



MEDICAL BOARD OF CALIFORNIA

QUARTERLY BOARD MEETING



Embassy Suites
San Francisco Airport
Mendocino & Burlingame Rooms
150 Anza Blvd.
Burlingame, CA 94010

Thursday, January 31, 2013

DRAFT MEETING MINUTES

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

Agenda Item 1 Call to Order/Roll Call

Dr. Levine, M.D. called the meeting of the Medical Board of California (Board) to order on January 31, 2013 at 3:55 pm. A quorum was present and due notice was provided to all interested parties.

Members Present:

Sharon Levine, M.D., President
Barbara Yaroslavsky
David Serrano Sewell, J.D.
Denise Pines
Dev GnanaDev, M.D.
Janet Salomonson, M.D.
Michael Bishop, M.D.
Reginald Low, M.D.
Silvia Diego, M.D.

Members Absent:

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

Staff Present:

Susan Cady, Enforcement Manager
Dianne Dobbs, Department of Consumer Affairs, Legal Counsel
Tim Einer, Administrative Assistant II
Kurt Heppler, Staff Counsel
Kimberly Kirchmeyer, Deputy Director
Natalie Lowe, Licensing Manager
Armando Melendez, Business Services Analyst
Regina Rao, Business Services Analyst
Vic Sandoval, Investigator
Kevin Schunke, Licensing Outreach Manager
Jennifer Simoes, Chief of Legislation

Renee Threadgill, Chief of Enforcement
Lisa Toof, Administrative Assistant II
See Vang, Business Services Analyst
Linda Whitney, Executive Director
Curt Worden, Chief of Licensing

Members of the Audience:

Teresa Anderson, California Academy of Physician Assistants
G.V. Ayers, Consultant, Senate Business, Professions, and Economic Development Committee
Yvonne Choong, California Medical Association
Zennie Coughlin, Kaiser Permanente
Frank Cuny, California Citizens for Health Freedom
Julie D'Angelo Fellmeth, Center for Public Interest Law
Hank Dempsey, Chief Consultant, Assembly Business, Professions, and Consumer Protection Committee
Karen Ehrlich, L.M., Midwifery Advisory Council
Jack French, Consumers Union Safe Patient Project
Faith Gibson, Midwifery Advisory Council
Carol Godstein
Terry Jones, Supervising Deputy Attorney General
Tina Minasian, Consumers Union Safe Patient Project
Dr. William Norcross, M.D., UCSD, PACE Program
Dr. William Perry, M.D., UCSD, PACE Program
Loren Reed, Department of Consumer Affairs, Public Affairs Office
Robert Rowan, California Citizens for Health Freedom
Carrie Sparrevohn, Midwifery Advisory Council
Diana Taylor, University of California, San Francisco

Agenda Item 2 **Public Comments on Items not on the Agenda**

Yvonne Choong, California Medical Association (CMA), spoke about an issue raised at the Enforcement Committee meeting related to the Medical Board of California's (Board) enforcement of physicians conducting utilization review that does not meet the standard of care. This item was approved to be added to the Enforcement Committees for a future meeting agenda. CMA agrees with the Board's previous position that utilization review does constitute the practice of medicine primarily because these decisions directly impact the treatment received within the professional sphere of physicians. She also requested that the Board place this item on the agenda for a future full Board meeting to clarify the Board's jurisdiction over violations related to utilization review and how the Board can better allocate resources to provide oversight to utilization review and to consider legislative or regulatory changes that can improve the Board's enforcement authority in this area.

Agenda Item 3 **Designation of the Decision In the Matter of the Accusation Against Edward Spencer, (Case #12-210205496) as a Presidential Decision.**

Ms. Dobbs presented the case to the Board. An accusation against Dr. Spencer went to Administrative hearing. The Board adopted the Administrative Law Judge's decision stating the relevant facts in this case are: 1) the Board filed a petition to order a psychiatric evaluation for respondent; 2) The petition alleged that respondent's ability to safely practice medicine was impaired due to mental illness; 3) The Board's documents included an 805 report that was received from respondent's employer; 4) The respondent was not provided a copy of the petition and was not offered an opportunity to present argument in opposition of the decision; 5) In the Administrative Hearing, it was raised, that the respondent did not make himself available to be interviewed by the Board's Investigators and did not comply with order for evaluation.

At the hearing the issue was raised that the entire petition process was unconstitutional as it did not offer respondent opportunity to see materials that were presented and an opportunity to object to it. This case can be adopted as a Presidential Decision because the Administrative Law Judge highlighted in the decision why 820 does not require the documents to be provided to the respondent ahead of time and why not allowing respondent to participate in the process at that stage of the case was not a violation of their constitutional rights. Ms. Dobbs explained that this decision would provide guidance to all involved in similar cases. Ms. Dobbs then introduced the Deputy Attorney General, Jane Zack Simon, who was assigned to the Spencer Case.

Ms. Simon expressed why this case would be good to adopt as a presidential decision. It makes clear several important points: 1) Failure to comply with a Board order is in and/of itself unprofessional conduct and cause for disciplinary action under Business and Profession Code 2224; 2) The provisions routinely put in orders requiring licensees to be evaluated as ordered, but also to cooperate and provide the evaluator any information or records that the evaluator deems necessary to conduct a thorough investigation; 3) The Board is not required to provide the licensee the investigation and they are not entitled to the petition that goes to Board Members to determine whether they have reason to order an evaluation. These reinforce the confidentiality nature of the investigation and help avoid any compromise to the investigation during the investigative stage. Ms. Dobbs requested the Board to designate certain sections of that decision to include factual finding #1, 2, 5, 6 and 7 and the legal conclusions 1 – 5. Ms. Dobbs asked for a motion to make these the Presidential Decision.

Ms. Yaroslavsky made a motion to make this a Presidential Decision; s/Ms. Salomonson. Motion Carried.

Ms. Yaroslavsky asked if there was a way to put a stop practice on a licensee for a certain number of days if evaluation was not completed as ordered. Ms. Simon stated there would have to be a statute change for that to be an option. Dr. Low requested a discussion on setting a time line for a plan to work on possibly changing the current statute. Ms. Yaroslavsky requested a three month update as to how many cases have been affected by accepting this as a precedential decision.

Agenda Item 4 **Presentation on the Aging Physician – Dr. Perry & Dr. Norcross**

Dr. Levine introduced Dr. Perry and Dr. Norcross who have worked with the PACE program since 1996 when it began. Dr. Perry is a neurologist and has done many neurological psychological exams on aging physicians. He spoke about and provided a power point presentation on different aspects of assessing the aging physician. His topics included: 1) The aging physician population; 2) concerns of the aging physician; 3) report that states that three to five percent of the aging physician have some type of an impairment; 4) how the aging brain works and reacts to changes in cognitive processing and their impact on medical practice; 5) the goals of a Neuropsychological/Fitness for duty evaluation, and, 6) impairment vs. cognitive weakness.

Public Comment was received for this agenda item.

Carol Godstein asked Dr. Norcross to explain why the suicide for female physicians is higher than that of male physicians and asked if anyone is working on that issue.

Dr. Norcross responded that it is believed that depression is a factor, but that truly no one knows why the suicide rate is so high in women physicians.

Darryl Hopkins, physician at Stanford, stated his institution has been looking at the aging physician from the perspective of screening. Screening is the approach to look at the risk of the whole population or a subset of the population and then supply a screening test to that group to see if there is any problem. If something is found, then it can be investigated further.

Agenda Item 5 **Licensing Committee Report**

Dr. Salomonson gave an update on the Licensing Committee meeting held on January 31, 2013. The Licensing Committee discussed a new issue that has been brought to the Board's attention. The Accreditation Council Graduate for Medical Education (ACGME) now has an international branch as does the Royal College of Canada International (RCCI). The Board has a pathway for recognizing international medical schools but have always required post graduate education to be either ACGME or RCCI. It is an evolving area and the Board is asking licensing staff to keep it apprised. The other issue is regarding the merging of the Osteopathic Association post graduate training (AOA) and the ACGME. The Board's statutes do not accommodate this because of the wording of the statute, thus a change is needed to accommodate this is to add "hospitals that are accredited by the American Osteopathic Association" to Section 2089.5 of the Business and Procedures Code. Dr. Diego recommended that the name be changed to The Joint Commission or by any entity CMS deems appropriate.

Ms. Whitney asked that the staff be asked to research any other items that may need to go into that revision of that particular statute to ensure that the complete issue has been addressed.

Dr. Salomonson agreed. Mr. Worden explained that this will be included in the Sunset process and the language has to be open to include future entities. Dr. Salomonson requested a motion for a change in the wording of statute Section 2089.5 of the Business and Procedures code.

Dr. Levin made a motion for the change in wording; s/Yaroslavsky; motion passed unanimously.

Agenda Item 6 **Enforcement Committee Report**

Dr. Low gave an update on the Enforcement Committee held on January 31, 2013. Dr. Low reported that an upcoming expert training program will be held on Saturday, February 9, 2013 at UC Irvine. Another one is planned in San Diego sometime in the summer or fall. Dr. Low stated that there has been significant progress in the Central Complaint Unit in case processing time. The processing time has been reduced by 20 days since the July meeting.

The Board has contracted with a transcription service to assist the consultants in the report writing to help in expediting the process.

The Enforcement Committee discussed Senate Bill 1441, which calls for uniform standards for the DCA licensees who are identified as substance abusers. There were 16 areas that had to be addressed and some of those were determined by staff to not be applicable because the Board does not have a diversion program. It was pointed out that the Board may not be in complete compliance and the issue will be put as an agenda item for the next meeting.

Public comment was received for this agenda item.

Tina Manasian urged the Board to come into full compliance with SB 1441 as soon as possible.

Agenda item 11 **Closed Session**

Dr. Levine asked for a motion to recess into closed session: Ms. Yaroslavsky moved; s/Diego.

The open meeting ended at 5:40 pm and went into closed session.

Closed session adjourned at 6:05 pm.

Dr. Levine, M.D. called the meeting of the Medical Board of California (Board) to order on February 1, 2013 at 9:08 am. A quorum was present and due notice was provided to all interested parties.

Members Present:

- Sharon Levine, M.D., President
- Barbara Yaroslavsky
- David Serrano Sewell, J.D.
- Denise Pines

Dev GnanaDev, M.D.
Janet Salomonson, M.D.
Michael Bishop, M.D.
Reginald Low, M.D.
Silvia Diego, M.D.

Members Absent:

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

Staff Present:

Susan Cady, Enforcement Manager
Dianne Dobbs, Department of Consumer Affairs, Legal Counsel
Tim Einer, Administrative Assistant II
Kurt Heppler, Staff Counsel
Kimberly Kirchmeyer, Deputy Director
Natalie Lowe, Licensing Manager
Armando Melendez, Business Services Analyst
Regina Rao, Business Services Analyst
Vic Sandoval, Investigator
Kevin Schunke, Licensing Outreach Manager
Jennifer Simoes, Chief of Legislation
Renee Threadgill, Chief of Enforcement
Lisa Toof, Administrative Assistant II
See Vang, Business Services Analyst
Linda Whitney, Executive Director
Curt Worden, Chief of Licensing

Members of the Audience:

G.V. Ayers, Consultant, Senate Business, Professions, and Economic Development Committee
Carol Godstein
Carrie Sparrevohn, Midwifery Advisory Council
Diana Taylor, University of California, San Francisco
Faith Gibson, Midwifery Advisory Council
Frank Cuny, California Citizens for Health Freedom
Hank Dempsey, Chief Consultant, Assembly Business, Professions, and Consumer Protection Committee
Jack French, Consumers Union Safe Patient Project
Julie D'Angelo Fellmeth, Center for Public Interest Law
Karen Ehrlich, L.M., Midwifery Advisory Council
Loren Reed, Department of Consumer Affairs, Public Affairs Office
Phyllida Burlingame, American Civil Liberties Union of California
Robert Rowan, California Citizens for Health Freedom
Teresa Anderson, California Academy of Physician Assistants
Terry Jones, Supervising Deputy Attorney General
Tina Minasian, Consumers Union Safe Patient Project
Yvonne Choong, California Medical Association

Zennie Coughlin, Kaiser Permanente

Agenda Item 12 **Call to Order/Roll Call**

Dr. Levine, M.D. called the meeting of the Medical Board of California (Board) to order on February 1, 2013 at 9:08 am. A quorum was present and due notice was provided to all interested parties.

Agenda Item 13 **Public Comments on Items not on the Agenda**

Dr. Barnett provided a power point presentation in regards to a reprimand against him related to the gag clause law. He requested a full review by the Board, a written report of the findings and remediation to the full extent possible. Dr. Levine requested that this issue be put on a future agenda for full discussion.

Agenda Item 14 **Approval on Minutes from the October 25-26, 2013 Meeting**

Dr. Levine asked for a vote to approve the minutes; approved unanimously.

Agenda Item 15 **Update on Activities of the Board of Pharmacy**

Ms. Herold stated the Board of Pharmacy is working on Implementation California; a system to secure the drug supply chain, so that counterfeit, adulterated drugs do not end up reaching patients. It tracks product from the manufacturer through every change of ownership down the chain to the pharmacy, or to the practitioner level. This process will make it so that a drug will not be able to be sold in California after July 2017 unless it has been tracked all the way through the process.

At the recent Pharmacy Board meeting DEA's proposed guidelines for the drug take back program were reviewed. There are three different ways for the public to get rid of controlled substances that they no longer want or need. One is to mail them back to a reverse distributor, community take back events, and also through pharmacies. None of these are required, they are all voluntary and there is a cost, since the cost of disposing of the drugs is expensive.

The Board of Pharmacy sponsored a bill that will impact ambulatory surgery clinics that took effect in January, 2013. It will allow groups of physicians to apply to the Pharmacy Board for a co-mingle drug permit, which means the clinic can have a single stock of medication from which they can work. Without this bill being in place, physicians were unable to have a large stock of drugs. This bill will allow a co-mingle drug stock through a permit with the Board.

Agenda Item 16 **Update on Joint Forum to Promote Appropriate Prescribing and Dispensing**

Ms. Whitney gave a brief update on the number of people registered for the forum and stated there is a long waiting list. There will be Board Members from both the Pharmacy Board and the Medical Board attending. There are several speakers scheduled to discuss promoting appropriate prescribing and dispensing.

Agenda item 17 **Presentation and Consideration of the Organ Donor License Plate Sponsorship**

Ms. Zettel, CEO of Donate Life California, gave a presentation on the basics of organ and tissue donation and how these donations can save lives and improve the lives of others. She asked that the Board be an official honorary state sponsor as they work to establish a specialized license plate to increase awareness and raise money for organ and tissue donation, education and outreach. They are not asking for the Board to sponsor monetarily, but to have a link on the Board's web site homepage to promote the license plate campaign and information on organ and tissue donation.

Public Comment was received on this agenda item;

Ms. Godstein commented that she recently renewed her drivers' license and found that the new license did not have the pink dot showing that she is an organ donor and is concerned that her wishes will not be carried out. It was explained to her that the DMV requires that an individual check the "donate" box each time he/she renews a license to get the pink dot and that the lack of the dot does not mean that she is not listed in the electronic registry. Dr. Levine asked for a motion to accept the Board becoming an official state sponsor.

Dr. Salomonson made a motion for the Board to become a state sponsor; s/Dr. Gnanadev. Motion Carried.

Agenda Item 7 **Executive Committee Update: Consideration of Committee Recommendations**

Dr. Levine provided an update on the Executive Committee meeting held on January 31, 2013. The Executive Committee reviewed the Board Member Administrative Procedure Manual and asked staff to make some additions to the manual. One addition being a section that explains in more detail what the Board Members duties and responsibilities are. The Committee asked staff to work on and bring back recommendations to the Board for discussion at the next committee meeting on; 1) rolls of Members when responding to the media; 2) Members meeting with the public and interested parties; and 3) options on the best way for the public who are not in attendance of the meeting to provide written comments to the Board.

Public comment was received on this agenda item;

Jack French, Consumer's Union requested that the Board meeting minutes be posted within one week following the Board meeting so the public would have time to review them in a timely manner. He also requested that the Board post on its Web site the meeting itself as soon as possible following the meeting. He would also like the public to be able to submit requested

agenda items to the Executive Director and/or Board President up to 30 days prior to the scheduled meeting date. If the Board decides not to allow the requested item on the agenda, that the requestor be notified and that the denial of such be read into the Board meeting minutes at the following meeting.

Agenda Item 8 **Update on Health Professions Education Foundation**

Ms. Yaroslavsky and Dr. Diego gave a brief update stating the Foundation is doing well especially with the Steven Thompson loan repayment program. The foundation awarded over four million dollars in loan repayments with the help of matching funds. In the year 2011 there were 185 applicants and the foundation was able to award approximately 75 loan repayments. Ms. Yaroslavsky thanked the Board as well as the federal government for extra funding that was disseminated.

Agenda Item 9 **Physician Assistant Board Update**

Mr. Schunke gave an update from the Physician Assistant Board (PAB). The Physician Assistants committee has transitioned and is now a fully authorized Board under the Department of Consumer Affairs (DCA). They have almost 9000 licensed physician assistants (PA) in California. There were two regulation packages to be brought to the Board's attention. The regulation on preceptors in PA training programs has been approved by the Office of Administrative Law and becomes effective April 1, 2013. The second rulemaking is the sponsored free health care events. The hearing was held the last week of October, 2012 and the regulations are being finalized. The next PAB meeting is scheduled for February 11, 2013. The Executive Officer of the PAB retired in December and one of its current staff members, Glenn Mitchell, was promoted and is now serving as the new Executive Officer of the PAB.

Agenda Item 10 **Update of Licensing Outreach/Education Program**

Mr. Schunke reported that travel for the outreach program has been approved for 2013. Outreach has already begun to teaching hospitals throughout California and outreach has been scheduled for much of the year starting in February through November. The 2013 matrix has begun with the teaching hospitals which asks them to let the Board know residents who need a license by July of this year.

Agenda Item 18 **Update on Legislation**

A. 2013 Legislation

Ms. Simoes reported that there are 40 newly elected members of the Legislature and meetings will be set up with each of them in the month of February. In addition 12 of the 13 members of the Assembly Business and Professions Committee are new. Meetings will be scheduled with them as well. Ms. Simoes reported several important legislative deadlines. The Governor released a proclamation that calls for the legislature to hold an extraordinary session for purposes of implementation of the affordable care act of California, this session commenced on Monday, January 28, 2013.

There are two bills that need a position taken on them. SB 62 (Price) would require a coroner to report deaths, that may be the result of prescription drug use, to the Board, the Osteopathic Medical Board, the Podiatric Board of Medicine, the Physician Assistant Board, and the Board of Pharmacy. Staff recommends that the Board take a “support”, if amended position, narrowing it to schedule II and schedule III drugs. Ms. Simoes asked for a motion.

Ms. Yaroslavsky made a motion for the Board to take a “support”, if amended position on this bill: s/Ms. Levine; motion carried.

GV Ayers, Senate Business and Professions Committee Consultant, spoke briefly on what the Legislature is doing to pursue the SB62 bill by talking with coroners, etc. He will take the Board’s recommendations back to the legislature and will take them into consideration.

Public Comment was received on this agenda item;

Yvonne Choong, California Medical Association, stated her concerns about the current language in the bill as well as the issue of overburdening coroners.

Ms. Simoes discussed SCR8 (DeSaulnier.) This concurrent resolution would proclaim the month of March, each year, as Prescription Drug Abuse Awareness Month and would encourage all citizens to participate in prevention programs and activities.

Ms. Yaroslavsky made a motion to take a “support” position on this Concurrent Resolution; s/Bishop; motion carried.

Maria Garcia spoke on behalf of California State Assembly Member Ben Wesoe in regards to the proposal of a bill not yet established to provide access to safe alternative treatments to cancer in California.

Frank Cuny and Robert Rowan spoke on their support for this bill that would provide access to safe alternative treatments to cancer and the patient’s right to choose.

Diana Taylor, professor of nursing at University of CA San Francisco spoke on clarification of the bill related to midwives performing first trimester aspiration abortions. They have two recent reports of findings that were recently published in national peer review journals. The first one is in this month’s issue of the American Journal of Public Health and the second will be in next month’s issue of the American Journal of Medical Quality.

Phyllida Burlingame, American Civil Liberties Union of CA spoke on AB154 (Atkins). This bill has six organizational sponsors. The Author has been working with these organizations to create actual language for the bill. The purpose of the bill is to increase woman’s access to early abortion care in California by authorizing advanced practice clinicians, nurse practitioners, certified nurse midwives, and physician assistants to provide early aspiration abortion care within the scopes of their licenses.

B. Status of Regulatory Action

Ms. Simoes pointed out the regulatory matrix and asked if there were any questions.

Agenda Item 23 **BreEZe Update**

Ms. Kirchmeyer introduced Mr. Rutschmann who is from DCA and the project manager of the BreEZe project. Mr. Rutschmann gave a detailed presentation on how the BreEZe project.

Public Comment was received for this agenda item.

Julie D'Angelo Fellmeth, Center for Public Interest Law expressed her concerns about whether the BreEZe system would interface with the Attorney Generals' office. Ms. Kirchmeyer stated the system has the functionality, but the Attorney General's office has to allow that interaction.

Agenda Item 19 **Board Member Communications with Interested Parties**

Dr. Levine requested that Mr. Heppler explain in more detail what interested party communication means. Mr. Heppler stated that interested party communication means a meeting that entails discussing something that falls within the jurisdiction of the Board.

Dr. Levine called a recess for lunch at 11:40 am.

Meeting reconvened at 12:15 pm

Agenda Item 20 **President's Report**

Dr. Levine reported that Ms. Yaroslavsky, Ms. Whitney and she attended a meeting with the State and Consumer Services Agency (SCSA) and the Governor's Office Staff to discuss the Board's enforcement program and issues related to appropriate prescribing. Dr. Levine described the intent, of the upcoming joint forum on prescription drugs and what the Board can do to try and address the epidemic of opioid death.

Dr. Levine stated that at the last Board Meeting she was mentioned she was scheduled to attend two separate meetings looking at undergraduate and graduate medical education. Specifically whether or not we would need to look at a statutory change. As statute is currently written, it conforms to current practice of four years of undergraduate education, four years of medical school with the growing cost of medical education, there are schools around the country looking to see if curriculum changes could compress the total time of undergraduate and medical school educate without the sacrifice of quality of medical education and the preparedness of graduates to come out of those programs. There are not any answers at the moment and that there will be pilot efforts. The Board should follow this with interest.

Dr. Levine and Ms. Whitney attended a meeting sponsored by the Federation of State Medical Board (FSMB) that focused on the national licensure and whether the time is right for some kind of federal licensure. She reported that none of the people at the meeting from a state perspective felt there was a need for federal licensure. There was an interest in signing contracts between states under what

conditions a physician licensed in one state can care for patients in other states, particularly around border states and physicians who may have patients come from state border towns.

Agenda Item 25 **Review and Consideration of Request for Recognition; Medical University of Warsaw – English Language Program**

Mr. Worden reported that the University of Warsaw had requested recognition by the Board for their English Language Program. The Board has already recognized the University of Warsaw for their Polish Language Program. Mr. Worden gave a brief detailed background and history of the school and then introduced Dr. Silva who gave a detailed evaluation of how this school meets the criteria for recognition.

Ms. Yaroslavsky made a motion to the Board to recognize this school; s/Levine. Motion carried.

Agenda Item 21 **Update of Federation of State Medical Boards**

Ms. Whitney reported that the Federation of State Medical Boards (FSMB) sent out a draft white paper policy brief regarding licensing models to facilitate the multi-state practice of medicine meeting they held. Comments were provided to the FSMB and as it develops its final position paper, it will be shared with the state Boards for the April FSMB meeting. Ms. Whitney continues to serve on the committee that is developing model data sets for state Boards to track work force data.

The committee will survey all state Boards in the near future to determine who collects what data, and is looking at cost to implement such a system for states that do not collect that data. This information will be presented at the April FSMB meeting.

Ms. Whitney reported that the executive staff participated in a round table conference regarding the Federal Trade Commission activity around the scope of practice issue. As updates are available, they will be presented to the Board.

Agenda Item 22 **Executive Director's Report**

A. Update of Staffing and Administration

Ms. Whitney recognized and thanked Tim Einer for his excellent work with the Medical Board as he is leaving the Board. Ms. Whitney announced Mr. Einer's replacement as Lisa Toof who came from the High Speed Rail where she supported the CEO and Board Members.

Ms. Simoes has been acting as the Board's public information officer and hopes to have that vacant position filled by the end of February. Mr. Heppler has moved to a position at DCA and the Board is in the process of backfilling his position. Approval for his position is pending. Monthly update meetings have been set up with the DCA's Director's Office to keep them informed of emerging policy issues related to the Board and medicine. Executive staff is participating in weekly calls with DCA related to the launch of the BreEZe program. Ms. Whitney and Ms. Kirchmeyer attended the quarterly executive officer meeting in November, 2012. Issues at this meeting included pension reform and the impact on current and future employees. Another topic

was the Franchise Tax Board top 100 delinquent tax payers and how the DCA is implementing that legislation for the Board because some individuals might be suspended. The BreZE project and its upcoming launch date was discussed. The next meeting is scheduled for March, 2013.

Ms. Whitney and Ms. Threadgill met twice with the SCSA in regards to enforcement issues related to ISO's, excessive prescribing, vehicles and staffing. These meetings were in addition to the meeting that Dr. Levine attended and mentioned earlier. Mr. Terry Jones was named acting Sr. Assistant Attorney General upon the retirement of Carlos Ramirez in December 2012. Ms. Whitney continues her bi-weekly calls with Mr. Jones to discuss cases, processes and issues that have come up within the past two weeks.

Dr. Levine announced that International Association of Medical Regulatory Authorities, which is the sister agency of the FSMB has asked Ms. Whitney to assist them in identifying physicians for a newly formed international academy for Continuing Medical Education and Consumer Professional Development accreditation.

B. Budget Overview

Ms. Kirchmeyer reported on staffing issues currently taking place at the Board. The Board is in the process of hiring seasonal employees and permanent intermittent staff to replace the loss of the student assistants and retired annuitants. The Board is recruiting for the Consumer Protection Enforcement Initiative position which is still going through the process at DCA.

Ms. Kirchmeyer announced that the April, 2013 Board meeting will be held at the Hilton at LAX. Staff is working on securing the Marriott in Sacramento for the July, 2013 meeting.

Staff is working with the University of California, San Francisco on a survey regarding electronic health records that will be sent to all licensees who renew in June and July of this year. This will be the second survey that has been sent out on electronic health records. Once information is gathered, a presentation will be made to the Board with the findings.

Ms. Kirchmeyer reported on budget issues. The Board's fund reserve at the end of the fiscal year is projected to be 4.3 months. The Board has one augmentation request moving forward and that is for the BreZE system. Per this projection, the Board will be very close to its mandated 2-4 months reserve at the end of this year and within mandate next fiscal year, therefore it is not prudent at this time to consider any reduction in licensing fees at this time as previously recommended by the Bureau of State Audits. The Board's spending is currently in line with its budget.

Mr. Kirchmeyer announced that the Board received a letter from the Reserve Officer Training Corp. program in Ramona, CA. The letter thanked the Board for its donation of computers to its cyber warfare team. Due to the Board receiving new computers, the old computers were donated to a high school ROTC program.

A. Staffing

Mr. Worden thanked the licensing staff for doing an outstanding job these past several months. He then gave a brief report on staffing stating that there are only three vacancies. Staff is working on interviewing and hiring permanent intermittent positions to replace the student assistants and retired annuitants that were no longer able to work.

B. Program Statistics

Mr. Worden discussed the licensing program statistic. The licensing staff answered 20,578 phone calls and the Board received 1,715 new physician and surgeon applications for the quarter. The Board completed initial review on 1,791 applications and there were 1,264 new licenses issued. The Board is meeting the strategic plan goal.

C. Status of International Medical School Programs

Mr. Worden gave a brief update on status of the International Medical School Program stating that the Board has a list of schools that are currently being reviewed and these schools are on the list because they have applicants who have attended those schools or the Board has self-assessment from those schools. There are 98 international schools in pending status, 9 self-assessment reports which must have a medical consultant review. The Board has been able to recognize 33 international medical schools in the quarter that met the definitions of 1314.(A)(1).

D. Status of Free Health Care Event Program

Mr. Worden gave an update of the Free Health Care Event Program. The Board is the first Board to pass regulations for this program. The Board is ready to start accepting applications. It has been notified by DCA that there are two free health care events coming up in California; one in Riverside county April 4-7, the other in Santa Ana April 11-14.

Agenda Item 26 Midwifery Advisory Council Update and Consideration of Council Recommendations

Ms. Sparrevohn gave a detailed update on the Midwives Alliance of North America (MANA) statistics project. The report included how data is collected and how data is compared to other like databases that are used nationwide. A legislative change in Business and Professions Code section 2516 would be required to make the MANA system available to midwives. She asked that the Board request a change in the statute during the Sunset Review process.

Public Comment was received on this agenda item.

Shannon Smith-Crowley, American Congress of Obstetricians and Gynecologists expressed her concerns about changing over and/or merging the two databases together.

Karen Erlich, Midwife Advisory Council (MAC), stated that she is the one who brought this project to the table because she feels the way things are being reported now is not the quality that is should be.

The MANA system will offer much more detailed information because registration will happen prospectively.

Yvonne Choong, CMA stated she believes that the current system does have issues, but contracting it out to a non-state entity may not be the solution. She recommends that the Board consider mechanisms for improving the database system.

Faith Gibson, Midwifery Advisory Council (MAC) gave some brief history of how this issue began. She stated there were some conversations at the Board regarding reporting by midwives in order to have statistics on the practice of midwifery. She assisted in creating the current reporting mechanism that is in law now. She encouraged the Board to approve the use of the MANA system and said it will give the members the information that they need.

Ms. Yaroslavsky recommended to the Board that they consider amending the Business and Professions Code section 2516 to use the MANA prospective data collection taking into account the funding as well as the advice they have heard today.

Ms. Yaroslavsky made a motion to amend the Business and Professions Code; s/Serrano-Sewell. Motion carried.

Ms. Sparrevohn also reported the MAC is hoping to get an amendment to Business and Professions Code section 2514, to allow Certified Nurse Midwives (CNM) to supervise midwife students. Currently, physicians and licensed midwives are allowed to supervise but CNM's are not included.

Public comment was heard on this agenda item;

Yvonne Choong, CMA recommended that it be clear the intent is to have the CNM who is supervising midwife student would be acting in lieu of the physician or licensed midwife.

Ms. Sparrevohn clarified that the statute right now reads that it is either physicians or licensed midwives who can act as a supervisor, the MAC just wants to add that CNM's can also act in a supervisory role.

Ms. Yaroslavsky made a motion to include Nurse Midwives as supervisors of midwifery students; s/Pines. Motion carried.

Ms. Sparrevohn provided the items the MAC is requesting for the March meeting. In addition to normal "housekeeping" type items, she would like to continue an ongoing discussion on the students and assistants issue and hear from interested parties on those issues. Also continue discussion on the MANA statistics in order to discuss in which the Board has questions. Lastly, the MAC would like an update on the Sunset Review process by staff. Ms. Sparrevohn would also like to create some written material on licensed midwives that can be distributed to new Board Members.

At this time, Dr. Levine took a moment to welcome and introduce the Board's newest member, Felix Yip, M.D.. Dr. Levine also swore in Dr. Yip.

Agenda Item 27 **Update on Outpatient Surgery Centers Program**

Mr. Worden provided some general information and background on outpatient surgery centers, including accreditation requirements. Some centers are not required to be owned by licensed physicians or surgeons; however, an outpatient surgery center that is not owned by licensed physicians or surgeons may not employ physicians or surgeons. Minimum requirements for outpatient surgery centers are set in statute. Accreditation agencies may require additional minimum requirements to meet the specific requirements for that specific agency. Accreditation agencies are required to inspect an outpatient surgery center at least once every three years. Accreditation agencies are required to report to the Board when the accreditation agency denies an existing surgery center's accreditation. A complaint against an outpatient surgery center is not necessarily a complaint against a physician.

The Board's licensing, enforcement, and legal staff met with California Department of Public Health (CDPH) in November, 2012 by telephone regarding outpatient surgery center's adverse action reports and complaints received by CDPH. In December, the Board's Executive Director sent correspondence to the CDPH's Director informing him that the Board had not received any adverse actions or complaints from the CDPH and requested that CDPH send all adverse actions or complaints that are not within its jurisdiction to the Board's Central Complaint Unit Manager.

Licensing is continuing to work with the four accreditation agencies to provide the necessary information to be in compliance with the current statutes. Three of the four agencies have met most of the requirements. The Board will continue to work with these agencies. Licensing will be focusing most of its attention on the accreditation agency that has not proceeded with meeting the minimum requirements. The Board's Web site is updated when the Board receives new information from the accreditation agency. The Board also receives a monthly update from each accreditation agency. The Board will not be posting information that happened prior to January 1, 2012 on the Web site as the statute is not retroactive. As of December 31, 2012, there are 1,181 accredited outpatient surgery centers.

Dr. Salomonson requested that each accreditation agency give a brief presentation at a future Board meeting to help the Board understand how vigorous the accreditation process is.

Ms. Threadgill reported that the Central Complaint unit would process the complaints that are received from the outpatient surgery centers; to date, however, the Board has not received any adverse action reports from CDPH. The Board has received two complaints regarding possible unaccredited outpatient surgery centers. The Board does not monitor the length or complexity of surgeries performed in the outpatient surgery centers.

Public comment was received on this agenda item.

Tina Manasian, Consumers Union, expressed her concerns on physician owned ambulatory surgery centers. She is pleased that the Board has chosen to post final inspection reports on the Web site. She urged the Board to require staff to update the Web site so that the section on accreditation of physician owned ambulatory surgery centers contains the information required by state law. She noted that on 18 of the first 25 surgery centers that came up when one enters the phrase "surgery center", no physician owned is listed. Also seven of the 25 indicated "non-reported" for accreditation. She stated

the missing data occurs with each accrediting agency. She asked how the Board is planning on working with the CDPH to keep informed regarding accreditation issues such as violating standards of care, and reported about adverse events. She stated that on a recent call between the Consumers Union, CDPH and the Board, there seemed to be a misunderstanding between the two agencies about where the responsibility lies for notification of physicians of new responsibilities regarding reporting of adverse events and for imposing required fines for non-reporting. She requested the Board provide a link on the Web site home page to information about physician-owned ambulatory surgery centers and their related accredited information. Also the page that does link to the information required by SB100 should be more consumer friendly.

Agenda Item 28 **Enforcement Chief's Report**

Ms. Threadgill requested a motion from the Board for approval to restore 10 licenses to clear status following completion of probation.

Ms. Threadgill requested a motion to restore 10 licenses to clear status. Mr. Serrano Sewell moved; s:GnanaDev. Motion Carried.

Ms. Threadgill also asked for a motion for three orders for license surrenders during probation and/or administrative action.

Ms. Threadgill requested a motion for three order for license surrenders. Dr. Levine moved; s:Yaroslavsky. Motion Carried.

Ms. Threadgill discussed the expert reviewer utilization report. She reported that the number of active experts is 964, which is slightly higher than the 953 reported at last meeting. The total number of experts utilized in calendar year 2012 was 349. During the Enforcement Committee meeting, Ms. Sweet provided an update regarding the second presentation of the revised expert reviewer training, which will be held in Irvine at the UC Irvine Medical Center on February 9, 2013 from 8:00 am – 5:00 pm.

The Board continues to support medical related training for Administrative Law Judges. On February 19, 2013, PACE will be doing some presentations and training from 9:00 am – 12:00 pm on the following topics: physician choice, clinical judgments, clinical guidelines, and the rise of evidence-based medicine. On February 21, 2013, training will be presented from 1:30 pm – 4:30 pm on topics of addiction, addiction medicine, and the addicted physician. Dr. Low is scheduled to present cardiology 101 training on Friday, March 15, 2013 during the lunch hour.

The current vacancy rate for investigators is 7%, taking into consideration identified candidates and those in background, the vacancy rate is only 1%. The percentage for supervisor vacancies however is 19%, which makes the overall vacancy rate for sworn personnel 9%. In calendar year 2012, the Board was interviewing and hiring a significant amount of staff. The Boards office of Standards and Training Unit completed 33 background investigations and the newly hired investigators attended their POST training in October, 2012. This 16 week training will be ending and graduation will be on February 14, 2013.

To date the Board has hired three additional staff that will be required to attend the next scheduled POST training. Additionally, the Board has begun to advertise six additional investigator positions; two for district offices, and the additional four staff, as well as a supervising investigator position to staff a new Operations Safe Medicine unit in Northern California. These additional positions will further assist in lowering the case load and current average investigation time. The Board only has one analyst vacancy in the CCU and one inspector vacancy in the Probation Unit.

Ms. Threadgill then reported on the progress of the CCU in meeting its goals of reducing complaint processing time, as this is one of the goals of the Strategic Plan. The CCU continues to do an outstanding job of reducing the timeline and the current information from receipt of complaint to closure or referral are down to 63 days, with 50% of the complaints being under 50 days. The enforcement time frame continues to improve; the total average days for the complaint investigation time is 334 days or .92 years. This is not just the investigations but includes the CCU time as well.

Ms. Threadgill then referred to the suspension orders issued. In this fiscal year to date, there have been 42 different types of suspension orders issued. Of these, 17 are Interim Suspension Orders (ISO). Ms. Threadgill then provided some information on ISOs and discussed what it takes to get this order. An ISO is considered extraordinary relief and pursuant to Government Code Section 11529, standard of proof must be met in order for an ISO to be granted. The standard of proof must be consistent with the burden and standards of proof applicable to a preliminary injunction entered into under section 2527 of the Code of Civil Procedure. Since every case is different, it is difficult to generalize why an ISO is not in place for a particular licensee. Before an ISO can be requested there are a number of steps that must be taken such as gathering medical records, obtaining patient consents, medical consultant and expert review, etc., in order to prove that the licensee's continued practice presents an imminent danger to public health, safety or welfare. Once the Attorney General's Office reviews the case, a determination is made as to whether there is enough evidence to warrant requesting an ISO. Even after the ISO is requested, if an Administrative Law Judge determines there is insufficient evidence, the request can be denied. Also due to a 15 day time restraint to file an accusation after granting an ISO and a 30 day time restraint between the accusation being filed and a hearing being scheduled, an investigation must be nearly complete in order to request an ISO. Depending on the case, gathering the appropriate materials necessary to complete the investigation and request an ISO can be a time consuming process. Due diligence must be taken to ensure that seeking the ISO is the correct course of action.

During October's Board meeting, a Member requested the development of an outreach plan. In response to that request, the Board staff contacted the California Medical Association, Director of Education, and has been invited to present at the local county medical societies Executive Directors' meeting held in Sacramento on April 15, 2013. During this meeting, the Board hopes to identify information that the county societies are interested in receiving from the Board and develop a plan based on their interests.

Dr. Bishop requested the Enforcement Program work on a self-assessment and report back to the Board.

Public comment was heard on this agenda item:

Carol Godstein, a health care consumer, reported on a complaint filed on two different physicians with the CCU, where she was unhappy with the handling and outcome of the complaint. She was referred to Ms. Threadgill.

Agenda Item 29 **Vertical Enforcement Program Report**

Mr. Jones introduced himself to the Board as the current acting Senior Assistant Attorney General for the Health Quality Enforcement Section due to Carlos Ramirez's retirement. Mr. Jones gave a summary of the preliminary report and a January 24, 2013 letter sent to the Board regarding the Sunset Review Report. As of the date the letter was sent out to the Board, Mr. Jones had not received any type of data from the Board. To summarize the report, he stated that the Vertical Enforcement Prosecution (VEP) is working and that it has resulted in lowered timelines over the course of the implementation of VEP since 2006. He stated that it has significantly resulted in more serious discipline in settings where the VEP is actively pursued during the course of the investigation. He has set forth in his report that the AG's office has improved at producing accusations in a timely manner, though they still have further improvements to meet their goal of 30 days, but over the period that VEP has been in effect, it has garnered a 32% increase in effectiveness in getting accusations timely filed. The most significant statistic that he wanted to mention is the measure of disciplinary outcomes. He referred to a chart that described results in the filing of accusations and the types of disciplines that have come out of the filings over the last three fiscal years. He reported that during the past three years, the disciplinary action in cases handled by the Los Angeles office, which covers approximately 25% of the physician population in the state and where attorneys have greater involvement during the investigation stage, has been significantly higher than offices in Northern California.

With these statistics, Mr. Jones feels that the active involvement of the Attorney General's office does result in greater public protection and should be continued. He feels that there are still improvements that can be made and his office will work Ms. Threadgill and her staff in putting together mechanisms to improve further performance of the VEP. A few suggestions can be made to improve timelines; including taking certain cases out of the VEP, specifically conviction cases. These cases can be handled without the assistance of the Attorney General's Office and could be removed from VEP by way of agreement between the Attorney General's office and the Board. There are a few other types of cases that may be able to be removed from the VEP, such as petitions for early termination or modification of probation. A decrease in processing time could be achieved by decreasing the Deputy Attorney General the same amount of time to approve a case closure as for accepting a case for prosecution which is 5 days. There are a couple of programmatic improvements that might be addressed, specifically, getting an accusation case onto the calendar at the Office of Administrative Hearings in a more expeditious manner. The Government Code requires that the Office of Administrative Hearings give preference to the Board cases, and that historically has not happened. If that was to be implemented at this time, the Board could get 60 days or more removed from the timeline. Another area where improvement could be made is in the enforcement of subpoenas. That would address a relatively small subset of cases, but it is an area where a lot of time is spent which might be able to be reduced.

Dr. GnanaDev requested a breakdown of timelines for each district office. Mr. Jones agreed to that request.

Dr. Bishop requested that the Board instruct Board staff to evaluate each of Mr. Jones suggestions and get back to the Board at the next meeting with implementation strategies for discussion.

Dr. Low asked which of the two entities, the Board or the Attorney General's office is in the best position to negotiate with Office of Administrative Hearings to prioritize the Board's cases.

Mr. Jones responded saying the Office of Administrative Hearings contracts with the board to perform the hearings, and he believes that the Board should be dealing with the Office of Administrative Hearings Director on this issue.

Mr. Serrano Sewell asked Mr. Jones if he thought that getting everyone involved together at a summit to problem solve the issues that are causing delays in timelines would be beneficial. Mr. Jones agreed that discussion and communication taking place in person can be much more effective than emails.

Dr. Levine noted that the Board has a VEP report due to the Legislature in March via the Sunset Review report and asked Dr. Low and Mr. Serrano Sewell to review the report before it gets submitted to the Legislature.

Agenda Item 30 **Discussion and Consideration of the Supplemental Sunset Review Report**

Ms. Kirchmeyer reported that at the last Board meeting, the Board approved the Sunset Review Report with the understanding that there will be a supplemental report that would also include updates on specific items as well as the VEP review. Today's discussion will only include items that the Board would like to have added to or removed from the report.

The first section provided an update on the work staff continues to do on the Breeze project, an update on the elimination of the Board's retired annuitants and the recruitment to obtain staff in place of those positions, and an overview on the Board's forum on appropriate prescribing and dispensing.

Ms. Kirchmeyer asked for a motion to approve this section of the report.

Ms. Yaroslavsky made the motion to approve this section of the report/s: Dr. Levine. Motion carried.

Ms. Robinson provided an update on the Licensing Section. There are seven updates in this section, four are additional information or updates and three are new items. The first is the update on the applicant satisfaction survey. The initial report included 77 responses and to date there are 242. The second update is on the outpatient surgery center accreditation which Mr. Worden covered in his review of the outpatient surgery centers. The third update is the international medical graduates and the implementation of recently enacted SB122. To date, the Board has received two applications, thus it is too early to determine whether regulations are necessary until more applications are received. The Board will continue to review this process as new factors are discovered and will develop regulations as necessary. The fourth update is on the Maintenance of Licensure. The initial report discussed the Board's past efforts and the Federation of State Medical Boards' (FSMB) current efforts on the Maintenance of Licensure. This report discusses the FSMB's five pilot programs of which nine state boards are participating. The Board looks forward to receiving the outcomes of these pilots and will

evaluate the data and decide how to move forward with Maintenance of Licensure to improve consumer protection.

The fifth issue is international postgraduate training, which was discussed yesterday at the Licensing Committee Meeting and then presented to the Full Board. The Board has agreed to watch the evolution of this program. This information will be added to the Sunset Report to inform the Legislature that the Board is monitoring this issue. The sixth item is the addition of the Allopathic and Osteopathic postgraduate training programs to the supplemental report as an issue for legislation. The seventh issue is on the Midwifery Program. The Board has added in the report the issue of certified nursing midwives supervising students in addition to physicians and licensed midwives. Lastly, the issue of the MANA statistics and program to be used instead of, or in addition to the current statistics reported to OHSPD. Ms. Robinson requested a motion to approve the licensing section.

Ms. Yaroslavsky made the motion to approve the items in the licensing section; s/Dr. GnanaDev. Motion Carried.

Ms. Kirchmeyer provided an update of the Enforcement Section. An update on the expert reviewer training was provided. This section will be amended after the training scheduled for next week is completed. The next addition is a section identifying how the Board plans to hire the CPEI positions, which is the exact same information that was provided in the Executive Committee meeting. Another item the Board identified at the meeting was a possible legislative change to suspend an individual who fails to comply with a petition for a mental/physical examination. That would require a legislative change and is something the Board may want to consider it in the Sunset Report.

Ms. Yaroslavsky requested that the Board look into a possible legislative change in regards to removing a Public Letter of Reprimand from the Boards Web site prior to the ten year requirement, so that in extreme cases, the Board has the final determination on posting.

Dr. Salomonson would like to have a legislative mechanism to review cases as more data becomes available.

Mr. Heppler recommended that the Board consider legislation for a physician who may have been disciplined, but through subsequent judicial review or judicial consideration, found they were not at fault. Dr. Levine asked for a motion.

Ms. Yaroslavsky made a motion to include these updates in the Sunset Review Report: s/Salomonson. Motion carried.

Ms. Kirchmeyer then reported on the VEP. Ms. Kirchmeyer discussed how important statistics are for the Board. The Board takes statistics very seriously. In order to ensure consistency, the Board currently only has the supervising investigators enter information in the Board's database. Additionally, the Board's staff reviews entries to ensure that accurate codes are placed on the system when cases are completed by the district office and when they are transmitted to the Attorney General's Office. Staff also cross references information provided in the physical files with the information posted into the database.

The Board also has a data validation individual who reviews these reports and statistics to ensure the data has been entered correctly. The Board has identified reports that are run on a monthly basis to determine if the codes are being entered correctly and these reports are reviewed and analyzed to ensure the statistics at the end of the fiscal year are accurate.

To measure the effectiveness of the VEP, the Board ran numerous reports that showed time frames for certain activities. For all reports, staff analyzed which cases would be considered as part of the VEP and excluded those that were not part of the VEP, such as criminal cases, petition cases, etc. This report was run to see where the improvements were comparing VEP cases with pre-VEP cases.

Ms. Kirchmeyer discussed the Boards' methodology for the time frames. The Board runs statistics from the date of the event back to whenever the beginning date was, no matter when that beginning date occurred. In the time frame from when the investigation was initiated to when an accusation was filed in the fiscal year 11/12, the Board took all accusations filed in 11/12 and went back and found the date the investigation was assigned, no matter which fiscal year it occurred in to determine how many days there were between those two data markers. The Board does remove any days that the case was closed from the overall time frame.

The Board analyzed statistics to help provide a recommendation for the Board to consider. A chart was provided to the Members which shows the investigation times from 2004/2005, prior to the VEP, to 2011/2012. Although there was a decrease in some years and an increase in others, overall from 04/05 to 11/12 there was a two day decrease in the time it took to investigate a complaint. For those that were referred to discipline, there was a 12 day reduction with VEP.

There was a significant decrease in the time it took to obtain a suspension. The time decreased by almost a hundred days and all categories showed improvement.

- The timeframe from when an investigation was initiated until the time an accusation was filed. In this category there was a decrease of 32 days.
- The timeframe from when an investigation was initiated until when a stipulation for disciplinary action is received. In this category there was a decrease of 8 days.
- The timeframe from when a case was initiated until the time the matter was submitted to an ALJ or until a proposed decision was received. The time decrease for all cases was a 77 day decrease.
- The timeframe from when an investigation was initiated until the Board received a proposed decision. In this category, there was an increase in 213 days.

In reviewing all of the data, it appears that having the DAG involved earlier in cases resulted in a decrease in the timeframe to issue a suspension order.

However, the overall statistics do not find that the VEP has dramatically improved the timeframes to discipline physicians found in violation of the law. With the decrease in investigative time in the last year, decreases should be reflected in the disciplinary timeframes in the next fiscal year. The Board has also noted that it takes a significant amount of time to have subpoenas enforced. Therefore, based upon all of the statistics, Board staff is recommending that the VEP model be modified. If the VEP was modified to only have certain cases remain in the VEP model and have others outside of the VEP model, it is believed that the DAGs would have time to work on subpoenas as well as move the disciplinary cases through the process more expeditiously. 60% of the cases the DAGs are involved in do not result in disciplinary action. The statistics do not indicate that having the DAG involved in these cases has decreased the time to investigate these cases, therefore it is recommended that these cases be removed from the VEP model. It is also recommended that the most urgent cases, which have the most potential to result in a suspension, to remain in the VEP model. These cases would include sexual misconduct, physical or mental illness and peer review or 805 cases. In all other cases, designation to VEP should be jointly considered by Board staff and AG's staff as the case is assigned at the district office. This assignment could be regularly re-considered as the case progresses to assure appropriate use of AG resources and also to be sure a DAG is brought into the case when necessary.

Mr. Serrano Sewell recommended having a joint recommendation to the legislature on this issue, both from the AG's office and from the Board.

Dr. Levine asked for a volunteer to work with her as a subcommittee member to review the Supplemental Sunset Review report before it goes to the Legislature. Dr. Salomonson volunteered.

Dr. Levine asked for a motion to delegate the two committees to make the final decision on the language to be put into supplemental sunset review report that is being sent to the Legislature.

Public comment was heard on this agenda item.

Julie D'Angelo Fellmeth, CPIL spoke on her concerns about the suggested changes to VEP.

She stated that the Sunset Review Supplemental Report focuses on the main goal of VE being expedited case processing cycles, but that fast is not necessarily better. People are looking for better, higher quality decision making by earlier involvement by the attorneys.

She stated that the Board and HQE have been working to implement VE since January 2006 and that during that time frame, the Board experienced significant vacancies in its investigator positions.

When VE started in 2006, the Board had almost 20% fewer investigators than it had 5 years earlier. By October of 2011, the Board had a 25% vacancy rate in its investigative staff. The hiring freeze was lifted in 2011 and the Board has begun to fill most of these vacancies, but it is important to recognize that devastating vacancy rate and the VE today is being evaluated in the context of that vacancy rate.

She noted the supplemental report contains detailed data and charts comparing times frames for various kinds of cases and various stages of the enforcement process and this data is seemingly being presented to the Board and to the Legislature to convince them that the Board's use of VE should

either be eliminated or confined to a very narrow set of sub cases. These cases being sexual misconduct cases, physical and mental illness cases and peer review cases where the Board has received an 805 report.

She believes there are some inconsistencies in the Sunset report. It states that the use of VE has increased the investigative time frames in three kinds of cases including cases alleging physical or mental illness. Yet those are the kinds of cases that the Board would leave with the VE.

She stated that believes that VEP should not be eliminated or confined to only specific types of cases.

GV Ayers, Senate Business and Professions Committee explained the process of the Sunset review hearing and confirmed the date of March 11, 2013.

Ms. Yaroslavsky made a motion to appoint a subcommittee to review the final draft to ensure edits discussed were included in the final version of the Supplemental report; s/Salomonson. Motion carried.

Dr. Levine deferred agenda item 31 (Discussion and Consideration of Teleconferencing of Medical Board Meetings) to the April Board Meeting.

Agenda Item 33 – Adjournment

Dr. Levine asked for a motion to adjourn the meeting. Dr. Salomonson made a motion/ s:Ms. Yaroslavsky. Motion carried.

Meeting adjourned at 4:15 pm.

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