MEDICAL BOARD OF CALIFORNIA
QUARTERLY BOARD MEETING

The Westin San Diego
400 W. Broadway
San Diego, CA 92101

Thursday October 29, 2015
Friday October 30, 2015

MEETING MINUTES

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

Members Present:
Dev GnanaDev, M.D., Vice President
Denise Pines, Secretary
Michelle Bholat, M.D.
Michael Bishop, M.D.
Randy Hawkins, M.D.
Howard Krauss, M.D.
Sharon Levine, M.D.
Ronald Lewis, M.D.
Gerrie Schipske, R.N.P., J.D.
Jamie Wright, Esq.
Barbara Yaroslavsky
Felix Yip, M.D.

Members Absent:
David Serrano Sewell, President

Staff Present:
Liz Amaral, Deputy Director
Christina Delp, Chief of Enforcement
Dianne Dobbs, Legal Counsel, Department of Consumer Affairs
Dennis Frankenstein, Staff Services Analyst
Kimberly Kirchmeyer, Executive Director
Natalie Lowe, Staff Services Manager I
Regina Rao, Associate Government Program Analyst
Letitia Robinson, Research Specialist II
Elizabeth Rojas, Staff Services Analyst
Paulette Romero, Staff Services Manager II
Jennifer Simoes, Chief of Legislation
Lisa Toof, Administrative Assistant II
Kerrie Webb, Legal Counsel
Curt Worden, Chief of Licensing

Members of the Audience:
Steve Alexander
Teresa Anderson, California Academy of Physician Assistants
Edward Barrera, Consumer Watchdog
Steven Brewer, Investigator, Health Quality Investigation Unit
Gloria Castro, Senior Assistant Attorney General, Attorney General's Office
Alex Chin, Arizona College of Osteopathic Medicine
Rosa Ching, Arizona College of Osteopathic Medicine
Yvonne Choong, California Medical Association
Genevieve Clavreul
Zennie Coughlin, Kaiser Permanente
Veverly Edwards, Consumer's Union
Julie D'Angelo Fellmeth, Center for Public Interest Law
Lou Galiano, Videographer, Department of Consumer Affairs
Amanda Gittelman, Arizona College of Osteopathic Medicine
Bridget Gramme, Center for Public Interest Law
James Hay, M.D., California MedicalAssociation
Marian Hollingsworth, Consumer's Union
Christina Maslach, Ph.P, University of California, Berkeley
Nicole McAllister, Arizona College of Osteopathic Medicine
Lisa McGiffert, Consumer's Union
Karen Miotto, M.D., University of California, Los Angeles
Michelle Monseratt-Ramos, Consumer's Union
Kathleen Nicholls, Deputy Chief, Health Quality Investigation Unit
Tri Nguyen, Arizona College of Osteopathic Medicine
Kerry Parker, California Society of Addiction Medicine
Michaelray Paulino, Investigator, Health Quality Investigation Unit
Jasjit Saini, Arizona College of Osteopathic Medicine
Susan Shinazy, Consumer's Union
Alexandria Styke, Arizona College of Osteopathic Medicine
Kai En Tang, Arizona College of Osteopathic Medicine
Chau Vu, Arizona College of Osteopathic Medicine
Christina Vu, Arizona College of Osteopathic Medicine
Matthew Wostak, Arizona College of Osteopathic Medicine
Tracy Zemansky, Physician Assistance Group

Agenda Item 1 Luncheon Presentation – Physician Burnout – Christina Maslach, Ph.D.

Dr. Maslach with the University of California, Berkeley, gave a presentation on New Insights into Burnout and Health Care. The presentation included the problems and outcome of burnout among Health Care Professionals.

Agenda Item 2 Call to Order/Roll Call

Dr. GnanaDev called the meeting of the Board to order on October 29, 2015, at 4:50 p.m. A quorum was present and due notice was provided to all interested parties.

Agenda Item 3 Public Comments on Items not on the Agenda

Mr. Barrera, Consumer Watchdog stated that his organization strongly supports the requirement that physicians notify their patients when the physician is on probation.

Agenda Item 4 Approval of Minutes from the July 29-30, 2015 Meeting

Dr. Lewis made a motion to approve the meeting minutes as written; s/Ms. Wright. Motion carried unanimously.

Agenda Item 5 Board Member Communications with Interested Parties

Dr. Levine, Ms. Schipske, Ms. Pines, Ms. Yaroslavsky and Dr. Hawkins had individual conversations with Consumer's Union regarding the administrative petition that was on the agenda.

Dr. Krauss stated he had email correspondence with Consumer's Union.

Dr. GnanaDev stated he has regular meetings with the California Medical Association and American Medical Association, but Board items/issues are never discussed.

Agenda Item 6 Update, Discussion and Possible Action on Recommendations from the Public Outreach, Education, and Wellness Committee

Dr. Lewis provided an update from the Public Outreach, Education, and Wellness Committee meeting. He stated he has taken over the roll as Chair of this Committee and that the name of the Committee has changed. The Committee's mission will now include overseeing the Board's public outreach, in addition to the physician education and wellness. The first item the Committee discussed was the elements of a successful physician health program. The Committee reviewed the uniform standards for substance-abusing physicians. He stated the Board staff had met with consumer groups and all licensee groups in September to obtain each group's recommendations on the elements a successful physician health program should include. He noted Board staff took recommendations from each group as well as staff recommendations and presented those recommendations in a power point presentation at the Committee meeting. After Committee discussion and public comment, the Committee approved the staff recommended elements. Dr. Lewis noted it is important to mention that the Committee does not believe the Board should sponsor legislation to create a physician health program, but if legislation is introduced, the Board would want the legislation to include the Board approved elements. The Committee is asking the Board to approve its recommendations for elements of a successful physician health program. Dr. Lewis then asked for a motion to approve the recommendations.

Ms. Wright made a motion to approve the Committee's recommendations for the elements of a successful physician health program; s/Ms. Yaroslavsky.

Ms. Hollingsworth, Consumer's Union, stated the BreEZe system needs some adjustments made, as some physicians go by a different name to their patients then they do on their actual licenses. When that happens, physicians often cannot be located in the system.

Ms. Fellmeth, Center for Public Interest Law (CPIL), stated she understands that the Committee is recommending to the Board that it set some parameters for a physician health program, if legislation should create such a program. Ms. Fellmeth stated that several key elements are missing from the public documentation handed out at the meeting. She noted several of the staff recommendations refer to the Uniform Standards, but are not shown on the public document handouts and requests that they be added. She added that in respect to the recommendation that this program be run by a private, non-contracted entity, she would like two additions added. The first being the Board require that entity be contracted through a competitive bidding process. The second request is that no organization or entity that was connected to the prior diversion program be involved in any way.

Ms. Fellmeth then stated that recommendation number six in the handouts states, "Report to the Board, any physician who is terminated from the program, for any reason." That recommendation is inconsistent with the Uniform Standard number 16. Ms. Fellmeth stated she had a couple of other recommended changes to be made, but will talk with staff about those recommended changes at a later time.

Mr. Barrera, Consumer Watchdog, stated if this program does get established at some point, he strongly urges the Board to not support any program that would let physicians keep their addiction problems secret and avoid consequences when they fail.

Mr. Alexander, prior Board Member, stated he has training in both alcohol and drug related issues and has trained hundreds of physicians and surgeons on how to speak publicly, work with boards and develop good public policy. He strongly urged the Board to follow the Board's prior decision to defund the physician diversion program that was in place at the time and end the secrecy that transpired prior to that. He noted that anyone could have a family member that could lose their life as a result of an error while the physician is under the influence.

Ms. Monseratt-Ramos, Consumer's Union Safe Patient Project, stated she first became familiar with substance abusing physicians in 2007 when the now terminated diversion program was up for sunset review. She lost her fiancé to a physician who was addicted to drugs because the physician was in a secret program, which did not allow the public to know the truth about him before becoming his patient. She noted there is nothing that prevents a physician from seeking treatment with complete confidentiality, and there is no need to create a special program that may interfere with oversight responsibility of the Board.

Dr. Miotto, Chair of the Well Being Program at UCLA, stated she is concerned with the question that has been raised that if the Board does not address or endorse a program that somehow the public will be safer. As a treatment provider, she does not understand the thought process behind that question, because treatment is what makes people safer. She stated she appreciated the Board's looking into this very important issue.

Motion carried unanimously.

Dr. Lewis continued his update stating the Committee also heard a presentation from the Board staff on the current "Verify a License" campaign and the Board's outreach plan. Staff presented a list of proposed outreach programs including mall outreach that has already begun, public service announcements, including television air time, radio interviews, billboard advertising,

advertising on rapid transit, and working with various organizations on getting the Board's website information printed on various items. The Board staff has proposed the campaign be focused on getting the month of March declared as the "verify a physician's license" month. Staff would also have the Board's Legislative Day in the month of March, to get legislators involved. The outreach plan also includes a timeline of activity events to implement, starting in October, focusing many of the outreach efforts in March. Dr. Lewis noted Members recommended staff work on a process to prioritize outreach items and deliverables and that the plan include this information in future Committee meetings and that staff develop a webpage to explain the various license statuses and what information is and is not available on the physician's profile. In addition, staff will consider revisions to the "Verify a License" brochure.

Ms. McGiffert, Consumer's Union, stated they support this outreach plan and would like to see it incorporated in the daily activities of staff and not just a one-time campaign. She noted much of the work would be lost if it is not put in plain language. She also recommended doing outreach on disciplinary orders.

Agenda Item 7 President's Report

Dr. GnanaDev read a statement on behalf of President Serrano Sewell. The statement read that Mr. Serrano Sewell wanted to thank the Board and the Committee for the work done on the outreach program. He has seen a lot of positive and educational press over the past two weeks on how a consumer can look up their physician. He feels this campaign will make an impact on patients of California. It reaches to the heart of the Board's mission of public protection. He stated he hopes that all Members make education a top priority when talking with friends, co-workers and associates. He hopes this campaign will lead to another Legislative Day at the State Capitol. He noted there is a lot of work to do within the upcoming months and he looks forward to working with staff and Members on this outreach.

In Mr. Serrano Sewell's statement, he also thanked Ms. Yaroslavsky for her service on the Education and Wellness Committee. She was chair of the Committee for several years, and has led the Board in numerous activities while on the Committee.

Dr. GnanaDev noted there have been some changes made to the Committee memberships as well as renaming the Education and Wellness Committee to the Public Outreach, Education, and Wellness Committee.

Dr. GnanaDev also announced that Panel B had elected a new chair for the panel. Dr. Krauss is now the new Chair of Panel B and Dr. Bholat is now the Vice Chair.

Ms. Edwards, Consumer's Union, stated they have reviewed the standing Committee Roster are they are concerned about the representation of the Board's public members on a few of the committees, for example, the Executive Committee and the Enforcement Committee. The legislature requires the Board be composed of eight physicians and seven public members. An approximate 50-50 ratio. She urged the Board to revisit the Board's Committee composition with the aim of having it reflect the 50-50 ratio as required by the legislature.

Agenda Item 8 Executive Management Reports

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

Dr. Yip made a motion to approve the orders; s/Ms. Yaroslavsky. Motion carried unanimously.

Ms. Kirchmeyer announced the appointment of the Board's newest Member, Kristina Lawson. Ms. Lawson was appointed by the Governor on October 28, 2015, but due to the brief time frame between her appointment and the meeting date, she was unable to attend the meeting. Ms. Kirchmeyer stated she looks forward to working with Ms. Lawson and that everyone is pleased to have her on the Board.

Ms. Kirchmeyer then noted she would not be going over the summaries in detail unless Members had any questions, but stated she had some things to give updates on and some things to bring to the Members' attention.

She began by stating the Board's vacancy rate is at 4%, which is the lowest it has been in several years. She is glad to be filling positions in hopes that it will make a difference in the licensing and enforcement statistics.

Ms. Kirchmeyer then noted that staff is currently working on the required Vertical Enforcement report that is due to the legislature on March 1, 2016. The required date was moved from March 2015 to March 2016 due to the transition of the investigators to Department of Consumer Affairs (DCA). She is pleased to announce that Anita Scuri will be assisting Ms. Robinson on the completion of the report. A meeting with DCA and the Attorney General's (AG's) office has already been held to discuss the report. The report has to be completed in consultation with these two entities, so it was believed that an early meeting to start receiving input would be valuable. The biggest issue at this point will be the ability to obtain the reports needed. Staff is looking into this issue currently and the Board is looking into hiring limited term positions to assist in BreEZe report writing. Ms. Kirchmeyer stated she will be working with Mr. Serrano Sewell to identify two Members to work with staff on this project. The report will be looking at the effectiveness of the Vertical Enforcement program and identifying any recommendations for improvement.

Ms. Kirchmeyer announced that the prior week the Board received the AG's opinion on medical assistants. In October 2013, the Board approved staff to request an AG's opinion on whether a medical assistant could perform basic pulmonary function testing. The Board had been contacted by the Respiratory Care Board (RCB) stating that they were of the opinion that a medical assistant could not perform such duties. Therefore, in collaboration with the RCB, an opinion was requested. The AG's opinion states that a medical assistant may lawfully perform spirometric pulmonary function testing if the test is a usual and customary part of the medical practice where the medical assistant is employed and the requirements for training, competency, authorization, and supervision are satisfied. She stated Board staff will be completing an analysis of the opinion and will update the Board's website as appropriate based upon the information. A copy of the opinion will also be provided to the Members.

Ms. Kirchmeyer noted that on October 23, 2015, the Board received a letter from the Bureau of State Audits (BSA). The letter stated they were conducting an audit pertaining to the oversight and monitoring of children in foster care who have been prescribed psychotropic medications. Therefore, the BSA will be auditing the responsibilities of the Board in this area. A meeting has been scheduled

with a pediatric psychiatrist to discuss information the Board has received. The goal of this meeting is that the psychiatrist can either assist in the identification of physicians who may be inappropriately prescribing or can assist in identifying additional information needed to obtain from the Department of Health Care Services (DHCS) or the Department of Social Services (DSS).

Ms. Kirchmeyer announced that the recently passed Assembly Bill (AB) 679 extended the CURES registration requirement date to July 1, 2016, instead of the previous requirement date of January 1, 2016. She then noted that the information in the Board packets under BRD 8B-3 is no longer current. At the time of writing the report, the understanding was that the streamlined application process would be available October 30, 2015 for all users. The original intent was to redirect users into an updated version of CURES depending on the user's browser. While Department of Justice (DOJ) is working on this redirect, it will not be ready until late November or early December. Until that time, users will need to continue to register by using a notary. All physicians will be notified once this redirect has been completed. The Board, the DCA, and the DOJ recommend that users implement an update to their systems in order to use a compliant browser for the updated version of CURES. This will allow physicians to take advantage of the improvement and alerts that will be available in the new upgraded version.

Ms. Kirchmeyer stated the inaugural meeting of the Interstate Medical Licensure Compact Commission took place in Chicago on October 27-28, 2015. Eleven states are now part of the Commission and more are in the process of approving the legislation. The meeting was held to begin the process of establishing the roles and duties of the Commission, Commissioners, and States. She noted that in addition, they established working groups on planning, finance and rules.

Ms. Kirchmeyer stated currently, the Board has not been approached by any Legislative offices inquiring about legislation on the compact.

The Federation of State Medical Boards (Federation) had also sent out a notice stating they are seeking resolutions by February 26, 2016 for their annual meeting. Ms. Kirchmeyer requested if any Member has an type of resolution idea that they would like submitted, to please contact her directly, so that it can be developed and presented at the January 2016 Board meeting. The Federation is seeking nominations for elected offices and that request had been sent to the Board members; however, no Board Member had shown interest to date.

Dr. GnanaDev thanked Ms. Kirchmeyer for handling the psychotropic drugs and foster children issue. He stated it is not just a Medical Board issue, it also is an issue where the DSS and DHCS are involved.

Ms. Clavreul stated her concerns for the current CURES system and the way the release dates keeps changing and getting wrong information.

Agenda Item 9 Update on the Physician Assistant Board

Dr. Bishop stated Board staff was informed that the Senate Committee on Business, Professions and Economic Development and Assembly Committee on Business and Professions will begin their Sunset Oversight Review in the Fall of 2015.

He noted that the Physician Assistant Board (PAB), is scheduled to be reviewed. The Board was last reviewed in 2012. Staff has begun preparation of the report, which is due to the Legislature December 1, 2015.

Dr. Bishop announced that the Governor signed SB 800, which is the DCA Omnibus bill. This bill made non-controversial or technical changes to various provisions pertaining to the healing licensing programs of the DCA. Among other things, the bill deleted the terms "board chair and vice chair" and replaced them with "president and vice president."

He noted the Governor also signed SB 337 (Pavley). This bill requires medical records to reflect the supervising physician for each episode of care; requires a physician assistant who transmits an oral order to identify the supervising physician; recasts medical record review provisions to require the supervising physician to utilize one of more mechanisms; and recasts prescribing provisions for a physician assistant when prescribing Schedule II controlled substances.

Dr. Bishop also noted that the revised physician assistant application for licensure was placed on the PAB's website. The application recently was updated to reflect recent changes in law and reporting requirements. Additionally, the new application is much more professional in appearance.

Dr. Bishop then announced that on September 21, 2015, Board Member Jed Grant and the PAB's Executive Officer attended a training session sponsored by the DCA regarding the North Carolina Dental Examiners v. Federal Trade Commission case.

He noted that this case could have potential impact on the DCA, including the PAB. The case established a new standard for determining whether a state licensing board is entitled to immunity from antitrust actions. The PAB will discuss this case and potential impact to the PAB at its November meeting.

Dr. Bishop thanked the Board, Ms. Kirchmeyer, and her staff for their continued support as it is always appreciated.

He then stated the next scheduled PAB meeting is November 2, 2015.

Agenda Item 10 Update on the Health Professions Education Foundation

Dr. Yip stated the Health Professions Education Foundation had done a very good job in the area of outreach and has received over 5000 applications. He then noted he and Ms. Yaroslavsky are assisting and are pleased with the outreach being done.

Dr. GnanaDev adjourned the meeting at 5:50 pm.

Friday, October 30, 2015

Members Present:
Dev GnanaDev, M.D., Vice President
Denise Pines, Secretary
Michelle Bholat, M.D.

Michael Bishop, M.D.
Randy Hawkins, M.D.
Howard Krauss, M.D.
Sharon Levine, M.D.
Ronald Lewis, M.D.
Gerrie Schipske, R.N.P., J.D,
Jamie Wright, Esq.
Barbara Yaroslavsky
Felix Yip, M.D.

Members Absent:
David Serrano Sewell, President

Staff Present:
Liz Amaral, Deputy Director
Christina Delp, Chief of Enforcement
Dianne Dobbs, Legal Counsel, Department of Consumer Affairs
Dennis Frankenstein, Staff Services Analyst
Cassandra Hockenson, Public Affairs Manager
Kimberly Kirchmeyer, Executive Director
Natalie Lowe, Staff Services Manager I
Regina Rao, Associate Governmental Program Analyst
Letitia Robinson, Research Specialist II
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Paulette Romero, Staff Services Manager II
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Lisa Toof, Administrative Assistant II
Kerrie Webb, Legal Counsel
Curt Worden, Chief of Licensing

Members of the Audience:
Teresa Anderson, California Academy of Physician Assistants
Hari Avedissian, Arizona College of Osteopathic Medicine
Gloria Castro, Senior Assistant Attorney General, Attorney General's Office
Yvonne Choong, California Medical Association
Genevieve Clavreul
Zennie Coughlin, Kaiser Permanente
Sara Davis, California Association of Midwives
Julie D'Angelo Fellmeth, Center for Public Interest Law
Veverly Edwards, Consumer's Union
Karen Ehrlich, L.M., Midwifery Advisory Council
Duncan Fraser, Investigator, Health Quality Investigation Unit
Lou Galiano, Videographer, Department of Consumer Affairs
Mike Gomez, Deputy Director, Department of Consumer Affairs
Bridget Gramme, Center for Public Interest Law
Rae Greulich, Consumer's Union
Kshipra Joshi, Arizona College of Osteopathic Medicine
Grace Kang, Arizona College of Osteopathic Medicine

Naila Khan, Arizona College of Osteopathic Medicine
David Killoran
Mariam Hollingsworth, Consumer's Union
Christine Lally, Deputy Director, Department of Consumer Affairs
Dr. Lang, Golden State Medical Association
Michelle Lee, Arizona College of Osteopathic Medicine
Michelle Leong, Arizona College of Osteopathic Medicine
Lisa McGiffert, Consumer's Union
Michelle Monseratt-Ramos, Consumer's Union
Carol Moss, Consumer's Union.
Kathleen Nicholls, Deputy Chief, Health Quality Investigation Unit
Jason Piccione, Department of Consumer Affairs
Eric Ryan, Supervising Investigator, Health Quality Investigation Unit
Albert Shin, Arizona College of Osteopathic Medicine
Susan Shinazy, Consumer's Union
Carrie Sparrevohn, Midwifery Advisory Council

Agenda Item 11 Call to Order/Roll Call

Dr. GnanaDev called the meeting of the Medical Board of California (Board) to order on October 30, 2015 at 9:00 a.m. A quorum was present and due notice was provided to all interested parties.

Dr. GnanaDev thanked the students from Midwestern University for attending.

Agenda Item 12 Public Comments on Items not on the Agenda

Ms. Clavreul stated her concerns of the medical students taking a picture of the sign in sheet as proof that they attended the meeting.

Agenda Item 13 9:00 a.m. REGULATIONS – PUBLIC HEARING - Manual of Model Disciplinary Order and Guidelines (Disciplinary Guidelines). Amendment to Section 1361 of Title 16, Californian Code of Regulations. This proposal would amend the Disciplinary Guidelines to make amendments to conform to changes that have occurred in the educational and probationary environments, clarify some conditions of probation, and strengthen consumer protection.

Dr. GnanaDev stated this is the time and place set by the Board to conduct a public hearing to consider changes to Section 1361 of Division 13 of Title 16 of the California Code of Regulations as described in the notice published in the California Regulatory Notice Register and sent by mail or electronic mail to those on the Board's mailing and subscribers' lists.

The current Disciplinary Guidelines (11th Edition, adopted in 2011), incorporated by reference in section 1361, must be amended to be made consistent with current law. Additionally, the Disciplinary Guidelines must be amended to reflect changes that have occurred in the educational and probationary environments since the last update to clarify some conditions of probation, and to strengthen consumer

protection. Accordingly, section 1361 must be amended to incorporate by reference the 12th Edition of the Disciplinary Guidelines as amended in 2015.

Dr. GnanaDev noted that the date was October 30, 2015, and the time was 9:08 a.m. He stated the purpose of the hearing was to receive oral testimony concerning the regulatory proposals described in the notice.

Dr. GnanaDev stated that after Ms. Webb's opening statement, he would call on those persons who wants to testify.

Ms. Webb stated there had been no public comment received, however, a comment was received at the meeting from Bridget Gramme from the CPIL, relating to Condition 33, where the Board has removed that after a period of non-practice that exceeds 18 months, a clinical training program would be required before reentering practice. Instead of the required training, the physician would be required to take the Federation of State Medical Board's Special Purpose Examination before reentering into practice.

Ms. Webb noted the purpose of staff's suggestion for the clinical program to be removed is because a quality of care issue that required a clinical training program would have already been part of the probationary order. CPIL suggested the Board leave the clinical training in the guidelines to state that, in the event the respondent's period of non-practice while on probation exceeds 18 calendar months, respondent shall successfully complete the Federation of State Medical Board's Special Purpose Examination or, at the Board's discretion, a clinical training program that meets the criteria of condition 18 of the current version on the Board's Disciplinary Guidelines prior to resuming the practice of medicine. Ms. Webb stated her concern with that change is that it may create challenges to how the Board uses its discretion. The expectation of these guidelines is that a quality of care issue would have already been addressed in the probationary order.

Ms. Gramme, CPIL, stated their biggest concern is that the Board would be giving up their discretion and rights in the appropriate circumstances to be able to order it. She stated they do not object to having the guidelines stay as they are written, they just do not want the Board to give up their discretion.

Dr. Levine stated the Board uses discretion when implementing the Disciplinary Guidelines as they are not rules, they are guidelines. Dr. Levine agreed with CPIL's suggestion of adding the Special Purpose Examination as an option, but maintaining under the appropriate circumstance the ability to decide on a case to case basis the appropriate option.

Dr. Bishop also agreed with the CPIL and Dr. Levine. He stated it makes sense to not give up an option that could be very helpful.

Dr. GnanaDev stated, he too, agrees that option should not be given up.

Dr. Lewis made a motion to adopt the language with the proposed amendment to Condition 33, and authorize the staff to prepare the modified language for a 15-day public comment period. If no negative comments are received, allow staff to finalize the rulemaking package to present to the Office of Administrative Law (OAL), making any non-substantive changes that are required; s/Ms. Yaroslavsky.

Dr. Bishop asked for clarification to Condition 18 in regards to the on-site participation for assessment and evaluation. Ms. Webb recommended the language be edited to state a minimum of 3 and no more than 5 days.

Dr. Lewis amended his motion to include Ms. Webb's amendments to condition 18; s/Ms. Yaroslavsky.

Dr. Lang, Golden State Medical Association, congratulated Ms. Kirchmeyer on her leadership on the demographics evaluation for medical board actions that were commented on and presented previously.

Dr. Lang then stated her concerns about the current discussion on Condition 33 of the guidelines. She noted that sometimes when people have this kind of discretionary control over the future of a physician, they do not have enough knowledge to know what is appropriate. She stated the majority of the Members on the Board, are not physicians and have never practiced medicine. She suggested the Board reconsider this being a mandatory inclusion in the disciplinary guidelines as it may hinder physicians returning to practice.

Motion carried unanimously.

Agenda Item 14 **Petition to Promulgate Regulations Pursuant to Government Code Section 11340.6 Concerning a Requirement for a Physician on Probation to Provide Patient Notification**

Ms. Webb referred the Members to tab 14 in their packets. She stated that Consumer's Union Safe Patient Project has filed a petition with the Board pursuant to Government Code section 11340.6 asking the Board to amend its disciplinary guidelines to require as a standard condition of probation the following: 1) physicians that continue to see patients be required to inform their patients of their probationary status; 2) patients be notified of the physician's probationary status when the patient contacts the physician's office to make an appointment; 3) that this disclosure be required to be in writing and signed at the time of the patient's appointments by each patient the physician sees while on probation to acknowledge the notice; 4) that this disclosure be posted in the physician's office, readily apparent to patients; 5) that the written disclosures described in 3 and 4 above include at least a one paragraph description of the offenses that led the Board to place the physician on probation; 6) that the written disclosures include a description of any practice restrictions placed on the physician; 7) that the patient be referred for more details to the Board's online documents related to the physician's probation; and 8) that the physician maintain a log of all patients to whom the required oral notification was made. The log should contain the following: patient's name, address and phone number; patient's medical record number if available; the full name of the person making the notification; the date notification was made; a copy of the notification given; and a signed attestation by the patient that notification was received. Respondent shall keep this log in a separate file or ledger in chronological order; shall make the log available for immediate inspection and copying at all times during business hours by the Board or designee; and shall retain the log for the entire term of probation.

Ms. Webb noted that after discussion and consideration, the Board must decide to grant or deny the petition. If the Board grants the petition, then the proposed regulatory change is subject to the regular rulemaking process. She stated if the Board denies the petition, then pursuant to Government Code section 11340.6, the Board must write a letter to the petitioners indicating why the Board has reached

its decision on the merits. This letter would also be submitted to the OAL for publication in the California Regulatory Notice Register.

Ms. Hollingsworth stated how important it is for patients to know about their physicians, especially those physicians on probation. She feels that a good foundation for a relationship between physician and patient is trust. Not only is trust important in this relationship, but it is important that patients can trust the Board to keep them from physicians who could pose a threat.

Ms. Greulich stated she loves physicians because her husband's life was extended by twelve years by brilliant, skilled physicians. Those are the types of physicians that the consumers of California should be seeing. Many of the physicians are put on probation for egregious offenses, which is why consumers have a right to know, since they are trusting their vulnerable loved ones to the care of a physician for treatment, whether he or she has a record that is questionable in any way.

Ms. Monseratt-Ramos noted many of the physicians are on probation due to substance abuse, sexually abusing their patients, and mental health issues. She stated the many consumers, such as the elderly and/or those already ill, often do not have access to the internet to check the physicians or time to check them when going from the emergency room into surgery, etc.

Ms. Clavreul stated the Board's duty is to protect the patient, not the physician. She hopes that there is a way that both can be done. She added there must be some kind of way to protect the patient but also assist the physician who is wanting to make a positive change and better themselves.

Ms. McGiffert, Director of Consumer's Union Safe Patient Project, noted that they have petitioned the Board to require as a condition of probation, that physicians inform their patients of their probationary status. She stated that currently physicians have to inform other entities of their probationary status, but not their patients, whom should be the first to be notified. She noted that opponents of the proposal see probation as a minor action in response to minor problems, which of course, is not the case. A probation order is a revocation of a license, and that revocation is set aside for a period of time in which the Board monitors the physicians and certain conditions have to be met. Often, these conditions are considered necessary to protect the public. She stated many of these physicians are on probation for serious offenses. She commented that though there are other reasons some are on probation, the orders they have reviewed have all had repeated problems. She urged the Board to not make protecting the physicians a higher priority than protecting the consumers.

Ms. Fellmeth, CPIL, stated they support Consumer's Union's petition in concept. She noted that they support the disclosure of probationary status in a meaningful way. Physicians on probation have been afforded full procedural due process and they have either agreed to probation or have been ordered to complete some terms of probation by the Board. Ms. Fellmeth stated CPIL has an additional reason for disclosing probationary status. That reason has to do with the Board's probation unit. She stated the probation unit is monitoring those physicians who have come extremely close to revocation and have been seriously disciplined. Any violation of probation should be detected promptly and should become the subject of a petition to revoke probation so as to remove a dangerous practitioner from practice. The probation unit positions has non-sworn investigators who are lacking the power of sworn peace officers and whom have double the caseloads of those who investigate the disciplinary matters. She stated they have to monitor compliance with all terms and conditions of approximately 520 probationers at any given time, including almost 3000 required drug tests per year. She noted that according to the Board's recent Sunset Report, 306 drug tests have come up as dirty taken by

probationers in 2011/2012, yet the probation unit reported only 33 probation violations to the AG's Office, and 34 petitions to revoke probation were filed. She stated, something does not compute with those numbers. She stated if probation violation detection is not working for whatever reason, patients are at risk, which would provide the Board a reason to grant Consumer's Union's petition.

Ms. Choong, CMA, stated CMA has serious concerns about this petition. Probationary status on physicians can already be found on the Board's website. They would argue that physicians can be disciplined for a wide variety of issues, many of which do not pertain to quality of care, such as record keeping errors, failure to pay their taxes or child support, etc. When a physician is placed on probation with restrictions, it means that the Board has deemed them safe to practice with those particular restrictions in place. Probation does not mean full, unrestricted practice. CMA feels that requiring physicians to notify their patients when placed on probation sends a mixed message regarding the physician's safety to practice. They believe if the physician is not safe to practice, the Board would revoke their license. Ms. Choong stated that this requirement could inhibit the Board's ability to settle cases, which would put more of a strain on the Board's investigative and hearing resources at a substantially higher cost to the Board. CMA strongly urged the Board to not go forward with this proposal at this time.

Dr. Gordon, previous Board Member, stated he is a family doctor, having a solo practice for 35 years. He stated he currently works part time at a clinic for the homeless and is a consultant in bioethics at a local hospital. He noted he had spent eight years as a Member of the Medical Quality Assurance starting in 1976. Dr. Gordon stated the Board has 2 important responsibilities and they are to protect the public and to supervise the profession. He noted during his tenure, it was the first time the Board had a non physician president of the Board. He stated the Board at that time was also the first in the nation to have a substantial number of non-licensees as Members. He noted that for several years while he was on the Board, the Members took their dues away from the Federation of State Medical Boards (Federation) because it was determined at the time that it was captured by the profession and had anti-consumerist attitudes. He stated this changed national health policy and professional medical licensing. He added they later rejoined the Federation. He noted that he is certain that the current Members are unaware of this history. He noted it is this history that brought him before the current Members to speak on the petition to approve and make patient notification a standard part of probationary orders. He knows that the investigation and discipline of physicians demands the greatest attention to the legal due process and the facts of the case. He stated in most cases the record of disciplinary actions over the years reflects physicians given probation with terms and conditions. He stated that he has provided a folder with information on disciplinary actions against licensed physicians in San Francisco for inadequate, inappropriate and unprofessional behavior as far back as medical school. He stated these are life long problems where probation is only a temporary rehabilitation.

Ms. Shinazy stated concerns about the consumers who do not have and/or cannot get internet service, or speak another language and cannot understand the website information, as well as the elderly or disabled who also cannot access the Board's website to check the status of their physician.

Ms. Moss, co-founder of Niles Project, stated she works very closely with Consumer's Union and they are asking the Board to approve the Consumer's Union request to provide the basic human right all consumers deserve. She urged the Board's approval on this request.

Dr. Lang noted that as a physician in private practice, putting another piece of paper in front of a patient is not necessarily going to have the safety effect that is expected, as many of today's patients do not

read in great detail all of the paperwork that is required to be filled out before seeing their physician. Dr. Lang also stated that the Board has discretion and does not put a physician in practice if they believe they are a significant safety risk to consumers, which is what the Board is already doing.

Ms. Kirchmeyer stated that she had done a survey with other boards under the DCA, and had heard back from approximately 26 of the 38 boards. She found that only one board has in its disciplinary guidelines, as an optional term and condition, a requirement that a sign must be posted during probation and also have it posted on the licensee's website. Although, this term and condition has been an option for a few years, it has never been used in a settlement and no Administrative Law Judge (ALJ) has ever added the condition into any order. Ms. Kirchmeyer found that there are approximately six boards that requires during suspension or revocation, a sign be posted in the offices of the licensee. There are also approximately three other boards that, like the Medical Board, require, under certain conditions, licensees to notify their clients/patients. Ms. Kirchmeyer noted that she had also sent the request out to the other State Medical Boards. She only received a response from six of them and none of them have the patient notification requirement.

Dr. Hawkins stated this request does have merit. He feels that Consumer's Union should be commended for coming forward and no matter the outcome, consumers will have a better understanding of what the Board does because of this request, and will be made aware of where they can get information about their physicians.

Dr. Hawkins then stated although fairly new to the Board, he truly believes the Board understands its primary function is to protect the public. He stated he was one of those physicians, who before being appointed to the Board wondered if there was bias within the Board. He stated that bias does not exist within this Board, and he has been convinced of that since becoming a Member of the Board. Dr. Hawkins stated he believes strongly that probation does protect the public and the Board takes the disciplinary guidelines very seriously. He feels that this requested requirement could get in the way of patient care.

Dr. Krauss stated he has reviewed several of the publications that Consumer's Union had forwarded to the Members. He noted he was intrigued to read many of the media publications referenced the Board's rejection of a similar proposal back in 2012, prior to his appointment to the Board. He noticed that in those articles, it stated the Board was comprised of a majority of physicians, by which he infers that some of the media and public may believe that a physician member is too conflicted to weigh these matters. He noted, that he, as well as several other physician members, are on other boards where they receive very little or no compensation as Members. Dr. Krauss then stated that one might conclude that his commitment to consumer protection in his volunteerism is a conflict to his own personal interest. He noted that no one from any of the other boards that he participates in have lobbied him on this matter. He stated that as a Member of this Board, he shares the same concerns as the Consumer's Union. Dr. Krauss noted that the public does need to be informed, however this is not just a Medical Board issue. He stated that the DCA has 42 boards and bureaus, where 20 of the boards and/or bureaus are health related and each board's websites varies in the ability to research the disciplinary actions taken against licensees.

Dr. Krauss noted that this petition may be excessive and may prevent successful conclusions in disciplinary proceedings. His recommendation is to have continued meetings with all stakeholders to achieve and improve public information regarding disciplinary actions against any and all licensees, not just those of the Medical Board.

Ms. Schipske requested that staff work on how to communicate to those without internet access and/or the elderly and disabled who have no way of finding out on their own about their physician's status. She stated she agrees with Dr. Krauss that disclosure should be system wide and not focused on one particular set of licensees.

Ms. Wright stated she supports the concept of this petition, however, there has to be a middle ground on how to reach all consumers, not just those with internet access.

Dr. Levine stated she has learned a lot throughout the process of the petition and thanked Consumer's Union for the many hours they have put into the preparation for this meeting. She noted she has some concern about this petition and the degree of detail and there are still several issues that need to be addressed before making a final decision on it. She feels that the Board needs to work on how to get information out to consumers by means other than the website.

Dr. Bishop stated that he would not be comfortable voting on this issue today because there is not enough information and/or answers at this point and to put something into regulation that is imperfect is something he could not abide by. He strongly recommended that the Board take the same very aggressive stance that the Prescription Task Force took by having several interested parties' meetings to get more input before making a final decision on this issue.

Dr. Lewis agreed there is not enough information at this point to make a final decision, but reminded everyone of the Public Outreach, Education and Wellness Committee, whose charge is to focus on public outreach and how to provide information to those hard to reach consumers. He recommended this Committee take the thoughts from the public and Members and work on a well-developed plan to deal with some of the issues brought forward in the petition, and bring it back to the Board before making a final decision today.

Dr. Yip stated he agrees with his colleagues and that there is certainly room for improvement and more discussions should take place.

Ms. Yaroslavsky noted she feels this has been an educational experience for all the Members to hear in such an organized and passionate, unified voice what they feel is important for consumers. She stated her concern is that what the intent of the petition is may not happen. She agreed there are licensees out there that have done egregious things; however, this request may not be appropriate in all situations. So, there needs to be a way to ensure that it is done in an appropriate non-punitive manner which is what is important to everyone. She would like to see it done in a way that will be effective and will make the best impact on the broadest amount of people.

Ms. Pines stated she empathizes with Consumer's Union and everyone who has come and spoken today; however, she believes that one thing that has not been considered is the unintended consequences of people who would receive a notice about their physician. Being a woman of color, she is concerned about what a notice like that would do to the consumers in communities of color. Many of these communities do not have a lot of physicians to choose from and often, do not go to a physician for whatever reason, whether it be cultural reasons, financial reasons, or other reasons.

Ms. Pines noted that when she was first appointed to the Board and was walked through the investigation process step by step, she realized how incredibly detailed that process is. She would like to have staff look more into what would happen if a such notice were received by every individual and

what the anticipated actions would be, so that those responses can be considered before moving forward and making a decision on this issue.

Dr. Bholat stated that also as a woman of color, she also believes there is much more to be considered and discussed before a decision is made.

Dr. Lewis made a motion to deny the petition and authorize staff work with the Board President and Vice President to send a letter to the petitioners and the Office of Administrative Law; s/Dr. Krauss.

Ms. McGiffert, Consumer's Union, thanked the Board for their comments and stated they look forward to working with the Board and staff as this issue moves forward. She noted she understands that some Members have concerns with the prescriptiveness of this, but urged Members to consider the substance of what it is trying to do.

Ms. Fellmeth, CPIL, suggested that the Board delegate to the Enforcement Committee an in-depth look at the probation program, including the method of detecting violations, and the method of bringing those violations to the attention of the AG's office. She noted if the Board's probation unit is not detecting or forwarding violations, then patients are not being protected.

Motion carried. (1 Abstain, Schipske).

Ms. Wright then made a motion to authorize the Board President to create a task force to work with staff and interested parties to develop a plan to incorporate the consumer concerns for informing the public about physicians who are on probation and also ask staff to work on finding a better way to convey this information on the Board's website; s/Ms. Yaroslavsky.

Motion carried unanimously.

Agenda Item 15 Discussion and Possible Action of Legislation/Regulations

Ms. Simoes began by stating she had contacted several legislative offices in the San Diego area and invited them to attend the Board Meeting. Ms. Simoes noted that the 2015 legislative session has ended and the Legislature does not reconvene until January 4, 2016. Ms. Simoes stated this is the first year of a two-year session, so if a bill did not pass this year, it could come back to the Legislature in the 2016 session. She pointed out that some of these 2-year bills are on the tracker list found under tab 15 of the Board packet.

Agenda Item 15A 2015 Legislation Update and Implementation

Ms. Simoes noted the bills in pink are Board-sponsored bills, the bills in green were signed into law by the Governor, the bill in orange was vetoed, and the bills in blue are 2-year bills. She stated she will be discussing all bills in green and pink that were signed into law and will only be giving a brief summary of each bill and then presenting the Board's implementation plan. She stated that every implementation plan will include an article in the winter Newsletter and notifying and/or training of Board staff. She did not mention those implementation items, but asked Members to please know they are included in the implementation plan for all bills.

SB 396 (Hill) requires peer review evaluations for physicians and surgeons working in accredited outpatient settings and it allows accredited outpatient setting facility inspections performed by accreditation agencies (AAs) be unannounced, after the initial inspection. She noted that for unannounced inspections, AAs must provide at least a 60-day window to the outpatient setting. This bill allows an accredited outpatient setting and a "Medicare certified ambulatory surgical center" (ASC) to access 805 reports from the Board when credentialing, granting or renewing staff privileges for providers at that facility. Finally, it delays the report from the Board on the vertical enforcement and prosecution model from March 1, 2015, to March 1, 2016. Ms. Simoes stated the Board's implementation plan is to include a stand-alone article in the Newsletter for physicians that work in outpatient settings as well as meeting with the AAs to explain the bill's provisions and ensure that they understand the new outpatient setting requirements. The Board will draft an all facilities type letter for all accredited outpatient settings on the new requirements of this bill, including any guidance from the Board and send the letter to the AAs for dissemination to all accredited outpatient settings. Staff will update the Board's website and work with Board staff on processes to allow accredited outpatient settings and ASCS to access 805 reports from the Board, as well as work with DCA to complete the VE report by March 1, 2016.

SB 408 (Morrell) ensures that midwife assistants meet minimum training requirements and sets forth the duties that a midwife assistant could perform, which should be at the same level as duties that a medical assistant can perform, technical support services only. Ms. Simoes noted the Board's implementation plan is to notify the Health Quality Investigation Unit (HQIU), and the AG's Office and hold an interested parties' meeting regarding training requirements for midwife assistants around the end of January 2016. The plan will also update and develop regulations to set forth the training requirements for midwife assistants similar to what is required for medical assistants. The Board will also update the website to include information on what is required to be a midwife assistant, what duties a midwife assistant can perform, and frequently asked questions. Ms. Simoes noted the Board will use the medical assistant information on the Board's website as a guide for the midwife assistant information.

SB 800 (Sen. B&P Com.) is the Board's omnibus bill that includes the technical changes requested by the Board. The omnibus language clarifies that registration is required to practice as a polysomnographic technologist, technician, or trainee in California. This bill also makes other technical, clarifying changes to fix an incorrect code section reference in existing law, delete an outdated section of statute related to a pilot project that no longer exists, and clarify that a licensee cannot call themselves "doctor", "physician", "Dr.", or "M.D.", if their license to practice medicine has been suspended or revoked. She noted the Board's implementation plan is only to notify the HQIU, and the AG's Office that these technical changes have been made.

AB 637 (Campos) allows nurse practitioners (NPs) and physician assistants (PAs), under physician supervision, to sign off on the Physician Orders for Life Sustaining Treatment (POLST) forms. The Board's implementation plan is only to notify the HQIU, and the AG's Office of this change.

AB 679 (Allen) amends existing law that requires all health care practitioners that are authorized to prescribe, order, administer, furnish or dispense Schedule II, III, or IV controlled substances and pharmacists to be registered with CURES by extending the date from January 1, 2016, to July 1, 2016. Ms. Simoes noted that this bill contains an urgency clause, so it becomes effective immediately. She stated the Department of Justice is currently in the process of updating CURES. This modernization and streamlined application for CURES registration was originally expected to be completed in July

2015, and the requirement for health care practitioners and pharmacists to register was January 1, 2016. She noted however, the CURES 2.0 system is not yet fully functional to allow for registration online, and this is not anticipated to be ready until at least October 2015. She stated this bill was introduced at the end of session in order to allow time for the new online registration process to be implemented and allow for a smooth transition to the online registration process for health care practitioners. She noted the Board's implementation plan is to include a stand-alone boxed article in the Newsletter to inform physicians of the delayed registration date for CURES; send an email blast to all physicians to provide notification that the CURES registration date has been extended until July 1, 2016; and, update the Board's website to reflect the new July 1, 2016 date for required CURES registration.

AB 684 (Alejo) authorizes the establishment of landlord-tenant leasing relationships between a Registered Dispensing Optician (RDO), optometrist, and an optical company, as specified. This bill transfers the RDO Program from the Board to the California State Board of Optometry (SBO). Ms. Simoes stated this bill replaces one optometrist Board Member on the SBO with an RDO Board Member and establishes an RDO Advisory Committee in the SBO. Also, this bill establishes a three-year transition period for companies that directly employ optometrists to transition to leasing arrangements. This bill is a result of numerous stakeholder meetings convened by the Governor's office, and attended by all stakeholders, including the Board, SBO and DCA. She noted that Board staff have attended these meetings and offered feedback and technical input and that most of the Board's staff suggestions have been taken and amended into the bill. Ms. Simoes noted, however, there are some technical fixes and changes that are still needed, as this bill was being worked on until the very end of session. The Governor's Office, DCA, and SBO are all aware that further changes are needed and the Governor's Office has committed to making needed changes as the RDO Program transitions to SBO. She stated the Board will continue to work with all interested parties, including SBO, DCA, and the Governor's Office, to provide any assistance needed during the transition of the RDO Program to SBO. Ms. Simoes noted the Board's implementation plan is to transfer all RDO Program applications and files including all pending cases to SBO, both hard copies and electronic files as well. The plan will also allow SBO to access RDO Program files in BreEZe and to update the Board's RDO Program webpage, forms, and certificates. Board staff will train SBO staff on the RDO Program, including the new staff position that will be hired to support the RDO Program. Staff will post a transition webpage on the Board's website to inform consumers and RDO Program registrants that the RDO program is moving to SBO and ensure that all interested parties are notified of the RDO Program moving to SBO effective January 1, 2016.

ABX2 15 (Eggman) establishes the End of Life Option Act (Act) in California, which will become effective 90 days after the special session on healthcare financing ends and remain in effect until January 1, 2026. Ms. Simoes stated this Act gives a mentally competent, adult California resident who has a terminal disease the legal right to ask for and receive a prescription from his or her physician to hasten death, as long as required criteria is met. She stated this bill is very similar to SB 128 (Wolk) and the specifics are included in the analysis. This bill allows the Board to update the attending physician checklist and compliance form, the consulting physician compliance form, and the attending physician follow-up form. Ms. Simoes noted, however, this bill already includes the actual forms to be used, until and unless they are updated by the Board. The Board's implementation plan is once this bill becomes effective, to include a stand-alone article in the Board's Newsletter for physicians; to notify the HQIU and the AG's Office; and to update the Board's website to include information on the End of Life Option Act and links to California Department of Public Health's (CDPH) webpage for links to the forms required for attending and consulting physicians.

Mr. Killoran spoke on behalf of a group of people with amyotrophic lateral sclerosis (ALS) who he stated literally have no voice. He stated the Board should adopt special continuing medical education requirements for physicians who counsel severely disable people about aid in dying. He noted that ALS patients often struggle with whether it is better to be alive or dead. Too often ALS patients are not getting the care and equipment needed for their hospice care. He believes the reason for this is because many physicians do not know the options for care and equipment for these patients and that needs to change before this bill takes effect.

ACR 29 (Frazier) makes findings and declarations regarding the importance of organ donation. Ms. Simoes stated this resolution would proclaim April 20, 2015, as Department of Motor Vehicles (DMV)/Donate Life California Day and the month of April 2015 as DMV/Donate Life California Month in California. There are no additional implementation items for this resolution.

SB 19 (Wolk) establishes the California Physician Orders for Life Sustaining Treatment (POLST) eRegistry Pilot. This bill was significantly amended since the Board took a support in concept position on this bill. Ms. Simoes noted this bill was amended to make the POLST Registry a pilot project and now requires the Emergency Medical Services Authority (EMSA) to establish the pilot, for the purpose of collecting a patient's POLST information received from a physician or physician's designee and disseminating the information to an authorized user. She stated this bill only allows EMSA to implement this bill if it determines that sufficient non-state funds are available to allow for the development of the POLST eRegistry Pilot, any related startup costs, and an evaluation of the POLST eRegistry Pilot. There are no additional implementation items for this resolution.

SB 277 (Pan) eliminates the personal belief exemption from the requirement that children receive specified vaccines for certain infectious diseases prior to being admitted to any private or public elementary or secondary school, or day care center. Ms. Simoes stated the Board's implementation plan is to notify the HQIU and the AG's Office and to update the Board's website to include information on new vaccine requirements and medical exemptions, including what a physician should consider before issuing a medical exemption. The plan will also include updating citation and fine regulations to include improper medical exemptions or non-compliance with the provisions of the bill.

SB 337 (Pavley) establishes alternative means for a supervising physician to ensure adequate supervision of a PA for routine care and the administration, provision, or issuance of a Schedule II drug order. Ms. Simoes noted this bill added medical records review meeting, training, and countersignature on 20 percent of Schedule II orders. The Board's implementation plan is to notify the HQIU and the AG's Office and to update the Board's website.

SB 464 (Hernandez) authorizes specified health care practitioners to use a self-screening tool and after an appropriate examination, prescribe, furnish, or dispense self-administered hormonal contraceptives to the patient. Ms. Simoes stated the Board's only implementation item is to notify the HQIU and the AG's office.

SB 643 (McGuire) is part of a package of three bills that establish a regulatory framework for the cultivation, sale, and transport of medical cannabis by the Bureau of Medical Marijuana Regulation in the DCA, the Department of Food and Agriculture (CDFA), and other state entities. Ms. Simoes noted that the portions of the bill that impact the Board are very similar to the provisions in medical marijuana bills that the Board supported. She noted the three bills related to medical cannabis were re-written and now SB 643 contains the provisions related to physicians recommending cannabis. The bill

includes cases related to marijuana recommendations in the Board's priorities. It also creates a new section in law related to recommending cannabis, which states that physicians recommending cannabis to a patient for a medical purpose without an appropriate prior examination and a medical indication, constitutes unprofessional conduct. This bill also prohibits a physician from recommending cannabis to a patient unless that physician is the patient's attending physician (as defined by subdivision (a) of Section 11362.7 of the Health and Safety Code (HSC); includes advertising, financial kick back and employment restrictions; and requires the Board to consult with the California Marijuana Research Program on developing and adopting medical guidelines for the appropriate administration and use of cannabis. It also specifies that a violation of the new section of law regulating cannabis recommendations is a misdemeanor and punishable by up to one year in county jail and a fine of up to five thousand dollars or by civil penalties of up to five thousand dollars. She noted the Board's implementation plan is to notify the HQIU and the AG's Office, as well as include a stand-alone article in the Newsletter regarding the new requirements for recommending cannabis. In addition, the Board will need to update its statement on recommending marijuana and consult and solicit input on needed revisions. Ms. Simoes stated the plan will also require staff to update the Board's website with the revised statement and update the Board's publications.

SB 738 (Huff) provides liability protection for physicians writing standing order prescriptions for epinephrine auto-injectors for school districts, county offices of education, and charter schools. Ms. Simoes noted the Board's only additional implementation item is to notify the HQIU and the AG's office.

SJR 7 (Pan) urges the Congress and the President of the United States to renew funding for the Health Resources and Services Administration's Teaching Health Center and Primary Care Residency Expansion Graduate Medical Education Programs, and to lift the freeze on residency positions funded by Medicare to expand physician supply and improve access to care. Ms. Simoes noted there are no additional implementation items for this resolution.

Agenda Item 15B 2016 Legislative Proposals

Ms. Simoes stated that as was presented in the Public Outreach, Education, and Wellness Committee, Board staff is working on launching an outreach campaign to encourage all patients to verify their physician's license on the Board's website. Part of the plan for this campaign is to focus outreach efforts in March. She stated Board staff is suggesting that the Board pursue a legislative resolution to proclaim March of every year, "Verify a Physician's License Month". This is another tool to enhance the outreach campaign efforts to improve the Board's visibility, and increase awareness of the Board's website and the physician profile information it offers to patients.

Ms. Yaroslavsky made a motion to approve a proposal to seek a legislative resolution for the verify (or check) a physician license month and/or work with DCA to make this proposal for all Boards; s/Dr. Levine. Motion carried unanimously.

Ms. Simoes stated Board staff has become aware of a growing number of cases that result in discipline because a licensee has some type of disability that impairs his or her practice, but the licensee does not apply for a disabled license. Many times these cases result in a patient care incident and related discipline. Board staff is also seeing the same issue for older physicians who continue to practice although they may face some cognitive issues due to age. Many of these physicians have had long, distinguished careers, which unfortunately have to end in discipline. Both of these types of cases are

difficult cases to settle. Many of these physicians have not had prior discipline, and do not want to surrender their licenses. For physicians in this situation who are facing an accusation that would result in more than a public letter of reprimand, but less than revocation, the Board is suggesting a new option for discipline, resignation of a license. The resignation option would allow a physician to voluntarily resign, but not allow the physician to reinstate his or her license. A resignation option might be more desirable for physicians and would ensure patient protection by taking that physician out of practice in California. It would merely be an option for the Board to consider for discipline, and it would be up to the Board to decide if that particular option is appropriate for each particular case.

Ms. Yaroslavsky made a motion to approve a proposal to seek legislation to have this option available for physicians during the disciplinary process; s/ Dr. Krauss. Motion carried unanimously.

Ms. Simoes stated Board staff is suggesting that law be amended to clarify the Board's authority in licensing and regulating allied health licensees (Licensed Midwives, Research Psychoanalysts and Polysomnographic Technologists and Trainees). She added there are many provisions that apply to physicians and surgeons that the Board also applies to allied health licensees, and the Board wishes to clarify its authority in law to do so. The Board tried to include some of these provisions in last year's omnibus bill, but they were removed because legislative staff thought they were too substantive for omnibus legislation. The Board would like clear authority to take disciplinary action against allied health licensees for excessive use of drugs or alcohol, to revoke or deny a license for registered sex offenders, to allow allied health licensees to petition for license reinstatement, to allow the Board to use probation as a disciplinary option for allied health licensees, and to obtain payment for the costs of probation monitoring.

Ms. Simoes stated there are also several areas that need clean up where the changes may be too substantive for omnibus. Board staff would like to run a bill that would include the allied health clean up and the other major clean up items.

Ms. Simoes stated this amendment would include a clean up to the provisions in the Medical Practice Act that include the Board of Podiatric Medicine (BPM). In existing law it appears that the Board oversees and houses the BPM, when that is not the case. Board staff would like to clean up all sections that reference Board oversight over the BPM and move or amend the appropriate sections of the Medical Practice Act and the laws that regulate the BPM, in Article 22 of the BPC.

Ms. Simoes stated another amendment being sought is clarification that the Board has the responsibility to deny or approve a postgraduate training authorization letter (PTAL) for international graduates. Although the Board currently uses the same reasons to deny a PTAL as it does for denying a license, this authority needs to be clarified in statute by including PTALs in Business and Professions Code (BPC) section 2221.

Ms. Simoes added the Board currently has a limited practice license that applicants or disabled status licensees may apply for if they are otherwise eligible for licensure, but unable to practice all aspects of medicine safely due to a disability. The way the law is written now, only new licensees or disabled status licensees can apply for a limited practice license. Board staff believes that all licensees should be able to apply for a limited practice license at any time. Board staff recommend making it clear in law that the limited practice license is an option for all licensees.

Ms. Simoes pointed out that currently when a physician is on probation; all related discipline documents are available on the Board's website for as long as those documents are public. However, if the Board issues a probationary license to an applicant pursuant to BPC section 2221, it is not specified in law how long that information should be made available to the public. Board staff recommends this information should follow the law related to physicians placed on probation, and that documents related to probationary licenses should be disclosed to an inquiring member of the public and posted on the Board's website.

Finally Ms. Simoes stated that existing law related to investigations that involve the death of a patient allows the Board to inspect and copy the medical records of the deceased patient without the authorization of the next of kin of the deceased patient or court order, solely for the purpose of determining the extent to which the death was the result of the physician's conduct in violation of the Medical Practice Act. The Board must provide a written request to the physician that owns the records, which includes a declaration that the Board has been unsuccessful in locating or contacting the patient's next of kin after reasonable efforts. Sometimes the physician is no longer practicing at the facility where the care of the deceased patient occurred or where the records are located. Board staff recommends amending this section to allow the Board to send a written request to the facility where the care occurred or where the records are located, in an attempt to secure the patient records and allow the Board to move forward with its investigation.

Ms. Yaroslavsky made a motion to approve seeking legislation for the allied health and major clean up proposals; s/Dr. Lewis. Motion carried unanimously.

Ms. Simoes stated Board staff recommending some omnibus proposals. The proposals include deleting BPC section 852 related to the Task Force on Culturally and Linguistically Competent Physicians and Dentists, as this task force no longer exists; Deleting BPC sections 2380 – 2392, as the Bureau of Medical Statistics does not exist in the Board; and deleting BPC section 2029 related to the retention of complaints, as this section is not relevant since the Board has its own records retention schedule and BPC section 2227.5 also specifies how long the Board retains complaints.

Finally Ms. Simoes state that BPC section 2441 is related to limited practice licenses should be amended to clarify that the Board must also agree to the practice limitation that the reviewing physician is suggesting for the applicant/licensee.

Dr. Lewis made a motion to approve the omnibus items; s/Dr. Krauss.

Ms. Choong, CMA, stated they feel the BPC section 2441 should be included in the major clean up category rather than the Omnibus Technical Clean Up.

Ms. Simoes stated there is no problem moving the BPC Section 2441 to the major clean up category.

Motion carried unanimously with the movement of the BPC section 2441 amendment to not be omnibus.

Agenda Item 15C Status of Regulatory Actions

Ms. Simoes referred the Members to tab 15C in their packets. Ms. Simoes provided an update to the Board regarding the regulations that would allow the Board to accept ABMS maintenance

of certification (MOC) CME as meeting the Board's Continued Medical Education (CME) requirements for license renewal. She noted the Board has received information from ABMS that all member board's MOC CME meets the Board's CME requirements (category 1), with the exception of one ABMS board, the American Board of Pediatrics, and this board is slated to meet the Board's CME requirements in January 2016. As such, the Board's proposed regulation is no longer necessary. Board staff is suggesting that this regulatory proposal be withdrawn.

Ms. Yaroslavsky made a motion to withdraw this CME regulatory proposal; s/Dr. Lewis. Motion carried. (1 Recusal – Levine).

Ms. Webb stated that upon further review of Title 16, section 1355.35(a)(10), an error was identified due to a recent legislative amendment. Accordingly staff recommends the language be amended as indicated in the Board packet, and noticed for a 15-day comment period.

Dr. Levine made a motion to approve the modified language, and authorize staff to notice the modified language for a 15-day comment period. If no adverse comments are received, the Board would authorize the Executive Director to make any non-substantive changes required to complete the rulemaking process and submit the matter to the Office of Administrative Law (OAL); s/Ms. Yaroslavsky. Motion carried unanimously.

Agenda Item 16 Update from the Department of Consumer Affairs

Ms. Lally stated she will take the comments that came today from the public and the Members regarding the petition for patient notification back to Director Kidane for discussion and looks forward to working with the Executive Director on these issues.

Ms. Lally continued with an update on the DCA executive team. She stated that after 36 years of service, their Deputy Director Amy Cox Farrell of their IT division is retiring and her replacement will be Jason Piccione.

Ms. Lally presented an update on the DCA's pro-rata study. As a result of the findings of the study, DCA has moved its annual cost distribution meeting with the boards from January 2016 to November 17, 2015. The purpose of this meeting is to give all boards and bureaus information regarding the distributed costs of the DCA. She stated what will be different this year is that the various units within the DCA will have staff available to answer questions and discuss those services they provide to the boards. They believe this "open house" format will allow the boards a greater opportunity to connect with the units they are currently working with, as well as explore other services that may not yet have been utilized.

Ms. Lally reminded the Members of the required training requirements and asked that they get them completed as soon as possible.

Ms. Lally then announced the upcoming online e-file program, called Net File, which will be available for the 2016 filing of the Form 700, Conflict of Interest Forms. In preparation for the April 1, 2016 filing deadline, access to the new online filing system will be available in February, 2016, at which

time DCA will distribute an updated conflict of interest procedure memo to all filers as well as the necessary training modules to properly educate, register and prepare users for the new paperless system.

Agenda Item 17 **Presentation and Discussion on the *North Carolina State Board of Dental Examiners v. Federal Trade Commission* Decision and Attorney General's Opinion**

Ms. Webb stated this decision was made by the Supreme Court on February 25, 2015, and noted it is important for regulatory boards nationwide. This case was brought forward because the North Carolina State (NC) Board of Dental Examiners sent out cease and desist letters to non-dentist teeth whiteners, claiming that they were engaged in unauthorized practice of dentistry. Ultimately, the non-dentist teeth whiteners stopped offering the service in North Carolina. The Federal Trade Commission found that the Dental Board's actions violated the federal antitrust law and sued the NC Board. Ms. Webb stated that the NC Board argued that its actions did not violate the law because it was a state agency and therefore immune from the antitrust law. The Supreme Court stated that a state board on which a controlling number of decision makers are active market participants in the occupation the board regulates must satisfy active supervision requirements to get antitrust state action immunity. Ms. Webb noted that teeth whitening was not covered under the definition of the practice of dentistry and the NC Board did not have statutory authority to pursue individuals for unlicensed practice. She stated that although the NC Board's authority is different than the Medical Board's, it is important for the Boards Members to understand the decision and its implications. This decision prompted Senator Hill to request an AG's Opinion on what constitutes active state supervision. Ms. Webb noted the AG's opinion stated that state supervision requires a state official to review the substance of a regulatory decision made by a state licensing board in order to determine whether the decision actually furthers a clearly articulated state policy to displace competition with regulation in a particular market. The official reviewing the decision must not be an active member of the market being regulated and must have and exercise the power to approve, modify or disapprove the decision.

Ms. Webb stated the AG further found that there are some broad areas of operation where the Board Members can act with reasonable confidence that their immunity will remain intact. She noted the Federal Trade Commission has recently come out with guidelines relating to this decision, and those guidelines make it clear that changing the composition of the boards to have a majority of public members will not necessarily shield Board Members from antitrust liability. The AG's opinion made some suggestions for increasing active state supervision, which are currently under review by the legislature and other stakeholders.

Ms. Webb noted the AG indicated that a State cannot grant blanket immunity for anti-competitive activity, so training of Board Members to recognize market sensitive areas is important.

Ms. Webb closed by noting that with regard to indemnification, the AG's opinion did recommend that the legislature clarify that treble damages in antitrust awards are not punitive damages. She stated this is important because the State, in general, is liable for injuries caused by an act within the scope of employment, but is not liable for punitive damages.

Ms. Webb stated this is an ongoing discussion and that the DCA will be releasing a memo soon and expects they will be adding this subject to the new Board Member Orientation Training.

Agenda Item 18 Update on the BreEZe System

Ms. Lowe gave an update on the BreEZe System from the Board's perspective stating she has been part of the BreEZe project from the very beginning and acting as the Board's licensing and cashiering expert, as well as assisting with Enforcement and general issues with the system. She stated she also co-chaired the licensing user group for DCA, so with that experience, she feels she has enough experience to speak on behalf of the Board.

Ms. Lowe noted that after having used BreEZe for the past two years and using the system on a daily basis in her position, that BreEZe does work and meets the Boards basic needs. However, she feels that the system at this time does not have all of the functionality that is needed. She noted the system can get the process completed; however, there are several work arounds that must be done in order to complete the processes. She gave the example of when a new license is issued or a license is renewed, a pocket card is generated and sent to the licensee. Since transitioning to BreEZe, this once automated process now requires Board staff to manually manipulate a data extract on a weekly basis to remove duplicate records, and records with invalid data before printing of the cards can be done. A request for change to this process is pending with DCA.

She stated there are several change requests currently pending at DCA. DCA determines if the request is something that can be completed by their staff or if the change needs to be completed by the vendor. All requests for change are reviewed to determine if the request is possible, who is responsible for making the changes and how much time it will take to complete. In order for any changes to be put into production, it must go in with a release. With each release, the Board prioritizes its top 10 pending change requests and then notifies DCA of those. The list is then reviewed by DCA and the vendor and each item is calculated into how many hours the request would take to complete. The time and resources available are limited, and divided between all of the boards and bureaus of DCA. She stated that because the scope of a few of the Board's change requests are so extensive, they have not made it into any releases yet.

Ms. Lowe stated the Board obtaining reports is still an issue that is being resolved. When the transition first took place, there were very few reports available in the system. However, Board staff have been able to program the majority of the licensing reports and are working on enforcement reports that are needed. It is a time consuming process, but progress is being made. She noted that in addition to the current staff working to create the needed reports, the Board's Information Systems Branch (ISB) will be hiring two limited-term positions that will focus on report writing. This should allow for a greater output of the necessary reports.

Mr. Piccione, DCA, gave an update on the BreEZe System. He stated the current BreEZe production statistics shows a demand for DCA online services, online applications and online payments. The BreEZe system has had over 806,000 unique account registrations, and a very large number of licensees are using the BreEZe system. Mr. Piccione noted data shows that when a program chooses to enable the renewals in the system, between 50 and 70 percent of total renewals are completed online. Although the Medical Board is on the front end of that range, 50 percent still demonstrates a solid online cultural adoption. He stated the BreEZe system and the DCA community are adapting.

Mr. Piccione stated Board staff continues to work to make sure that BreEZe can accommodate the Boards' work appropriately. Board staff accomplishes this by working through the BreEZe IT

governance process and submitting change requests and system investigation requests (SIR). He noted the DCA BreEZe maintenance team has implemented five to seven week releases. Mr. Piccione reported that there will be one more production release before the release 2, go live date scheduled for January 2016. He noted the accelerated maintenance team will resume after that January date. In addition to the maintenance team, the past 6-8 months have seen training and knowledge transfer between the contract integrator and DCA staff in the areas of configuration, technical architecture and interfaces. He stated knowledge transfer will continue and after the next group of DCA programs go live with BreEZe, this team will join the existing maintenance team to address system requests at an increased rate.

Mr. Piccione thanked Mr. Eichelkraut, Ms. Smith and Ms. Lowe for their assistance and participation in the user group.

Mr. Piccione moved into the reporting part of the BreEZe system. He noted that the system has a growing report offering, currently 34 standing reports and 126 custom reports. He also commended the effort of staff for producing the needed Enforcement reports that contain a wide range of valuable statistics, and many DCA programs are currently using these reports, during their sunset proceedings. The DCA reports unit also provide bi-monthly data extracts that provide similar data for licensing. The user group understands the need for the expansion of their reporting capabilities. He stated they believe the effective date of strategy must affect security, self-service, agility and a reasonable development life cycle. This means quickly putting the board's data in the hands of the board's users, management and constituents in a structured and secure manner in order to facilitate management in day-to-day operations, make strategic management decisions, and effectively allocate resources to achieve program goals.

Mr. Piccione stated the DCA is implementing a business intelligence platform known as the Quality Business Intelligence Reporting Tool. With this tool, DCA will be able to navigate through the data profile. The DCA Office of Information Services (OIS) has scheduled a preliminary demonstration of this system in early December 2015. He noted the DCA is working with Board staff to supplement its current report writing staff for both acute reporting needs and will include Board staff in the early stages of the intelligence development for more mid-term goals.

Mr. Piccione stated the DCA wants consumers to search for licensed physicians and to be able to do so quickly and easily. DCA recognizes the opportunities the BreEZe system offers with the online functionality and are focused on the online user experience and plan to address these opportunities post release 2 go live, which is scheduled for January 2016.

Ms. Clavreul stated she is concerned when computer technology is not working.

Ms. Fellmeth stated there is an area where BreEZe is causing a violation of the law. She noted BPC section 2027 requires the Board to disclose detailed information about multiple medical malpractice settlements entered into by a physician within a certain period of time. For two years, none of that has been disclosed on the BreEZe system, where prior to BreEZe, that information was available on the website.

Ms. Kirchmeyer stated that issue is on the top of the priority list.

Agenda Item 19 Discussion and Possible Action on Universidad Iberoamericana (UNIBE) Medical School Application for Recognition

Mr. Worden gave a brief description on the medical school application stating Board staff and Dr. Nuovo have completed their initial review of the UNIBE medical school application. He stated this school is a nonprofit private institution in the Dominican Republic and is fully accredited by the Dominican Republic Ministry of Higher Education. The school was founded in 1982 and offers 15 undergraduate programs and 30 graduate programs. This medical school is a five year, four month program and the first year and four months are pre-med and if the students have a bachelor degree that meets those pre-med requirements they move directly on to the basic medical school. The medical school itself has a traditional track that is taught in Spanish and an international track that is taught in English. However, all third year clinical rotations are done in the Dominican Republic and students must be proficient in Spanish to proceed.

Mr. Worden stated that he and Dr. Nuovo agree the school is ready for a site visit to determine if it meets all of the requirements for recognition. The school has done a great job of providing the Board all necessary information; however, in order to proceed and finalize the evaluation, it will require a site visit where some very specific items will be requested from the school.

Dr. Lewis made a motion to authorize a site visit team to conduct a site inspection of UNIBE and the clinical teaching hospitals in the Dominican Republic; to approve the composition if the site team to include at least one Board Member, one Executive Staff Member, Legal Counsel and a Medical Consultant; to delegate to staff the determination of the hospital training sites to be evaluated; and to approve staff to move forward with an Out of Country Travel Request to authorize travel to the medical school and teaching hospital sites in the Dominican Republic; s/Dr. Levine. Motion carried unanimously.

Agenda Item 20 Update, Discussion and Possible Action of Recommendations from the Midwifery Advisory Council Meeting

Ms. Sparrevohn stated the MAC has been working on updating the licensed midwife annual report data collection tool so that the statistics will more accurately reflect the outcomes in California. She stated they hope to have their recommendations to the Board in early 2016. The MAC is looking forward to the crafting of regulations pursuant to SB 408, the bill that authorized midwife assistants. She noted that regulations remain stalled pursuant to AB 1308, but she anticipates movement in 2016. She stated SB 407, which passed this year, allows for licensed midwives to provide medical services through the Comprehensive Perinatal Services Program, but only after the regulations for AB 1308 are enacted.

Ms. Sparrevohn asked for a motion to approve the following items for the next MAC meeting scheduled for December 2015: task force update on the licensed midwife annual report data collection tool and interested parties' meeting that was held October 13, 2015; discussion, update and approval of changes to the data collection tool; update on continuing regulatory efforts required by AB 1308; an update on any legislation related to midwifery that was passed during the current year; and an update on the challenge mechanism being re-approved for the National Midwifery Institute.

Ms. Yaroslavsky made a motion to approve the above listed agenda items for the next MAC meeting; s/Dr. Krauss. Motion carried. (Dr. Lewis absent from vote).

Agenda Item 21 Update, Discussion and Possible Action of Recommendations from the Enforcement Committee

Dr. Yip gave an update on the Enforcement Committee Meeting. He stated Ms. Webb gave a presentation on utilization review (UR) including the process of UR in the workers' compensation and managed care system. She pointed out that UR is considered the practice of medicine. He stated Ms. Webb also provided the manner by which complaints regarding UR are handled by the Board. Ms. Webb also pointed out the problems encountered by the Board staff in processing these complaints, specifically expert reviewers do not have to be licensed in California and a name of the expert reviewer is required to be kept confidential in certain circumstances. He noted that Ms. Webb provided a suggestion to the Committee to improve the Board's oversight. The Committee requests the full Board to approve supporting any legislative changes for UR and independent medical review physicians to be licensed in California, to have similar certification and/or training as the treating physician and to identify themselves in the report.

Dr. Yip made a motion for the full Board to approve supporting legislative changes for UR and independent medical review physicians to be licensed in California, to have similar certification and/or training as the treating physician, and to identify themselves in the report; s/Ms. Yaroslavsky Motion carried. (Dr. Lewis absent from vote).

Dr. Yip then stated Ms. Robinson provided an update on the demographic study. She stated she had been in contact with the California Research Bureau and advised the study is ongoing and hopes to provide an update on the study at the next Board meeting. He stated Ms. Delp provided an update on the Enforcement Program.

He noted that Ms. Delp mentioned an issue raised by the AG's Office regarding the use of the same investigator to work a criminal case and administrative investigation. The AG's office is asking for the HQIU to develop a parallel policy for these types of investigations. In November the Board staff will reach out to the HQIU and the AG's Office to address the concerns of conducting parallel investigations with the goal of reaching an agreement that works best for all agencies.

Dr. Yip stated the Committee was also updated on the vertical enforcement (VE) report. The Board staff will meet with DCA and the AG's Office to discuss the highlights and challenges of the VE process. The report is due to the Legislature in March 2016 and the Board intends to have two Board Members provide feedback on the content. A draft report is expected to be completed and provided to the Board at the next meeting; however, if the report is not completed by that time, a special Board meeting may have to be held in February to review the report.

Ms. Delp also advised of the development of a "cloud" to share case information electronically via a secure system that will be utilized by Board staff, DCA, HQIU, and the AG's Office. A meeting is scheduled for November 3, 2015 to discuss implementation of this electronic process. Ms. Kirchmeyer and Ms. Delp also advised the Committee of a meeting with the Office of Administrative Hearing (OAH) with the purpose of introducing Ms. Delp as the Board's new Chief of Enforcement and to discuss the new uniform standards for substance abusing licensees. During the meeting, they discussed training to provide to the ALJ's on topics including prescribing expectations, impairment and how it impacts the practice of medicine and medical record keeping standards and expectations.

Dr. Yip noted that Ms. Delp also updated the Committee regarding the expert reviewer training, which is expected to be conducted in March 2016 in Southern California. In addition to the training, a

recruitment plan to expand the number of experts within specific specialties is being developed. The expert reviewer database is expected to be enhanced to make it user friendly for Board staff, investigators, and medical consultants.

Dr. Yip stated Ms. Delp provided an update on the Board's involvement in the issue of overprescribing psychotropic medication to children in foster care. It has been challenging for Board staff of find an expert to give an opinion on data that was provided by the DHCS and DSS. However, staff will meet with a potential consultant on November 9, 2015 and it is hopeful that this physician will be interested in working with the Board. Dr. Yip noted that on October 12, 2015, the Board staff met with DHCS and DSS to give them an update regarding the Board's analysis of the data and explained that the data may not be sufficient to make a determination regarding physicians overprescribing. The Board, DHCS and DSS developed a notification process whereby the individuals in the system for foster care can contact the Board if they believe a physician is inappropriately prescribing medication to children in foster care.

Agenda Item 22 Update and Discussion Regarding the Interim Suspension Order (ISO) Study

Ms. Kirchmeyer referred the Members to pages BRD 22-1 and 22-2 in the Board packets. She stated that in a prior meeting, the Board directed Board staff to work with the AG's Office and the HQIU to find ways and strategies to expedite cases that Board staff thought would be ISO cases. After reviewing several cases, the workgroup established a list of improvements/policy changes that can be made.

The first improvement would be expert training for cases alleging physical or mental impairment. Training needs to be provided to the Board's subject matter experts on report writing and clarity of reports. The reports need to specifically indicate whether the individual is safe to practice without any restrictions.

The next improvement would be if an expert report states that the individual needs to have restrictions in order to practice safely, an ISO should be considered to institute those restrictions. Ms. Kirchmeyer stated the Board needs to monitor all investigation/prosecution cases on a monthly basis to ensure all cases that could be an ISO are moving forward.

In addition, the Board needs to closely monitor the requirement in BPC section 2220(a), which specifically states that within 30 days of receipt of a BPC section 805 or 805.01 report the Board must investigate the circumstances to determine if an ISO should be issued. A process needs to be in place for follow up by the Board with HQIU and the AG's Office to see this determination is made in the required timeframe.

Ms. Kirchmeyer noted that another improvement needed is to have the Central Complaint Unit's (CCU) immediate transfer of BPC 805 and 805.01 reports. The Board's CCU would then immediately transfer these reports via email to both the HQIU and AG's Office upon receipt in order to expedite the process.

In addition, the Board, HQIU, and AG's Office report reconciliation where the Board, HQIU, and AG's Office staff would reconcile reports on a monthly basis the cases that have been referred to the AG's

Office requesting an ISO. This would ensure the cases that have been identified as ISO cases are prioritized by the Board, HQIU, and the AG's Office.

Another improvement would be to request that the Office of Administrative Hearings expedites ISO decisions and serves the Board, along with the AG's Office, to ensure timely receipt of decisions where ISOs are issued, as well as denied. In addition, the Office of Administrative Hearings (OAH) should also be specifically requested, when granting an ISO on an ex parte basis, to issue the ISO immediately at the conclusion of the ex parte hearing, rather than taking the matter under submission, so that the physician can be immediately and personally served with the ISO before leaving the OAH. Ms. Kirchmeyer noted that taking such matters under submission, in order to prepare a detailed decision to be issued later is only appropriate at the conclusion of a noticed hearing on the ISO petition.

Ms. Kirchmeyer also recommended training to the OAH on impairment and how it impacts the practice of medicine. Such training could also be provided by the Physician Assessment and Clinical Training Program Staff.

Another recommendation would be to update the investigation report synopsis. The HQIU would clearly identify in the case the synopsis of a Report of Investigation that the case was being transmitted for an ISO and an accusation.

Ms. Kirchmeyer recommended that the Lead Prosecutor (LP) and the Supervising Investigator I review each case immediately upon receipt and throughout the course of the investigation to determine if the case should be identified and handled as an ISO. In addition, during quarterly case reviews, both the LP and the Supervising Investigator I should review all the cases to identify if there is a need to seek an ISO. Throughout the course of any investigation, the Deputy Attorney General (DAG) and the Investigator assigned should then alert their chain of command that the evidence has changed the matter to an ISO.

Another recommendation was to add ISO cases to the Monthly Investigative Case Activity Report (MICAR). Ms. Kirchmeyer stated adding these cases to the MICAR report would immediately inform the Senior Assistant Attorney General that a case is being transmitted for an ISO, so that the case can be closely monitored.

Ms. Kirchmeyer noted that any disagreement on whether a case should be processed as an ISO should be immediately placed into the dispute resolution process and follow the chain of command.

She also noted that as soon as possible, staff should establish a parallel criminal/administrative investigation policy and process for cases where the HQIU designates a Board investigation as criminal. Providing for a parallel policy would help protect the Board's integrity in its investigation process when these dual pathways arise. Additionally, staff anticipates this policy would eliminate the need to wait for a criminal case to proceed through the criminal process before seeking an ISO (or a Penal Code Section 23 Order). That process may result in an investigator assigned to the criminal investigation and a separate investigator assigned to the administrative investigation. This would allow the investigations that have been designated as criminal by HQIU, which may also be ISO cases, to proceed in the administrative process if warranted by the evidence.

Finally, Ms. Kirchmeyer recommended creating an activity code within the BreEZe system to identify a case as an ISO case for monitoring and statistics.

Ms. Kirchmeyer stated several of these recommendations have already been either fully implemented or are in the process of completion. Board staff will continue to work with the HQIU and the AG's Office to implement the remainder of these changes as soon as possible to assist in the timely identification and processing of cases warranting an ISO. An update on the progress of these changes and their impact will be provided at a future Enforcement Committee meeting.

Ms. Castro added some information to Item 13. She stated the policy of an overriding Board such as this is to coordinate, compliment, triage and maximize its resources while preserving the constitutional rights of the physicians. This body has both criminal and civil components to the Board's mandate, and this Board is no different and should pursue all of its remedies with vigor. Parallel proceedings involve criminal and civil actions against the same individual for conduct arising under the same set of facts and generally consist of simultaneous sequential or overlapping criminal, civil and administrative proceedings. The AG's office has always had a parallel proceedings policy in place so staff has always been bound to not participate in criminal proceedings against physicians. She noted it has become incumbent upon HQIU and DCA to bind its investigators. In B&P Code Section 2006, it states that any investigation by the Board shall be deemed to refer to a joint investigation conducted by employees of the DOJ and HQIU under the VE prosecution model as specified in section 12529.6 of the Government Code. However, the AG staff does not direct criminal investigations, as their policy is two different attorneys assigned and two different investigators assigned. Unfortunately, the VE model never contemplated the AG's Office directing of criminal cases. With that, the AG's Office is not monitoring or directing criminal cases being developed by HQIU against physicians. Ms. Castro stated the AG's Office is requesting a second investigator be assigned where probable cause exists for criminal issues to arise. She stated the Board needs to properly administrate its investigations and precautions must be taken, which is why a parallel proceedings policy must be put in place by the DCA. This would avoid claims that the Board and DCA investigators have violated a physician's constitutional rights by the use of civil discovery.

Mr. Gomez stated this issue has a broader application to the entire DCA because not only does DCA have the HQIU, but it also has the Investigation Enforcement Unit, which also does investigations in the licensing division for the AG's Office. He stated the DCA needs to be sure that whatever is being done, is being done with equity, justice and consumer protection in mind for all licensees. Mr. Gomez stated this is a subject that needs much more discussion.

Ms. Choong, CMA, stated they believe that further discussion is needed on number 13 of this agenda item. She requested more information as they have some concerns that pertain to a particular case from 2005. She stated as this process is developed they want to be sure the Gray case is strictly followed to the extent that the Board is proposing to get license restrictions imposed as a condition of bail.

Ms. Castro stated these PC23's were not discussed during the ISO discussions because the bail restrictions actually prohibit the person from using the license and is ordered by a judge. The Board is the only entity who has the authority to bind any license or its use.

Ms. Kirchmeyer stated that she wanted to point out that although staff is working on expediting ISO's, it does not mean the Board will no longer request PC23 restrictions. PC23s are a lot more expedient to obtain in several instances and the Board will continue to use this important tool.

Agenda Item 23 Investigation and Vertical Enforcement Program Report

Mr. Gomez announced that Ms. Sweet has retired recently and Ms. Nicholls has been promoted to Deputy Chief.

Ms. Nicholls gave a presentation and stated their main focus is consumer protection. She stated the HQIU would identify and prioritize ISO cases and those that present the biggest threat to the public. They will also focus on time gaps in investigations and provide high quality, thorough investigations, and ensure that the lower priority cases be rotated to keep them moving. Ms. Nicholls stated the HQIU is also focusing on investigator retention, which is crucial to the success of their program.

Ms. Nicholls announced some upcoming events such as the California Narcotics Officers Association (CNOA) training that will be taking place in November 2015. She stated they also have a Medical Consultant Statewide Meeting scheduled to take place in January 2016. She noted that HQIU is in the process of finalizing a lesson plan with the AG's Office HQE staff for joint training on 805 investigations. The target date for that training is February 2016.

Ms. Nicholls noted the Field Training Officer (FTO) pay differential request has been approved by the Director and has been forwarded to CalHR for final processing. An HQIU retention pay proposal drafted by former Deputy Chief, Laura Sweet, was submitted to the Director and will be included in the collective bargaining process set for Spring 2016. She stated numerous hiring panels are taking place throughout the state to fill investigative vacancies, and is a top priority.

Ms. Nicholls announced a new program being rolled out to all HQIU offices. This program is an electronic case binder system. The system was developed by the San Diego Sheriff's Department and has been adopted by Sheriff's, San Diego's Police Department Homicide Units and the San Diego District Attorney's (DA) Office. This system was recommended to the HQIU and was given to the HQIU free of charge. She noted besides the obvious cost savings, this system is a much more efficient way to share information. Ms. Nicholls stated this system will not only be used in expert packages, but also for transmittals to the AG's Office. She noted the AG's office is supportive of this method and she feels it will be a great asset to both entities.

Ms. Nicholls transitioned into the HQIU's current vacancies. She stated there are currently 25 investigator vacancies out of 76 positions, which makes a 33% vacancy rate. They have identified 16 investigator candidates that are currently in background. She noted that they have recently identified five more candidates that are also currently in background. Ms. Nicholls stated there are six more anticipated investigator vacancies whom are currently in background with other agencies.

Ms. Nicholls noted that the retention pay proposal is crucial to retaining investigators. She stated it is not realistic to pay 18.5% lower, have a more complex case load and have double the volume of work than other agencies. Ms. Nicholls noted that the investigators who have chosen to stay with the HQIU have had their caseloads doubled. The ideal caseload is 15-18 per investigator, yet in many areas, some investigators have been assigned 30 or more complex cases. She stated that HQIU will focus on identifying and working priority cases and eliminating time gaps in non-priority cases by rotating those cases in a systematic fashion. She stated budget allowed overtime is also being offered to assist with the workload.

Ms. Nicholls then explained the data parameters for the case aging statistics. She noted that statistical figures are still unavailable from BreEZe, so staff is manually compiling the data. She stated there was no retrievable data for February 2015 or for July/August 2014. Ms. Nicholls presented slides that showed monthly comparison statistics that were manually calculated based on month end. She noted that for cases over one year old, there was a slight reduction from August to September, with a similar slight reduction for cases over 550 days old. She stated the additional slides show the comparison of this year with 2014, and can be found in the Board packets for review.

Ms. Yaroslavsky expressed her concerns about the HQIU's vacancy rate and the backlog of pending cases.

Agenda Item 24 Update from the Attorney General's Office

Ms. Castro gave the Board an update on the *Lewis vs Medical Board* case. She reminded Members that the Lewis case involves a court of appeal decision that ruled the Board's access to CURES during the course of a disciplinary investigation did not constitute a serious invasion of the patient's right to informational privacy. She stated there were two compelling state interests weighing in favor of the Board's use of CURES, including controlling the diversion and abuse of controlled substances and exercising its regulatory power to protect the public against incompetent, impaired or negligent physicians. The Second Court of Appeal also held that to impose a good clause requirement before accessing CURES data would necessarily involve litigating the privacy issue in advance and that this delay would defeat the legislative purpose of CURES.

Ms. Castro noted that Dr. Lewis appealed this decision to the California Supreme Court and it adopted his petition. She stated they are not done briefing the case due to the fact that recently new amicus briefs were filed. The ACLU filed an amicus brief on behalf of Dr. Lewis on October 27, 2015 and the Electronic Frontier Foundation filed one on October 28, 2015. The CMA, the AMA, the California Psychiatric Association, the California Dental Association and American Dental Association also filed a brief in support of petitioner. She stated the Board will file a brief in response to the recently filed amicus briefs and believes the oral argument in this case will be in the Spring of 2016.

Ms. Castro then provided a brief personnel update noting that Supervising Deputy Attorney General, Thomas Lazar would be retiring after 30 years as the Board's Attorney. She stated they will fill his position as soon as they are able.

Agenda Item 25 Agenda Items for the January 2016 Meeting in Sacramento

Ms. Schipske requested an update on the Fictitious Name Permits as well as a discussion on the Corporate Practice of Medicine.

Dr. Lewis asked to hear from some of the Deans from the medical schools regarding the changes of medical education as it has advanced greatly in the last several years as well as how medical schools deal with psychosocial issues in their applicants. .

Dr. Hawkins stated he would like to hear from the medical schools in regard to the shortage of health care professionals and their approach on this issue.

Agenda Item 26 **Adjournment**

Dr. GnanaDev adjourned the meeting at 1:43 p.m.

_____ _____
Dr. GnanaDev, Vice President Date

_____ _____
Denise Pines, Secretary Date

_____ _____
Kimberly Kirchmeyer, Executive Director Date

The full meeting can be viewed at http://www.mbc.ca.gov/About_Us/Meetings/2015/