MEDICAL BOARD OF CALIFORNIA
QUARTERLY BOARD MEETING

Embassy Suites
250 Gateway Blvd.
South San Francisco, CA 94080
July 27 – 28, 2017

MEETING MINUTES

Thursday, July 27, 2017

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

Members Present:
Dev GnanaDev, M.D., President
Michelle Bholat, M.D.
Judge Katherine Feinstein (ret.)
Randy Hawkins, M.D.
Howard Krauss, M.D.
Kristina Lawson, J.D.
Sharon Levine, M.D.
Ronald Lewis, M.D., Secretary
Denise Pines, Vice President
Brenda Sutton-Wills, J.D.
David Warmoth
Jamie Wright, J.D.
Felix Yip, M.D.

Members Absent:
Michael Bishop, M.D.

Staff Present:
April Alameda, Staff Services Manager II
Christina Delp, Chief of Enforcement
Kimberly Kirchmeyer, Executive Director
Regina Rao, Associate Governmental Program Analyst
Elizabeth Rojas, Staff Services Analyst
Jennifer Saucedo, Staff Services Analyst
Jennifer Simoes, Chief of Legislation
Lisa Toof, Staff Services Manager I
Kerrie Webb, Staff Counsel

Members of the Audience:
Teresa Anderson, California Academy of Physician Assistants
Eric Andrist, via phone

Gloria Castro, Senior Assistant Attorney General, Health Quality Enforcement Section, Attorney General's Office
David Chriss, Chief, Health Quality Investigation Unit, Department of Consumer Affairs
Zennie Coughlin, Kaiser Permanente
Julie D'Angelo Fellmeth, Center for Public Interest Law
Rosanna Davis, Licensed Midwife, California Association of Licensed Midwives
Patrick Donnellan, Medical University of the Americas
Louis Galiano, Videographer, Department of Consumer Affairs
Renuka George, Deputy Attorney General, Attorney General's Office
Dean Grafilo, Director, Department of Consumer Affairs
Gordon Green, M.D., Medical University of the Americas
Marian Hollingsworth, Consumers Union Safe Patient Project
Christine Lally, Deputy Director, Department of Consumer Affairs
L. Khadijah Lang, M.D., President, Golden State Medical Association, via phone
Craig Leader, Senior Investigator, Health Quality Investigation Unit
Michelle Monseratt-Ramos, Consumers Union Safe Patient Project
Kathleen Nicholls, Deputy Chief, Health Quality Investigation Unit, Department of Consumer Affairs
Steve Rodgers, Medical University of the Americas
Alecia Sanchez, California Medical Association, via phone
Mark Scarlett, Supervising Investigator, Health Quality Investigation Unit
Mark Servis, M.D.

Agenda Item 1 Call to Order/Roll Call/Establishment of Quorum

Dr. GnanaDev called the meeting of the Medical Board of California (Board) to order on July 27, 2017, at 2:34 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 provided.

Agenda Item 3 Approval of Minutes from the April 27-28, 2017 Meeting

Ms. Kirchmeyer stated the Board had received a request for corrections from Ms. Castro, Attorney General's Office, requesting changes to the last line on page 39, adding the word "eliminating" between the words "of" and "VE" at the beginning of the line. In addition, on that same line on page 39, the second "VE" should be changed to "Monitor's." Lastly, on page 40, the fourth line down the word "attendee" should be changed to "attending."

Dr. Lewis made a motion to approve the April 27-28, 2017 meeting minutes, with amendments stated by Ms. Kirchmeyer; s/Dr. Bholat. Motion carried (11-0-2 - Feinstein and Levine Abstain).

Agenda Item 4 President's Report, including notable accomplishments and priorities

Dr. GnanaDev stated that over the last quarter his main focus has been representing the Board at meetings and hearings in order to assist the Board's sunset bill pass through the legislative process. He added that more would be heard about that during Ms. Simoes presentation on legislation. He noted earlier in the month he had testified at the Assembly Business and Professions Committee Hearing on Senate Bill (SB) 798, the Board's sunset bill. In addition, he had several discussions on SB 798 with legislative staff and Board staff.

Dr. GnanaDev stated that he and Ms. Pines had a call with Executive Staff to discuss the meeting agenda and other board projects and that their communication was very important to ensure they are aware of any issues that arise, including the status of the Board's sunset bill.

Dr. GnanaDev then thanked the Licensing Program for its work over the last several months noting that during the busiest time of the year, the Licensing Program was able to keep the timeframe at the lowest days they have had and gave congratulations to the staff.

Dr. GnanaDev noted that he would be working closely with staff over the next month as they continue to ensure that the Board's sunset date is extended and the requested improvements to the Board are made. He then thanked the staff of the Senate Business, Professions, and Economic Development Committee for their assistance to the Board.

He noted that since the last Board Meeting there had been no committee assignment changes. However, he told Members that if anyone wished to change committee assignments, to please contact him or Ms. Kirchmeyer.

Agenda Item 5 Election of Officers

Dr. GnanaDev asked Board Members for nominations for Secretary. Dr. Krauss nominated Dr. Lewis. No other nominations were made. ***Motion carried unanimously (13-0).***Dr. GnanaDev then asked for nominations for Vice President. Dr. Krauss nominated Ms. Pines. No other nominations were made. ***Motion carried unanimously (13-0).***

Ms. Pines asked for nominations for Board President. Dr. Krauss nominated Dr. GnanaDev. No other nominations were made. ***Motion carried unanimously (13-0).***

Agenda Item 6 Board Member Communications with Interested Parties

Dr. GnanaDev stated he is involved with multiple organizations, including the California Medical Association (CMA), and meets with representatives of these entities regularly, but never discusses Board issues beyond what the Board has already approved.

Agenda Item 7 Discussion and Possible Action on Legislation/Regulations

Ms. Simoes referred the Members to their legislative packets, and their updated tracker list. She noted that on the tracker list, the bills in blue were bills the Board had already taken positions on and stated that even if the bill had been amended, the amendments did not affect the Board's position. She indicated she would not be discussing these bills. She added the bills in green would require discussion and a position and the bill in pink was the Board's sunset bill.

Ms. Simoes began with **Assembly Bill (AB) 40 (Santiago)** stating the bill would allow authorized health information technology systems to integrate with and automatically query the Controlled substances Utilization Review and Evaluation System (CURES) on behalf of an authorized health care practitioner. She noted the Board currently had a support in concept position on the bill, since the Board wanted to make sure the integration was not limited to a small number of health information technology systems. She added the Board believed it is important that all physicians have access to the CURES integration and associated efficiency proposed by the bill. Ms. Simoes noted the bill was amended to delete the provisions that would have given the Department of Justice (DOJ) the discretion to decide which health information technology systems would have access to CURES integration, and now allowed all health information technology systems that meet the specified requirements to retrieve information in the CURES database on behalf of an authorized health care practitioner or pharmacist**.** Ms. Simoes noted that at the last hearing on the bill, all the entities that had taken an opposition on the bill had removed their opposition. She noted that Board staff is recommending that the Board change its position from support in concept to support.

Dr. Lewis made a motion for the Board to change its position from support in concept to support on AB 40; s/Dr. Krauss. Motion carried unanimously (13-0).

Ms. Simoes continued stating that **AB 443 (Salas)** would expand the scope of practice for optometrists to include the ability to provide habilitative services, provide for more independent practice, treat additional conditions, and administer vaccines. Ms. Simoes went through each condition of the bill, specifically stating the bill would do the following:

- Allow an optometrist to provide habilitative optometric services.
- Remove provisions in existing law that require optometrists to refer specified cases and consult on specified cases with an ophthalmologist or appropriate physician.
- Replace the terms “corneal surface disease and dry eyes” with “nonmalignant ocular surface disease and dry eye disease” as conditions that an optometrist is authorized to diagnose and treat.
- Add hypotrichosis and blepharitis to the list of conditions that an optometrist is authorized to diagnose and treat.
- Authorize an optometrist to prescribe specified therapeutic pharmaceutical agents, including for off-label use. The bill would also add tramadol to the list of therapeutic pharmaceutical agents an optometrist may use and prescribe.
- Delete the requirement that an optometrist must maintain a written record in the patient’s file of information provided to a patient’s ophthalmologist, the ophthalmologist’s response, and any other relevant information in cases for which an optometrist must consult with an ophthalmologist. The bill would also delete the requirement that the information must be provided upon request of the ophthalmologist with the consent of the patient.
- Authorize an optometrist to collect blood by skin puncture for testing patients suspected of having diabetes.
- Authorize an optometrist to perform skin testing to diagnose ocular allergies, limited to the superficial layer of the skin.
- Authorize an optometrist to use or prescribe diagnostic contact lenses.
- Authorize an optometrist to use a needle to remove foreign bodies from the cornea, eyelid, and conjunctiva.
- Revise the qualifications for an optometrist to be certified to treat glaucoma in patients over 18 years of age for optometrists that completed a didactic course of no less than 24 hours in the

diagnosis, pharmacological, and other treatment and management of glaucoma.

- Authorize an optometrist, as specified in the bill, to use any topical or oral therapeutic pharmaceutical agent, which is not a controlled substance, or noninvasive medical device, or technology whose use does not constitute surgery that is not expressly authorized for use or prescription by an optometrist certified to use therapeutic pharmaceutical agents, if it has received a United States Food and Drug Administration (FDA) approved indication for the diagnosis or treatment of a condition authorized by the Act. The bill requires an optometrist to successfully complete any clinical training imposed by a related manufacturer prior to using any of the therapeutic pharmaceutical agents or noninvasive medical devices or technologies.
- Authorize an optometrist, as specified in the bill, to use any other topical or oral therapeutic pharmaceutical agent which is not a controlled substance, or noninvasive medical device, or technology whose use does not constitute surgery, that is not expressly authorized for use or prescription by an optometrist certified to use therapeutic pharmaceutical agents and does not meet other requirements, as specified, if approved by the California Board of Optometry (CBO) through regulation for the rational treatment of a condition authorized by the Act. The bill requires any regulation pursuant to this paragraph to require a licensee to successfully complete an appropriate amount of clinical training to qualify to use each topical or oral therapeutic pharmaceutical agent or noninvasive medical device or technology approved by the CBO pursuant to the bill.
- Prohibit an optometrist from using injections for cosmetic effect and the performance of blepharoplasty or other cosmetic surgery procedures that reshape the normal structures of the body in order to improve appearance and self-esteem.
- Allow an optometrist who meets specified certification requirements to also be certified to administer immunizations after the optometrist meets all of the following requirements:
    - Completes an immunization training program endorsed by the Centers for Disease Control and Prevention (CDC) that, at a minimum, includes hands-on injection technique, clinical evaluation of indications and contraindications of vaccines, and the recognition and treatment of emergency reactions to vaccines, and maintains that training.
    - Is certified in basic life support.
    - Complies with all state and federal recordkeeping and reporting requirements, including providing documentation to the patient's primary care provider and entering information in the appropriate immunization registry designated by the Immunization Branch of the California Department of Public Health (CDPH).
    - Applies for an immunization certificate on a CBO approved form.
    - Pays the application fee for a certificate to administer immunizations.
- Define immunization as the administration of immunizations for influenza, herpes zoster virus, and pneumococcus in compliance with individual Advisory Committee on Immunization Practices vaccine recommendations published by CDC for persons 18 years of age or older.
- Specify that the definition of surgery in the Act does not include the provisions added by the bill.
- Add "steroid induced glaucoma" to the definition of glaucoma and would require an optometrist who treats a patient for steroid induced glaucoma to promptly notify the prescriber of the steroid medication if the prescriber did not refer the patient to the optometrist for treatment.
- Require an optometrist to consult with and, if necessary, refer to a physician or other appropriate health care provider when a situation or condition occurs that is beyond the optometrist's scope of practice. The bill states consultations, referrals, and notifications required by the bill shall be documented in the patient record.

- Specify that failure to refer a patient to an appropriate physician constitutes unprofessional conduct.

She added the bill had been significantly amended and narrowed, compared to SB 492 from 2014 and SB 622 from 2016. Ms. Simoes noted that allowing optometrists to perform these additional procedures, diagnose and treat more conditions and prescribe additional topical or oral therapeutic pharmaceutical agents may result in consumer harm if the optometrist does not have the proper training and education. She stated Board staff suggested the Board oppose the bill unless it is amended to require additional training and/or education related to the optometrist scope expansions included in the bill.

Dr. Lewis made a motion for the Board to take an oppose unless amended position on AB 443; s/Dr. Hawkins.

Dr. Hawkins noted that diagnosing and treating glaucoma and the requirement to refer had been a concern of his and asked Dr. Krauss if he felt that was something that stood out to him as a concern of the bill.

Dr. Krauss stated that glaucoma had been a discussion between optometry and ophthalmology for many years and felt that a level had been reached where many optometrists are quite capable of diagnosing and treating the most common form of glaucoma. He noted that one thing that he found interesting is that neither CMA nor the State Society of Ophthalmology are currently opposing the bill, which means they have met and struck a compromise, and in the past neither of them have been encouraging scope expansion. Dr. Krauss offered the following comments in regard to the bill. He noted that one section replaced "corneal surface disease and dry eyes" with "nonmalignant ocular surface disease and dry eye disease" under conditions of the human eye an optometrist is authorized to diagnosis and treat. Dr. Krauss stated his concern is the term "non-malignant" is a misnomer, as the only "malignant" ocular surface disease is cancer, therefore the meaning of "non-malignant" in the bill needed to be more specific. He felt that one of the amendments in the bill should be to better define which ocular surface diseases can or cannot be treated.

Dr. Krauss noted that as Ms. Simoes stated, that are several parts of the bill that should have a companion piece to assure adequacy of training, certification and competence. He added that whenever a non-physician is requesting to practice within the field of medicine he felt there should be evidence of training, certification and competence to assure consumer protection. He stated that other sections expanding the scope would also need additional training. He noted that even eye drops could have a significant interaction with one's well-being. He explained the bill also removed the requirements for optometrists requiring consultation and/or referral to an ophthalmologist or appropriate physician and surgeon for certain conditions. He emphasized that all of these expanded scope items should have a companion piece requiring proper training certification and assurance of competence.

Dr. Krauss noted that he found it interesting that the bill adds "tramadol" to the list of therapeutic pharmaceutical agents that optometrists may use and prescribe, including for rational off-label purposes. He noted that he saw no reason for an optometrist to prescribe tramadol, as pain of such severity that would require more than a topical or over-the-counter remedy should be managed by a physician.

Dr. Krauss stated the bill also deleted the requirement that an optometrist must maintain a written record in the patient's file of information provided to a patient's ophthalmologist, the ophthalmologist's

response, and any other relevant information in cases where an optometrist must consult with an ophthalmologist. It also deleted the requirement that this information must be provided upon request of the ophthalmologist and with the consent of the patient. He noted that he was to understand that medical record keeping generally required maintenance of a record of to whom and when information is sent or shared, as well as information received from other practitioners, so why would optometrists be exempted from standard requirements of medical record keeping.

Dr. Krauss continued stating the bill authorized an optometrist to collect blood by skin puncture, authorized an optometrist to do skin testing to diagnose ocular allergies, and authorized an optometrist to use a needle to remove foreign bodies from the cornea. He stated it appeared that optometrists are exploring all possible avenues to get access to "the needle," and it would appear that the long term goal is to accustom the legislature and the public to needle-wielding optometrists, so that the leap to administration of diagnostic or therapeutic intravenous agents will "reasonably" be requested. Furthermore, he asked why optometrists needed to do blood tests. He would send a patient to the lab with a request for blood testing or request the patient's general practitioner to arrange the tests for allergy testing. Ophthalmologists do not do that and the patient should be referred to an allergist. He added that most cases of ocular allergy require little more than an eye drop for treatment. He stated that the requests are absurd and do not serve a reasonable public need. There is no demonstrated need for, and therefore public risk without benefit for the additional bill requirements to authorize an optometrist, as specified, to use any topical or oral therapeutic pharmaceutical agent which is not a controlled substance, or noninvasive medical device, or technology. He added, obviously, extensive education, training, supervision and certification would be indicated in order to open the entire pharmacopeia to optometry.

Dr. Krauss added the extreme hazard in allowing optometrists to provide immunizations is that it may create a public perception that if one is under optometric care there is no need for medical care. He noted the Board promotes a health care system that protects and serves consumers, which encourages each individual to have a primary care physician and to see their physician on a regular basis, including for discussions regarding indications, risks and benefits of immunization. He noted who administers the immunization is secondary, but if optometrists are regularly offering and providing immunizations, patients are more likely to be neglectful in their health care, in general. He added he felt his points were important since CMA and the State Society of Ophthalmology were not raising these points and he felt the Board should be concerned for consumer protection.

Dr. Lewis agreed with Dr. Krauss on all of his comments, but the two points in the bill that he stated stood out to him the most were the prescribing of tramadol and the immunization part of the bill. He felt that optometrists' office would become an immunization center, which was a huge concern for him.

Dr. Lewis emphasized his oppose, unless amended position, but added the amendments would have to be extensive and he would want to see the amended bill again before he would want to support the bill. He requested the bill be brought back to the Board for discussion.

Ms. Simoes noted that since the next Board meeting is not until October, the amended bill could not be brought back to the Board.

Ms. Kirchmeyer stated the Board had two options for this request, Members could delegate a Board Member to review any amendments, if they occur, to be sure they align with the Board's concerns just discussed, or hold an Executive Committee meeting before the next Board meeting is scheduled.

Dr. Bholat noted she found it interesting that VSP was supporting this bill since VSP is the Medi-Cal provider for patients that are in underserved areas. She stated she is not supporting that VSP provide immunizations, but she would like to understand the reasons behind the bill. She stated she feels there might be another piece to the part of the bill that has optometrists providing vaccines.

Dr. Krauss stated that his concern is that this bill has a scope expansion that is no longer opposed by CMA and the State Society of Ophthalmology in a setting where Senator Hernandez has publicly stated throughout his legislative career that he will see that the optometrists scope be expanded, implies to him that no matter how vocal the Board is in expressing concerns about consumer protection, the bill is going to pass and be signed.

Dr. Krauss stated that if the Board is going to seek any amendments that the Board emphasize the training, supervision, certification and competency, rather than argue over specific issues.

Ms. Kirchmeyer suggested the Board delegate Dr. Krauss to work with Ms. Simoes and the author's office on the recommended amendments of the bill.

Dr. GnanaDev agreed and asked for a second volunteer to work with Dr. Krauss and Ms. Simoes on this issue. Dr. Hawkins volunteered to be the additional person needed.

Dr. Levine stated she would very much like to see the Tramadol prescription item be mentioned specifically when discussing possible amendments with the author's office.

Motion carried unanimously (13-0).

Ms. Simoes moved to **AB 1560 (Friedman)** stating that existing law limited the number of nurse practitioners (NP), physician assistants (PA), and certified nurse midwives (CNM) that may be supervised by a physician, to four for each category of mid-level practitioner. She pointed out this would mean a physician could supervise four NPs, four PAs and four CNMs for a total of 12 mid-level practitioners. She noted that originally the bill would have removed the cap entirely; however, the bill had been amended to allow a physician to supervise 12 mid-level practitioners total, but does not limit the type of mid-level practitioner, so a physician could supervise 12 NPs, 12 PAs, or 12 CNMs, instead of four of each type of mid-level practitioner. Increasing the supervision ratio from 4 to 12 for the individual categories of mid-level practitioners may result in insufficient supervision. The current limit for physician supervision for each mid-level practitioner category is 4, with a total limit of 12. Ms. Simoes stated these mid-level practitioners are well qualified to provide medical care when practicing under physician supervision. The standardized procedures and physician supervision, collaboration, and consultation are in existing law to ensure that the patient care provided includes physician involvement and oversight, as physicians should be participating in the patient's care in order to ensure consumer protection. She noted Board staff suggested raising the limit from four to six for each category of mid-level practitioner seems reasonable. The total limit of supervision would still be 12 as it is currently, but allowing a physician to supervise two more PAs, NPs, or CNMs would not negatively impact patient care. Ms. Simoes stated Board staff suggested the Board oppose this bill unless it is amended to cap the number of PAs, NPs, and CNMs a physician can supervise at 6 for each category of mid-level practitioner, and keep the total cap at 12 mid-level practitioners total that a physician can supervise.

Dr. Lewis made a motion for the Board to take an oppose unless amended position on AB 1560, with the amendment being to put a cap on the number of mid-level practitioners per category to six; s/Dr. Bholat.

Dr. Bholat stated the cap is very important and the Center for Medicare and Medicaid Services has set the cap for teaching positions at one attending physician to four trainees with nothing specified as far as level of trainees. She noted that a concern of hers is that she has witnessed a newly licensed physician being responsible for a number of trainees with a patient level of about 2000. She stated that she is concerned for physicians in how that would impact contractual agreements as they try to do good work in places that have limited resources.

Dr. Hawkins noted that he agreed with Dr. Bholat's concerns and the need for practitioners in underserved areas, and that twelve seemed like a lot of mid-levels to have to supervise. He added with the training for PAs being extended, it puts a lot more responsibility on the supervisor, perhaps too much. He stated that twelve is a lot for one person to supervise.

Ms. Simoes stated that the actual number of trainees under one supervisor will not change with this bill, the only change would be removing amount per the category of practitioner. She stated that Board staff was trying to look at the amendment and decide what a reasonable cap would be, per the Board's last position taken on the bill. Ms. Simoes asked the Members if they think increasing the cap of each practitioner by two is reasonable.

Dr. Lewis believed that the degree of required supervision by law should be looked at since the practitioner has different levels of supervision depending on the category of the trainee. He would recommend less number of trainees at the PA level and a bit more on the NP, due to the type of supervision required for each.

Dr. Hawkins stated that supervising mid-levels just out of training would be more involved than supervising mid-levels who have been in practice.

Ms. Simoes stated there is not a maximum cap of 12, it is just four per category and since there are only three categories, it makes it 12 total.

Dr. Levine asked if there is any evidence that a physician is supervising 12 individuals anywhere in the state.

Ms. Simoes stated that no one captures this data at this time. She added that staff was recommending six because with access to care issues, staff thought that increasing the number by two would not provide a negative impact. However, Ms. Simoes stated that she is looking for other recommendations by the Board.

Ms. Kirchmeyer stated the Members may choose to decide to change the cap to five, instead of six, as recommended by staff.

Dr. Levine made a request to amend the prior motion to change the cap from six to five.

Dr. Lewis accepted the amendment made to his motion by Dr. Levine to take an oppose unless amended position, with the amendment of changing the current six per category to five per category, with a cap of 12 mid-level practitioners total; s/Dr. Hawkins. Motion carried unanimously (13-0).

Ms. Simoes noted **SB 512 (Hernandez)** would require a health care practitioner that performs a stem cell therapy that is not approved by the FDA to communicate this to his or her patients on a notice, which is specified in the bill, displayed in his or her office. She added the bill would allow the licensing board having jurisdiction of the health care practitioner, including the Board, to cite and fine the health care practitioner, not to exceed $1,000 per violation if the notice is not displayed. The bill would specify that no citation shall be issued and no fine shall be assessed upon the first complaint against a health care practitioner for violation of this section of law. Ms. Simoes stated the bill would allow a citation and fine to be assessed upon a second or subsequent violation, not to exceed $1,000 and that the bill would also require the Board to include data in its Annual Report, beginning with the 2018-19 Annual Report, on the number of complaints received and any disciplinary actions taken against its licensees who provide stem cell therapies. She stated the bill would provide notification and information to patients seeking stem cell therapy that has not been approved by the FDA, and that this information would encourage patients to consult their primary care physician, which may help to protect consumers. Ms. Simoes added that the data reporting requirement is something the Board could easily include in its Annual Report. Board staff suggested the Board take a neutral position on the bill.

Dr. Krauss noted that he would like to see the Board take a support position due to the fact that stem cell and regenerative therapies have taken the world by storm. He added he felt there are a number of facilities that are not quite ready for "prime time." He noted that he had read an article that was published in the New England Journal of Medicine that described an unfortunate case where three patients had improper eye treatments at a stem cell therapy center in Florida and all three patients are now permanently blind. Dr. Krauss stated he felt that consumers were at great risk until stem cell research and studies can be established as appropriate and proven. He stated he would like the Board to support the bill but be able to speak with the author to add regenerative therapy to the bill.

Mr. Warmoth asked Ms. Simoes why staff did not recommend support instead of neutral.

Ms. Simoes noted that she had been working very closely with the author's staff on the bill providing technical assistance. Ms. Simoes stated that CMA expressed some concerns, which the Board staff agreed to, so she was recommending a neutral position so that changes could be made if needed.

Dr. Hawkins stated he would recommend the neutral or an oppose position, and stated his issue is that even with the disclaimer stating the therapy had not been approved by the FDA and could be checked before agreeing to the procedure is not enough for him. He stated that many physicians do not know much about the new therapies and while they may tell the patient to check into the therapy, patients are inclined to do the procedure versus conventional therapy and then have complications. Therefore, he has significant concerns about taking a neutral position and is much more inclined to take an oppose position.

Dr. Levine added that a support position on the bill may be understood as the Board saying this practice is acceptable as long as you warn people in some way about this untested and potentially dangerous therapy.

Ms. Kirchmeyer stated that was one of the issues that she and Ms. Simoes had discussed when talking about the recommended position on the bill. They thought at least they would be getting a notice in the physician's office and that it would hopefully bring it to the patients' attention that this is something they should investigate and discuss with their primary care physician before having the therapy done.

Dr. Krauss suggested a support if amended position, with a reasonable amendment that would include all of the concerns with an obligation to post or inform that most stem cell research and regenerative therapies have not been proven to be safe or efficacious.

Dr. GnanaDev stated that the bill in its current form needs a lot of work, so he wondered if staying neutral was the best option at this point.

Dr. Hawkins made a motion to oppose SB 512; s/Judge Feinstein.

Mr. Warmoth stated he had originally asked why staff was not recommending a support position and after discussion amongst the Members, he thinks that taking an oppose position would kind of have the same outcome, which is it would look like the Board is saying there is no reason to warn patients because they support the therapy, so he felt a neutral position would be the best position to take.

Dr. Krauss also spoke against an oppose position and suggested a neutral position also. He stated the author had touched on a very important issue that Members are concerned with in terms of public safety and felt that an outright oppose position may prevent Members and staff from working with the author on perhaps withdrawing the bill and working on a better bill for the next year.

Ms. Simoes stated that having the Board take a neutral position gives her a better opportunity to work with the author, rather than the Board taking an oppose position, which would close the door entirely on options and discussions.

Ms. Sanchez, CMA, stated CMA does not have an official position on this bill but currently have a watch position on the bill.

Ms. Andrist asked why the Board seems to care what position CMA takes on a bill since their intent is to protect physicians and the Board is an entity meant to protect patients. He added that when legislation comes up to protect patients, CMA is almost always against it. He noted that the CMA has 43,000 members, whereas the Board has over 100,000 doctors along with the other specialties that fall under the other boards, so he thought it was clear that the majority of the physicians in the state would not even participate with the CMA, so again, he wondered why the CMA had such a big say in things, he felt it was because of money.

The motion for the oppose position on SB 512 failed (1-11 – Hawkins, Lawson absent for vote).

Dr. Krauss made a motion for the Board to take a neutral position on SB 512; s/Dr. Lewis. Motion carried (11-1 – Hawkins, Lawson absent for vote).

Dr. Levine suggested that perhaps the author of SB 512 would be interested in holding a hearing on the use of off-label stem cell therapies in practice in California just to shed some light on what is happening with the science and what is behind various approaches.

Ms. Simoes stated she would bring that up with the author's staff person.

Ms. Simoes moved to **SB 715 (Newman)** and stated she just wanted to bring the bill to the Members' attention, however, the Board did not need to take a position. The bill would specifically include the failure to attend board meetings to the reasons that the Governor can use to remove a member from a board. She stated she did not think any further discussion was needed on this unless any Members had questions.

Ms. Simoes stated that **SB 796 (Hill)** contained other provisions, including extending the sunset date for the Naturopathic Medicine Committee and the Respiratory Care Board; however, she stated she would only be discussing the provision related to the Uniform Standards. She explained the bill would require the Department of Consumer Affair's (DCA) Substance Abuse Coordination Committee (SACC) to review the existing criteria for Uniform Standard 4, which is regarding substance testing. Specifically, Uniform Standard 4 governs all aspects of required testing, including, but not limited to, frequency of testing, the randomness of testing, method of notice to the licensee, number of hours between the provision of notice and the test, standards for specimen collectors, procedures used by specimen collectors, the permissible locations of testing, whether the collection process must be observed by the collector, backup testing requirements when the licensee is on vacation or otherwise unavailable for local testing, requirements for the laboratory that analyzes the specimens, and the required maximum timeframe from the test to receipt of the result of the test. Ms. Simoes added the bill would require the SACC to review the criteria and make findings to determine whether the existing criteria for Uniform Standard 4 should be updated to reflect recent developments in testing research and technology. She stated the bill would require the SACC to consider information from, but not limited to, the American Society of Addiction Medicine, and other sources of best practice. Ms. Simoes added the Board already adopted the Uniform Standards in 2015, however, with passage of SB 1177 from 2016, the Board is now working to develop the Board's Physician Health and Wellness Program (PHWP). The PHWP is required to meet all the Uniform Standards. She noted that Board staff agreed that Uniform Standard 4 should be reviewed to reflect recent developments in testing research and technology and suggested that the Board support this provision in the bill**.**

Dr. GnanaDev stated this is an important provision because currently there are laws conflicting with early intervention. He confirmed that staff is only asking for a support position on the one provision of the bill for review of Uniform Standard 4, and nothing else about the bill.

Ms. Simoes stated that was correct.

Dr. Lewis made a motion to support the provision of SB 796 regarding Uniform Standard 4; s/Dr. Bholat. Motion carried unanimously (12-0, Lawson absent for vote).

Ms. Simoes noted that **SB 798 (Hill)** was the Board's sunset bill. She began by providing an update on the status of the bill. She stated it was heard in Assembly Business and Professions (B&P) Committee on July 11, 2017. In the committee analysis and at the hearing, the committee recommended some amendments, including: 1) striking language contained in the bill regarding psychotherapist-patient records; 2) amending the section on probation disclosures to impose the requirement on licensees who have been found to have committed one of the serious offenses pursuant to a settlement admission or an ALJ finding and remove disclosure requirements for licensees with prior disciplinary histories and for

additional offenses as determined by the Board; and 3) amending the section regarding expert witness report exchanges to remove the requirement to provide the report 90 days from the filing of an accusation. At the committee hearing, Senator Hill agreed to amendments 1 and 3, but instead of making the probation notification amendments in 2, he wanted to remove probation notification from the bill entirely. Ms. Simoes noted that SB 798 remained in the Assembly B&P Committee, and staff had talked to Senate Business, Professions, and Economic Development (BPED) Committee staff and Senator Hill's staff on the next steps for the Board's sunset bill. She stated that it was possible that the language will go into another bill, so when the Board takes a position, it needed to be on the language, not on the actual bill.

Ms. Simoes noted that at the last Board meeting, the Board had taken a support if amended position on the bill and requested amendments to the probation notification language. She stated the Board's requested language was currently contained in SB 798. She added the Board had also requested amendments to keep the vertical enforcement (VE) model for sexual abuse or misconduct cases, mental or physical illness cases, complaints against licensees with a prior disciplinary history who are currently on probation or have an accusation pending, and for any other complaints that the Board decides would benefit from the VE model. Ms. Simoes stated there is now intent language in the bill regarding VE and this issue will be addressed after input from stakeholders. She added that there is a possibility that if the Board's requested language does end up going into the bill, the broad provision, which allows the Board to put any case it deems warranted into the VE model may be an issue for some interested parties. She stated she needed to get the Board's input on removing this language. She noted that lastly, the Board requested that this bill be amended to include language to transfer the Board's investigators from the Department of Consumer Affairs, Health Quality Investigation Unit, back to the Board; however, this will likely not happen this year. Ms. Simoes stated that many of the Board's suggested amendments have been made or will be addressed, and Board staff suggested that the Board support the language in SB 798 in its current form, also to support the bill if the Assembly B&P Committee recommended amendments are made, if the probation notification language is removed in its entirety, or if the Board's VE language is taken without the language she had discussed previously. She added that the Board should also support any bill that includes the sunset date extension and other changes requested by the Board in its sunset report.

Dr. Lewis made a motion to support SB 798 in any version as identified by Ms. Simoes; s/Dr. Krauss.

Ms. Monseratt-Ramos stated her concerns in regard to the patient notification being removed in its entirety. She noted that over 3,600 consumers sent an email to the Assembly B&P Committee and legislators asking them to support consumers and the patient notification of physicians on probation for the most dangerous and serious cases. She stated that Consumer's Union is asking the Board to explicitly oppose CMA's amendments and to support Board staff's recommendations that the Board voted on at the last Board meeting, which was to support the legislation if the Board's amendment stayed in the bill. She added that the Board needs to show consumers that they would stand up for them.

Ms. Hollingsworth discussed the amendment to SB 798 that required only certain physicians on probation to notify their patients. She stated that the bill says the amendments would affect criminal convictions only involving the practice of medicine but she asked what about the other so-called dangerous physicians who have harmed people outside of their office or hospital. She stated consumers should know about them as well. She asked the Board to please not water down the probation

amendment as patients deserve to know if their physician is on probation, so they can decide for themselves whether to continue under the physician's care.

Ms. Fellmeth stated that the Senate BPED Committee had scheduled a stakeholders' meeting and she wanted to express her gratitude for that opportunity to discuss the VE issue in further detail, and also for the Board's decision that the outright abolition of VE is not the appropriate resolution. She noted that Board staff presented specific cases that they believe would benefit from the VE processes – sexual abuse or misconduct cases, mental or physical illness cases, complaints against a licensee with a prior disciplinary history who are currently on probation or have an accusation pending, and a broad category of any other case the Board decides would benefit from VE. She added that staff had not presented any data to support the inclusion of these type of cases and the exclusion of other types of cases. She noted that last time staff did present data supporting their choice of inclusion and exclusion of certain types of cases, that data and those choices were rejected by the Board.

Ms. Kirchmeyer stated if complaints are received that are urgent complaints and should be worked in VE model due to consumer protection, staff would request it be processed through the VE model.

Mr. Andrist stated it is offensive that the Board thinks that they do such a good job protecting patients that it deserves to be extended for another four years. He stated part of the problem is that the Board just accepts the status quo, even though patients are being harmed and legitimate complaints are being tossed out. He stated the Board's job is to protect consumers and the Board should be calling for it to be restructured completely and include the patient notification provision. Mr. Andrist added that supporting SB 798 is supporting mediocrity and failure. He stated they will continue to call for the sunsetting of the Board and even if that does not happen, they will continue to point out to the public how the Board is failing drastically in protecting citizens.

Dr. Krauss stated that most Members have had the privilege of having been on the Board for years, but many who attend or watch a webcast of the meetings do not have the full history and he felt it important to remind everyone that every Board Member holds first and foremost their obligation for consumer protection. He noted that Members believe in discipline and rehabilitation of physicians, and the Board does protect consumers. He added the Board's principal concern was not protecting physicians, but if physicians who are disciplined and/or on probation have an obligation to report their status to every patient coming in for a visit or calling for an appointment, the Board would be faced with a huge overflow of physicians not accepting discipline and the Board's work may be hindered due to the timeliness of processing cases. He added that it is not in the best interest to the people of California to have the Board not be able to assess every consumer complaint, not be able to hear every physician's case or appropriately discipline or revoke a physician license. So, he wanted to reiterate that the Board's concern is consumer protection, not physician protection.

Dr. Levine stated that should this section be pulled out of the bill, Senator Hill had stated that he would find another vehicle for patient notification, and asked if staff knows if that is the case or not.

Ms. Kirchmeyer stated that this subject is very important to Senator Hill, but that currently, she is not certain if that is something he has definite plans to do or not.

Motion carried (12-0, Lawson absent for vote).

Ms. Simoes stated the regulatory action status matrix is in the packet under 7B and asked if the Members had any questions. No questions were presented.

Agenda Item 8 Presentation and Possible Action on the Medical University of the Americas' Application for Medical School Recognition

Ms. Kirchmeyer introduced the Board's medical consultant, Dr. Servis. He is the Vice Dean for Medical Education at UC Davis School of Medicine with responsibility for all undergraduate, graduate and continuing medical education. He is also a professor of clinical psychiatry and Vice Chair for education in the Department of Psychiatry and behavioral sciences. She added that she, Ms. Webb, and Dr. Lewis had the privilege of joining Dr. Servis on the site visit to Nevis to review the Medical University of the Americas (MUA). She stated a slide show of photos from the visit would be rotating on the screen throughout the discussion.

Dr. Servis stated that his full report could be found in the Board packets, and he would just be summarizing it and would then take questions from Members. He began by thanking the Board for giving him the privilege to visit this school and also for the great team that he had join him on this trip. He stated that during the thorough review of the school, the students, the faculty and leadership, and its facilities, they asked some very tough questions of MUA and in his report is the process by which the school was reviewed. Dr. Servis noted that the school was very collaborative with the team and did not interfere in their review process as they met with faculty independent from the school's administration and leadership. They also met with students without faculty or school administration present and felt that the data that was obtained from their questions was very reliable. He noted that while they were there, they found additional things they wanted to see and additional people they wanted to meet with and the school was very cooperative in providing those opportunities to do so. Dr. Servis added that they were even able to witness classroom work in action and have some validity for some things that they had heard about.

Dr. Servis stated they felt very good about the information that they obtained and the cooperation they received from the school. He noted that after review of all of the information gathered, the team felt the school was in compliance with the B&P Code and the California Code of Regulations for recognition beginning with students who matriculated May 1, 2015, which was when the school enacted a new curriculum. He noted that when he first reviewed the school's application in 2014, he had found five areas of concern, which were detailed in his full report, but the school addressed those areas and the new curriculum had robustly addressed the concerns beginning in 2015.

Dr. Servis stated that on the recent site visit, the team was able to witness the effect of the curriculum changes. He added that in addition to meeting those five areas of compliance, they found several other strengths at the school that he felt were noteworthy. Dr. Servis noted that those items were listed in his full report, but briefly went over them.

He stated the first notable item was the excellent leadership from the top, along with adequate resources that delivered every element of the medical education program. He noted there was wonderful curricular oversight from the faculty-led Curriculum Committee with very comprehensive and robust course review to ensure quality improvement in the curriculum. The

team was impressed with the quality of the teaching faculty in Nevis, which was largely basic science faculty, but some clinical faculty who were teaching clinical skills. He pointed out that these are individuals who live in Nevis year-round and they saw wonderful relationships between the faculty, the school leadership, and the students themselves.

Dr. Servis stated the team was impressed with the facilities and felt they were more than adequate. The classroom facilities allowed for active small group learning, which had been an area of concern in the 2014 review. This concern has been acted on and clearly implemented. The school also had wonderful laboratory facilities that have a student cadaver ratio in the anatomy lab of four students to one cadaver, which is as good a ratio as in U.S. medical schools.

Dr. Servis stated the student support services and facilities on the Nevis campus were very strong. They provide housing assistance to their students, as well as on boarding efforts for students coming to the island. They also provide confidential counseling and a strong firewall between that counseling service and the school leadership and faculty.

He noted MUA offers a great literature review and analysis course that more than made up for the lack of active laboratory and biomedical research available there, in terms of exposing students to the nature of research, the importance of lifelong learning, and the ability for critical reading of literature. Dr. Servis stated they have a good road to residency program that helps the students' transition from the pre-clinical classroom into the clinical rotations and then into residency, which is led by several Associate Deans. He felt the faculty there is supported and able to attend professional meetings in their area of specialty. He added that Dr. Green provides wonderful faculty development, particularly around the kinds of innovative pedagogy that he liked to see for active learning and self-directed learning from students.

Dr. Servis noted MUA uses the National Board of Medical Examiner assessments throughout the curriculum both pre-clinical and clinical, and as a result, the students are dong well on the United States Medical Licensure Examination (USMLE). Dr. Servis added that most of all, in addition to all of those strengths, they were impressed with the students themselves. The students are clearly satisfied with the education they are receiving, the support they are getting and seem to be doing well on the trajectory of becoming physicians. He stated the team felt the proof was in the many students they met over the course of their stay.

Dr. Servis stated that though MUA met the standards, the team did find a few things they felt that could be improved upon that they discussed in their exit interview, and are detailed in his full report. He mentioned that they could use a video interview in their admissions process, which is currently done entirely by phone. They felt the prohibition against homosexual behavior in Nevis was something the students should be made aware of before coming to the school. He also felt the background check for students before entering the school could be improved. He stated the faculty could be empowered to a greater extent throughout the school, such as being a part of the Admissions Committee and perhaps there is a role for students in the admissions process that could be helpful to the school.

Dr. Servis stated they felt the basic science chairs must be involved in the interviews of faculty that may be appointed to their department, as that did not seem to be a consistent occurrence. He noted that the team felt the clinical chairs that oversee the clinical rotations could be more

meaningfully involved with the faculty appointments and promotions of the clinical faculty. They also felt that the faculty roles in governance throughout the institution could be enhanced. He stated the team was quite impressed with the local hospital in Nevis as the students had highly variable experiences, and some of them had wonderful clinical experiences. However, one area of concern found was that students did not reliably get experience in doing rectal or pelvic examinations prior to clinical rotations, and he felt there might be an opportunity to add that into the curriculum.

Dr. Servis stated that he had read the recently received response letter and was impressed with the robust response to each of the areas that had been highlighted in the exit interview and noted they had clearly addressed each of the concerns and in some cases, exceeded the response that had been envisioned.

Dr. Lewis stated that he agreed with the things that Dr. Servis had put in his report and what had solidified it in his mind regarding the competency and education the students receive was when the team went to Harbor Hospital. The team asked questions around the acceptance as a foreign medical student and were told that the students were not treated any differently than their U.S. counterparts, and felt that in some instances, they were more well respected for their clinical knowledge than the students from the U.S., and he felt that was very impressive.

Ms. Webb noted that reflecting back, it was a great experience and she appreciated the forthrightness that they had during the long days, as they paid off and they got the information that was needed to make a recommendation of support.

Dr. Lewis made a motion to deem the MUA to be in substantial compliance with the requirements of B&P Code sections 2089 and 2089.5 and California Code of Regulations Title 16, section 1314.1 beginning with students who matriculated after May 1, 2015; s/Dr. Hawkins.

Dr. Bholat asked the number of students the MUA has per year, who they are, where they come from, the percent of international students, and the patient to physician trainee ratio.

Mr. Rodgers noted that MUA has approximately one hundred forty five to one hundred seventy five students matriculate per year, and the patient to physician ratio is seven or eight to one. He added that the percentage of international students and U.S. students are at 50% each.

Dr. Bholat asked the ratio when students are in clinical rotation.

Mr. Rodgers stated it varies by site, and it would be anywhere from individual attention to groups of up to six.

Dr. Bholat asked about their costs per year and if federal funding is available to students.

Mr. Rodgers noted that the U.S. students are able to get federal funding as they are participating in the Title 4 Program.

Dr. Bholat noted that in the report from 2014, there had been a large failure rate coming out of the April 2014 class, so she asked how the Board knows about the improved failure rates.

Dr. Servis responded stating the team had asked for those statistics during their visit and found that their pass rate is at or above the national mean for U.S. medical schools on the USMLE exams.

Dr. Bholat asked how many of their students obtain residencies.

Mr. Rodgers stated the students that obtain residencies is approximately 88%-89%, and that they do not abandon any of their students as it is a life long commitment to their students that they continue to work with them and are quite successful with subsequent efforts.

Dr. Bholat then asked where most of their students end up and in what specialties.

Mr. Donnellan stated he does not have the specific statistics, but it is predominantly family medicine, followed by internal medicine. He added it is a broad array of where the students end up and they also have residency in Canada as well.

Mr. Warmoth stated that he intends to abstain on this issue and it is not based on the report or the school itself, but he cannot support recognizing a school in a country that discriminates against a certain sexual orientation.

Judge Feinstein noted that she had the same concern as Mr. Warmoth. She noted she does not know how the school came to be located where it is, but she is concerned that there are students who would be unable or unlikely to select the school because of the laws in the country in which it is located.

Mr. Rodgers stated that he did research on this issue since this law had been brought to his attention. This law was a surprise to him, as he knows of several gay men and women who reside on the island and have wonderful lives there. He found that these laws date back to years ago, and quite frankly, the entire Caribbean still has these laws on the books. In the Caribbean council meetings, amongst all the countries, there has been discussion of getting rid of these laws and he noted that to his knowledge, these laws are not utilized in any fashion in any of the jurisdictions in the Caribbean. He stated he is not proud of it and certainly does not support it, and they intend to participate in the efforts to change those laws, because they stand for diversity and they have representatives at the school from every religion, sexual preference, and they are very proud of those diversities. He added that he understands and respects the views and the seriousness of this nature.

Judge Feinstein asked of the students at the school who are lesbian, gay, transgender, is faculty aware of them experiencing any form of harassment or discrimination and is there a process in place should that occur.

Mr. Rodgers stated that they are not aware of anyone experiencing harassment and that the school would take any allegation regarding this very seriously.
Motion carried (8-0-4 – Bholat, Feinstein, Sutton-Wills, and Warmoth abstained, Lawson absent for vote).

Agenda Item 9 Update, Discussion and Possible Action on Recommendations from the Enforcement Committee

Dr. Yip stated the Enforcement Committee had met earlier that day. He stated Ms. Delp provided the Committee an update on the Board's Enforcement Program. She stated that a meeting had been held on July 5, 2017, with himself, staff from the Attorney General's Office, staff from the Health Quality Investigation Unit (HQIU), and Board staff. He stated that the agenda for this meeting included an update regarding the changes to the B&P Code section 805 peer review reporting investigation process, a discussion about monitoring VE investigations and post accusation pleadings, a dialogue about the potential changes to the VE process and how those changes would be implemented, the role of a probation inspector, a discussion about the changes HQIU has made to resolve its vacancy rates and a review of enforcement statistics. He stated Ms. Delp also notified the Committee that the Board's Probation Unit staff and staff from the Board's vendor who provides biological fluid testing provided a presentation to staff from the Attorney General's Office. The presentation included an overview of probation protocols and policies concerning testing, the services the vendor provides, and an understanding of the different types of tests that are performed.

Dr. Yip stated Ms. Delp also provided an update on the Expert Reviewer Program training and recruitment plan. Ms. Delp told the Committee that 35 new experts had joined the program and that two expert reviewer training sessions had been scheduled for the fall, one on September 28, 2017, in Sacramento, and one on November 2, 2017, in Sylmar. He added that these expert trainings were going to be held on a weekday as opposed to a weekend to determine if it increases the number of attendees. He stated that Ms. Delp informed the Committee that staff are exploring the possibility of attending three recruitment events in the Los Angeles area in September and October. Finally, Ms. Delp informed the Committee that the Board's Information Systems Branch had developed a new expert reviewer database that will assist in better monitoring and management of the Expert Reviewer Program.

Dr. Yip added that the Committee then heard a presentation from Ms. Henderson on the Board's Complaint Investigation Office. He added that this was the Board's non-sworn investigative unit that was established July 2014. He stated that this unit demonstrates outstanding efforts to investigate the less complex complaints submitted to the Board. He stated Ms. Henderson explained the types of complaints this unit investigates and the processes they follow.

Dr. Yip stated Ms. Kirchmeyer provided an update on a project to identify physicians who may be inappropriately prescribing, based upon information received from CDPH on deaths related to opioids. Ms. Kirchmeyer stated that through an interagency agreement with CDPH, the Board received 2,692 death certificates that were identified as overdose deaths related to opioids. From this volume, 2,256 were reviewed by Board medical experts to determine if there may be a physician inappropriately prescribing. Based upon the experts' reviews, the Board identified 522 cases where it was believed there may be inappropriate prescribing and needed further investigation. Dr. Yip noted that this proactive approach had been valuable and the Board would continue to receive data from CDPH.

Dr. Yip stated that Ms. Kirchmeyer also gave a presentation on enforcement statistics that could be found in the Board packets under the Enforcement Committee tab, agenda item 8. Ms. Kirchmeyer stated the report was drafted due to a Member's request from a previous Board meeting on complaint demographics. Dr. Yip commended the efforts of staff for putting together the data.

Agenda item 10 Vertical Enforcement Program Update from Health Quality Enforcement Section

Ms. Castro stated she wanted to thank Dr. Yip for setting up a meeting with the Health Quality Enforcement Section, the Health Quality Investigation Unit, and Board staff to discuss the Board's enforcement processes. She also thanked him for establishing a regular meeting every six-months to review processes.

Ms. Castro introduced Renuka George, Deputy Attorney General, who works within the Office of Legislative Affairs at DOJ and is assigned to monitor the Board's sunset bill, which includes changes to VE.

Judge Feinstein stated she sensed that the DAG memos that Members are receiving are providing less information on the stipulation and the case being reviewed. She added that another concern is that often in mitigating circumstances it lists that there is an issue with the Board's expert reviewers' opinion versus that of a contrary expert. She asked whether or not steps are taken to research the other sides' expert opinion and if that is used as a reason to recommend lesser discipline.

Ms. Castro asked if Judge Feinstein was requesting more details to be included in the stipulations recommendations letters.

Judge Feinstein stated that some contain less information than others and she looks for certain types of information that should exist in every case,.

Ms. Castro stated if the memos are not providing the information needed by the Members, she will work with Ms. Kirchmeyer to identify which office is providing those memos and which DAG is not providing the needed information in those memos.

Ms. Castro added that in regard to the contrary experts, she felt that was one of the things that SB 798 was trying to address with respect to expert opinions. She stated that they do not get defense expert opinions on a timely basis and they do not provide the Board with enough information. She noted that there is no requirement for them to be provided in a written format. She stated that if the change in the law occurs, the Deputy Attorneys General can then pursue the facts as they are well before a hearing takes place. She added that their office does research the experts' opinions as best as they can through discovery, but that process is a curtailed process under the Administrative Procedures Act (APA). Ms. Castro stated she would not consider it mitigation, but more of a reality of the battle of the experts. Members should know in a stipulation recommendation letter how the attorney sees it from their perspective. She added that the Board is empowered to disagree and when it does, they go back and go to hearing. She noted that they

always welcome an early disclosure of expert opinions because it helps the public and it helps the efficient presentation of evidence.

Judge Feinstein asked if a written report is received from experts.

Ms. Castro stated yes, and that occurs within the context of the VE model in the investigation and is a very crucial part of the process that allows them to make a legal recommendation to their client to say this case needs to be closed or needs to be transmitted for prosecution. In addition, the attorney could recommend other action, such as a pre-accusation public letter of reprimand or citation.

Judge Feinstein asked if when a written opinion is received from a respondent's expert if the respondent's expert is free to come in and testify.

Ms. Castro noted that in B&P Code section 2334 both sides must disclose the basis of the opinion and the qualifications of the expert 30 days before a hearing. She added they work with the Office of Administrative Hearings to ensure that is a useful disclosure and that it means something. She stated that the current law could be improved, which is why they were glad to see the proposed changes in SB 798.

Judge Feinstein asked if there was any inclination to seek a statutory change that if an expert was going to testify in an administrative hearing that a report is prepared and a mutual reciprocal discovery take place since that is how other courts work.

Ms. George stated she is aware that this issue has been discussed regularly and to the extent that there can be continued discussion, they welcome those discussions and input from the Board, but as Ms. Simoes pointed out, SB 798 is in a very unique situation and it would be hard to say what exactly would happen ultimately.

Ms. Kirchmeyer stated that SB 798 amends the law to require a complete report so if the bill did go through, what Judge Feinstein is asking for would happen. She added that discussion on the matter of the timing of the report is still occurring.

Mr. Andrist congratulated the Attorney General's Office VE team for continuing to plug along with all of the hurdles that the Board and the Legislature has put in their way. He added that this is another way that the Board fails. He noted that he corrected Dr. Krauss at a previous meeting in regard to the Consumer Reports' article rating the Board the highest. He added that the report was comparative; it compared all the medical boards against each other, which is like comparing all of the mass murderers in the U.S. He stated that one is always going to come out on top, but he will still be a mass murderer. Mr. Andrist stated the Board had been under fire for decades about not doing its job properly, not being able to process enough complaints in an acceptable amount of time. He noted that his complaint in the death of his disabled sister was closed, even though the Board had not received a copy of the certified medical records and had not received a copy of the private autopsy report. He stated that when he complained, staff re-opened his complaint, pretended to care and then just closed it again. He added that requested documents were hidden by staff, and that there is no consumer recourse in making sure the Board does its job properly, as there is no real transparency.

Agenda Item 11 Update from the Attorney General's Office

Ms. Castro stated she had two updates on specific cases being handled by the Attorney General's Office. She noted in the first case the California Supreme Court had just rejected the appeal that was filed by Dr. Cross, which was a case that involved a subpoena enforcement matter. The issue in that case involved psychotropic medications and whether the Board could pierce the veil between psychiatrist and patient.

She stated the second case was related to the Board's winning the case of *Alwyn Carl Lewis v. the Medical Board of California.* Ms. Castro noted that Amy Feinberg from the Office of the Solicitor General and Deputy Attorney General Ed Kim argued the case back in the California Supreme Court in May and on July 17, 2017, the Court unanimously affirmed the judgment of the Court of Appeal and upheld the Board's ability to access records of controlled substance prescriptions in the DOJ's CURES system in all physician disciplinary investigations. She added that the court rejected Dr. Lewis' claim that the Board's access to CURES without a warrant or subpoena supported by good cause violated the patients' right to privacy under the California Constitution. Ms. Castro added that the California Supreme Court applied a general balancing test on how the Board's review of CURES data was justified by the states dual interest in protecting the public from the unlawful use and diversion of a particularly dangerous prescription drugs and narcotic and also by the Board's duty to protect patients from negligent and/or incompetent physicians. It was found that the Board was not required to demonstrate a compelling interest or that they had to use least intrusive means to achieve the Board's objectives.

Ms. Castro added that the most important part of the case is that the Supreme Court stated that requiring the Board to have to provide evidence to a judicial officer and a superior court setting to establish good cause as part of the preliminary investigations could result in protective legal battles that would effectively derail VE investigations and she stated this was a very important precedent for the Board in conducting physician disciplinary investigations.

Ms. Kirchmeyer stated that these two cases were extremely important to the Board and the fact the Board won in both cases is significant. She complimented Ms. Castro's team and stated she could not thank Ms. Feinberg and Mr. Kim enough for the representation on the Lewis case.

Ms. Castro then thanked the Board and stated this fight would help every other board that regulates licensees who prescribe medication.

Judge Feinstein noted that she read about the Board's winning of this case in the FSMB's Newsletter and was pleased to see it, since it is a nationally published newsletter, and stated that this win will not just help California boards, but other state boards as well.

Agenda Item 12 Vertical Enforcement Program Update from Health Quality Investigation Unit

Mr. Chriss stated he was pleased to report that the 7.44% recruitment and retention pay differential for DCA investigators was ratified and took effect July 1, 2017. He added this pay differential was granted to investigators who have been at the top step of their salary range for 12 months or more. He noted that investigators who had not reached the top step yet would be receiving this same differential once they had been at the top of their range for 12 months. Mr. Chriss thanked the Board for supporting this retention pay and though it was a long process, it paid off as of July 1, 2017.

Mr. Chriss noted that the unit's current sworn investigator vacancy rate was 38%, which was 29 vacancies and included two new investigators who started, one on June 26, 2017, in the Rancho Cucamonga field office and the other on July 17, 2017, in the Tustin field office. They also had two more scheduled start dates for new investigators, one being August 2, 2017, for the Valencia Field office and the other, August 21, 2017, for the San Bernardino field office. Mr. Chriss added that all four new hires had their POST certificate and would not need to attend the academy. He noted that at the end of August, their vacancy rate will have gone down to 35%. He added they had one new investigator for the San Dimas office who was attending the basic police academy, with a graduation date of September 15, 2017. He noted that they had 20 investigators in background in addition to the new staff, previously mentioned and they are actively conducting hiring panels for the remaining positions.

Mr. Chriss added that to mitigate the vacancies, they had 15 non-sworn, limited-term, special investigators, state-wide, working the lower priority cases. He stated that case loads were still very high for the sworn investigators, in some offices, in the high forties. To address this issue, they had advertised eight new special investigator limited-term positions, four for Southern California and two for Northern California. The positions would not carry a caseload, but would assist with the tasks for existing cases in order to reduce the workload. He added they are in the process of hiring six retired annuitant special investigators to assist in the unlicensed practice cases not involving patient harm.

Mr. Chriss stated that in June 2017, they had started new case disposition procedures with Board staff to streamline the procedures for processing completed cases. These new procedures would make a huge impact in the field office and staff was very excited about the changes.

He stated their unit had planned a three-week mini academy for newly hired investigators that will take place beginning in October 2017. He noted they were also in the process of making a recruitment video for the unit and would have the video accessible on the website to attract interested parties to their vacant positions.

Dr. Lewis stated that at previous meetings, they would have a slide to show that provided statistics and would like to see that again at future meetings as it helps him to understand the issues better. These statistics should show vacancy rates, positions filled, and any other information necessary to update the Board

Mr. Chriss stated he would be sure to have a presentation of statistics at future meetings.

Agenda Item 13 Update from the Department of Consumer Affairs, which may include Updates pertaining to the Department's Administrative Services, Human Resources, Enforcement, Information Technology, Communications and Outreach, as well as Legislative, Regulatory and Policy Matters

Director Grafilo stated he wanted to introduce himself to the Board as the Director of DCA. He congratulated Dr. GnanaDev for being reappointed as President of the Board and stated he was looking forward to working with the Board in his new role as DCA Director. He added that he was honored that Governor Brown appointed him on March 20, 2017, and stated it was not part of

his plan for 2017, however, the more he learned about the opportunity and how it was aligned with his own personal values and beliefs, he jumped at the opportunity.

Director Grafilo stated that prior to coming to DCA, he had been primarily legislative staff since 2004, first with an Assembly Member in the East Bay, former Majority Leader Alberto Rico, who represented the tri-cities area of Fremont, Newark, and Union City. He then took the opportunity to become Chief of Staff for former Assembly Member Warren Foritani, who represented Gardena, Los Angeles, and parts of Long Beach. He then had the opportunity to work for the California Medical Association. He stated he felt honored to have been chosen to work with the first Filipino American ever elected to the California State Legislature, Assembly Member Bonta.

Director Grafilo noted that in the last four months at DCA, he had done his best to get a good sense of the different issues that may be impacting the 39 different programs under DCA and noted he had recently met with staff from several of the various boards. He stated that specific to the practice of medicine, in terms of approaching vexing issues, problems, and cases, his approach would be one in which he obtains a multitude of perspectives on the issue and ensures the information he gets is data driven, so that he can ensure that he can take a deliberative and robust process toward the decision making process. This approach will give him confidence in the decision.

Director Grafilo then stated that part of his vision for DCA was to partner with the different boards toward fulfilling the mission of the boards, as well as DCA. He then mentioned that the VE issue had been brought to his attention several times in his first four months as Director and he is looking forward to getting a clear assessment of it and hopefully identify ways to improve it. He knows it has been around for quite some time, which means there is a lot of data that he can glean from and come August 1, 2017, he can begin his conversations with the Senate BPED Committee on this issue. He noted he would be involved in those discussions and that the insight of the Board would be key in his information gathering.

Dr. Krauss welcomed Director Grafilo and noted that Ms. Kirchmeyer and Ms. Lally had done a great job of reaching out to other healthcare related boards. He noted that one thing he learned when he was with CMA was that physicians can better serve their patients if they come to a common ground of what is in their patients' best interest and less time opposing one another. He noted that he felt the same was very true with all of the healthcare related boards under DCA, and he hoped that Director Grafilo would work and enforce the efforts that Ms. Kirchmeyer and Ms. Lally has started. He stated he hoped that one day there would be an annual group healthcare board meeting to solve some of the vexing issues in terms of consumer protection because they all have much more in common then in opposition to one another.

Director Grafilo agreed with Dr. Krauss stating that Ms. Kirchmeyer and Ms. Lally had been doing a great job related to the healing arts boards and that notion of all healing arts boards meeting annually. He stated he always welcomes opportunities to collaborate to establish best practices amongst the healing arts boards and beyond.

Mr. Andrist stated that he had cc'd Director Grafilo on a number of important emails outlining the failures of the Board, without a response to one of them and as a former associate director of

CMA and other organizations whose intent is to protect physicians, he stated it made sense that he could side with protecting bad physicians and not listen to consumer concerns.

Dr. GnanaDev stated the remaining agenda items shown on the agenda for Thursday would be discussed on Friday, July 28, 2017.

Dr. GnanaDev adjourned the meeting at 5:50 p.m.

R E C E S S

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

Friday July 28, 2017

Members Present:
Dev GnanaDev, M.D., President
Judge Katherine Feinstein (ret.)
Randy Hawkins, M.D.
Howard Krauss, M.D.
Sharon Levine, M.D.
Ronald Lewis, M.D., Secretary
Denise Pines, Vice President
Brenda Sutton-Wills, J.D.
David Warmoth
Jamie Wright, Esq.
Felix Yip, M.D.

Members Absent:
Michelle Bholat, M.D.
Michael Bishop, M.D.
Kristina Lawson, J.D.

Staff Present:
April Alameda, Staff Services Manager II
Christina Delp, Chief of Enforcement
Melissa Giron, Inspector
Kimberly Kirchmeyer, Executive Director
Regina Rao, Associate Governmental Program Analyst
Elizabeth Rojas, Staff Services Analyst
Jennifer Saucedo, Staff Services Analyst
Jennifer Simoes, Chief of Legislation
Lisa Toof, Staff Services Manager I
Kerrie Webb, Staff Counsel

Members of the Audience:

Teresa Anderson, California Academy of Physician Assistants
Eric Andrist, via phone
Gloria Castro, Senior Assistant Attorney General, Health Quality Enforcement Section Attorney General's Office
Zennie Coughlin, Kaiser Permanente
Julie D'Angelo Fellmeth, Center for Public Interest Law
Rosanna Davis, Licensed Midwife, California Association of Licensed Midwives
David Field, N.D., Naturopathic Medicine Committee
Louis Galiano, Videographer, Department of Consumer Affairs
Faith Gibson, Licensed Midwife
Christine Hildebrand, A Voice for Choice Advocacy
Marian Hollingsworth, Consumers Union
Todd Iriyama Investigator, Health Quality Investigation Unit
Lauren Jones, via phone
L. Khadija Lang, M.D., President, Golden State Medical Association, via phone
Tara Levy, N.D., Naturopathic Medicine Committee
Mahfouz Michael, M.D., Clinica Medica of San Miguel
Michelle Monseratt-Ramos, Consumers Union Safe Patient Project
Crystal Moreno, American Congress Obstetricians and Gynecologists, by phone
Lisa McGiffert, Consumers Union, via phone
Alecia Sanchez, California Medical Association
Carrie Sparrevohn, Licensed Midwife, Midwifery Advisory Council
Rebecca Sernett, Investigator, Health Quality Investigation Unit

Dr. GnanaDev called the meeting of the Medical Board of California (Board) to order on July 28, 2017, at 9:05 a.m. A quorum was present and due notice was provided to all interested parties.

Agenda Item 17 Public Comment on Items Not on the Agenda

Dr. Michael stated he had been practicing medicine for over 35 years in California, and was the founder, owner, and medical director of Clinical Medical of San Miguel, which serves approximately 1000 patients a day and over 300,000 patients a year. He noted that over the years he has learned of the many health disparities that affect the communities he serves. He noted that many of the patients he sees suffer from high rates of heart disease, hypertension, diabetes, and obesity. He stated that because of this he founded the San Miguel Foundation that aims to provide health programming to local communities. He noted that aside from his medical practice, he found that the number one key of prevention is education and awareness. He stated that in his years as a practitioner he had been recognized by President Clinton, the state of California legislators, as well as the City and County of Los Angeles for his work in the community.

Dr. Michael stated he wanted to stress the importance of having community clinics that are actively engaged in the people and neighborhoods they serve. Clinical Medical of San Miguel is a main health care provider for many of his patients and he stated he will continue to provide affordable services, and community programming for a long time. He urged the Board to support Clinical Medical of San Miguel and other community clinics, so they can continue to do the good work they do.

Ms. Hollingsworth stated she was speaking as an individual about something the Members were doing that they may not even realize they were doing. She noted that at the previous day's meeting when the Board was discussing legislative bills, the Members would often state what the California Medical Association (CMA) may have stated or believed about several of the bills rather than providing their own thoughts and opinions about the bill. She noted that CMA is only concerned about the financial stability of physicians and their practice as opposed to what the Board's goal is supposed to be, which is patient safety. She noted this makes the public question how dedicated the Members are to their position on the Board, if they are always quoting the CMA's opinions or beliefs. She added that Members should keep their references to the CMA private, so that the public would know their own opinion about a bill rather than the affiliation with the CMA.

Dr. GnanaDev stated that when the Board Members are at the Board meeting they are all representing the Board, as that is their responsibility.

Ms. Hildebrand stated she appeared before the Board about a year ago and asked the Board specifically to stop the "witch hunt" on physicians who were writing medical exemptions for vaccinations under SB 277. She stated that not only did the Board not stop the witch hunt but that they had become a part of it. She noted that the Board's mission statement states that the Board is to provide access to quality health care through the Board's licensing and regulatory functions. She noted that the number one mantra is to do no harm.

Ms. Hildebrand noted that there is research that states it takes 17 years after research is done and findings are made for it to become a practice. She stated that if it takes 17 years for research to become practice, it means that the research that had been done over the past 5-10 years has not become practice yet unless physicians are looking at that research and bringing it into their own practice. She added that when you have these physicians who look at vaccinations and look at the individual child and the risk to benefit ratio, there are physicians who are giving medical exemptions based on the latest research coming out of places that have associations with vaccines and aluminum adjuvant with auto immune disorders. Ms. Hildebrand stated that many of these physicians have been retained and most of them have been sent a letter in that last few months from the Board stating the Board knows they are giving out exemptions, and recommend they ensure they are current and in compliance with SB 277. She noted that this method is intimidating and unprofessional and should not be happening. She asked the Board to really look at their practice and support the physicians and the patients of California by allowing them to write medical exemptions when it is truly appropriate.

Ms. Jones stated that she had filed a complaint with the Board that was closed without an investigation. It was first filed in 2015 and she never received confirmation of her complaint filing. She stated she followed up in March 2017, and the Board took her new complaint, but then closed it immediately. She added the Board staff stated that they had obtained her medical records, but when she inquired with the hospital they told her that her records had not been requested by anyone from the Board and that she was lied to by staff.

Dr. GnanaDev stated that Ms. Jones could contact Ms. Delp, the Board's Chief of Enforcement directly to discuss her concerns.

Ms. McGiffert, Consumer's Union Safe Patient Project, stated that since the evaluation of the Board's website keeps coming up, she thought she would call in since she was the one who oversaw the

evaluation, which was based solely on information provided to consumers on websites. It provided no evaluation on the usability of the website other than the ability to search by a physician's name. She noted that yes, California came out on top with a score of 84 among other states, which had terrible websites. She noted that the Board should be proud that the site has much good information on it, but that it could still be improved. Ms. McGiffert noted that it was important to note that same Consumer Reports' article also supported the patient notification by doctors on probation because there are so many barriers for consumers to find clear information that is posted on the Board's website. She noted the information was there, but was difficult to find, and Ms. Kirchmeyer recognized the shortcomings and asked her staff to make changes to further improve the site. She noted that several of those changes/improvements had been made.

Mr. Andrist stated that Dr. GnanaDev had told a previous caller to contact Ms. Delp to assist with her complaint, and Mr. Andrist noted that the caller had already contacted Ms. Delp previously and was lied to in regard to the Board having a signed release form for her medical records. He added that the caller had contacted the hospital and was told that they had not sent the Board any records for the caller. Mr. Andrist noted that he again needed to question why the topic of why various staff have broken the California Public Records Act and why his request for that issue has not been put on an agenda. He noted that he asked for it at the October 2016 meeting and then again at the April 2017 meeting. He then asked if there was some reason the Board was ignoring the issue that Board staff is breaking the law and not making the Board as transparent as they possibly can be.

Agenda Item 14 Update on Disciplinary Demographic Task Force

Ms. Wright stated that as reported at the last meeting, the goal of the task force is to evaluate claims of discrimination and the findings of the California Research Bureau's demographic study in order to proactively prevent bias in any and all processes of the Board and any actions of anyone who may be involved in the investigative or disciplinary processes. She stated she was happy to report that the Board had found a vendor to provide the implicit bias training, and that this training would be available both in person and also via webinar for those who cannot participate in the in-person training. She noted Board staff was in the process of working with DCA to get the contract completed. The training will provide specific information on the Board's enforcement process as well as information on subconscious bias. She added the training would include a few key studies as well, and the hope was to have the training completed by the end of the year. She noted that the task force recommended that this training be repeated every two years.

Ms. Wright noted that on July 12, 2017, she and Dr. Krauss met with representatives from the Golden State Medical Association and an attorney who knows the Board's enforcement process from the physician's perspective. The goal of the meeting was to receive any additional information that could assist the Board in identifying issues within the Board's enforcement process where unconscious bias could be brought into the process. The meeting included discussion on certain information that should be removed from the complaint, investigation, and prosecution processes. Ms. Wright noted that this information would be any information identifying the medical school the licensee attended or the location of the postgraduate training that was received. She added that the Board is working on a memo to the Health Quality Investigation Unit (HQIU) and the Attorney General's (AG) Office regarding this policy change. Ms. Kirchmeyer had already met with management from both HQIU and the AG's Office, however, a written policy needed to be released. Once the policy is implemented, the Board will meet with the Office of Administrative Hearings to ensure this information is not included in the proposed

decision either. She noted this meeting was very productive and allowed the Members to hear concerns from the association and interested members of the public. She added they were thankful for the association bringing the concerns to the Board and hopeful that the changes being made will improve the Board's enforcement process and remove any factors that could lead to unconscious bias.

Dr. Lang stated she and the Golden State Medical Association were very pleased to see that their comments and concerns were heard and were being given the appropriate attention for something as important as this. She noted they were pleased to be able to give their input and to work with the Board in order to try and improve, mitigate and hopefully eliminate the effects that were found in the demographic study. She noted they believe the items that had been discussed by Ms. Wright were good first steps for trying to help "level the playing field," by decreasing any discriminatory effect in the process so that that California consumers are not deprived of quality practicing physicians by any type of biases, conscious or unconscious. She noted they are more than willing to continue working with the Board.

Agenda item 15 Update on the Physician Assistant Board

Dr. GnanaDev stated this item would be tabled for this meeting as the Physician Assistant Board had not had a meeting since the Board's last meeting and Dr. Bishop was not able to attend this Board meeting.

Agenda Item 18 Presentation on the Naturopathic Medicine Committee

Dr. Field, N.D., and Dr. Levy, N.D., provided a power point presentation regarding the Naturopathic Medicine Committee, noting that as part of a legislative mandate, through SB 796, they were asked to interact with the other licensing boards and he felt that this presentation was a great way to do that. Dr. Field stated that naturopathic medicine is a primary health care that uses primarily natural methods and substances to support and stimulate the body's self-healing process.

Dr. Field stated that naturopathic doctors (ND) are trained in a wide variety of primary care, complementary, and alternative therapies, including conventional medication and drugs. He added they are trained in hormone replacement therapy due to the legislature granting NDs the right to independently prescribe hormones, both natural and synthetic, back in 2003. He noted they also may administer epinephrine to treat anaphylaxis.

Dr. Field and Dr. Levy also provided information on the training and education of NDs as well as their standards and education. They also gave a brief description on independent prescribing of controlled substances, natural substances and exclusionary formularies, as well as the naturopathic scope of medicine.

Dr. Lewis asked who are the faculty for naturopathic students.

Dr. Levy stated the basic science faculties are primarily PhDs in their field of teaching.

Dr. Field noted that the basic science instruction occurs on-site in a university or college setting.

Dr. Lewis asked about the disciplinary process, stating that when he last looked at the B&P Code, he noticed that NDs were still under the Osteopathic Medical Board for the disciplinary process, and asked

how their patients know where to go if there are complaints or concerns about treatment they had received.

Dr. Field stated that in terms of an organizational chart, they are under the Osteopathic Medical Board, however, as a committee, they are authorized to act independently to conduct their own disciplinary actions. He noted that if a member of the public does have a complaint, they are able to go to their website and file a complaint online.

Dr. Lewis asked if they have the requirement, as the Board does, to have a posting in all offices that provides a phone number and/or website address for someone to file a complaint.

Dr. Levy stated that requirement is not currently in their regulations, but they have been discussing it and plan to add that requirement to their regulations in the future.

Dr. Krauss thanked Dr. Field and Dr. Levy for the presentation and stated he felt this was a great opportunity under the DCA to do a better job in the future to work together on the common goal of protecting Californians, and stated there are open ears and minds at the Board. He stated that in the practice of allopathic medicine, physicians tend to question themselves, everyday. He stated the challenge comes from that which they call evidence-based medicine and the purist test of that is what is known as a prospective double mask study where the comparison is between the outcomes of therapies with like groups of patients with treatment versus placebo, or treatment of a new variety versus treatment of an old variety. Dr. Krauss asked if NDs challenge themselves and believe in seeking evidence for the treatments that are recommended.

Dr. Field stated the answer is an emphatic yes. He noted that the interventions that they make are based on evidence, some of which comes from the Journal of the American Medical Association as they often publish article that are germane to naturopathic practice. Dr. Field stated there is constant self reflection within the profession with each doctor.

Dr. Levy added that each of the medical schools has research happening, looking at a huge variety of things. She added that there are people looking at all different types of medicine and the best way to integrate some therapies that are used with disease and health.

Dr. Levine asked if they had a sense of the practice organization of naturopathic physicians and the total number of NDs in California.

Dr. Field stated their board had issued over 800 licenses in the 13 years they have been in existence. He noted approximately 200 of those have either lapsed or are inactive.

Dr. Levy stated that most of the NDs were practicing as solo practices or in small group practices with other NDs and that there were a number of NDs who practice in integrated settings with medical doctors, osteopathic doctors, chiropractors, and other health professionals.

Dr. Field added that NDs are widely distributed throughout California, with many in the urban areas, in terms of population. He noted there are some NDs who are paying off their student loans by serving in rural clinics.

Dr. Yip asked what opinion they give to their patients about vaccinations and also are they allowed to give the Samson flu vaccination.

Dr. Levy noted that they are not able to give medical exemptions currently, as only medical and osteopathic doctors are able to provide exemptions. She added that they practice very individualized medicine and she recommends to her patients to talk to their primary care pediatricians about their plans around vaccinations.

Dr. Yip stated that in the medical profession, there is strict research through the Food and Drug Administration (FDA) on medication. He noted he has found there is no industry or governmental regulations on quality of herbs and natural medicine and asked if there is a movement among the organization to push for more regulation and quality control with those types of products.

Dr. Field stated that the fact that nutritional supplements are not regulated by the FDA is as a result of actions by the U.S. Senate over the last 30 years, where they passed the dietary Health and Safety Act, which makes it a buyer beware marketplace. He noted that he wished they could completely regulate nutritional supplements in the way pharmaceuticals are regulated.

Dr. Hawkins asked the number of consumers seeking naturopathic services in a year and also asked for more information about the education as far as do they adhere to certain standard prevention therapies such as exercise, dietary colonoscopies, pap tests, etc., or do they refer those patients to their primary care physicians.

Dr. Levy stated they are licensed as primary care doctors in California and they are able to order mammograms and standard procedures. She stated they would refer a patient who might need a colonoscopy to a gastrointestinal doctor, as it is not something she could perform, but could refer out. She added they are trained in doing gynecological exams and can order all standard testing through labs, as well as standard screenings and x-rays.

Agenda Item 19 Discussion on the January 2018 Board Meeting Location

Ms. Kirchmeyer stated that at the last Board meeting, Members had approved the meeting dates and locations. However, since the last Board meeting staff had been trying to find a meeting facility in Sacramento for the January 2018 meeting. She stated she wanted to ask the Members to change the meeting location for the January 2018 meeting from Sacramento to a location in Northern California in order for staff to look at meeting possibly in Oakland, San Jose, or somewhere else in Northern California.

Dr. Yip made a motion to allow staff to change the January 2018 meeting location from the Sacramento area to the Northern California area; s/Ms. Pines. Motion carried (10-0, Dr. Lewis absent from vote).

Agenda Item 20 Executive Managements Reports

Ms. Kirchmeyer stated that she would not be going over all of the Administrative, Enforcement Program, or the Licensing Program Summaries unless someone had a question. She noted that both the licensing and enforcement statistics and highlights of each program could be found in the Board packets. She

added that it was important to note that the Board had received almost 10,000 complaints, issued almost 500 more licenses then the previous year, and received over 8,000 applications.

Ms. Kirchmeyer then noted she did have a few items to bring to the Members' attention. She referred the Members to page BRD 20A-4, which contained the Board's budget as approved for fiscal year 17/18. She noted the budget includes three new positions for the Board, which were approved through the budget change proposal process, as well as DCA related budget change proposals. For the Board, two enforcement staff in the Board's Central Complaint Unit were added and one staff was added to implement the Physician Health and Wellness Program. For DCA, funding was approved to continue the BreEZe system and additional staff were approved for the DCA's SOLID training unit. Ms. Kirchmeyer added that on Page BRD20A-5 was the Board's fund condition, which included information on the complete repayment of the Board's outstanding loans to the general fund. This document indicated the Board's fund reserve was projected to be at 4.8 months at the end of the past fiscal year, and that staff would soon close out fiscal year 16/17 and have an actual picture of the Board's fund condition. She noted that with the loans, the Board was expected to be at its mandated level in fiscal year 18-19.

Ms. Kirchmeyer noted that she and staff had been doing a lot of presentations over the last quarter. Those presentations were usually on the Board's roles and functions, in particular, the enforcement process. She noted that these presentations are so helpful and really wanted to ensure they are available to provide these presentations to any organization that makes a request to the Board.

Ms. Kirchmeyer reiterated what Dr. GnanaDev had said at the previous day's meeting, and complimented the Board's licensing staff for ending the year at 28 days for initial review, adding that is a huge achievement.

Ms. Kirchmeyer then referred the Members to pages BRD 20A-17 to 23, where she had included a report from the CDPH on the End of Life Option Act that had been released at the end of June. She noted this report only covers the period of June 9, 2016, which was when the law went into effect, to December 31, 2016. She added that future reports would cover a full calendar year. She pointed out a few statistics from the summary, which stated that 191 individuals received prescriptions for aid in dying drugs. Of those, 111 individuals died following ingestion of these prescriptions; 87% of these individuals were 60 years of age and older, with a median age of 73; 96% had health insurance; 84% were receiving hospice or palliative care; and 59% of the underlying illnesses were identified as cancer; and neuromuscular disorders, such as ALS and Parkinson's, accounted for 18%. She noted that of those with cancer, lung cancer was 20%, breast cancer was 19%, pancreatic cancer was 12%, and prostate cancer was 11%.

Ms. Kirchmeyer added that after the last Board meeting, where the Board heard a presentation on the aging physician by Dr. Bazzo, she was asked to provide an age breakdown for licensed physicians. She stated those statistics could be found on pages BRD 20A-24 and 25. She noted that as shown in the statistics, several physicians, while they may keep a current renewed and active license, had indicated on their survey that they were actually retired, and that there may be more individuals that fit into that category, but that they may have not completed their survey, as also indicated on the chart.

Ms. Kirchmeyer noted that on pages 20 E-1 to E-3, was an update from the Health Professions Education Foundation and the Stephen M. Thompson Loan Repayment Program. She stated that the prior Executive Director, Linda Onstad-Adkins, had recently retired and that Ms. Norlyn Asprec had been appointed as the new Executive Director. Ms. Kirchmeyer stated this was good news for the Board because Ms.

Asprec had formerly been the HPEF's marketing and outreach director and the Board had been working with her for the past year. Ms. Kirchmeyer stated she looked forward to continuing the Board's great relationship with HPEF.

Ms. Kirchmeyer stated that in her report, she had provided a brief update on the issue of overprescribing psychotropic medication to foster care children. Since that report she had received more information. She noted in the report that the Board was still waiting for information to be sent to obtain the authorization for medical records. In addition, staff had sent self-addressed, stamped envelopes last month to the Department of Social Services (DSS) in order to expedite the return of the forms. The DSS identified the information needed to send letters to the youth, their social worker, or attorney, as appropriate. She added that per DSS, they anticipated the first round of letters would be sent out by the end of July. Of the 86 cases identified by the Board, 47 of the patients are currently over 18, and 39 are under 18. Of the 39 cases of children under 18, 33 of the cases would have to make direct contact with the county social worker and their county counsel to determine if there was an appropriate adult who could be contacted to consent on the child's behalf to authorize the release of their records or determine if a juvenile court order is needed.

Ms. Kirchmeyer noted that for the Members' information, on pages 20G-1 to G-15 was a report that had recently been released by the Federation on duty to report and sharing of information about health care practitioners.

Ms. Kirchmeyer reminded Members that this is the year for the Board to do their strategic plan, and the planning session with DCA's SOLID unit is scheduled to take place at the October Board meeting. She noted that DCA had requested that Members set aside a whole day for the planning, so she asked the Board if they would rather schedule the planning meeting on Thursday and do the panel meetings on Wednesday before. She noted she would be reaching out to the Members to find out how they would like to handle the schedule for that since one full day of the Board meeting would need to be dedicated to walking through the strategic plan.

Ms. Kirchmeyer thanked Dr. GnanaDev and Ms. Pines for their work over the last several months on the sunset review process and SB 798, and for always being willing to assist her and staff, including flying to Sacramento to attend meetings.

Dr. Krauss asked Ms. Kirchmeyer in regard to the End of Life Option Act report, if she knew what happens to the unused lethal prescription for those who do not use the drug.

Ms. Kirchmeyer noted that there had been language in the bill that talked about needing to dispose of the unused drug through the proper disposal process.

Ms. Webb stated there was a provision in the bill for it in Health and Safety Code section 443.20.

Dr. Krauss then asked if the law on the proper disposal of the unused drug was being followed.

Ms. Kirchmeyer stated that is something she is not aware of, however, one thing that was told by the Oregon Medical Board was that those individuals may not have passed away yet, and they may be holding on to the drug until it was truly decided by the individual that they wanted to go through with the process.

Dr. Hawkins asked if Members would be getting advance information in regard to the strategic planning process.

Ms. Kirchmeyer stated that the strategic planning process includes Members as well as other interested parties being sent a survey that they will be asked to complete in regard to the Board's strengths, weaknesses, opportunities and threats (SWOT), ahead of the strategic planning meeting.

Agenda Item 21 Update on Implementation of the Physician Health and Wellness Program

Ms. Kirchmeyer noted that Board staff was still working on regulations to implement the program. She stated that as the Members heard at the previous day's meeting, it appeared that at least one of the Uniform Standards may change. She noted that she and Ms. Webb had discussed that possible change and due to the lengthy regulatory process, they felt they should continue forward with the regulatory process and hoped to present the regulations at the October Board meeting for the Members review and approval before being submitting them to DCA for review and publication. She noted they hoped to have another interested parties meeting with the actual language prior to the October Board meeting.

Agenda Item 22 Update, Discussion and Possible Action of Recommendations from the Midwifery Advisory Council Meeting

Ms. Sparrevohn noted that her full report was in the Board packet, but there was one update she wanted to provide to the Members regarding the Licensed Midwife Annual Report (LMAR) survey that had been completed. She stated staff had scheduled a task force meeting for August 11, 2017 for discussion on how to go forward with the survey findings. She then asked for a motion to approve the agenda items listed in her report for the next Midwifery Advisory Council (MAC) meeting which include: task force update on revisions to the LMAR; update on continuing regulatory efforts required by AB 1308; update on the Midwifery Task Force; update on the Hospital Transfer Form; update on midwifery related legislation being followed this year; update on the progress of the midwifery assistant regulations; update on the midwifery program; presentation by California Association of Licensed Midwives on public access to licensed midwifery care, including ability to consult and transfer care; and update on the California community college licensed midwifery program.

Dr. Lewis made a motion to approve the agenda items as stated for the next MAC meeting; s/Dr. Krauss.

Dr. Hawkins asked Ms. Sparrevohn if she knew what a naturopathic doctor birth attendee does.

Ms. Sparrevohn stated she was not certain, but knew they are potentially licensed and trained to do that, but was uncertain what the scope of that training is.

Dr. GnanaDev pointed out that there are no residency programs in naturopathic medicine, they just go through school, which is why it is a major issue that California is dealing with at this time.

Ms. Sparrevohn noted that she felt the Board needed to be aware that there are licensees who may be trained to provide obstetric or midwifery care, but are not trained to provide that care outside of a hospital setting and licensed midwives are uniquely trained to provide care in an out-of-hospital setting and that it is a very different skill set.

Motion carried (11-0).

Agenda Item 23 Agenda Items for the October 2017 Meeting in the San Diego Area

Dr. Krauss requested a presentation from the entity that is responsible for making sure that hospitals are providing the B&P Code section 805 reports as required. He would like the presentation to include what the obligations are of medical schools, hospitals, and health centers regarding investigations of allegations, so Members can be informed of whether or not the process is occurring as it should.

Ms. Kirchmeyer stated she would reach out to CDPH about this as they are the entity responsible for reviewing the hospitals, and doing the inspections.

Mr. Warmoth thanked the several Members for their solidarity vote at the previous day's meeting by abstaining from the issue that had come before them, but noted that at the same time, Members are not doing their job of protecting the public by trying to hold a medical school to a standard not required by law. He asked that staff look at the Board's current guidelines for school approval and consider the possibility of adding a requirement to look at the political climate of the location of the medical school to be determined if there discrimination is based on race, sex, gender identity, or any other issue. He added that it is not an overriding factor, but it is a factor to be considered in the final approval.

Dr. Krauss stated with the Governor's office approval, he would be attending the FSMB's workgroup meeting in Washington, D.C. in September and he would like to report on the meeting at the next Board meeting.

Dr. Hawkins noted that in regard to B&P Code section 805 reporting, he wanted to bring the attention to the consumers, that when Ms. Kirchmeyer talks about the proactive nature of this issue, this is an example of how the Board is being proactive in public protection.

Agenda Item 24 Adjournment

The meeting was adjourned at 10:45 a.m.

The full meeting can be viewed at http://www.mbc.ca.gov/About_Us/Meetings/2017/