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January 24, 2013

Board Members
Medical Board of California
2005 Evergreen Street, Suite 1200
Sacramento, CA 95815

Re: Attorney General's Preliminary Response to MBC Sunset Review Report 2012

Dear Members:

This letter report will constitute the preliminary response of the Health Quality Enforcement Section of the Attorney General's Office to the Medical Board of California Sunset Review Report 2012. This report is preliminary in nature because our office has not yet received the supporting data and methodology information we requested from the Board's Executive Director on December 3, 2012. Once we receive the requested statistics or data in the requested format (alphabetized by physician name, etc.), we will be able to fully analyze the data set forth in Section 5 of the Report, ensuring that we are comparing "apples to apples," using the same cases and time periods.[1] We would like to comply with the Board's directive to collaborate with Board's Enforcement Program in reporting data, where possible, using the same beginning and end markers to measure aging and averages for important events.

We want to note at the outset that since the Vertical Enforcement and Prosecution Model (VE/P) model[2] was implemented in January of 2006, the Attorney General's office has continued

[1] On January 2, 2013, a further request was sent to Executive Director Whitney requesting that data collected for the Board's anticipated further review of VE/P include physician names to permit our office, once it requests and receives the data, to properly analyze it and compare it to our ProLaw data. Again, we are endeavoring to report our case management data, where possible, in a manner consistent with the format followed by the Board's Enforcement Program.

[2] "VE/P" refers to the "vertical enforcement and prosecution model" mandated by the Legislature in Government Code section 12529.6, which defines the manner in which allegations of unprofessional conduct by physicians and surgeons are to be investigated and, if warranted by the evidence, prosecuted by the Health Quality Enforcement Section. Government Code section 12529.6, subdivision (b), provides that both an investigator and a deputy attorney general will be assigned to investigation cases and the investigator will, under the direction but not the supervision of the deputy attorney general, obtain the evidence necessary for the Attorney General to advise the Board on legal matters, including whether to file an accusation or dismiss the complaint for lack of evidence.

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to work in a collaborative and productive manner with the Board's Chief of Enforcement and her staff to implement the goals of the Vertical Enforcement/Prosecution model enacted by the Legislature. The hard work of investigators and deputy attorneys general over the past seven years is commendable.

As an example of collaboration to ensure the intent of the Legislature[3] is followed, HQE and Enforcement Program managers participated in the creation of a Vertical Enforcement and Prosecution Manual ("Manual"), the most recent edition of which was jointly created in 2011, and issued in early 2012.[4] Among other things, the third edition of the Manual provides for the first time timelines for investigators for moving investigation cases forward.[5] For example, the Manual now sets forth specific timeframes for an investigation to be assigned to an investigator and for the AG's Lead Prosecutor (LP) to be appraised of the case.

The AG's direction of the case commences once the Lead Prosecutor receives an investigation for review from the Supervising Investigator.[6] Throughout our participation, the goal is to collect quality evidence necessary for successful prosecutions. Early involvement of the AG's office helps focus investigative resources on cases that may merit urgent interim relief, such as in the case of impaired physicians, consistent with the Board's responsibilities pursuant to Business and Professions Code section 2220.05, subdivision (a).[7] We will be reporting

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[3] Government Code section 12529.6, subdivision (a), states : "The Legislature finds and declares that the Medical Board of California, by ensuring the quality and safety of medical care, performs one of the most critical functions of state government. Because of the critical importance of the board's public health and safety function, the complexity of cases involving alleged misconduct by physicians and surgeons, and the evidentiary burden in the board's disciplinary cases, the Legislature finds and declares that using a vertical enforcement and prosecution model for those investigations is in the best interests of the people of California."

[4] Vertical Enforcement and Prosecution Manual (Third Edition, July 2011). Prior editions of the Manual were published in March and November 2006. A Joint Guidelines handbook was published in April of 2008. The focus of prior editions was to address the roles of our respective offices in the management of investigations at critical junctures of AG direction, such as subject interviews, expert reviewer selection and expert report review. Efforts to improve DAG/investigator teamwork have been pursued since the inception of VE/P. HQE and MBC Enforcement are now in agreement with critical aspects of the program such that our focus now is on investigative timeline efficiency, and an expanded role of the Lead Prosecutor. Throughout this time period, efforts have also been made to lower investigative legal costs, and to promote statewide consistency in how VE/P is applied.

[5] Vertical Enforcement and Prosecution Manual (Third Edition, July 2011), p. 10).

[6] Lead prosecutors review matters for compliance with Business and Profession Code section 2220.08, identify cases ripe for interim relief, and obtain primary deputy attorney general assignments from Supervising Deputy Attorneys General (SDAGs), among other duties. (Vertical Enforcement and Prosecution Manual (Third Edition, July 2011), pp. 6-7.)

[7] Business and Profession Code section 2220.05, subdivision (a), states: "In order to ensure that its resources are maximized for the protection of the public, the Medical Board of California shall prioritize its investigative and prosecutorial resources to ensure that physicians and surgeons representing the greatest threat of harm are identified

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statistics regarding this important function of the AG's Office in the response to the Board's Sunset Review Report Supplemental 2013.

This continuing collaborative effort has improved public protection of patients receiving medical services in California, while at the same time protecting physicians from unwarranted or needlessly protracted investigations and prosecutions, thereby addressing two primary concerns of the legislature in creating the VE/P model. VE/P has improved the quality of investigations and prosecutions. There has also been a decrease investigation and prosecution timelines, compared to pre-VE/P, and a higher percentage of serious, disciplinary[8]outcomes for administrative cases. The shorter the timelines for investigation and prosecution, the sooner a physician is either disciplined or exonerated. Quicker and higher quality disciplinary outcomes translate into fewer patients exposed to potential harm and thus better public protection. Expeditious resolution in favor of a physician removes the cloud of suspicion over the physician created by the investigation and gets the physician back into the productive practice of medicine.

The Attorney General in directing investigations and prosecuting cases takes very seriously the statutory mandate that gives public protection the highest priority.[9] Further, the

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and disciplined expeditiously. Cases involving any of the following allegations shall be handled on a priority basis, as follows, with the highest priority being given to cases in the first paragraph:

> "(1)Gross negligence, incompetence, or repeated negligent acts that involve death or serious bodily injury to one or more patients, such that the physician and surgeon represents a danger to the public.
>
> "(2)Drug or alcohol abuse by a physician and surgeon involving death or serious bodily injury to a patient.
>
> "(3)Repeated acts of clearly excessive prescribing, furnishing, or administering of controlled substances, or repeated acts of prescribing, dispensing, or furnishing of controlled substances without a good faith prior examination of the patient and medical reason therefor. However, in no event shall a physician and surgeon prescribing, furnishing, or administering controlled substances for intractable pain consistent with lawful prescribing, including, but not limited to, Sections 725, 2241.5, and 2241.6 of this code and Sections 11159.2 and 124961 of the Health and Safety Code, be prosecuted for excessive prescribing and prompt review of the applicability of these provisions shall be made in any complaint that may implicate these provisions.
>
> "(4)Sexual misconduct with one or more patients during a course of treatment or an examination.
>
> "(5)Practicing medicine while under the influence of drugs or alcohol."

[8] The AG's office does not consider public letters of reprimand serious discipline, as explained further in footnote 19.

[9] Business and Professions Code section 2229, subdivision (a) ["Protection of the pubic shall be the highest priority of the [Board] in exercising [its] disciplinary authority."] The Attorney General, as the chief law officer of the state (Cal. Const., art. V, § 13) possesses not only extensive statutory powers but also broad powers derived from the

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important oversight role assigned to HQE by the Legislature is held in the highest regard by this office. Finally, the high burden of proof[10] demanded in administrative cases against physicians demands involvement at the investigative phase to ensure meritorious cases are pursued. VE/P requires trial deputies to become involved in the investigation phase of a case where many of the evidentiary and legal issues that will be faced in trial are first encountered.

Key statistical measures that support the above assessment have been previously identified.[11] For example, one statistical measure is the average number of days from the date of receipt of the consumer complaint at the Medical Board District Office to the date the investigation is closed, either for insufficiency of evidence, or because the case has been accepted for prosecution. This basically measures how long it takes the Medical Board's Enforcement Program to complete investigations. The Board's table at page 99 of the Sunset Report shows significant improvement in this measurement. Information has been requested from the Executive Director of the Board so that we can further analyze these statistics. We note that with respect to the date for "case accepted for prosecution," there have been differences in how the Board tracks transmittals. In the past year, however, there has been much progress in this area. The Board's District Offices have been cooperating with Lead Prosecutors and Supervising Deputy Attorneys General in reconciling the date of closure or transmittal of a case.[12]

Further, the Medical Board and the AG's Office are striving to become more closely aligned in the measurement of significant events. For example, the AG's Office has measured the aging of investigations from the date the investigation is stamped received at the first District Office which receives the complaint. However, as reflected in the Sunset Report at page 99, the Medical Board measures aging from the date an investigation is assigned to an investigator. Given that the Manual now requires immediate assignment to an investigator and notice to the LP within 24 hours on all urgent cases and ten days from receipt at the District Office of all other cases, we look forward to further improvements in this measurement. We welcomed the institution in July of 2009 of the "Aged Case Council" where Enforcement Program staff examines investigations which are not meeting the goal of completing investigations in 180 days as set forth in Business and Professions Code section 2319. Pursuant to the Board's request,

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common law relative to the protection of the public interest. (*D'Amico v. Board of Medical Examiners et al.* (1974) 11 Cal.3d 1, 11.) The AG has independent responsibilities to uniformly and adequately enforce the law.

[10] *Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853 [standard of proof to be applied at the administrative level is clear and convincing proof to a reasonable certainty.]

[11] See the October 4, 2010, Attorney General Report to the Board, p. 17 (Section 12, Attachment R to the Board's 2012 Sunset Review Report, p. 54).

[12] The date is determined by the date the Primary DAG (or Lead Prosecutor) signs the Report of Investigation, indicating closure or acceptance for prosecution.

Enforcement Program staff and HQE management meet on a quarterly basis to discuss improving case investigations and other issues. Added to these efforts are the monthly and quarterly case data productions by HQE and the AG's Case Management Section ("CMS") reporting on topics such as unfiled cases and the aging of administrative matters.

Another key statistical measure is the average number of days from the date the case is accepted by HQE for prosecution to the date the accusation is sent to the Medical Board for filing—measuring how long statewide it takes HQE to prepare proposed accusations. This timeframe is wholly under the AG's authority. The sooner a pleading is filed—and posted on the Board's website—the sooner the consuming public is on notice that action is being taken against a physician. Due to our involvement in the investigation, assigned trial deputies in charge of drafting the Accusation are more familiar with the case, allowing for some efficiencies in the filing of complex cases. Our standard continues to be to send pleadings to the Executive Director within thirty calendar days (or twenty working days) from the date an investigation is accepted for prosecution. The below graph reflects overall improvement in this regard.

Average Number of Days from "Accepted for Prosecution" to "Pleading Sent"
Accusations and Accusations/Petitions to Revoke Probation Combined

Calendar Year	2005	2006	2007	2008	2009	2010	2011	2012
Statewide	71.54	76.51	55.47	57.5	52.45	54	46.18	48.47

The above chart reflects that since implementation of the VE program, HQE has reduced its overall average filing time from 71.54 to 48.47. This represents a 32% reduction in filing time attributable to the VE program.[13] For the 2012 statistics, the median to file an accusation is 39 days.

Finally, the most significant statistical measure is disciplinary outcomes. Any assessment of the state of physician discipline in California necessarily requires an examination of disciplinary outcomes. Under the Medical Practice Act, disciplinary outcomes range from the most severe – outright revocation or surrender of licensure – to revocation stayed with a period of probation – and finally to the lowest level of post-accusation discipline, a public reprimand with or without educational courses. The first set of two tables below shows disciplinary outcomes Statewide with and without public reprimands included.

[13] The methodology utilized for this second key statistical measure is as follows: Using the "Opened" date in ProLaw for each year, the average number of days was calculated from the date the case was "Accepted for Prosecution" to the date "Pleading Sent" to the Medical Board for filing. Administrative cases that were initially "Accepted for Prosecution," only to be reviewed and returned to the Medical Board District Office for additional investigation, have been calculated separately deleting the time period of investigation. The cases reflected in the chart include out-of-state discipline cases. Calculations were done using matters that had been resolved.

Disciplinary Outcomes
Statewide

[The figures below calculate serious discipline as PLR, Probation and Revocation.]

Filed Accusations and Acc/PRP Only
(OSD discipline included)

	PLR	Prob	Rev/Surr	Total SD	With	Dism	Total Cases	%
2009- 2010	51	95	82	228	12	7	247	92.3
2010-2011	57	87	65	209	13	7	229	91.2
2011-2012	52	111	94	257	9	6	272	94.4

[The figures below calculate serious discipline as Probation and Revocation]

Filed Accusations and Acc/PRP Only
(OSD discipline included)

	PLR	Prob	Rev/Sur	Total SD	With	Dism	Total Cases	%
2009- 2010	51	95	82	177	12	7	247	71.6
2010-2011	57	87	65	152	13	7	229	66.3
2011-2012	52	111	94	205	9	6	272	75.3

The following tables show the pattern of obtaining serious discipline by HQE office. The out-of-state discipline (OSD) cases, performed in San Francisco, are noted, as well.[14]

[14] AG statistics were previously supplied in calendar year format because VE was rolled out at the beginning of calendar year 2006. At the request of the Board, calculations are now being based on fiscal year numbers, as well as accounting administrative cases based on the fiscal year in which the decision and order was signed (not the effective date). Upon receipt of the Board's statistics we expect to revise our statistics, if necessary.

2009 – 2010

	PLR	Rev	Prob	With	Dism	Total SD	Total Cases	%
Los Angeles	7	18	26	2	2	44	55	80.0
Sacramento	10	4	11	2	1	15	28	53.5
San Diego	13	15	27	4	4	42	63	66.6
San Francisco	21	45	31	4	0	76	101	75.2
ALL	51	82	95	12	7	177	247	71.6
OSD	7	34	13	0	0	47	54	87.0
w/o OSD	44	48	82	12	7	130	193	67.3

2010 – 2011

	PLR	Rev	Prob	With	Dism	Total SD	Total Cases	%
Los Angeles	13	16	34	1	2	50	66	75.7
Sacramento	5	1	11	0	1	12	18	66.6
San Diego	13	14	21	5	4	35	57	61.4
San Francisco	26	34	21	7	0	55	88	62.5
ALL	57	65	87	13	7	152	229	66.3
OSD	15	23	7	6	0	30	51	58.8
w/o OSD	42	42	80	7	7	122	178	68.5

2011 – 2012

	PLR	Rev	Prob	With	Dism	Total SD	Total Cases	%
Los Angeles	13	25	46	1	0	71	85	83.5
Sacramento	5	6	12	4	0	18	27	66.6
San Diego	10	21	29	2	4	50	66	75.7
San Francisco	24	42	24	2	2	66	94	70.2
ALL	52	94	111	9	6	205	272	75.3
OSD	13	26	7	1	1	33	48	68.75
w/o OSD	39	68	104	8	5	172	224	76.78

Significantly, the above three tables[15] demonstrate that during the past three years, imposition of serious disciplinary action[16] in cases handled by HQE–Los Angeles, where over 25% of the physicians in California practice and where attorneys presently have greater involvement during the investigation stage, has been consistently, significantly higher—averaging 13 percentage points more—than the Northern California offices cited by the Board's report as less hands-on during the investigation phase. When out-of-state discipline cases are taken out of the mix[17]—they are not subject to VE/P—the average jumps to 17 points. Even the Board's numbers are similarly reflective. A cursory review[18] of the Board's table in Section 5 on page 97 of the Sunset Review Report discloses that the Los Angeles office had, on average, 8% more serious discipline over the seven years recorded, with 17% more serious discipline in three of the years. This table also demonstrates that between the 2006 inauguration of VE/P and 2012, the overall level of serious discipline has increased by 17 percentage points.[19]

The statistics substantiate the premise underlying VE/P, namely, that greater attorney involvement under the VE/P program translates into greater public protection.[20] The higher level

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[15] The column headings on the chart denote, in order from the left, public reprimands; revocations; probation orders greater than one year; withdrawals of accusations; dismissals of accusations after hearing; total serious discipline (adding the "Rev" and "Prob" columns); total number of cases (adding the PLR, Rev and Prob columns); and percentage of total cases in which serious discipline was obtained (Total SD/Total Cases). "OSD" refers to out-of-state discipline cases almost exclusively handled through HQE-San Francisco; such cases are not subject to vertical enforcement since they are never sent to a Medical Board District Office for investigation.

[16] Public reprimands obtained pursuant to Business and Professions Code section 2227 should be excluded from the definition of serious discipline because the same disciplinary outcome can be obtained, where the physician is willing, without the filing of an accusation and the subsequent prosecution by the Attorney General's office. Specifically, Business and Professions Code section 2233 authorizes the Board to issue a public letter of reprimand after a case has been investigated rather than filing or prosecuting a formal accusation. Use of this method of discipline is limited by section 2233 to minor violations.

[17] The last annual report to the Legislature filed by the MBC pursuant to Government Code section 12529.7 in March 2012 restated a recommendation that the MBC be given authority to handle all out-of-state discipline cases (p. 19, citing Recommendation No. 5 of the August 2010 report).

[18] Only a cursory review is possible since the Board has not yet provided the underlying data to our office as requested in our December 3, 2012, letter at page 2, ¶ 1.

[19] The table at the bottom of the same page in the Sunset Review Report, which purports to reflect the percentage of outcomes which resulted in the loss of the physician's license, is unquestionably inapposite since it discounts almost half the vertical enforcement cases prosecuted and presumably includes out-of-state discipline cases which are not the subject of vertical enforcement. Where the issue is the efficacy of the vertical enforcement model, these exclusions and inclusions make little sense.

[20] The methodology utilized to calculate serious discipline is as follows: "Serious discipline" is defined as: (1) outright revocation of licensure; (2) surrender of licensure; and (3) revocation of licensure, stayed, with a period of probation of at least one year. Using the "Opened" date in ProLaw for each calendar year, "serious discipline" was calculated using the above definition. In calculating each outcome, cases that were "declined to prosecute" and cases that did not reach an administrative outcome (i.e., Accusations filed but waiting administrative hearing) were

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of serious discipline and the resulting public protection achieved through providing appropriate direction during investigations, including participating in interviews of the subject physician, should be the norm. The Attorney General's Office is taking steps to ensure consistent implementation of the VE/P process throughout the state.

The Board's Enforcement Program states in several places in its Report that the necessity of interaction between its investigators and deputy attorneys general leads to frustration --mainly in scheduling physician interviews;[21] lessened job satisfaction; and is a matter cited in the exit interviews of departing investigators. These circumstances might in part be addressed at the hiring stage when the nature of the job is described to potential hires and during the training phase, when new investigators attend the academy and thereafter work with their field training officers. There is no doubt about the nature of the job; it can be difficult. Nonetheless, it is the procedure established by the legislature after careful deliberation and input from all stakeholders. Further, the Vertical Enforcement and Prosecution Manual which defines the interactions between the investigators and the deputy attorneys general reflects both the statutory mandate that the HQE section direct the investigations and the collaboration between HQE and the Enforcement Program in establishing the procedures under which that that direction and the consequent investigation take place. The Attorney General's office remains receptive to proposals that may enhance the efficiency of the investigation process but which nonetheless remain true to the intent of the legislature found in Government Code section 12529.6 that "using a vertical enforcement and prosecution model . . . is in the best interests of the people of California."

In conclusion, implementation of the VE/P program has resulted in overall improvements in the key statistical measures that provide the most accurate picture of the state of physician discipline in California, including disciplinary outcomes.

While the VE/P program continues to represent a vast improvement over the prior "Deputy-In-The-District-Office" Program, there is still nevertheless room for further improvement. We look forward to receiving and reviewing the Enforcement Program's detailed study of VE/P (the Sunset Review Report Supplemental 2013) and the supporting data.

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omitted from the calculations. Out-of-state discipline cases were included in the calculations and their outcome separately listed on the bottom two rows. Inclusion of those cases, which are never investigated in the district office, tends to inflate the success rate.

[21] Attendance at witness interviews has never before been raised as an issue for discussion with HQE management. A review of cases reflects that, except in the instance of a sexual abuse complainant, a directive by our former Senior Assistant in April of 2010 has been followed by AG staff. Namely, DAG attendance at witness interviews requires SDAG approval and is granted on a case-by-case basis. We are open to a discussion of witness interviews generally so that AG directions regarding interviewing necessary witnesses are followed more uniformly.

We will thereafter explore further measures to improve the VE/P program in order to afford better protection to the consuming public.

Sincerely,

E. A. JONES III
Acting Senior Assistant Attorney General

For KAMALA D. HARRIS
Attorney General

EAJ:ml

cc: Kathleen Kenealy
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Civil Law Division
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Linda H. Whitney
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December 3, 2012

Linda K. Whitney
Executive Director of the Medical Board
2005 Evergreen Street, Suite 1200
Sacramento, CA 9581

RE: Sunset Review Report Statistics

Dear Linda:

Thank you for the copy of the Medical Board Sunset Review Report 2012, Volume I that you sent me. As I stated in my report at the October 26, 2012, Medical Board meeting, I do not agree with some of the statements and conclusions stated in Section 5 of the report. As I further stated in my report, I reserved my comments on this section until I can confirm that the statistics used in this report coincide with the statistics for Medical Board cases maintained at the Attorney General's Office.

As you know, the Health Quality Enforcement (HQE) Section maintains its data base and sorts its statistical reports by physician names, by calendar year and uses specific initiating and terminating events for aging determinations. In contrast, the Medical Board maintains a data base by fiscal year containing the physician's names as well as the investigation case numbers or a primary consolidated number in the case of multiple investigations being filed in one accusation. The Medical Board uses a different set of events for aging determinations, and in some cases, includes other types of administrative matters, such as out-of-state discipline cases, in its statistical measurements. These differences in data tabulation have led to two different sets of statistics each pointing to different conclusions regarding the success of the Vertical Enforcement Program. Further, the differing conclusions make it difficult to agree on recommendations that will improve the program. Fortunately, the Board has already produced its conclusions, and the raw data being requested here already exists, and will not result in your staff having to compile any new data.

In preparing my comments on the Board's Sunset Review Report, I want to make sure that in compiling our respective statistical data, the HQE Section and the Medical Board are comparing "apples to apples" and using the same cases, and the same time periods. I am also mindful of the repeated admonishment recently by Medical Board members that HQE and MBC statistics data should correspond with one another. We have endeavored over the past year to

reconcile more of our data on a monthly and quarterly basis, especially to agree upon the dates that administrative cases are considered transmitted to our office—an area of especially different data in the past between our offices. I recognize that reconciling both sets of data can be a time consuming process. Nonetheless, I believe that undertaking this process is essential to producing statistical data that is accurate and useful to our respective offices as well as to the legislature and other stake holders.

To start this process, however, we need your staff's assistance. I would appreciate receiving a copy of the statistics or data referenced in the following pages of your Sunset Review Report. We are referencing the page number of the report, and for most of these data requests we would need the data provided to be alphabetized by physician last names and to include the MBC case number or, in the case of multiple investigations, the primary consolidated case number. We also make some requests for methodology, and start and end point data markers.

1. At page 97, the list of all case names used to calculate the percentages in the two tables ["Percentage of Results in Serious Discipline" and "Percentage of Revocations/Surrenders"]. Please provide us with the case names and MBC numbers sorted by city, and by year as reflected in the chart.

2. At page 99, the data markers used to calculate the start and end points of the "average days to complete investigation in field operations." We would like to calculate our data consistent with MBC's markers, where feasible. Please provide us with the alphabetized physician names and include the MBC case numbers sorted by fiscal year as reflected in the chart.

3. At page 102 (Table 9a), the list of the 853 cases listed in columns "Accusations filed" for years 09-10 through 11-12. Please provide us with the alphabetized physician names and include the MBC case numbers sorted by fiscal year as reflected in the chart.

4. At page 102 (Table 9a), the list of 105 the cases listed in the columns "Accusations Withdrawn, Dismissed, Declined" for years 09-10 through 11-12. Please provide us with the alphabetized physician names and include the MBC case numbers sorted by category (withdrawn, dismissed declined) and fiscal year as reflected in the chart

5. At page 102 (Table 9a), the list of the 484 cases listed in columns "pending- No Accusation filed" for years 09-10 through 11-12. Please provide us with the alphabetized physician names and include the MBC case numbers sorted by fiscal year as reflected in the chart

6. At page 102 (Table 9a), the list of the 1,085 cases listed in columns "pending - Accusations filed" for years 09-10 through 11-12. Please provide us with the alphabetized physician names and include the MBC case numbers sorted by fiscal year as reflected in the chart. Please provide information on the how the category "pending – Accusations filed" in this

column is defined and how it differs with the data reflected in the row marked "Accusations filed" at the top of Table 9a.

7. At page 102 (Table 9b), the data markers used to calculate the start and end points of the "average days to complete." We would like to calculate our data consistent with your markers, where feasible.

8. At page 102 (Table 9b), for the term "AG Cases Initiated" and "AG Cases Pending" please advise us what types of administrative cases are being considered in each of these groupings (e.g., out of state discipline). Please provide us with the alphabetized physician names and include the MBC case numbers sorted by fiscal year as reflected in the chart.

9. At page 102 (Table 9b), for the disciplinary outcomes listed, we request a list of the cases counted in columns "Revocation" through "Probation" for years 09-10 through 11-12. Please provide us with the alphabetized physician names and include the MBC case numbers sorted by category (revocation through probation) and fiscal year as reflected in the chart.

10. At page 102 (Table 9b), the list of the 344 cases listed in columns "Public Reprimand" for years 09-10 through 11-12. Please provide information regarding whether this column includes both pre-accusation and post-accusation PLR outcomes. Please provide us with the alphabetized physician names and include the MBC case numbers sorted by fiscal year as reflected in the chart

11. At page 103 (Table 9b), the list of the 93 cases listed in columns "Petition to Revoke Probation Filed" for years 09-10 through 11-12. Please provide us with the alphabetized physician names and include the MBC case numbers sorted by fiscal year as reflected in the chart.

12. At page 103 (Table 9c), "Average Days to Close" is used in this table under "all investigations." Please provide the data markers used to calculate the average. Specifically, advise us whether the start point is the date a complaint is "referred to investigation" or the date a complaint is "assigned to an investigator" as these terms are used by your office. Please provide us with the alphabetized physician names and include the MBC case numbers sorted by fiscal year as reflected in the chart for the rows marked "first assigned," "closed" and "pending."

13. At page 103 (Table 9c), "Average Days to Close" is used in this table under "sworn investigations." Please provide the data markers used to calculate the average. Please provide us with the alphabetized physician names and include the MBC case numbers sorted by fiscal year as reflected in the chart for the rows marked "closed" and "pending." We have not requested the data listed under "non-sworn investigations" and "desk investigations" on the assumption that these are cases that were not subject to Vertical Enforcement. If this assumption is incorrect, then please provide information for those two categories as well.

14. At page 104 (Table 9c), the list of cases listed in the category "ISO & TRO issued" for years 09-10 through 11-12. Please provide us with the alphabetized physician names and include the MBC case numbers sorted by fiscal year as reflected in the chart.

15. At page 104 (Table 9c), the list of cases listed in the category "PC 23 Orders Requested" for years 09-10 through 11-12. Please provide us with the alphabetized physician names and include the MBC case numbers sorted by fiscal year as reflected in the chart.

16. At page 104 (Table 9c), the list of cases listed in column "Other Suspension Orders" for years 09-10 through 11-12. Please provide the types of administrative cases being included and analyzed in this category. For example, are automatic suspension orders included in this category? Please provide us with the alphabetized physician names and include the MBC case numbers sorted by fiscal year as reflected in the chart.

17. At page 104 (Table 9c), the list of cases listed in columns "public letter of reprimand" for years 09-10 through 11-12. Please provide information regarding whether this column includes both pre-accusation and post-accusation PLR outcomes. Please provide us with the alphabetized physician names and include the MBC case numbers sorted by fiscal year as reflected in the chart.

18. At page 104 (Table 9c), the list of cases listed in columns "compel examination granted" for years 09-10 through 11-12. Please provide us with the alphabetized physician names and include the MBC case numbers sorted by fiscal year as reflected in the chart.

19. At page 104 (Table 10), please provide the data supporting the numbers appearing under the columns 08/09 through 11/12 for the headings "1 year" through "4 years" under Attorney General Cases. Please provide information on how the averages were calculated, and the general methodology being applied to this table. Please provide us with the alphabetized physician names and include the MBC case numbers sorted by fiscal year as reflected in the chart.

20. At page 104 (Table 10), please provide the case names supporting each number under columns 08/09 through 11/12 for the headings "90 days" through "over 3 years" under Investigations. Please provide information on how the averages were calculated, and the general methodology being applied to this table. Please provide us with the alphabetized physician names and include the MBC case numbers sorted by fiscal year as reflected in the chart.

21. At page 105, please provide the case names supporting each number under columns 06/07 through 11/12 for every heading in the table "Increases or Decreases in Disciplinary Action." Please provide us with the alphabetized physician names and include the MBC case numbers sorted by fiscal year as reflected in the chart.

Thank you for your anticipated cooperation in this matter. This data is essential to the HQE Section and the Attorney General's office evaluation of section 5 of the Board's Sunset Report and the Vertical Enforcement Program. Do not hesitate contact me if you have any questions regarding this matter.

Sincerely,

CARLOS RAMIREZ
Senior Assistant Attorney General
Health Quality Enforcement Section

For KAMALA D. HARRIS
Attorney General

CR:

cc: Gloria Castro
Supervising Deputy Attorney General
Health Quality Enforcement Section