MEDICAL BOARD OF CALIFORNIA

QUARTERLY BOARD MEETING

Courtyard by Marriott
Golden A&B
1782 Tribute Road
Sacramento, CA 95815

July 20, 2012

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

Ms. Yaroslavsky called the meeting of the Medical Board of California (Board) to order on July 20, 2012 at 9:00 a.m. A quorum was present and notice had been sent to interested parties.

Members Present:

Barbara Yaroslavsky, President
Janet Salomonson, M.D., Vice President
Gerrie Schipske, R.N.P., J.D., Secretary
Michael Bishop, M.D.
Jorge Carreon, M.D.
Hedy Chang
Silvia Diego, M.D.
Shelton Duruisseau, Ph.D.
Dev GnanaDev, M.D.
Sharon Levine, M.D.
Reginald Low, M.D.

Staff Present:

Aaron Barnett, Investigator
Eric Berumen, Central Complaint Unit Manager
Susan Cady, Enforcement Manager
Ramona Carrasco, Central Complaint Unit Manager
Dianne Dobbs, Department of Consumer Affairs' Legal Counsel
Tim Einer, Administrative Assistant
Kurt Heppler, Staff Counsel
Kimberly Kirchmeyer, Deputy Director
Natalie Lowe, Licensing Manager
Armando Melendez, Business Services Analyst
Cindi Oseto, Licensing Manager
Regina Rao, Business Services Analyst
Letitia Robinson, Research Specialist
Paulette Romero, Central Complaint Unit Manager

Anthony Salgado, Licensing Manager
Kevin Schunke, Outreach Manager
Jennifer Simoes, Chief of Legislation
Laura Sweet, Deputy Chief of Enforcement
Cheryl Thompson, Licensing Analyst
Renee Threadgill, Chief of Enforcement
See Vang, Business Services Analyst
Michel Veverka, Investigator
Linda Whitney, Executive Director
Dan Wood, Public Information Officer
Curt Worden, Chief of Licensing

Members of the Audience:

Teresa Anderson, California Academy of Physician Assistants
Yvonne Choong, California Medical Association (CMA)
Scott Clark, CMA
Janet Coffman, MAA, MPP, Ph.D., Assistant Adjunct, UCSF
Frank Cuny
Julie D'Angelo Fellmeth, Center for Public Interest Law (CPIL)
Mitch Feinman, M.D.
Bill Gage, Chief Consultant, Senate Business, Professions and Economic Development Committee
Dr. Ravi Garehgrat
Beth Grivett, PA
Randall Hagar, California Psychiatric Association
Virginia Herold, Executive Officer, California State Board of Pharmacy
Stewart Hsieh, J.D.
Tina Minasian, Consumers Union Safe Patient Project
Glenn Mitchell, Physician Assistant Committee (PAC)
James Nuovo, M.D., University of California, Davis (UCD)
Elberta Portman, Executive Officer, PAC
Carlos Ramirez, Senior Assistant Attorney General, Office of the Attorney General
Loren Reed, Department of Consumer Affairs, Public Affairs Office
Ann Robinson, Consumers Union Safe Patient Project
Amara Sheikh
Farzana Sheikh
Rehan Sheikh
Shannon Smith-Crowley, American Congress of Obstetricians and Gynecologists (ACOG)
Cristeta Summers, Law Office of Albert Robles
Lenore Tate, Senate Office of Research

Prior to agenda item two, Ms. Yaroslavsky recognized Board member Hedy Chang. This will be Ms. Chang's last meeting. Ms Chang was appointed to the Board in 2004, and re-appointed in 2008. She has served in many capacities in the organization, stepping up to chair committees, serving as the chair of a disciplinary panel, serving as Secretary of the Board, and now serving on the Federation of State Medical Boards, representing the interests of California. Ms. Yaroslavsky thanked Ms. Chang for her time served on the Board and for her engagement, participation, and her passion in giving her voice to many issues that have been raised.

Agenda Item 2 Public Comment on Items not on the Agenda

Frank Cuny, Executive Director of California Citizens for Health Freedom urged the Board to consider sponsoring or supporting a bill that his organization will be introducing next year. This bill will make integrated treatment of cancer legal in California. Mr. Cuny is aware of over 2,000 people who go to Mexico each year for cancer treatment that is not available in California. Under current law, it is a criminal offense for a physician to provide integrated treatment for cancer.

Rehan Sheikh informed the Board that he had a flyer that he would like to distribute to the Members. He also wanted to remind the Board of the high educational standards of the University of California - Davis and that its graduates are considered competent to practice in the state of California. He presented a copy of a certification from the University of California - Davis for his wife, Farzana Sheikh. Mr. Sheikh said that he is bringing a pilot program to the Board so that she can practice medicine in the state of California since she is a graduate of the University of California Davis, and since it is recognized. Mr. Sheikh asked the Board if they had any objections to his proposition.

Ms. Yaroslavsky reminded Mr. Shiekh that this portion of the meeting is not a conversation; it is a time to speak to the Board.

Mr. Sheikh replied that since the Board did not reply with any objections, he considered his motion as adopted.

Kurt Heppler, Staff Counsel to the Board, reiterated that the purpose of public comment is to not take action on any items but to make a determination whether to put an item on the agenda for the next meeting. Mr. Heppler informed the Board that there was no action taken by the Board on Mr. Sheikh's motion.

Tina Minasian, representing the Consumers Union Safe Patient Project, commented that since the state of California is so large, Board meetings are routinely inaccessible for consumers who cannot afford the funds or time to attend a meeting. For these well informed, disabled, and passionate activists, travel to Board meetings is even more difficult and in some cases not possible. One request that the Consumers Union Safe Project has made to the Board is to teleconference all public meetings. By offering teleconferencing of public meetings, members of the public could participate in the Board's public meetings remotely. The public could listen to the meetings by telephone and the Board could allow public testimony by telephone. The request is not the establishment of remote locations from which the public participate, but to allow the public be able to use their own cell or landlines to call into meetings from wherever they are. The Consumers Union Safe Patient Project believes that the Bagley-Keene Act supports public participation by teleconferencing and the Board is misinterpreting the law and thus failing to abide by the Act when they fail to keep up with the new technology that can facilitate public participation in government.

Ann Robinson, from Consumers Union Safe Patient Project wished to raise a concern about the unbalanced nature of the membership of the Board. The Board has a total of 15 seats and the law requires that seven of these be filled by public Members, the remaining eight are physician seats. At the moment, there are seven physicians on the Board and only four public Members. A relationship that should be close to 50/50 is now askew with nearly twice as many physicians as public Members. This creates a dramatic imbalance on the Board and it creates concerns about the implications this has for priority setting, policies, and process decisions being made by the Board.

Two public seats expired in June. This will leave the Board with seven physician seats filled and only two public seats filled. A copy of a letter that was sent to the Governor the previous week raising these concerns was circulated to the Members. The letter was signed by the leadership of Consumers Union, American Association of Retired Persons (AARP), California Pan-Ethnic Health Network (CPEHN), California Public Interest Research Groups (CALPIRG), Latino Coalition for a Healthy California (LCHC), and University of San Diego School of Law.

Yvonne Choong from the CMA wished to bring to the Board's attention a brochure that has been produced by the CMA Foundation with the support of the California Endowment. The brochure is intended to help patients understand their new benefits, highlights the opportunities to obtain or change health coverage, and provides timelines for when these changes take effect. There are also links to resources where patients can find more information. This brochure is available in Spanish, Vietnamese, and Chinese.

Agenda Item 3 Approval of Minutes from the May 3-4, 2012 Meeting
Dr. GnanaDev made a motion to approve the minutes from the May 3-4, 2012 meeting; s/Duruisseau; motion carried.

Agenda Item 4 Annual Report on the MBC / UCD Telemedicine Pilot Program
Dr. Nuovo from UCD provided a presentation on the MBC / UCD Telemedicine Pilot Program.

Assembly Bill 329, (Nakanishi, Chapter 386, Statutes of 2007), authorized the Board to establish a pilot program to expand the practice of telemedicine in California. The purpose of the pilot was to develop methods, using telemedicine to deliver health care to persons with chronic disease(s). The pilot would also develop information on the best practices for chronic disease management services and techniques and other health care information as deemed appropriate.

The bill required the Board to make a report to the Legislature, with findings and recommendations, within one calendar year after the commencement date of the pilot. The report was to include an evaluation of the improvement and affordability of health care services and the reduction in the number of complications achieved by the pilot. It has been explained to the Legislature in previous reports that the Board entered into a contract for a three-year pilot and submitted reports in 2010 and 2011. The contract ended on June 30, 2012 and the data is now being reviewed and evaluated. The final report will be prepared during the fall of 2012, to include an evaluation of the entire pilot and to prepare evidence based recommendations. The report will be forwarded once finalized.

Dr. Nuovo discussed the project goal to test a model for improving access to diabetes self-management training and resources via telemedicine technology for patients in rural communities in northern and central California. The rationale is that the informed, activated patient in concert with the prepared, proactive healthcare team can improve outcomes. This comes from the Chronic Care Model and more information can be found at: www.improvingchroniccare.org. His full presentation may be viewed on the Web cast: http://www.youtube.com/watch?v=iGFaCyEe76U&feature=BFa&list=PLEC131A4C20035C17

Agenda Item 5 Adoption of Revised Emergency Contraception (EC) Protocol
Virginia Herold, Executive Officer, California Board of Pharmacy and Shannon Smith-Crowley, American Congress of Obstetricians and Gynecologists (ACOG) presented the Revised EC Protocol to the Members. Ms. Herold informed the Board that this is a collaboration between the

Board and the California State Board of Pharmacy where pharmacists are able to manage and provide EC pursuant to the protocol. Before the Board was a copy of the protocol regulation that the Board would be approving and the Board of Pharmacy would be adopting. There had been one small technical adjustment on the last page in the chart. It is a clarity issue that went from one tablet twice a day to two tablets.

Ms. Schipske raised concern regarding procedure number three and the phrase at the bottom, "Other options for EC include consultation with your physician regarding insertion of an IUD." The inference in there is that an IUD is for emergency contraception and it is not.

Dr. GnanaDev made a motion to approve the protocol regulation that would be adopted by the California State Board of Pharmacy. The motion includes striking the language of the last line of procedure number three which reads, "Other options for EC include consultation with your physician regarding insertion of an IUD." s/Schipske.

There was further discussion that there should be modified text added to the portion that would be struck. It should read, ***"For other options for emergency contraception, consult with your physician or healthcare provider and encourage patients to follow up with their physician or healthcare provider after the use of emergency contraception."***

Dr. GnanaDev, the maker of the motion agreed to the amendment and Ms. Schipske, upheld her second.

Ms. Yaroslavsky called for the vote. Motion carried with Dr. Diego voting no and Dr. Carreon and Dr. Salomonson abstaining.

Agenda Item 6 Update on Pharmacy Board Actions

Ms. Herold continued by providing an update on Board of Pharmacy actions. The biggest item for the Board of Pharmacy at this moment is the means by which to deal with the CURES program. There could be funding trouble in the next few years. As an alternative to shutting it down, the Board of Pharmacy voted to approve or provide a support position on SB 616 which will potentially lead to a fee increase for their pharmacists.

The other item concerns various forms of automation equipment currently being used to dispense prescriptions. Existing California law, with respect to automation, is relatively restrictive and during inspections, inspectors are finding machines that have features or very broad features that are not covered in existing law. There will be a one day summit on October 24, 2012, and various technology vendors will be invited to introduce their automation equipment. This will help clarify what machines are authorized for use in a particular environment.

Agenda Item 7 Update on Controlled Substances Forum

Ms. Whitney and Ms. Herold provided an update on the controlled substances forum. There is increased evidence of a wide spread problem with prescription drug abuse in this country, in particular with the diversion of controlled drugs. The goal of the forum is to address some of the issues that are common and overlap between the Medical Board and the Board of Pharmacy. Some issues are more specific to physicians and other prescribers, and some are more specific to pharmacies but, the overall goal is to ensure patients that have pain needs get pain treatment and those that are abusing the system do not.

The anticipated date of the forum is the first part of 2013.

Agenda Item 8 Special Faculty Permit Review Committee Update

Dr. Low informed the Members that pursuant to Section 2168.1 of the California Business and Professions Code (B&P), the Board is allowed to issue a Special Faculty Permit (SFP) to an internationally trained physician who is sponsored by a Dean of a California medical school and has been recognized as academically eminent in his or her field of specialty. This allows the individual to have a permit that authorizes him or her to practice with all the rights and privileges of a California medical license only in the sponsoring medical school and its formally affiliated hospitals.

The SFP Review Committee held a teleconference meeting on June 14, 2012, and reviewed three applications: one from UCLA – David Geffen School of Medicine for Dr. Hasan Yersiz; one from UC Irvine School of Medicine for Dr. Pietro Galassetti; and one from UC San Francisco School of Medicine for Dr. Maria Cilio.

A. Consideration of 2168 Applicants

Mr. Worden presented on the first candidate for consideration. Dr. Hasan Yersiz's area of expertise is liver transplantation, more specifically In-Situ Splitting of a liver for transplantation. Dr. Yersiz graduated from Instanbul University, Instanbul Faculty of Medicine in Turkey and completed postgraduate training there and at Sisli Etfal Hospital, Instanbul Surgery. He received special training at Instanbul University, Instanbul Faculty of Medicine in the Hepato-Pancreato-Biliary Surgery Unit.

Dr. Yersiz has received multiple institutional appointments with UCLA including Visiting Research Scholar, Visiting Associate Researcher, Assistant Clinical Professor of Surgery, Assistant Adjunct Professor of Surgery, Associate Adjunct Professor of Surgery, Adjunct Professor of Surgery, and Health Sciences Clinical Professor/Professor of Clinical Surgery.

Dr. Yersiz is known throughout the U.S. and internationally as the leading expert for In-Situ Splitting of a liver for transplantation. He has trained 43 Fellows who have completed two year fellowships and is currently training three more fellows. Dr. Yersiz has performed 18 lectures and presentations in the U.S. and internationally. He also provides consulting services regarding liver transplants for the OneLegacy Liver Advisory Committee and he has approximately 60 peer reviewed publications. He has written chapters for seven different liver transplantation books and one guide book on liver transplantation.

Dr. Low made a motion that the Board approve Dr. Hasan Yersiz for a Business and Professions Code Section 2168.1(a)(1)(B) Special Faculty Permit at UCLA; s/Duruisseau; motion carried.

Mr. Worden presented on Dr. Pietro Galassetti from UC Irvine. Dr. Galassetti's area of expertise is pediatric diabetes in the area of in-vivo metabolic procedures and obesity. Dr. Galasetti graduated from the University of Rome-La Sapienza Faculty of Medicine, Italy and also completed his postgraduate training there. Dr. Galassetti also has a Ph.D. in Education in Molecular Physiology and Biophysics from Vanderbilt University.

Dr. Galassetti completed his post doctoral training at Indiana University-Research Fellow Pulmonology, Harbor/UCLA Medical Center-Exercise Science/Pulmonology, and Vanderbilt

University-Molecular Physiology and Biophysics, and Endocrinology.

Dr. Galassetti's institutional appointments at Vanderbilt University include Research Assistant Professor, Division of Diabetes/Endocrinology/Metabolism. Appointments at UC Irvine include Assistant Professor in Residence; Department of Pediatrics Director, Bionutrition/Metabolism Core, General Clinical Research Center; Assistant Professor, Department of Pharmacology; Associate Professor in Residence, Department of Pediatrics and Pharmacology; and Associate Professor in Line (50%) and Associate Professor in Residence (50%), Department of Pediatrics and Pharmacology.

Dr. Galassetti has been awarded research awards from Southern Society of Clinical Investigations, and the Outstanding Young Investigator Award from the Association for Patient-Oriented Research in 2001. He is the recipient of a prestigious NIH K24 mid-career award that recognizes both scientific innovation and outstanding mentorship in clinical/translational research. Dr. Galassetti's research has been published in scientific journals and he has served as a reviewer for over 30 different scientific journals. He has 81 peer reviewed published articles and has 18 review articles/book chapters.

Dr. Low made a motion that the Board approve Dr. Pietro Galassetti for a Business and Professions Code Section 2168.1(a)(1)(B) Special Faculty Permit at UC Irvine; s/Diego; motion carried.

Mr. Worden presented on Dr. Maria Roberta Cilio from UCSF. Dr. Cilio's area of expertise is pediatric neurological disorders and neonatal seizures. Dr. Cilio is a medical school graduate of the University of Rome and also holds a Ph.D. from University of Catania/Harvard University in Pediatric Sciences.

Dr. Cilio completed her postgraduate training at University of Rome-Pediatric Neurology, St. Luc Medical Center-Pediatric Neurology and Pediatrics, Bambino Gesu Children's Hospital-Pediatric Neurology, and special training in Pediatric Neurophysiology.

Dr. Cilio's institutional appointments include Visiting Associate Professor, Associate Adjunct Professor, and Visiting Professor.

Dr. Cilio has been invited to make presentations in the U.S. and internationally on 45 occasions. She has 34 peer reviewed publications and six books and chapters. Dr. Cilio was awarded the Presidential Chair award from UCSF in 2011, which calls for her to develop and implement an interdisciplinary program in neonatal neurophysiology. She is the project leader and principal investigator for prestigious multicenter research grants with the European Commission and the Italian Ministry of Health for rare neonatal neurological disorders and the genetic basis of neonatal seizures.

Dr. Low made a motion that the Board approve Dr. Maria Roberta Cilio for a Business and Professions Code Section 2168.1(a)(1)(B) Special Faculty Permit at UCSF; s/Chang; motion carried.

B. Approval of University of California, Irvine Committee Member Change

Dr. Low informed the Board that the UC Irvine School of Medicine's requested to change its SFP Review Committee member from F. Allan Hubbell, M.D., M.S.P.H., Executive Vice Dean, to Wadie Najm, M.D., Associate Dean for Academic Affairs/Clinical, as Dr. Hubbell has retired.

Dr. Low made a motion that the Board approve the request from UC Irvine changing its SFP Review Committee member from F. Allan Hubbell, M.D., M.S.P.H., Executive Vice Dean, to Wadie Najm, M.D., Associate Dean for Academic Affairs/Clinical; s/Chang; motion carried.

Agenda Item 9 Physician Assistant Committee (PAC) Update

Ms. Yaroslavsky wanted to take a moment to thank Dr. Low for his time and commitment to the PAC. In January, with the inordinate strain on Dr. Low's time commitments, he submitted his resignation from this committee to the Governor. Ms. Yaroslavsky requested that if any physician on the Board is interested in this committee to please contact her or Ms. Whitney.

Dr. Low reported that the PAC meeting was held in May and since the last Board meeting, 175 licenses have been issued by the PAC and there are now over 8,500 PAs licensed in California. There are 70 complaints pending, 25 investigation cases pending, 45 probationers, and 24 cases awaiting administrative adjudication at the office of Attorney General.

At the last Board meeting the consideration of a regulatory change dealing with personal presence of the supervising physician was heard. Dr. Low reminded the Members that the Board is responsible for regulation of scope of practice issues. Upon review of draft language at the last meeting, the Board Members requested the PAC review and revise the proposed language to address the Board's concerns and resubmit the revised language at a future Board meeting. There was further discussion at the prior meeting and it was suggested that an informational presentation be made to the Board regarding the Physician Assistant (PA) scope of practice; this will be presented in the next agenda item.

The PAC regulatory proposal dealing with preceptors in the PA training was modified to address the concerns raised by the CMA and the California Academy of Physician Assistants. This proposal is currently out for a 15 day public comment period.

The PAC is working to incorporate the uniform standards of SB 1441 for substance abusing licensees into the PAC model disciplinary guidelines. The PAC held an interested parties workshop on May 15, 2012, to discuss incorporating the uniform standards and draft language is being developed.

The Sunset Review for the PAC is currently moving through the legislative process and it incorporates several changes to the PAC including the name change from the Physician Assistant Committee to the Physician Assistant Board. There is also inclusion of Section 800 reporting requirements and change in the composition of the new board. If this is passed by the Legislature and signed by the Governor, the new board would be in existence until 2017. Lastly, the PAC is considering implementing an examination for licensure of new applicants that would focus on the laws and regulations governing the practice of PAs in California.

Agenda Item 10 Presentation on Physician Assistant's Scope of Practice

The PAC serves and protects consumers of California through licensing, approving PA training

programs, and enforcement of the laws governing the Physician Assistant Practice Act. PAs are highly skilled professionals who, under the supervision of a physician and surgeon, provide patient services ranging from primary medicine to specialized surgical care.

The Board heard a scope of practice regulatory proposal from PAC Chair, Robert Sachs, at the May 2012 meeting. Members requested a presentation on PAs to better understand their scope of practice in order to make informed decision on future issues related to PAs.

Elberta Portman, Executive Officer of the PAC, provided a presentation for the Members. Ms. Portman shared the highlights of the PAC that included legislative intent, who they are, what they do, their mission statement, and the relationship of the PAC and the MBC.

Beth Grivett, PA, has been a PA for 17 years and currently works for a medical group in Orange County that specializes in family medicine. Ms. Grivett has recently released the second edition of her book, ***So You Want to be Physician Assistant.***

Ms. Grivett provided a presentation that began with the history and origin of the PA profession and led into the current scope of practice. The highlights of the presentation focused on PA education, initial licensure, maintaining certification, typical PA duties, California PA demographics, California laws governing physician-PA practice, supervision requirements, reimbursement, and healthcare reform.

Agenda Item 11 Presentation on Use of Electronic Health Records: A Survey of California Physicians

Janet Coffman, MAA, MPP, Ph.D., Assistant Adjunct, University of California at San Francisco (UCSF), reported on physicians' experience with Electronic Health Records (EHR). Professor Coffman is an associate professor at the Philip R. Lee Institute for Health Policy Studies and Department of Family and Community Medicine at the UCSF.

Professor Coffman provided the background on the HITECH Act that authorizes Medicare and Medicaid (Medi-Cal in California) to make incentive payments to hospitals and clinicians for meaningful use of EHRs.

The Department of Health Care Services has a program called the Medi-Cal EHR Incentive Program that provides eligible Medi-Cal Providers with $21,250 during the first year of the program for adopting, implementing, or upgrading a certified EHR in their practices. In subsequent years, providers who demonstrate "meaningful use" of their EHRs by reporting on a set of objectives and clinical quality measures will receive $8,500 yearly for up to 5 years. Over the life of the program providers can receive a total of $63,750 in incentive payments from Medi-Cal. An email blast from the Board was sent to physicians notifying them of this program and its deadline for application.

The Board also partnered with UCSF to assist the Department of Health Care Services in being able to baseline or provide a starting point for usage of EHRs statewide. The UCSF drafted a survey that was sent out to physicians along with their renewal notice. This survey was separate from the Board's physician survey and asked questions regarding EHRs. The information gathered from this survey by UCSF was used to draft a report for the Department. This report will provide the Department with the data they can use to see how this program impacts the use of EHR in the

future. The full report can be obtained at: http://www.chcf.org/publications/2012/06/meaningful-use-ehrs-physicians.

Agenda Item 12 Executive Committee Update

Ms. Yaroslavsky reported that the Executive Committee had met the previous Wednesday. She asked that Jennifer Simoes please come forward to discuss SB 1483.

Ms. Simoes began by discussing that SB 1483 (Steinberg), is sponsored by the CMA, the California Hospital Association, the California Psychiatric Association, and the California Society of Addiction Medicine.

Ms. Simoes wished to thank the author's office for addressing many concerns raised by the Board in its previous analysis. The issues of concern with this bill were: it was located in the Board's Medical Practice Act; that it did not identify a state agency to have oversight of the committee and the Physician Health Program (PHP); and that it did not identify a funding source. These have been addressed.

This bill would still establish the PHP, which would be administered by the Physician Health Recovery and Monitoring Oversight Committee (Committee). This bill now places the Committee in the Department of Consumer Affairs (DCA), would require DCA to select a contractor to implement the PHP, and the Committee would serve as the evaluation body of the PHP. The PHP would provide for confidential participation by physicians who have a qualifying illness, and are not on probation with the Board. The PHP would refer physicians, also called participants, to monitoring programs through written agreements and monitor the compliance of the participants with that agreement. The bill would require the Committee to report to DCA the outcome of the PHP and the bill would require regular audits. This bill would increase the physician license renewal by $39.50 to fund the cost of this PHP and the Committee.

The bill would cover those with a valid physician and surgeon certificate. It would also include students enrolled in medical schools approved or recognized by the Board, graduates of medical schools enrolled in medical specialty residency training programs approved or recognized by the Board, or physicians and surgeons seeking reinstatement of a license from the Board. Staff believes that applicants would be required to report this information on their licensing application, thus a possible amendment is required.

This bill would require the PHP to have a system in place for immediately reporting physicians who fail to meet program requirements. The system would be required to ensure absolute confidentiality in the communication to the enforcement division of the Board. The bill does not specifically require the reporting to the Board of those whose treatment does not substantially alleviate impairment, those who withdraw or terminate prior to completion, or those who after an assessment, are unable to practice medicine safely. This lack of reporting to the Board appears to be an oversight in how the bill was drafted and this is a possible amendment.

Lastly, this bill would increase the biennial license renewal fee for all physicians and surgeons by $39.50, to fund the cost of the PHP and the Committee. Board staff has a concern with implementing the fee due to the effective date of January 1, 2013. The Board sends renewal notices to physicians 90 days in advance of the renewal expiration date. For licensees with renewal dates of January 1, 2013, the renewal letters go out October 1, 2012. With the transition to a new

computer system set for October 15, 2012, the Board's current computer system is frozen and no new changes can currently be made. The programming time to accomplish this update and revise all renewal forms, the Web site, cashiering, etc. will take three to four months. Board staff would not have to time to update the computer system, revise renewal forms, and get out the renewal letters by October 1, 2012. Board staff would either have to delay the sending of the renewal notices or have to send another letter requesting the additional $39.50 in renewal fees. This additional workload, if the bill stays as written, would result in a fiscal impact to the Board.

The Board will be able to implement this bill in a more efficient manner if the increased fee had a delayed implementation date of July 1, 2013. This would give the Board until April 1, 2013 to update the computer system and revise forms. It would allow Board staff the necessary time to do this within its normal workload and would not result in a fiscal impact to the Board. Board staff suggests a neutral if amended position on this bill, with the amendments being to delay implementation of the increased fee to July 1, 2013, to clarify applicant participation and clarify reporting to the Board.

Ms. Simoes further pointed out some important information regarding this bill. It is not the same as the Board's diversion program. It does not divert people from enforcement and it is a program created and intended to be a referral system to refer physicians to monitoring programs. Physicians would still pay the cost for the monitoring program. This program does not actually provide monitoring services. If the Board were to find out that a physician participating in the program had done something negligent during patient care, the normal complaint process would still be applicable. This program would not exempt these physicians from enforcement or divert them from enforcement.

Ms. Yaroslavsky made a motion that the Board take a neutral if amended position on SB 1483 with the following amendments being: 1) To clarify applicants must report participation in the program on Board applications for licensure; 2) Change the effective date of implementation of the increased fee to July 1, 2013 and after; 3) Clarify that reports must come to the Board as outlined in Section 830.10(e)(1); s/Duruisseau.

Public comment was received for this agenda item.

Randall Hagar, Government Affairs Director for the California Psychiatric Association, informed the Members that his organization is a co-sponsor of this bill. The bill is to present a new model that is a public-private partnership and it is based on public health principles. This bill brings about something different as the outreach and educational functions are spelled out in the legislation. He urged the Members to support the bill.

Yvonne Choong, CMA, informed the Board that they are also one of the sponsors of the bill. Ms. Choong wished to address the question regarding the estimated $2.2 million that would be collected at renewal. The last program received roughly $1.2 million per year and it was acknowledged that it was underfunded based on the ratios and it was understaffed.

Ms. Chang explained that the Board will collect the money and turn it over to this new Committee. The new Committee will not do any testing, they are just a monitor and they will hire someone to do that. Ms. Choong explained that the new Committee will be responsible for the evaluation of the program and making sure the vendor is doing what they are supposed to be doing. The composition

includes clinical experts that will have oversight. They will also be the ones that will be making reports to the Board on participants who have not completed the terms of their contract with the vendor, who are withdrawing from the program, and those that are not completing the program.

Ms. Schipske shared concerns about the fees that will be collected being subjected to borrowing by the State and then running the risk of once again having a program that is not properly funded.

Julie D'Angelo Fellmeth from the Center for Public Interest Law (CPIL), stated that as she said at the May meeting, there is a lot wrong with this bill. First, it creates a new state regulatory board at a time when the Governor and his administration are trying to constrict government. Secondly, it allows private trade associations, which are the sponsors of this bill, to dictate the membership and control this new state regulatory board. Third, it requires the Board to fund the new board and its vendor, with physician licensing fees; thus, tying the Board in the eyes of consumers and the media, to this new program over which the Board will have no control. No one has seen any fiscal analysis to support the new surcharge on physician licensing fees. Finally it is incomplete; it does not even do what it purports to do. It purports to create a certification program for private monitoring companies or programs but there is no mechanism or standards in the bill for the certification process.

Ms. D'Angelo Fellmeth asked the Board to recall the history about their old diversion program.

Ms. D'Angelo Fellmeth urged the Board to oppose to this bill for these reasons, as it is unclear, it is incomplete, it potentially hands control of a new board and its vendor to the same organizations and the same individuals that failed to properly police the Board's diversion program for a 24-year period.

Ms. D'Angelo Fellmeth asked the Board to consider another amendment with a provision stating that it precludes anybody who was connected to the old diversion program or Liaison Committee from holding a management or supervisory role in the program.

Tina Minasian conveyed her personal opinion and concerns. One of her biggest concerns about this program, is it sounds just like diversion again. Ms. Minasian was a victim of one of the doctors that was in the diversion program. Ms. Minasian asked how many chances will a physician be given?

Ms. Minasian also inquired about what happens if participants lie on their application with licensing and do not tell the Board that they are a participant in this program? She stated that she thinks that the Board should know who everyone is that is in the program. Ms. Minasian believes this program to be another diversion program and she urged the Board to not support this.

Ms. Chang requested that another amendment be added that would prohibit anyone connected with the former diversion program or the Liaison Committee to be in a management or supervisory position either on the new committee or as the vendor; Ms. Yaroslavsky, as the maker of the motion, accepted the amendment and Dr. Duruisseau, the second on the motion, also accepted the added amendment.

Public comment was called for after this amendment.

Randall Hagar informed the Board that the sponsor will look at these amendments.

Julie D'Angelo Fellmeth requested the Board clarify the language of the added amendment.

Ms. Yaroslavsky confirmed and verified with Ms. Chang that the amendment as stated was what Ms. Chang wanted to express.

Ms. Yaroslavsky called for the vote. Motion carried.

Agenda Item 13 Legislation / Regulations
Ms. Simoes reported on legislative outreach pursuant to Strategic Plan Goal 4, Objective 4.1, stating she contacted eight legislative district and capitol offices to let them know about the quarterly Board meeting, to extend an invitation, and to provide information about the meeting. Ms. Simoes continues to meet with legislative and committee staff on a daily basis on Board sponsored bills, bills where the Board has a position, and on bills or issues that surface that might impact the Board.

A. 2012 Legislation
Ms. Simoes informed the Board that the status of four of the bills on the tracker list had become chaptered, which means that they have been signed into law by the Governor.

The first bill discussed was **AB 1533** (Mitchell). This is actually the Board's sponsored bill that would authorize a pilot for the UCLA International Medical Graduate program. This bill passed through the Legislature without any no votes or opposition and was signed into law by the Governor on July 13, 2012. Ms. Simoes thanked Assembly Member Mitchell for authoring this bill and the UC system for their support as co-sponsors.

The next chaptered bill is **AB 1548** (Carter). This is the bill that prohibits outpatient cosmetic surgery centers from violating the prohibition of the corporate practice of medicine and elevates the penalties of violating the corporate practice of medicine provision. The Board took a support position on this bill because it helps to prevent further offenses and ensures consumer protection. This bill was also signed into law by the Governor.

Also chaptered is **AB 1621** (Halderman). This bill would exempt physicians working on trauma cases from current law that requires physicians to provide specified information on prostate diagnostic procedures to patients who undergo an examination of the prostate gland. The Board took a support position on this bill and the Governor signed it into law.

The last bill that was recently chaptered is **AB 1896** (Chesbro). This bill would align state law with the federal Patient Protection and Affordable Care Act and would exempt all health care practitioners employed by a tribal health program from California licensure, if they are licensed in another state. The Board did not take a position on this bill and the Governor signed it into law.

Ms. Simoes provided an update on pending legislation.

- **SB 1575** (Senate B&P)
  This bill is the vehicle by which omnibus legislation has been carried by the Senate Business, Professions and Economic Development Committee. The omnibus language would allow the Board to send renewal notices via email; would clarify that the Board has enforcement jurisdiction over all licensees; and would establish a retired license status for

licensed midwives. This bill is currently in the Assembly Appropriations Committee. The Board is supportive of the provisions that impact the Board.

- **SB 122** (Price)
  Discussion on this bill was deferred to the Licensing Committee Update.

- **SB 616** (DeSaulnier) Controlled Substances: Reporting
  This bill was discussed during Ms. Herold's update. This bill would establish the Controlled Substance Utilization Review and Evaluation Sustem (CURES) Fund, which would consist of contributions collected from organizations for purposes of funding the CURES program administered by the Department of Justice (DOJ).

  The Board believes CURES is a very important enforcement tool and an effective aid for physicians to use to prevent "doctor shopping" Although the Board currently helps fund CURES at a cost of $150,000 this year, these funds cannot be used for staffing. The Board is aware of the issues DOJ is facing related to insufficient staffing and funding for CURES. Staff suggested that the Board support any effort to get CURES more fully funded.

Dr. Levine made a motion to support SB 616; s/ Duruisseau; motion carried.

- **SB 1236** (Price) Healing Arts Boards
  This bill is the sunset bill for the PAC. This bill would rename this committee the Physician Assistant Board (PAB), and would make it its own board, not a committee of the Medical Board. This analysis only included the relevant sections of the bill in the Business and Professions Code (BPC) related to the PAC.

  In addition to making the PAC its own board, the bill would extend the sunset date of the PAB to January 1, 2017. It would also create a retired license status for PAs. The bill would revise the makeup of the members of the PAB. Upon expiration of the current Medical Board Member, this bill would require a member to be appointed to the PAB that is also a member of the Board, but that member shall serve as an ex officio, nonvoting member whose funtions will include reporting to the Board on the actions or discussion of the PAB.

Ms. Schipske made a motion to support SB 1236; s/Chang; motion carried.

- **SB 1237** (Price) Omnibus – Sunset Dates
  This bill extends the sunset date of the vertical enforcement and prosecution model from January 1, 2013, to January 1, 2014. The new date will coincide with the Board's sunset date, and vertical enforcement will be an issue that will be evaluated in the Board's sunset report.

  Staff was just making the Board aware of this bill, no position was needed.

B. Status of Regulatory Action

Ms. Simoes directed the Members to their Board packets to review the regulation matrix that lists the status of all regulatory proposals in process.

At the conclusion of this agenda item, Ms. Yaroslavsky returned to Agenda Item 12 and stated that not only did the Executive Committee meet to discuss SB 1483, they also performed the Executive Director's performance review. She is pleased to announce that Ms. Whitney will be with the Board for another year.

Agenda Item 14 Licensing Committee Update, and Possible Consideration of Recommendation(s)

Dr. Salomonson reported that the Licensing Committee had met the previous day. At the meeting, they were updated on staffing issues, and the business process and reengineering recommendations. There was also an update on the implementation of SB 100, the outpatient surgery center requirements, and the fact that information is now available on the Web site. Staff provided a demonstration of the information available on the Web site for outpatient surgery centers. Dr. Salomonson invited all the Members to take a tour of this on the Web site and to provide feedback. Dr. Salomonson discussed that there was also a presentation on the allied healthcare professions under the domain of the Board.

A presentation was also provided on physician continuing medical education.

Mr. Salgado provided the Committee with an update on the implementation of the polysomnography program and the various levels of providers.

There was also a discussion about the licensing application indicating that changes are in the process but not complete at this time.

There was an overview of the recognition process of international medical schools that was provided by Dr. Silva, MBC Medical Consultant. Dr. Silva had been a Dean at UC Davis and has extensive experience in the recognition process of international medical schools. He stated the USMLE test as a standalone, is not a sufficient evaluation for the adequacy of medical training. Although it is an important factor, the recognition process of the international medical schools is still important as well.

Mr. Worden and Mr. Heppler discussed a legislative proposal to consider providing an alternative pathway to eligibility for licensure for applicants who have had some or all of their medical school training at an unrecognized or disapproved medical school. The primary goal of the Board is protecting the public and there are some concerns about this proposal. Dr. Salomonson requested that Mr. Heppler and Mr. Worden address the actual legislative proposal with the full Board.

Mr. Worden summarized that there was language previously in SB 122 that would allow the Board and/or require the Board to license individuals who obtained some or all of their medical education from an unrecognized and/or disapproved school. The language that is in the bill had some specific things that were actually less than what is required of some the Board's current licensing requirements. The language would have allowed an individual who has attended and/or graduated from an unrecognized or disapproved school to be licensed as a physician and surgeon in California if he or she meet the following:

- Taken and passed a written exam recognized by the Board to be equivalent in content to that administered in California.
- Held an unrestricted license in another state, country, or the military for five years.

- Had no disciplinary action or adverse settlements or judgments.
- Completed one year of approved postgraduate training and holds an American Board of Medical Specialties (ABMS) certification.
- Committed no acts or crimes constituting grounds for denial.

Mr. Worden stated there are 16 combinations of medical school education that would impact the Board. The way the bill was previously written, it would increase the Board's workload significantly and would require that all applications go through the Application Review Committee (ARC). It is estimated that there would be at least 200 applications per year and the review would require 25 hours per quarter for ARC reviews alone. This is a significant workload increase. Mr. Worden would require additional staff to do the preparations. An average time for an ARC preparation is 20 hours, not including the initial review of that application or follow up for the manager and the Chief.

Licensing staff has met with the sponsor of the bill to discuss alternative language that provides more consumer protection and still addresses many of the concerns of the sponsor/author. There was one amendment that was recommended by the Committee to the Board's proposed language in the packet, and that was to include the Board's authority to adopt regulations.

Mr. Heppler informed the Board that he had advised the Committee that the issue was that attending a disapproved or unrecognized school does not act as an automatic bar to licensure. Mr. Heppler also explained that passage of the proposed language would not result in automatic granting of licensure. Under the provisions of the alternative language, these applicants will be eligible for licensure.

Mr. Heppler identified the amendments that the Board is contemplating with SB 122:

- If the applicant had attended a disapproved school the Board would require 20 years of licensure and active practice in another state.
- If the applicant is from an unrecognized school, it would require 10 years of licensure and practice in another state.
- He or she would have to be certified by a specialty organization that is a member board of the ABMS.
- The applicant would have to successfully complete and pass the examination(s) required in law.
- Applicants cannot be the subject of disciplinary action.
- Applicants have to complete three years of postgraduate training.
- Applicants are not subject to denial of under Division 1.5 (commencing with Section 475) or Article 12 (commencing with Section 2220).
- Applicants have not had any healing arts license or certificate disciplined by another state or federal jurisdiction.
- Applicants would not be eligible to apply for Special Faculty Permits or specialized exemptions for licensure associated with the UC system.

It was further mentioned that this will not impact the post graduate training or the PTAL process. The PTAL is what is required for international medical school graduates that have graduated from an approved school.

Mr. Heppler summed up that this is an alternative pathway in the 2135, 2135.5 series which grants the Board the authority to issue licenses for applicants that have a non-traditional background.

Dr. Salomonson made a motion to adopt a support position on this language as amendments to SB 122 and for the Board to have regulatory authority; s/Duruisseau.

Ms. Chang discussed that she still had concerns about eligibility. She wanted the Board to be clear that she was the dissenting vote for the recommendation from the Licensing Committee. She added that if this bill were to be passed, that individuals would have to be licensed by the Board.

Mr. Worden explained that this law makes them eligible to apply for licensure, it does not guarantee licensure.

Public comment was received for this agenda item.

Bill Gage, Chief Consultant for the Senate Business and Professions Committee provided information and background for how the Legislative Council arrived at the draft language. Mr. Gage stated that the Legislature has been focused on the whole idea of reviewing and eliminating any arbitrary barriers that remain for practitioners coming into California.

Mitch Feinman, M.D. advised the Board that he is a triple board certified Rheumatologist and Internist practicing medicine in South Carolina. After his graduation from the University of Southern California, he attended a medical school in the Dominican Republic. Upon learning that the school was not on par with US regulations, Dr. Feinman applied to Ross University of Medicine, an approved California medical school. Because of the current interpretation of the law by the Board, he is not even permitted to apply for licensure; because a small fraction of his medical education was at a disapproved school. Dr. Feinman supports the recommendation to permit him to be able to practice medicine in California.

Stewart Hsieh advised the Board that he represents three other physicians who are graduates from foreign medical schools. They are all board certified, have been practicing over 10 years, and cannot apply for licensure. They all support this change. Mr. Hsieh did state that requiring 20 years of practice is unreasonable.

Cristeta Summers works in the law office of Albert Summers who represents doctors seeking licensure in California. There are concerns with the minimum required years of practice. What the Board has proposed is without careful consideration of data that might correlate to better what those years should be. Ms. Summers would like the Board to consider the required years with reasoned and validated data. Ms. Summers also stated that the proposed amendment makes no link between the timing of the Board's disapproval or non-recognition of a medical school with the timing of the doctor having actually attended that school.

Ravi Garehgrat, M.D., shared with the Board that he is a graduate of a medical school which is neither an approved nor disapproved school. Dr. Garehgrat thinks that as a general consensus, clinical achievements and the length of practice can be shown to be adequate. He feels like a physician in his position can prove competency to the Board. Dr. Garehgrat suggested that a topic of discussion for the Board could be using hospital credentialing for these physicians. These may prove to be useful to the Board to ease some of the concerns of competency.

Ms. Yaroslavsky called for the vote. Motion carried with Ms. Chang abstaining.

Agenda Item 32 Election of Officers
Dr. Salomonson made a motion to nominate Dr. Levine as Board President; s/Chang; motion carried.

Dr. Carreon made a motion to nominate Dr. Duruisseau as Board Vice President; s/Diego; motion carried.

Dr. Diego made a motion to nominate Dr. Carreon as Board Secretary; s/Salomonson; motion carried.

Agenda Item 15 Physician Responsibility in Supervision Committee Update, and Possible Consideration of Recommendation(s)
Ms. Schipske reported that the Committee met the previous afternoon. The purpose of the meeting was to discuss the requirement of SB 100 that requires the Board to adopt regulations regarding the appropriate level of physician availability needed within clinics or other settings using lasers or intense pulse light devices for elective cosmetic procedures.

There were four regulatory proposals drafted by staff that were reviewed.

- The first proposal was the Community Standard Proposal.
- The second proposal reviewed was On Premises.
- The third option reviewed was the Physically Present and Immediately Available.
- The fourth was Not Physically Present but Immediately Available.

The Committee discussed all four options and consensus was that option four was the most practical. There was also a discussion about ensuring that any practitioner performing elective cosmetic procedures using lasers and intense pulse light devices and the physician supervising these practitioners, have appropriate training to ensure consumer protection.

After much input from the Committee Members and the public, the Committee voted to recommend to the full Board that it go forward with a regulatory proposal for a revised option four. The revised option would be as follows:

Whenever an elective cosmetic procedure involving the use of a laser or intense pulse light device is performed by a licensed health care provider acting within the scope of his or her license, a physician with relevant training and expertise, shall be immediately available to the provider. For purposes of this section, immediately available means contactable by electronic means without delay, interruptible, and able to furnish appropriate assistance and direction throughout the performance of the procedure and inform the patient of provisions for post procedure care. This shall be contained in standardized procedures or protocols.

Ms. Schipske made a motion to adopt this language and move forward with a regulatory hearing; s/Bishop. Ms. Yaroslavsky called for the vote to set this for a regulatory hearing at the October 2012 meeting; motion carried.

Ms. Schipske stated that the Committee also is forwarding a recommendation that the Board approach the Legislature about going forward on additional legislation to enhance consumer protection in this area by requiring specific training and/or certification for both the provider and the supervising physician.

Mr. Heppler advised the Board that his recommendation was that approaching the Legislature be wrapped together with the language that was set for the regulatory hearing.

The maker of the motion accepted the amendment to add the recommendation that the Board approach the Legislature on additional legislation to enhance consumer protection in this area by requiring specific training and/or certification for both the provider and the supervising physician; s/Bishop. Motion carried.

Ms. Schipske informed the Board that at the next Committee meeting, they will be reviewing the entire issue about medispas and how they get fictitious name permits, because they are medical practices.

Agenda Item 16 Enforcement Committee Update

Dr. Low reported that the Enforcement Committee had met the day before. They started with a discussion about amended accusations by Senior Assistant Attorney General Carlos Ramirez and Supervising Deputy Attorney General Gloria Castro.

An amended accusation may be filed at any time before the submission of the matter for a decision. Where an amended accusation presents a new charge, the respondent must be afforded a reasonable opportunity to prepare a defense. Hearings may be postponed for good cause.

Amendments to accusations are made and served at any time during the course of the case. Once the prehearing conference is held, six weeks prior to hearing, administrative law judges control whether and when an accusation may be amended, filed and served, by setting deadlines.

It is rare that accusations are amended as to new charges during a hearing. When it does happen, it is usually the result of new evidence that was not disclosed in prehearing discovery due to any number of valid reasons.

Dr. Low continued that Ms. Sweet provided an update on the expert reviewer training that was held at the UC Davis Medical center on May 19, 2012. The training was very successful, with over 100 doctors in attendance and the critiques of the training were overwhelmingly positive.

Dr. Low continued that the Committee heard from Susan Cady with an overview on the Central Complaint Unit (CCU) process and goals. The complaint review process is much more detailed than many people realize. When a complaint is received, it is entered into the computer and by law, an acknowledgement letter is sent. If there is insufficient information to establish a violation the case may be closed. If there may be a deviation from the standard, the case is referred to a district office for investigation. For non-quality of care cases, which might include sexual misconduct, the unlicensed practice of medicine, or physician impairment, these cases are sent straight to a district office for investigation.

Ms. Cady identified areas where improvement can be made, for example, reducing the time it takes to acknowledge and enter a complaint from 10 to five days. Time can also be shaved off for the medical specialty review. It would require legislation, but Ms. Cady said another time saving mechanism might be to exclude more cases from the need for the up-front specialty review and instead allow the cases to go directly to the district office, like how 805 cases are currently treated.

Vern Hines, an auditor at DCA, gave a presentation of auditable risks identified in the Board's CCU. DCA commissioned Mr. Hines to determine if boards in the DCA are prioritizing and processing complaints in an efficient and effective manner. Mr. Hines was tasked with identifying where high risk enforcement programs can improve their processes and procedures, with existing resources, to better protect the public. Mr. Hines assessed 3,599 complaints that were closed from January 1, 2011 to June 30, 2011. On average, it took 4.3 months to close the 3,599 complaints and took 12 months to close 416 of those cases.

Mr. Hines identified the following areas of risk or concern: cases may not be assigned in a timely fashion to a medical specialist; medical specialists may have the cases too long; and CCU tracking reports are missing prioritization information.

Mr. Hines made several recommendations. He said the CCU may want to revise medical specialist contracts or follow-up more frequently to try and reduce the medical specialist delay; print an overdue report to monitor all cases that are awaiting a medical specialist assignment including listing all urgent/non-urgent cases in date order; modify the report to show the urgency level of outstanding cases so that non-urgent cases are not assigned ahead of more urgent cases.

The next item was the June 22nd Administrative Law Judge (ALJ) training that the Board coordinated for ALJs who hear Board cases. This training went very well. In this initial session, training topics included pain management/appropriate medication standards, chronic pain issues, new developments in medicine, and other subjects. The training was particularly cost effective because it was accomplished with video conferencing technology and presenters were located throughout the state with the judges in their respective offices. Additional training opportunities are being developed, including training that would take place during lunch time, to allow judges to continue attending hearings.

On June 29th, Dr. Low met with Board and Health Quality Enforcement (HQE) staff, to discuss the reconciliation of data and statistics. The Supervising Investigators and Supervising Deputy Attorneys General have been exchanging information monthly so the data comports at that level. Ms. Cady and Ms. Castro have been working at reconciling cases at the AG's office that remain un-filed. Lastly the AG's office is working on gathering data on elements of the vertical enforcement model to compare across the four regions of the state.

Ms. Kirchmeyer gave the Committee some background on the enforcement annual report format. She then walked through the entire report and solicited edits or changes to the Committee. The suggestion was taken under consideration and the Members will get back to Ms. Kirchmeyer by August 15, 2012 with comments or edits.

Ms. Cady gave the Committee an update on the implementation of SB 100, regarding outpatient surgery settings. Ms. Cady provided the Committee with a flow chart which explained how the Board will respond to complaints received regarding an outpatient surgery setting. The complaint

will initially be reviewed by the Licensing Program to determine whether the setting is accredited or not. If the setting is accredited, the complaint will be referred to the accrediting agency for inspection. Once the inspection report is received in Licensing, the findings will be reviewed to determine if any deficiencies were identified in categories that relate to patient safety. Patient safety deficiencies will be referred to the CCU to be initiated and referred for formal investigation.

Finally, SB 100 also made outpatient surgery settings subject to the same adverse event reporting requirements that are currently in place for hospitals and other licensed health care facilities. Board staff met with representatives from the California Department of Public Health (CDPH) to discuss this new reporting requirement as the law requires that the adverse event reports be filed with CDPH. Ms. Cady developed a reporting form to be used specifically by the surgery centers. The Board is waiting for input from CDPH before finalizing the reporting form.

The Committee then heard from Renee Threadgill and Carlos Ramirez in a process overview of the vertical enforcement program. Ms. Threadgill spent time explaining where attorneys are now involved in the investigation process compared to pre-vertical enforcement. Mr. Ramirez explained the various roles of the team members and the law from which vertical enforcement is derived.

Public comment was received for this agenda item.

Ann Robinson provided comment about the handling of a complaint that she filed in 2006 regarding the death of her mother. She informed the Board that something is wrong with the system and needs to be corrected. Ms. Yaroslavsky suggested that Ms. Robinson speak with the Chief of Enforcement to discuss this case.

Agenda Item 23 Consideration of Petition to Amend Section 1379.50 of the Board's Polysomnography Regulations

Mr. Heppler and Mr. Salgado discussed that there is a provision in the Government Code that allows an interested party to petition for an amendment to a regulation.

The American Health and Safety Institute (AHSI) has petitioned the Board to revise its regulations to allow Basic Life Support (BLS) certification issued by them to satisfy the requirements and regulations for the Board's polysomnographic technologists, technicians, and trainees. Currently the BLS certificate must be issued by the American Heart Association. The AHSI would like a BLS certificate by AHSI to satisfy the Board's registration requirement.

Mr. Salgado has reviewed the criteria that the American Heart Association uses and compared it to the AHSI criteria. He concluded that there is no appreciable difference and there would be no appreciable loss in consumer protection. Staff's recommendation is to grant this petition and commence the rule making process.

Dr. GnanaDev made a motion to grant the petition and set the matter for regulatory hearing at the October 2012 meeting; s/Levine; motion carried.

Agenda Item 30 Enforcement Chief's Report

A. Approval of Orders Following Completion of Probation and Orders for License Surrender During Probation

Ms. Threadgill requested approval for eight orders restoring license to clear status following

completion of probation and three orders for license surrender during probation or administrative action.

Dr. Levine made a motion to approve the orders; s/GnanaDev; motion carried.

B. Expert Utilization Report

Ms. Threadgill reported that the District Offices used 205 experts during the first six months of 2012, to review 293 cases. The total active list of experts as of July 2, 2012 is down to 944. 267 experts did not return their signed contract during the process of converting to the new contract system. Additionally, 20 experts withdrew from the program because of the low reimbursement rate, retirement, or no longer interested. Some determined they were not suited to do this work. Although this appears to be a significant drop, Ms. Threadgill does not believe this will impact the enforcement process. The Board is still able to do business and continues to recruit.

C. Enforcement Program Update

It was reported that as a result of the Board's appeal regarding the loss of 28 vehicles, there was success in retaining 24.

Ms. Threadgill reported that the Enforcement Program has indentified candidates to fill all of their vacant investigator positions. Therefore, the vacancy rate, taking into consideration the individuals in background, results in a zero percent investigator vacancy rate. There are four Supervising Investigator I vacancies however, there are individuals in background for two of those positions.

The Retired Annuitants (RAs), managed by OST, have been essential in order for the Enforcement Program to complete 41 peace officer background investigations during the past 12 months. As it was previously reported, there were a number of candidates that withdrew from the process after the background was finished, causing the Enforcement Program to do more backgrounds than vacant positions.

Ms. Threadgill explained the amount of work that goes into a background investigation.

Backgrounds must be conducted pursuant to the Peace Officers Standard and Training (POST) Commission and include the following components:

- Applicant completes a 27-page personal history statement.
- Applicant is interviewed by a background investigator.
- Fingerprints/firearm eligibility verified.
- DMV driving record check.
- Local law enforcement agency checks (this can entail quite a few checks if the applicant has moved around).
- Credit check.
- Official transcripts from educational institutions.
- Birth certificate/citizen documentation.
- Military selective service.
- Marriage/dissolution.
- Employer contacts.
- Reference contacts.
- Neighbor contacts.

- Medical and psychological clearance.
- Narrative report – submitted and signed by background investigator and Chief of Enforcement.

POST audits the Enforcement Program compliance with these requirements annually. The Enforcement Program is fortunate to have RAs perform this critical function because it has allowed existing investigative staff to focus on reduction of case timelines.

Ms. Threadgill reported on strategic plan objective 5.2. The Enforcement program is very close to reaching its goal of 50% of the complaints in the Complaint Unit being under 50 days old. It was pointed out that staff are only 8% away from reaching that goal.

The number of complaints received by CCU continues to increase. In the past year there were 209 additional complaints compared to last year.

With regard to reduction of the investigation timeline, Enforcement has reduced the investigation average timeframe to 264 days. Ms. Threadgill reminded the Board that the goal was 275 days. This is quite phenomenal considering challenges such as vacancies and furloughs. It is anticipated that future challenges will be faced as the result of the implementation of Personal Leave Program 2012.

D. Program Statistics

Ms. Threadgill continued with Enforcement Program statistics by starting with a document reflecting goals set by the Program in July 2008, to reduce the timeline. It was pointed out that staff have surpassed those goals in most of the categories and they are in the process of setting new goals.

Ms. Threadgill pointed out that in the last fiscal year, the total complaint process and average investigation days combined totaled 347 or .95 years. This number contrasts with 424 days in fiscal year 2008/2009 or 1.16 years.

The total average time from complaint intake through the total time at the AG's office is 741 days or 2.03 years compared to 908 average days or 2.49 years in fiscal year 2008/2009. This is a 167 day decrease in the average days to complete the enforcement/prosecution process. This is another example of the outstanding work produced by both Board and HQE staff this past fiscal year.

Also covered was the number of suspension orders issued for the past eight fiscal years. This past fiscal year, 35 interim suspension orders were obtained, as well as 12 Penal Code Section 23 practice restrictions.

Ms. Threadgill then discussed that she had been requested to provide information regarding some of the cases that are considered outliers.

The Program reviewed the cases that are over 700 days old. The vast majority of them have the same theme. They involve allegations of over prescribing and inappropriate prescribing . They involve other law enforcement entities such as DEA, FBI, IRS, or local police departments and the Program is often asked to standby and allow these agencies to complete their investigations. About a year ago the Program realized that these agencies were not mindful of the Board's statute of

limitations and were impeding the ability to complete these investigations timely. Consequently, the Program has taken a zero tolerance policy in delaying these investigations unless the entity is willing to put something in writing acknowledging that it is its request that prevents the Program from moving forward.

Prescribing cases are also compounded by the need for multiple undercover operations and the planning and staffing that each operation involves. Prescribing cases also typically involve numerous patients, which translates to having to procure and review volumes of medical records. The Program also needs to obtain death certificates and autopsy reports. The investigator might have to write a subpoena or a search warrant for the medical records. Then the investigator must visit numerous pharmacies to obtain the original prescriptions, get the physician to attend an interview, and send the case to two experts as required by the Board's pain management guidelines. Generally, the patients are not cooperative since they want the prescriptions.

Other common themes in outlier cases involve inability to obtain records, inability to obtain timely interviews, and inability to prevent case aging when dealing with cunning defense attorneys.

Ms. Threadgill added that sections of law designed to help the Board, BPC section 2234(h), have done little to improve problems associated with interview delays on the part of subject physicians. In accordance with strategic plan 2.3, the Enforcement Program has identified this section of law as one that will require substantial modification in order to be of value in eliminating subject interview delays.

Agenda Item 31 Vertical Enforcement Program Report

Mr. Carlos Ramirez reported that the AG's Office continues to provide statistical reports to the Board staff. Their office has provided a total of six reports, three of those are monthly, three are quarterly and three are customized for the Board. The Board met with the data section to make sure the reports that are being provided suit the needs of the Board staff.

With regards to the staffing, the AG's Office had a vacancy in Los Angeles that has been moved to Fresno. This office has been serviced out of Sacramento or Los Angeles, which has entailed a significant amount of travel. The plan is to have someone permanently in that office. The objective is to have a second position assigned to that office in the future.

Agenda Item 19 Update on Federation of State Medical Boards (FSMB)

Ms. Chang reported that the Foundation of the FSMB has selected additional members. The Foundation has a policy that it does not wish to have more than one member from the same state serving on its board. Ms. Chang's appointment with the FSMB will expire in two years and she hopes that a member of the Board would be interested in serving on the FSMB after her term expires.

Ms. Chang described a current joint venture that will serve as a mechanism that collects informational data and records from the time that someone was a medical student all the way to being a licensed physician. This data will be collected from various organizations and it will be interesting to see its evolution in the next year.

The FSMB continues to work on implementing a pilot program in telemedicine and the uniform application of a license is another subject being reviewed.

Agenda Item 24 Board Member Communications with Interested Parties

Dr. GnanaDev disclosed that as a member of the American Medical Association (AMA) Delegation, he was in attendance at its meeting in Chicago. At this meeting, he met with the FSMB Executive Director, its board Chair, and leadership of the AMA and CMA. Dr. GnanaDev made it clear that when he meets with these leaders, they do not discuss anything about Board issues. Last month, the American Association of Physicians of Indian Origin, had an annual meeting. Dr. GnanaDev was provided with an award and wanted to disclose that CMA was in attendance at this meeting and he reiterated that his activities with the Board are kept separate.

Ms. Yaroslavsky disclosed that she had met officially with the chair of the Senate B&P Committee Curren Price, along with Board staff and Board member Dr. Low.

Agenda Item 17 Education/Wellness Committee Update

Ms. Yaroslavsky provided an update that the Education/Wellness Committee had met the previous day. This combined Committee is a work in progress as the one had not met since 2010 and the other in 2011. The Members will attempt to put the Committee on an off-cycle status from the full Board meetings so time and energy can be devoted to the subjects that impact the Board.

Public comment was received for this agenda item.

Tina Minasian stated that the Board's Web site offers confusing information to patients who are trying to comply with deadlines for filing complaints. This has resulted in the Board refusing to review complaints that patients believe were filed timely. In a meeting in January with Ms. Whitney and Ms. Kirchmeyer, several examples were provided of problematic, unclear, and misleading communications on the Web site pertaining to the statute of limitations.

Ms. Minasian is pleased that the Board recently made changes to one document, *How Complaints are Handled* brochure. It is believed that the Board should develop a thorough plan and make addressing this important issue throughout its Web site a communications priority. It was requested that when the Board learns of an alleged improper act or omission by a physician from a source other than a patient, that the patient be notified immediately in writing that the statute of limitations has begun to run. The Board should also advise patients as their complaint is making its way through the process, as to whether it is in danger of going over the statute of limitations. The Board should direct its staff to put in place a process to notify consumers of the deadlines for statutes of limitations.

Agenda Item 26 Executive Director's Report
F. 2013 Board Meeting Dates and Locations

Ms. Whitney discussed the proposed meeting dates for 2013. Ms. Yaroslavsky recommended that the dates be held open for 60 days so that Members can make sure these proposed dates would work with their schedules.

Dr. GnanaDev suggested that perhaps the Ontario area could be used for the Los Angeles area meeting location in the Spring.

Dr. Diego and Dr. Levine requested that the proposed meeting dates of October 31 – November 1, 2013, not be considered. The consensus of the Members would be to meet instead on October 24 – 25, 2013.

E. Status of Sunset Review Report

Ms. Whitney informed the Members that the Sunset Review Report is an opportunity for the Board, the Legislature, the Public, and the Administration to re-examine the laws and mission of the Board to determine what changes or enhancements need to be made or to eliminate the Board. The Board's last Sunset review was in 2004. The process begins with the receipt of a questionnaire from the Senate B&P Committee. The responses to these questions are due on November 1, 2012. The responses are reviewed by the legislative staff and the Board may be asked additional questions or clarifying questions on issues. An informal hearing may be held prior to the Legislature going into their session in early 2013. The formal legislative hearing is conducted through the policy committee and is usually held in Spring. The bill then moves through the legislative process and hopefully by the Fall of 2013, it would be signed with enhancements for the Board and continued operations of the Board for another four to six years.

Staff has received the questionnaire and have begun the process of collecting data to respond to questions. Staff is working with the AG to gather data on Vertical Enforcement/Prosecution (VE/P), as that has been promised to the Legislature pursuant to the Board's VE/P evaluation report that was submitted in March.

The Board is at the point where a couple of subcommittees are needed. The subcommittees would consist of Board Members appointed to assist with the development of the review of various sections of the final report so it can be presented to the Board in final draft at the October meeting. Ms. Whitney will be seeking the Members interests through the Board President and she then can appoint subcommittees of two Members to help staff in different sections of this report.

An examination of outliers is going to be completed. As Ms. Threadgill discussed in her report, it needs to be determined what laws may need to be added to the codes to expedite or speed up the handling of complaints but, it needs to be looked at in a way where the Board does not eliminate due process.

D. Update on Audit Report

Ms. Kirchmeyer stated that at the last meeting, she discussed that the legislation which changed the Board's reserve mandate from two months to two to four months, also included a requirement that the Department of Finance, Office of State Audits Evaluations perform a preliminary review of the Board's financial status. This included but was not limited to its projections related to expenses, revenues, and reserves and the impact of the loan from the contingent fund of the Board to the General Fund made pursuant to the Budget Act of 2008. This audit was completed and submitted to the Board in its final form on May 31, 2012. When the final draft was received, Ms. Kirchmeyer and Ms. Whitney met with Ms. Yaroslavsky to review the report. They then drafted a response to this audit report and a copy of the letter was included in the Board materials.

The specific results and outcome of the audit were that although the loans to the General Fund have not impacted the Board's ability to operate at this time, should the Board have the anticipated increase in expenditures and the loans are not repaid, the months in reserve will drop below the mandated level of the two months. Upon review, it was found that the report accurately captured the information provided and met the mandate of the Legislature.

B. Budget Overview

The budget overview will be held over to a future meeting. The budget overview information is in the meeting materials and any questions that the Members might have should be directed to Ms. Whitney or Ms. Kirchmeyer.

C. Update and Presentation on BreEZe

The update and presentation on BreEZe will be held over to a future meeting. The BreEZe information is in the meeting materials and any questions that the Members might have should be directed to Ms. Whitney or Ms. Kirchmeyer.

A. Update on Staffing and Administration

Ms. Whitney extended a very heartfelt thanks to the program chiefs; Ms. Threadgill, Mr. Worden, Ms. Simoes, and deputy director Ms. Kirchmeyer for the outstanding work of putting the Board meetings together, developing their staff and demonstrating excellent leadership skills, without them the Board would not function. Ms. Whitney stated that often individuals are recognized for staff efforts and she would like to publicly recognize the chiefs. Last month the Board was able to promote Mr. Einer, he will continue as the Administrative Assistant to the Board but will take on additional duties related to the Executive office.

Ms. Kirchmeyer provided a staffing comparison from the last meeting to this meeting. At the last meeting it was reported that there were 42 vacancies and the vacancy rate was 15%. It was also reported that there was going to be 18.1 positions swept from the Board due to the budget letter from the Department of Finance. On June 30th there were 283.2 positions. On July 1st, due to the budget letter 18.1 positions were lost, taking the total to 265.1 positions. However, with the passing of the budget on July 1st, there were 6 Operation Safe Medicine positions gained, which brings it now to a total for fiscal year 2012/2013 of 271.1 positions. Of those positions there are currently 27 of those that are vacant which is a 10% vacancy rate, however, there are 19 individuals either in background or awaiting eligibility or a start date. That brings the vacancy rate to 3% when they are all on staff. This is the lowest rate for the Board, for a significant amount of time.

In June notification was received that due to bargaining unit agreements each employee will be given one personal leave day per month. This is a leave day that they have to take without pay. This decrease for employees equates to a 4.62% in pay and this agreement is in place from July 1 – June 30, 2013. It is similar to the previous furlough program but offices will not be closed. It is a self-directed furlough.

In addition there were side letter agreements with the bargaining units that stated effective September 1st all student assistants and non-mission critical RAs will have to be released from the Board. The Board actually identified 19 RAs that did not fit the criteria for mission critical and those employees were no longer working after July 1st. Justifications were written for the remaining RAs and staff is awaiting State and Consumer Services Agency decision on those RAs. It will be a huge impact if both the student assistants and any of the RAs are lost.

The cost comparison for student assistants that help out in the licensing and information systems branch unit versus having to hire full time permanent staff equates to a difference of about $90,000 per year. In addition, those students only work about 20-25 hours a week and they are very flexible. They assist with extra projects and fill in when others are on vacation or extended leave. There is a possibility that these student assistants could be hired as permanent intermittent

employees but, again that will be a cost increase.

For RAs, these are individuals who have retired from state service and have a wealth of knowledge and skills. In most circumstances these individuals do not need extensive training, if any training at all. These employees are also flexible and when a project is over, they can be told that they no longer have hours available but, could be called if they are needed in the future.

Just in looking at the cost comparison, it varies depending on classification but, just for those RAs working in the licensing unit, in one year there would be a $30,000 savings as compared to having full-time permanent staff in those positions.

Agenda Item 18 Update on Strategic Plan Implementation
The Update on strategic plan implementation will be held over to a future meeting.

Agenda Item 20 Update on Health Professions Education Foundation
The update on Health Professions Education Foundation will be held over to a future meeting.

Agenda Item 21 Update on Licensing Outreach/Education Program
The update on licensing outreach/education program will be held over to a future meeting.

Agenda Item 22 Discussion of National Practitioner Data Bank Information
The discussion of National Practitioner Data Bank information will be held over to a future meeting.

Agenda Item 27 Update from the Department of Consumer Affairs
The update from the Department of Consumer Affairs will be held over to a future meeting.

Agenda Item 28 Licensing Chief's Report
The Licensing Chief's report will be held over to a future meeting.

Agenda Item 29 Midwifery Advisory Council Update
The Midwifery Advisory Council update will be held over to a future meeting.

Agenda Item 33 Agenda Items for October 25-26, 2012 Meeting in the San Diego Area
Ms. Schipske requested that the Board explore safe prescription medical disposal or something similar to the Take Back Program that Alameda County recently incorporated.

There was also a request for information on a program or concept that is being used that is called Christian healthcare cost sharing plans where instead of insurance, Church members get together and make contributions and it pays for the medical care. It would be interesting for the Board to see if that is being used to any extent in California and how this concept works regarding access to care.

Dr. GnanaDev asked that staff investigate a possible proactive approach for an enforcement outreach program. Enforcement could possibly provide outreach and training to medical staff for prevention of mistakes.

Ms. Yaroslavsky announced that Dr. Low has been appointed as the Chair of Panel B.

Agenda Item 25 President's Report

Ms. Yaroslavsky remarked that she has had a very interesting three years chairing this Board and has learned a lot. The work that this Board does and the dedication of the staff of doing the right thing exceeds what she has observed in other kinds of boards. She thanked the Members for the opportunity to lead for the past three years. She wished Dr. Levine the best in this rewarding and important experience.

The Members of the Board each took a moment to thank Ms. Yaroslavsky for her dedication, passion, and hard work as the Board President.

Agenda Item 34 Adjournment

There being no further business, Dr. Diego made a motion to adjourn; s/GnanaDev; motion carried.

The meeting was adjourned at 3:50 p.m.

Barbara Yaroslavsky, President

Gerrie Schipske, R.N.P., J.D., Secretary

Linda K. Whitney, Executive Director