MEDICAL BOARD OF CALIFORNIA

QUARTERLY BOARD MEETING

Four Points by Sheraton
Sacramento International Airport
4900 Duckhorn Drive
Sacramento, CA 95834

January 29-30, 2015
MEETING MINUTES

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

Thursday, January 29, 2015

Members Present:
David Serrano Sewell, J.D., President
Michael Bishop, M.D.
Dev GnanaDev, M.D., Vice President
Howard Krauss, M.D.
Sharon Levine, M.D.
Ronald H. Lewis, M.D.
Denise Pines, Secretary
Jamie Wright, Esq.
Barbara Yaroslavsky
Felix Yip, M.D.

Members Absent:
Elwood Lui
Gerrie Schipske, R.N.P., J.D.

Staff Present:
Elizabeth Amaral, Deputy Director
Ramona Carrasco, Staff Services Manager I
Charlotte Clark, Staff Information Services Analyst
Dianne Dobbs, Legal Counsel, Department of Consumer Affairs
Rashya Henderson, Supervising Investigator I
Cassandra Hockenson, Public Affairs Manager
Kimberly Kirchmeyer, Executive Director
Nicole Kraemer, Staff Services Manager I
Armando Melendez, Business Services Officer
Dino Pierini, Business Services Officer
Regina Rao, Associate Governmental Program Analyst
Paulette Romero, Staff Services Manager II
Kevin Schunke, Licensing Outreach Manager
Jennifer Simoes, Chief of Legislation

Lisa Toof, Administrative Assistant II
Kerrie Webb, Legal Counsel, Medical Board of California
Susan Wolbarst, Public Information Officer
Curt Worden, Chief of Licensing

Members of the Audience:
G.V. Ayers, Consultant, Senate Business, Professions, and Economic Development Committee
Theresa Anderson, California Academy of Physician Assistants
Connie Broussard, Supervising Deputy Attorney General, Attorney General's Office
Gloria Castro, Senior Assistant Attorney General, Attorney General's Office
Yvonne Choong, California Medical Association
Genevieve Clavreul
Zennie Coughlin, Kaiser Permanente
Karen Ehrlich, Licensed Midwife
Stephen Ellis, M.D.
Carolyne Evans, Deputy Attorney General, Attorney General's Office
Julie D'Angelo Fellmeth, Center for Public Interest Law
Michael Gomez, Deputy Director, Department of Consumer Affairs
Marian Hollingsworth, Consumer's Union
Sarah Huchel, Consultant, Senate Business, Professions, and Economic Development Committee
Christine Lally, Deputy Director, Department of Consumer Affairs
Mark Loomis, Supervising Investigator, Health Quality Investigation Unit
Leslie Lopez, Business, Consumer Services, and Housing Agency
Roberto Moya, Investigator, Health Quality Investigation Unit
Anita Scuri
Taryn Smith, Office of Senate Research
Laura Sweet, Deputy Chief of Enforcement, Health Quality Investigation Unit
Peggie Tarwater, Deputy Attorney General, Attorney General's Office

Agenda Item 1 Call to Order/Roll Call

Mr. Serrano Sewell called the meeting of the Medical Board of California (Board) to order on Thursday, January 29, 2015 at 3:45 p.m. A quorum was present and due notice was provided to all interested parties.

Agenda Item 2 Public Comments on Items not on the Agenda

No public comments were heard on this agenda item.

Agenda Item 3 Approval of Minutes from the October 23-24, 2014 Meeting and December 1, 2014 Meeting

Dr. Lewis made a motion to approve the October 23-24, 2014 meeting minutes as submitted; s/Dr. Krauss. Motion carried. Dr. Lewis made a motion to approve the December 1, 2014 meeting minutes as submitted; s/Dr. Krauss. Motion carried unanimously.

Agenda Item 4 Board Member Communications with Interested Parties

Dr. GnanaDev stated he meets regularly with California Medical Association (CMA) and American Medical Association (AMA) on advocacy issues. No Board issues are discussed. He noted he was a member of the work group for the 1115 Waiver, and had three meetings with various entities on this subject. This is for the Medi-Cal waiver for the next five years, starting October 2015 through October 2020. This work group made several recommendations to the Department of Health Care Services.

Dr. Krauss stated that he recently had a discussion with Janus Norman, a lobbyist for the CMA regarding SB 128, the death with dignity bill.

Agenda Item 5 President's Report

Mr. Serrano Sewell stated that he and Dr. GnanaDev continue to meet with the Board's Executive Staff to discuss the projects at the Board and to ensure everything is moving forward as needed for the Board meetings. He then referred the Members to BRD 5A-1 and 5A-2. This document is the Board's policy compendium that was approved at the Board's October Meeting. As requested by the Members, he wanted to offer an opportunity for the Members to review the compendium and offer changes or suggest a new item that could be placed in the compendium for discussion. Mr. Serrano Sewell asked the Members if anyone had any edits or any new policies they would like reviewed for possible inclusion into the document.

Dr. Krauss requested to establish some policies regarding telehealth and its use for recommending marijuana or prescribing Schedule II controlled substances.

Agenda Item 6 Executive Management Reports

Ms. Kirchmeyer began by asking the Board for a motion to approve the orders following completion of probation and orders for license surrendered during probation.

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

Ms. Kirchmeyer stated that at a prior meeting, the Board had approved the 2015 Board Meeting dates, however there was a request by a Member to move the April 30 - May 1, 2015 meeting to May 7 - 8, 2015. Ms. Kirchmeyer noted there would be no negative impact to the disciplinary time frames with this change.

Ms. Yaroslavsky made a motion to approve the date change; s/Ms. Wright. Motion carried w/one abstention; (Dr. Krauss).

Ms. Kirchmeyer introduced the Board's new Deputy Director, Elizabeth Amaral. Ms. Amaral began on December 5, 2014; and in a very short time, has made a significant impact on the Board, and is doing a wonderful job.

Ms. Kirchmeyer stated the Board had recently received notice that the Board's Chief of Enforcement position will be going to the State Personnel Board on February 5, 2015 for reconsideration. If that position is approved, she is hoping to have someone in that position by May. Ms. Kirchmeyer thanked Ms. Simoes for assisting her with many of the duties of that position while it has been vacant. Ms. Kirchmeyer also thanked Ms. Romero and Mr. Worden for their assistance.

Ms. Kirchmeyer thanked the Department of Consumer Affairs (DCA) Executive Staff for assisting these past several months with issues that have come to the Board. The assistance of Mr. Kidane, Ms. Rhine, and Ms. Lally, has been instrumental in being able to move items forward.
Ms. Kirchmeyer stated that working with the DCA Executive team on the Enforcement reports has been helpful in that they are really working to ensure they fit the Board's needs, including working to obtain information regarding the Attorney General's (AG's) Office.

Ms. Kirchmeyer gave a brief update on the CURES program. She stated that the MBC staff is very involved in this project. The project is still on schedule for the roll out and for individuals to be able to register by January 2016. Ms. Carrasco and Ms. Romero have been very involved in the CURES meetings. Ms. Kirchmeyer noted she has weekly meetings on this project, as she is part of the Joint Executive Steering Committee. The project has been through JAD sessions, has put the requirements together, and is now in the design stage. She noted that at the last meeting, the initial screen of the future CURES system was reviewed.

Ms. Kirchmeyer gave an update on the coordination with other state agencies regarding the issue of prescribing psychotropic medication to foster children. She stated as reported at the last meeting, Senator Lieu sent a letter to the Board asking it to look into the inappropriate prescribing of these drugs to foster kids. Since the last meeting, the Board has met with the Department of Health Care Services (DHCS), and the Department of Social Services (DSS) on this issue. After the meeting, Board staff put together a list of information that was requested be provided to the Board in order to determine if any treatment was inappropriate. In order to receive this information, the agencies are requiring staff to put together a scope of work for a data usage agreement and memorandum of understanding (MOU), between the Board, DHCS, and the DSS. At this time, Ms. Webb is working with legal counsel at the DHCS to complete the agreements. Once that document is complete, the information will be provided to the Members. Ms. Romero, Ms. Simoes, or Ms. Kirchmeyer continue to attend meetings on the quality improvement project that has been put together by those two agencies and a data impact work group.

Dr. Levine expressed her concerns that now that there is state law requiring CURES registration by January 1, 2016, whether those who are managing the existing system are confident that it can handle the additional registrations between now and December 31, 2015.

Ms. Kirchmeyer stated the new CURES system is slated to roll out on July 1, 2015. The new system will be able to handle all of those individuals. In the meantime, there has been outreach done and so far, there have been no complaints concerning the system not being able to perform. The intent is to allow the new system six months of registrations before the actual deadline.

Ms. Yaroslavsky suggested having a large group of providers and/or stakeholders look at the system before its actual roll out date to ensure it is going to meet the needs and to provide some sort of education.

Ms. Kirchmeyer stated that the CMA is involved in the project and was asked to identify users to come in and look at the system as part of the actual roll out and design of the system. She also stated, as far as education, the California Department of Technology has now required the education portion be put in as a data marker to ensure the users of the system have education and training.

Ms. Yaroslavsky suggested the Board staff send out an email to all licensees reminding them of the deadline and include the information on how they can go about being registered and how important it is that it be done.

Ms. Kirchmeyer stated that is something that will be done as soon as the system is up and running.

Dr. Lewis asked Ms. Kirchmeyer what she hopes the result of the MOU with DHCS and DSS will be and what it will accomplish.

Ms. Kirchmeyer stated the Board has asked for data on children who have received four or more psychotropic drugs within a certain time frame be sent to the Board to be analyzed; however, that will not occur without the MOU being in place.

Dr. Levine stated the purpose of the MOU is to address the concern by DHCS that in order to release data to the Board, they are required to have an MOU in place to enable them to exchange data. It is to enable the inter entity transfer of the data in a fashion that protects both entities.

Dr. Lewis asked if there had been any thought put into setting up stakeholder meetings since it is such an important topic, to include, media, state agencies, and the Board so that everyone understands what the Board does and what other agencies do to prevent issues that come in the future.

Ms. Kirchmeyer stated that type of meeting is occurring and being handled by DHCS and the DSS, as it is their issue, but the Board is also involved since it regulates the physicians.

Yvonne Choong, CMA, brought a couple of items to the Board's attention. She stated they were pleased to see in the Governor's Budget the plan to repay $10 million dollars back to the contingent fund for the Board. She stated CMA is supportive of this and they intend to include it in part of their budget advocacy. On the issue of CURES, CMA has been meeting with the Department of Justice (DOJ) and is assisting them in putting together a list of physicians practicing in different types of environments in order to help create all of the possible scenarios that a physician might use with the system. They do not believe that the Board can remind physicians too early of the requirement to be registered in CURES and they are happy to assist in publicizing in any way they can.

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

Ms. Yaroslavsky gave an update on the Education and Wellness Committee Meeting stating a presentation regarding the corporate practice of medicine prohibition was given by Ms. Webb, Ms. Dobbs, and Mr. McGlone. The theme of this presentation was that the physician has to be in charge of his or her own practice of medicine, and that these laws protect consumers from undue influence on physicians. It also makes physicians accountable to the Board, which accomplishes consumer protection. The Committee recommended that the presentation be posted on the Board's website and that a link to this presentation be sent to those who are applying for a fictious name permit (FNP). In addition, Dr. Krauss suggested a Newsletter article be written on the topic for the Board's Spring Newsletter.

Ms. Yaroslavsky stated Ms. Hockenson presented an update on the public affairs strategic plan, which included extensive outreach and the launching of the Board's Twitter account. She noted it was brought to the Committees' attention that a CME course on safe prescribing was held by the Board on September19, 2014, in Los Angeles. This course was made possible by a grant from the Federation of State Medical Boards (FSMB). Future agenda items will be a presentation on physician health programs and asking staff to further examine those programs in other states and present what exists elsewhere.

Agenda Item 8 Update and Consideration of Recommendations from the Enforcement Committee Meeting

Dr. Lewis stated at the Enforcement Committee meeting that Mr. Gomez and Ms. Sweet, from the DCA Health Quality Investigation Unit (HQIU) provided an update of the investigative process at the DCA. Ms. Castro, AG's Office, also spoke to update the Committee on the status of the Vertical Enforcement (VE) manual and the operational issues at the AG's office.

Dr. Lewis also provided an update from the Marijuana Task Force meeting that took place in Sacramento on December 12, 2014, to discuss the Board's marijuana statement. The discussion included review of the current marijuana laws, the current marijuana statement, and a precedential decision the Board had adopted regarding this topic. Dr. Lewis stated they discussed new legislation that had been introduced on December 1, 2014. The task force fully reviewed the laws pertaining to an appropriate examination and the telehealth laws. Based on these reviews, the law authorizes the initial examination to be performed by telehealth; however, the standard of care must be followed, as do the requirements of Business and Professions (B&P) Code section 2290.5, the Board's telehealth law. Dr. Lewis stated the committee is recommending a motion to amend the marijuana statement on the important points to consider when recommending marijuana for medical purposes. The addition would add the statement, "telehealth, in compliance with B&P Code section 2290.5, is a tool in the practice of medicine and does not change the standard of care."

Dr. Lewis stated the task force discussed and decided a change to B&P Code section 2242 is needed to state a recommendation for marijuana must have an appropriate prior examination. Currently, this section of law states in part: "prescribing, dispensing, or furnishing dangerous drugs as defined in section 4022 without an appropriate prior examination and a medical indication constitutes

unprofessional conduct." He stated after reviewing the Boards precedential decision, it was found that when this case went to the superior court, the court stated that a recommendation is not a prescription and therefore did not find a violation of B&P Code section 2242. During the review of the new legislation, the task force found this amendment is in Assembly Bill (AB) 26. The task force recommended watching both AB 26 and the spot bill, AB 34. AB 26 changes the law to require an in person examination for any recommendation for marijuana. He announced the Board would be taking a position on this legislation during the legislative agenda item. If this legislation were to pass, staff would need to amend the Board's marijuana statement to comply with the new statutory requirements. The Committee is recommending a motion to amend code section 2242 to require an appropriate examination prior to recommending marijuana either by AB 26 or by a Board future legislative proposal. He stated the task force recommended waiting until the legislative year is completed before any changes are made.

Dr. Lewis stated at the Committee meeting Ms. Kirchmeyer and Ms. Simoes reported on a third party reviewing the disciplinary action demographic data. At the October 2014 Enforcement committee meeting and the full Board meeting, Members directed staff to research potential third party organizations to analyze the data presented in relation to discipline action demographics. It was suggested Board staff contact appropriate organizations that have the ability to conduct such reviews and report their findings to the Board. After some research, Board staff contacted the California Research Bureau (CRB), which provides nonpartisan research services. The CRB is a central services agency and does not charge clients for their services. CRB is interested in performing a data analysis review of the Board's disciplinary demographic data and publishing a report on their findings. The Committee is recommending a motion for staff to create a memorandum of understanding (MOU) between the Board and the CRB to do this study. The Board President and Vice President will work with staff on the MOU and Dr. Krauss will look at the methodology that will be used by CRB.

Dr. Lewis stated at the Committee, that it was requested that a future agenda item be a discussion on scheduled drugs, and an in-person prior examination.

Mr. Serrano Sewell asked for a motion to accept the task force marijuana recommendations.

Dr. Lewis made a motion to accept the new statement to the Board's marijuana, statement to watch legislation regarding a change to B&P 2242 and to watch AB 26 and AB 34 for necessary future changes; s/Ms. Yaroslavsky. Motion carried unanimously.

Dr. Lewis made a motion to approve the recommendation to create an MOU with the CRB to provide a study on the disciplinary data demographics; s/Dr. Levine. Motion carried unanimously.

Agenda Item 9 Vertical Enforcement Program Report

Mr. Gomez, Deputy Director, DCA, gave an update on the progress DCA and the DOJ have made on the creation of the new VE manual. Mr. Gomez stated the joint manual is 95% complete, with only one outstanding issue to be resolved. To date, the draft represents a collaborative effort between DOJ and DCA. The one outstanding issue should be resolved within the next two meetings; the next

meeting is scheduled to take place on February 4, 2015. Mr. Gomez thanked Ms. Castro and her staff for the work they have put into the joint manual.

Mr. Gomez explained the most important differences between the current manual and the previous versions. He stated that DCA believes the previous versions of the manual have served their purpose. DCA and DOJ took the knowledge and lessons gained from working under the prior versions and incorporated them into this new manual. The primary goal was to create a product that reduced delays in the enforcement process and increased accountability thereby enhancing consumer protection in California. The secondary goal was to create a product that eliminated the confusion caused by the significant redundancy, to provide clarity by organizing it chronologically, and making it more user friendly. Most importantly, it needed to use a neutral tone to lay the foundation for true teamwork between the two agencies that would be using the manual. He believes this product allows a user to find all of the information on one topic in one place unlike the previous manuals. It also recognizes that both the Investigators and the Deputies' Attorney General are trained professionals with separate levels of expertise that need to be recognized and respected by one another. In addition to working with the AG's Office on the VE manual, DCA has been communicating with Ms. Castro on a regular basis to address current issues to ensure that enforcement cases continue progressing in the most efficient and effective manner in the absence of a joint manual.

Mr. Gomez announced that DCA is in discussion with Mr. Castro in regards to the creation of a cloud network, which would allow documents and evidence to be shared in joint casework, making it conveniently available to the VE team Members. Ms. Sweet will be working with the AG's Office to assist in the cloud development.

Dr. Lewis expressed his concerns about the vacancies that Mr. Gomez has that affect the ability to perform the job as needed. He asked Mr. Gomez to address how they are working with the hiring authorities to reduce that number and what is the roadblock.

Mr. Gomez stated there are a couple of things. The first one being the normal course at the end of year, which is when peace officers tend to retire. They had several retirements this past year. They try to stay ahead of that with the recruitment process. They cannot compete with local governments when it comes to salaries. The collective bargaining units limit their salary range and several leave to go to an agency that pays more.

Dr. Lewis asked what they believe is the biggest roadblock for filling these vacancies.

Ms. Sweet stated it is truly believed to be salaries. Other agencies often pay up to 15% more than they do.

Dr. GnanaDev thanked Mr. Gomez and Ms. Castro for the presentation. He asked Mr. Gomez when the Board and the public could expect the reductions in time lines since the biggest complaint is that it takes too long to get from the date of complaint to the final disciplinary action. He wants to know when the Board can expect to see the results of the transfer of investigators from the Board to DCA.

Mr. Gomez replied there are different situations that are being worked on to where he cannot give an exact date, but reminded the Board that DCA and the AG's Office are working together to be sure they are all on the same page with how they transmit their cases, and how the investigative process is

developed. They also have other issues such as recruitment and hiring, so putting all of those things together, some are in their control, and some are not. The hope is that they will get there by working closely with the AG's Office, making sure they have the human resources, the financial resources, the training, and the partnership with the AG's Office for the protection of the consumers of California.

Ms. Castro reminded the Board that the AG's Office does not own the whole time scope from head to tail. There are other participants who play a key role in this process, such as the physician who has full and complete due process in the proceedings. There are the expert reviewers who may have an issue to where they have to cancel or change an appointment time. There are some time periods that neither she, nor Mr. Gomez have any control over, but that they are working as best as they can to get the job done.

Dr. Levine stated she was pleased to hear that almost all issues have been resolved in terms of the joint manual, and asked what the one remaining issue is.

Mr. Gomez replied that the one remaining issue is whether the Deputy Attorney General should be included in the investigatory interviews or not.

Laura Sweet gave a brief power point presentation on statistical data on case time frames. The presentation showed statistics for the past five years in different areas of case files.

Ms. Castro stated they are still working on the joint VE manual and hopes to have it finalized by the AG's Office by July. She stated that even without the completed manual, they would continue to address the different issues with legal case management, not only with investigations, but also with investigation closures.

Ms. Castro stated she is excited to get the cloud up and running as it has always been an issue for staff to not have access to evidence on cases when it is really needed. On the topic of subject interviews, she feels it is important to have documentation to review prior to a scheduled subject interview as it helps her staff to decide whether to send questions, whether to appear personally, to appear by phone, or not appear at all. The cloud concept is fully funded by the DOJ and at this point is a pilot project.

Ms. Castro noted that with respect to statistics, the AG is continuing to work with the Board obtaining data from BreEZe that was previously accessible through the CAS system. They used to be able to view the CAS system to get significant milestones from investigators but are no longer able to do so. Ms. Castro stated she would work with Ms. Sweet to look at what has been done in the last six months to see if they can reconcile any data that needs to be reconciled. That way, when statistics are presented, they can be presented with much more confidence than in the past.

Dr. Bishop stated he has no doubt that all that can be done is being done in terms of salaries being an issue for hiring and keeping staff. He feels that the only people who can really do anything about that is the Legislature. He asked if there is any way the Board can look to them for some guidance on how to change this situation and how they can help the Board to achieve what needs to be achieved.

Dr. Bishop also would like to know what the ideal timeline is. He would like to know what really is possible and where the Board can go to get that information. He requested staff look at a typical non-criminal case to see what the average time frame is to closure. He stated he would like to know if other states and/or other equivalent medical boards have a metric to go by.

Mr. Serrano Sewell stated all issues would be brought to the Legislature and Governor's Office on February 26, 2015, during the Board's Legislative Day.

Dr. GnanaDev stated he is thrilled to hear that the process is being streamlined, but in the end, the time it takes affects public protection, and the media is blaming the Board for the delays. He noted he agrees that the Legislature has to do something to assist with getting and keeping staff to keep these delays from happening.

Agenda Item 10 Update from the Attorney General's Office

Ms. Castro reported on the Lewis case, which is the Supreme Court case that is questioning the ability of the Board to access the CURES system to protect the public. Dr. Lewis has requested another continuance that is expected to be filed by mid-February with hopes to have a brief filed by mid-March.

Agenda Item 11 Update of the Physician Assistant Board

Dr. Bishop stated the last Physician Assistant (PA) Board meeting had nominations and elections of officers. Robert Sax was elected President for 2015. Mr. Jed Grant was elected Vice President. Both are licensed PAs with excellent credentials. The Medical Board submitted a regulatory package to amend the physician assistant supervision requirements to permit PAs to assist in surgery without the personal presence of a supervising physician if the supervising physician is immediately available to the PA. The action also defined "immediately available," as physically accessible and able to return to the patient immediately upon request of the PA to address any situation requiring the supervising physician's services. The regulatory package was approved by the Office of Administrative Law (OAL) on December 17, 2014. It will become effective on April 1, 2015.

Dr. Bishop, on behalf of the PA Board, thanked the Medical Board staff for shepherding the change through the process.

Dr. Bishop stated the PA Board discussed requirements for Members to report knowledge of possible violations of PA laws and regulations by licensees. Legal counsel informed the PA Board there is nothing in PA laws and regulations requiring Board Members to report possible violations of laws and regulations. It was suggested that a policy might be considered to give Members some guidance as to the responsibility to report such violations.

Dr. Bishop announced at the November 2014 PA Board meeting, Members reviewed and adopted a policy on Board Member reporting knowledge of violations of PA laws and regulations.

Dr. Bishop again, thanked the Medical Board for their support and stated the Board's Executive Director and her staff are always available to assist when needed. Staffs provides excellent customer

service, are always professional, and goes above and beyond in providing a quality product. He announced the next PA Board meeting is scheduled for February 9, 2015.

Agenda Item 12 Update on the Health Professions Education Foundation

Ms. Yaroslavsky noted the Stephen M. Thompson Loan Repayment Program was created in 2003 to increase the accessibility to health care and promote longevity of primary care physicians in medically underserved areas in California. Physicians can receive up to $105,000 dollars in exchange for providing direct patient care in a medically underserved area for a minimum of three years. Based on the number of applicants, and the amount of funds each year, the process of selecting recipients continues to be very competitive. To date, the program has awarded over $31 million dollars to 311 individuals. In 2013, of 157 applicants, 115 were actually awarded money. She stated it was recently announced that the Executive Director of the Health Professions Education Foundation will be leaving.

Agenda Item 25 Special Faculty Permit Review Committee Recommendation: Approval of Applicants

Dr. Yip stated the Special Faculty Permit Review Committee (SFPRC) met on December 4, 2014. At that meeting, two applications were reviewed for approval. One applicant from the University of California, San Francisco (UCSF) and the other from Keck School of Medicine, University of Southern California (USC).

Dr. Yip stated the first applicant was Dr. Hideho Okada. Dr. Okada has held the following positions: tenured professor at the University of Pittsburgh, School of Medicine, and Visiting Research Instructor and Visiting Research Associate at the University of Pittsburgh. Dr. Okada was one of the co-leaders for the international working group, Immunotherapy Response Assessment in Neuro-Oncology. Dr. Okada has 67 publications, 137 published papers and has been invited to lecture at several seminars. Dr. Okada has an in-depth understanding of immunology in central nervous system tumors, and has unique expertise and experience in both the clinical and basic research aspects of medical science. Dr Okada's national and international reputation as a leader in this field is reinforced by his outstanding clinical investigations.

Dr. Yip stated Dr. Okada would hold a full-time faculty appointment as a Professor of Neurological Surgery, Step 1 in the Department of Neurological Surgery at UCSF, if he is approved for a Special Faculty Permit (SFP) appointment by the Board. Dr. Okada would provide instruction as part of the medical school's education program and see patients to fulfill his clinical teaching responsibilities at UCSF. Dr. Okada will be instrumental to the mission of neurological surgery at UCSF, developing novel and promising therapeutic strategies to treat patients with brain tumors.

Dr. Yip finished by stating Dr. Okada's application is complete except for the final fee for the permit. The final fee for the permit would be required prior to issuing the SFP if the Board adopts the SFPRC's recommendation for approval.

Dr. Yip asked for a motion to approve Dr. Okada for an SFP at UCSF pursuant to B&P Code section 2168.1 (a)(1)(A).

Dr. Lewis made a motion to approve Dr. Okada for an SFP; s/Ms. Yaroslavsky. Motion carried unanimously.

Dr. Yip stated the next applicant was Dr. Rene J. Sotelo. Dr. Sotelo is currently the Professor and Chairman of the Department of Urology and Director of Minimally Invasive Surgery at Clinica Floresta in Venezuela. Dr. Sotelo has also held the following positions: Director, Minimally Invasive Surgery in Urology, Universidad Santa Maria; Director of Fellowship in Urologic Minimally Invasive Surgery, Universidad Central de Venezuela; Assistant Professor, Universidad Nacional de Colombia; and Visiting Professor, Sociedad de Cirugia de Bogota, Hospital de San Jose. Dr. Sotelo has published over 60 peer reviewed articles, 3 textbooks and over 27 book chapters, and has lectured in major scientific societies in over 24 countries. Dr. Sotelo is an expert in robotic surgery in South America and is a pioneer in single-port laparoscopic and robotic surgery. Dr. Sotelo is an internationally known pioneer who led the development of laparoscopic and robotic techniques for urinary fistula surgery.

Dr. Yip added Dr. Sotelo would hold a full time faculty appointment as a Professor of Clinical Urology at USC, if approved for an SFP appointment by the Board. Dr. Sotelo would be providing medical instruction to medical students, residents, and fellows and would conduct research in the development of novel robotic and single-port techniques. Dr. Sotelo would also provide clinical care, outpatient services and inpatient services at USC clinical sites and at Los Angeles County/USC Medical Centers. Dr. Sotelo has the credentials to guide the USC program to the highest levels of excellence and will enhance USC's robotic enterprise, given his unique, innovative talents.

Dr. Yip added Dr. Renee J. Sotelo's application is complete except for the copy of a social security card, copy of his visa and the final fee for the permit. The copy of the social security card, visa, and the final fee for the permit will be required prior to issuing the SFP if the Board adopts the SFPRC's recommendation for approval.

Dr. Yip asked for a motion to approve Dr. Sotelo for an SFP at USC pursuant to B&P Code section 2168.1 (a)(1)(A).

Ms. Yaroslavsky made a motion to approve Dr. Sotelo for an SFP; s/Dr. Lewis. Motion carried unanimously.

Agenda Item 13 Closed Session

Mr. Serrano Sewell adjourned the meeting into closed session at 5:35 p.m.
Closed session ended at 6:25 and the meeting was recessed.

Friday, January 30, 2015

Members Present:
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Michael Bishop, M.D.

Dev GnanaDev, M.D., Vice President
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Katherine Besinque, President, California Pharmacists Association
Adam Brearley, Investigator, Health Quality Investigation Unit
Connie Broussard, Supervising Deputy Attorney General, Attorney General's Office
Gloria Castro, Senior Assistant Attorney General, Attorney General's Office
Hank Chaudhry, Chief Executive Officer, Federation of State Medical Boards
Yvonne Choong, California Medical Association
Genevieve Clavreul
Patricia Connolly, M.D., Kaiser Permanente'
Zennie Coughlin, Kaiser Permanente
Kathleen Creason, Osteopathic Medical Association
Shannon Smith Crowley, American Congress of Obstetricians and Gynecologists, District IX
Karen Ehrlich, Licensed Midwife

Julie D'Angelo Fellmeth, Center for Public Interest Law
James Gasper, Department of Health Care Services
Bridget Gramme, Center for Public Interest Law
Stephen Gray, Pharm D, J.D., California Society of Health System Pharmacists
Virginia Herold, Executive Officer, Board of Pharmacy
Marian Hollingsworth, Consumer's Union
Sarah Huchel, Senate Business, Professions, and Economic Development Committee
Christine Lally, Deputy Director, Department of Consumer Affairs
Victor Law, Member, Board of Pharmacy
Reginald Low, M.D.
Liz McCamen, Board Researcher, Board of Pharmacy
Bryce Penny, Department of Consumer Affairs
Allen Schaad, Member, Board of Pharmacy
Carrie Sparrevohn, Licensed Midwife
Rose Turner
Stanley Weisser, Board President, Board of Pharmacy
Brian Warren, California Pharmacists Association

Agenda Item 14 Call to Order/Roll Call

Mr. Serrano Sewell called the meeting of the Medical Board of California (Board) to order on Friday, January 30, 2015, at 9:05 a.m. A quorum was present and due notice was provided to all interested parties.

Agenda Item 15 Public Comments on Items not on the Agenda

Dr. Low requested an agenda item for the next Board meeting. He stated there is a need to have physicians identify themselves by full name and by giving the license number when asked if they are performing some kind of professional action. He reiterated an incident regarding utilization review where the reviewer would not provide their information. It was later determined that a pediatric allergist was making a determination on a cardiology case. He does not believe it is unreasonable that if a physician is doing some kind of professional activity, that if they are asked, they must identify themselves and provide their license number. There is no way to file a complaint against a physician if their name and license numbers are not known.

Genevieve Clauvreul brought forward concerns regarding the workers compensation system and the physicians doing utilization review. She agreed with comments from prior speakers. She believes only qualified physicians should do utilization review and need to identify themselves.

Agenda Item 16 Update from the Department of Consumer Affairs

Mr. Serrano Sewell stated on day one of the meeting there was a full and complete report from the DCA and the AG's Office on VE and on the efforts that DCA has been making in investigating cases.

Agenda Item 17 **Designation of the *Decision in the Matter of the Accusation Against Gary Wayne Page, M.D.* (Case number 02-2009-197437) as a Precedential Decision.**

Ms. Dobbs gave a brief summary of the case. She stated this case involves a physician who was disciplined by several states. The case is valuable precedentially because it explains the similarities and differences between B&P Code sections 141 and 2305. Both of these sections relate to discipline imposed by another state. Section 141 is permissive, allowing its Board discretion to discipline a licensee who had discipline taken against his or her license by another state for any act substantially related to the professional practice regulated by the Board.

Section 2305 requires mandatory action against a physician and surgeon, and makes it unprofessional conduct whenever another state revokes, suspends, restricts, or limits a medical license issued by that state or imposes any other discipline for any action that would be grounds for discipline in California. Section 2234 further requires the Board to take action against a licensee charged with unprofessional conduct.

Ms. Dobbs stated this decision also points out that Section 141 is based on another state's discipline for any act substantially related to the practice regulated by the Board, and therefore would be grounds for discipline in California.

Section 2305 differs from Section 141 in that it does not rely on the acts of the licensee in another state, but rather on the nature of the out-of-state discipline and provides that out-of-state discipline that would have been grounds for discipline in California shall constitute grounds for discipline for unprofessional conduct in California.

Ms. Dobbs stated this clarification would be valuable to respondents, their attorneys, the AG's Office, and the Administrative Law Judges (ALJ) hearing cases. She requested a motion to designate as precedential the case of Gary Page, M.D., Case No. 02-2009-197437.

Ms. Rose Turner stated that she concurs with Dr. Low on requiring doctors or medical professionals to identify themselves with their name, license number, and specialties. This is a particular problem in the area of utilization review and independent medical review with workers' compensation, where in expedited or concurrent review; nonmedical personnel are making medical decisions. She also stated reviews are routinely referred to chiropractors to make very important medical decisions that are beyond their scope of practice.

Secondly, she requested that an item be put on the agenda regarding the issue of prescribing to persons with intractable pain because of the changes to the guidelines. She stated that intractable pain does not go away, and persons are routinely denied their medication, difficulties with litigation, etc., regardless of the fact that medical necessity has already been established.

Mr. Serrano Sewell stated these comments were in reference to Item 15 and were only taken out of order because there were some technical difficulties with the teleconference. He reminded everyone the agenda item being discussed presently is Agenda Item 17.

Ms. Bridget Gramme, Center for Public Interest Law, stated they are generally supportive of designating the Page decision as precedential to highlight the distinction between B&P Code sections 141 and 2305. However, they do have some concerns regarding some of the proposed portions of the decision to be designated as precedential.

First, she stated, they feel this is a very factually complex case that they hope is not likely to occur often, especially in light of the many disciplinary actions that were taken against this doctor in multiple states. They also think it could be potentially confusing going forward if the factual findings were designated as precedential, but more importantly, they are concerned about the designation of paragraphs 24 and 25 of the decision. They feel these paragraphs do not properly take into account, the mandate that public protection is paramount according to B&P Code section 2229.

She added they are also concerned that if these paragraphs are designated as precedential, it could be dangerous in the future, that doctors may be able to use these sections to support the fact that they are rehabilitated, even though they have caused serious endangerment to patients. She urged the Board to remove paragraphs 24 and 25 from being precedential.

Marianne Hollingsworth, Consumers Union Safe Patient Project, recommended the Board adopt legal conclusions in paragraphs 10 and 11 as precedential. She stated these legal conclusions support consistency in future decisions involving B&P Code sections 141 and 2305. In addition, this precedent would make clear that disciplinary action in another state, even in cases where the case is settled with no admission of culpability, is adequate grounds to trigger these two statutes and provide grounds for disciplinary action by the Board.

She recommended removal of paragraphs 24 and 25. She stated Dr. Page's case includes a long history of buried accusations, offenses, and disciplines.

Ms. Dobbs commented that she has no objection to striking 24 and 25 and stated they were originally included because she felt it was important to include all the facts in this very complex case, which is why they were included. However, for the purposes being established as a precedential case, they are not necessary.

Ms. Kirchmeyer stated the regulations allow the Board to adopt the decision in its entirety or to select paragraphs out of the decision, and if taking those out does not hinder the reasons for making it precedential, the Board can do so.

Ms. Castro noted the AG's Office would not have an issue with striking 24 and 25. She added the decision would be useful to their office and ALJs.

Ms. Yaroslavsky made a motion to designate as precedential the case In the Matter of The Accusation Against Gary Page, M.D., Case No. 02-2009-197437, striking paragraphs 24 and 25; s/ Dr. Lewis. Motion carried unanimously.

Agenda Item 18 Request Approval to Obtain an Attorney General Legal Opinion Regarding Clarification on Business and Professions Code Section 805 Reporting

Ms. Webb referred the Members to page BRD 18-1 and stated this issue is before the Board because an interested party sent a letter to the Board asking for clarification on when a report pursuant to B&P Code section 805 (805 reports) must be filed. She stated there are two ways of looking at this requirement. One could state that 805 reports must be filed within the required time frame when any one of the three actions that have been specified in the law occurs, even if a hearing, pursuant to B&P section 809.2 has been requested but not yet afforded to the physician. The other believes that an 805 report should be filed only after this hearing has been afforded to the licensee.

Ms. Webb noted with this being such an important matter, it is prudent to ask for an AG's opinion to get clarification so that hospitals and other reporting facilities know what is required.

Ms. Webb asked for a motion to authorize the Executive Director to request a formal legal opinion from the AG's Office with regard to when B&P section 805 reports must be filed.

Ms. Yaroslavsky made a motion to authorize the Executive Director to request a formal legal opinion concerning the timing of filing 805 reports; s/Ms. Wright.

Ms. Kirchmeyer added that she would also like to expedite this request from the AG's office.

Yvonne Choong, CMA, reminded the Board that at the last Board meeting, it approved a legislative proposal that would require physicians to also report when there is an 805 action against them. Therefore, CMA believes that the legislative proposal will likely create additional confusion for physicians. Therefore, until the matter of when 805 reports need to be submitted to the Board, the Board may want to reconsider their previous support of the legislative proposal.

Motion carried unanimously.

Agenda Item 19 Discussion and Consideration of the Sunset Review Recommendation Regarding the Registered Dispensing Optician Program

Ms. Kirchmeyer referred the Members to page BRD 19-1. She reminded the Members that in November 2012, the Sunset Review Report was submitted and in that report the Board asked the Legislature to look into whether the Registered Dispensing Optician (RDO) Program should stay with the Board or whether it should go to the Board of Optometry.

After having several meetings with stakeholders, interested parties, and other entities on similar and related issues, staff is no longer recommending movement of the RDO Program out of the Board. Based upon these meetings, it appears there would not be consensus on this concept. Therefore, after discussion with DCA, it is the staff's recommendation that the RDO Program remain within the Board in order to protect consumers.

Ms. Kirchmeyer asked for a motion for the RDO Program to continue to remain under the Board.

Ms. Yaroslavsky made a motion for the RDO Program to remain under the Board; s/ Dr. Krauss.

Dr. Krauss expressed his concerns about consumers getting confused as to which healthcare board to contact when there is a complaint. He asked if the Board has observed this to occur.

Ms. Kirchmeyer stated that could happen, however, if a consumer is seeing an eye doctor and then they go to an RDO, they may think it is under the Board of Optometry. If staff gets a complaint that was sent to the Board in error, staff refers them accordingly. She confirmed that consumers are not at risk with the present circumstances.

Ms. Yaroslavsky suggested some type of notification in those offices about the Medical Board's oversight and a phone number to use if needed.

Dr. Levine noted there is a statement in the report that there are discussions being held regarding altering the laws about co-location.

Ms. Webb stated Assembly Member Bonilla held a meeting with interested parties regarding this issue. The Board then had a follow-up meeting as well. The parties are exploring whether they can come up with statutory language that would recognize that there are a lot of different models that are being used across the nation successfully, keeping consumer protection in mind. There is currently no draft language that would successfully do this, but it is being explored.

Ms. Clavreul agreed with the Board keeping the RDO program.

Motion carried unanimously.

Agenda Item 20 Presentation on Telehealth

Mr. Serrano Sewell introduced Dr. Patricia Connolly, Associate Executive Director of the Permanente Medical Group, stating she joined the Medical Group as a practicing internal medicine physician at the Oakland Medical Center. She has served as a Director of the Internal Medicine Residency Program and Director of Medical Education prior to being appointed Chief of Medicine in Oakland. In her current role, she oversees laboratory services in Kaiser Permanente's (KP) Northern California region and leads Kaiser Permanente Medical Group's development and use of technology in healthcare delivery. Her focus on technology is in three key areas: leveraging the electronic medical record to improve quality; developing applications to engage patients; and understanding and managing their health and extending the reach of the delivery system to patients where and when they are in need. Of particular interest is the development of applications to support informed decision making.

Dr. Connolly gave a presentation on the use of video in extending care to KP patients. She stated this is one of the many services that KP offers patients in order to access care in ways that work for them. She stated that with the advent of electronic medical records, there has been an explosion of email contact between patients and physicians. There is technology that is more widely distributed in the community now, commonly referred to as teledermatology. The technology can work two ways. One is that a physician in the office, a general internist, might take a picture while the patient is with them and transmit that picture to a dermatologist, who is remote. The patient then is able to receive the advice and expertise of the specialist while still in the primary care physician's office.

The other way is that the patient is remote, takes their own picture and attaches it to an email and sends it to the primary care physician or to the dermatologist. This technology allows physicians to bring care closer to the patient in ways that provide quality and care that is more expeditious.

Dr. Connolly stated this is not the only way to get care. KP continues to maintain nurse advice, available 24/7, along with the availability of telephone appointments. Patients can also utilize the Internet to receive a great deal of information that empowers them to provide self-care, or helps them formulate the kinds of questions they have in pursuing their care. A patient can also send a communication to their physician at any time of day, and that physician will respond back to them.

Dr. Connolly noted that KP is really thinking of video as the next step in enhancing access to care for patients in ways that are convenient for them. They do not see it as a whole new, separate work, but just the next stage.

Ms. Wright expressed her concerns about security and patient privacy and asked if there is a breach, who holds liability, KP or the patient.

Dr. Connolly stated that nothing is 100% foolproof from hacking. However, KP uses a separate system as opposed to Skype or FaceTime. It is maintained and protected by KP's internal IT colleagues, who are the same ones who protect their EMR. This system is embedded in the EMR. She stated, they take security very seriously. KP considers it their responsibility and their duty to protect it in every way possible.

Dr. Krauss asked if a KP patient is allowed to access telehealth as an initial encounter without ever having had an in-person visit.

Dr. Connolly stated KP is not offering that right now, and part of the reason has to do with having to have a good-faith exam, particularly if they are a new patient.

Dr. Lewis asked Dr. Connolly's opinion on how she thinks telemedicine would work outside of California where people cannot get to physicians.

Dr. Connolly stated telehealth offers several opportunities. One is connecting primary care physicians to specialists. If the ability of the primary care physician to support their patients who are local by connecting them to specialists via telehealth were enhanced, it would have huge value.

Dr. Levine asked Dr. Connolly about patient's satisfaction with video visits.

Dr. Connolly noted the feedback is uniformly positive. They have had people who were on vacation or on a trip that were able to continue their trip because they got what they needed from a video visit.

Dr. Bishop stated he thinks that telehealth has great potential but is concerned that it will begin to distance physicians from their patients. He feels that in-person, hands-on visits have both diagnostic and therapeutic benefits.

Ms. Ehrlich stated it was interesting to hear Dr. Connolly state KP does not charge for these video visits and thinks that has to do with the model that KP has in minimizing how many people come through the door and have to be seen and put through the entire process. She stated she could not

imagine that most fees-for-service model care is not going to charge for these video visits. She would like to know how that is going to impact fees and general costs.

Ms. Clavreul complimented Dr. Connolly on the KP system, but hopes physicians can be paid for their visits.

Agenda Item 21 Discussion and Consideration of the Interstate Compact

Ms. Kirchmeyer introduced Dr. Chaudhry, Federation of State Medical Boards (FSMB), who will be assisted in the presentation on the interstate compact. She stated that she and Dr. Levine have been talking about the interstate compact for at least a year and a half. She stated that in April 2013 the FSMB passed a resolution to look into the issue of an interstate compact. Since that time, staff from the FSMB and several State Medical Board Executive Directors worked on the interstate compact document.

Ms. Kirchmeyer explained that the interstate compact was really the result of discussions that started in regards to national licensure. From 2012 through 2014, bills were introduced in an effort to obtain national licensure. Most recently, HR 3077, would allow Medicare patients to be treated by a physician who held a license in any state. The Board has always held that a physician must be licensed in the state where the care is being provided. However, HR 3077 would remove this requirement for Medicare patients. Ms. Kirchmeyer stated that when the bill was introduced, Dr. Levine authored a letter to Congresswoman Eshoo discussing the Board's concerns. After these bills were introduced, the FSMB began discussion about an interstate compact that would allow for a streamlined licensure process across state lines, but would also address concerns Boards had regarding consumer protection and still require an individual to be licensed in each state where they see a patient.

Ms. Kirchmeyer stated that the Board has provided significant comment on the interstate compact. Dr. Levine and Ms. Kirchmeyer both were at the April 2014 FSMB meeting and provided comments on the interstate compact. Additionally, the Board provided two e-mails regarding the draft versions of the interstate compact. Board staff and legal counsel had reviewed and analyzed the interstate compact and provided significant input to the FSMB. She stated that at the time, the Board's biggest concern was the lack of a requirement for fingerprinting of physicians. Based upon the Board's concerns, the final interstate compact is now requiring fingerprints and a criminal background check.

Ms. Kirchmeyer provided the Members with a presentation on the specific requirements of the interstate compact. She explained the licensure process indicating that the requirements of the interstate compact are higher than the Board, in that the Board only requires one year of post-graduate training for a U.S. graduate or two years for international graduates, and the compact actually requires an individual to complete a post-graduate training program and board certification. In addition, the compact requires all steps of the USMLE to be passed within three attempts, requires the physician to have a full and unrestricted license to practice by a board, and states that a physician cannot ever have been convicted or have any discipline by a state board.

Ms. Kirchmeyer reviewed the definitions in the interstate compact and discussed the requirements for the state of principle license. She pointed out that the interstate compact is just another way for a

physician to obtain licensure and is voluntary for a physician. A physician does not have to go into the compact.

Ms. Kirchmeyer walked the Members through the process if a physician were to be licensed through the interstate compact. She also provided a description of the renewal process. She indicated that the Board still is able to obtain its licensure and renewal fees. She also provided a presentation on the disciplinary process, indicating that the Board will still be able to take appropriate action.

Ms. Kirchmeyer explained the data sharing required with the interstate compact, but also indicated that the Board would still list these individuals on its public disclosure or physician profile and all the requirements that the Board has right now, for public disclosure would remain the same regardless of whether the person was licensed via the interstate compact. She stated that if the Board were in the compact, it would have to report any time it gets a complaint against a physician. In addition, it would have to report disciplinary action and have to share the action with the other states within the compact.

Ms. Kirchmeyer stated that after the Board staff analyzed the interstate compact, they identified several benefits and a few concerns about joining the compact. She went over the benefits, indicating that it is voluntary for the state; it cannot make substantive changes to the compact without unanimous consent of the commission and by the legislature; it does not change the state's Medical Practice Act; it maintains the practice of medicine where the patient is located; the Board can still take its own disciplinary action against a physician's license in accordance with California's Medical Practice act; it has a proactive expedited exchange of complaint information; and preserves the funding of the state-based licensure. She stated the concerns would be the costs to the member states, which at this time are unknown. She added, however, that the FSMB has stated that based on the way the compact is written, they wrote it to where it could take grants and other outside funding. In addition, the expedited license fee that the applicant would have to pay will hopefully cover the costs of the commission.

Ms. Kirchmeyer stated that most of the concerns have been taken into consideration by the FSMB and changes have been made.

Ms. Kirchmeyer went over the pros for a physician, indicating that it is voluntary; it would save time in obtaining multiple, duplicate documents for licenses by the individual states; it expedites the processing times for obtaining a license in multiple states; and it could save money, dependent upon the cost of the expedited license fee. She stated the cons were the additional processing fee for the applicant and also that complaints are shared with member states.

Ms. Kirchmeyer asked Dr. Chaudhry to provide his presentation.

Dr. Chaudhry thanked the Members for their service on the Board and leadership on this and so many other issues. He stated that the compact is about enabling an expansion of access to care and protecting the patients at the same time, which is not always easy to do. He stated the need for this arises from telemedicine and new technology, but also the Affordable Care Act, which is going to allow 30 million Americans the ability to see physician's because they are going to be insured. He stated that state medical boards felt that at this critical time in this nation, they did not want to be seen as an obstacle.

Dr. Chaudhry explained that many physicians increasingly have multiple licenses. FSMB data shows that 16 percent of the nation's physicians have two licenses, six percent have three or more, and several hundred doctors in the country have 25 or more licenses.

Dr. Chaudhry provided Members with information on the FSMB's uniform application and also the creation of the Federation's Credential Verification Service, which is run by the FSMB.

Dr. Chaudhry indicated that there are more than 200 interstate compacts in existence today. He stated it is not a new concept for states, but it is a way for states to come together and decide something without federal or national intervention. It is essentially a contract between the compact states and is constitutionally authorized. He stated that it responds to a collective problem without nationalization of the issue. He added that it also retains state sovereignty, which he believed is an important point. He stated that many physicians are in Border States that wish to have multiple licenses so they can practice in multiple jurisdictions or be able to deliver care to their patients when they travel to other jurisdictions.

Dr. Chaudhry explained that in July 2013, the FSMB put together a task force made up predominately of all of the FSMB committees and task forces who are representatives of the state licensing boards. They then put together a drafting committee who received a lot of feedback from the state boards and other stakeholders like the American Medical Association and others to get their feedback before a final product was put together. Dr. Chaudhry thanked the Board for the feedback they provided. He added that the FSMB did modify the original language of the compact to address some of the Board's concerns. He added that in September 2014 they provided the final document.

Dr. Chaudhry explained that the practice of medicine occurs where the patient is located. He added that unfortunately, many people do not understand why this is, but he explained that when a resident in the State of California is injured or harmed, they should be able to come to the Board, and the Board should be able to help them. They cannot do that if they do not know about the healthcare provider who is delivering care to that patient, because the provider is in another state and the Board has never even heard of them.

Dr. Chaudhry stated that there are 25 state medical boards across the nation who have either endorsed or formally supported the compact in its current format. He stated that according to the FSMB's experts at the National Council of State Governments, who are guiding the FSMB about how to do interstate compacts, only seven states are needed to make it start and become functional. He stated that he believes at least nine or ten states' legislatures are interested in moving forward this year, and he is optimistic that it will be in place by late summer of 2015. He added that he looks forward to the Board, and ultimately the California State Legislature, joining if it feels that this is appropriate for it.

Mr. Serrano Sewell asked if any states ratified the compact.

Dr. Chaudhry stated that none have ratified it yet, but they are in the process. He stated many states have it introduced through legislation, and already, depending on the state, either the senate or the assembly has voted on it, or the committees have voted on it. He added that there is an advantage to those states that join early on, in the sense that since only seven states are needed to get it going, if

there are some changes that need to be made, it is a lot easier to do it with seven or eight than 49 states. He stated that he does not think there should be too many substantive changes, because after a year of study and feedback, most of the principle points have been addressed.

Dr. GnanaDev thanked Dr. Chaudhry and stated the concept is great and that the alternative of national licensure is not a good concept. He added that with national licensure, the states completely lose control of what really happens to medical care in their own state. He stated that initially he had many concerns, but only two remaining. The first is the representation. He explained that California has about one-eighth of the licenses in the country, and it only has one vote on the Commission. The second one is how nebulous it is on the cost. He would like clarification on that.

Dr. Chaudhry stated the driving force behind the compact is not the fear of national licensure, but as Ms. Kirchmeyer pointed out, there is legislation that actually would require the Department of

Health and Human Services to run the licensure and take it away from the states. Dr. Chaudhry stated that this is not the right way of doing this. The interstate compact is a prudent mechanism that preserves states' rights in the right way. He added that in regard to representation the FSMB consulted with the National Council of State Governments, which has expertise and experience in interstate compacts. They have indicated that interstate compacts apparently are run that way. The states are given equal representation. That is historically how interstate compacts have been run, and it is usually not by geographic representation. So, that is why it is one vote per state board.

Dr. Chaudhry explained that as far as cost is concerned there is probably going to be a savings on the part of the physician. The state boards would still set the fees as they currently do. He stated that the FSMB has made a recommendation, unofficially, that since not every state has to review credentials to issue this license, perhaps they may wish to consider the renewal fee rather than the initial licensure fee, but, in the end, it is up to the state boards.

Dr. Levine thanked Dr. Chaudhry and Ms. Kirchmeyer for the presentation. She stated that she was originally a skeptic on this and has actually, moved to a strong supporter. She stated that while one of the reasons to support this and to encourage California legislature to participate is, while its intent is to facilitate licensure in multiple states for physicians without eroding consumer protections, she thinks that from a California perspective, this actually is an enhancement to consumer protection. She also stated that from a purely pragmatic perspective, if California is going to do this, she agrees with Dr. Chaudhry's argument about getting involved early and helping to shape the work of the commission rather than being the 49th state to participate. She added that while the purpose of this was not to neutralize the effort for national licensure, she thinks the Board cannot underestimate the powerful resources in the telecommunications industry. If there is not something that achieves, in a safe way, some of the goals of supporting practice in multiple states, national licensure may happen.

Mr. Serrano Sewell asked about the composition of the interstate commission and if it is conceivable that it could be made up of all non-physicians or all physicians, or all executive directors of medical boards, since it is up to each state medical board to select amongst themselves their representative to the interstate commission. He has concerns that there is no requirement for a mix of members.

Dr. Chaudhry replied that the thinking was not actually complicated. The FSMB was told that an interstate commission has to be up to the states and the state agencies that are running it. So, no

third party can tell them what they do, so it is up to the states. He added that out of the 70 state medical and osteopathic licensing boards in the United States and its territories, all but three have public member representation. Some have as much representation as the Board, some others have token representation, but every state board has valued the role of public members.

Dr. Krauss also thanked Dr. Chaudhry and Ms. Kirchmeyer for the presentation. He stated he had two questions. One is in the concept of the interstate compact. Although it maintains state sovereignty, his understanding was that it requires congressional approval. He asked if that is true. He stated his second question is understanding patient location and whether it would be the primary residence of the patient, or if a California patient calls from New York state, is it the location of New York.

Dr. Chaudhry stated that in regards to the congressional role, the National Council of State Governments has stated that when the issue does not involve an area in which the federal government ordinarily takes a role, then the states may do what they wish. If the interstate compact involved foreign relations, congressional approval would be required. He stated that the issue of state medical boards regulating physicians, under the 10th Amendment, has always been a state's issue and therefore does not need congressional approval. He added that as far as the patient location, it tends to be where the patient is located at the time of their care.

Ms. Yaroslavsky asked how the Board moves this forward and asked about the fees to the Board.

Ms. Kirchmeyer stated that at the end of the presentation in their packet there were options for the Board. The Board can support the interstate compact, can support the compact and actually seek legislation, can oppose it, or can do nothing at this time. She added that if the Board wanted to move it forward they would want to do a support position, and possibly sponsor legislation.

Dr. Chaudhry stated that in regard to fees, the language was written so the commission can get grants. He added that the hope is that it would be consistent and budget neutral.

Dr. Bishop asked if an individual wants to be licensed in California only, do they have to fulfill all the requirements for the compact.

Ms. Kirchmeyer stated that the physician would just go through the normal licensing process

Dr. GnanaDev expressed concerns over the cost to the Board and the uncertainty of the amount.

Dr. Krauss asked if once this compact is established and approved, going forward, if there is a desire to make changes, does that again go through every state legislature.

Dr. Chaudhry stated that if it is a procedural change within and it is relatively minor the commission would be empowered to do that. However, if it is a substantive change the amendment would need to be approved by all of the participating state legislatures.

Mr. Serrano Sewell asked for public comment.

Ms. Hollingsworth, Consumer's Union Safe Patient Project, stated they have concerns regarding the FSMB's interstate medical licensure compact. She stated that they object to the compact being adopted by the State legislature precisely as written. She added that the FSMB finalized the compact without any public consumer input. Their second concern is that the compact creates an interstate medical licensure compact commission and there is no requirement that the commission include even a single consumer patient safety representative on the commission or its executive committee. She stated their third concern is that any amendments to the compact must be enacted into law by unanimous consent of the member states. She added that the compact empowers the commission to promulgate rules that shall have standing as statutory law, and the compact says that the laws shall not overwrite existing state authority to regulate the practice of medicine. She pointed out that this seems to contradicted by another compact provision that all laws in a member state in conflict with the compact are superseded to the extent of the conflict.

Ms. Hollingsworth further stated that the Board and the State of California should not give up their power now and in the future to protect California patients in the ways it deems most appropriate. She added that there was confusion and lack of clarity on the information that will be public and that there is no assurance that the commission will be transparent and make public the data it collects in a manner already provided by the California law and Board policy. She urged the Board to oppose the adoption of the interstate compact.

Ms. Choong, California Medical Association, stated they have some concerns with the proposal, but this discussion has helped to clarify some of CMA's issues. She stated they share the concern of several of the Board Members regarding cost. In addition, while they understand that the expedited license fee is expected to cover the bulk of the costs, CMA thinks the workload that may be associated for the Board may have to be born by physicians who are not actually participating in the compact. She questioned what problem is trying to be addressed. She stated that if there is a problem with California's existing licensing process, the CMA believes that perhaps that is an issue that the Board should take up for all licensees, rather than just a subset that chooses to participate in the compact. She further stated they also have concerns about potential corporate bar issues. The CMA thinks that there is a potential that this will increase potential violations of the corporate bar. She stated that CMA has some concerns regarding the difference the schools that will be accepted as California has its own list of approved schools and there is a difference between that and what the compact requires. Lastly, she stated that CMA has some concerns about sharing information. She explained that currently complaints under California's system are confidential. It is unclear if other states have this provision as well. And if that information is shared in other states, will that continue to be confidential. She stated that CMA has not taken a position on the compact and is continuing to study it. She urged the Board to carry out its very thoughtful process looking at all the many issues.

Ms. D'Angelo Fellmeth, CPIL, stated she read the compact and other FSMB documents related to the compact, such as the one called "Six Myths" about the interstate medical licensure compact. She stated CPIL has a number of concerns about the compact, one of which is the requirement for the State legislature to adopt the compact in its entirety. She stated some of the language of the compact is unclear, confusing, and internally inconsistent, and she cannot get clarification. She added that the compact says that the physician must adhere to the California Medical Practice Act and the Board's regulations. However, in Section 16A of the compact it says, "The provisions of the compact and the rules promulgated hereunder shall have standing as statutory law but shall not override existing state authority to regulate the practice of medicine."

Ms. Fellmeth believes that there may be things that the Board has not even considered that may be problematic in the compact, such as not addressing the very weak expungement of criminal conviction laws that exist in many other states, including California, that allow a doctor to get a conviction expunged and to then answer no to the question regarding whether they have been convicted of a crime.

Ms. Clavreul stated she also has concern with the compact and recommends the Board takes it under advisement and seriously look into the details very carefully.

Dr. Lewis made a motion that the Board wait for legislation to be introduced, if any, regarding the medical licensure compact. No second was provided.

Dr. GnanaDev requested to amend the motion to support the compact in concept and let the staff work with the legislature and look at the issues raised by the public to determine if the compact would be approved in California.

Dr. Lewis accepted Dr. GnanaDev's amendment to support the compact in concept and let the staff work with the legislature and look at the issues raised by the public to determine if the compact would be approved in California; s/Dr. Bishop. Motion carried unanimously.

Dr. Levine stated that the Board needs some substantial information to respond to the substance of concerns that were raised.

Agenda Item 22 Update on the Federation of State Medical Boards

Ms. Kirchmeyer let the Members know that Dr. Levine has been approved by the Nominating Committee to run for the Board of Directors of the FSMB. She then asked Dr. Chaudhry to give a brief update on what is happening with the FSMB.

Dr. Chaudhry stated that last year the state medical boards unanimously adopted a telemedicine policy, which updated their previous policy from 2002. Many of the principles and the concerns that were included in that policy were reflected in the comments that were made in response to Dr. Connolly's presentation.

He stated they are currently struggling with this notion of telemedicine consultations between doctors. He stated they have a task force that is looking at it and putting together a draft document. The discussions continue, so it may take another year, as it is not an easy issue.

Dr. Chaudhry noted for the last 10 years, the FSMB has been involved in the International Association of Medical Regulatory Authorities (IAMRA). It turns out many of the issues that the Board deals with are issues that regulatory authorities deal with around the world. IAMRA is working on a way to share data so that state regulatory authorities and medical regulatory authorities around the world are able to be aware of who is licensed and whether they have been disciplined. He noted that Ms. Kirchmeyer serves on an important committee within IAMRA, called the Physician Information Exchange Work Group, and her comments have been very useful in guiding that group in terms of making sure that they are thoughtful and deliberative in their approach.

Dr. Chaudhry stated this past September at the London meeting he was elected as the chair elect of IAMRA, and said he is happy to represent the United States and looks forward to working with the countries of the world. There are 40 countries represented on IAMRA, with the same public protection issues. He stated he looks forward to the Board's input and feedback as he represents what is happening in the United States.

He stated the new FSMB Board of Directors Chair is Dr. Gifford from Alabama, a nephrologist, who is concerned about being proactive rather than just being reactive. One of his ideas is to put together a committee or a working group that will look at educating future physicians, specifically medical students and residents, about what it is that state boards do, how to stay out of trouble, what is professional discipline, and what is unprofessional conduct.

He announced the annual meeting is in April, in Fort Worth. He stated the FSMB is pleased that Dr. Levine is seeking a position on the FSMB Board of Director and they appreciate the names that have been submitted for various committee appointments. He stated California is very important to them and the Board is important to them. They look forward to the Board's continued engagement in guiding policy for all of the nation's state boards.

Dr. Chaudhry noted that in July, one of the Members of the FSMB's Board of Directors would be coming to provide a presentation and update to the Board. At that time, the member will be able to go over a little more detail on some of the FSMB activities and share more from the annual meeting.

Agenda Item 23 Update and Consideration of Recommendations from the Midwifery Advisory Council (MAC) Meeting

Ms. Sparrevohn referred the Members to the Board packets, stating unless anyone had any questions regarding her report, she would just like to highlight a couple of items. Discussions continue surrounding regulations that are needed pursuant to AB1308. She stated there are still a few details to be worked out between the interested parties, but the MAC is very encouraged by the work that has been done.

She noted Attachment A in the materials is a one-page comparison between licensed midwives and certified nurse midwives, as well as their educational components and ability to dispense and furnish medications. The MAC chose the CNM as a comparison because many physicians are already well aware of what certified nurse midwives do, so they tried to make it easier for the Board to understand.

She stated she would like to applaud the Board's recognition of the need for language regarding midwife assistants, and the MAC is looking forward to watching that go through the Legislature this year.

Ms. Sparrevohn requested approval of the following agenda items for the March 2015 MAC meeting: task force update on the Licensed Midwife Annual Report Data Collection Tool Task Force; an update on continuing regulatory efforts required by AB 1308; an update on the midwife assistant legislation; and an update on the interested parties meeting held in December. The last item that needed approval was a presentation by Diane Holzer, a licensed midwife and a physician's

assistant. She has been working with the Home Birth Summit, which is a national group who has created recommendations regarding best practices for home to hospital transfers by midwives.

Ms. Crowley, American Congress of Obstetrics & Gynecology District 9, stated they concur with Ms. Sparrevohn's comments for the agenda items.

Ms. Yaroslavsky made a motion to accept the agenda items for the March MAC meeting as requested. Motion carried unanimously. (Pines absent from vote).

Agenda Item 24 Discussion and Consideration of Midwifery Advisory Council Member Appointments

Mr. Worden referred the Members to pages BRD 24-1 through 24-3 in the Board packets. He stated while doing an evaluation of the Member terms, it was discovered that two of the MAC Members' terms had actually expired June 30, 2014, and currently three more terms expire June 30, 2015. Mr. Worden noted this causes a potential for up to five new MAC Members out of six. He requested a one-year extension for all MAC Members' appointment to avoid that issue.

Dr. Levine made a motion to approve the request to extend the MAC Members terms by one year; s/Dr. Lewis. Motion carried unanimously. (Pines absent from vote).

Agenda Item 26 Discussion and Adoption of Joint Protocols with the Board of Pharmacy

Mr. Weisser, President of the Board of Pharmacy (BOP), introduced Ms. Virginia Herold, Executive Officer, Liz McCamen, School of Pharmacy at USC; Victor Law, BOP Member; Allen Schaad, BOP Member; and Steve Gray, California Society of Health-System Pharmacists (CSHP). Mr. Weisser stated that every day pharmacists collaborate with physicians for the benefit of their patients and they are here to present three protocols for the Board's review, input, and approval. The first protocol is for pharmacists furnishing nicotine replacement products, the second for pharmacists furnishing self-administered hormonal contraception, and the third, is for pharmacists furnishing Naloxone Hydrochloride. Mr. Weisser stated this has been an on-going process, which was just completed on Tuesday at the BOP Board Meeting.

Ms. Kirchmeyer noted the most updated version of the hormonal contraceptive protocol was handed out and asked the Members to use those documents for reviewing during this discussion, as that document will be the language that they will be asking to approve.

Ms. Kirchmeyer stated this protocol was created due to a bill that required that Board to work jointly with the BOP. She asked if there were any questions, as Mr. Weisser and his team would be able to answer them.

Ms. Yaroslavsky asked for a point of clarification. She stated she understood that they were mandated to do this and thought it had already been done.

Ms. Kirchmeyer stated what had actually been done in the past was emergency contraception protocols. These three new protocols have not been reviewed before.

Dr. Lewis stated he read the document and from what he understands, there is a one-time self-administered hormonal contraceptive and a second one that is an emergency contraceptive. He understands the emergency one, but is confused about the other one.

Ms. Herold explained the Legislature took existing provisions that had existed for a number of years for emergency contraception and they added self-administered hormonal contraception, so that both aspects of contraception were included in the same Code section.

Dr. Lewis stated he did not understand whether they were going to have to seek advice of a healthcare provider.

Ms. Herold noted it is her understanding that the hormonal contraception is intended to be an ongoing process. In many cases, it is going to be women who are already on hormonal contraception, and just looking for another way to get it rather than going through what they have done in the past.

Ms. Yaroslavsky made a motion to accept the protocol for the self-administered hormonal contraception; s/Dr. Levine.

Dr. Bishop asked if there were age limits for this hormonal contraception.

Ms. McCayman stated there were no exclusive age limits. The one limit would be if one has started menstruation, which is why one would have a need for contraception. However, because, under California law, minors also have equal reproductive rights, they felt it was important not to create age barriers.

Ms. Choong, California Medical Association, had a question that relates to the fact sheet on the hormonal contraception. The fact sheet states, "The pharmacist shall answer any questions the patient may have regarding self-administered hormonal contraception." They are wondering if this might be an appropriate place to direct the patient to their physician if there are questions the pharmacist cannot answer.

Ms. Choong also asked for some clarification in the area of product selection. It states the pharmacist in consultation with the patient may select any hormonal contraceptive listed in the current version of the US MEC as category 1 or 2. Mr. Choong noted the US MEC does not actually designate contraceptive methods as 1 or 2. Category 1 or 2 actually refers to the risk to the patient based on their health condition, so she suggested a change be made to clarify that this term refers to health condition, not method.

Lastly, Ms. Choong has some concerns about the section on injections. The fact sheet states, "for furnishing self-administered hormonal contraception, the pharmacist shall ensure that the patient is properly trained in administration of the contraceptive medication." However, when looking at the fact sheet, it actually says, "Where can I get the shot?" It states, "A healthcare professional can give you the shot." She suggested more clarification be included to help avoid the conflict.

Ms. Choong added, concerning injections, the fact sheet discusses having reminders sent to the patient telling them when they should do the injections, providing additional support. That is more

than the support that is provided with other methods, so she recommended adding some additional language regarding further support that the pharmacist may need to provide with respect to injections.

Ms. McCayman noted that the fact sheet that Ms. Choong is referring to regarding the health care provider, is not the most current version, and that part is no longer included in the current version for that very reason. She also stated that they are still working with the California Department of Public Health on the specifics of these optional fact sheets, and since they are optional and not required, they should not be a hindrance to adoption of the protocol.

Ms. Crowley, ACOG, stated that they worked closely with the BOP on emergency contraception several years ago. She noted that in this recent process, she was unable to attend the public meetings as most of them took place during the legislative session. Therefore, they were not able to give the input that they really would have liked. Specifically on the protocols, there are a couple of issues. The first issue being the Depo injection being provided. This is the most effective type of contraception, but they believe that it is a problem for it to be provided in a pharmacy setting, because they are effective for three months and up to a year in terms of staying in the system, so, they feel it is something that needs to be discussed with a physician. She stated ACOG believes that hormonal contraception should be available over the counter. They are looking at this from the perspective of getting the women the contraception they need without interruption, but also not putting in additional barriers. She feels the checklist could be refined in terms of looking at the US Prevention Task Force medical eligibility criteria and refining it a bit further. She recommended the contraceptive protocols not be approved at this meeting.

Steven Gray, California Society of Health System Pharmacists, thanked the Board for supporting SB493, and stated this bill and this particular protocol, was intended to address issues of access, especially for those who have decided to become or are sexually active and need reasonable access to hormonal contraceptive. He pointed out that this is all about self-administered hormonal contraceptive, and the pharmacists' position here is that the pharmacists are not going to be using this in lieu of a prescription. If a patient walks in with a prescription from a physician or other prescriber, that will be the process.

Mr. Gray stated this is all about a pharmacist providing access through their specialized training. The protocols are agreed on by the two boards, and making the judgments specifically about the injection that the patient is, in fact, capable. He noted this is very important, especially for some of the economically and transportation disadvantaged patients. These are still prescription drugs, and so this needs to be added to the form to make it quick access at the state level, which is within the power of the boards to do.

Mr. Serrano Sewell asked President Weisser if he thought it advisable for the BOP and staff to reconvene parties, taking into consideration the comments heard and then bring it back to the Board. He stated the Board is willing to have an interim teleconference meeting later if necessary.

Mr. Weisser stated the product that was given at this meeting has been a result of collaboration of many meetings of BOP staff and many stakeholders and feels the current product is final and complete.

Mr. Serrano Sewell thanked Mr. Weisser for the clarification and continued with the motion to accept the hormonal contraception material as-is.

Ms. Yaroslavsky reminded the Board that there is specific additional training that pharmacists have to go through in order to do this, in hope that would alleviate some the concerns that people are having.

Dr. GnanaDev expressed his concerns about the Depo injection when prescribed to a typical patient as opposed to an RN or someone with medical training.

Katherine Besinque, President of the California Pharmacist Association, stated that Depo injections are often dispensed by pharmacies. For many patients, it is a self-administered, subcutaneous, and intramuscular injection on a regular basis. Pharmacists dispense many medications that are given that way at home. She noted all pharmacists receive immunization training and provide many immunizations intramuscularly. There was a pilot program in California where pharmacists did the Depo injections because access is an issue sometimes with Depo.

Dr. Levine recommended amending the language to read, "they select any hormonal contraceptive listed in the current version of the US MEC for patients or for individuals identified as category 1 or 2 based on the information reported in the self-screening tool."

Ms. Yaroslavsky agreed to the amendment and restated her motion to accept the amended language; s/Dr. Levine.

Ms. Ehrlich, Licensed Midwife, asked if there were some way to certify that the patient has been trained in self-injection to avoid people injecting a nerve or a vein in error since Depo is to be an intramuscular injection.
Mr. Serrano Sewell stated that the patients are trained when given the injectable prescription.

Motion carried unanimously.

Mr. Serrano Sewell moved to the next protocol, nicotine replacement products. Board Members and the public were given the opportunity to speak on this issue. There were no comments.

Dr. Lewis made a motion to accept the nicotine replacement products protocol: s/Ms. Yaroslavsky. Motion carried unanimously.

Mr. Serrano Sewell moved to the last protocol, Naloxone Hydrochloride, and asked for a motion.

Dr. Lewis made a motion to accept the Naloxone Hydrochloride protocol; s/Ms. Yaroslavsky.

Ms. Herold noted that this particular protocol will be promulgated as an emergency regulation, which means if it is adopted as it is shown currently, then the BOP will file it with the Office of Administrative Law (OAL). The statute that authorized the two boards to do this created the opportunity for BOP to proceed under the emergency rule-making procedure, so it does not have to be demonstrated as an emergency.

Ms. Choong, California Medical Association, stated that in one section, it states that the pharmacy shall provide training in opioid overdose prevention, recognition, response, and administration of the antidote, Naloxone. The Board may want to incorporate some more specifics as to what that training shall encompass. CMA wants to be sure it is administered as effectively as possible. Literature stated that this training is extremely important. Since there is no fact sheet available at this time on this issue, she suggested making sure that this information be included.

Dr. Levine stated she understood that there is pending FDA approval of a less expensive version on Naloxone that would make the product much more accessible to families and patients and asked Ms. Herold what the status of that was.

Ms. Herold stated she did not believe that the FDA approval is going to make it more accessible. The intranasal product is being fast-tracked to be approved, but it has not been approved yet. It is still available now, but is very expensive and she does not know if the FDA approval would make it less expensive.

Dr. GnanaDev noted that when it is approved that appropriate training must be provided.

Ms. Herold stated that BOP has been working with continuing education providers in California who are planning to provide this education to pharmacists so they can operate under this protocol. They have also been working with people from the poison control center about doing the fact sheet making sure all the fact sheet things that are being handed out to the patients are incorporated into the pharmacists' training, so that it is all very cohesive.

Motion carried unanimously w/1 abstention. (Krauss)

Agenda Item 27 Discussion and Consideration of Legislation/Regulations

Ms. Simoes provided an update on some staffing changes in the Assembly and Senate Business and Professions (B&P) Committee. First, the Assembly Business, Professions, and Consumer Protection Committee has been split into two committees. It has been split into the Business and Professions Committee and then the Privacy and Consumer Protection Committee. The Board's issues will continue to go through the B&P Committee, and Assembly Member Bonilla is still chair of that Committee. Hank Dempsey, Chief Consultant of the Assembly B&P Committee, has moved to the Privacy and Consumer Protection Committee. Le Ondra Clark, who was in the Senate B&P Committee, is taking Mr. Dempsey's place in the Assembly B&P Committee. Sarah Huchel, who was the Board's consultant in the Assembly B&P Committee, is moving to the Senate B&P Committee. G.V. Ayers has retired from the Senate B&P Committee. Ms. Simoes thanked Mr. Ayers for his assistance over the past years and wished him well in retirement. Lastly, Senate B&P Committee has a new chair, Senator Hill. Senator Hill has been a member of the Senate B&P Committee and is familiar with the Board, because he has carried Board bills in the past.

Next, Ms. Simoes gave an update on the upcoming Board Legislative day, which will be held on February 26, 2015. She noted she is working on setting up meetings with the chairs of B&P and Health Committees and new Members of the B&P Committees. Staff will be working on talking points to summarize the Board's top issues, including some that were raised at the Board meeting yesterday.

Ms. Simoes announced that the 2015 legislative session has started, and the bill introduction deadline is February 27, 2015, so many more bills will be at the next meeting. She stated there is a 2015 legislative calendar in the packets that provides the legislative deadlines this year.

Ms. Simoes provided an update on the proposals that were approved by the Board at the last meeting. She stated in regard to the 805-reporting proposal, she is having difficulty in securing an author for this bill, mainly because CMA has major concerns. While visiting the legislative offices, trying to secure an author she lets them know what the proposal does, and gives them information on why the Board is asking for the proposal. She stated that when asked, she lets them know what CMA's issues are and why the Board wants the proposal. She stated she believes there are still some good reasons to run this proposal as there may be underreporting by peer review bodies. She stated, however, that it does not appear likely that the Board will find an author. She also stated that with the Board seeking a legislative proposal, the timing might not be right.

Ms. Simoes stated AB 26, would enact the Medical Cannabis and Regulation Control Act. She stated this is a reprint of AB 1894, a bill introduced last year. The Board supported that bill. She stated the bill would include in the Board's priority cases that allege a physician has recommended marijuana to patients for medical purposes without a good-faith prior examination, or medical reason. It would also require physicians to perform an appropriate prior exam before recommending marijuana for a medical purpose, which must include an in-person exam. This would also provide the change that the Marijuana Task Force requested. It also has some information related to which dispensaries can employ physicians that are recommending medical marijuana. She added since the Board took a support position on this bill last year, and it is something the Marijuana Task Force has recommended, staff is suggesting a support position on this bill.

Ms. Yaroslavsky made a motion to take a support position on this bill; s/Dr. Krauss. Motion carried unanimously.

Ms. Simoes presented SB 19 (Wolk) which would establish the California Physician Orders for Life-sustaining Treatment Statewide Registry by January 1, 2016. She stated it would require the California Health and Human Services Agency to establish and operate the Physician Orders for Life Sustaining Treatment (POLST) statewide registry. She stated that many of the important details are missing from this bill such as who was going to pay for the POLST registry, and how the information will be kept confidential.

Ms. Simoes stated that other states like Oregon, there are 14 people that take these calls from emergency medical personnel, so it is very easy for them to maintain confidentiality. Although it is a very good concept, there are many unanswered questions in this bill that would make it difficult to take a position since the Board does not know how it is going to operate. Therefore, staff is suggesting that the Board take a support in concept position on this bill and work with the author's office and staff, and once there are more details in this bill, the Board can take a different position.

Dr. Lewis made a motion to take a support in concept position; s/Ms. Yaroslavsky. Motion carried unanimously.

Ms. Simoes moved to SB 22 (Roth) which would establish the graduate medical education trust fund, to fund grants to residency programs in California. The funds consist of public/private partnerships and would require the Office of Statewide Health Planning and Development (OSHPD) in consultation with the California Healthcare Workforce Policy Commission, to develop criteria for distribution of the money. She stated that this bill is in line with the Board's policy compendium so staff is suggesting the Board take a support position.

Ms. Yaroslavsky made a motion to take a support position; s/Dr. GnanaDev.

Dr. Levine asked if the bill in its current state identifies the funding source of public/private partnership.

Ms. Simoes stated it specifies more on the criteria when donations are received, but not necessarily any more criteria on the funding.

Dr. Levine asked if staff recommended a support or a support in concept position.

Ms. Simoes noted the Board's policy compendium is broad enough that it can support any efforts to fund more education or residency slots, so that is why staff is suggesting a support position.

Dr. Levine stated something she would like to take for future discussion is the role of the policy compendium as opposed to the Board taking positions on a specific bill; she feels that the compendium is a way of giving staff general direction opposed to committing the Board to a position. She does not believe the compendium supersedes the ability of the Board to look at the specifics of the bill and make a decision.

Mr. Serrano Sewell commented that was the intent of the compendium.

Ms. Simoes agreed, stating the Board has supported similar bills, but to support the bill in concept would be fine as well.

Dr. Lewis made an amended motion to support the bill in concept with Ms. Yaroslavsky's approval of the amendment. Motion carried unanimously.

Ms. Simoes discussed SB 128 (Wolk) which would establish the End of Life Option Act in California. It is modeled after Oregon law that was enacted in 1997. This would allow a competent, qualified individual, who is a terminally ill adult, to make a request to receive a prescription for aid in dying medication. The qualified individuals must voluntarily express the wish to receive a prescription and must be a resident of California. The request has to be documented by two oral requests and one request in writing. She added this bill defines an attending physician as a physician who has primary responsibility for the healthcare of an individual and treatment of the individual's terminal illness. There are a number of requirements that the attending physician must do before prescribing the aid in dying medication, one of which is the requirement that the attending physician has to refer the qualified individual to a consulting physician, to confirm the diagnosis, prognosis, and determine that the qualified individual is competent. The consulting physician must be qualified by specialty or experience to make this diagnosis and prognosis. They must examine the individual

and their medical records. There are some counseling requirements throughout the process, and an opportunity for the person to rescind their request.

Ms. Simoes stated because the Board is a regulatory agency, it historically has not taken positions on these kinds of bills that affect an individual's rights in their end-of-life healthcare choices. However, some issues in the bill are actually incorrect and may need technical assistance. Therefore, Board staff suggested that the Board directs staff to work with the author's office to provide feedback, input, and assistance without taking a position on the policy.

Ms. Simoes has talked to the authors' offices. They are very open to doing this. She and Ms. Kirchmeyer have a meeting scheduled with the staff person in Senator Wolk's office to go over any issues that the Board may have. She believes there are some important things that could get fixed, because, anytime a bill is going to get implemented, regardless of what the Board thinks of the policy, the Board has to make sure it is something the Board can implement and that physicians can follow in California.

Dr. Krauss stated consumer protection also involves protecting people in terms of death with dignity. However, he can also envision, in the context of their family or self-guilt, how these things can be coercive in terms of someone potentially making a decision because it is financially better for the family. Therefore, he thinks there needs to be adequate consumer protection in a bill of this nature. In addition, he does not like reinventing the wheel, and there are bills and laws like this in Oregon, Washington, and Vermont. So, if staff could be encouraged to consult with the medical boards of those states to see how they have dealt with it, he believes that would be helpful.
Furthermore, he does not think that the Board should ever support prospectively agreeing that it would not sanction somebody if they do this. He thinks it still becomes within the scope of the practice of medicine, and the Board has to maintain purview over the entirety of the scope of medicine.

Ms. Simoes responded that his bill does address the coercion aspect, so the patient has to say that their request is not arising from coercion or undue influence. That was one of the issues that was going to be brought up. It would be difficult for a physician to sign off if that was not the case.

Ms. Simoes stated AB 159 (Calderon) would enact the Right to Try Act. This would allow a manufacturer of an investigational drug, biological product, or device to make that drug, product, or device available to an eligible patient. This bill would define an investigational drug, biological product, or device as a drug, product, or device that has successfully completed phase one of the clinical trial approved by the FDA, but that has not been approved for general use and remains under investigation in a clinical trial. It defines an eligible patient as one who has a terminal illness. The definition of terminal illness is very broad, and Ms. Simoes can speak to the author’s office. Ms. Simoes stated the patient has to have considered all their treatment options, been unable to participate in a clinical trial for the terminal illness within a hundred miles of his or her home, or has not been accepted to that clinical trial. In addition, they have to have received a recommendation from their physician, have given written, informed consent, and have documentation from their physician of testing that they have met the requirements. Also, this bill would not allow the Board or the Osteopathic Medical Board to revoke, fail to renew, or take any other disciplinary action against a physician's license based solely on the physician's recommendation to an eligible patient regarding a prescription or for treatment with an investigational drug, biological product, or device, provided that that recommendation or prescription is consistent with the medical standards of care.

Ms. Simoes noted she has talked to the author's office and they are willing to meet with staff. She stated she is requesting to work with the author's office on this bill.

Dr. GnanaDev stated this bill has many issues and requested staff to work with the author.

Dr. Levine agreed with Dr. GnanaDev's comments. She feels there are many problems with this bill. The first of which is phase one testing has nothing to do with effectiveness or efficacy. It means that it is not going to kill people necessarily, but phase one testing is early, so consistent with standards of good medical practice means that there needs to be some science behind the application or a recommendation or prescription of the therapy.

Dr. Levine stated one of the biggest challenges for accruing sufficient evidence on the effectiveness of therapy is getting patients to agree to participate in the gold standard of double-blind controlled trials. Therefore, if a patient knew they could get the therapy, whether or not it had been proven effective, as opposed to taking a chance that, you will get a placebo, it will make it much harder to do clinical trials. She thinks from a consumer protection point of view, this is creating a public health problem. She agrees that the Board should not take a position but address the issues that have been identified in this bill.

Agenda Item 28 Agenda Items for the April/May 2015 Meeting in the LA Area

Mr. Serrano Sewell stated in the interest of time, if Members have any suggestions for future agenda items for the May meeting in Los Angeles, to please forward them to Ms. Kirchmeyer. He then asked if there were any public comments or suggestions for future agenda items. There being no comment he adjourned the meeting.

Agenda Item 29 Adjournment - ***Mr. Serrano Sewell adjourned the meeting at 1:20 pm.***

David Serrano Sewell, President — Date: MAY 7, 2015

Denise Pines, Secretary — Date: 5/11/2015

Kimberly Kirchmeyer, Executive Director — Date: 5/14/15

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