



MEDICAL BOARD OF CALIFORNIA

Protecting consumers by advancing high quality, safe medical care.

WebEx Online November 18 – 19, 2021

MEETING MINUTES

Thursday, November 18, 2021

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

Members Present:

Kristina D. Lawson, J.D., President
Ryan Brooks
Alejandra Campoverdi
Dev GnanaDev, M.D.
Randy W. Hawkins, M.D., Vice President
James M. Healzer, M.D.
Howard R. Krauss, M.D.
Laurie Rose Lubiano, J.D., Secretary
David Ryu
Richard E. Thorp, M.D.
Eserick "TJ" Watkins
Felix C. Yip, M.D.

Members Absent:

Asif Mahmood, M.D.

Staff Present:

Antonio Adea, Office Technician
Aaron Bone, Chief of Legislation and Public Affairs
Susan Cady, Associate Governmental Program Analyst
Erika Calderon, Staff Services Manager I
Valerie Caldwell, Associate Governmental Program Analyst
Charlotte Clark, Information Technology Supervisor I
Francy Crowley, Information Technology Specialist I
Sean Eichelkraut, Information Technology Manager I
Devin Graham, Staff Services Analyst
Jenna Jones, Chief of Enforcement
Jacoby Jorgensen, Staff Services Manager I
Nicole Kraemer, Information Technology Associate
Sheronnia Little, Information Technology Supervisor I
Natalie Lowe, Information Technology Specialist I
Marina O'Connor, Chief of Licensing
William Prasifka, Executive Director
Letitia Robinson, Research Data Specialist II
Elizabeth Rojas, Staff Services Analyst

Alexandria Schembra, Associate Governmental Program Analyst
Lisa Toof, Staff Services Manager I
Reji Varghese, Deputy Director
Carlos Villatoro, Public Information Officer II
Kerrie Webb, Staff Counsel

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

Ms. Lawson called the meeting of the Medical Board of California (Board) to order on November 18, 2021, at 2:07 P.M.

Ms. Lawson gave opening remarks, saying there has been an effort underway to discredit the work of the Board but that Board members and staff share the common goal and mission of protecting California consumers.

A quorum was present and due notice was provided to all interested parties.

Agenda Item 2 Public Comments on Items not on the Agenda

Ms. Jen Kamel of VBAC Facts requested the Board join California Association of Licensed Midwives (CALM) in co-sponsoring legislation to create a licensed midwife board.

Ms. Rosanna Davis of CALM thanked the Board for including an endorsement of a licensed midwife board in the 2020 Sunset Review Report and invited the Board to join CALM in co-sponsoring legislation to establish a licensed midwife board. Ms. Davis offered to share a draft of the legislation submitted to committee staff.

Ms. Susan Lauren thanked Mr. Watkins and Senator Hill for standing up for patient safety. Ms. Lauren stated that California plastic surgeons have harmed and killed consumers for decades and gave examples of physicians who have been accused of killing their patients during plastic surgery procedures. Ms. Lauren commented that plastic surgeons should not be used as experts for each other.

Ms. Tania McCracken requested the Board work with CALM on legislation to create a licensed midwife board.

Ms. Marian Hollingsworth of The Patient Safety League urged the Board to conduct a special study session for Board members to review the conflict-of-interest policies as well as the disciplinary guidelines since the Board has come under increased criticism for not following the Board's own guidelines. Ms. Hollingsworth gave an example of a surgeon who was arrested for a DUI and was given a reprimand when the guidelines recommend five years of probation and biotesting.

Mr. Galen Richards asked the Board to join CALM in co-sponsoring legislation to create a licensed midwife board.

Ms. Teresa Yu asked the Board to join CALM in co-sponsoring legislation to create a licensed midwife board.

Ms. Shawnda Westly commented that she appreciated hearing Ms. Lawson's point of view at the beginning of the meeting, but that she strongly disagrees. Ms. Westly asked the Board to live up to its role of being a consumer protection agency.

Ms. May Williamson asked the Board to join CALM in co-sponsoring legislation to create a licensed midwife board.

Mr. Patrick Havel expressed his support for an independent California midwifery board.

Ms. Lindsey Amador asked the Board to join CALM in co-sponsoring legislation to create a licensed midwife board.

Ms. Abraham asked the Board to join CALM in co-sponsoring legislation to create a licensed midwife board.

Mr. Curtis Thompson stated that he filed a complaint in January 2020, filled out an authorization for release of medical records in February 2020, and has not heard anything since then. Mr. Thompson asked for the status of his complaint and why no one is keeping him informed of its progress. Mr. Thompson shared that when he told the physician he was going to file a complaint, the physician was dismissive and stated that the Board is inefficient and nothing would happen.

Mr. Eric Andrist of The Patient Safety League commented on WebEx requiring attendees to log in while the Open Meeting Act prohibits requiring people to identify themselves. Mr. Andrist spoke on the recent Los Angeles Times article in which Mr. Watkins gave an interview and informed the writer that he filed a whistleblower complaint. Mr. Andrist recalled Judge Feinstein's resignation from the Board and Dr. Bishop's statements that the Board was broken. Mr. Andrist asked about the quarterly patient advocate meetings and commented on email correspondence from Mr. Bone and Mr. Villatoro regarding how disciplinary actions are chosen to be highlighted on social media.

Dr. Jeffrey Gordon stated that he was a member of this Board 40 years ago, during which time the Board was praised by the people of California. Dr. Gordon commented on complaints he has filed against physicians for COVID-19 statements they made and has not received any response from the Board. Dr. Gordon asked if the Board has a routine response to people who submit complaints and asked if the Board has a policy similar to the Federation of State Medical Boards (FSMB) that it is unprofessional to state falsehoods about vaccinations and treatments for COVID-19.

Ms. Kimberly Turbin asked the Board to join CALM in co-sponsoring legislation to create a licensed midwife board.

Ms. Juliane Diamond asked the Board to join CALM in co-sponsoring legislation to create a licensed midwife board.

Ms. Sandra Perez stated that she disagrees with Ms. Lawson’s point of view and commented on the complaints she has submitted to the Board. Ms. Perez spoke of the Los Angeles Times article and stated that the Board needs to do better in supporting legislation for patient safety.

Mr. Jeff Rizzo stated that he is finishing Mr. Andrist’s comments and commented on the email correspondence from Mr. Bone and Mr. Villatoro regarding how disciplinary actions are chosen to be highlighted on social media. Mr. Rizzo concluded that the Board does not have time to inform the public via social media of important disciplinary actions and instead are randomly chosen.

Ms. Michelle Welborn urged the Board to join CALM in co-sponsoring legislation to create a licensed midwife board.

Ms. Virginia Farr stated that she does not believe Ms. Lawson’s opening remarks and commented on patients who die and doctors not being in jail. Ms. Farr commented that she believes the Board is corrupt and spoke of her injuries from medical harm.

Ms. Barbara Christianson requested the Board to join CALM in co-sponsoring legislation to create a licensed midwife board.

Ms. Maya De Paula Hanika asked the Board to join CALM in co-sponsoring legislation to create a licensed midwife board.

Ms. Rosie Arthursdotter commented on the difficulty of joining the Board’s WebEx meetings. Ms. Arthursdotter stated that she is an advocate for chronic and intractable pain patients and has asked to be part of the Board’s committees but has not heard back. Ms. Arthursdotter read an excerpt and shared that her son had passed away because his access to pain medication was limited by the Board’s Death Certificate Project.

Ms. Michele Monserratt-Ramos of Consumer Watchdog stated that she has spent the last 16 years at the Board’s meetings because it is not protecting consumers. Ms. Monserratt-Ramos spoke of her fiancé’s death caused by a substance-abusing physician and how her complaint was dismissed. Ms. Monserratt-Ramos commented that she has worked to change laws, which should be the Board’s job, and stated that the Board should do better.

Agenda Item 3 Approval of Minutes from the August 19 – 20, 2021, Quarterly Board Meeting

Ms. Lawson asked if there were any additions or corrections to be made in the Board minutes.

Ms. Lubiano requested a change to her comments on page BRD 3 – 7, saying she received correspondence from a complainant rather than speaking with a complainant, a correction to the spelling of her name on page BRD 3 – 25, and a correction to the phrase “diversity and equity inclusion” on page BRD 3 – 51, requesting it to be listed as “diversity, equity, and inclusion”.

Ms. Campoverdi requested a change to her comments on page BRD 3 – 40, saying she was in favor of the *previous* version of the bill.

Dr. Krauss moved to approve the August 19 – 20, 2021 meeting minutes/S: Dr. Healzer

Ms. Lawson asked for comments from the public. Hearing none, Ms. Lawson asked Ms. Caldwell to take the roll.

Motion carried 11-0-1 (Dr. Thorp abstained)

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

Ms. Lawson reported that since the last Board meeting in August, Dr. Hawkins and she participated in the Board's Sunset Review process, which was adopted through SB 806. Ms. Lawson also reported that she has worked with staff at the Department of Consumer Affairs (DCA) and at Business, Consumer Services, and Housing Agency (Agency) on a variety of matters of importance to the Board. Ms. Lawson stated that the Board's 2020/2021 Annual Report is published on the Board's website. Ms. Lawson expressed her gratitude to Dr. Krauss for serving on the Board and explained that pandemic-related orders extended his term to November 28th. Lastly, Ms. Lawson pointed out that the Board meeting will publicly open on Friday morning and then go into closed session for the evaluation of the executive director.

Ms. Lawson asked for comments from the public.

Mr. Andrist commented on the difficulty of using WebEx. Mr. Andrist asked why a closed session would be placed in the middle of the meeting, making members of the public wait, instead of moving it to the end of the meeting. Mr. Andrist said it is illegal to require members of the public to give their names to attend meetings.

Agenda Item 5 Board Member Communications with Interested Parties

Dr. Hawkins thanked Ms. Lawson for her opening remarks and advised that he is on a Food and Drug Administration (FDA) advisory committee and participated in two committee meetings.

Mr. Watkins stated that he spoke to reporters from CBS Morning News and the Los Angeles Times, and that he filed a whistleblower complaint with the California State Auditor. Mr. Watkins explained that he did this because of the comments like those heard today, and that even though the Board is failing consumers, he does not think there are motives for it.

Ms. Lawson stated that she routinely receives communications on a variety of matters and forwards them to Board staff for resolution. Ms. Lawson added that she has interacted with DCA and Agency, and participated in several media interviews, which she notified Board members of in advance.

Dr. GnanaDev commented that he meets with members of the local government and board of supervisors, but Board issues are not brought up.

Ms. Campoverdi stated that she received an email communication request for a meeting from a patient advocate, but the meeting has not taken place yet. Ms. Campoverdi also stated that she spoke to the Centers for Disease Control (CDC) Young Breast Cancer Survivor program as a patient advocate.

Ms. Webb commented that members of the public are free to use pseudonyms and fake email addresses to join the meeting.

Ms. Lawson asked for comments from the public.

Mr. Andrist replied to Ms. Webb, saying she is wrong about the public having to provide a name or other information to attend the meeting.

Ms. Arthursdotter commented that she had previously made a request for a presentation on intractable pain, but the actual presentation turned out to be something else.

Ms. Perez asked if Ms. Jones was going to discuss communications from patient safety advocates concerning medical students and residents registering with the Board.

Mr. Ryu stated that he had someone request information from him and that he directed them to Board staff.

Agenda Item 6 Executive Management Reports

Mr. Prasifka began by giving administrative updates, saying Board staff continues to hold meetings with Ms. Lawson and Dr. Hawkins, the Attorney General's Office (AGO), and Health Quality Investigation Unit (HQIU). Mr. Prasifka gave a staffing update, noting that the Board has eight new employees and one retired annuitant in Administrative Services, Licensing, and Enforcement units. In the budget update, Mr. Prasifka noted marginal improvement in the operating conditions of the Board with a .6-month reserve. Mr. Prasifka commented that the Board is in a perilous financial situation with only a partial fee increase but is managing to achieve operational efficiencies.

Mr. Prasifka gave an update on COVID-19, noting that since the end of October, all unvaccinated staff have been undergoing weekly testing coordinated by DCA. Speaking on external communications, Mr. Prasifka commented on the Board's 2020/2021 Annual Report. Mr. Prasifka also spoke of the closure of pain management clinics and the Board issuing guidelines to licensees in consultation with the California Department of Public Health (CDPH).

Mr. Prasifka gave an Information Systems Branch (ISB) update, commenting on the Board's complaint tracking system, the print-yourself pocket license cards, the Direct Online Certification Submission (DOCS) portal, the online complaint form redesign, and the WebEx training events for the medical expert program.

During the enforcement update, Mr. Prasifka highlighted statistical information regarding the increase in public letters of reprimand and noted that disciplinary actions in a given year are a direct reflection of complaints that have been made in previous years. Mr. Prasifka reiterated that there has been an increase in public letters of reprimand, as well as revocations and surrenders, because of an increase in complaints. Mr. Prasifka commented that there is no change in the Board's policy and that every case is looked at on its own merits. Mr. Prasifka briefly reviewed the enforcement charts and graphs, noting that complaints have increased and there is no basis for expecting them to always decrease, and that it is critical for Board staff to manage the aging profile to ensure there is not a backlog of older cases.

Mr. Prasifka gave a licensing update, noting that the Board received a continuous volume of postgraduate training license (PTL) and physician and surgeon (P&S) license applications and that the initial review period remains at 30 days. Mr. Prasifka noted that SB 806 will bring changes to the licensing processes, but staff are prepared for the challenges. Mr. Prasifka stated that the Board has issued three licenses under the Mexico Pilot Program and are awaiting the go-ahead from the other applicants to process their licenses.

Mr. Varghese gave a brief update on the 2022-2025 Strategic Plan, saying that the Board is traditionally provided with the Environmental Scan during the November Board meeting, but the report will be delayed due to the external stakeholder survey yielding 5,061 responses, which is a 957% increase from the 2017 Environmental Scan.

Ms. Lawson asked if DCA included a broader audience in the survey than they previously did.

Mr. Varghese shared that the outreach included emailing licensees, public stakeholders, and posting on social media, which prompted 4,785 responses from licensees and 276 responses from the public.

Ms. Lubiano asked about the status of the online complaint tracking system.

Mr. Varghese replied that considerable progress has been made and that the Board must use the state's BreEZe system and go through the legal review and approval processes.

Ms. Lubiano asked for a timeline and what the public can expect.

Mr. Varghese responded that there is not a definite answer now, but more information can be brought to the Board later.

Mr. Eichelkraut added that Board staff are currently working on the infrastructure for the web services to be able to pull data out of BreEZe and since there is not a formal project plan yet, a timeline is not available.

Mr. Brooks commented that the current way data is aggregated makes it difficult to come out with accurate numbers and an accurate depiction of what is actually happening. Mr. Brooks stated that he has hired an expert statistician to help him figure out all the different independent variables, and the numbers he sees are not the numbers being reported in the news. Mr. Brooks expressed his interest in a system to show the recidivism rate.

Mr. Varghese replied that there is progress being made on the initiative to show recidivism rates. Mr. Varghese explained that to have a correct foundation, Board staff had to start with defining recidivism and how it should be calculated.

Mr. Brooks commented that if the information is not accurate, then the Board cannot measure its success, and that if the numbers the Board have do not tell the full story, then it is difficult to bring the information to consumers.

Ms. Lawson asked if there are any tools Board staff need from members to help with this work.

Mr. Prasifka responded that Board staff would reach out to members if it became necessary.

Mr. Watkins commented that he would love to see Mr. Brooks' statistics where claims are made that the media's information is false or inaccurate. Mr. Watkins stated that Board members can only rely on the data that the Board produces. Mr. Watkins reviewed the document he created of enforcement numbers for the last 13 years, concluding that the number of public reprimands given for serious issues was too high.

Ms. Lawson asked Mr. Watkins why his chart does not include surrenders, saying it is difficult to understand the impact that would have had on the data.

Mr. Watkins responded that he did not include surrenders because they do not go to Board members, and he wanted to focus on decisions that the Board members make. Mr. Watkins commented that he is encouraged by what he is seeing on the new panel he is on, and he wants the Board to do better.

Ms. Lawson stated that there are always opportunities to improve, but the Board must work with the right data to do that. Ms. Lawson commented that the number of surrenders has increased in the last year and that data should be included since not all complaints go through Board members.

Dr. GnanaDev commented that he thinks most all decisions are agreed on in the panels. Dr. GnanaDev asked if Board staff are informing complainants of the status of their complaint.

Ms. Jones replied that Board staff are conducting monthly reviews of files coming out of the Central Complaint Unit (CCU) to ensure that letters are being sent.

Dr. GnanaDev commented that in his experience in quality care compliance, he sends an acknowledgement, investigates, and then sends a letter with the outcome. Dr. GnanaDev stated that he does not want people to feel that the Board is ignoring them, and it concerns him when he hears commenters say they have received nothing.

Mr. Brooks asked if there is a Board policy for sending letters.

Ms. Jones stated that she will follow up with the commenters stating they have not received a letter. Ms. Jones commented that when the file reviews started several months ago, staff were not hitting the mark, which is why processes have changed.

Mr. Ryu asked if there is a routine response sent to complainants that acknowledges receipt of the complaint.

Ms. Jones replied that there is an acknowledgement letter that should go out.

Ms. Campoverdi asked about the criteria used to close cases, adding that it would be helpful for the public to understand the process.

Mr. Prasifka stated that the annual report that was just published contains a lot of detail into the reasons why complaints are closed.

Ms. Lawson commented that it is worthy of an agenda item at the next Board meeting to go through the data in the annual report and the reasons why complaints are closed.

Mr. Prasifka stated that Board staff and executives exist to serve and do the work of the Board, and if there is anything staff can do to give better information, they would be happy to do so.

Mr. Brooks stated that the more accurate data the Board has, the better it can do its job.

Ms. Lawson asked for comments from the public.

Ms. Hollingsworth disagreed with Mr. Prasifka, saying that there have been a number of egregious cases involving death that resulted in a reprimand. Ms. Hollingsworth gave examples of patient deaths and stated that the Board must stop using reprimands for first-time offenders.

Ms. Lauren agreed with Ms. Hollingsworth and added that severe bodily harm is also egregious. Ms. Lauren shared her experience of harm during plastic surgery and asked for change to legislation and California Code of Regulations (CCR) section 1356.6 for liposuction.

Ms. Monserratt-Ramos stated that she conducted a survey amongst her advocacy team and found that most of them have not received letters throughout the complaint process, adding that a few may have received one letter and many who called the Board were just passed around. Ms. Monserratt-Ramos stated that the Board needs to fix this issue.

Ms. Farr asked how the Board is supposed to get proper evidence if medical records are false. Ms. Farr requested an agenda item addressing false medical records. Ms. Farr asked if any Board member has written a letter to the governor explaining that the state is in a medical crisis.

Mr. Andrist commented that patient advocates are not numbers and percentages, they are human beings harmed by incompetent doctors. Mr. Andrist agreed with Ms. Farr about writing to the governor. Mr. Andrist stated that patient advocates are concerned about the reprimands because it is letting bad doctors off the hook and spoke of physicians who think the Board is weak. Mr. Andrist asked about the status of Mr. Thompson's complaint. Mr. Andrist commented on the number of complaints and reprimands from years 2016/2017 to 2018/2019.

Ms. Arthursdotter commented on the Board's website, saying it is not ADA compliant. Ms. Arthursdotter also commented on fictitious medical records, saying the Board should look at the practice instead of the individual doctor.

Ms. Westly commented that it is heartbreaking listening to the public commenters and echoed the concerns about notifying patients. Ms. Westly spoke of her closed complaint and stated there is a problem with the system.

Mr. Rizzo stated that advocates put Ms. Lawson in her position, and they can easily work to have her removed if she does not stop trying to silence the public.

Ms. Perez commented about the online complaint tracking system and spoke of her closed complaints. Ms. Perez stated that the Board is not enforcing the law.

Ms. Lawson stated that, after listening to the comments, there is an opportunity for a task force to work on data stream and to work on processes.

Agenda Item 7 Enforcement Updates

Ms. Castro gave an update on the AGO and spoke of Business and Professions Code (BPC) section 312.2, saying it requires the AGO to publish data on accusations prosecuted for DCA, and will be available on January 1, 2022, at oag.ca.gov. Ms. Castro gave a staffing update, saying a new supervising deputy attorney general has been appointed and reviewed his background.

Ms. Nicholls gave an update on the HQIU, beginning with staffing, saying there are 15 investigator vacancies, however four new investigators will start in the next several weeks. Ms. Nicholls added that there are 21 candidates in background and hiring panels continue to be conducted to identify additional candidates. Ms. Nicholls commented on retiring commanders and stated that interviews have already been conducted for their vacancies. Ms. Nicholls stated that, since the last Board meeting, Department of Justice (DOJ) special agents have received a 12% pay increase, resulting in six HQIU investigators leaving for the DOJ. Ms. Nicholls commented that the salary disparity should be addressed, but the HQIU is committed to exploring other ways to retain investigators. Ms. Nicholls spoke of HQIU's continuous improvement team and additional training. Ms. Nicholls reviewed the pending investigations graph for January 2020 through October 2021 and the chart showing the number of cases over 365 days for January 2021 through October 2021, concluding that HQIU is completing older cases. Ms. Nicholls commented that HQIU continues to hold weekly meetings with Board staff and expressed the need for new experts in all specialties.

Ms. Lawson asked Ms. Nicholls what the biggest impediment was to get qualified experts.

Ms. Nicholls replied that there are not enough experts on the list who are familiar with specific specialties.

Ms. Lawson asked if the experts are being paid enough and if the work is too time consuming.

Ms. Nicholls replied that money is a factor, but part of it is that more outreach is needed.

Mr. Watkins commented that the expert reviewer challenge is significant.

Ms. Nicholls agreed with Mr. Watkins and added that the quality of the opinions is not good, which can affect cases.

Mr. Brooks asked Ms. Nicholls to send Board members the list of specialties that experts are needed in.

Dr. GnanaDev commented that the time commitment and pay are issues for expert reviewers, adding that many physicians get paid four to five times more in the private sector. Dr. GnanaDev stated that the Board has had to settle for a lower discipline in many cases because of marginal quality experts.

Ms. Castro commented that it takes courage to sit in judgment of fellow professionals, and it takes a special kind of person to want to review cases. Ms. Castro agreed with comments about the expert reviewers' pay.

Dr. Hawkins commented that the HQIU charts are encouraging, although the numbers are still higher than what he would like to see. Dr. Hawkins added that it is hard to imagine the numbers will plateau or continue to decrease with investigators leaving the HQIU.

Ms. Nicholls commented that progress has been made in the aged cases and agreed that the pay disparity is going to be an issue. Ms. Nicholls reiterated that the Board has her commitment to look at other areas where staff can be retained. Ms. Nicholls added that the large workloads are another reason why staff leave and spoke of the expert procurement unit and other units helping with efficiency.

Dr. Yip spoke of reaching out to schools to recruit experts. Dr. Yip suggested collecting data on cases that were ruined by bad experts.

Ms. Lubiano commented about her experience at expert reviewer training and encouraged other Board members to attend. Ms. Lubiano suggested a bootcamp for expert reviewers with different sessions on different topics, such as how to testify and how to write a thorough report. Ms. Lubiano suggested the Board build a campaign to encourage physicians to sign up for the program and volunteered to assist.

Mr. Watkins commented on unconscious bias in the deputy attorney general (DAG) memos and spoke of a DAG during the panel meeting that seemed to represent the case for the doctor. Mr. Watkins asked Ms. Castro if this was normal.

Ms. Castro commented that she cannot control how people read the DAG memos and that the AGO is there for justice. Ms. Castro added that every effort is made to give Board members all the tools and facts that are pertinent within the context of the memos. Speaking about petitions, Ms. Castro commented that Board members will hear the DAGs say they represent the AGO and the people and she pointed out that petitions are not discipline and the Board is bound to consider them under BPC section 2307.

Mr. Watkins commented that this information helped him but not in a way that was helpful.

Dr. GnanaDev commented that when a DAG agrees with the judges, it is beneficial because both sides agree on the appropriate discipline.

Mr. Watkins commented that he has seen many of these responses before and this specific incident struck him as out of the norm.

Ms. Lawson asked for comments from the public.

Ms. Lauren commented that the experts are here for service, not for money. Ms. Lauren spoke of Dr. Dubrow and her own trial. Ms. Lauren commented that plastic surgeons cover for each other.

Ms. Helena Pappas commented that the Board has mismanaged her complaint, saying that it was initially closed in CCU shortly after it was submitted, but was later reopened by a retired annuitant who reviewed the case file and determined that it was improperly closed. Ms. Pappas added that her complaint was also mismanaged by HQUI.

Mr. Andrist commented that Ms. Nicholls is the only person he trusts. Mr. Andrist spoke of expert reviewers, saying we are all human beings listening to other human beings, but it does not appear hard for the Board to let bad doctors off the hook. Mr. Andrist requested Ms. Castro to look into illegal activities of the Board concerning meeting attendees having to register. Mr. Andrist asked what the point is of a pool of experts if they are not qualified. Mr. Andrist spoke of cases being mishandled by the Board.

Ms. Arthursdotter commented on expert reviewers following the standard of care and guidelines for pain management.

Mr. Rizzo stated he was continuing Mr. Andrist's comments and spoke of cases that have been dismissed due to the Board and AGO mishandling them.

Ms. Farr commented that expert reviewers lie in civil trials and are still able to work for, and represent, the Board. Ms. Farr stated that Dr. Dubrow should not be a witness for the Board. Ms. Farr thanked Ms. Nicholls for including trauma in HQUI's training and asked if the experts are trained to read false medical records.

Dr. Thorp commented that there are areas that the Board struggles with regarding medical experts and added that there are a series of problems, including difficult and time-consuming work, lack of community doctors who manage a practice, and a decrease in licensed physicians. Dr. Thorp added that the decrease in licensure is a concern. Dr. Thorp commented that the Board is not advocating, nor does it think, that it is okay for one child to be harmed or injured and spoke of the difference between a physician doing something wrong and operating within the standard of care.

Agenda Item 8 Update from the Department of Consumer Affairs

Ms. Holmes updated the Board on DCA, saying staff are working in the office to provide public services, and utilizing telework where appropriate, adding that DCA is assembling a task force to create a telework policy to provide further clarity and structure. Ms. Holmes stated that state employees must show proof of vaccination or be subject to regular COVID-19 testing and reminded Board members that they must follow health and safety protocols if they plan to visit a DCA location or attend in-person Board meetings. Ms. Holmes commented on AB 361, which extends the ability of boards to meet remotely until January 30, 2022, and added that any future changes are unknown. Ms. Holmes commented on scams effecting DCA boards and bureaus and stated that additional information is on DCA's website. Lastly, Ms. Holmes reminded Board members that 2021 is a mandatory Sexual Harassment Prevention training year.

Ms. Lawson asked for questions or comments from Board members. Hearing none, Ms. Lawson asked for comments from the public.

Ms. Pappas wanted to finish comments from a previous agenda item. Ms. Lawson invited Ms. Pappas to submit her comments in writing or present her comments during agenda item 12 tomorrow morning.

Ms. Arthursdotter commented that laws regarding intractable pain and patient care were removed from DCA's website. Ms. Arthursdotter commented on reviewing complaints and computer-generated records. Ms. Lawson asked Ms. Arthursdotter to present this comment tomorrow morning during agenda item 12.

Agenda Item 9 Update on Revising Guidelines for Prescribing Controlled Substances for Pain

Mr. Prasifka stated that the task force has met twice since the last Board meeting and is working on the preparatory work to update the guidelines. Mr. Prasifka commented that Board staff have reviewed state legislation and regulations along with federal guidelines by the CDC, FSMB, and the Department of Health and Human Services, noting that the CDC is in the process of updating their guidelines, which will be incorporated into the Board's guidelines. Mr. Prasifka stated that Board staff identified experts for a balanced panel, who were presented to the task force and approved. Mr. Prasifka stated that the Board is moving forward with mapping out required changes, and then will proceed to public consultation.

Dr. Hawkins asked if the task force will look into intractable pain.

Mr. Prasifka answered in the affirmative.

Ms. Lawson commented that it sounds like the public part of the process will occur in the first or second quarter of the new year.

Mr. Prasifka agreed.

Ms. Lawson asked for comments from the public.

Ms. Arthursdotter briefly summarized her work experience and history and stated that she has previously offered her services to the Board for this task force. Ms. Arthursdotter stated that she knows where the problems are in the guidelines, and that they need to be consistent and accurate and not dependent on politics or special interest groups.

Ms. Anne Fuqua stated that she is a chronic pain patient who has taken high-dose opioids for over 20 years and that they have drastically improved the quality of her life. Ms. Fuqua thanked the Board for its statement regarding the closure of pain clinics and guidance for physicians to treat pain patients. Ms. Fuqua expressed her hope that the updated guidelines will enable physicians to treat patients like herself without fearing for their careers.

Ms. Lawson reiterated that there will be a public process in early 2022 for updating the guidelines.

Ms. Lawson adjourned the meeting at 5:44 P.M.

RECESS

Friday, November 19, 2021

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 Emmalee Ross, Public Information Officer I
 Alexandria Schembra, Associate Governmental Program Analyst
 Scott Steele, Associate Governmental Program Analyst
 Christina Thomas, Staff Services Manager I
 Reji Varghese, Deputy Director
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 Kerrie Webb, Staff Counsel

Agenda Item 10 Call to Order/Roll Call/Establishment of a Quorum

Ms. Lawson called the meeting of the Medical Board of California (Board) to order on November 19, 2021, at 9:03 A.M. A quorum was present and due notice was provided to all interested parties.

Agenda Item 11 Closed Session

The Board moved into closed session to conduct the annual evaluation of the executive director pursuant to Government Code section 11126(a)(1).

Agenda Item 12 Public Comments on Items not on the Agenda

Ms. Lauren commented on a medical malpractice suit and Dr. Dubrow's role as the medical expert. Ms. Lauren also commented on her experience with Dr. Dubrow and her complaint with the Board.

Ms. Denise Johnson shared her story of her son's death due to medical negligence and commented on her closed complaint with the Board, adding that she was mistreated by an investigator. Ms. Johnson commented that California laws make it nearly impossible for physicians to be held accountable for preventable deaths and urged the Board to support legislation to change the burden of proof to preponderance of evidence.

Ms. Pappas commented on the Board and HQUI mismanaging her complaint, saying it was closed in 2019 and reopened in 2020. Ms. Pappas stated that she was never contacted by an

investigator for an interview until she publicly stated so during a Board meeting, after which, an investigator contacted her. Ms. Pappas commented that the statute of limitations is nearing and was recently told by Ms. Jones that HQIU cannot find an expert reviewer. Ms. Pappas thanked Ms. Nicholls for contacting her after last night's Board meeting.

Ms. Farr commented that complainants will not get justice from the Board due to the lobbying efforts of the California Medical Association (CMA). Ms. Farr stated that the public wants things fixed so medical harm does not continue to happen, adding that these things include falsification of records and surgical assault, and asked the Board for help. Ms. Farr commented on the difference between a complication and an error.

Ms. Hanna Rhee of Black Patients Matter demanded that U.C. Regents stop protecting tenured professor physicians who misuse their positions to manipulate and sexually assault subordinates.

Mr. Andrist spoke of Ms. Webb's comments of being able to use pseudonyms when logging in to WebEx, saying that information is not in the instructions and the law does not require that as a condition to attend meetings. Mr. Andrist stated that he logged in to this morning's Board meeting as Kerrie Webb and was kicked off and added that Ms. Lawson asks speakers for their names before speaking. Mr. Andrist stated that he is keeping track of Ms. Lawson and what she does will follow her past her tenure on the Board, adding that he has nothing better to do than make sure Board members are held accountable.

Ms. Arthursdotter commented that during the update on revising guidelines for prescribing controlled substances, it was stated that the Board must follow the CDC guidelines. Ms. Arthursdotter wondered why this was said and stated that the Board sets the standards for the state. Ms. Arthursdotter commented that the guidelines were made for naïve patients, not chronic pain patients. Ms. Arthursdotter spoke of the CDC rescinding a letter they published regarding the guidelines and how the Board should make that available on its website.

Ms. Perez offered Dr. Thorp her condolences and added that his comments yesterday were not well received by patient advocates and could be misconstrued to mean they should accept their child's preventable death. Ms. Perez spoke of her closed complaint and wondered if the Board investigates complaints. Mr. Perez commented that she, along with many other advocates that have commented, were never interviewed.

Ms. Hollingsworth commented on Dr. Thorp's comments made yesterday, saying that most complaints are for egregious harm or death and many of the doctors get off. Ms. Hollingsworth commented that going before the Board should make doctors fearful.

Ms. Tracy Dominguez offered her condolences to Dr. Thorp and added that his comments are why the public finds it hard to have faith in the Board. Ms. Dominguez commented that families who have lost loved ones deserve to be heard and that the Board's priority is to protect life.

Ms. Alicia Cole commented that Dr. Thorp's comments were hurtful and goes to the heart of the bias and stereotype against patients. Ms. Cole commented that patients can forgive an honest mistake but cannot forgive cover-ups, lies, missing information, altering records, and stereotyping patients.

Ms. Monserratt-Ramos offered Dr. Thorp her condolences and added that his comments made yesterday were outlandish. Ms. Monserratt-Ramos commented that to insinuate that patient advocates would spend time at Board meetings without real complaints of gross negligence is outrageous. Ms. Monserratt-Ramos commented that patient advocates are here to make a positive change.

Ms. Tammy Smick offered her condolences to Dr. Thorp and added that his comments were painful to those who have lost children due to medical negligence. Ms. Smick spoke of her son's death and her complaint with the Board that resulted in a public reprimand. Ms. Smick commented that the doctor's continued practice allows patients to be put at risk. Ms. Smick urged the Board to look at cases and all the patient advocates reaching out and to properly discipline doctors.

Ms. Sharon Washington commented that Dr. Thorp's comments were disheartening and with that kind of mindset, complainants will never see justice. Ms. Washington shared her experience of her brother's death and not having any answers.

Agenda Item 13 Discussion and Possible Action on Legislation/Regulations

Mr. Bone discussed the implementation of the 2021 bills that the Board took a position on and that were signed into law in October. Mr. Bone reviewed AB 356, which authorizes CDPH to issue one-time temporary permits for health care professionals to use fluoroscopic x-ray equipment. Mr. Bone reviewed AB 359, which clarifies the options for out-of-state physicians to obtain a license in California and adds specified subjects to the list of courses that a licensee may take to meet continuing medical education (CME) requirements. Mr. Bone reviewed SB 310, which creates a pilot program to allow for the recycling of cancer medication. Lastly, Mr. Bone reviewed SB 806, which is the Board's sunset bill. Mr. Bone noted that staff have already completed the programming necessary to implement the licensing and renewal fee increases and the enforcement program is developing cost accounting procedures and training for cost recovery. Mr. Bone commented that staff are working with DCA on a possible new fee study to demonstrate the Board's need for further fee increases and establish positive cash flow.

Ms. Lawson asked for questions or comments from Board members. Hearing none, Ms. Lawson asked for comments from the public.

Ms. Arthursdotter commented on AB 359, saying it is problematic because a lot of the CME in pain management tends to promote one modality as opposed to the entire spectrum of pain management. Ms. Arthursdotter commented that CME should ensure procedures and guidelines are being followed rather than just promoting a product.

Mr. Bone commented that AB 359 had very specific new CME offerings pertaining to practice management, the use of technology, clinical office workflows, care facility coding, and educational methodologies for physicians who teach in a medical school.

Ms. Rhee suggested the Board send an email blast on the implementation of legislation.

Ms. Hollingsworth encouraged the Board to support SB 310 and spoke of her experience with her husband's cancer medications.

Ms. Lawson asked Mr. Bone to discuss the 2022 legislative proposals.

Mr. Bone stated that the proposals from the Board's 2020 Sunset Report that were not included in the final version of SB 806 will continue to be legislative priorities for the Board in 2022. For enforcement proposals, Mr. Bone reviewed a proposal to change the evidentiary standard of burden of proof from clear and convincing proof to preponderance of evidence, noting that most allopathic medical boards in other states have this burden of proof. Mr. Bone reviewed another proposal relating to petitions for reinstatement and penalty relief, noting that the current wait timeframes in law often exceed the amount of time the Board requires to investigate, prosecute, and impose discipline. Mr. Bone commented that an additional proposal on this topic is to pursue authority to establish an application fee that covers the Board's reasonable costs to process petitions. Mr. Bone reviewed another proposal to require an earlier exchange of expert testimony information from 30 days of the originally scheduled hearing date to 90 days. Mr. Bone reviewed another proposal to require additional mandatory reporting of potential physician misconduct to include medical groups, health insurance providers, health care service plan providers, and locum tenens agencies. Mr. Bone reviewed another proposal to require patient records to be maintained for at least seven years. The final enforcement proposal Mr. Bone reviewed was to authorize the Board to provide consumers with a copy of their personal records obtained by the Board during an investigation.

Moving to licensing proposals, Mr. Bone reviewed a proposal to clarify BPC section 2096(a) that P&S license applicants may participate in postgraduate training outside of California. Mr. Bone reviewed another proposal to clarify the licensing requirements for those who obtained some postgraduate training outside of California and then were accepted to a training program in California, noting that staff proposed to clarify BPC section 2065(g) so that it applies to applicants who have credit for 24 months of postgraduate training from an international medical school. Mr. Bone reviewed another proposal that would update the mechanism by which the Board can extend the deadline for a licensee to demonstrate they have received credit for 36 months of postgraduate training by amending BPC section 2097. The final licensing proposal Mr. Bone reviewed would simplify the language in BPC section 2097 that pertains to the licensing requirements for applicants in an oral and maxillofacial surgery program.

Ms. Lawson asked Board members if they had any technical questions about the proposals.

Mr. Watkins asked about adding more proposals.

Ms. Lawson responded that she wants to invite the public to provide their own ideas and then Board members can provide their ideas, as well.

Dr. Krauss asked if the evidentiary standard proposal is exclusively for the Board, or all boards in California.

Mr. Bone replied that it is just for the Board.

Dr. Healzer commented on the proposal to require employers to report all employment-related discipline, adding that it seems overbroad.

Mr. Bone commented that this proposal involves issues that pertain to medical disciplinary causes or reasons, noting that there is current law that defines these issues as being reasonably likely to be detrimental to patient safety or delivery of care.

Dr. Healzer agreed that allegations of sexual misconduct should be reported by the employer but commented that he is concerned that this language might require even simple counseling discussions to be reported.

Ms. Lawson asked to hear public comments before discussing the details or any changes to the proposals.

Ms. Cole commented that her own complaint can be used as a case study to show that the burden of proof of clear and convincing evidence is harmful to patients and inhibits the Board from doing its job. Ms. Cole spoke of her medical experiences and complaint submitted to the Board.

Ms. Nicholls expressed her support for the proposals to reduce the burden of proof, to increase mandatory reporting, and for tolling the statute of limitations, which was included in the Board's Sunset Report. Ms. Nicholls requested two additional proposals, including adding a timeframe for physician participation in interviews and requiring biological fluid testing for impairment cases.

Ms. Rhee questioned why Ms. Nicholls was commenting during the public comment portion of this agenda item. Ms. Rhee supported mandatory reporting of physician misconduct, especially sexual misconduct. Ms. Rhee requested that medical experts and consultants hired by the Board have significant work history in promoting diversity and racial and religious tolerance.

Ms. Lauren requested additional proposals, including amending CCR section 1356.6 on liposuction and authorizing medical records to be co-authored. Ms. Lauren spoke of her experience of sexual misconduct from a physician.

Ms. Monique Himes expressed her support to change the burden of proof to preponderance of evidence. Ms. Himes shared her grandson's death due to medical negligence and the complaint submitted to the Board.

Ms. Farr commented that the problem with the legislative proposals is that CMA will override them. Ms. Farr commented that bills are needed to see the impact of the CMA on patient safety, for preventing medical errors, for the health and wellness of physicians, for a hotline to call for help, and to address false records.

Ms. Alka Airy spoke of her sister's death due to medical negligence. Ms. Airy expressed her support to change the burden of proof to preponderance of evidence and added that this change would align with 41 other allopathic medical boards and help improve public trust in the Board. Ms. Airy commented that she admires Mr. Watkins for his candor and courage and

hoped more Board members would step up to improve the Board's transparency with the public.

Ms. Susan Lieu spoke of her mother's death due to medical negligence. Ms. Lieu expressed her support to change the burden of proof to preponderance of evidence.

Ms. Monserratt-Ramos expressed her support to change the burden of proof to preponderance of evidence. Ms. Monserratt-Ramos spoke of her fiancé's death due to a substance-abusing physician and of her closed complaint.

Ms. Dominguez shared her daughter's and grandson's deaths due to medical negligence. Ms. Dominguez expressed her support to change the burden of proof to preponderance of evidence.

Mr. Xavier De Leon spoke of his son's death due to medical negligence. Mr. De Leon expressed his support to change the burden of proof to preponderance of evidence.

Mr. Charles Johnson commended the families and victims of medical negligence for sharing their stories. Mr. Johnson spoke of his wife's death due to medical negligence. Mr. Johnson thanked Mr. Watkins for his courage and stated that Mr. Watkins should not stand alone. Mr. Johnson expressed his support to change the burden of proof to preponderance of evidence. Mr. Johnson asked the Board how many more times victims and family members have to bear their soul so that other families can be treated with dignity.

Ms. Kimberly Turbin shared her story of medical battery and expressed her support to change the burden of proof to preponderance of evidence.

Ms. Evelen Martinez shared her son's death due to medical negligence. Ms. Martinez commented that the Board cannot lead the public to believe that they can file a complaint and tell them the consumer protection is the Board's priority, and then do nothing to change the pattern of negligence. Ms. Martinez expressed her support to change the burden of proof to preponderance of evidence.

Ms. Smick spoke of her son's death and supported changing the burden of proof to preponderance of evidence.

Ms. Johnson offered her condolences to Dr. Thorp. Ms. Johnson spoke of her son's death due to medical negligence and her experience filing a complaint with the Board. Ms. Johnson expressed her support to change the burden of proof to preponderance of evidence.

Ms. Arthursdotter supported changing the burden of proof to preponderance of evidence and commented that the legislative proposals deserve a stakeholders meeting. Ms. Arthursdotter spoke of laws that limit hours worked by employees and attributed an overworked physician to her son's death. Ms. Arthursdotter commented on the retention period for medical records as well as false records.

Ms. Perez supported changing the burden of proof to preponderance of evidence and spoke of a complaint submitted to the Board after the death of her daughter. Ms. Perez commented that

the CMA has too much of a stranglehold on the Board and the legislature, and proposed legislation that no current Board or staff member can actively work on behalf of CMA while they are with the Board, including no speaking roles nor fundraising within five years of being with the Board. Ms. Perez commended Mr. Watkins for advocating and standing up for patients.

Ms. Washington shared her brother's death due to medical negligence. Ms. Washington expressed her support to change the burden of proof to preponderance of evidence. Ms. Washington commented that there is a pattern of racism in healthcare that is killing black people. Ms. Washington stated that she supports Mr. Watkins.

Ms. Hollingsworth offered her condolences to Dr. Thorp and urged the Board to support changing the burden of proof to preponderance of evidence. Ms. Hollingsworth spoke of her father's death and complaint to the Board, adding that the same doctor later overdosed a patient and ended up on the Board's death certificate project.

Ms. Lawson commented that there is a lot to work through and suggested starting with the licensing legislative proposals to reach a consensus.

Dr. Krauss commented that everything Mr. Bone presented seemed helpful and empowering to allow the Board to be more effective and suggested a single motion to approve all the proposals unless any other Board member objects.

Ms. Lawson commented that she wanted to allow additions from Board members.

Dr. Krauss suggested a motion to approve the proposals as a consent calendar and allow Board members to withdraw individual items for separate discussion and consideration.

Dr. Krauss made a motion to approve the 2022 legislative proposals as a consent calendar, allowing for Board members to withdraw items for separate discussion and consideration/S: Dr. Yip

Dr. Hawkins commented that he supports many of the proposals and asked about the resources and money required to pay for them. Dr. Hawkins commented that these proposals require the support of the legislature and asked public advocates to talk to their legislators.

Ms. Lawson agreed with Dr. Hawkins and clarified for the public that these are potential Board legislative proposals, but support of the legislature is needed to enact them.

Mr. Brooks agreed with Dr. Hawkins, saying he hoped a dollar amount could be attached to the proposals. Mr. Brooks added that changing the burden of proof to preponderance of evidence will increase complaints and asked about the funding mechanism.

Ms. Lawson pointed out that the Board has not abandoned its request for an adequate fee increase.

Mr. Watkins commented that he supports the proposals and knows how difficult it is for the Board to get what it wants. Mr. Watkins commented that the Board needs the fee increase to

execute its duties more effectively. Mr. Watkins added that, even with patient advocates speaking out, the Board does not have enough lobbying power to go against the CMA.

Mr. Ryu agreed with everything that had been said and hoped this discussion would shed light to the public on the process and to the laws which limit what the Board can do or disclose. Mr. Ryu commented that the Board can offer its support in the recommendations to the legislature, who has the sole authority to make the proposals happen. Mr. Ryu suggested seeking higher pay for expert witnesses while acknowledging the Board's current financial position.

Ms. Lawson asked Board staff what the mechanism is for paying expert witnesses.

Mr. Bone replied that it is through the budget process and that Board staff have previously looked into it and did not find any statutory impediments. Mr. Bone added that a budget change proposal would have to be requested to get the authority to spend additional money, adding that the Board's fund condition is the biggest obstacle.

Ms. Campoverdi supported the proposals and acknowledged the headwinds that the Board faces. Ms. Campoverdi requested to discuss the proposals that Ms. Nicholls presented pertaining to biological fluid testing and time limits on good cause.

Ms. Lawson asked Mr. Bone if he made note of Ms. Nicholls' proposals.

Mr. Bone reiterated Ms. Nicholls' proposals of mandatory submission of biological testing, and asked Ms. Campoverdi if she was referring to tolling subpoenas.

Ms. Campoverdi responded that it was for adding a time limit on good cause for an appearance.

Ms. Webb responded that it would be a change to BPC session 2234(g) to put a time limit on physicians to comply with sitting for an interview. Regarding submitting biological fluid testing, Ms. Webb commented that the proposal may need to be that if an investigator requests a physician to submit to a biological fluid test and they refuse, there would be a cease practice order put in place until there is compliance or a hearing.

Ms. Campoverdi asked if Ms. Nicholls was still available to clarify her proposals.

Mr. Brooks asked if Ms. Nicholls could submit her proposals in writing.

Ms. Lawson commented that this is not the final time the Board will have this conversation, and that the proposals will be discussed during the February Board meeting.

Mr. Bone commented that this is the ideal time to discuss the proposals and added that at this time next year, the Board will be submitting some form of a sunset report, so whatever the other ideas are for consideration can be put into that report.

Ms. Nicholls explained her biological fluid testing proposal, saying the issue is when investigators ask for a sample, the physician can say no, at which time HQIU would have to go through the long process of gathering evidence to pursue a motion to compel. Ms. Nicholls

continued, saying if they could obtain a cease practice order, an impaired physician could not treat patients. Regarding physician interviews, Ms. Nicholls explained the issue is the timeframe, saying that physicians can say they have good cause to not show up. Ms. Nicholls stated that once an investigator contacts a physician for an interview, a time limit should be set in place. Lastly, Ms. Nicholls explained the subpoena issue regarding tolling the statute of limitations, saying that valuable time is lost in the subpoena enforcement process.

Ms. Lawson asked if any Board members did not want to see Ms. Nicholls' proposals included as part of the 2022 legislative proposals.

Dr. Thorp asked Mr. Bone if the legislature is likely to accept these proposals.

Mr. Bone replied that he expects that the legislature is aware of the Board's issues, especially with sunset review and media coverage, and hoped that would elevate the chances of finding an author for the proposals. Mr. Bone added that after the Board finalizes the proposals, he will contact legislators' offices to try to find authors who will advocate for these changes.

Ms. Lawson asked if Dr. Krauss, as the maker of the motion, would be willing to incorporate Ms. Nicholls' proposals.

Dr. Krauss stated that he accepts the amendments.

Dr. Yip accepted the amendments.

Mr. Watkins commented on only hearing from doctors during case hearings and suggested a proposal to amend BPC 2330 to remove the word *not* so that the patients have an opportunity to give a statement at hearings. Mr. Watkins added that this would create equality and transparency.

Ms. Lawson commented that she agrees with allowing patients the opportunity to participate in the process. Ms. Lawson commented on the Board improving its policies about contacting complainants and added that there may be other statutory changes the Board would like to pursue to provide patients an additional voice. Ms. Lawson asked Mr. Watkins if he is okay with coming back to this at the February meeting to allow Board staff time to research.

Mr. Watkins commented that that is fair.

Dr. Hawkins agreed with Mr. Watkins' suggestion.

Dr. Healzer commented that he is supportive of the proposals but would like to revisit his comments about the language of requiring reporting of any employment discipline, saying that it is too broad.

Ms. Lawson commented that there is consensus support for the initial proposals and Ms. Nicholls' proposals, pending a vote, along with support for a broad concept of developing a process that would provide patients an additional voice to be discussed in February, and asked Dr. Krauss to amend his motion to encapsulate all of this.

Dr. Krauss commented that this is the Board's intent, and it is good policy, but it is not yet ready to be brought to a legislator since there are so many layers of the law to bring the complainant into the process. Dr. Krauss stated he is happy to amend his motion to support that as Board policy and intention.

Dr. Krauss made a motion to approve the 2022 legislative proposals as a consent calendar, allowing for Board members to withdraw items for separate discussion and consideration, and to further discuss and consider allowing complainants to give a statement/S: Dr. Yip

Mr. Bone commented that, if Board members are comfortable with Board staff having the discretion of crafting language and working with legislators, within the boundaries set, then staff will do so and report back at the February Board meeting.

Dr. Healzer asked for the motion to be restated.

Ms. Lawson stated that the motion is to adopt the legislative proposals included in the staff report, include the proposals presented by Ms. Nicholls related to biological fluid samples and good cause, and to include a legislative proposal or policy to increase patient opportunity for access in the disciplinary process, with the latter being discussed further during the February Board meeting. Ms. Lawson commented that all of this will be discussed at the February Board meeting and depends on whether a sponsor is found.

Dr. Thorp commented that he understood the importance of a complaint being able to be heard as a case, but there was a reason why the appellate court held clear and convincing evidence as the standard of proof. Dr. Thorp added that California has been out of step with most of the United States for a long time and he would feel disingenuous if he did not raise these concerns.

Ms. Lawson commented that it sounded like Dr. Thorp would vote against the motion on the table.

Dr. Krauss stated that the original motion uses the term 'consent calendar' so that if a Board member is concerned with an item, it could be removed from that vote, and another motion and vote could be made on any excluded items.

Dr. Thorp asked for the burden of proof item to be pulled out of this vote.

Ms. Lawson confirmed that burden of proof item will be pulled out of this vote. Ms. Lawson asked Ms. Caldwell to take the roll.

Motion carried 11-0-0 (Support; Dr. GnanaDev and Dr. Mahmood absent)

Dr. Krauss made a motion to seek legislative action to change the evidentiary standard from clear and convincing to preponderance of evidence/S: Dr. Yip

Dr. Hawkins commented that he wanted more information beyond the cost, including how this changes what the Board does.

Mr. Ryu asked what the evidentiary standard is for the 40 other states that was previously mentioned.

Mr. Bone replied that the other states use preponderance of evidence for the evidentiary standard, and that currently California uses clear and convincing.

Ms. Lawson commented that it is the standard for administrative cases, rather than the standard for the Board.

Mr. Bone replied that it is the standard for the Board's disciplinary cases.

Dr. Hawkins asked Ms. Webb to make a succinct comment about this topic.

Ms. Webb commented that there would be more cases that meet the burden of proof for discipline, which also means more cases being referred to HQIU for formal investigation, to the AGO for prosecution, and to Board members for review. Ms. Webb added that the Board is being judged by what other states are doing, and reports treat the Board's standards as if it were the same as other states' standards. Ms. Webb continued, saying this will end up in the hands of the legislature, who is at times critical of the Board but often does not give the Board the tools requested. Ms. Webb reiterated that this change would put the Board on par with most other allopathic medical boards across the U.S. but will also impact the number of cases the Board considers.

Dr. Healzer asked if clear and convincing evidence is the standard used for other healing arts boards in California.

Ms. Webb replied that it is.

Dr. Krauss commented that his greatest frustration in serving on the Board is feeling powerless knowing that it could do a better job, adding that all the legislative proposals brought forward gives the Board more power, more authority, and a better opportunity to do its job. Dr. Krauss continued, saying that it does not mean that doctors will be victimized or that the Board would be frivolous in how the Board dispenses justice.

Ms. Lawson asked Ms. Caldwell to take the roll.

Motion carried 10-1-0 (Support; Dr. Thorp oppose, Dr. GnanaDev and Dr. Mahmood absent)

Mr. Bone commented that it was helpful that the Board had a list of priorities in the Sunset Report, and that there may be legislators that are interested in some of the proposals but do not have the capacity to take on each one. Mr. Bone added that if there is any direction that the Board has regarding priorities of the proposals, he would work with the Board's president and vice president.

Dr. Krauss made a motion to delegate the work of prioritization to the executive committee/S: Dr. Yip

Ms. Lawson commented that prioritization would be made to address the concerns heard from Board members and public advocates today. Ms. Lawson spoke of working on this like the way the Sunset Review was worked on with the vice president and executive staff.

Ms. Webb reminded Ms. Lawson that the motion was made for the executive committee, which is different than the Board's president and vice president.

Dr. Krauss amended his motion to delegate the work of prioritization to the president, vice president, and staff/S: Dr. Yip

Ms. Lawson asked Ms. Caldwell to take the roll.

Motion carried 10-0-0 (Support; Dr. Thorp, Dr. GnanaDev and Dr. Mahmood absent)

Moving to the status of pending regulations, Mr. Bone asked if Board members had any questions.

Ms. Webb commented that she will give an in-depth update on the Physician Health and Wellness Program during the next agenda item. Ms. Webb added that the approved certifying organizations has to do with approving certifying organizations that certify medical and midwife assistants and is going through the final review with the Office of Administrative Law (OAL), and she expects the regulations to be approved by the next Board meeting. Ms. Webb continued, saying the notice to consumers is regulation that will change the signage requirements to be clearer in stating that the Board licenses and regulates our licensees, along with contact information to make a complaint, and that the notice will be given in the primary language of the patient or patient's representative. Ms. Webb commented that this regulation has been submitted to the OAL for the 45-day public comment period and will have an update at the next Board meeting.

Ms. Lawson asked for questions or comments from Board members. Hearing none, Ms. Lawson asked for comments from the public.

Ms. Arthursdotter commented that the problem with records is that there is an embargo on patient access to them and that they are distorted and added that available records must be kept in good order to be able to enforce any action.

Ms. Rhee commented that she supports a physician health and wellness program but cautioned the Board of protecting physicians in power and professor physicians with tenure in the U.C. system, saying there are physicians already guilty of sexual assaults who are being protected.

Ms. Lauren agreed with Ms. Arthursdotter's comments about patient records and added that records should be co-authored with the patient.

Agenda Item 14 Update on the Status of Physician Health and Wellness Program

Ms. Webb gave an update on the Physician Health and Wellness Program, saying that the proposed language in the meeting materials has already been approved by the Board and is included for background. Ms. Webb commented that the Board previously had a diversion program, which was deemed ineffective and was terminated, and the legislature required DCA to establish the Substance Abuse Coordination Committee to establish the Uniform Standards for Substance-Abusing Licensees. Ms. Webb added that the Physician Health and Wellness Program (PHWP) must comply with the Uniform Standards. Ms. Webb stated that the PHWP is not a diversion program, and if the Board becomes aware of a physician with a substance abuse issue, the Board will initiate the enforcement process. In contrast, if a physician self-refers to the PHWP, the Board will not be alerted so long as the physician does not have practice restrictions in place and is compliant with the program. Ms. Webb added that a relapse is a violation and will trigger a report to the Board to initiate enforcement action.

Ms. Webb stated that the proposed rulemaking was submitted to DCA on May 6, 2021, where it was reviewed, and suggestions were provided to remove the requirements for the vendor and add it into the bidding process so that the regulations do not have to be changed every time there is a change in the contract. Ms. Webb commented on DCA formalizing changes to their Uniform Standards, and that Board staff will amend its own Uniform Standards as part of the rulemaking on the PHWP, which will avoid a delay with the OAL for consistency reasons. Ms. Webb stated that Board staff will work with DCA on the substantive changes and will bring modified language back to the Board for approval at the February Board meeting. Once the amended language is approved by the Board, DCA, and Agency, it will be submitted to the OAL to be noticed for a 45-day comment period, and upon approval by the OAL, will be filed with the Secretary of State.

Ms. Lawson asked for questions or comments from the Board members. Hearing none, Ms. Lawson asked for comments from the public.

Ms. Rhee commented that the PHWP should also include physicians who have a history of sexual assault.

Ms. Farr hoped the vendors that the physicians go to for help are informed of trauma care and spoke of physicians being traumatized.

Ms. Monserratt-Ramos commented that she was part of the team that ended the diversion program, which led to the Uniform Standards for Substance-Abusing Licensees. Ms. Monserratt-Ramos stated that it was her understanding that DCA's change in biofluid testing was only meant for respiratory therapists who have limited salaries and health care professionals who are under supervision at least 50 percent of the time.

Agenda Item 15 Updates from External Boards and Organizations

Ms. Melby gave an update on the Board of Registered Nursing (BRN), saying that the Nurse Practitioner Advisory Committee met on November 16th and passed initial draft language to implement AB 890, and went on to the full board who agreed to start the regulatory process. Ms. Melby noted that BRN is looking for a naming convention for the 103 and 104 nurse practitioners so that the public can understand what they mean. Ms. Melby commented that

the BRN must still address the fee section for adding various categories to the nurse practitioner's certification. Ms. Melby stated that the draft language is on the BRN's website. Ms. Melby spoke of the discussion of AB 852 at BRN's interested parties meeting, saying people want to write new law versus having regulations formed to address the current law.

Dr. Hawkins gave an update on the Health Professions Education Foundation (HPEF), saying that their last meeting was on September 8, 2021, with the dissolution occurring on October 1, 2021. Dr. Hawkins noted that HPEF was incorporated into the new Department of Health Care Access and Information (HCAI). Dr. Hawkins gave the websites for HCAI and California Grants Portal for physicians to visit for financial grants and loan forgiveness.

Dr. Hawkins gave an update on the Physician Assistant Board (PAB), saying the PAB last met on November 8, 2021, with a new board member sworn in and elections for the president and vice president. Dr. Hawkins commented on SB 806, which was also the PAB's sunset bill, saying that it made statutory changes to reflect the independence of the PAB as a stand-alone board. Dr. Hawkins also commented on SB 697, saying that it includes substantive changes in physician assistant practice in California. Dr. Hawkins noted the next PAB meeting on February 7, 2022 and added that it is expected to be held in-person in Sacramento.

Ms. Lawson asked for questions or comments from Board members.

Ms. Lubiano asked Dr. Hawkins to confirm that HPEF no longer exists.

Dr. Hawkins confirmed, saying it was dissolved and incorporated into HCAI, a new department. Dr. Hawkins encouraged healthcare professionals to visit the websites hcai.ca.gov and grants.ca.gov to find which grants and loan forgiveness programs may be available to them.

Ms. Lawson asked for comments from the public.

Ms. Rhee commented that she is happy to see progress being made.

Agenda Item 16 Discussion and Possible Action on Proposed Agenda Item for the Midwifery Advisory Council

Ms. O'Connor recommended the Board approve an agenda item for the December Midwifery Advisory Council (MAC) meeting for the discussion and possible action regarding 2022 MAC meeting dates and added that this agenda item was not included in the Board's August meeting when the MAC agenda was approved.

Ms. Lawson asked for questions or comments from Board members.

Ms. Webb commented that there may need to be an additional item for consideration of a new MAC member.

Ms. O'Connor commented that the MAC vacancy has been advertised, but the MAC was going to vote on the new member at the next meeting.

Dr. Thorp moved to approve the proposed agenda item/S: Dr. Hawkins

Ms. Lawson asked for comments from the public.

Ms. Arthursdotter offered her condolences to Dr. Thorp.

Ms. Lawson asked Ms. Caldwell to take the roll.

Motion carried 11-0-0 (Dr. GnanaDev and Dr. Mahmood absent)

Agenda Item 17 Future Agenda Items

Dr. Hawkins asked if there is a list of potential future agenda items from previous requests.

Ms. Lawson replied that executive staff keeps the list and that some of the items are already scheduled for the next meeting.

Ms. Lubiano requested to build on her previous diversity, equity, and inclusion presentation request to include how it is interwoven into the Board's outreach and staff recruiting efforts.

Mr. Prasifka commented that, as stated during the Board meeting yesterday, there is a request to present on the reasons for closing cases.

Dr. Thorp requested a presentation on the treatment of intractable pain, separate from the Board's previous presentation on pain management.

Mr. Prasifka responded to Dr. Thorp, saying that is an item that was being planned in terms of the task force for updating the Guidelines for Prescribing Controlled Substances for Pain, and added that there is no reason why a presentation cannot be a separate item. Mr. Prasifka commented that Board staff will work with Dr. Thorp in finding an expert for the presentation.

Ms. Lawson asked for comments from the public.

Ms. Farr commented that Ms. Lauren would like agenda items on the topics of medical records falsification and the regulation of plastic surgery. Ms. Farr commented that she would also like an agenda item regarding false medical records, along with how the CMA impacts patient safety, trauma-informed care, and how to prevent medical errors.

Ms. Fuqua thanked Dr. Thorp for requesting an agenda item on intractable pain and echoed the request.

Ms. Rhee requested an agenda item to discuss an alternate patient complaint resolution pathway.

Ms. Arthursdotter commented that she would like to build on Dr. Thorp's request for intractable pain to add reactions between different medications and how they are metabolized.

Ms. Monserratt-Ramos requested a presentation on probation and probation monitoring, saying that it was previously requested by patient advocates and Board members. Ms. Monserratt-Ramos also requested an update on the required reporting as part of the Uniform Standards for Substance-Abusing Licensees, how the Uniform Standards are working, how many violations have occurred, and how many interim suspensions have been ordered.

Dr. Thorp expressed his appreciation for members of the public voicing their concern and sympathy for him.

Ms. Lawson thanked Dr. Krauss for his service to the Board.

Agenda Item 18 Adjournment

Ms. Lawson adjourned the meeting at 2:08 P.M.

DRAFT