



MEDICAL BOARD OF CALIFORNIA



QUARTERLY BOARD MEETING

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

July 24-25, 2014

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:

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

Members Absent:

Elwood Lui
Gerrie Schipske, R.N.P., J.D.

Staff Present:

Adam Brearly, Investigator, HQIU
Susan Cady, Staff Services Manager II
Dianne Dobbs, Legal Counsel, Department of Consumer Affairs
Virginia Gerard, Associate Government Program Analyst
Catherine Hayes, Staff Services Manager
Cassandra Hockenson, Public Affairs Manager
Anne Hutchison, Staff Services Analyst
Kimberly Kirchmeyer, Executive Director
Armando Melendez, Business Services Officer
Roberto Moyer, Investigator, HQIU
Destiny Pavlacka, Office Assistant
Regina Rao, Associate Governmental Program Analyst
Kevin Schunke, Licensing Outreach Manager
Jennifer Simoes, Chief of Legislation
Renee Threadgill, Chief of Enforcement, HQIU
Lisa Toof, Administrative Assistant II
See Vang, Business Services Officer

Kerrie Webb, Legal Counsel
Curt Worden, Chief of Licensing
Christine Zimmer, Staff Services Manager I

Members of the Audience:

Theresa Anderson, California Academy of Physician Assistants
GV Ayers, Senate Business and Professions Committee
Gloria Castro, Senior Assistant Attorney General, Attorney General's Office
Yvonne Choong, California Medical Association
Scott Clark, California Medical Association
Genevieve Clavreul, (via Teleconference)
Zennie Coughlin, Kaiser Permanente
Frank Cuny, California Citizens for Health Freedom
Julie D'Angelo Fellmeth, Center for Public Interest Law
Jodi Hicks, California Academy of Family Physicians
Marian Hollingsworth, Consumer's Union
Christine Lally, Deputy Director, Boards and Bureau's, Department of Consumer Affairs
Tina Minasian, Consumer's Union
Anita Scuri
Suzan Shinary, Consumer's Union
Mike Small, Department of Justice
Cesar Victoria, Department of Consumer Affairs

Agenda Item 1 Call to Order/Roll Call

Dr. Levine called the meeting of the Medical Board of California (Board) to order on Thursday, July 24, 2014 at 4:06 p.m. A quorum was present and due notice was provided to all interested parties.

Agenda Item 2 Public Comments on Items not on the Agenda

Frank Cuny, Director for California Citizens for Health Freedom, stated next year, they will be introducing a bill that will deal with making integrative treatment of cancer legal in California. The bill will define what integrative treatment is, what the factors are, and what kind of rights the patient has including knowing what background the provider has for providing it. In addition, the patient will know what the conventional approaches are for treatments and the differences between the two. Currently under the cancer law, cancer treatments have to be approved by the Federal Drug Administration (FDA), which is strictly the drug approach and physicians who are not following could be disciplined by the Board. They feel there are other treatments out there that are very successful.

Agenda Item 3 Approval of Minutes from the May 1-2, 2014 Meeting

Ms. Yaroslavsky made a motion to approve the May 1-2, 2014 Meeting Minutes as submitted; s/Dr. Lewis. Motion carried.

Agenda Item 4 Presentation on Improvements and Changes to the Controlled Substance Abuse Utilization Review and Evaluation System (CURES)

Dr. Levine introduced Mr. Small from the Department of Justice (DOJ). Mr. Small has been program manager for DOJ's CURES/Prescription Drug Monitoring Program (PDMP) since December 2011. He has been the leader and advocate of the redesign of an updated CURES system.

Mr. Small provided a presentation including an update on current statistics of the CURES system as well as issues presently being worked on to meet the future needs of physicians and pharmacists. One particular issue that Mr. Small discussed is the registration process. Historically, this process has not been optimal. The web-based database system for practitioners today was originated in 2009. Like many PDMPs, it was built from small federal grants over the course of a couple of years and has proved to not be sufficient enough to carry on the mission that is needed with the ever-increasing frequency of opioid drug abuse and misuse. In addition, in 2011, the Governor and the Legislature defunded CURES. Since then the system has been running on unofficial status, recognizing that it is an important public health and public safety program. DOJ has been trying to sustain it, but consequently, has been unable to respond satisfactorily to the constituent needs, particularly the practitioners. Staff has been unable to answer phone calls timely and taking it is far too long to process applications for new registrants and new users of the system. Fortunately, DOJ has recently been able to bring on six student interns, which has allowed DOJ to accept phone calls and emails. It is taking staff two to three days to respond to calls and emails, but they are now able to return them.

In terms of registration, it is recognized that it is a burdensome process. Staff has put together a process for facilities with groups of 20 or more qualified participants who have their application packets complete, less the notarization requirement, DOJ will come out to the facility and verify those participants in person and collect those applications. DOJ has made offers to public entities such as the Board of Pharmacy that has staff who accept the applications and sign off on the confirmed identity of the applicant and then forward the applications to DOJ where they are processed, waiving the notary requirement. Ms. Small is proud to announce that with no authorized staff, registrations have increased by 216% since December 2011.

SB 809 reinstates CURES funding effective July 1, 2015, at which point DOJ can begin hiring staff again. However, in the same bill, all DEA holding prescribers and all pharmacists have to be registered with the CURES system, which is going to be a tough process with the current registration system as it stands now. Mr. Small's goal for the July 2015 effective date is to work with the boards that license prescribers and pharmacists to ingest elements of the boards data files necessary for them to register users in order to create an automated registration program. This process will produce an official source of files documenting licensure rather than having to start from scratch. Licensees would be able to identify themselves electronically, complete the on-line application form, provide a DEA

number, etc. At that point, the registration would be complete, a password would be issued, and the licensees would then be considered registered and able to use the system.

Aside from registration itself, DOJ is envisioning the system doing a number of things it currently cannot do. DOJ is planning to interoperate with all of the major health care systems and pharmaceutical Information Technology (IT) systems in the State, so that CURES queries can be sent electronically, based on anticipated appointments, or in case of an emergency room visit.

Mr. Small noted they hope to add a few new features to the new system that are not available in the current system. They hope that by achieving interoperability, they will be able to create a bridge between email systems, so that if a physician in one setting sees a CURES report that is alarming to him or her, there would be a peer-to-peer communication to let them know there may be an issue with a particular patient. He would also like to give physicians the option and ability to enter the patient's name into the system and if that patient goes to another physician, and if a CURES report was run, it would tell the new physician, the previous physician wishes to be contacted before any additional narcotic drugs are prescribed. Mr. Small would also like the physician to have the ability to have a list of patients on their landing page of the system who in total have been prescribed more than 100 milligrams of opioids from all various sources of prescribers. Another option he would like to see offered is a statistical page that provides rates of prescribing throughout the state and by zip code.

Dr. Lewis stated real-time information is what is truly needed most. Dashboards are good for private type practices, but not for urgent care or emergency room care.

Mr. Small agreed and reminded the Board that his hands are tied by the Legislature and current law. Current law gives a seven-day period to submit the data by the pharmacists. The system will be able to accept data on a real-time basis, but that does not mean it will be updated due to the law.

Dr. GnanaDev asked Mr. Small, if a colleague wanted to sign up for CURES right now, how long it would take them.

Mr. Small stated there is an approximately five to six week backlog on processing applications at the current time.

Dr. GnanaDev noted this backlog is frustrating to the physician and gives the public a false sense of security. If Proposition 46 passes, Dr. GnanaDev believes there is no way the system will be ready and it worries him. He asked what could be done to make registering faster and easier.

Mr. Small noted the new statute is going to enable them to make IT integration connections with the board's data to facilitate making registering much simpler and quicker. It is not a difficult task, but takes funding to do it.

Dr. GnanaDev asked for clarification on getting the information to a physician before a patient's appointment.

Mr. Small stated once the new system is fully developed, there will be interoperability to other systems and physicians could choose to go to the expense to transmit query data to CURES in bulk, the day before the appointment. They would then be able to get the data back, so it is in the system when the physician meets with the patient for their scheduled appointment.

Dr. Krauss thanked Mr. Small for the presentation, as he believes CURES is a very valuable resource and without his single-handed efforts, it would be non-existent by now. Dr. Krauss asked if funding and staff were provided today, how soon the CURES system could register 100,000 practitioners.

Mr. Small stated the first step would be to create the registration section of the system that could accommodate that many practitioners, which is a priority for him. However, since he works for DOJ and it is responsible for title and summary for all the public initiatives, he cannot comment too much on any specific situation that may force a contracted enrollment period.

Dr. Krauss asked if the new CURES system is running or if it is still being designed.

Mr. Small stated it is being designed. The requirements have been approved by the California Technology Agency and the contractor was just recently hired. There are a lot of meetings and planning that have to take place to refine the project to a level where a viable system will be produced.

Dr. Krauss asked what the time line would be with the vendor to have a functional system.

Mr. Small stated at this point it would be July 1, 2015.

Ms. Yaroslavsky asked if the program, as it exists today, is convenient for the benefit of the people using it, or is that being put aside in order to build a new more effective program.

Mr. Small stated when he started on this program in 2011, changes to the existing system were frozen due to lack of staff funding. The current system is not the best or most user-friendly system; however, those who do use the current system state that it is indispensable to them. It can certainly be made better in the future, which is the goal.

Dr. Krauss asked if the new system would provide real-time information.

Mr. Small replied no. If the Legislature only requires pharmacists to provide information every seven days, there is no possibility of having a real-time system even if it was planned. The system is being built to accept data in real-time, but a legislative change would need to be made to tell the pharmacies they must submit that data when the patient walks away after picking it up.

Dr. Lewis stated when the Members look at some disciplinary cases the accusation often states the physician did not consult CURES. He asked if there are consumer protection groups involved in any of the discussions for the new system so they can understand the difficulties of the database and that it is not perfect yet.

Mr. Small stated he is not at the level of being an advocate, but can guarantee that he confers with them, so they all know what his thoughts and ideas are.

Dr. Levine asked, for those registered in the system, what the response time is for getting information back when queried.

Mr. Small stated it could take from just seconds to hours, depending on the size of the inquiry response. He noted if the response is too large; it could actually crash the system as it stands now.

Dr. Levine asked if they have an end users group informing the Joint Application Design (JAD) process.

Mr. Small stated they do have a stakeholder group of practitioners that was established by their Office of Legislative Affairs, during the course of the Legislative life cycle. DOJ held a stakeholders session and the information that came from that meeting is being designed in the new system.

Dr. Levine recommended holding additional sessions, such as that one, to continue to gain knowledge from the group.

Dr. Krauss asked if the utilization limit has been identified for the current CURES system.

Mr. Small stated he is not able to answer that as he is not an IT person, but stated, the system limit, as it stands right now, is quite fragile.

Genevieve Clavreul (via teleconference) noted she is very disappointed with the current system and feels it needs to be much closer to real-time responses. She stated it needs more research and time put into it. DOJ should be looking at other States' systems that are real-time and learn from them. She also stated she does not understand why the CURES system is housed under the DOJ, as in several other states, it is not.

Agenda Item 5 Presentation on Physician Impairment

Ms. Cady stated that at a previous meeting a Board member asked what is done in cases where a physician has a mental illness diagnosis. This question followed a discussion of legislation sponsored by CMA to establish a physician assistance program within the Board to provide services to physicians suffering from substance abuse or mental illness. Although this legislation was unsuccessful, Members raised the question about what resources are available to the physician community to provide services and support for physician wellness.

Ms. Cady provided a presentation showing complaint statistics and current disciplinary guideline recommendations, as well as external resources for mental illness and substance abusing licensees.

Ms. Yaroslavsky asked how the information that a physician can apply for a disabled license or voluntary limitation license is distributed.

Ms. Cady noted it is posted on the Board's website as one of the license status options.

Ms. Yaroslavsky suggested an article in the next Newsletter.

Dr. GnanaDev noted he did not know that these status options were available. He asked what the physician has to do and disclose on the status change application.

Ms. Cady stated the physician initiates the request to change their license status; the attending physician will provide some basic information about the physician's condition and the length of time the physician should stay in that status. The return to active status is the reverse of the first process. The attending physician releases the physician to continue practicing. Should that physician have a complaint filed against them while in a different status, the enforcement process would be the same no matter what status the license is in at the time of the complaint.

Agenda Item 7 President's Report

Dr. Levine stated she is pleased to have had Mr. Serrano Sewell join her on the bi-weekly meetings with the Executive Staff of the Board. Staff has been very helpful in keeping them up to date with things that are going on, as well as preparing them for upcoming Board meetings.

Dr. Levine went on to discuss a couple of important issues that were a part of the Federation of State Medical Board's (Federation) most recent meeting: the first being telehealth, the second being state licensure versus federal licensure. The connection between the two of them is that the telecommunications industry sees an enormous opportunity in leveraging physicians to provide telehealth services across state lines. The current model of state licensure in the United States (U.S.) means that if a physician is taking care of a patient in California, that physician has to be licensed in California. There has been intense lobbying at the federal level to reverse the requirement for State licensure and to approve federal licensure. The Federation has alternative approaches. The first being a model policy introduced in April 2014 for the appropriate use of telemedicine technologies in the practice of medicine.

Dr. Levine stated that core to this policy is the practice of medicine occurs where the patient resides, not where the physician is physically located. The critical part of this is, as a medical board, to do anything other than that would literally separate the licensing and enforcement functions. If a patient in California were being treated by a physician that has a national license, it would be uncertain as to whom that consumer would bring concerns. The Board would be able to license a physician in California but would have no recourse if a California licensed physician were creating a problem in another state. It is critical to maintain the connection

between licensure and enforcement. The Federation and each of the individual medical boards support that position and the Board has made it clear to the sponsors of the federal legislation that this practice is not safe for consumers and that the state medical boards feel strongly about their obligation to protect consumers by being able to both license and enforce action against physicians.

The Federation has come up with an alternative approach that would facilitate licensure across state lines, but it would still require licensure in each venue in which the physician intended to practice.

Dr. Levine announced this would be her last Board Meeting as President and stated it has been a pleasure to serve as Board President and she has learned from all the Board Members and appreciated the confidence that was placed in her. She stated the Board has accomplished a lot over that past two years. The Board has been through the Sunset Review process, has looked critically at the process and procedures of the Board, and has taken action in areas where it was realized that the Board needed to improve. The Outpatient Surgery Center Task Force was developed with a clear commitment to raise the standards of Accrediting Agencies. Great work has begun on addressing the overprescribing issues, with Dr. Bishop and Ms. Yaroslavsky doing a great job on the Prescribing Task Force.

Dr. Levine thanked everyone again for the confidence and support as President and then turned the discussion over to Ms. Kirchmeyer to continue with the Federation update.

Agenda Item 8F Discussion and Consideration of State Licensure of Telemedicine

Ms. Kirchmeyer referred the Members to page 8F-1 in their packets. She stated this report requested a board policy statement on State licensure for telehealth. Federal legislation has been introduced that, if enacted, would allow physicians in another state to practice via telehealth without requiring additional State licensure where the patient is located. H.R. 3077, *The TELE-MED Act of 2013*, if enacted, would allow a Medicare provider licensed in any state to treat any Medicare beneficiary in another state via telemedicine, without being licensed in the state where the patient is located.

Ms. Kirchmeyer noted current California law requires physicians who treat patients in California, whether through face-to-face office visits or via the provision of telehealth services, to be licensed in California. When these types of federal legislative bills come up, the Board does not take a position on them; however, to make things easier for staff, Ms. Kirchmeyer and Ms. Simoes would like to have the Board adopt a Board policy. The policy would read as follows, "The Medical Board of California believes that the practice of medicine occurs where the patient resides at the time of the physician/patient telehealth encounter and therefore requires the physician to be under the jurisdiction of the State Medical Board where the patient resides."

Ms. Yaroslavsky made a motion to accept the policy as read; s/Dr. Lewis.

Dr. Krauss stated concern about the potential misunderstanding of the word “resides.” As phrased in Agenda Item 8F, it uses the words “where the patient is located” and he feels that would be better wording, so there is no confusion at a later date.

Dr. Levine noted she had a concern about the word “located.” She used the example of a patient on vacation in New York who calls up their physician, who is licensed in California, and says her daughter’s asthma is acting up and does not have her inhaler. Currently, the physician would call a pharmacy, provide all of their credentials needed, and the pharmacy would allow a courtesy fill of the prescription. If the word “located” were used, the physician would be unable to handle the situation that way.

Dr. Krauss then suggested using the words “resides, or is currently located.”

Ms. Webb stated that law will vary from state to state and California has law pursuant to Business and Profession Code Section 2060 on the subject of status on non-resident practitioners. A physician from another state may not provide care to a patient in California whether there is an on-going relationship between the physician and patient, with very select exceptions.

Dr. Levine retracted her concern about the word “located,” and after discussion believes, the word “located” is the proper term to be used.

Ms. Kirchmeyer stated the language should stay as it is shown in the packet.

Dr. Levine read the language as “The Medical Board of California believes that the practice of medicine occurs where the patient is located at the time of the physician/patient telehealth encounter and therefore requires the physician to be under the jurisdiction of the State Medical Board where the patient is located.”

The previous motion was withdrawn. Dr. Lewis made a motion to keep the language as it reads in the Board packet and as read by Dr. Levine after further discussion; s/Ms. Yaroslavsky.

Dr. Bishop still had some concerns about the proper language that should be used. He feels that it needs further discussion, since there may be some ramifications the Board may not understand. New technology allows for many loopholes and believes that not all concerns have been addressed.

Mr. Serrano Sewell stated he agrees with Dr. Bishop that further discussions should take place. However, to aid staff and the Board in replying to inquiries, it is important to get a policy statement, which can always be changed.

Ms. Yaroslavsky agreed with Mr. Serrano Sewell’s statement given there is federal legislation going on at a national level, something needs to be available for staff.

Ms. Webb stated the current statute is supportive of the Legislature’s directive, but a policy statement from the Board addressed to the federal level would be helpful for staff to be

authorized to respond on behalf of the Board.

Motion carried (9-1) with further discussion to be continued at a future meeting.

Dr. Levine stated Dr. Krauss suggested there are other areas where the Board sees frequent legislation on a regular basis that in some areas may be useful for the Board to have policy statements that would be useful to staff in terms of working with legislative staff with how the Board is likely to respond to a given piece of legislation. Dr. Levine stated this subject would be placed on a future board meeting agenda for further discussion.

Agenda Item 8E Federation of State Medical Boards Summary

Ms. Kirchmeyer continued with her report referring the Members to tab 8E in their Board packets. Ms. Kirchmeyer stated one of the most significant projects at the Federation is the development of an Interstate Compact. The Federation developed a framework for this Interstate Compact, which would provide a new licensing option under which qualified physicians seeking to practice in multiple states would be eligible for expedited licensure in all States participating in the Compact. For example, an individual applies for a license in Arizona and states they would like to be licensed in California and Nevada also. Arizona would verify the individual's eligibility and submit that information to a newly established Commission. The licensee would then submit the licensure fees to the Commission who would send the fees and application to both California and Nevada. California would then issue this individual a license. The requirements for an applicant to enter into the Interstate Compact are quite rigid and are as follows: the applicant would hold one full and unrestricted license within a compact state; have successfully completed medical school and a postgraduate program; are board certified; have passed the USMLE within three attempts; do not have discipline in any state license; have not been convicted; and are not under investigation by any agency or law enforcement.

When this compact was reviewed by staff, one significant concern was that it did not require these individuals to be fingerprinted. The Board requires all applicants to be fingerprinted for two reasons. The first is it verifies that the information the physician is providing to the Board is accurate. The second is because if the individual is arrested, the Board is notified via a subsequent arrest report.

Ms. Kirchmeyer stated the Federation is taking this concern into consideration and the next draft Compact should include language that would include fingerprinting be done by the FBI as opposed to the DOJ. If the Board were to decide to join the Compact, the Board would have to go through the legislative process, as this would be a legislative change. Ms. Kirchmeyer feels that nothing needs to be done at this point, stating the Board should wait until the next draft is released, but wanted the Board to be aware of what the Federation is considering. She also noted the Legislature would not put through any type of Compact without fingerprinting being a requirement. After talking with the Federation staff, they stated the fingerprinting requirement could be put into a rule under the Commission. Staff is following this closely as it progresses. The reason this issue has come forward is that the telehealth community is really pushing for a licensure that would allow anyone with a license in another state to practice across any state line. The Board requires the physician to be licensed in California.

Dr. GnanaDev stated the Federation has developed a decent compromise with this Compact. There is a lot of push in Congress to make it a national issue rather than a state issue.

Dr. Levine noted another benefit is that the Compact stipulates that the physician will have to be board certified, which is a higher standard than any state currently requires.

Agenda Item 8G 2015 Proposed Board Meeting Dates

Ms. Kirchmeyer moved on to Agenda Item 8G, the proposed 2015 Board Meeting dates. She noted there are two proposed dates in January/February and two proposed dates in October/November. She also noted that there are two proposed locations for the January/February meeting as well as the July meeting. In the past, the January/February meetings have always been held in the San Francisco Bay Area and the July meetings in the Sacramento area. It was suggested that those two locations be reversed.

Dr. Krauss commented on the proposed February 5/6 and the November 5/6 dates, as he has a standing monthly meeting already scheduled for the 2015 year that happens to fall on those dates.

Ms. Yaroslavsky suggested choosing January 29/30 and October 29/30 with that in mind.

Dr. Levine read the following dates that are up for approval: January 29-30, 2015 in Sacramento, April 30-May 1, 2015 in Los Angeles, July 30-31, 2015 in San Francisco, and October 29-30, 2015 in San Diego.

Dr. Lewis made a motion to approve the dates and locations as stated; s/Ms. Yaroslavsky.

Julie D'Angelo Fellmeth, Center for Public Interest Law, commented on the Interstate Compact and the issue of practicing across state lines, where the patient is located at time of treatment. She stated this issue should not be overlooked. The medical profession is not the only profession that this issue is effecting. If the Board is going to agree to let an out-of-state physician practice in California, they should have to agree to be subject to this Board and California law.

Genevieve Clavreul via teleconference stated she is glad that the Board is discussing this very important issue.

Motion carried.

Agenda Item 6 Board Member Communications with Interested Parties

Dr. Krauss reminded the Board that he sits on the Board of the California Ambulatory Surgery Association (CASA) and is still a Trustee of the California Medical Association (CMA). There have been no conversations regarding issues before the Board.

Agenda Item 8A Approval of Orders Following Completion of Probation and Orders for License Surrender During Probation

Ms. Yaroslavsky made a motion to approve the orders following completion of probation and orders for license surrender during probation; s/Dr. Lewis. Motion carried.

Agenda Item 9 Elections of Officers

Dr. Levine asked for nominees for Secretary of the Board.

Dr. Lewis nominated Denise Pines for Secretary of the Board; s/Mr. Serrano Sewell.
Motion carried.

Dr. Levine then asked for nominees for Vice President.

Dr. Levine nominated Dr. GnanaDev for Vice President of the Board; s/Mr. Serrano Sewell.
Motion carried.

Dr. Levine then asked for nominees for President of the Board.

Ms. Yaroslavsky nominated David Serrano Sewell as President; s/Dr. Lewis.
Motion carried.

Mr. Serrano Sewell thanked Members for the opportunity and stated he looks forward to working with the Executive Director, and staff this next year. He then expressed his great appreciation to Dr. Levine for her great leadership, often in a challenging environment. He stated the Board benefited from her intellect, her ethics, and her commitment to public service, as well as her patience. He noted Dr. Levine leads by example and as the new term begins, that will be the standard.

He presented her, on behalf of the Board and staff, a personally engraved gavel as a thank you gift for her hard work as President of the Board.

Dr. Levine presented Dr. Reginald Low, a prior Board Member, with a plaque to thank him for his service on the Board from 2006 to 2013. Dr. Low served on the Board in many capacities. He took a leadership role, served as Chair of the Enforcement Committee, and was a shining light in identifying where there were problems and what needed to be done to correct them. He was instrumental in working with staff in the enforcement process in identifying ways to reduce complaint-processing times. He also did remarkable work in his leadership role in the importance of training expert reviewers. Dr. Levine thanked Dr. Low for his outstanding service to the Board.

Dr. Low thanked Dr. Levine for the kind words and then congratulated Ms. Kirchmeyer on her appointment as Executive Director. Her appointment is a great addition and offers such expertise and knowledge to the position. He then thanked Dr. Levine for her work as President when the Board was in somewhat of disarray in terms of the perception from the Legislature, helped the Board through the Sunset Review process, and stated it was an honor and privilege to serve on the Board. He noted there is a lot of challenging work ahead, encouraged the Members to continue

their outstanding work, and thanked everyone for the incredible relationships he has developed by being on the Board.

Meeting was recessed at 6:15 p.m. until 9:00 a.m. on Friday, July 25, 2014.

Friday July 25, 2014

Members Present:

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

Members Absent:

Sharon Levine, M.D.,
Elwood Lui
Gerrie Schipske, R.N.P., J.D.

Staff Present:

Nicola Biasi, Investigator, HQIU
Susan Cady, Staff Services Manager II
Dianne Dobbs, Legal Counsel, Department of Consumer Affairs
Cassandra Hockenson, Public Affairs Manager
Kimberly Kirchmeyer, Executive Director
Armando Melendez, Business Services Officer
Regina Rao, Associate Governmental Program Analyst
Kevin Schunke, Licensing Outreach Manager
Jennifer Simoes, Chief of Legislation
Laura Sweet, Deputy Chief of Enforcement, HQIU
Renee Threadgill, Chief of Enforcement, HQIU
Lisa Toof, Administrative Assistant II
See Vang, Business Services Officer
Anna Vanderveen, Investigator, HQIU
Caesar Victoria, Department of Consumer Affairs
Kerrie Webb, Legal Counsel
Curt Worden, Chief of Licensing
Christine Zimmer, Staff Services Manager I

Members of the Audience:

Theresa Anderson, California Academy of Physician Assistants
 GV Ayers, Senate Business and Professions Committee
 Gloria Castro, Senior Assistant Attorney General, Attorney General's Office
 Yvonne Choong, California Medical Association
 Genevieve Clavreul (via Teleconference)
 Zennie Coughlin, Kaiser Permanente
 Julie D' Angelo Fellmeth, Center for Public Interest Law
 Karen Ehrlich, L.M., Midwifery Advisory Council
 Karen Fischer, Executive Officer, Dental Board
 Mike Gomez, Deputy Director, Department of Consumer Affairs
 Marian Hollingsworth, Consumer's Union
 Sarah Huchel, Assembly Business and Professions Committee
 Doreathea Johnson, Deputy Director of Legal Affairs, Department of Consumer Affairs
 E.A. Jones, Supervising Deputy Attorney General, Attorney General's Office
 Christine Lally, Deputy Director, Department of Consumer Affairs
 Marcus McCarther, Department of Consumer Affairs
 Jason Piccone, Department of Consumer Affairs
 Anita Scuri
 Suzan Shinary, Consumer's Union

Agenda Item 10 Call to Order/Roll Call

Mr. Serrano Sewell called the meeting of the Board to order on Friday, July 25, 2014 at 9:08 a.m. A quorum was present and due notice was provided to all interested parties.

Agenda Item 11 Public Comments on Items not on the Agenda

Genevieve Clavreul asked a question about a physician charging an upfront fee for a patient who had insurance. Ms. Kirchmeyer referred Ms. Clavreul to a staff person to assist her off-line.

Agenda Item 7 President's Report

Mr. Serrano Sewell returned to the President's Report to announce a change in Committee assignments. He stated Dr. Lewis has agreed to serve as the Chair of the Enforcement Committee, since Dr. GnanaDev is now Vice President of the Board. Dr. GnanaDev is moving from the Enforcement Committee to the Licensing Committee and Dr. Yip has agreed to serve on the Health Professions Education Foundation.

Agenda Item 8 Executive Management Reports

Ms. Kirchmeyer referred the Members to their packets to review the Administrative, Enforcement, and Licensing Program summaries.

Ms. Kirchmeyer stated she had received a specific question from one of the Board Members and wanted to respond accordingly. On page 8B-8, the amount of the Attorney General (AG) line item

will remain the same even with the investigators moving over to the Department of Consumer Affairs (DCA). The AG's Office has its own line item in the Board's budget, which also includes the Vertical Enforcement portion and will continue to be paid directly by the Board. For fiscal year 14/15, staff will provide two budget reports for Enforcement. One report will be for the Board, the other will be for the Health Quality Investigative Unit (HQIU). An update on both reports will be provided at the October Board Meeting.

Ms. Kirchmeyer announced that the State has entered into a contract with a travel agency to do the travel for all state employees. This contract requires users to use the new travel agent beginning November 2014. Staff will be providing all Members with the information needed as they will need to sign up with log in information, create a profile, etc. Ms. Rao will be assisting the Members with that process.

Ms. Kirchmeyer thanked the staff for their hard work in getting all of the applicants licensed by the deadline of July 1, 2014. Staff from other units assisted as well and Ms. Kirchmeyer thanked everyone for a job well done.

Ms. Kirchmeyer announced that last week she traveled to Washington, D.C. to represent California at a meeting hosted by the California Department of Health and Human Services (DHHS). The meeting was entitled "*Advancing Policy and Practice; a 50 State Working Meeting to Avoid Opioid Related Overdoses.*" It was held July 17 and 18 and was very well attended and almost every state was represented. Joining Ms. Kirchmeyer from California was Virginia Herold from the Board of Pharmacy and Jackie Dauer from the California Department of Public Health (CDPH). The meeting began with an overview of the epidemiology and the evidence base for interventions. Both the Secretary and Deputy Secretary for the Department of Health and Human Services stressed three components addressing each of the following issues: the first issue was provider oversight; the second was a prescription drug-monitoring program; and the third, prescribing guidelines and providing education. In some areas, California was ahead of other states, in other areas, other states were ahead of California. During the breakout sessions, the region states got together and discussed what they had done in each area and what still needed to be done. The Department of Health and Human Services will be gathering all input received and will provide an overview of the work gathered at the meeting and will be providing it to all attendees. Ms. Kirchmeyer stated she would forward that information to the Members once it has been received. The meeting ended with the Chief of Staff from the White House of the National Drug Control Policy talking about its goals. There were many handouts brought back, one of them being provided to the Members for review. This document shows where California fits within the rest of the nation as far as the information gathered by the Centers for Disease Control (CDC.) This particular document shows that as of the year 2011, California ranks very well with the states, with it being the 40th highest drug overdose death rate. For every 100,000 people, California only had 10.7 overdose deaths. California was also identified as the second lowest opioid pain reliever-prescribing rate in the U.S. per 100,000 people.

Ms. Kirchmeyer announced the Board still intends to have another joint forum in the future after the prescribing guidelines are revised.

Ms. Kirchmeyer then provided an update on the CDPH's Opioid Public Workgroup where she and Ms. Simoes are both members. This group is made up of state agencies including all the dispensing and prescribing boards under DCA, as well as several units within the Department of Healthcare Services, The Department of Education, local county health officers, Emergency Medical Services Agency, and the Department of Justice. Others will be included in the future. At the last meeting, it was recommended that the Board's prescribing guidelines be the actual kickoff for this group. CDPH will do a large press conference as soon as the Board's guidelines are approved. The release of the guidelines will be the catalyst for all of the agencies to put their outreach plans into play. As stated in the update in the Board packet, the Board is going to be providing free CME on extended release and long acting opioid prescribing on September 19, 2014 in Los Angeles.

Ms. Kirchmeyer announced that the Board would be working with Mr. Small to allow physicians to register for the CURES system at future Board Meetings. Staff is also looking to allow physicians to come into the Board's Sacramento office and register as well. Those are a couple of steps to assist in getting individuals registered before that January 2016 deadline.

Ms. Yaroslavsky recommended discussing perhaps having the district offices also offer the option to register for CURES in each of those offices and making it part of the outreach campaign when staff is in other areas doing outreach.

Dr. GnanaDev strongly suggested the Board continue to work with DOJ in getting the CURES system to be a real-time system. With the way the system is set up now, he feels it gives a false sense of security.

Ms. Kirchmeyer reminded the Members until the law changes to require a real-time system, and immediate input of prescriptions at issuance, the current system will never be a real-time system. Obtaining the information from the system will be real-time though.

Dr. Krauss stated the technology to upgrade the CURES system has existed for a long time. The problem is the lack of dedication of dollars and resources to build it.

Dr. Bishop asked what needed to be done to get the law changed concerning the current CURES system. He feels seven days is much too long to allow prescriptions to be the system and is not what the physicians expected from the system when it was put into place.

Mr. Serrano Sewell stated it had been discussed at several prior meetings for the Board to do a legislative day in Sacramento, where the Members spend a day at the Capitol. This would give the Board Members the opportunity to reintroduce themselves to the elected officials and their staff and talk with them about what it would mean for consumer protection to have the current CURES law changed to allow a real-time system put in place.

Ms. Kirchmeyer stated she believes the Board will receive push back on changing that law until there is a system in place that is capable of real-time interoperable service. She noted that in the next two years, once this new CURES system is up-to-date, the Board would need to work with the Board of Pharmacy to assist in working on getting the law changed.

Ms. Clavreul thanked the Board for setting up a legislative day and requested the Board look into the prescribing statistics and the Oklahoma PDMP.

Agenda Item 12 Update from the Department of Consumer Affairs

Ms. Lally began by congratulating the newly elected President, Vice President, and Secretary of the Board. She, on behalf of the Director and the Department, thanked Dr Levine for her extraordinary service. She reminded the Board of the newest leadership at the DCA, as Mr. Awet Kidane was appointed as the new Director and Ms. Tracy Rhine as the new Chief Deputy Director.

Ms. Lally then introduced Jason Piccione, DCA's Chief Technology Officer to give an update on the BreEZe system.

Mr. Piccione stated he understands that a big concern of the Board is the schedule to get requested fixes and changes completed. He gave the update of the current schedule for the next three production releases. They are as follows: production release 1.14 is scheduled for August 14, 2014; production release 1.15 is scheduled for September 19, 2014 and production release 1.2 is scheduled for early November 2014. This modified schedule represents an acceleration of production releases. DCA has identified a need for a more robust and agile production maintenance structure. DCA is in talks with the contracted vendor to establish a higher capacity dedicated production maintenance team. A DCA team of dedicated expert vendor staff would increase the throughput of their production maintenance. The intent of this effort is to run higher capacity releases on a five to six week cycle.

Another key discussion taking place is to accelerate knowledge transfer. DCA believes the sooner they can perform critical development tasks in the area of configuration, and build and deploy, the more responsive the maintenance structure will be. Another area of interest for the Board is the usability of the BreEZe on-line experience. There have been many opportunities identified to increase the usability of the BreEZe on-line system. These efforts include deleting the existing BreEZe home page and having the current BreEZe login page act as the initial landing page for the BreEZe system, eliminating the initial, potentially confusing, upfront page for users.

Another improvement is to redesign the home page with better instructions and increased usability, and to provide a scrolling announcement section on the home page that can be updated by staff and provide announcements to the public. The additional two edits are more technical; including providing links to pre-populate drop downs in the searches as well as providing links to specific resources. DCA expects details from the vendor for redoing the home page at the July 28, 2014, Change Control Board meeting and expects an analysis for the remaining items at the August 11, 2014, Change Control Board meeting. Mr. Piccone believes this is a start to a better user experience.

Ms. Yaroslavsky thanked Ms. Piccione for being so responsive to the issues and concerns of the Board and recommended using stakeholders when updating the BreEZe system rather than just

IT staff in order to get an outside perspective of what changes would be helpful to make the system more user friendly.

Dr. GnanaDev asked if DCA is working closely with CURES to make the two work together at some point.

Mr. Piccione stated currently there is no interface between the two systems planned, however, the need has been identified, and the DCA has provided the CURES project with the BreEZe data dictionary so that all data elements are known to that project, since clearly an interface in the future will be required.

Yvonne Choong, CMA, made a request for BreEZe to have the ability to show the status of the licensing application and where that application is in the process. She also stated that CMA agrees with the fact that CURES and BreEZE will need to be able to interact in the future and noted CMA would be happy to participate in any type of usability stakeholder meetings in regard to this interface completion.

Dr. Lewis asked if there is a difference in the timeline between a new applicant to California and a renewal within the BreEZe system.

Ms. Kirchmeyer stated they are handled differently as they are completely different transactions. New applications have to be reviewed individually to be sure all needed documents are included and current. Renewals can be done on-line in BreEZe and can usually be done in about 20 minutes or so, assuming there are no complications. If a renewal is mailed in, it could take four to six weeks to be processed and completed.

Ms. Kirchmeyer announced the Board just hired a student assistant who is working on creating a video to walk an applicant through the application process from beginning to end along with some questions and answers that will be posted on-line once completed.

Agenda Item 13 Update of the Health Professions Education Foundation (HPEF)

Ms. Yaroslavsky reported the HPEF has had a great year with the Steven Thompson Loan Repayment monies. They awarded thirty one million, eight hundred and thirty five dollars' worth of loan repayments to a total of two thousand, and eighty-three participants. She announced that 75% were women and 24% were men. These participants were from all different areas of California. She stated she is pleased that Dr. Yip will be joining the HPEF team.

Agenda Item 14 Update of Education and Wellness Committee Meeting

Ms. Yaroslavsky thanked staff for putting together such a great array of guests. The first presentation was Dr. Barbara Hernandez, Director for Physician Vitality from Loma Linda University who outlined the University's Wellness Campaign, which is designed to promote physician vitality across their career. The second presentation was from Dr. Michael Goldstein, professor of Public Health and Sociology at the University of Los Angeles who presented his report

on UCLA's initiative to become a healthy campus, entirely smoke free with healthy eating programs. The program could be a model for the State of California. Dr. Jessica de Ybarra, a physician and public health medical officer from the CDPH, gave a presentation and report on the Let's Get Healthy Task Force and California Wellness Plan. One main goal of this Task Force is to prevent chronic diseases for a healthier California.

Ms. Yaroslavsky reported the Education and Wellness Strategic Plan was distributed to Committee Members for review and Members were pleased with the plan.

Agenda Item 15 Update on Licensing Committee Meeting

Dr. Bishop stated the Licensing Committee had two presentations. The first one was given by Ms. Carol Clothier, Vice President of State Health and Public Affairs. She discussed the ABMS Maintenance of Certification (MOC) requirements and identified how the ABMS MOC has several elements to meet Continuing Medical Education (CME) requirements for license renewal. Ms. Clothier advised the Licensing Committee that she had met with staff, and staff had advised her that the Board might be able to accept ABMS MOC as meeting the Board's CME requirements with an amendment to current regulations.

Dr. Bishop asked for a motion to have staff review the current CME regulations regarding the feasibility of adding ABMS MOC as meeting the Board's CME requirements and to have staff present the feasibility of amending the CME regulations, including draft language, if appropriate, to the Board for review and consideration.

Ms. Wright made a motion to approve staff begin the regulatory process to allow ABMS MOC meet the CME requirements./s: Dr. Lewis. Motion carried.

Dr. Bishop stated the second presentation and discussion was given by Mr. Worden on the minimum number of years of approved postgraduate training required for licensure and licensure exemption while participating in an approved postgraduate training program in California. Board staff was asked to evaluate the pros and cons of increasing the minimum number of years for U.S. and Canadian medical school graduates from one year to either two or three years and for international medical school graduates from two to three years. The FSMB is recommending three years of postgraduate training for licensure. The minimum number of years for an Accreditation Council for Graduate Medical Education (ACGME) on Royal College of Physicians and Surgeons of Canada (RCPSC) accredited residency program is three years. In addition, the newly proposed FSMB Interstate Compact would require a minimum for three years and ABMS certification. The Licensing Committee made and adopted a motion to have staff proceed with interested parties meetings to obtain input regarding the impact of extending the minimum requirements of postgraduate training for licensure in California.

Agenda Item 16 Discussion and Consideration of Disclosure of Approved Postgraduate Training

Ms. Kirchmeyer referred the Members to tab 16 in the Board packets. She stated in the Board's Sunset Review Report, the Board had identified several issues for consideration by the Senate Business, Professions, and Economic Development Committee (B & P Committee). An issue the Board had requested the Committee consider was elimination of the requirement for the Board to post approved postgraduate training on the physician's profile. At the time of the Sunset Review, the information could not be posted on the Board's website using its current IT system. However, when the Board staff identified fields for the new BreEZe system, they ensured this information would be able to be captured in the new system. Since the Board went live with BreEZe, this information has been entered into the system for those individuals who have applied since the system was put into place. Therefore, this information is now being captured, including the complete name of the postgraduate training program. With this new information being entered in the system, staff no longer believes the requirement needs to be removed from the Board's current statute. It is recommended that the Board direct staff to no longer pursue this legislative change and instead move forward with working on a change to the BreEZe system so this information could be posted to a physician's profile.

Ms. Yaroslavsky made a motion to direct staff not to pursue the elimination of the requirement for the Board to disclose postgraduate training on a physician's website profile/s: Dr. Krauss. Motion carried.

Agenda Item 17 Discussion and Consideration of Proposed Regulations for Amendments to Title 16 CCR, Sections 1364.10, 1364.12, 1364.13 and 1364.14 – Citations and Fines

Ms. Kirchmeyer referred the Members to tab 17 in their Board packets. She stated the Board's current regulation authorizes a "Board official" to issue a citation, a fine, and an order of abatement. These regulations also require the Board official who issued the citation to perform certain functions, including holding the informal conference, authorizing an extension, etc. The regulation defines "Board official" as the Chief, Deputy Chief, or Supervising Investigator II of the Enforcement Program of the Board. Within the transition of the investigators, these positions are no longer part of the Board. The regulations now need to be amended to allow the Executive Director or his or her designee to issue citations and perform the function once a citation is issued. This amendment needs to be done in a more expeditious manner than the normal rulemaking process usually used by the Board. Due to the need to expedite these regulations, the hearing should be held immediately following the 45-day comment period, rather than waiting until the next Board meeting. If no negative comments are received, staff will finalize the rulemaking package and submit it to the Office of Administrative Law. If negative comments are received, the matter will then be brought back to the Board at its October meeting or possibly a teleconference meeting scheduled before the October Board meeting. This regulatory change is consistent with other boards under DCA that state the Executive Director or his or her designee are

authorized to issue citations and perform other functions associated with the citation, such as holding informal conferences and authorizing extensions for compliance.

Dr. GnanaDev made a motion to direct staff to notice the amended regulatory language and to hold a hearing immediately after the 45-day comment period, and if no negative comments were received, the Board would then delegate the Executive Director to proceed with the rulemaking process/s: Dr. Krauss. Motion carried.

Agenda Item 18 Discussion and Consideration of Proposed Regulations Update the Disciplinary Guidelines, Title 16 CCR, Section 1361

Ms. Cady stated in December 2011, section 1361 containing the Board's Disciplinary Guidelines was amended. Since that time, a number of statutory and program changes have occurred which has prompted the need to amend the Disciplinary Guidelines to be consistent with current practices. Staff has identified a number of non-substantive changes that should be addressed in this regulatory proposal as well.

The first change is in Conditions 9, 10 and 11, which relate to the abstention from the use of alcohol and controlled substances and biological fluid testing. These conditions authorize the issuance of a cease practice order, but require that an accusation be filed within 15 days or the cease practice order will be dissolved. An amendment is required in order to be consistent with the timelines for filing an accusation following a suspension currently defined in the Government Code 11529 extending the timeframe in which an accusation must be filed following the issuance of a suspension order from 15 days to 30 days.

The second proposed change is under Condition 18, which is the clinical training program. The PACE program has revised their clinical assessment component and staff would like to modify the Board's Disciplinary Guidelines to be consistent.

The next proposed change is under Condition 19, which requires an oral clinical examination be administered pursuant to the requirements outlined in Business and Professions Code Section 2293. With the transfer of staff to DCA, the district medical consultants are no longer available to the Probation Unit to provide the coordination of the oral clinical examinations should they be ordered as a condition of probation. An amendment to this condition is required to eliminate the oral clinical examination as a condition that could be ordered.

The next proposed change is under Condition 25, which requires a third party chaperone be identified by the physician within 30 days, however if the chaperone leaves, the physician is given 60 days to identify a new chaperone. An amendment to this condition is necessary to reduce the time allowed to replace a chaperone to 30 days in order to enhance consumer protection.

The next proposed change is under Condition 28, which prohibits the licensee from supervising physician assistants during the period of probation. It has been identified that advance practice nurses perform a similar function and have to be supervised by a physician. An amendment to Condition 28 is needed to prohibit physicians on probation from supervising physician assistants and advance practice nurses.

The final proposed change is under Condition 31, which outlines general probation requirements, and was found to contain language that conflicted with language in Condition 33, non-practice while on probation. An amendment to this condition is required eliminating this conflict.

Ms. Cady asked for a motion to direct staff to notice the amended regulatory language and hold a hearing at the October Board meeting after the 45-day public comment period.

Ms. Webb had some additional changes she asked to be included in the original motion. She asked for the capitalizations and term usage consistent through the guidelines. Also on item 28, she would like to have approval to change the heading to read, Supervision of Physician Assistant and Advanced Practice Nurses.

Dr. Krauss made a motion to direct staff to notice the amended regulatory language, with comments made by Ms. Webb for consistency, title change, and drafting issues and also to hold a hearing at the October 2014 Board meeting after the 45-day public comment period/s: Dr. Lewis.

Ms. Kirchmeyer explained that should the regulations for the SB 1441 Uniform Standards not be completed, the regulatory hearing would be at the January or April 2015 meeting.

Ms. Castro recommended that the word “use” in the first line of Condition 10 be expanded as the biological fluid tests can be very sensitive.

Motion carried.

Agenda Item 19 Update of Transition of Staff to the Department of Consumer Affairs

Mr. Gomez, Deputy Director of Enforcement at DCA, stated the transition of staff to the DCA has been successful. He announced there was a swearing in ceremony on June 30 and July 1, 2014. Mr. Gomez stated the transition has gone very well and it is with much thanks to the work of the Board staff, the DCA staff, and support staff. Mr. Gomez stated with the assistance of Ms. Kirchmeyer, Ms. Threadgill, and Ms. Sweet, he has become immersed in what the Board and the investigators actually do. He noted none of the district offices have been impacted by the transition, and no staff has been relocated, except the Office of Standards and Training, which affected approximately seven people.

Mr. Gomez announced they had finalized the meet and confers with all of the unions last month. The meetings were very successful with only some minor things to be worked out with regard to some concerns the unions had.

Mr. Gomez stated he is looking closely at the efficiencies and inconsistencies that can be improved. He is learning to understand the work and commitment the investigators have to their work and protecting consumers of California. They are highly trained and very dedicated people.

Ms. Threadgill, the DCA Deputy Chiefs and Mr. Gomez had a leadership meeting to start discussions on the differences, what resources they have available, what processes will be with the field offices, and other issues of concern. Another meeting will be held with all of the supervisors of HQIU to look at what works and what improvements can be made to better the investigator practices and to better protect consumers in the joint mission with the Board.

Mr. Gomez stated there are still some outstanding matters that need to be addressed, but he is optimistic that there will be better investigative timelines in the future and in the meantime that no further delays are created.

Ms. Yaroslavsky asked Mr. Gomez what future benchmarks the Board can expect and how success is going to be measured.

Mr. Gomez replied there are a couple of things to review. One being working with Ms. Threadgill and staff, making sure case management cycle times hit the benchmark of June 30 or July 1. That is the basis from which they are trying to either decrease certain timelines or make some efficiencies in the quality of investigations with the AG's Office as well.

Agenda Item 20 Vertical Enforcement Program Report

A. Program Update

Ms. Castro began by congratulating Mr. Serrano Sewell in his new role as President of the Board, stating she is looking forward to working under his leadership. Ms. Castro noted she and Ms. Kirchmeyer continue to meet regularly and she often speaks with Ms. Webb with respect to ideas, and efficiencies on things that could affect the outcome of cases.

She stated the Vertical Enforcement (VE) Manual that was in effect from 2006 to July 1, 2014, established the course for those investigations. The Health Quality Enforcement Section enjoyed a direct line of communication with the Executive Director and with the Board, as a client, as well, through the Board's enforcement chain of command. When the AG's Office directed these investigations, pursuant to Senate Bill (SB) 231, they were directly involved with the investigative employees in the Board's chain of command. The AG's Office has been exercising this authority to direct investigations established by SB 231 for the past eight and a half years. In enacting SB 231 and creating the VE model, the Legislature amended portions of the Government Code that directly governed the statutory duties of the AG. SB 231 also reorganized the operation of the Health Quality Enforcement Section itself. The AG, working closely with the Board, has been executing these duties for the past eight and one half years and their view of how these responsibilities are imposed on them by the Government Code has been reflected by various versions of the VE Manual since January 1, 2006. They have been working under the most recent version of the VE Manual dated January 2011. The AG's Office has revised the manual as of July 2014. Ms. Castro stated Ms. Kirchmeyer had provided the Members with the most current version of the manual for their review. The same version has also been provided to the Health Quality Enforcement (HQE) Unit as well as DCA.

Ms. Castro stated the joint manual continues to take forth-prior relationships with the AG's office with the exception of the names being changed to accommodate the changes that SB 304 put into

place. Notwithstanding this change, these investigations are still subject to VE and continue to be directed by the AG's Office. However, the Executive Director will still determine what is sent to the HQIU and as such, will continue to be responsive to what will be investigated by HQIU. In addition, Ms. Kirchmeyer has the obligation and oversight to review final investigation reports on closed investigations. The AG's Office is going to continue to be very involved in that process and hopes that Ms. Kirchmeyer will continue to look to them for any background on legal justifications, evidentiary issues, and medical expert opinions. At the same time, the AG's office has provided the most current VE Manual that has been in effect since July 1, 2014. It reflects that the investigations will continue to be directed by the AG's Office to fulfill her statutory responsibilities to provide legal advice to the Board.

In addition, Ms. Castro stated the HQIU has been informed how cases should be presented to HQE to allow for official handling and receipt of cases at the AG's Office. She has provided transmittal case guidelines, which were provided to all DCA boards. These guidelines coupled with the new procedures set forth in the manual aim to ensure the cases can be efficiently processed between offices. Matters such as scheduling physician's interviews, expert selection, expert report review and the AG's Office consideration for prosecution proceeds effectively and efficiently for the benefit of the investigations and their resolution. Ms. Castro stated the authority of the AG's Office to decide what cases will be prosecuted continues as before, as does the Executive Director's ability to decide thereafter what will be filed as a disciplinary action on behalf of the Board. This procedure remains unchanged and the Board's policy and filing postures will continue as before. She added that SB 304 did not dilute the Board's ability to function as needed in fulfilling its statutory charges to enforce the Medical Practices Act.

Ms. Castro noted SB 304 did not affect the team concept or the management of the Board's cases. The HQIU staff will be engaged in a team effort to be responsible for obtaining the evidence needed for the AG's Office to make proper legal determinations and provide legal advice to the Executive Director on investigation outcomes and filing decisions. The AG and HQIU are both committed to complete these investigations as efficiently as possible and the goal to find improved avenues to complete investigations as efficiently as possible is a shared goal. Ms. Castro stated she has shared her ideas with HQIU and looks forward to continuing that conversation. She has met with Mr. Gomez a number of times since November/December of last year and has been working on dispute resolutions on cases. She stated efficient operation of the HQIU is a crucial component of everything that the AG's Office does and evidence collection is key. The AG's ability to make its legal recommendations rest on the AG having the required evidence collected in the investigations and proper steps being taken in procuring this information, such as service of subpoenas of medical records, properly questioning subject physicians during investigation, and obtaining reviews from qualified medical experts. All of these components are needed to work efficiently so the AG can advise the Board on legal issues developed during investigations.

In conclusion, Ms. Castro stated as the attorneys for the Board and Executive Director, the AG's Office holds all of the obligations to the highest regard and will continue to uphold all of their ethical obligations. She stated they need to ensure the continuation of the VE model after July 1, 2014. The AG's Office will meet with the DCA to discuss the possibility of a joint manual and the AG will work with DCA to identify and create efficiencies in the workflow, especially with regard

to evidence sharing between the two agencies. She will report to the Board at the October 2014 meeting with the status of those conversations.

B. HQE Organization and Staffing

Ms. Castro announced two new DAGs that have joined the section: Karolyn Westfall in San Diego and Christine Sein has joined the Los Angeles office.

Ms. Castro then reported on (*Alwin Carl Lewis, M.D. v. Medical Board of California*). A decision was reached by the Court of Appeal on May 29, 2014. Dr. Lewis had filed a Petition for Writ of Mandate, which sought relief from an order. One item that was an issue in this case involved CURES and whether the Board could obtain data from CURES during a disciplinary investigation of the physician without obtaining a prior warrant or administrative subpoena demonstrating good cause. The Court of Appeal ruled that the Board can access CURES during the course of a disciplinary investigation and it did not constitute a serious invasion of the patients' right to informational privacy. Further, there were two very important state interests weighing in favor of the Board. One, controlling the diversion and abuse of controlled substances and two, exercising its regulatory power to protect the public against incompetent, impaired, or negligent physicians. The Court of Appeals also held that to impose a good cause requirement before accessing CURES data would not necessarily involve litigating the privacy issue in advance. This delay would defeat the legislative purpose of CURES, which is to allow physicians to instantly look up a new patient's controlled substance history and to determine whether a patient legitimately needs pain medication or is doctor shopping. The court also found that the Board's access to CURES should not be limited by the nature of the complaint against the licensee.

Dr. Lewis asked Ms. Castro to name some inefficiencies that the AG's Office has at this time that could affect what the Board does and also asked if the AGs Office meets with the Office of Administrative Hearing's (OAH) and has discussions for feedback between both parties.

Ms. Castro stated she is looking forward to continuing the conversation about is the development of a cloud. She has met with Mr. Kidane and Ms. Rhine from DCA along with her own staff involving the case management section. She stated that evidence is the most important thing in an investigation and DCA and Ms. Kirchmeyer are both open minded on how to efficiently transfer evidence between staffs that are not co-located. The VE model does not require staff to be co-located as long as there is an efficient way to transfer information between offices. She wants there to be a way for things to be sent instantly to the attorney safely, with proper encryption, and a way that forwards the attorney real-time evidence that is needed to prepare a subject interview.

Ms. Castro stated she does meet on a regular basis with Mr. Chang and Ms. Johnson from DCA to share some of the issues with the OAH and some efficiencies that could be found together. She does meet on a frequent basis with OAH with the assistance of the DCA legal counsel.

Dr. GnanaDev thanked Ms. Castro for the update and stated she is going to be the integral part of the triangle between DCA, the Medical Board, and the AG's Office to streamline the process.

Ms. Castro stated as the Board's attorney, she is always cognizant of how the Board is being portrayed to the public. She wishes the Board's efforts were highlighted more; however, there are cases that come to the attention of the public. She reminded the Board that when that happens, the AG's Office works with Ms. Kirchmeyer, Mr. Gomez and the investigators, too.

Ms. Yaroslavsky also thanked Ms. Castro for the update. She referred Ms. Castro back to her description about the investigative staff, and noted this relationship is going to be key. After reading the manual, Ms. Yaroslavsky noticed that there is a lot of opportunity for collegiality in the manual, however she also noticed there were many direct processes. Ms. Yaroslavsky recommended, Ms. Castro be cognizant of the fact that the two need to work together and that hopefully it will weigh more towards the collegiality side as opposed to direction being given by the AG's Office.

Ms. Castro stated that it reads that way to her staff as well. She wants her staff to be engaged in these cases and take them in high regard.

Mr. Gomez, noted the 2014 VE manual has not been put into effect for DCA HQIU. He has staff looking at DCA's current practices to determine efficiencies and collaboration. He needs to understand how the AG's Office directs, understands professionalism, and team work, and look at best practices for the State of California, other local governments, and the District Attorney's Offices. Mr. Gomez reiterated they have not imposed that manual on the DCA staff yet. In reference to Ms. Yaroslavsky's comment regarding the investigation staff, Mr. Gomez stated that Chief Deputy Director Rhine is coordinating a meeting with Ms. Castro and her staff to re-look at how things can be done better, the roles of the investigators and prosecutors, and whether training is needed. When they say team, it has to mean team.

Ms. Kirchmeyer asked Ms. Laura Sweet and Ms. Susan Cady to stand and stated that, at the Board's great loss, they have announced their retirement. These individuals have been with the Board a very long time and to lose them is going to be a great loss of knowledge. She wanted to recognize them and thank them for their hard work and dedication to the Board.

Agenda Item 21 Update on the Prescribing Task Force

Dr. Bishop reported that on June 19, 2014, the Prescribing Task Force held an interested parties meeting. Prior to this meeting, Board staff had drafted revised prescribing guidelines for all individuals to review and provide comment. While drafting these guidelines, staff reviewed several existing guidelines and incorporated them into the Board's revisions. In addition, staff incorporated information received from the prior task force meetings. Several items needed expert input, such as the appropriate morphine equivalency that would raise a red flag. Several physician organizations in the group were able to provide guidance and input on the guidelines. The meeting had representatives from the prescribing and dispensing communities, law enforcement, and other regulatory boards, including the Dental Board, Board of Pharmacy, Physician Assistant Board, and the Nursing Board.

There was a great discussion on the guidelines; their intent, their purpose, and what needed to be included in them. Overall, the group thought the guidelines needed to cover all scenarios that may

occur. One member of the audience made a great observation; that the best practice is one patient, with one physician, at one time. Indicating that every possible scenario cannot be in a guideline, but they do need to provide basic guidance to assist in making decisions in all situations.

The other issue that needs to be clarified is treating acute pain versus non-acute or chronic pain. At the end of the meeting, everyone was offered an opportunity to continue to review the guidelines and provide comments to staff. To date, staff has received comments from several different organizations. Dr. Bishop stated Board staff was scheduled to meet the following week to review the comments received at the meeting and to put them together for the next Task Force meeting. Board staff will also be meeting with some physician field experts prior to the next meeting to provide input for the final document. The task force wants to complete the revision to the guidelines prior to the October Board meeting. This would allow the Board to approve the guidelines at that meeting so they can be sent to all physicians and placed on the Board's website.

During the course of this process, staff gathered some best practices for opioid medication, which is still a future issue for the Task Force that will be looked into after the revision of the guidelines. It is believed the process of revising the guidelines has provided the opportunity to have all stakeholders weigh in on this process in order to get the best product. The goal is to have a document that can educate providers and assist in appropriate prescribing.

Agenda Item 22 Update on The Physician Assistant Board

Dr. Bishop provided an update on the activities at the Physician Assistant Board (PAB). He stated for the personal presence regulations; the Medical Board is the agency that adopts any scope of practice regulations on behalf of the PAB. The Board held a regulatory hearing at its February 2014 Board meeting. After discussion, it was proposed to delete "or" from one section of the language. The Board adopted this change and there was a 15-day public comment period. At the Medical Board meeting in May 2014, the Members reviewed public comments received and following consideration of comments received from the AG's Office, Board staff recommended further clarification of the definition of "immediately available." Board Members voted to approve the language, but referred it back to the PAB for consideration. The modified language was approved by the PAB at its May 2014 Board meeting. It was then referred back to the Medical Board and noticed for an additional 15-day comment period. Since no public comment was received, the rulemaking file is currently being finalized and will be submitted to the DCA for review and approval prior to submission to the Office of Administrative Law. On behalf of the PAB, Dr. Bishop thanked the Medical Board Members and staff for this regulatory change.

Dr. Bishop announced that the PAB website is being updated by PAB staff and the DCA internet team. DCA is requesting that boards, bureaus, and commissions within the Department have similar looking websites.

Dr. Bishop added that with respect to SB 352, supervision of medical assistants, the PAB has updated the website to reflect the implementation of SB 352, which allows physicians to delegate medical assistant supervision to physician assistants, certified nurse practitioners, and certified nurse midwives. The PAB site continues to include a link to the Medical Board's website section regarding medical assistant laws and regulations.

Dr. Bishop noted PAB staff had recently updated the paper application for licensure to reflect compliance with AB 258, which requires the application to include the following statement: "Have you ever served in the United States Military?" PAB requested the BreEZe team make similar updates to the on-line application. The next PAB meeting is scheduled for August 18, 2014 in Sacramento.

Agenda Item 23 Discussion and Consideration of Legislation/Regulations

A. 2014 Legislation

Ms. Simoes stated she had invited several Legislative offices to attend the Board meeting. She introduced G.V. Ayers from the Senate Business and Professions Committee and Sarah Huchel from Assembly Business and Professions Committee.

Ms. Simoes referred the Members to the tracker list in the Board packet. She stated the bills in blue are two-year bills that the Board has already taken positions on and will not be discussed. The bills in pink are Board-sponsored bills and will provide an update and the bills in green and orange, will need to be discussed and have a position taken on them.

AB 1838 (Bonilla) would allow graduates of accelerated and competency-based medical school programs to be eligible for licensure in California, if the program is accredited by the Liaison Committee on Medical Education (LCME), the Committee on Accreditation of Canadian Medical Schools (CACMS), or the Commission on Osteopathic College Accreditation (COCA). Ms. Simoes stated the Governor just recently signed this bill into law and it will become effective January 1, 2015.

AB 1886 (Eggman) would allow the Board to post the most serious disciplinary information, which is already public information, on the Boards website for as long as it remains public. This bill was recently amended to address concerns raised by the CMA and other provider groups. Concerns were raised that posting all public information indefinitely would be punitive, especially for information that is a lesser form of discipline or is not considered discipline. CMA also raised concerns that the existing statute was confusing and convoluted, which Board staff agreed. The author, sponsor and CMA worked on amendments, and with these amendments, there is no opposition on the bill. The amendments would restructure the statute to reflect the current and historical information that can be posted to the Board's website related to physicians; require malpractice settlement information be posted over a five-year period, instead of a ten-year period; require public letters of reprimand to be posted for ten-years, instead of indefinite posting; and require citations to be posted, that have not been resolved or appealed within 30 days, and once the citation has been resolved, to only be posted for three-years, instead of five-years (citations are not considered discipline).

SB 1466 (Committee on Business, Professions, and Economic Development) is the health omnibus bill which contains technical amendments for all of the health boards. The portions related to the Board include the American Osteopathic Association (AOA) Health Care Facilities Accreditation Program to be an approved accreditation agency and striking "scheduled" from the existing law that requires physicians who perform a scheduled medical procedure outside a general acute care

hospital that results in a death, to report the occurrence to the Board within 15 days. This bill is moving through the process.

Dr. GnanaDev stated there is one new issue with the residency programs. That issue is AOA and ACGME have agreed that the osteopathic accredited programs can take all osteopathic physicians into their program starting in 2015. The Board needs to make sure that until all programs become part of ACGME (by 2020) the gap in time is still considered part of the postgraduate training.

AB 496 (Gordon) is a two-year bill and was introduced in 2013. This bill previously reauthorized the Task Force on Culturally and Linguistically Competent Physicians and Dentists in order to expand the Task Force's membership and charge to include the lesbian, gay, bisexual, transgender, and intersex (LGBTI) community. This bill was recently substantially amended and would now only add to the existing cultural competency CME course requirement to also include information pertinent to the provision of appropriate treatment and care to LGBTI communities, as appropriate. The Board could work with organizations that accredit CME courses to ensure compliance with the new requirement if this bill was signed into law. This bill does not expand the Board's Cultural and Linguistic Physician Competency Program Workgroup, but would require organizations that accredit CME courses to update their standards, if necessary, to meet the new requirement in this bill. Since this bill does not expand the working group convened by the Board, the Board would only need to include agenda items at future meetings to hear from the organizations who have addressed the amended cultural and linguistic competency curriculum requirement. The Board did support the previous version of this bill because the Board believes it is important that LGBTI cultural issues are addressed by providers, so physicians can provide appropriate care for all patients and believes cultural competency is an important factor in the physician-patient relationship. Board staff recommends the Board still support this bill with amendments.

Ms. Yaroslavsky made a motion to support this bill with the amendments as presented/s: Dr. Lewis.

Dr. GnanaDev wanted to be sure that this bill does not mandate any CME.

Ms. Simoes noted this bill changes the requirements the CME must meet and just integrates LGBTI issues into the existing requirements.

Motion carried.

AB 809 (Logue) would delete the requirement included in the Telehealth Advancement Act of 2011 that requires physicians, prior to the delivery of health care via telehealth, to verbally inform the patient at the originating site that telehealth may be used and obtain verbal consent from the patient for this use. This bill would now require health care providers, prior to initiating the use of telehealth, to inform (it does not have to be verbally) the patient at the originating site about the use of telehealth. This bill would now allow the health care provider to obtain consent in writing (in addition to verbal consent), for the use of telehealth as an acceptable mode of delivering health care services and public health during a specified course of care and treatment. This bill would also specify that it should not preclude a patient from receiving in-person health care delivery services during a specified course of care and treatment after agreeing to receive services via telehealth. This

bill would allow the Telemedicine Advancement Act of 2011 to be implemented as intended, which will help to improve access to care via telehealth. The latest amendments do not adversely affect the Board and Board staff is suggesting the Board continue to support AB 809.

Dr. Krauss made a motion to support this bill with the amendments as presented/s: Dr. GnanaDev.

Yvonne Choong, CMA stated they are currently neutral on this bill. She noted there would be a couple of additional amendments that will be forthcoming on this bill. They feel the language as proposed to be amended is broad enough to allow them as an organization to continue recommending to physicians that they obtain consent for each course of care provided via telehealth, as they believe that is the best practice. The proposed amendments broaden that language and their concern is the amendments could be interpreted to require consent for each use of telehealth once “during a specified course of care and treatment.” They feel that a physician should not have to be required to obtain consent for each visit if it is a course of treatment.

Motion carried.

SB 1116 (Torres) previously would have allowed physicians to donate an additional \$75.00 to the Board to help fund the Steven M. Thompson Loan Repayment Program (STLRP). Amendments were taken to address concerns and this bill would now require the Board by July 1, 2015, to develop a mechanism for physicians to pay a voluntary contribution, at the time of application for initial license or renewal to the STLRP. Currently, a physician could donate more than the mandatory \$25.00; however, this information is not included on the initial licensing or renewal application. This bill would ensure that physicians are aware of their ability to donate additional funding to the STLRP. The Board is already planning to make these revisions. Staff recommends the Board continue to support this bill and any other measures that help fund the STLRP.

Ms. Yaroslavsky made a motion to support this bill with amendments as presented/s: Dr. Lewis. Motion carried.

SB 1243 (Lieu) is a sunset review bill for several boards under the DCA. New language was recently added that would impact all boards under DCA. The purpose of the language is to increase transparency of information distributed by DCA and would require DCA, the AG’s Office and the OAH to submit specified reports to the Legislature on an annual basis. The information required to be reported by DCA is modeled after the Board’s existing law (Business and Professions Code (BPC) Section 2313) that requires the Board to report specific data in the Board’s annual report. This bill would also enhance unlicensed advertising enforcement, require DCA to develop enforcement academy curriculum, amend public meeting notice requirements, and establish a board member mentor program. This analysis will only cover the portions of the bill that affect the Board.

This bill would require boards under and within DCA to provide written notice of a board meeting by regular mail, email, or both. The board shall also provide individuals these options and comply with the individuals’ chosen method of notice delivery. This bill would require an agency that plans to webcast a meeting to include in the meeting notice the intent to webcast the meeting; however,

this bill would allow the meeting to be webcast even if the information is not included in the meeting notice.

This bill would expand the existing authority of boards to request telephone disconnection for advertising of unlicensed activity to any form of advertisement, not just those in a telephone directory, as currently permitted, and provides this authority to all boards under and within DCA (not just those listed in existing law).

This bill would require DCA to provide an opportunity for an employee of DCA, who performs enforcement functions, to attend an enforcement academy on an annual basis. This bill would require DCA to develop the enforcement academy curricula in consultation and cooperation with the AG's Office and OAH.

This bill would require DCA to submit a report of the accounting of the pro rata calculation of administrative expenses to the appropriate policy committees of the Legislature on or before July 1, 2015, and on or before July 1 of each subsequent year. This bill would require DCA to conduct a study of its current system for prorating administrative expenses to determine if the current system is the most productive, efficient, and cost-effective manner for DCA and the agencies comprising DCA.

This bill revises information contained in DCA's annual report to the Governor and the Legislature that is due January 1 each year to include the total number of restraining orders or interim suspension orders, as specified, and to include the information relative to the performance of each board (including the Board.)

This bill would require the AG's Office to submit a report to DCA, the Governor, and the Legislature on or before January 1, 2016 and on or before January 1st of each subsequent year. The report must include specified information regarding the number of cases referred, the number that no action is taken, the number of accusations filed and withdrawn and the average number of days it takes for different steps of the enforcement process where the AG is involved.

This bill would also require OAH to submit a report to DCA, the Governor, and the Legislature on or before January 1, 2016 and on or before January 1 of each subsequent year. The report must include specified information on the number of cases referred to OAH and the average amount of time it takes to set a hearing, to conduct a hearing, and to issue a proposed decision.

Lastly, this bill would require DCA to develop a board member mentor program where experienced board members will be trained to act as mentors to newly appointed board members. A mentor member should be assigned to a new board member who serves on a different board and a mentor can be a current or former board member.

Board staff does have some technical concerns with some of the reporting requirements that all boards would have to adhere. The required reporting in large part is based on information that the Board is already required to report. However, the reporting should be changed to July, instead of January, to be consistent with the fiscal year reporting, instead of calendar year reporting. This bill would require the number of complaints to be reported, in addition to the number of consumer calls

or letters designated as discipline related complaints, and the number of complaint forms. This is duplicative and is captured in the number of complaints received, which is something already included in the Board's annual report. The reporting requirements refer to BPC Section 801.01, but this section only applies to the Board, so it should be amended to apply to all boards. Lastly, this bill defines "action" as proceedings brought on or on behalf of DCA's constituent agencies against licensees for unprofessional conduct. Proceedings can be brought against licensees for actions that are not included under unprofessional conduct, so this term should be taken out to ensure that all actions are included.

Board staff is suggesting that the Board support this bill if the technical amendments identified are addressed.

Ms. Yaroslavsky made a motion to support this bill if amended as presented/s: Dr. GnanaDev.

Ms. Yaroslavsky stated she does not feel that being mentored by someone on another Board should be mandated by law. She liked the idea of enforcement staff going on retreats; however, training every year is a concern to her due to the time away from duties.

Dr. GnanaDev feels this bill has something good and something worrisome. The good thing is cooperation and transparency are important, but micromanagement is a bad idea. Staff needs to work with the author to eliminate as much of this micromanagement as possible, while leaving the cooperation and transparency.

Motion carried.

SB 1262 (Correa) would put various licensing and enforcement requirements on marijuana dispensaries and cultivation facilities and would create a Bureau of Medical Marijuana Regulation (Bureau) in the DCA that would be the regulatory agency performing the licensing functions. It also gives local agencies the primary responsibility for enforcement of the Bureau standards, in accordance with Bureau regulations.

This bill would impose specified requirements on physicians recommending marijuana and on the Board. Ms. Simoes stated her analysis would only cover the portion of the bill related to the requirements on physicians recommending marijuana and requirements of the Board.

This bill would require the Board to include, in its investigative priorities, cases involving repeated acts of excessively recommending marijuana to a patient for medical purposes without a good faith examination of the patient and a medical reason for the recommendation.

This bill would prohibit a physician from recommending marijuana to a patient unless that person is the patients' attending physician, as defined by subdivision (a) of Section 11362.7 of the Health and Safety Code (HSC). This bill would also subject physicians recommending marijuana to the laws in BPC 650.01, and would not allow a physician to accept, solicit, or offer any form of remuneration from or to a licensed dispenser, producer, or processor of cannabis products in which the licensee or his or her immediate family has a financial interest. This bill would not allow a physician to advertise for marijuana recommendations unless the advertisement contains a specified notice to consumers and meets the requirements of BPC Section 651.

Lastly, this bill requires the Board to consult with University of California's (UC) Center for Medicinal Cannabis Research (CMCR) on developing and adopting medical guidelines for the appropriate administration and use of marijuana.

This bill has been significantly amended and no longer expressly, spells out what a physician must do before marijuana is recommended, including the requirement that an in-person patient examination must be conducted. This bill still places anti-kick back and advertising restrictions on physicians who recommend marijuana, and includes in the Board's priorities cases involving repeated acts of excessively recommending marijuana to a patient for medical purposes without a prior appropriate examination of the patient and a medical reason for the recommendation.

This bill requires the Board to consult with CMCR when developing guidelines, but does not expressly require the Board to develop and adopt guidelines for the appropriate administration and use of marijuana. If this bill were to pass, the Board would need to update its current statement and at that time would consult and solicit input from the CMCR.

Board staff is suggesting the Board take a neutral position on this bill, as it no longer contains many of the enforcement tools for the Board to utilize regarding requirements physicians must follow when recommending marijuana.

Dr. Lewis asked the difference between an oppose unless amended position, versus a neutral position.

Ms. Simoes stated the oppose unless amended position is a much stronger position, more of a negative position. The author's office has been very diligent about keeping the Board's recommendations in mind and speaking with Ms. Simoes often about the bill and she feels like taking an oppose unless amended position would not be correct at this time.

Dr. Lewis made a motion to take a neutral position on this bill/s: Ms. Yaroslavsky.

Ms. Genevieve Clavreul stated that marijuana is a Schedule I drug and this bill needs much more clarification.

Motion carried.

SB 492 (Hernandez) would have expanded the scope of an optometrist. This bill was amended and would instead generally revise the Optometry Practice Act to clarify and expand the optometrist's scope of practice and create an advanced practice optometry certificate.

Per the Assembly Business, Professions, and Consumer Protection Committee analysis, the Committee convened six separate meetings during 2013 to hear expert testimony and discuss key components of advanced practice including laser procedures, surgical procedures, immunizations, and injections. The Committee also conducted a tour of the UC Berkeley School of Optometry. Formal discussions concluded in January without consensus, although the working group had significantly reduced the range of open issues. Additional discussions between optometry and

medicine continued from January 2014 through June 2014, often, but not always, with the Committee's involvement. By June, the parties had largely narrowed down the range of procedures under discussion. The primary concern was with the minimum number of supervised procedures required to perform the procedures safely and achieve certification. Unfortunately, the parties were unable to find a mutually agreeable objective standard to bridge the remaining distance. Having failed to reach consensus, this bill was amended on June 16, 2014 to reflect the preferred position of the author and the sponsor, the California Optometric Association.

Although this bill was significantly amended, it still expands the scope of practice of an optometrist by authorizing advanced practice certification and by allowing optometrists to treat ocular inflammation and pain, non-surgically and surgically; treat eyelid disorders; treat the lacrimal gland, lacrimal drainage system, and the sclera in patients under 12 years of age; use all therapeutic pharmaceutical agents (TPA) approved by the FDA for use in treating eye conditions, including codeine with compounds and hydrocodone with compounds; administer immunizations; expand ability to order laboratory tests; and allow for certified advanced practice optometrists to perform surgical procedures. This is a significant expansion of the scope of practice of an optometrist. Although some provisions in this bill may be reasonable, this bill would allow optometrists to diagnose, treat, and manage ocular conditions, perform surgical procedures, and be granted full drug prescribing authority, including controlled substances, which is a significant scope expansion. Even with the amendments that require additional education and clinical and didactic experience, it is likely not enough to provide the appropriate education to prepare optometrists for this significant scope expansion; as such, this bill could put patients at serious risk of harm and significantly affect consumer protection. Since the Board is nearing the end of the legislative session and further negotiation is unlikely at this point, Board staff suggests that the Board oppose this bill.

Dr. Lewis made a motion to take an oppose position on this bill/s: Dr. Krauss.

Ms. Clavreul stated she is glad to see the Board is opposing the bill. She feels optometrists do not have enough background or education to extend their performance on this issue.

Dr. Krauss stated the interested parties put in many hours and a lot of hard work to come up with a reasonable program of supervised education and acquisition of skill sets so that everyone would be comfortable with these procedures being carried out safely. When this program was brought to the Committee, the author of the bill rejected it. The author of this bill has submitted bills in the past that, in essence, expanded the scope to include everything an ophthalmologist does if someone presents with visual symptoms. If there is inadequate assurance of public protection, he does not see anything that can be amended, or revised, in this session that could possibly allow the Board to support this bill. He is firmly in support of the oppose position.

Motion carried.

Dr. Krauss thanked Ms. Simoes for her dedication and hard work and stated that he has recently been made aware of the fact that bills can move from the committee to the floor of the Legislature rather quickly. With the structure of the Board as it is, these bills are only discussed among the Members on a quarterly basis, which can sometimes put Ms. Simoes in a position where she may not be comfortable in testifying at a hearing if the bill has significantly changed since discussion at

the prior quarterly Board Meeting. He suggested that the Executive Committee, develop a compendium of Board policy that Ms. Simoes can always refer back to at hearings, rather than be absent from them.

Mr. Serrano Sewell agreed with Dr. Krauss' suggestion and stated that this issue will be put on the next Executive Committee meeting agenda.

Dr. Lewis also complimented Ms. Simoes on her hard work and stated she can count on Member participation when it is needed.

B. Status of Regulatory Actions

Ms. Simoes referred members to the matrix in the Board Packet under agenda item 23B and stated this document provided an update on the Board's regulatory packages.

Agenda Item 24 Agenda Items for October 23-24, 2014 Meeting in San Diego

Mr. Serrano Sewell noted that the following agenda items would be included on the October 2014 Board meeting agenda including legislative proposals and a regulatory hearing on disciplinary guidelines.

Dr. Lewis requested another CURES update be included in the Executive Management Report.

Ms. Yaroslavsky requested a discussion on the fictitious name permits to see if it is meeting the need of the stakeholders and if not, to convene an interested parties meeting.

Mr. Serrano Sewell stated if anyone else has anything to be added to the October agenda, to contact Ms. Kirchmeyer.

Agenda Item 25 Adjournment

Mr. Serrano Sewell adjourned the meeting at 12:33 pm.

David Serrano Sewell, Vice President

Date

Denise Pines, Secretary

Date

Kimberly Kirchmeyer, Executive Director

Date

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