive Vice President of Academics and Ochsner's International Chief Medical Office, was in attendance to represent the University of Queenland/Ochsner and to answer any questions.

Dr. Nuovo introduced himself as a professor and associate dean in medical education at UC Davis. Dr. Nuovo gave a brief description of what the process is for a school to request recognition. The school submits a self-study which resulted in a series of questions that were submitted back to the school. Those were responded to and then a meeting took place with Dr. Pinski in May 2013. This proposal

represents a substantial effort to train U.S. citizens and to prepare them to enter graduate and medical education programs in this country. The two years of basic science training, the preclinical years are done in Queensland and two years are done within the Ochsner health system. Ultimately, there will be a total of 480 students enrolled in this program. One of the key themes in the review was determining if there is an infrastructure for resources for oversight to ensure that those 480 students are competent and capable of moving to the next level of training. Dr. Nuovo suggested that a site visit needs to be conducted to address the primary concerns that are highlighted in the summary report.

One concern is whether the home site in Queensland has the facility and the resources necessary to train a group this size and to provide adequate oversight; the same thing applies to Ochsner. Queensland and Ochsner both have a long track record of training in undergraduate and graduate medical education.

Another concern that is stated in the report is regarding the admissions process. The concerns is that there are no interviews of applicants for the program. This is a substantial departure from U.S. and Canadian schools who use interviews in their determination as to whether an applicant is eligible for admission into the program. These concerns led Dr. Nuovo to the conclusions that he is not confident that the self-study documents demonstrated compliance with Section 1314.1. In the final analysis, Dr. Nuovo believes that these conclusions do require a site visit to Queensland at this time. Dr. Nuovo recommends that a site visit be done in New Orleans Ochsner before determining if a site visit to the Queensland campus is necessary. The site visit to New Orleans would include a review of resources, oversight and how the school deals with corrective action for students who are not performing according to standards.

Dr. Pinsky stated that the University of Queensland is a state school of the state of Queensland and Ochsner Health System is a tax exempt 501(c)(3), non-profit organization. The Queensland program is accredited by the Australian Medical Council. The curriculum admission policies regarding students are uniform throughout the program because they are part of the accredited program.

Dr. GnanaDev made a motion to approve Dr. Nuovo's recommendation for a site visit to Ochsner; s/Yaroslavsky. Motion carried.

Ms. Yaroslavsky asked how the foreign schools are chosen to be evaluated? Dr. Levine stated that school submitted a self-assessment. This is the first type of application that has come in that has a physical separation between the clinical and the pre-clinical training, but probably not the last that will be received.

Mr. Worden added that this school chose to apply for recognition through the Board as they want their students to be eligible to participate in post graduate training and licensure in California. Currently their program would be considered unrecognized by the Board. Without the recognition, their students would have to attend post graduate training and be licensed for 10 years in another state and become ABMS certified before they could be eligible to apply for licensure in California.

Ms. Kirchmeyer reminded the Board the staff would have to go through the process of submitting an out-of-state travel exemption request to DCA and also put a site team together.

Agenda Item 19 **Update of Activities of the Board of Pharmacy – Ms. Herold / Ms. Sodergren**

Ms. Herold and Ms. Sodergren, Board of Pharmacy, (BOP) introduced themselves and thanked the Board for allowing them to share information from BOP with the Board. Mr. Herold reported that there is an issue about how the CURES program is going to be funded. During the forum, a lot of time was spent discussing the need for CURES, the benefits of CURES, and how it can provide information to both prescribers and dispensers. As part of the budget year 13/14, all of the regulatory boards will contribute a sum of money to fund CURES for the next two years in order to create a new computer system. This was done as part of a trailer bill to make sure that this program is no longer funded by the General Fund. One component of CURES is the prescription drug monitoring program where prescribers and dispensers can call up and find out where a particular patient is with respect to prescribing and getting the drugs dispensed. Sign up of practitioners and pharmacists has been encouraged, however, it has been a slow process. Ms. Herold stated it is the hope that this new CURES computer system will assist in raising the enrollment rate and the ability to get enrolled.

Ms. Herold then stated that one of the main priorities for the BOP is implementation of a new law called e-pedigree. This program tracks prescription drugs from the manufacturer though repeated sales down to the pharmacy or the prescriber. It creates a secure chain of custody for that product, so every time someone buys it and sells it, there is a certification that follows who bought and/or sold the drug to whom. If a particular drugs enters into the chain without a history, it can be researched to determine who manufactured it, etc. The implementation of the program is still in progress and is scheduled to take effect in January of 2015, with 50% of the drugs sold in California having to be serialized and the remaining 50% a year later. Wholesalers have until July of 2016 to be ready to read and transmit pedigrees and the last stage are the prescribers and pharmacies who have until July of 2017. The BOP has regulation packages that are in the final stages of review and another three that are going to the BOP at the next Board Meeting. A fourth package is still being worked on right now that would probably be of interest to physicians because it concerns drop shipments, where the manufacturer ships the drug directly to a practitioner for a patient.

Ms. Herold announced that at the next BOP meeting, there will be a person from Turkey who is responsible for the design and the implementation of California's system in the country of Turkey. They did it in a three year period based on California's 2008 law and had it up and running by 2010.

Another project the BOP is working on pertains to their regulations known as patient centered labels on prescription container labels. It was established that a standardized order of particular elements that are most important to patients be listed. There is 50% of dedicated space on the label used for these particular elements and they have to be standardized. Associated with this issue is the requirement for a translated label for people who speak other languages. There is a bill that has been introduced that will require all labels for all patients who are non-English speaking to be translated into the language of the patient. There is an interpreter requirement where if a non-English speaking patient goes into a pharmacy to get a prescription filled, there has to be an interpreter service available to the patient either via telephone access or someone in the pharmacy itself.

Ms. Herold then briefly discussed that the BOP is looking at the problem with drug diversion, particularly of controlled substances throughout the U.S. The BOP has noticed that there is quite an

effort on the part of the drug enforcement administration (DEA), in particular, to clamp down on wholesalers, and when the wholesalers get a reduced supply of drugs, they clamp down on the pharmacies including providing continuing education with the DEA talking where they are talking about drug diversion and drug abuse. The BOP then talks about corresponding responsibility, how to avoid being the victim of a theft, and other pitfalls of practice.

Public Comment was heard on this agenda item:

Genevieve Clavreul recommended the Board take a look at the prescription monitoring program that Oklahoma uses and compare it to CURES. The Oklahoma program can identify within one hour a patient that has already been prescribed a drug.

Julie Haskins, an investigator for Anthem Blue Cross, stated that Anthem Blue Cross provides prescription drug information via a quarterly report, to many regulatory and law enforcement bodies on the top prescribers of California. She is happy to supply that report to anyone in a regulatory agency who is interested in seeing it. A subpoena is not required, only a written request.

Agenda Item 20 **Update/Follow Up from Joint Forum to Promote Appropriate Prescribing and Dispensing – Ms. Kirchmeyer / Ms. Herold / Ms. Sodergren**

Ms. Herold stated that, like the Board, the BOP created a task force to work on the next forum. The BOP task force is interested in working with the Board's task force. There were a number of action items that were generated at the close of the February Joint Forum and have been preserved for the next forum that will hopefully take place the first part of 2014. The BOP has two Board Members whom are extremely interested in participating in the upcoming forum. Ms. Kirchmeyer stated that the upcoming forum will take place in Southern California. She stated there were some items that came out of the Boards' recent Education and Wellness Committee as far as identifying issues in a possible brochure that will be discussed between both Board's task forces prior to the next Joint Forum.

Agenda Item 21 **Update of Prescribing Task Force – Ms Yaroslavsky / Dr. Bishop**

Dr. Bishop reported that on July 2, 2013, the prescribing task force met with staff to establish the mission, vision and objectives of the task force. The following mission statement has been identified: "*The task force will identify ways to proactively approach and find solutions to the epidemic of prescription drug overdoses through education, prevention, best practices, communications and outreach by engaging all stakeholders in this endeavor.*" The task force will hold its first meeting on Monday, September 23, 2013. Currently the meeting is scheduled to take place in Sacramento. The first issue the task force will be looking into is identifying the appropriate patient information that can, and should, be shared and discussed between the prescriber and the pharmacist. This is an issue that was raised at a prior Board meeting by CMA. Based on information received, this is a significant issue that needs to be resolved. The task force believes that having all of the appropriate interested parties at the table to discuss this issue will provide a solution. The task force hopes to create a document that identifies appropriate information that can be shared between the prescriber and the dispenser based on input from all stakeholders. This document could be shared and posted on all licensing board Web sites who prescribe and dispense.

The task force also wants to begin identifying best practices in prescribing. This will be a large task and will take several meetings to reach a consensus and product that can be provided to all stakeholders. Once best practices have been identified, the task force can then move to revisiting the pain management guidelines; educating prescribers, dispensers, and the public on prescribing issues; and developing an outreach plan to provide information to all interested parties. The task force will be conducting working meetings with representatives from numerous interested parties, including all prescribers (physicians, nurse practioners, dentists etc.), pharmacists; prescribing and dispensing associations; law enforcement agencies such as the DEA, DA's office, Sheriff's office; consumer advocate groups; the healing arts boards; insurance companies; and Senate and Assembly Committees. The meetings will be closely facilitated. The task force hopes that by having significant input, they will get several viewpoints and be able to put together a cohesive, comprehensive document that will be useful for all prescribers and dispensers. At the October Board Meeting, the task force will provide an update from the September meeting and will hopefully have a draft of a document regarding the appropriate information to share between the prescribers and the dispensers.

Public Comment was heard on this agenda item:

Yvonne Choong, CMA, stated that they wanted to express their appreciation for the Board's efforts in establishing the Prescribing Task Force. She also stated that from reading the staff report, given the scope, mission and objectives of the Task Force, the Board may want to reconsider the scope of work that the Task Force is considering; for example the Strike Force may also benefit from some review by the Task Force in order to help the Board take a comprehensive approach to this issue. CMA also feels that with the broad nature of what the Task Force intends to accomplish, it will require collaboration among many entities and requires a strong public health approach in terms of data collection. In looking at the list of representatives, they would like to see some additional public health representatives including the Department of Public Health who are involved in regulating substance abuse treatment programs, as they have a role here as well.

Genevieve Clavreul reminded the Board that she, as a member of the public, would like to be included on this task force. Ms. Kirchmeyer stated to Ms. Clavreul that her name is on the invitation distribution list.

Agenda Item 22 **Update and Discussion of the Strike Force for Prescribing Violations – Ms. Threadgill / Ms. Sweet**

Ms. Sweet gave an update on the short and long term goals for addressing the inappropriate prescribing situation. Pursuant to the Board's direction from the last meeting, staff was redirected to create a temporary strike force team called Operation RX (ORX). This team consists of a supervising investigator, four investigators and an analyst who have been redirected from their traditional assignments. As of June 10, 2013, there were 161 prescribing cases in the field office caseload. Each of those cases were reviewed and 35 of those cases were identified as requiring immediate attention and were appropriate for reassignment to the ORX. The team has been welcomed by local police jurisdictions and the DEA, who have been very cooperative in the team's efforts. The downside of creating this strike force team is the workload for the remaining staff and due to limited resources, the team is having to travel quite a bit. The team has already executed one search warrant, and another will

be executed within the next two weeks. She is confident that there will be arrests to be announced at the next Board Meeting.

Ms. Sweet continued her update with the long term plan goals stating that the Board needs more staff to combat this problem. Drug induced deaths have become the leading cause of injury related deaths, even more than motor vehicle accidents. Of 38,329 drug overdose deaths in 2010, approximately 22,000 of them involved prescription drugs.

Ms. Sweet stated that these types of cases are very time consuming and the only way to address the problem permanently is to attach more resources that are commensurate with the issue. Ms. Sweet was asked by a Board Member previously, what would it take to combat this issue. The Board staff proposes two offices, one in Northern California and one in Southern California, each composed of a supervising investigator, six investigators, an office technician, a staff services analyst, and a medical consultant. Staff believes there are clearly enough prescribing cases at this time to support those positions, but the staff will continue to analyze the data over the next year to gather specific statistics to support augmentation of staff.

Public Comment was heard on this agenda item.

Yvonne Choong, CMA, stated they would like to express their support for any reorganization of the Board's resources that allows investigation by case type if it leads to more efficient investigations. Understanding this is the first draft of the proposal for this task force, they have some issues that should be addressed for clarification. The scope of the strike force was unclear. They would also like to know what the sources of complaints will be. With concerns to fiscal estimates, how does this new program impact the fiscal analysis of SB 62, and if SB 62 does pass, would that provide an additional source of complaints. Lastly, in terms of funding, they would be interested in knowing how the Board would intend to fund the Strike Force, and if it would create a fee increase to physicians.

Agenda Item 23 **Legislation / Regulations – Ms. Simoes**

Ms. Simoes introduced some of the audience members: G.V. Ayers from the Senate Business and Professions Committee, Taryn Smith from the Senate Office of Research, and Sonja Palladino from Senator Bonilla's office.

Ms. Simoes referred the Members to the tracker list in their Legislative Packets, stating that the bills in orange will be discussed today, the bills in green are those where the Board has taken positions and they have either not been amended or the amendments do not affect the Board's position and do not need Board discussion, and the bills in blue are two year bills

AB 1000 (Wieckowski) is sponsored by the California Physical Therapy Association. The Board was previously opposed to this bill; however, this bill was significantly amended. This bill, as originally introduced, would have allowed a physical therapist (PT) to make a physical therapy diagnosis. This bill would have allowed a patient to directly access PT services, without being referred by a physician, provided that the treatment is within the scope of a PT as long as specified conditions are met. There were no limits placed on how long a patient could directly access PT services.

This bill was significantly amended to address concerns raised by the opposition. This bill no longer allows a PT to make a "physical therapy diagnosis". This bill includes language that has been negotiated by interested parties. Board staff believes that this bill includes adequate safeguards to ensure consumer protection. As such, Board staff is suggesting that the Board no longer oppose this bill and instead take a neutral position.

Ms. Yaroslavsky made a motion to take a neutral position; s/Dr. Bishop. Motion carried.

AB 1308 (Bonilla) is sponsored by the American Congress of Obstetricians and Gynecologists. This bill, as originally introduced, would allow a licensed midwife (LM) to directly obtain supplies, order testing, and receive reports that are necessary to the LM's practice of midwifery and consistent with the scope for practice for a LM.

Recent amendments would also allow a LM to obtain devices and obtain and administer drugs and diagnostic tests. Amendments would specify that a LM is not required to identify a specific physician in the arrangement for the referral of complications to a physician and surgeon for consultation.

This bill no longer requires the Board to adopt regulations to address physician supervision and to identify complications necessitating referral to a physician. However, Board staff still believes that it is essential that this bill address the issue of physician supervision.

Public Comment was heard on this agenda item.

Carrie Sparrevohn, current chair of the Midwife Advisory Council (MAC), encouraged the Board to support this bill, if amended.

Ms. Palladino, Senator Bonilla's office, thanked the Board for their support on this bill as well as thanked staff who has been very helpful with providing technical expertise on the history of the issue of supervision and the other issues with midwifery.

Genevieve Clavreul stated that it is important to delineate the consequences of what happens when you have a delivery and a physician is not notified and an outcome arrives where the infant dies for the lack of calling a physician in to assist.

Karen Ehrlich, licenses midwife, wanted to remind the Board that the only drugs, devices and diagnostics that the midwives are asking to have the authority to use are those for which they are trained, and ones that they are expected to use in an out of hospital setting. They are also hoping that with this bill, physicians are not liable for any care midwives provide and are not liable until such time the physician has completely assumed care.

Frank Cuny, California Citizens for Health Freedom, urged the Board's support for this bill.

Ms. Yaroslavsky made a motion to support if amended; amendment being working with sponsors, author's office and interested parties to try and help resolve the issue of physician supervision; s/Ms. Schipske. Motion carried. Five approved / four abstentions, (Bishop, GnanaDev, Diego and Salomonson)

Dr. Levine called for a lunch break at 12:45 pm. Meeting to resume at 1:15 pm.

Meeting reconvened at 1:23 pm.

Ms. Simoes continued with her legislative update.

SB 62 (Price) was previously amended to require a coroner to report deaths to the Board when the contributing factor in the cause of death is related to toxicity from a Schedule II, III, or IV drug. The initial report must include the name of the decedent; date and place of death; attending physicians, podiatrists, or physician assistants; and all other relevant information available.

The bill was recently amended to specify that deaths are only required to be reported to the Board when the cause of death (instead of a contributing factor in the cause of death) is due to a Schedule II, III, or IV drug. Technical amendments were made to clarify that the pathologist does not have to be board certified, to reflect current practice and clarify existing law.

Ms. Simoes stated the Board will handle coroner reports as it would handle any other complaint and will triage and order medical records, as appropriate. Physicians will be notified when a patient's medical record is being requested by the Board and physicians will still be entitled to a summary of their central file under Business and Professions Code Section 800(c). Board staff believes that this bill will still help to ensure consumer protection and ensure that the Board is aware of these drug overdose deaths, which will allow the Board to review the information and investigate as appropriate.

Public Comment was heard on this agenda item.

Eduardo Martinez, CMA, spoke about some concerns that CMA has about this bill. The CMA feels this bill is broad and will capture many cases that will have nothing to do with patient/physician relationships. Tolerance of a drug varies from person to person and tolerance in an individual builds over time which can lead to levels of a drug in a body that might be considered toxic in a forensic examination, but may have been medically appropriate. The difficulty is that most physicians' use urine drug screenings to monitor compliance with prescriptions; however, coroners use blood screenings to quantify levels of medications in a body. They believe this law would have a chilling affect on physicians' willingness to assume treating patients for whom a controlled substance is the appropriate course of treatment.

Julie D'Angelo Fellmeth, Center for Public Interest Law, stated that they have always supported this bill and continues to, but wanted to give a brief response to the CMA. This report is just that, a report. It is a piece of information, that is why there are investigations and she does not feel that CMA's concerns are justified.

Genevieve Clavreul stated that to take that measurement in a final diagnosis of a death is arbitrary. She does not know of any study of people's absorption of different drugs, as every individual metabolizes drugs differently.

Dr. Yip made a motion to continue to support the bill; s/Dr. Bishop. Motion carried.

SB 304 (Price) is the Board's sunset bill. The Board discussed almost all of the provisions in this bill at its last meeting and took a support if amended position on the bill, with the amendments being to include language that would extend the Board's sunset date, and to include some of the other new issues from the Board's sunset review report that would enhance consumer protection. However, the bill was amended during the last Board meeting to transfer all investigators employed by the Board and their staff to the Department of Justice (DOJ), effective January 1, 2014.

Moving the investigators over to DOJ could streamline the enforcement process by placing investigations and prosecutions under the jurisdiction of one agency. Allowing investigators and Deputy Attorneys General to be more easily co-located will also help to enhance communication.

Ms. Simoes provided information on the investigator's tenure and retention. Regarding information on retention, the data was broken down into three time periods that equal the last 10 years. In the last 5 years from 2008 - 2013, 53 investigators and supervising investigators left the Board; 29 retired, 21 transferred to another department or agency, and 3 were rejected on probation. In the last 5 to 7.5 years from 2005 - 2008, 25 investigators and supervising investigators left the Board; 15 retired and 20 transferred to another department or agency. In the last 7.5 to 10 years from 2003 to 2005, 22 investigators and supervising investigators left the Board; 20 retired and 2 transferred to another department or agency.

Regarding information on Board tenure, the data reflects a snapshot in time, and the same date was used (June 30) for each year data was collected. In 2013, investigators were employed for an average of 6 years; in 2008, investigators were employed for an average number of 9 years; and in 2003, investigators were employed for an average number of 7 years. In 2013, supervising investigators were employed for an average number of 8 years; in 2008, supervising investigators were employed for an average number of 10 years; and in 2003, supervising investigators were employed for an average number of 6 years.

Transferring investigators to DOJ would allow the investigators to receive a higher salary, which may reduce the number of investigators who retire or transfer from the Board and may increase the length of time investigators remain at the Board.

Ms. Simoes pointed out some issues and concerns. If the investigators are transferred to DOJ, they will become employees of DOJ, meaning that the Board will no longer have control or authority over investigations and associated timelines, once cases are sent to DOJ for investigation. If investigations are handled by DOJ, the Board will have no input on the decisions made regarding the outcome of a case, whether it is referred for discipline, whether it is closed, whether a public reprimand is offered, etc. In addition, the Board will still be held accountable for its cases and timelines, even though it will have no oversight or control over the investigations and outcomes.

Ms. Simoes discussed the fiscal impact. If the investigators are transferred to DOJ, it will result in an increase of $1.294 million per year (for salaries only), due to the fact that the investigators at DOJ are classified as Special Agents and have a higher salary. The funding for these positions would be removed from the Board's salary and wages and moved to the Attorney General line item on the Board's budget as an operating expense. The operating expenses in the Board's budget associated with the current investigator positions would be reduced for all overhead costs, including equipment,

vehicle maintenance, rent, travel, training, etc., and would be moved to the Attorney General line item in the Board's budget.

The Attorney General would determine the billing methodology and bill the Board an hourly rate for the investigative services – currently the Board charges/is reimbursed $149/hour for investigative services for physician and surgeon cases. The Board recently voted to approve pay differentials for investigators, which would have a total annual fiscal impact of $110,943 (chart attached), in comparison to the $1.294 million that this proposal would cost the Board.

Ms. Simoes stated as far as implementation is concerned, investigative staff in the Board's Operation Safe Medicine Unit (OSM) would not be transferred to DOJ, as they do criminal investigations. All other staff in the Enforcement Program (besides staff performing investigations and their staff) would remain at the Board (Central Complain Unit, Discipline Coordination Unit, Probation Unit, Non-Sworn Special Investigative Unit, and the Central File Unit). The Board would need to have an individual assigned to review investigation reports to ensure appropriate action was taken.

There are some implementation issues and concerns that Board staff has with this proposal. The Office of Standards and Training staff would be needed at both DOJ and at the Board. It is uncertain whether boards who currently utilize the Board's investigators would continue to use the transferred investigators or if they would use the DCA's Division of Investigation (DOI). If the Board hits the financial threshold for the hours that could be paid to DOJ from the line item, the Board would have to stop investigations until July 1 of the next fiscal year; this is a serious consumer protection issue. Lastly, the implementation date of this bill, January 1, 2014, is not reasonable, as it is only three months after the bill is signed.

Public Comment was heard on this agenda item.

Julie D'Angelo Fellmeth, Center for Public Interest Law, stated that for the last several years, the AG's office has been responsible for both the investigation and the prosecution of Board disciplinary matters and is required to use vertical enforcement. With investigators working side by side with the attorneys, it would make it easier to implement vertical enforcement. They would be required to use the same procedure manual, use the same computer system, and be co-located which they are not doing now. Ms. Fellmeth stated she did not believe that the Board would lose control as the Board still has the Central Complaint Unit which would review the cases and decide which ones to refer for investigations. The Executive Director would still be responsible for signing off on an accusation and the Board would still review all proposed ALJ decisions and stipulations.

Genevieve Clavreul stated that she is opposed to this bill as the DOJ has a more punitive and criminal aspect that she does not like to see in the practice of medicine.

Tina Minasian, California Patient Advocate, stated that this bill is a very sensitive issue for her as she was injured by a doctor whose license was revoked, but it took two and a half years for her complaint to turn into an investigation against this doctor while vertical enforcement was in place. She stated that she is not for or against this bill particularly, but feels the Board should look into their own staff processes to determine why it takes so long for complaints to turn into investigations.

Ms. Yaroslavsky made a motion to continue to support this bill with the amendment to include sunset extension language and delete the language that would require investigators to be transferred to DOJ; s/Dr. GnanaDev. Motion carried.

SB 352 (Pavley) is sponsored by the California Academy of Physician Assistants, and would allow physician assistants (PAs), nurse practitioners (NPs) and certified nurse-midwives (CNMs) to supervise medical assistants (MAs). This bill was amended to specify that if a PA, NP, or CNM authorizes a MA to perform any clinical laboratory test or examination that the MA is not authorized to perform, it would constitute unprofessional conduct.

The Board had a support if amended position on this bill and requested amendments. Recent amendments addressed the Board's concern, and the Board now has a support position on this bill.

Public Comment was heard on this agenda item.

Theresa Anderson, on behalf of the California Academy of Physicians Assistants, thanked the Board for working with them on amendments and coming to a support position.

SB 492 (Hernandez) would have deleted the definition of the practice of optometry in existing law and would have expanded the scope of an optometrist by allowing an optometrist to examine, prevent, diagnose, and treat any disease, condition, or disorder of the visual system, the human eye, and adjacent and related structures; to perform surgical and nonsurgical primary care procedures; and to prescribe drugs, including narcotics, among other allowances.

Although this bill was significantly amended, it still expands the scope of practice of an optometrist by allowing optometrists to diagnose diabetes mellitus, hypertension, and hypercholesterolemia; treat ocular inflammation and pain non-surgically and surgically; treat all eyelid disorders; treat the lacrimal gland, lacrimal drainage system, and the sclera in patients under 12 years of age; and use all TPAs approved by the FDA for use in treating eye conditions, including codeine with compounds and hydrocodone with compounds.

Board staff suggests that the Board oppose this bill unless it is amended to remove the provisions that allow an optometrist to diagnose and treat common diseases, perform surgical procedures, and be granted full drug prescribing authority, including authority to prescribe controlled substances.

Ms. Yaroslavsky made a motion to support if amended as specified; s/Dr. GnanaDev. Motion carried.

SB 493 (Hernandez) would allow pharmacists to furnish medication, order and interpret tests, furnish self-administered hormonal contraceptives, initiate and administer vaccines, and furnish prescription smoking cessation drugs and devices.

This bill was amended to require the pharmacist to consult with the patient's primary care provider before furnishing a smoking cessation drug to the patient that may produce serious neuropsychiatric events, which addresses the concern raised by the Board.

At the last Board meeting, the Board voted to support this bill if it was amended to exempt smoking cessation drugs that are known to have a risk of neuropsychiatric events, like Chantix and Zyban. This bill was amended to require the pharmacist to consult with the patient's primary care provider before furnishing a smoking cessation drug to the patient that may produce serious neuropsychiatric events, which addresses the Board's concern. This bill will help to further the Board's mission of promoting access to care and the Board now has a support position on this bill.

SB 670 (Steinberg) would authorize the Board to inspect the medical records of a deceased patient without the consent of the patient's next of kin or a court order.

This bill was amended to change the burden of proof for restricting a physician's prescribing privileges to "probable cause" that the physician prescribed, furnished, administered, or dispensed controlled substances in violation of the Medical Practice Act.

This bill will help to speed up investigations in cases where patients have died as a result of prescription drug overdose. This bill will also make improvements to the Board's enforcement process, which will result in timelier investigations. The Board has a support if amended position on this bill and would like it amended to make it clear when and how the Board can impose limitations on a physician's prescribing privileges and the due process afforded to the physician. The Board is working with the author's office and interested parties on amendments to address the Board's concerns.

Ms. Yaroslavsky made a motion to continue to support if amended; motion seconded. Motion carried.

SB 809 (DeSaulnier and Steinberg) is sponsored by the California Attorney General Kamala Harris, and as originally introduced, would establish the CURES Fund that would be administered by the DOJ, and would be funded by an annual 1.16% (as of July 1, 2013) licensing, certification and renewal fee increase for licensees of boards that are authorized to prescribe or dispense Schedule II, III, or IV controlled substances. (The 1.16% annual fee would result in an increase of $18 for physician renewal fees ($9 each year of the two-year renewal cycle), and a $9 initial licensing fee increase.) This bill would have required manufacturers, and health insurers to contribute as well and would have eventually required all prescribers and dispensers to consult CURES before prescribing or dispensing Schedule II, III, or IV controlled substances.

This bill was amended and would no longer mandate that manufacturers and insurers contribute to funding for the CURES system or the DOJ enforcement program. This bill would allow DOJ to seek private funds from qualified manufacturers, insurers, and health care service plans for the purpose of supporting CURES.
The amendments would also allow DOJ to invite stakeholders to assist, advise and make recommendations on the establishment of rules and regulations necessary to ensure proper administration and enforcement of the CURES database. This bill would require DOJ to consult with prescribers, regulatory boards, and other stakeholders to identify desirable capabilities and upgrades to the CURES system. The amendments would also specify how the CURES data can be used.

Lastly, this bill was amended to no longer require, but strongly encourage, all prescribers and dispensers to consult CURES before prescribing and dispensing Schedule II, III, or IV controlled substances.

The Board believes CURES is a very important enforcement tool and an effective aid for physicians to use to prevent "doctor shopping". Due to the importance of this program, Board staff is suggesting that the Board support any effort to get CURES more fully funded in order for the PDMP to be at optimum operating capacity. Board staff is suggesting that the Board support this bill if it is amended to fix the fee and implementation.

Public Comment was heard on this item.

Eduardo Martinez, CMA, stated that CMA is in support of SB 809 as its members want to see an upgraded and well-funded CURES system to identify red flags and they want to be part of the solution in addressing the prescription drug abuse issue.

Genevieve Clavreul agreed that everyone should participate in funding this system as everyone will benefit from it at some point.

Ms. Yaroslavsky made a motion to support if amended to fix the fee and implementation; s/Dr. GnanaDev. Motion carried.

Agenda Item 24 Licensing Chief's Report – Mr. Worden

Mr. Worden began by thanking his staff for doing an excellent job this quarter especially with the other projects such as Breeze taking staff away from their regular duties. Mr. Worden gave a brief update on the vacancies in the licensing unit.

Mr. Worden referred the Members to their packets. He stated the consumer information unit answered 23,400 calls the past quarter and 92,611 calls for the fiscal year. The Board received 1,552 physician/surgeon applications in the fourth quarter and 6,697 applications for the fiscal year. The Board completed 1,720 initial application reviews in the fourth quarter and 6,671 application reviews for the fiscal year. There were 1,438 physician licenses issued in the fourth quarter and 5,540 were issued in the fiscal year. There are approximately 28 pending applications at the senior review level for the fourth quarter.

There is a five year licensing history shown in the Board Packet of the physician and surgeon licenses and the Board issued 89 more licenses in this fiscal year than the fiscal year 11/12, and in comparison, that is 752 more licenses issued than in fiscal year 08/09. Also in the packet is a five year history of applications received and this year there were 68 more applications received than fiscal year 11/12 and 590 more than in fiscal year 08/09.

Mr. Worden stated the strategic plan goal of reviewing an application within 45 days of receipt was maintained for the fourth quarter. Currently, the number of days to review a U.S. file was 30 days, for the IMG file it was 37 days, and pending mail dates were eight days for each of those application types.

Mr. Worden stated there are approximately 91 schools pending approval at the end of the quarter; of those there are eight who are self-assessment reports. If a school qualifies for the 1314.1(a)(1), those are recognized in-house based on it being a school with the primary purpose of teaching citizens within their country and it is a Government or State owned bonafied non-profit school. There are three schools that are in consultant review at this time.

Mr. Worden reported that there were not any events during the fourth quarter, however they received notification recently in regards to a couple of upcoming events. The California Dental Association Foundation is going to hold one in December and noted that they intend to have some physicians there although no physician applications have been received for that event. The RAM organization is planning an event for next April assuming that AB 512 gets passed and extends the program to 2018.

Agenda Item 25 Update on Outpatient Surgery Settings Program

A. Update from Task Force; Consideration and Possible Action – Dr. GnanaDev / Dr. Salomonson

Dr. GnanaDev reported that he and Dr. Salomonson met on June 25th with the staff in Sacramento to discuss the Outpatient Surgery Setting Program (OSS). There were three main objectives for this meeting. The first was to view the Board's Web site and the OSS database to determine if further edits needed to be made. Board staff walked Members through several edits that had been completed and some that were still in process. Some significant edits included having the inspections report and any subsequent corrective action plans available to the public and having an indicator that the facility is CMS approved. It was identified that the OSS Web site pages need to be rewritten into a format that is more understandable and easier for the public to navigate. The staff is going to be rewriting this page to make it more user friendly. Another recommendation was to be able to do a geographical search of the OSS locations by entering a city name. Staff will be working on these enhancements, but due to other priorities, this will not be done in the immediate future.

Dr. Salomonson reported that after reviewing the Web site, the Task Force members looked at the requirements in Health and Safety Code Section 1248.15. They went through the laws, line by line. In reviewing the accreditation agency documents, the Members needed more information on what they looked at to ensure the physicians are appropriately trained.

Dr. Levine stated that she went through the criteria of the accreditation agencies line by line and had found differences, however, there are a number of areas where all four agencies have the same standards.

Dr. GnanaDev stated that there was a difference of opinion on whether or not you should have hospital admitting privileges, he did not agree with that, so that is why staff was asked to look into this and ask each agency what they would do in certain situations.

Dr. Salomonson discussed the reporting issue that was identified. Current law requires each OSS to report adverse outcomes to the CDPH, however the Board does not get the reports from the CDPH. Additionally, the Board has no authority to issue citations to an OSS for failing to report. The CDPH

does have authority to issue a citation and fine but does not have authority over the accrediting agencies, so there is a loop hole that needs to be fixed by a statute change.

Dr. GnanaDev stated that at this time, those reports are going to CDPH and the information cannot be shared with the Board. Since the Board has the responsibility for the OSSs, those adverse actions should be reported to the Board, and the Board should have the right to cite and fine. The law needs to be changed as right now, the Board is responsible for supervising the OSSs, but have no other input. Mr. Worden stated that the most critical part is to get the law changed to where the Board receives these reports.

Public Comment was heard on this agenda item.

Tina Minasian, Consumer's Union, stated that Consumer's Union has submitted to the Board a number of written testimonies regarding OSSs. They applaud the Outpatient Surgery Center Task Force recommendation for legislation to require outpatient surgery centers to submit adverse event reports to the Board for the purpose of investigation and to authorize the Board to cite surgery settings that do not submit the required report. These are keys steps that must be taken to fully implement the States' strong patient safety laws. However, Consumer's Union feels the task force is missing some important opportunities to strengthen standards for accreditation of physician owned surgery centers. They believe that the Board should require that physicians performing surgery under general anesthesia in physician owned outpatient centers be board certified or board eligible and also have hospital privileges for the specialty procedures they are performing in outpatient centers. In addition, the Board should require that the surgery centers seeking accreditation post a notice on the premises 6 months prior to finalizing the accreditation to inform the employees, patients and the public how to confidentially contact the accreditation agency about concerns they may have regarding patient safety at the surgery center. Lastly, the Board should require that future inspections by agencies be unannounced. Consumer's Union urged the Board to apply rigorous oversight to these surgery centers and their accrediting agencies.

Genevieve Clavreul thanked the Board for doing what they are doing as it is a huge issue. She feels that it is imperative that they be appropriately credentialed and that the accrediting agencies' visits should be unannounced.

Julie D'Angelo Fellmeth, Center for Public Interest Law, stated that consumers at this point have no idea who regulates the outpatient surgery centers. They are not aware that there is a distinction between physician owned clinics that are accredited by one of the Board's accrediting agencies and one that is licensed by CDPH. Since there is legislation being sought on the reporting issue, she suggests that the Board consider including a signage requirement similar to the notice to consumers that requires physicians to post a sign in their waiting room stating that doctors are regulated by the Medical Board of California. This would direct patients to the information about these surgery centers that is posted to the Board's Web site and also would direct them on where to file a complaint if needed.

Victoria Samper, Institute for Medical Quality, stated the Health and Safety Code 1248 does require that outpatient settings post the name and telephone number of the accrediting agency with instructions on how to submit a complaint in a location readily visible to patients.

Dr. Levine asked if the OSSs under the purview of the Board are currently required to post information about the agency that accredits them and the contact information for that agency, which is where the complaint would go.

Ms. Webb stated they are required to post a sign regarding the accreditation agency, however if the issue is that the Board wants people to know that the Board oversees the accrediting agency that is not what is demanded by the statute.

Ms. Yaroslavsky made a motion to support the proposed legislation;/s Dr. GnanaDev. Motion carried.

B. Web site and Program Update – Mr. Worden

Mr. Worden asked Ms. Lowe to join him in this update. Ms. Lowe reported that staff has been working diligently to obtain and upload the required information from the four accreditation agencies into the Board's OSSs database. Ms. Lowe stated after making several enhancements to the public Web site have been made including: adding the inspection reports, the corrective action plans and outcome reports; defining the requirements for what data is actually required to be reported and displayed on the Board's Web site based on whether a setting is CMS approved or not; and identifying the timeframe of the actual values that is being reported. Staff is confident that they are near completion on entering the missing data. Although when searching for information previously on the public site, it did appear that there was significant data missing from the Web site, and the data that was missing was due in part to the OSSs that were CMS approved, as well as missing reports because the timeframes were prior to the reporting period that the accreditation agencies had to provide that information. Disclaimers have been added to the Web site for those values that are not reportable as well as information on settings that are CMS approved. As settings that are not CMS approved are not required to be reported to the Board, staff has partial information on some of these settings. Staff has asked the accreditation agencies to continue to provide this information as a courtesy so that the Board can provide the most information to the public.

As of July 17, 2013, after entering all of the available data that was provided from the accrediting agencies, an internal exception report was run to determine what information was still missing and what was still needed. Of the 1,279 total settings in the database, 367 of them were identified as CMS approved. Ms. Lowe stated that after running the internal exception report, filtering out information that is not actually required to be reported, and taking into consideration time frames of the law being implemented, the database is really only missing 27 values out of 872 settings. Ms. Lowe believes staff is at a point where these internal exception reports can be run on a regular basis, not only to say which values are missing, but also what information needs to be updated. It is the responsibility of the accrediting agencies to provide the updates. Staff will work with the agencies directly to assistant in receiving updates and/or missing information that needs to be provided.

Ms. Lowe reported that the Web site is still a work in progress and it will continuously be updated regularly adding a search option by city or county in order to locate an OSS in a particular area. In addition, a search will be added for those OSSs that are doing business under a different name, as currently a search is not available, for a DBA name.

Ms. Lowe also gave an update on the accrediting agency renewals stating that all four accreditation agencies have submitted their renewal packages, which included extensive documentation on their standards, development plans, review processes, etc. An internal review has been done on all four of the renewal packages and based on that review, all four agencies continue to meet the requirements as outlined in the Health and Safety Code. All four have been approved and renewed.

Dr. GnanaDev stated his strong appreciation to staff who have worked so diligently on these enhancements.

Mr. Worden also thanked the Board's ISB staff who continued to improve the Web site on such short notice while trying to do the BreEZe project as well. Also, the accreditation agencies provided staff with the additional requirements that have been provided in the Board packet. Mr. Worden directed the Members to a side by side chart that shows how the accreditation agencies meet the required elements, as well as the additional requirements that each agency has.

Agenda Item 26 **Review and Consideration of Request for Approval as an Accrediting Agency; Healthcare Facilities Accreditation Program – Mr. Worden**

Mr. Worden announced to the Board that Michael Zarski, CEO of the HFAP, had planned on attending the Board Meeting, but was unable to due to a board meeting of HFAP in Chicago. This item is a request for another accreditation agency to be approved by the Board. The Healthcare Facilities Accreditation Program is part of the American Osteopathic Association. They have submitted an application for approval. They have been providing medical facilities with an objective base review of services since 1945 and in 2003 they were granted deeming authority by the Center for Medicare/Medicaid Services (CMS) to conduct accreditation surveys of ambulatory surgical centers for CMS. In addition HFAP is a CMS deeming authority to survey acute care hospitals, critical care hospitals and hospital facility laboratories. Board staff reviewed their application and requested additional documentation. Additional clarifying information and after reviewing the clarifying information, it was determined HFAP met all requirements to become an approved accrediting agency.

Dr. GnanaDev made a motion to approve this facility; s/Dr. Bishop. Motion carried.

Agenda Item 27 **Enforcement Chief's Report – Ms. Threadgill**

Ms. Threadgill began with requesting a motion to approve nine orders restoring license to clear status following completion of probation during the period from 1/30/2013 through 4/16/2013.

Ms. Yaroslavsky made a motion to approve the nine orders requested; s/Dr. GnanaDev. Motion carried.

Ms. Threadgill then asked for another motion to approve 11 orders restoring license to clear status following completion of probation during the period from 4/23/2013 through 7/3/2013.

Ms. Yaroslavsky made a motion to approve the 11 orders requested; s/Dr. GnanaDev. Motion carried.

Ms. Threadgill referred the Board Members to their agenda packet. She stated that during a previous Board meeting staff presented a proposal to increase the hourly rate for expert reviewers. The question was raised regarding the hourly rate for expert reviewers in other states. The chart in the Board packet provides the information staff was able to obtain from other states.

Ms. Threadgill stated the Board has a total of 936 active experts. The Board utilized 258 to review 372 cases in the second quarter of the calendar year. She reported that the next expert reviewer training is scheduled to be held on November 2, 2013 at UCSD, La Jolla Medical School Campus. She encouraged Members who are available on that date to attend this excellent training. She will continue to provide the Board Members with information as the date approaches.

She reported that the investigator vacancy rate is currently 11%; however, when the vacancies that have candidates in background are deleted the rate is 1%. The vacancy rate for Supervisors remains at 10%.

During this fiscal year the enforcement program hired 17 new investigators. In addition, staff held a four week mini academy that was specific training on Board cases. The Board plans to send five investigators to the required POST academy in August although this is contingent upon the Board getting clearance to hire those candidates in background prior to the start of the Academy. POST conducted an audit of the Board's background investigations and indicated that the files look great and the narratives are really good.

DCA Audits Unit is currently conducting an audit of the Board's evidence accounts. Those results with be provided to the Board at the next Board meeting.

On June 3, 2013 staff provided DCA with a request to establish and fill the CPEI (6 non-sworn special investigators and 1 Supervising Special Investigator non-sworn) positions. These positions are still pending at DCA. However, the Board received notice that CalHR is reviewing the use of this class at DCA.

Staff is conducting an intensive statewide training for the Board's staff, January 13-17, 2014, which will focus on excessive prescribing cases. This is a joint effort between Board staff and the LA County DA's office. Ms. Threadgill will inform Board Members of schedule details, as interested Members may wish to attend.

The Board continues to support providing medical related training to Administrative Law Judges. They will receive a one and a half hour anatomy presentation on August 16 and another one and a half hour physiology presentation on September 20. In June, the ALJs had internal Interim Suspension Order Training and internal Disciplinary Guideline training in July.

Ms. Threadgill referred Members to a series of graphs in the Board packet. These graphs show that the time to complete a complaint in the complaint unit is decreasing. At the time of preparation of this package, data for the month of June was not available; however, she stated that the time for the month of June is 67 days. This is in large part due to suggestions from Dr. Low regarding reducing the time that medical consultants are allowed to review a case. Members can see the correlation by reviewing

the medical consultant average days also in the packet. She stated that Dr. Low's idea worked and thanked him.

Ms. Threadgill stated that she is extremely excited about the productivity of staff during this fiscal year. She disclosed that the numbers that she references are rough approximates that have not been through the validation process for the annual report, so they are not the official numbers. She identified the following statistics:

- Staff referred 143 criminal cases to the DA this fiscal year. This is remarkable considering two years ago only 56 case were referred and last year 112. OSM is responsible for 77 of the criminal referrals.
- Staff had a total of 1689 investigation dispositions this fiscal year, whereas, only 1605 last year.

San Jose staff recently arrested a subject on a $25,000 warrant for transporting controlled substances and dispensing or furnishing prescription drugs without a license and practicing medicine without a license.

Ms. Threadgill invited any Member who would be interested in taking a look at closed case reviews, cases that are not going forward for adjudication or prosecution to visit a district office to see how it operates and to get a clearer picture of what work actually goes on in those offices.

Dr. Levine recommended that Ms. Threadgill send an email to all of the Members with the addresses of the district offices and ask for a response as to when the Member could visit an office.

Dr. Yip asked if there was any detailed information on why the previous enforcement staff had left the board.

Ms. Threadgill stated that she does do exit interviews and could provide that information to the Members.

Agenda Item 28 Vertical Enforcement Program Report – Ms. Castro

Ms. Castro thanked Ms. Webb and Ms. Dobbs for the Disciplinary Guidelines presentation. She stated that she was very impressed with it and agreed with what was provided. Ms. Castro reminded the Board that the AG's office works hand in hand with the Boards Enforcement staff as the Board has appointed as necessary and regionally to obtain settlement recommendations from the Board as soon as an accusation is filed and received.

Ms. Castro reported that the AG's office is active in the early settlement conference process, as well as the mandatory settlement conference process, to obtain information for the Board to act as needed and as informed as possible on the recommendations on stipulations. The Board will see more uniformity in the DAG memos and the Board will be able to find out everything that needs to be known about the case, so an informed decision can be made. She looks forward to the Board continuing to remind OAH that it is the Board's position that admissions are favored in stipulations whenever possible,

rather than a nolo plea. These are client attorney privileged communications that are very important and they will continue to give as much information as possible, consistent with the rules of professional conduct.

Ms. Castro then gave a brief update on the Vertical Enforcement Program. She stated she meets every other week with Ms. Kirchmeyer and feels the meetings have been very productive. The AG's Office and the Board continue to meet quarterly to discuss enforcement issues as they relate to district offices, lead prosecutors. and the Vertical Enforcement Program. The next meeting is scheduled for August 2, 2013. They continue to produce reports to Ms. Kirchmeyer and try to improve on that process. Ms. Castro also receives reports regularly from the Board staff to be more consistent with each other. In March, the Enforcement Sub Committee agreed that conviction only cases, that do not involve quality of care issues, will not be assigned to a primary DAG. This allows the primary DAG to focus on Interim Suspension Orders and subpoena enforcements. Finalized protocol will be discussed with the Board staff in August as to how that will work. Ms. Castro stated that she continues to be interested in the forming of any sub committee and is available to be invited to participate on an as needed basis.

She and her staff are excited that the Board will be issuing cease practice orders on PACE failure cases and failures to enroll in PACE, as well as the biological fuel testing positive results. Staff is working to be sure that petitions to revoke probation can be filed as soon as possible.

The Board had requested that subpoena enforcement matters take priority and staff has responded. Eight subpoena enforcement actions have been filed in superior court. The AG's office is starting to educate superior courts statewide as to the Board's power to demand medical records without patient release where good cause is shown and public safety outweighs patient concerns. These enforcement subpoena cases will be followed to ensure decisions align with the Board's goal of public protection, as well as balancing patient privacy concerns.

Ms. Castro stated that she has had two staff that had been with HQE for many years that retired. She had one member of the HQE staff appointed to the Assembly, two appointed to the bench at OAH, and one additional staff retire. They have recently hired six new people and should be fully staffed within the next month. They are replacing seven DAG positions as well as two supervising DAG positions.

Dr. Levine thanked Ms. Castro for her spirit of collaboration.

Dr. Levine requested to return to her President's report and stated that during elections the day prior, David Serrano Sewell had asked to step down from his recently appointed position as Chair of the Enforcement Committee due to his election of Vice President. Dr. GnanaDev has agreed to serve as Chair of the Enforcement Committee.

Dr. Levine stated that Dr. GnanaDev and Mr. Tagami have been working as a two person task force to look at revising the posting for the permanent Executive Director position, which has gone through the DCA office of personnel and is currently posted on the Web until the second week in August. She thanked them both for looking at that and making sure the roll description fit the needs of the Board.

Agenda Item 30 **Agenda Items for October 24-25, 2013 Meeting in Riverside**

Dr. Levine announced the following agenda item requests for the October Board Meeting:

- A presentation on fraud and fraud prevention from the Department of Health Care Services,
- recommendations for the dates for last two board meetings in 2014,
- A presentation by an Administrative Law Judge on Interim Suspension Order's,
- A presentation from Games for Health Care,
- A presentation on Vial of Life Program,
- Two presentations, which may go to committees: one on pharmaceutical industry patient assistance programs and one on fictitious name permits and med spas.
- A presentation on the funding of graduate medical education

Agenda Item 31 **Adjournment**

Dr. Levine adjourned the meeting at 4:21 pm.

Sharon Levine, M.D., President — Date 10/25/13

(*) Unavailable to Sign

Silvia Diego, M.D., Secretary — Date

Kimberly Kirchmeyer, Interim Executive Director — Date 10/24/13

The full meeting can be viewed at www.mbc.ca.gov/Board/meetings/Index.html