



MEDICAL BOARD OF CALIFORNIA

Protecting consumers by advancing high quality, safe medical care.

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Gavin Newsom, Governor, State of California | Business, Consumer Services and Housing Agency | Department of Consumer Affairs

WebEx August 25-26, 2022 MEETING MINUTES

August 25, 2022

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, President
Michelle Anne Bholat, M.D.
Ryan Brooks
Randy W. Hawkins, M.D., Vice President
James M. Healzer, M.D.
Nicole Jeong, J.D.
Laurie Rose Lubiano, J.D., Secretary
David Ryu
Richard E. Thorp, M.D.
Veling Tsai, M.D.
Eserick "TJ" Watkins

Members Absent:

Asif Mahmood, M.D.

Board Staff Present:

Aaron Bone, Chief of Legislation and Public Affairs
Sean Eichelkraut, Information Technology Manager
Jenna Jones, Chief of Enforcement
Tonya Moriarty, Licensing Analyst
Marina O'Connor, Chief of Licensing
William Prasifka, Executive Director
Reji Varghese, Deputy Director
Carlos Villatoro, Public Information Manager
Kerrie Webb, Staff Counsel

Agenda Item 1: Call to Order/Roll Call/Establishment of a Quorum ([Link to video](#))

President Kristina D. Lawson called the meeting of the Medical Board of California (Board) to order on August 25, 2022 at 2 p.m. A quorum was present and due notice was provided to all interested parties.

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Agenda Item 2: Public Comments on Items not on the Agenda ([Link to video](#))

Public comments on Agenda Item 2 were provided by: Susan Lauren, Hanna Rhee, Christina Hildebrand, Kristen Ogden, Rosie Arthursdotter; Marian Hollingsworth, Eric Andrist, Tracy Dominguez, Anne Fuqua, Virginia Farr, Joseph Kramer, and Rochelle Odell.

Agenda Item 3: Approval of Minutes from the May 19-20, 2022 Quarterly Board Meeting ([Link to video](#))

The Board discussed the format of the meeting minutes, and whether the Board could instead replace the meeting minutes with a link to the entire meeting. Ms. Webb stated the minutes are supposed to be a summary. Board staff redesigned the minutes to ensure accuracy by including the video link for each agenda item, capture the motion and the results, and provide some limited summary. She added that individuals can get transcripts through YouTube or through the Board if a word-by-word recounting of the meeting is desired.

Public comments on Agenda Item 3 were provided by: Susan Lauren, Eric Andrist, Anne Fuqua, Rosie Arthursdotter, Kristen Ogden, and Hanna Rhee.

Dr. Thorp moved to approve the minutes for the May 19-20, 2022, Board Meeting/S: Dr. Hawkins; Motion carried 10-0 (Dr. Bholat abstained).

Agenda Item 4: President's Report, including notable accomplishments and priorities ([Link to video](#))

President Lawson welcomed new colleagues Nicole Jeong, J.D., and Dr. Michelle Anne Bholat. She discussed her activities in the recent weeks, the Medical Board has been hard at work regarding a variety of legislative matters that will be discussed later in the agenda. The President discussed combating misinformation and disinformation which continues to be a priority area of focus for her and the Medical Board. She added AB 2098 will be discussed later in the agenda. She went on to mention the House Select Sub Committee on the Coronavirus crisis released recent reports on detailed findings regarding how dangerous misinformation and disinformation is spread and what corrective steps can be proposed to avoid future public harm. She mentioned participating in a dinner with American Board of Internal Medical Foundation's forum which brought together several stakeholders to discuss strategies for combating misinformation and disinformation.

Public comments on Agenda Item 4 were provided by: Eric Andrist, Hanna Rhee, Michele Monserratt-Ramos, Rosie Arthursdotter, Virginia Farr, Susan Lauren, and Laura Powell.

President Lawson presided over the swearing in of Dr. Bholat and Ms. Jeong to the Board.

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Agenda Item 5: Board Member Communications with Interested Parties ([Link to video](#))

Board members discussed their contacts with members of the public and stakeholders.

Mr. Brooks disclosed that he has conversations with four members of the public focusing on inefficiency, patient care, advocacy, and mis/disinformation. He states their comments and concerns were taken to heart and he will follow up on them.

Dr. Hawkins stated he participated in an FDA Advisory Committee regarding the COVID-19 vaccine.

Mr. Watkins said he spoke to someone at Valley Public Radio.

Ms. Lawson disclosed she had contacts with FSMB both in her role as a committee member and she attended a dinner where she had contact with the attendees; she participated in the ABIM'S Foundation Forum in Colorado Springs, which was attended by 200 individuals; had numerous conversations with members of the public; and has met with state legislators as part of the Board's legislative activity.

[Public comments on Agenda Item 5 were Provided By:](#) Eric Andrist, Hanna Rhee, Laura Powell, Rosie Arthursdotter, and Virginia Farr.

Agenda Item 6: Updates from External Stakeholders ([Link to video](#))

Updates were provided by external stakeholders including Gloria Castro with the Attorney General's Office (AGO), Kathleen Nichols with the Health Quality Investigations Unit (HQIU), and MaryKate Cruz-Jones with the Department of Consumer Affairs (DCA).

Ms. Castro welcomed Dr. Bholat and Ms. Jeong to the Board and provided them a thorough explanation of the AGO's Health Quality Enforcement section and its role in the Board's Enforcement Process. Ms. Castro welcomed new members of the team. She reminded the Board that it has the highest burden of proof of "clear and convincing evidence to a reasonable certainty" among the DCA boards. She welcomed two new members of her team at the AGO.

Ms. Nichols discussed the mission of HQIU. She stated that HQIU has 20 vacancies, which is a 24 percent investigator vacancy rate, and four new investigator positions were awarded on July 1, 2022. Ms. Nichols discussed SB 425, which was effective January 1, 2020, and requires healthcare facilities and others to report sexual abuse and misconduct complaints made by a patient against a licensed healthcare practitioner to appropriate regulating entities within 15 days. Ms. Nichols shared HQIU currently has 13 candidates undergoing background review and two candidates have received start dates. Ms. Nichols said HQIU participated in two job fairs and continues to hold hiring panels to identify new candidates. Ms. Nichols provided a brief overview of HQIU's progress which included information on its workload and aged cases. She said the Division of Investigations has made significant progress within the past two years and continues to look for ways to improve its progress with aged cases.

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MaryKate Cruz-Jones provided updates on behalf of the Executive Office and welcomed new Board Members Dr. Bholat and Ms. Jeong. Ms. Cruz-Jones discussed SB 189 which was signed by the Governor on June 30, 2022, and reinstates on July 1, 2023, on remote meeting provisions of the Bagley-Keene Act Open Meeting Act that were in place during the pandemic. DCA is asking boards to complete the Public Meeting Survey to assist boards in tracking meeting costs in order to compare costs between in-person and online meetings.

Ms. Cruz-Jones also discussed Brown Bag meetings with Executive Officers and Bureau Chiefs on July 5, 2022, to roll out changes to DCA's regulation development and approval process. An August 10, 2022, Brown Bag meeting focused on the topic of social media including best practices and content. Ms. Cruz-Jones discussed Department of Consumer Affairs' Workforce and Succession Plan. Ms. Cruz-Jones discussed Department of Consumer Affairs employee departures and transitions. She went on to advise new board members of their required form 700, which documents any conflicts of interest, and mandatory ethics, sexual harassment prevention, defensive driver, and Board member orientation trainings and their timeframes.

Ms. Lubiano regarded Ms. Nichol's updates as helpful and would like them to continue.

Mr. Watkins, Ms. Castro, and Ms. Nichols discussed Board member roles and responsibilities and the potential revision of the Board's Disciplinary Guidelines, and HQUI cases and their final outcomes.

Board Members discussed public comments, 805 Reports and Business Professions Code 2027.

Ms. Lawson proposed further discussion to take place at a future Board meeting.

[Public comments on Agenda Item 6 were provided by:](#) Susan Lauren, Eric Andrist, Monique Hines, Hanna Rhee, Rosie Arthursdotter, Kimberly Turbin, Xavier DeLeon, Tracy Dominguez, Michele Monserratt-Ramos, and Christina Hildebrand.

RECESS

Agenda Item 7: Update from External Boards ([Link to video](#))

Dr. Hawkins discussed updates from the Physician's Assistant Board. The PA Board last met on August 8, 2022, virtually. There are total of 287 accredited PA programs in the US and 19 programs in California.

The programs are a three-year postgraduate program, with the average number of students per program is 46 and current annual capacity of 883. The PA Board agenda and meeting material can be viewed at pab.ca.gov.

He told the Board that he provided a report to the PA Board briefing them on the Board's Third Quarter Newsletter, its participation in a Senate Business and Professions Committee Hearing regarding the Board's legislative proposals, a physician extortion scam update, and an update on

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the Board's Guidelines for Prescribing Controlled Substances for Pain. He also informed the PA Board that Ms. Lawson was awarded the FSMB's Merit Award during its annual meeting held in New Orleans.

[Public comments on Agenda Item 7 were provided by:](#) Eric Andrist, Rosie Arthursdotter, Hanna Rhee, and Virginia Farr.

Agenda Item 8: Executive Management Report (Link to video)

Mr. Prasifka discussed the Administrative Summary. He provided a staffing update regarding concerns with vacancy rate, and difficulties with retention and recruiting staff. With regard to the budget update, he stated the Medical Board is not on a sustainable financial footing and discussed receiving a \$10 million loan from the Automotive Repair Board, which made the Board solvent but only on a short-term basis. He stressed the importance of revisiting the fee increase and it remains a legislative priority for the Board.

Mr. Prasifka discussed the physician survey and material regarding scams on physicians. He discussed media and external relations. He mentioned the release of the August newsletter. He discussed participating in a roundtable discussion August 5, 2022, regarding the Mexico Pilot Program.

Mr. Prasifka reported that Deputy Director Reji Varghese and Public Information Manager Carlos Villatoro met with a representative of Consumer Watchdog. He mentioned a July 14, 2022, Public Stakeholders Meeting regarding the update on the Board's Guidelines for Prescribing Controlled Substances for Pain, which was very productive.

He indicated that on June 20, 2022, Board Member James Healzer, M.D., was confirmed unanimously by the state Senate.

He provided an update on the Complaint Liaison Unit, highlighting that the Board is looking to have some public stakeholder meetings on this topic.

He provided several Enforcement and Complaint Unit updates. Cost recovery was introduced on the first of January and so far, the Board has recovered \$239,000, from 40 cases identified for cost recovery, adding that the Board is only allowed to recover costs incurred from the first of January 1, 2022, and onward. Cost incurred before January 1 are not recoverable.

The Board has not issued any letters of advice since the signing of the Board's sunset bill, as no regulations have been promulgated. In addition, the law provides that the letters of advice cannot be issued in cases involving patient care.

The Board's enforcement monitor, appointed by DCA, has begun their work and Board staff has been working with them to supply them with all the information they require to accomplish their task.

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The Central Complaint Unit's average time to initiate a complaint is 5 days, and has been consistently low, and it is a tribute to the hard work of the Board's staff.

Mr. Prasifka provided several Licensing Program updates, emphasizing that this is an extremely busy time, as applications are up by more than 68 percent since last year, license issued to physicians and surgeons are up 84 percent. He said the Board has been able to maintain its statutory deadlines. He mentioned the increase in licensing activity is due to the change in law, SB 896.

Mr. Prasifka updated the Board on the Mexico Pilot Program, and stated that the Board has issued 18 licenses, and added a fifth community health center has signed on to participate in the project, and the Board is working with stakeholders and UC Davis, who is doing the evaluation of the program to ensure that the Board is meeting its statutory requirements are met in relation to the program.

The Board's webmaster and Consumer Information Unit continues to receive numerous inquiries and Mr. Prasifka thanked the Board's Licensing Program for their outreach efforts.

Ms. Lubiano mentioned the section on the Complaint Tracking System and holding stakeholder meetings to gather input. She mentioned she would like to volunteer to gather input to help facilitate that process. Dr. Bholat offered to volunteer as well and offer her assistance for the Complaint Tracking System and outreach to the Expert Reviewer Program.

Mr. Brooks noted that the numbers on the website include complaints that are not germane to the Board. He asked if the Board has corrected that.

Mr. Prasifka said beginning with last Annual Report, the Board began including unactionable complaints to give the public a sense of what happens to complaints when they are closed. He mentioned a change in the reporting of complaint numbers would need to be discussed by the Board at a future Board meeting.

Mr. Brooks proposed discussing complaint tracking numbers reporting at a future meeting,.

Mr. Bone stated there is a code section that pertains to the Board's Annual Report requiring the number of complaints received by the Board to be reported. He added that the Board included information about unactionable complaints in last year's annual report to reflect complaints that are unactionable. Mr. Brooks stated the unactionable complaints could be reported apart from the Board's actual complaints.

Dr. Thorp agreed with Mr. Brooks and asked why it seems that the number of complaints have been increasing since fiscal year 19-20.

Mr. Watkins and Ms. Jones discussed questions regarding agenda Item 8b. He questioned the accuracy of the administrative outcomes reported in the staff report for agenda item 8b, compared to the numbers reported in the Board's Annual Report. Ms. Jones stated she will look into the numbers.

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Mr. Watkins mentioned testimony provided by people from Bakersfield and complaining to the Board that staff is not responsive to them. He requested staff provide clarity at the next meeting regarding 805 reporting in Bakersfield.

Ms. Lawson proposed 805 Reporting have a separate agenda Item. Mr. Watkins requested to receive 70-80 percent of Board Meeting materials earlier than a week in advance to provide more time for proper review. Mr. Prasifka noted that the Board staff will comply with the Board's request to provide the Board meeting materials sooner, however, there are many agenda items in which the Board's staff does not receive the information until a very late stage, such as legislative changes.

Mr Watkins asked if the opportunity to meet with Board leadership is open to all patient advocates. Mr. Varghese said the invitation is extended to everyone who wants to meet with himself or other members of the Board's executive management team.

In response to Mr. Watkins' question about accuracy of reports, Ms. Lawson pointed out that the Board's Annual Reports are reported differently than they are in Agenda Item 8b. The staff report adds two subsets of numbers reported in the Annual Report, hence the difference.

Ms. Lawson noted that she too has met with patient advocates. Mr. Watkins requested an update on the status of licensing timelines. He wanted to know the geographic locations of individuals applying for PTLs and P&S licensing especially in the primary care specialty. He noted his concern for physician shortages in various regions of the state.

Ms. O'Conner stated she can provide some of the information as it is readily available and will work the Board's ISB team to provide the rest.

[Public comments on Agenda Item 8 were provided by:](#) Eric Andrist, Susan Lauren, Rosie Arthursdotter, Hanna Rhee, Virginia Farr, and Marian Hollingsworth.

Agenda Item 9: Update on Revising Guidelines for Prescribing Controlled Substances for Pain ([Link to video](#))

Mr. Prasifka discussed draft guidelines that were distributed and meeting with interested parties on July 14, 2022, regarding constructive comments received. He stated he is working with subject matter experts to refine the existing guidelines focusing on several discreet areas.

Dr. Thorp added that the Interested Parties Meeting was well-attended, and the comments were thoughtful. Concerns were brought up at the Interested Parties Meeting about the draft document's use of the words "must" and "should." He stressed the importance of the careful use of those terms. He noted that work done so far on the revision of the guidelines will make it easier for patients who rely on controlled substances for pain to get the medication they need, without making physicians feel as if they are operating outside of the guidelines.

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[Public comments on Agenda Item 9 were provided by:](#) Kristen Ogden, Heather Grace, Virginia Farr, Monty Goddard, Ann Fuqua, Hanna Rhee, Rosie Arthursdotter, Rochelle Odell, and Joseph Kramer.

Mr. Prasifka addressed and acknowledged public comments.

Dr. Thorp stated that the Board is not on a deadline for revising the prescription guidelines and said that the Prescribing Task Force was willing to delay the final draft to hold another stakeholder meeting to further improve the draft.

Agenda Item 10: Mexico Pilot Program- UC Davis 1st Annual Program Report ([Link to Video](#))

Dr. Sergio Aguilar-Gaxiola presented UC Davis' 1st Annual Program Report of the Mexico Pilot Program.

Dr. Aguilar-Gaxiola's presentation covered the scope of the evaluation, the metrics used by his team, survey results and initial findings. He stated that the first report focuses on two of seven measures that will be used in the evaluation including Measure 5, which is the impact on cultural and linguistical services, and Measure 6, with is the impact on limited-English-speaking-patient encounters.

Dr. Aguilar-Gaxiola noted that future assessments will focus on the other measures including quality of care; adaptability of physicians; impact on working and administrative environment in nonprofit community health centers and impact on interpersonal relations with medical licensed counterparts in health centers; patient experience; and recommendations on whether the program should be continued, expanded, altered, or terminated.

The presentation was followed by Board member discussion.

[Public comments on Agenda Item 10 were provided by:](#) Arnoldo Torres, Dr. Toxicology, Hanna Rhee, and Rosie Arthursdotter.

RECESSED

Agenda Item 11: Discussion and Possible Actions related to AB 890 Regulations ([Link to Video](#))

The Board of Registered Nursing's Executive Officer Loretta Melby discussed and provided updates for all regulations related to AB 890.

She stated regulations on the implementation of AB 890 are with the DCA Director for review and on target to go live on January 1, 2023. She stated they have had several stakeholder meetings and are hopeful for a good outcome.

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Ms. Melby stated they updated CCR 1480 with a definition on what a group setting is. She stated CCR 1481 was updated and 103 and 104 were added as separate categories as Nurse Practitioners (NPs) as both categories have different expanded scopes of practices. She stated CCR 1482.3 is the application process for a 103 NP and 1484 is the application process for a 104 NP. She discussed CCR 1487 Notice to Consumers, which explains that they are an NP under the BRN.

She stated the BRN will be moving forward with the transition to practice regulations. It is 4,600 hours, or three years equivalent, that an NP after graduation, getting a national certification and getting licensed in California would be able to complete and then submit to the Board, adding that direct patient hours must be in a practice area that is in alignment with their national certification.

Ms. Melby discussed standardized procedures in length. She mentioned that the BRN will be using the IDEAL system for license validations and/or attestation. She anticipates that there will be 103 NPs that will be entering into practice in January 2023, who will be able to work without standardized procedures in a group setting, and three years after that they will be able to apply to be a 104 NP, giving them the ability to work independently in their own practice without standardize procedures.

[Public comments on Agenda Item 11 were provided by:](#) Rosie Arthursdotter, Eric Andrist, Virginia Farr, and Kimberly Turbin.

Agenda Item 12: Discussion and Possible Action on the Development of Complaint Liaison Unit (Link to Video)

Mr. Bone and Ms. Jones discussed staffs updated proposal to creating a Complaint Liaison Unit within the Board that was last discussed in February's meeting. Mr. Bone does not wish to finalize proposal, rather he wishes to receive public comment and direction from the Board. Staff will include a final proposal in the Sunset report to be presented to the Board at December's meeting for final approval.

He mentioned the goals of the program and there are four areas of responsibility that are expected for the unit, including for them to consider requests from consumers to evaluate whether their complaint was closed appropriately, when applicable. The Complaint Liaison Unit was a topic of discussion during the May 6 hearing of the Senate Committee on Business, Professions and Economic Development regarding the Board's legislative proposals, and state legislators expressed interest in the program. The Committee encouraged the Board to provide a proposal for their consideration.

Board Members discussed the proposal and encouraged staff to continue working on it for sunset review.

[Public comments on Agenda Item 12 were provided by:](#) Rosie Arthursdotter, Alka Airy, Susan Lauren, Xavier DeLeon, Hanna Rhee, Tracy Dominguez, Marian Hollingsworth, Christina Hildebrand, Eric Andrist, Michele Monserratt-Ramos, Wendy Knecht, and Kimberly Turbin.

Agenda Item 13: Discussion and Possible Action on New Legislative Proposals for the 2022 Sunset Report ([Link to video](#))

Mr. Bone discussed the Board's preparation for sunset review and proposals for the Board to consider. He said Board staff is preparing its sunset report and will address questions received from legislative staff in the report. One key section of the report consists of new issues, which allows the Board to make new requests and recommendations to the Legislature for statutory changes. He pointed out that in the 2020 sunset report, the Board included many items under new issue and had some success. Mr. Bone informed the staff that the purpose of the agenda item is to get direction from the Board on what to include under new issues in next year's report. Mr. Bone said the staff recommends including in next year's report all items from the 2020 report that did not make it into law, a legislative proposal that would address the issue of licensees under Board investigation who ask their patients to rescind their release of medical records and/or dissuade patients from cooperating with the Board, and some clarifying changes regarding the Board's Licensing process, with the most significant proposal being to allow PTL holders who wish to transition to a Physician's and Surgeon's license an additional 60 days to complete the USMLE Step 3 examination requirement.

Ms. Lawson directed staff to further review improvements to 805 reporting, and to the Board's operations. Board members discussed increasing fees or other possible sources of revenue to fund Board operations. Dr. Hawkins proposed an interested parties meeting prior to the sunset review and staff was directed to hold one between now and December 2022.

[Public comments on Agenda Item 13 were provided by:](#) Susan Lauren, Hanna Rhee, Xavier De Leon, Alka Airy, Rosie Arthursdotter, Tracy Dominguez, Eric Andrist, Kimberly Turbin, Michele Monserratt-Ramos, and Helena Pappas.

BREAK

(Mr. Brooks departed the meeting)

Agenda Item 14: Discussion and Possible Action on Legislation and Regulations ([Link to video](#))

Legislation

Mr. Bone discussed updates since the Board's May 2022 Meeting. The Legislature has completed most of their work for the year as they make last minute amendments to bills and adjourn for the year on August 31, 2022. Mr. Bone stated this would be the final Board meeting before the end of their session.

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Mr. Bone stated he is expecting bills of interest to the Board to be amended after today's meeting. He noted that AB 562, AB 852, AB 1636, AB 1662, AB 1733, AB 2060, SB 57, SB 1440, and SB 1441 did not require Board discussion because they are not expected to move forward or not have been significantly amended contrary to the Board's position taken at a prior Board meeting.

AB 657 ([Link to video](#))

Mr. Bone presented AB 657. This bill requires the Board, as well as other licensing boards, to expedite the application for licensure from a provider who intends to provide abortions in California. He stated in wake of a recent Supreme Court decision certain stakeholders expect California to receive an influx of patients coming to the state and a need for providers. He further stated AB 657 does not change licensing standards for these applicants; however, would expedite the staffs review of the application reducing the processing time.

Mr. Bone went on to say AB 657 was modeled after an existing law in the Medical Practice Act that expedites the license for those who intend to practice in underserved areas in the state. Mr. Bone is requesting the Board assume a support position on AB 657.

[Public comment on AB 657 was provided by:](#) Hanna Rhee.

Mr. Watkins moved to support AB 657/S: Dr. Hawkins; Motion carried 9-0 (Dr. Thorp abstained).

AB 1102 ([Link to video](#))

Mr. Bone presented AB 1102. This bill would clarify existing law that requires healthcare professionals providing telephone medical advice services from an out of state location to do so consistent with state laws governing their respective licenses. This law also specifies that telephone medical advice services are required to comply with all directions and requests of information made by DCA and the respective healing arts licensing board. The last time the Board discussed this bill they adopted a support position version of the bill; however, the bill was amended to require the reporting of certain information from that service on an as-requested basis. Further the amendment clarifies that the request can come from either DCA or the healing arts licensing board. Mr. Bone requested the Board assume a support position on the current version of the bill.

[No public comments on AB 1102 were provided.](#)

Dr. Thorp moved to support AB 1102/S: Dr. Healzer; Motion carried 10-0.

AB 1278 ([Link to Video](#))

Mr. Bone Presented amendments to AB 1278. This bill requires physicians to provide written notification to inform patients of the Federal Centers for Medicare and Medicaid services open payment online database and to post a similar notice in an area likely to be seen by patients in their office and on the physician's website. Mr. Bone stated the Board last discussed this Bill a year ago and adopted a support position. Since then, the bill has been waiting for action in the Senate's Appropriation Committee and was approved earlier this month and amended. Mr. Bone further stated the changes to the Bill are noted in the analysis; however, additional amendments to the Bill will likely be added today or tomorrow. Mr. Bone discussed some language that was struck from the bill that requires physicians to provide the notice to their patients every two years, that the notice may include more than one signature line to enable the same record to be used for multiple years, and language that delays the posting of the Open Payments Database link on the website until January 2024, and makes it clear that it only applies to physicians who have a website.

Board members discussed the provisions of AB 1278 in depth.

[Public comments on AB 1278 were provided by:](#) Wendy Knecht, Dennis Cuevas-Romero, Katrina Reyes, Eric Andrist, and Marian Hollingsworth.

Dr. Healzer moved to maintain support as amended AB 1278/S: Dr. Hawkins; Motion carried 9-1 (Dr. Thorp: No).

AB 2098 ([Link to video](#))

Mr. Bone presented AB 2098, which establishes that the dissemination of misinformation/disinformation related to COVID-19 by a physician to their patient in the form of treatment or advice constitutes unprofessional conduct. . This bill currently has a position of support if amended. Mr. Bone discussed the current amendments of AB 2098 and recommends the Board change its position to support.

Ms. Lawson confirmed the author of the bill agreed to advance the amendments of AB 2098 and supports the Amendment of AB 2098. Board members discussed the current amendments.

[Public comments on AB 2098 were provided by:](#) Christina Hildebrand, Dennis Cuevas, Susan Lauren, Rosie Arthursdotter, Eric Andrist.

Dr. Hawkins moved to support AB 2098/S: Mr. Watkins; Motion carried 9-1 (Dr. Bholat-No).

AB 2178 ([Link to video](#))

Mr. Bone presented AB 2178 as a follow-up to prior legislation to establish a definition of Academic Medical Centers (AMC) and authorizes those facilities to sponsor physicians seeking a special faculty permit. The bill proposes some technical changes to some of the definitions of an AMC to align them with current terms and the training experiences offered at the facilities. The amendments are not expected to make substantial change the requirements to qualify as an AMC. The most recent amendment clarifies the requirement for residents who serve at an AMC. Mr.

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Bone stated the Board previously adopted a support position for AB 2178 and requests the Board maintain its support position of AB 2178.

[No public comments on AB 2178 were provided.](#)

Dr. Thorp moved to recommend the Board maintain a support position/S: Dr. Tsai; Motion Carried 10-0.

AB 2236 ([Link to video](#))

Mr. Bone presented AB 2236, which would allow a qualified optometrist to perform certain advanced surgical procedures provided they successfully complete specified education and training standards. AB 2236 establishes standards for an optometrist who wishes to perform advanced surgical procedures. The oversight for these procedures will fall to the State Board of Optometry; however, there is one key role for physicians in this program, which is to act like qualified educators to the optometrist going through training and education as specified. Mr. Bone stated in order to be qualified the physician must be board certified in Ophthalmology, in good standing with the Medical Board and have an active surgical practice.

Mr. Bone provided the supporting organizations and those who oppose the bill and stated that letters from the associations, both for and against the bill, are appended to the staff's analysis of the bill. He indicated that the Board's staff does not have a recommend position on the bill.

Dr. Hawkins asked which procedures are included in the bill. Mr. Bone stated that they are listed on page two of the analysis and the analysis listed seven different procedures pertaining to AB 2236. He said it was a challenging prospect if the Board wishes to weigh in on the safety and consumer protection aspects relative to authorizing optometrist to perform the specific procedures. Relevant as well to the Board, is establishing standards and expectations for ophthalmologists to act as these educators who are going to play a critical role in training the optometrists to do the work.

Board members discussed the bill in detail and expressed their concerns with expanding the scope of practice for optometrists without further research.

[Public comments on AB 2236 were provided by:](#) Craig Kleiger, Marian Hollingsworth, Rosie Arthursdotter, Brandon Marchie, and Susan Lauren.

Dr. Thorp moved to oppose AB 2236/S: Dr. Hawkins; Motion carried 10-0.

AB 2626 ([Link to video](#))

Mr. Bone presented AB 2026, which would prohibit the Board and other licensing boards from disciplining a licensee who is sanctioned by another state for performing an abortion that would be

lawful under California law if it were performed in California. The Board adopted a support position in a prior meeting; however, since the last meeting the bill was amended to clarify that discipline or criminal convictions in other states solely for performing an abortion would not lead to licensing denials or disciplinary actions in California. Mr. Bone recommended a support position on the current bill.

[No public comments were provided on AB 2626](#)

Dr. Hawkins moved to adopt a support position for AB 2626/S: Dr. Tsai; Motion carried 10-0.

SB 528 ([Link to video](#))

Mr. Bone presented SB 528. This bill requires certain forms related to the provisions of psychotropic medications be included in a foster youth's case plan. The prior version of the bill required the Department of Social Services create an electronic healthcare portal through which providers would be able to access health information included in a foster child's health and education summary. The current version of the bill requires a foster youth's case plan include certain documents related to psychotropic medications prescribed to them. This bill is expected to ensure current and future caregivers and health care providers have access to their medical history. Further, the bill may help ease the Board's access to medical records related to inappropriate prescribing cases. Mr. Bone requests the Board support the current version of the bill.

[Public comments on SB 528 were provided by:](#) Susan Lauren and Rosie Arthursdotter.

Dr. Healzer moved to support as amended AB 528/S: Dr. Tsai; Motion carried 10-0.

SB 923 ([Link to video](#))

Mr. Bone presented SB 923. This bill allows current Continuing Medical Education (CME) requirements related to cultural competency to be satisfied through evidence-based training related to individuals who identify as transgender, gender-diverse, or intersex, also referred to as TGI in the bill. The bill also imposes several requirements on healthcare service plans, health insurers and Medi-Cal Managed Care plans related to training and inclusive care to the TGI communities. Mr. Bone advised the requirements are briefly discussed in the analysis; however, the present focus is on the CME requirements. Mr. Bone continued stating overall SB 923 is intended to ensure that physicians and health insurance staffers are trained in evidence based cultural competency related to TGI communities.

Mr. Bone pointed out that the bill expands upon the suggested ways a CME provider may comply with a requirement to offer culturally competent training to physicians. He said the law requires CME courses to include cultural and linguistic competency in the practice of medicine; but

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generally provided options, not prescriptions how to do so. Mr. Bone recommended the Board to adopt a support position on the CME provisions of SB 923.

[No public comments were provided on SB 923.](#)

Mr. Watkins moved to adopt a support position on SB 923/S: Dr. Hawkins; Motion carried 10-0.

SB 1259 (Link to video)

Mr. Bone presented SB 1259. This bill proposes to update current law to allow a pharmacist, subject to certain protocols adopted by the Board of Pharmacy and the Medical Board, to independently furnish any opioid antagonist that is approved by the Food and Drug Administration (FDA). Currently, an authorized pharmacist may independently furnish Naloxone Hydrochloride to an individual in accordance with those jointly developed protocols. Mr. Bone advised the protocols are included in the analysis. Mr. Bone advised this Bill is intended to increase patient access to other lifesaving medications. Mr. Bone recommended the Board adopt a support position for SB 1259.

Mr. Bone and Dr. Hawkins discussed the Pharmacy Board support of SB 1259.

[Public comment on SB 1259 was provided by:](#) Rosie Arthursdotter.

Dr. Hawkins moved to adopt a support position for SB 1259/S: Mr. Watkins; Motion carried 10-0.

Regulations

Discussion and Possible Action on Proposed Regulations for the Physician Health and Wellness Program (Link to video)

Ms. Webb discussed material related to proposed rulemaking to establish Physician Health and Wellness Program (PHWP). She stated the Board is authorized to establish a PHWP pursuant to Business and Professions Code (BPC) section 2340 with the goal of providing early identification and interventions to support rehabilitation of substance abuse to ensure physicians remain able to practice medicine in manner that will not endanger the public and will maintain the integrity of the medical profession.

She said BPC section 2340.2(e), requires the PHWP to comply with Uniform Standards Regarding Substance-Abusing Healing Arts Licensees, adding that the PHWP regulations have gone through

many revisions to refine the language to meet the Uniform Standards and the statutory requirements for the PHWP.

Ms. Webb said the proposed rulemaking sets forth the definitions used throughout the regulations for the program; sets forth the criteria for admission into the program; describes the record retention requirements; sets for the requirements for the program vendor and the participants; and includes internal citations to the Uniform Standards adopted by the Board. Further, it describes the reporting requirements for practice restrictions, violations, withdrawals, and terminations, and the requirement for the vendor to respond to Board inquiries about licensees.

It also sets forth the vendor's required reporting to the Board and the requirement for external independent audits. The rulemaking modifies the Board's Uniform Standard Regulations to provide for the changes approved by DCA's Substance Abuse Coordination Committee, under the biological fluid testing section and it repeals obsolete regulations relating to the Board's defunct Diversion Program.

Ms. Webb requested the Board make a motion to approve the text and direct staff to prepare necessary regulatory documents to submit to Department of Consumer Affairs and Business Consumer Services and Housing Agency. Upon those agencies' approval, submit the documents to the Office of Administrative Law to notice the proposed regulatory language to amend sections 1357, 1357.1, 1357.9, and 1361.5c3, repeal sections 1357.2, 1357.3, 1357.4, 1357.5, 1357.6, and 1357.8, and adopt sections 1357.10, 1357.11, 1357.12, 1357.13, and 1357.14 of Division 13 of Title 16 of the California Code of Regulations, and if no substantive adverse comments are received during the 45-day comment period, authorize staff to finalize rulemaking file and submit it to Department of Consumer Affairs and Agency, and upon approval to the Office of Administrative Law, and to make technical or substantive changes, and to adopt text without returning to the Board.

[Public comment on the proposed PHWP regulations was provided by:](#) Rosie Arthursdotter.

Dr. Hawkins/S: Dr. Thorp moved to approve the motion; Motion carried 10-0.

Discussion and Possible Action on Proposed Responses to Public Comments received on the Modified Text and adoption of the Modified Text for Notice to Consumers ([Link to video](#))

Staff Counsel Kerrie Webb presented proposed responses to written and oral public comments received by the Board on the modified text for the proposed rulemaking on Notice to Consumers.

She explained the rulemaking went through a 45-day comment period, and the Board received comments from two entities, the California Hospital Association, and the California Medical Association, asking the Board to consider modifications to the proposed regulations.

Board staff determined several of the suggestions would improve the proposed regulations, without undermining the goal of the regulations. The Board approved modified language during the May 2022

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Board meeting, which included the addition of a quick response (QR) Code to the posted sign that would take consumers to the Board's Notice to Consumers webpage, which will be developed to provide information regarding the Notice to Consumers requirements and templates of the notice documents translated into multiple languages.

The approved modified text went out for a 15-day comment period, and the Board received 19 comments total. Thirteen commenters specifically objected to the inclusion of a QR Code on the Notice to Consumers template. Six commenters did not specifically reference changes to the modified text, so they did not meet the requirements for consideration at this rulemaking juncture, but those comments were reviewed, and the comments provided general objections to the requirement to provide the notices.

Regarding the comments objecting to the QR Code, the concerns included that providing a QR Code would encourage individuals to file complaints against physicians, in a casual way and without appreciation for how damaging a complaint filed with the Board can be to a physician. Some commented that patients should speak to the physician, or practice, directly about any complaints, rather than filing a complaint with the Board. Others wrote that the inclusion of a QR Board would inundate the Board with frivolous complaints and it will distract the Board from legitimate complaints.

Some believe that the flood of complaints generated by the QR Code will contribute to physician burnout and discourage physicians from practicing in California.

Ms. Webb suggested the proposed response to the comments be that physicians are already required to provide patients a notice that medical doctors are licensed and regulated by the Medical Board and provides the Board's phone number and website. Further, Business and Professions Code 2026 requires the Board to adopt regulations to enhance this information to include among other things that patients can check on their physician's license and file a complaint with the Board. The notice provides several ways to reach the Board, including by phone, email, website and the QR Code.

The QR code will not take users directly to the complaint form. Regardless, an individual who wants to file a complaint with the Board can do so through any method of contacting the Board. In addition, licensees are free to post their own notices about how patients may file complaints within their practice, but they must comply with the Board's notice requirements. Since licensees are already required to provide notices to consumers, the Board does not anticipate there will be a large influx of complaints.

Ms. Webb suggested that the Board adopt the modified text as it was previously approved without making any further changes.

Dr. Tsai recommended the Notice to Consumers Webpage stated a disclaimer that provides information pertaining to the type of complaints the Board handles, to cut down on office decorum complaints. Ms. Webb stated the disclaimer would not be part of the regulations, but the webpage can link to existing information on the website that explains the type of complaints the Board handles, and those it has no jurisdiction over. She reiterated that the QR code will not link to the complaint form, but rather the Notice to Consumer webpage, which will provide the authority for requiring the Notice to

Consumers and links to multi-language notice templates. The consumer can then use any one of the contact methods on the notice and website to file a complaint.

Ms. Webb requested a member to make a motion to: Approve the proposed responses to the comments on the modified text for the proposed rulemaking on Notice to Consumers (Title 16, of the California Code of Regulations, Sections 1355.4, 1378.5, 1379.4, and 1379.58); Adopt the modified text as-is for the proposed rulemaking on the Notice to Consumers; and authorize staff to finalize the rulemaking file and submit it to the Office of Administrative Law, including the authority to make any technical or non-substantive changes, and to adopt the modified text without returning to the Board.

[Public comment on the proposed Notice to Consumers regulations was provided by:](#) Rosie Arthursdotter.

Dr. Thorp moved to motion/S: Dr. Bholat; Motion carried 10-0.

Agenda Item 15: Officer Elections ([Link to video](#))

Board Members discussed officer elections. Ms. Lawson discussed the length of terms per the Board Administrative Manual and the Board must elect officers at the first meeting of the fiscal year. She advised that the Board may vote for a slate of officers or elect officers one by one with the positions being president, vice president, and secretary.

[Public comments on Agenda Item 15 were provided by:](#) Michele Monserratt-Ramos, Eric Andrist, and Hanna Rhee.

Dr. Thorp motioned to elect a slate of officers including to continue with Ms. Lawson as President, Dr. Hawkins as Vice President, and Ms. Lubiano as Secretary /S: Dr. Tsai; Motion carried 10-0.

Agenda Item 16: Future Agenda Items ([Link to video](#))

Ms. Lawson asked for an agenda item on what institutions are required to report to the Board and how the Board can facilitate better collaboration.

Dr. Healzer said he would like to know more about physicians who are obligated to report 805 actions and what actions the Board has taken against those physicians for failing to report.

Ms. Lubiano stated she would put in another request for trauma-informed training. Board Members discussed LGBTQ+ health disparities and learning more about that.

Dr. Bholat asked for an agenda item in which the Department of Managed Care could provide some data that talks about their complaints and grievances. She added that there are some

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patients who think that the doctor can assist them with their out-of-pocket expense related to their PPO.

Ms. Jeong stated she too was interested in talking about 805 reports and their posting requirements.

[Public comments on Agenda Item 16 were provided by:](#) Rosie Arthursdotter, Hanna Rhee, and Eric Andrist.

Kristina D. Lawson adjourned the meeting at 7:30 P.M.

DRAFT

Friday, August 26, 2022

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, President
Ryan Brooks
Michelle Anne Bholat, M.D.
Randy W. Hawkins, M.D., Vice President
James M. Healzer, M.D.
Laurie Rose Lubiano, J.D., Secretary
Nicole Jeong, J.D.
David Ryu
Veling Tsai, M.D.
Eserick "TJ" Watkins
Richard E. Thorp, M.D.

Members Absent:

Asif Mahmood, M.D.

Board Staff Present:

Aaron Bone, Chief of Legislation and Public Affairs
Sean Eichelkraut, Information Technology Manager
Jenna Jones, Chief of Enforcement
Tonya Moriarty, Licensing Analyst
Marina O'Connor, Chief of Licensing
William Prasifka, Executive Director
Letitia Robinson, Research Data Specialist
Reji Varghese, Deputy Director
Carlos Villatoro, Public Information Manager
Kerrie Webb, Staff Counsel

SOLID Staff Present:

Elizabeth Coronel, Facilitator and Strategic Planner
Trisha St. Clair, Facilitator and Strategic Planner

The Board's Strategic Planning Session was conducted by the Department of Consumer Affairs' SOLID Team and Strategic Planning meeting outcomes will be incorporated into the Strategic Plan (Video: [Link to Video](#)).