



# MEDICAL BOARD OF CALIFORNIA

## QUARTERLY BOARD MEETING



San Francisco Airport Marriott Waterfront  
1800 Old Bayshore Hwy  
Burlingame, CA 94010

**Thursday July 30, 2015**  
**Friday July 31, 2015**

### MEETING MINUTES

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

#### **Members Present:**

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

#### **Members Absent:**

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

#### **Staff Present:**

Liz Amaral, Deputy Director  
Christina Delp, Chief of Enforcement  
Dianne Dobbs, Legal Counsel, Department of Consumer Affairs, Legal Counsel  
Dennis Frankenstein, Business Services Officer  
Cassandra Hockenson, Public Affairs Manager  
Kimberly Kirchmeyer, Executive Director  
Regina Rao, Associate Government Program Analyst  
Letitia Robinson, Research Specialist  
Elizabeth Rojas, Business Services Officer  
Paulette Romero, Staff Services Manager II  
Jennifer Simoes, Chief of Legislation  
Lisa Toof, Administrative Assistant II  
Kerrie Webb, Legal Counsel  
Curt Worden, Chief of Licensing

**Members of the Audience:**

Jeremy Adler, Physician Assistant, California Academy of Physician Assistants  
 Teresa Anderson, California Academy of Physician Assistants  
 Carmen Balber, Consumer Watchdog  
 Gloria Castro, Senior Assistant Attorney General, Attorney General's Office  
 Yvonne Choong, California Medical Association  
 Zennie Coughlin, Kaiser Permanente  
 Julie D'Angelo Fellmeth, Center for Public Interest Law  
 Karen Ehrlich, L.M., Midwifery Advisory Council  
 Lou Galiano, Videographer, Department of Consumer Affairs  
 Bridget Gramme, Center for Public Interest Law  
 Doug Grant, Investigator, Health Quality Investigation Unit  
 Dr. Greenberg, Monitored Aftercare Program  
 Honorable Jerry Hill, Senator  
 Marian Hollingsworth, Consumers Union  
 Sarah Huchel, Senate Business and Professions Committee  
 Todd Iriyama, Investigator, Health Quality Investigation Unit  
 Gail Jara, California Public Protection and Physician Health  
 Lisa McGiffert, Consumers Union  
 Karen Miato, Physicians Well Being, University of California Los Angeles  
 Michelle Monseratt-Ramos, Consumers Union  
 Carolyn Navarro  
 James O'Donnell, Pacific Assistance Group  
 Kerry Parker, California Society of Addiction Medication  
 Adam Quinonez, Department of Consumer Affairs  
 Susan Shinazy  
 Michel Sucher, M.D., Monitored Aftercare Program  
 Ashby Wolfe, M.D., Centers for Medicare and Medicaid Services  
 Dr. Zemansky, Pacific Assistance Group

Mr. Serrano Sewell began by introducing special guest, State Senator Hill.

Senator Hill thanked the Medical Board of California (Board) for the great work they do and stated that Ms. Kirchmeyer and Ms. Simoes are extraordinary to work with. He also commented on how things have changed for the better in the past couple of years with the change of leadership, and feels that the Sunset Review that would be coming up in 2017 would go smoothly.

Senator Hill noted he is honored to Chair the Senate Business and Professions Committee. He explained a couple of situations that got him started on the path of politics and things that happened that encouraged him to want to make a difference in California.

Senator Hill stated one thing that had him truly concerned is a story he read in the paper about a physician in Orange County who killed some people by placing counterfeit, foreign materials in their bodies and for that, the physician got five years' probation. He noted, after reading that, he got rather angry and realized something is wrong. He then read some other cases, and stated he felt similarly concerned.

Senator Hill noted he knows that the Board is as concerned as he is about consumer protection around the state and he, as someone who looks at the Department of Consumer Affairs, reminded the Board that the main responsibility is to be sure that consumers are protected. He hoped that the Board would continue to look at that in the future knowing that consumers feel the same.

Dr. Krauss stated that he appreciates that Senator Hill took the time to come speak to the Board, and also that he knows the Senator appreciates what a difficult job the Board has. He also noted that with all the decisions the Board makes in collaboration with the Attorney General's (AG's) Office, it is often the Board that pushes for more, but with respect to due process in the law, sometimes the "onion had to be peeled" in the physicians discipline and licensure as well. He reminded the Senator that the Board is here to protect the people, not the physicians.

Mr. Serrano Sewell thanked Senator Hill for taking time out of his busy schedule to come and speak at the Board Meeting.

#### **Agenda Item 1 Call to Order/Roll Call**

Mr. Serrano Sewell called the meeting of the Board to order on July 30, 2015, at 3:43 pm. A quorum was present and due notice was provided to all interested parties.

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

Lisa McGiffert, Director of Consumers Union Safe Patient Project, submitted a petition with over 5100 signatures of Californians that urges the Board to require physicians who are on probation to disclose their probationary status to their patients. The signatures were recently gathered online beginning in June by Consumers Union. She stated there are over 400 physicians that are on probation currently in California, many for very serious violations. Most of these physicians are actively practicing. Consumers Union is asking the Board to add a requirement to probationary orders that would directly affect a fraction of California physicians; only 400 of the 102,000 practicing physicians. She stated that it seems small, but is a paramount issue for patients who are being treated by these physicians. They feel it is unreasonable for consumers to rely on posting on the Board's website as a primary way to inform patients of physicians who have been disciplined. She noted that many consumers do not even know that the Board exists, let alone those who do not have access to the internet, such as the elderly, low income, etc. Consumers Union is recommending the Board amend the guidelines to make this requirement a standard condition and urged the Board to take this action.

Marian Hollingsworth stated she feels that the importance of physician disclosure of probation is a very important part of the informed consent process. She hopes the Board takes it seriously when the issue is discussed at the Board's October Board meeting. She noted that Mr. Serrano Sewell promised to have that item on the agenda for that meeting. She also stated that the media is following this story and feels it is important from the consumer safety standpoint. The ABC affiliate in San Diego did a report on the Consumers Union petition in June and the Sacramento Bee newspaper recently ran an

article written by Ms. Hollingsworth about the importance of physician disclosure for probation. She asked the Members to read the article to see this important issue from a consumer perspective.

Michelle Monserrat-Ramos noted the Consumers Union offers the opportunity to write guest blogs for their Safe Patient Project website. She recently contributed a post discussing a physician on probation and a comparison between the Department of Motor Vehicles (DMV) and the Board, asking readers to determine who did a better job of protecting the public. The example given was a licensee with a long arrest record, including eight months in jail. The DMV took swift action, before the Board did. The licensee surrendered his license, then reapplied, got his license back only for the physician to violate probation, six to seven months later.

**Agenda Item 3**      **Approval of Minutes from the May 7-8, 2015 Meeting**

*Ms. Yaroslavsky made a motion to approve the meeting minutes as written; s/Dr. Lewis. Motion carried unanimously.*

**Agenda Item 4**      **Board Member Communications with Interested Parties**

Ms. Yaroslavsky noted she had a conversation with several members of the Consumers Union Safe Patient Project regarding many of the same issues that have been brought up during the recent public comment period.

Dr. Bishop stated he had a discussion with the past president of CAPA regarding Senate Bill (SB) 337.

Ms. Wright noted she also had a conversation with several members of the Consumers Union Safe Patient Project and hopes there is a way for their passion to be used as way to assist with consumer safety.

Mr. Serrano Sewell stated he also had a phone conversation with the Consumers Union Safe Patient Project in regard to physician disclosure of probation. He also had a conversation with the Director of the Department of Consumer Affairs (DCA), which he would provide more details on in his President's Report.

**Agenda Item 5**      **Presentations of Physician Health Programs and Discussion/Consideration**

Ms. Robinson provided the Members with information on physician health programs. She stated the Board's Diversion Program was originally established to provide public protection by monitoring impaired physicians to prevent them from working while under the influence. However, since the elimination of the Board's Diversion Program in 2008, an impaired physician must independently seek out additional sobriety activities, such as AA meetings, treatment programs, and group therapy sessions to assist in a successful recovery.

At the request of Board Members, staff invited two speakers to present information on other states physician health programs. Board staff also reviewed the laws and policies for two other California healing arts boards health programs and other states' physician health programs to gain knowledge on how their programs operated. Ms. Robinson noted that excerpts from a few states' program laws can be found in the Board packets on pages BRD 5-3 through BRD 5-12.

Mr. Serrano Sewell introduced Dr. Sucher who provided a presentation on the Arizona Medical Board Physician Health Program (PHP). Dr. Sucher thanked the Board for the invitation and introduced his colleague Dr. Greenberg. Their presentation included a PHP overview consisting of several areas of the program such as the purpose, history, oversight and operations, Monitored Aftercare Program (MAP) entry pathways, MAP elements and terms, and compliance and non-compliance tracks. It also included PHP tracks, accomplishments, MAP and PHP statistics, enhancements and future plans.

Dr. Suchers biography and power point presentation can be viewed on the Board's website:

[http://www.mbc.ca.gov/About\\_Us/Meetings/2015/Materials/materials\\_20150730\\_brd-5b.pdf](http://www.mbc.ca.gov/About_Us/Meetings/2015/Materials/materials_20150730_brd-5b.pdf).

Ms. D'Angelo Fellmeth, Center for Public Interest Law, stated she was the Board's former Enforcement Monitor. She stated that California had approximately six times as many physicians as Arizona and is three times the geographical size of Arizona, which is a huge consideration. She noted that the California program, even at its worst, had double the number of participants than Arizona has currently. Ms. Fellmeth then gave a background history of her experiences of California's monitoring program as the Board's former Enforcement Monitor.

She stated that as the Board's Enforcement Monitor, she did not recommend abolishment of the program, but did recommend the Board consider several fundamental issues if the program was to continue. The first issue the Board should consider is if the diversion concept is diverting into a secret program of the most dangerous physicians, and if the program is using confidential mechanisms that are demonstrably failing. If that is the case, consider whether the program should be located within the Board, as she found it was a deterrent to the physicians entering the program. The third consideration she recommended is if the Board decided to continue the program, it needed to completely restructure the program in order to be sure it is effectively monitoring substance abusing physicians and protecting patients from those physicians.

James O'Donnell, an independent contractor with the Pacific Assistance Group (PAG), stated this group is a facilitative group in the San Francisco Bay Area. As a facilitator, he watches physicians very carefully, in terms of their attitude, how they are doing in recovery, and requires physicians to meet with him at least once or twice a week for five years. His job is to assess and report any mental or physical relapses. He stated that physicians come into their program decimated as human beings, because of their chemical dependency. He has seen hundreds of doctors and he finds that he sees a difference in these physicians daily and stated most of them leave the program as high functioning individuals. He noted that the original diversion program did a survey and found that physicians in diversion at that time had less complaints.

Michelle Monserrat-Ramos stated a diversion program is a threat to patient safety and urged the Board to continue with the progress of the Uniform Standards, and say “no” to diversion and “yes” to patient safety.

Karen Miato, Chair of the Physicians Well-Being Committee at UCLA, stated she wants to advocate strongly for a program to assist physicians with dependencies in the state of California.

Dr. Zemansky, a clinical psychologist and current President of PAG, noted the PAG does private monitoring under structured guidelines primarily set mainly by the Federation of State Physician Health Programs. She strongly believes that having options for physicians that have dependencies would best protect the public, as opposed to having only enforcement, which can only come after something happens.

Susan Shinazy stated that as physicians are the most highly educated in health care, she thinks they should stand up and lead the way for our culture in making it acceptable to admit to addiction and to get help. There should be no secrecy since they deal with human lives.

Mr. Serrano Sewell stated this agenda item would be continued to the next day to hear from Dr. Gundersen who had travel problems.

#### **Agenda Item 6**      **Discussion and Possible Action on Legislation/Regulations**

Ms. Simoes began by stating she contacted all Legislative district offices in the Bay area and invited them to the Board Meeting.

#### **Agenda Item 6A**      **2015 Legislation**

Ms. Simoes then referred the Members to the tracker list in the Legislative Board packet. She noted the bills in blue are either two-year bills or bills where the Board had already taken a position. The bills in pink are Board-sponsored bills and would be discussed first and then those in green. She brought to the Members’ attention that several of the scope bills have turned into two-year bills. Ms. Simoes presented on the following bills.

**SB 396 (Hill)** would make consumer protection enhancements that the Board already voted to sponsor/support for accredited outpatient settings. She stated this bill would require peer review evaluations for physician and surgeons working in accredited outpatient settings; and it would allow accredited outpatient setting facility inspections performed by Accreditation Agencies (AAs) be unannounced after the initial inspection. For unannounced inspections, AAs must provide at least a 60-day window to the outpatient setting. Ms. Simoes noted this bill would also delay the report from the Board on the vertical enforcement and prosecution model from March 1, 2015 to March 1, 2016.

Ms. Simoes stated the bill would allow an accredited outpatient setting to access 805 reports from the Board when credentialing, granting or renewing staff privileges for providers at that facility. Ms. Simoes noted this bill had been significantly amended to

address concerns raised by the opposition. A number of provisions were removed from this bill and now the only two provisions that remain related to peer review and unannounced inspections. Ms. Simoes noted this bill is moving forward and currently on the Assembly floor and there is no longer any opposition to the bill.

**SB 408 (Morrell)** would ensure that the midwife assistants meet minimum training requirements and sets forth the duties that a midwife assistant could perform. The duties would be at the same level as a medical assistant, basically technical support services only. Ms. Simoes stated this bill would allow the Board to adopt regulations and standards for any additional midwife technical support services. She noted this bill is currently on the Assembly floor, had not received any “no” votes, and is moving forward.

**SB 800 (Committee on Business, Professions, and Economic Development)** is the vehicle by which omnibus legislation had been carried by the Senate Business, Professions, and Economic Development Committee. The Board had already discussed this bill, and the only change to this bill is there was language that was included that would have clarified in statute that the Board, for allied health care professionals, can put them on probation and allow them to apply for reinstatement. However, it was thought by Legislative staff that these amendments were too substantial, so they were removed from the bill. Ms. Simoes stated that next year, she would find an author for a new bill that would include all technical clarifying changes or anything that needs to be made more clear. Ms. Simoes noted she would work with the different program staff to identify all of the changes that need to be made and to make sure the Board had the authority to do all that needs to be done.

**AB 266 (Bonta, Cooley, Jones-Sawyer, and Lackey)** would enact the Medical Cannabis Regulation and Control Act and would establish the Office of Marijuana Regulation within the Office of the Governor, the Division of Medical Cannabis Regulation within the State Board of Equalization (BOE), the Division of Medical Cannabis Manufacturing and Testing within the California Department of Public Health (CDPH), and the Division of Medical Cannabis Cultivation within the California Department of Food and Agriculture (CDFA). Ms. Simoes reminded the Members that AB 26 was merged with AB 34, in which the Board took a support if amended position. She noted that now AB 34 had merged into AB 266, which means the law enforcement supported bill and the industry supported bill have merged into this current bill, AB 266. She stated that AB 26 and AB 34 were supported by the Board, with the request to add the requirement of an in-person examination. Both bills were supported by the Board because they would have provided the Board with enforcement tools that would help ensure consumer protection and would ensure that physicians are not making marijuana recommendations for financial or employment reasons. Ms. Simoes noted that the bill had been significantly amended since the Board took a neutral position at the May 2015 Board Meeting. As such, Board staff is suggesting that the Board change its position on this bill from a neutral position to a support position.

Dr. Krauss asked Ms. Simoes if the substance of this bill is making it more restrictive for a physician to issue a marijuana recommendation or if most of it is a reiteration of current law.

Ms. Simoes responded stating it is a reiteration of current law with the exception that currently it is not clear that Business and Professions Code (BPC) Section 2242 applies to recommendations for marijuana. She noted there are some court cases that make it unclear, and in the past, it had been important to the Board to add language to BPC Section 2242 to make it clear that it applies to recommendations for marijuana. She stated this bill does add that recommendation to BPC 2242, which is important for enforcement reasons for the Board.

Dr. GnanaDev stated he is pleased to hear that this bill would prohibit a physician from recommending cannabis to a patient unless they are the patient's attending physician.

*Dr. Lewis made a motion to take a support position on AB 266; s/Ms. Yaroslavsky. Motion carried with one abstention (Krauss).*

**AB 483 (Patterson)** would require initial licensing fees for specified healing arts licenses to be prorated on a monthly basis. The Board had taken a neutral, if amended position, and asked that the Board be removed from this bill. The Board's requested amendments were taken. The Board now has a neutral position on this bill. Ms. Simoes noted the Board had been added to AB 773 (Baker), which would change the initial license time period from birth date renewal, to a two-year license.

**AB 684 (Alejo and Bonilla)** would place a moratorium on discipline for registered opticians (RDOs) and optometrists by the Board or the Board of Optometry (CBO) for engaging in any business relationship prohibited by BPC Sections 655 and 2556. Ms. Simoes noted that this bill contains an urgency clause, so it would take effect immediately. She stated that at this time, putting a moratorium on disciplinary action for RDOs and optometrists makes sense. The Board took a neutral if amended position on this bill previously, and requested an amendment to ensure that the safe harbor only applies to RDOs and optometrists registered and licensed before the safe harbor takes effect. This requested amendment was taken, so the Board is now neutral on this bill. Ms. Simoes then noted that she, Ms. Kirchmeyer and Ms. Webb have participated in several meetings with the Governor's Office regarding the proposed language for this bill. The language was still in draft form, but she wanted to let the Members know that if this bill were to come to bill form, there may have to be an emergency Executive Committee meeting because it would be a bill that the Board would need to take a position on, but at this point, it is still just the moratorium with a neutral position.

Dr. Krauss stated this bill would give an advantage to big businesses and be a disadvantage to small businesses, which concerns him, but noted this may not be a battle the Board needs to fight.

Ms. Simoes stated this bill is not sponsored by any of the parties that support this bill. She noted that Senator Bonilla's office had made it clear that the purpose of this moratorium is to get interest parties together to decide if there can be a solution and, if not, to give the Boards and CBO, the time to get prepared to actively enforce the existing law.



**AB 773 (Baker)** would require licenses issued by the California Board of Psychology and the Board to be valid for two years from issuance. Ms. Simoes stated that Board staff believes that a two-year license would be a better way to resolve the issue of license fee overpayment. Board staff had discussed adding the Board to this bill with the author and her staff, and they were willing to add the Board to this bill. Ms. Simoes stated this bill was amended to add licenses issued by the Board. As such, the Board now had a support position on this bill.

**SB 337 (Pavley)** would establish alternative means for a supervising physician to ensure adequate supervision of a physician assistant (PA) for routine care and the administration, provision, or issuance of a Schedule II drug. Existing law requires all medical charts for Schedule II drug orders to be countersigned within seven days by the supervising physician. Ms. Simoes noted this bill would add two additional mechanisms, in addition to the existing five percent medical record countersign requirement, for a supervising physician to choose from to ensure adequate PA supervision. For all mechanisms, the supervising physician shall select for review those cases that by diagnosis, problem, treatment, or procedure represent, in his or her judgment, pose the most significant risk to the patient. Ms. Simoes stated the two additional mechanisms have been significantly amended to address the Board's concerns, and are as follows:

- The supervising physician and the PA shall conduct a medical records review meeting, at least once a month during at least 10 months of the year. During any month in which a medical records review meeting occurs, the supervising physician and PA shall review an aggregate of at least 10 medical records of patients treated by the PA functioning under protocols. Documentation of medical records reviewed during the month shall be jointly signed and dated by the supervising physician and the PA.
- The supervising physician shall supervise the care provided by the PA through a review of cases involving treatment by the PA functioning under protocols adopted by the supervising physician. The review methods used shall be identified in the delegation of services agreement and shall include no less than an aggregate of 10 cases per month for at least 10 months of the year. Documentation of the cases reviewed during the month shall be jointly signed and dated by the supervising physician and the PA.

Ms. Simoes noted that existing law requires all medical charts for Schedule II drug orders to be countersigned with seven days by the supervising physician. This bill would create an additional mechanism for a supervising physician to ensure adequate supervision of the administration, provision, or issuance by a PA of a Schedule II drug order.

She stated the additional mechanism is only allowed if the PA had documentation evidencing the successful completion of an education course that covers controlled substances and meets specified standards. Ms. Simoes noted this bill had been amended to ensure that there are minimum requirements in the mechanism allowed to ensure adequate physician supervision. This bill still reduces the physician review of medical records for Schedule II drug orders from 100 percent to 20 percent. The supervising physician would be responsible for choosing the 20 percent of the drug orders that get signed. Ms. Simoes stated this bill would also require the PA to receive controlled substances training. With the amendments that have been taken to address the Board's concerns, Board staff is

recommending that the Board change its position from oppose unless amended to a neutral position.

Dr. Lewis stated he feels that since the Board's amendments were made, the Board should take a support position on this bill.

*Dr. Lewis made a motion to take a support position on SB 337; s/Dr. Bishop.*

Theresa Anderson, California Academy of Physician Assistants, thanked the Board for the opportunity to work with staff to address the Board's concerns and offered to answer any questions Members may have, as they are the sponsor of this bill.

*Motion carried unanimously.*

**SB 464 (Hernandez)** would authorize specified health care practitioners to use a self-screening tool that would identify patient risk factors for the use of self-administered hormonal contraceptives by a patient, and after an appropriate exam, prescribe, furnish or dispense self-administered hormonal contraceptives to the patient. Ms. Simoes noted that the sponsors of this bill believe it would help to improve preventative health services by increasing access to services in rural communities through the utilization of telemedicine by allowing patients to provide information to a health provider through self-screening tools. If telehealth is used, the existing telehealth laws would apply. Ms. Simoes stated the other health care practitioners named in this bill would also have to comply with their existing laws related to prescribing and can only provide services that are within their scope of practice. Board staff would have concerns if an appropriate prior exam was not required, but since it is, Board staff recommended that the Board take a neutral position on this bill.

*Ms. Yaroslavsky made a motion to take a neutral position on SB 464; s/Dr. Lewis.  
Motion carried with one abstention (Krauss).*

**SB 467 (Hill)** is a sunset bill for several boards and includes pro rata requirements for DCA and reporting requirements for the AG's Office. Ms. Simoes noted that this bill would also require the Director of the DCA, through its Division of Investigation (DOI), to implement "Complaint Prioritization Guidelines" for boards to utilize in prioritizing their respective complaint and investigation workloads. She stated the Guidelines shall be used to determine the referral of complaints to DOI and those that are retained by the health care boards for investigation. Since the Board already had priorities set in law, these prioritization requirements should not apply to the Board. Senate Business and Professions Committee agreed and submitted language to exempt the Board from the Complaint Prioritization Guidelines in this bill. With that exemption, Board staff is suggesting the Board only watch this bill at this time.

**SB 538 (Block)** would expand the scope of practice for a naturopathic doctor (ND) and would allow an ND to prescribe certain drugs without physician supervision. Ms. Simoes noted that current law allows an ND to furnish or order legend drugs and Schedule III-V drugs in accordance with standardized procedures or protocols developed by the ND and

their supervising physician. She also stated that currently law authorizes an ND to provide repair and care incidental to superficial lacerations and abrasions, except suturing, and permits an ND to remove foreign bodies located in the superficial tissues. A physician may supervise up to four NDs at a time. Ms. Simoes stated this bill had been amended and significantly narrowed, however, it still allows NDs to prescribe Schedule V and legend drugs without physician supervision. For this reason, Board staff is recommending the Board continue to oppose this bill.

*Dr. GnanaDev made a motion to continue with an oppose position on SB 538; s/Ms. Wright. Motion carried unanimously.*

### **Agenda Item 6B      Status of Regulatory Actions**

Ms. Simoes referred the Members to page BRD 6B-1 in their packets, status of regulatory actions. Ms. Simoes pointed out the regulations related to Continuing Medical Education (CME) requirement and stated they are still being reviewed as the Board had received additional information from American Board of Medical Specialties (ABMS) related to the necessity of these regulations. She noted these regulations would be brought back to the Board at the October Board meeting.

### **Agenda Item 6C      Federal Legislation**

Ms. Simoes stated that both S1778 and HR3081 refer to the Telemedicine for Medicare Act of 2015. She noted in both bills Medicare participating physicians or practitioners who are licensed, or otherwise legally authorized to provide a health care service in a State, may provide such a service as a telemedicine service to a Medicare beneficiary who is in a different State. These bills would specify that any requirement that a physician or practitioner obtain a comparable license or other comparable legal authorization from such different State shall not apply. The Board had previously opposed this legislation and written letters to Congress expressing the Board's opposition. Board staff is requesting approval from the Board to again write letters expressing the Board's opposition and concerns for both of these Congressional bills.

*Ms. Yaroslavsky made a motion to approve Board staff to write letters to Congress expressing the Board's opposition of these bills; s/Dr. GnanaDev. Motion carried unanimously.*

### **Agenda Item 7      President's Report**

Mr. Serrano Sewell gave an update on a meeting he had with the DCA Director, Mr. Kidane and his senior staff. Their discussion included the transition of the investigators and the importance of the Board's investigation and disciplinary process as it relates to consumer protection. They also discussed DCA's presentation of the vertical enforcement process, with the exchange of ideas, protocol and how everyone can work together. Mr. Serrano Sewell noted that Mr. Kidane and staff complimented the Board on how the Board fulfills their duty.

Ms. Serrano Sewell then gave a few brief highlights of the past year. The first being the legislative day that some of the Members participated in in October which he believes encouraged Senator Hill to come and speak at this meeting. He then noted that Ms. Kirchmeyer did an outstanding job in hiring the Board's new Deputy Director and Chief of Enforcement, and in successfully transferring the investigators to DCA. The Board had also approved and released updated Guidelines for Prescribing Controlled Substances for Pain. Mr. Serrano Sewell thanked staff for assisting in the process of the release of those guidelines. He also stated that the Board successfully sponsored legislation to ensure that documents on serious discipline remain posted on the Board's website in an effort to increase transparency.

Mr. Serrano Sewell wrapped up his President's report stating the Board had several interested parties meetings this past year where Members have heard ideas on what the Board should be doing to continue with consumer protection.

Ms. Kirchmeyer added that the Board had also passed the Regulations on SB 1441, Uniform Standards for Substance Abusing Licensees, and congratulated the Board on all the work that had been done and their accomplishments over the past year.

#### **Agenda Item 8**      **Update from the Executive Committee**

Mr. Serrano Sewell stated that the Executive Committee had met earlier in the day and discussed several issues. Ms. Kirchmeyer and Ms. Amaral gave a presentation and update on the Board's 15/16 budget. Ms. Kirchmeyer and Ms. Robinson gave a presentation on the Board's satisfaction survey as well as an update of the Board's strategic plan. Mr. Serrano Sewell noted the Committee Members also suggested some future agenda items for the next Executive Committee meeting, such as the Board's public outreach efforts as well as public education efforts and how to best utilize Members as ambassadors for the Board in promoting consumer protection.

#### **Agenda Item 9**      **Update from the Licensing Committee**

Dr. Bishop stated the Licensing Committee had met earlier in the day and approved the minutes from the July 24, 2014 meeting. He stated Mr. Worden provided an update on the licensing program for the past fiscal year. Mr. Worden also thanked the licensing managers and staff for their hard work. The Committee was advised that 5,873 physicians were licensed in fiscal year 14/15, which is an increase of 351 licenses from the previous year. Licensing staff were required to work overtime to process all of the applications for the residents and fellows who needed licensure by July 1, 2015. Dr. Bishop noted that the Board's call center had received 155,092 calls this past year, which is an increase of 6,624 more calls than in the prior year. Mr. Worden stated in his update that he believes the increase was due to the new licensing system in BreZE.

Dr. Bishop noted there are 107 medical schools pending recognition by the Board, with seven pending self-assessment reports. He stated that Mr. Worden provided an update on the June 30, 2015 interested parties meeting that was held in Sacramento regarding minimum requirements for accredited postgraduate training for licensure and physician

re-entry. Dr. Bishop noted that staff plans to hold another interested parties meeting in Southern California within the next few months and encouraged all interested parties to attend as it is critical to have public input at these meetings.

**Agenda Item 10**      **Update from the Education and Wellness Committee**

Ms. Yaroslavsky stated the Education and Wellness Committee had met earlier in the day and meeting minutes from the January 29, 2015 meeting were considered and approved. She noted the Committee was treated to a presentation by Dr. Ashby Wolfe, the Chief Medical Officer for Region IX, Centers for Medicare and Medicaid Services. Dr. Wolfe provided an update on the Affordable Care Act (ACA), as well as information on the ACA's compliance mandate for physicians.

Ms. Yaroslavsky stated the Committee also had a presentation from Dr. Andres Sciolla, Associate Professor of Clinical Psychiatry, Medical Director, Northgate Point Regional Support Team with the University of California, Davis. Dr. Sciolla pointed out how childhood trauma in adverse childhood experiences could affect one's health including increased morbidity and premature mortality.

Ms. Yaroslavsky noted that if any Members have anything they would like added to the next Education and Wellness Committee meeting agenda to please let staff know.

Dr. Bishop recommended having an expert give a presentation on physician burnout added to the next agenda. He stated it is becoming a bigger issue than some realize and he thinks it should be reviewed and discussed.

Mr. Serrano Sewell adjourned the meeting at 5:57 pm.

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**Friday, July 31, 2015**

**Members Present:**

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

**Members Absent:**

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

**Staff Present:**

Liz Amaral, Deputy Director  
 Christina Delp, Chief of Enforcement  
 Dianne Dobbs, Legal Counsel, Department of Consumer Affairs  
 Dennis Frankenstein, Business Services Officer  
 Cassandra Hockenson, Public Affairs Manager  
 Kimberly Kirchmeyer, Executive Director  
 Regina Rao, Associate Governmental Program Analyst  
 Letitia Robinson, Research Specialist  
 Elizabeth Rojas, Business Services Officer  
 Paulette Romero, Staff Services Manager II  
 Jennifer Simoes, Chief of Legislation  
 Lisa Toof, Administrative Assistant II  
 Kerrie Webb, Legal Counsel  
 Curt Worden, Chief of Licensing

**Members of the Audience:**

Teresa Anderson, California Academy of Physician Assistants  
 Carmen Balber, Consumer Watchdog  
 Gloria Castro, Senior Assistant Attorney General, Attorney General's Office  
 Yvonne Choong, California Medical Association  
 Janet Coffman, University of California, San Francisco  
 Zennie Coughlin, Kaiser Permanente  
 Julie D'Angelo Fellmeth, Center for Public Interest Law  
 Rosanna Davis, President, California Association of Midwives  
 Long Do, California Medical Association  
 Michael Dugan, Federation of State Medical Boards  
 Karen Ehrlich, L.M., Midwifery Advisory Council  
 Lou Galiano, Videographer, Department of Consumer Affairs  
 Mike Gomez, Deputy Director, Department of Consumer Affairs  
 Bridget Gramme, Center for Public Interest Law  
 Faith Gibson, Licensed Midwife  
 Kenwood Gill, M.D.  
 Doris C. Gundersen, M.D., Colorado Physician Health Program  
 Mariam Hollingsworth, Consumers Union  
 Gail Jara, CPPPH  
 Christine Lally, Deputy Director, Department of Consumer Affairs  
 Craig Leader, Investigator, Health Quality Investigation Unit  
 Lisa McGiffert, Consumers Union  
 Karen Miato, Physicians Well Being, University of California, Los Angeles  
 Michelle Monseratt-Ramos, Consumers Union  
 Susan Shinazy  
 Robert Sumner, Department of Justice  
 Laura Sweet, Deputy Chief, Health Quality Investigation Unit  
 Sandra Thuston, Department of Justice  
 Cynthia Verdis, Investigator, Health Quality Investigation Unit  
 Jacqueline A. Watson, Federation of State Medical Boards

**Agenda Item 11**      **Call to Order/Roll Call**

Mr. Serrano Sewell called the meeting of the Medical Board of California (Board) to order on July 31, 2015 at 9:06 a.m. A quorum was present and due notice was provided to all interested parties.

**Agenda Item 12**      **Public Comments on Items not on the Agenda**

Faith Gibson, licensed midwife, suggested the Board create a way to allow patients and/or colleagues to report an incident that took place with a physician without having to place an official complaint with the Board, so there is a record of an incident on file, but not an actual complaint.

Rosanna Davis, Licensed Midwife and President of the California Association of Midwives (CAM), thanked the Board for sponsoring midwife assistant legislation that would contribute to the safety of licensed midwife care in the out of hospital settings. She then thanked the Board staff for assisting with letters to drug suppliers so that licensed midwives can secure appropriate emergency medications. Ms. Davis then thanked Ms. Yaroslavsky for her many years of service on the Midwifery Advisory Council (MAC).

Ms. Davis announced plans that CAM had to implement a comprehensive quality of care program for licensed midwives. One aspect of this plan would include survey mechanisms for licensed midwives to receive feedback from the patients they assist as well as from physicians and nurses, hospital staff and the emergency medical services staff, after a transfer of care from home to hospital.

Kenwood Gill, M.D., commended the Board for assisting in making the CURES registration easy. He noted that he feels the Board's participation in the annual FSMB meetings is a conflict of interest and believes the interstate compact would adversely affect the state of California for a number of reasons.

Susan Shinazy commented on the Board's decision to make physicians tell their patients directly when they are on probation. She stated that not all patients have access to the internet to be able to check on each physician they see, so she encouraged the Board to make it mandatory that the physician notify their patients directly.

**Agenda Item 13**      **9:00 a.m. REGULATIONS – PUBLIC HEARING - Physician's and Surgeon's Licensing Examinations Minimum Passing Scores. Amendment to Section 1328.1 of Title 16, California Code of Regulations. This proposal would further define the law pertaining to passing scores on licensing examinations and eliminate the need for the Medical Board of California to pass a yearly resolution for the minimum passing examination score.**

Mr. Serrano Sewell stated this is the time and place set by the Board to conduct a public hearing on proposed regulations to amend the three separate sections of Title 16 of the California Code of

Regulation (CCR) as described in the notice published in the California Regulatory Notice Register and were sent by mail to those on the Board's mailing list.

This proposal would be seeking an amendment to Section 1328.1 of Title 16 of the California Code of Regulations. The proposal would further define BBC section 2177 pertaining to passing scores on licensing exams and eliminate the need for the Board to pass a yearly resolution for the minimum passing exam score. Mr. Serrano Sewell stated the written comment had to have been submitted by the deadline of July 20, 2015. He noted that no written public comment was received by the deadline.

Mr. Serrano Sewell noted the date as Friday, July 31, 2015 and the time as 9:30 a.m. Both Ms. Webb and Mr. Worden stated there had been no written comments received and the Board can move forward with the hearing.

No public comments were provided.

Mr. Serrano Sewell stated since there were no comments from the public or from Members of the Board, he asked for a motion to approve the regulation and ask staff to submit the regulatory package to the Office of Administrative Law (OAL) for finalization.

*Dr. Lewis made a motion to approve the amendments to section 1328.1 of Title 16 and ask staff to submit the regulatory package to OAL for finalization; s/Ms. Yaroslavsky. Motion carried unanimously.*

**Agenda Item 14**      **9:05 a.m. REGULATIONS – PUBLIC HEARING - Outpatient Surgery Setting Accreditation Agency Standards. Amendment to Section 1313.4 of Title 16, California Code of Regulations. This proposal would make these regulations consistent with Health and Safety Code Section 1248.15 and 1248.35. The amendment will require all outpatient setting locations to be inspected and require an accreditation agency to report actions to the Board.**

Mr. Serrano Sewell stated this is the time and place set by the Board to conduct a public hearing on proposed regulations to amend Section 1313.4 of Title 16 of the CCR as described in the notice published in the California Regulatory Notice Register and were sent by mail to those on the Board's mailing list. This proposal would make these regulations consistent with Health and Safety Code Section 1248.15 and 1248.35. The amendment would require all outpatient setting locations to be inspected and require an accreditation agency to report any actions to the Board within 24 hours.

Mr. Serrano Sewell stated written comment had to have been submitted by the deadline of July 20, 2015. He noted that no written public comment was received by the deadline.

Mr. Serrano Sewell noted the date as Friday, July 31, 2015 and the time as 9:34 a.m. Both Ms. Webb and Ms. Romero stated there had been no written comments received and the Board can move forward with the hearing.



Lisa McGiffert, Consumer's Union, supported the amendments and looks forward to seeing the change on the Board's website. She thanked Board staff for working with Consumer's Union over the years in getting the website improved in regards to the Outpatient Surgery Settings section.

Dr. Yip recommended staff check on each Accreditation Agency to see what criteria they use for reprimands.

Mr. Serrano Sewell stated with no additional comments from the public or from Members of the Board, he asked for a motion to approve the regulation and ask staff to submit the regulatory package to the Office of Administrative Law (OAL) for finalization.

*Dr. Lewis made a motion to approve the amendments to section 1313.4 of Title 16 and ask staff to submit the regulatory package to the OAL for finalization; s/Dr. Yip. Motion carried unanimously.*

**Agenda Item 15**      **9:10 a.m. REGULATIONS – PUBLIC HEARING - Disclaimers and Explanatory Information Applicable to Internet Postings. Amendment to Section 1355.35 of Title 16, California Code of Regulations. This proposal will update the list of disclaimers and explanatory information provided with public disclosure information released on the internet. The amendment will also add public disclosure screen types for court orders related to family support issues.**

Mr. Serrano Sewell stated this is the time and place set by the Board to conduct a public hearing on proposed regulations to amend Section 1355.35 of Title 16 of the CCR as described in the notice published in the California Regulatory Notice Register and were sent by mail to those on the Board's mailing list. This proposal would update the list of disclaimers and explanatory information provided with public disclosure information released on the internet. The amendment would also add public disclosure screen types for court orders related to family support issues.

Mr. Serrano Sewell stated the written comment had to have been submitted by the deadline of July 20, 2015. He noted that no written public comment was received by the deadline.

Mr. Serrano Sewell noted the date as Friday, July 31, 2015 and the time as 9:40 a.m. Both Ms. Webb and Mr. Romero stated there had been no written comments received and the Board can move forward with the hearing.

No public comments were provided.

Mr. Serrano Sewell stated since there were no comments from the public or from Members of the Board, he asked for a motion to approve the regulation and ask staff to submit the regulatory package to the Office of Administrative Law (OAL) for finalization.

*Dr. Levine made a motion to approve the amendments to section 1355.35 of Title 16 and ask staff to submit the regulatory package to the OAL for finalization; s/Dr. Lewis. Motion carried unanimously.*

**Agenda Item 5**      **Presentations on Physician Health Programs and Discussion/Consideration** *(cont'd from Thursday 7/30/15)*

Dr. Doris Gundersen gave a presentation on the Colorado Physician Health Program (CPHP). Dr. Gundersen is board certified in both general adult and forensic psychiatry. She is an Assistant Clinical Professor in the department of Psychiatry at the University of Colorado where she teaches medical students, residents, and fellows. Dr. Gundersen is currently the President of the Federation of State Physician Health Programs. Her presentation included CPHP's mission statement, and their program development. She described their funding history, and the CPHP's relationship with the Colorado Medical Board. She then reviewed their executive and clinical structure, and services as well as a review of their research activities and future endeavors.

Dr. Gundersen's presentation can be viewed in full on the Board's website at the following link: [http://www.mbc.ca.gov/About\\_Us/Meetings/2015/Materials/materials\\_20150730\\_brd-5a.pdf](http://www.mbc.ca.gov/About_Us/Meetings/2015/Materials/materials_20150730_brd-5a.pdf)

***Dr. Lewis made a motion to direct staff to explore setting up meetings with interested parties on the topic of a physician health program. Motion passed unanimously.***

Julie D'Angelo Fellmeth, Center for Public Interest Law, noted that the statement that "no participant in a physician health program had ever injured a patient while in the program" is heard often, but cannot be proven because participation in a diversion program is confidential. She stated that no program had ever been tracked to prove that anyone had graduated successfully after completing the program. She stated that there is no way to know if any program had ever been effective in assisting physicians in recovering from substance abuse or whether it had adequately protected patients. Ms. Fellmeth noted that any diversion program must stringently adhere to the SB 1441 uniform standards and any non-compliance with the program contract must be reported to the Board immediately and the participant must be removed from practice. She stated that there must be a two-strike policy as the first strike is having to enter the program. Any non-compliance is considered strike two and the physician is out of the program. She stated any new program created in California must not be controlled by the same organization or individuals of the former Diversion Program that were in control at the time of its abolishment in 2008, and the program must be audited every two years.

Miriam Hollingsworth, Consumers Union Safe Patient Project, stated they are against the possibility of a new diversion program, as the original program was discontinued for a number of reasons. She stated that these secret diversion programs do not work, and that all they do is keep dangerous, addicted physicians in practice while putting the unsuspected patient at risk of injury or death. She asked the Board that if a diversion program is reestablished, to be sure and have full disclosure to patients before being treated.

Michelle Monserat-Ramos, Consumers Union, asked the members to please remember that they were not appointed to their positions to rehabilitate physicians, but to protect California consumers.

Lisa McGiffert, Consumers Union, stated she is in full support of physicians getting rehabilitated, however, there are several programs out there for that purpose. She believes there is no need for the Board to create a special program that would interfere with the Board's oversight responsibilities.

Carmen Balber, Consumer Watchdog, stated she was troubled by the presentation that was given by Dr. Gundersen, as it stated they are advocates for physicians, which is the wrong approach for the Board to take. The Board's mission is to advocate for patient safety, and the past California program failures would preclude patient protection. Ms. Balber also noted that Dr. Gundersen's presentation stated that punishment for physicians is not the right tactic because it does not cure substance abuse, which is correct; however, there is no longer a diversion program because confidentially treating substance abusing physicians instead of disciplining them created a revolving door sending physicians back and forth from treatment to practice. She stated that if the Board decides to consider another diversion type program, confidentiality cannot be primary, treatment cannot take the place of discipline, and those responsible for running the program would have to be addressed.

Susan Shinazy stated Dr. Gundersen had mentioned in her presentation that more physicians would come forward for treatment if it were kept confidential; however, she did not show any statistics with that fact. She noted that helping anyone to hide addiction is enabling them, which is a huge disservice to patient safety.

Mr. Serrano Sewell stated he had no interest in replicating the Board's previous diversion program.

*Motion carried unanimously.*

**Agenda Item 16**      **Discussion and Possible Action on Proposed Regulations Updating the Model Disciplinary Orders and Disciplinary Guidelines**

Ms. Kirchmeyer reminded the Board that at the July 2014 Board meeting, Enforcement staff proposed several edits to the Board's Disciplinary Guidelines. Staff had intended to schedule a regulatory hearing for these edits, however, with the SB 1441 guidelines going through the process at that time, staff had to wait until those guidelines were finalized. With those now having been finalized, staff is now able to schedule the hearing for the disciplinary guidelines. However, since July 2014, staff have identified additional changes and edits that would either clarify the guidelines or make necessary changes.

Ms. Kirchmeyer referred the members to pages BRD 16-1 through 16-19 in their Board packets. She noted that the edits in red had already been approved and the edits in blue are the ones that need approval at this meeting. Ms. Kirchmeyer stated some of the edits are technical, such as changing the name of the agency, and the version number. The large strikeout area is a change in the manner in which these guidelines are provided. Previously the document would identify what changes have been made, however, those changes are now identified in the regulatory document, so staff is asking to eliminate that section.

Ms. Romero stated one significant change is in aligning the sections of cease practice orders to meet interim suspension orders, moving the need to file an accusation from 15 days to 30 days, as stated in the Government Code Section for interim suspension orders. In addition, staff realized that clarification was needed in the section of the final decision by a Board as compared to an administrative law judge. In the prior version, it appeared that both the Judge and the Board had a total of fifteen days to issue a decision, however it was the intention that each party had fifteen

days, and this amendment is recommended. Those conditions can be found in 9, 10 and 11. The changes in conditions 14, 15, 17, 18, and 23 remove the specific reference to the University of California San Diego Physician Assessment and Clinical Education (PACE) program. The Board should not identify one specific program, but instead, say a program approved, in advance, by the Board. On condition 28, at the July 2014 Board meeting, the Board approved the condition to include nurse practitioners (NPs), but the title had not been updated. Ms. Romero noted all other amendments are technical.

Ms. Kirchmeyer stated at this time staff is asking for a motion to approve the language as proposed and to notice the language for a public comment period. In addition, staff is seeking a motion to set this regulatory hearing for the October Board meeting.

***Ms. Yaroslavsky made a motion to approve the language as proposed, as well as to set the regulatory hearing for the October Board meeting; s/Dr. Lewis. Motion carried unanimously.***

### **Agenda Item 19      Executive Management Reports**

Ms. Kirchmeyer began by asking for a motion to approve the orders following completion of probation and orders for license surrender during probation.

***Dr. Lewis made a motion to approve the orders; s/Ms. Yaroslavsky. Motion carried unanimously.***

Ms. Kirchmeyer introduced the Board's new Chief of Enforcement, Christina Delp, stating she came from the Contractors State Licensing Board where she was the Deputy Chief of Enforcement and is pleased that she had joined the Board's team.

Ms. Kirchmeyer then noted she would not be going over the summaries in detail unless Members had any questions. She then stated the Memorandum of Understanding (MOU) with the California Research Bureau (CRB) to perform the ethnicity disciplinary demographic study had been signed, and work on the project would begin soon. Ms. Kirchmeyer noted there had been a delay in the signing of the MOU due to a leadership change at the CRB. The new leadership needed to review the MOU before signing. She stated that Board staff would provide requested data to the CRB so the study can begin.

Ms. Kirchmeyer stated that pursuant to a request at the last Board meeting, she met with the AG's Office and the DCA investigative unit to look into the interim suspension orders (ISOs) and ways to strengthen that process. She noted at their next meeting, discussion would include criteria for which cases may warrant an ISO. Once that criteria is identified, training would be provided to the investigators and deputies. She noted several more meetings would be held and a final report would be provided at the Board's October meeting.

Ms. Kirchmeyer stated she does not have a Board of Pharmacy (BOP) update, but did announce that the BOP conducted the final review of the comments on the hormonal contraception and Naloxone protocols at their meeting earlier in the week. She stated there would be a BOP update at the Board's October meeting.

In regards to the coordinated effort with other state agencies on prescribing psychotropic medications to foster children, the data use agreement with the Department of Health Care Services (DHCS) and the Department of Social Services (DSS) had been finalized and signed. Board staff had received the requested de-identified information, and staff is currently looking for a pediatric psychiatrist that can review this information to determine if physicians who may be inappropriately prescribing can be identified. Once that occurs, staff would work with DSS to obtain patient release forms for medical records to begin an investigation. This project had been delayed due to the search for the pediatric psychiatrist. In the meantime, staff met with a pediatrician to review the records and are now unsure how useful the information obtained is going to be at this point. However, after review from a pediatric psychiatrist, it may be found that a different type of data would be more useful and if so, would be requested at that time.

Ms. Kirchmeyer noted that staff would be attending a webinar hosted by DHCS and DSS, to discuss psychotropic medication data sharing efforts and staff was hopeful that it would assist in identifying further information that can be used for this project. Ms. Kirchmeyer stated that staff continues to encourage those who have foster children in their care to notify the Board of any physician they believe may be inappropriately prescribing these drugs.

Ms. Kirchmeyer stated the Board staff had been involved in the CURES program for quite some time, but she had asked Robert Sumner and Sandra Thuston from Department of Justice (DOJ) to come and give the Board a brief update on its current status.

Mr. Sumner, Deputy Attorney General working in the Office of Legislative Affairs, and Ms. Thuston, a manager in the AG's justice information services specific to law enforcement services, gave a brief update on the CURES program. Mr. Sumner stated that as of June 30<sup>th</sup>, it was announced that the CURES 2.0 went live and contains several features that are very useful to both the regulators as well as the users of the system. Their first priority is user acceptance. Issues that were identified during the user acceptance phase were worked out to be sure adoption could be done smoothly from the 1.0 system. They have done a "soft launch", rather than forcing everyone onto the new system all at once. They are transitioning people in to the system in phases. They currently have transitioned in regulators and would gradually be transitioning groups from the prescribing side.

#### **Agenda Item 20**      **Update from the Department of Consumer Affairs**

Ms. Lally reported that the Department of Consumer Affairs (DCA) had released many reports and data extracts that release one boards can now use to track their workloads. She stated of particular interest on the enforcement side, is the recent availability of a report providing the best data on cases referred to and pending at the AG's office. The report also provides information on outcomes of the disciplinary and administrative processes. Reports supplying similar levels of detailed information on intake in investigations are currently being tracked for late August or early September delivery, as testing of these reports are still in progress. She stated the DCA is committed to not releasing these reports if critical issues are not resolved during the testing phase. Ms. Lally thanked the Board staff who assisted in the design and critical input in the testing of the reports. She then noted that on the licensing side, data extracts of licensing applications received, both pending and completed are also provided on a regular basis to the boards by the DCA. In the future, these reports would be made available to be run on demand.

Ms. Lally then stated the final maintenance update for release one boards is scheduled in September. The DCA is grateful to staff for their continuing to communicate the maintenance priorities, as it results in requests being completed timely. Ms. Lally noted that release two of BreEZe is scheduled to launch in December. This release would include fixes and enhancements for release one boards. The maintenance release schedule for release two has not been finalized. She stated that DCA would be working with the vendor to get a maintenance schedule released as soon as possible.

Ms. Lally provided an update on the North Carolina Supreme Court decision. She noted the DCA legal office would continue to meet and work closely with Agency, the Governor's Office and the AG's Office on the decision. The DCA legal office is developing training for the Executive Officers, Board Presidents and Board Counsels on its impact. The training is scheduled for August, 2015. No specific date has been set yet. The DCA Legal Counsel is also following other legal cases that are taking place in other states that may possibly effect California.

Ms. Lally noted that Senator Hill had requested a legal opinion from the AG's office on the impact the Supreme Court Decision would have on the DCA's boards and bureaus and if the current Board structure provides sufficient active State supervision. She noted the DCA had been notified that Senator Hill and the Legislature would hold an informational hearing in the fall. Ms. Lally stated the DCA's legal counsel would be providing specific direction to all boards.

Ms. Lally then gave an update on the DCA's pro-rata study. She noted that enacted into law in January 2015, Senate Bill 1243 required the DCA to prepare a one-time study of their pro-rata system and the way expenses are distributed to DCA's boards and bureaus. In December 2014, the DCA commissioned CPS HR Consulting to conduct the study. The first part of the study was a survey of the boards and bureaus; the second was an analysis of how the pro-rata costs are distributed. She stated that nearly all of the Boards and Bureaus participated in the survey. The survey helped the DCA to determine that there are changes that can and must be made. She stated two of the most important areas are in customer service and timeliness. The results of this survey are being taken very seriously by the DCA and they are using this survey as a starting point to initiate improvements at the executive level.

Carolyn Navarro recommended the Board look at Yelp's website to see the reviews that people are giving in regard to their experiences with the Board.

**Agenda Item 17**      **Presentation and Update from the Federation of State Medical Boards – Jacqueline A. Watson, D.O. and Mike Dugan**

Ms. Watson and Mr. Dugan from the Federation of State Medical Boards (FSMB) gave a presentation and update on current issues at the FSMB. Those topics included the FSMBs vision and mission, the services and educational opportunities that the FSMB provides, and an update on their new five-year strategic plan. They also gave an advocacy update, which included discussion on the FSMB's 2015 policy initiatives, their scope of practice, the Interstate Medical Licensure Compact and opioid prescribing.

The FSMBs presentation can be viewed in full on the Board's website at the following link:  
[http://www.mbc.ca.gov/About\\_Us/Meetings/2015/Materials/materials\\_20150730\\_brd-17.pdf](http://www.mbc.ca.gov/About_Us/Meetings/2015/Materials/materials_20150730_brd-17.pdf)

Lisa McGiffert, Consumers Union, stated they work around the country and are pleased to see the FSMB information would be updated soon. She hoped that since the FSMB site is one of the few places that anyone in the country can look up their physicians, the FSMB would consider making disciplinary action information available to the public at no cost.

Dr. Gill thanked Ms. Watson and Mr. Dugan for attending and presenting at the meeting. He stated he believes there is no reason for California to consider the Interstate Compact at the current time as the needs of other states are very different from the needs of California. He then discussed the legislation being considered where Medicare beneficiaries can get telemedicine across state lines and the physician would be disciplined by the parent state and not where the beneficiary is located. He said if this Legislation should pass, it would impose a significant hardship on the state board that is responsible for disciplining the physician.

**Agenda Item 18**      **Presentation on Findings from the 2013 Supplemental Survey on Electronic Health Record Availability and Medi-Cal Participation – Janet Coffman, M.A., M.P.P., Ph.D., Associate Professor, University of California, San Francisco**

Dr. Coffman, University of California, San Francisco (UCSF), gave a presentation on the findings from the 2013 Supplements Survey done on Electronic Health Record availability and the participation of Med-Cal. Her presentation included information on the methods used in the survey to obtain the information, as well as the questionnaire which included voluntary questions as well as mandatory questions. She also presented many of the results of the survey, which included the 2011 – 2013 EHR availability, which was also broken down by practice type, by majority specialty, the five most frequently used features and the five least used features. Her presentation also provided facts and statistics about Medi-Cal participation.

Dr. Coffman's presentation can be viewed in full on the Board's website at the following link: [http://www.mbc.ca.gov/About\\_Us/Meetings/2015/Materials/materials\\_20150730\\_brd-17.pdf](http://www.mbc.ca.gov/About_Us/Meetings/2015/Materials/materials_20150730_brd-17.pdf)

Carolyn Navarro stated she is angered that she had to contact Washington DC and have them contact Medi-Cal in California before anyone from Medi-Cal would respond to her complaints.

**Agenda Item 21**      **Investigation and Vertical Enforcement Program Report**

Mr. Gomez announced that they began the implementation of the new Vertical Enforcement (VE) Prosecution Manual. He stated he had met with all of the team members of the AG's office and investigators in the HQIU to go through the manual. He stated the primary goal was to create a new era of teamwork and collaboration to reduce delays in the enforcement process and increase the accountability to enhance consumer protection in California.

Mr. Gomez thanked Ms. Kirchmeyer and Ms. Castro for their valuable input into the creation of the manual and he felt that it is a product that would hold each individual accountable for their duties.

Ms. Sweet gave a presentation on the accomplishments that have taken place since the transition of the investigators from the Board to the DCA. Her presentation included accomplishments in their recruitment and retention efforts, improved efficiencies, improved staff morale, improved professionalism, and statistics of pending cases.

Ms. Sweet then announced that three of their investigators had been recognized by the Federal Department of Justice for their outstanding work on criminal cases during the past year; Supervising Investigator, Laura Gardhouse, Investigator Larry Bennett, and Supervising Investigator Carmen Aguilar-Marquez were awarded at a ceremony. She stated their investigators had won five like awards in the past five years, which is a testament of their passion and dedication for fulfilling the mission of public safety.

Ms. Castro gave an update on the VE Manual stating the negotiation team had been very motivated to get it completed, and she stated she is proud of the outcome. Ms. Castro noted now that the VE Manual is in place, their office would be starting to work on training staff as well as getting the Cloud concept finalized to assist in giving both attorneys and investigators access to the same files simultaneously. Her office would be working closely with DOJ to discuss collaboration software options to help determine which application would meet the needed requirements for all involved.

Ms. Yaroslavsky requested Ms. Sweet forward a copy of her presentation to the Board Members.

Dr. Lewis requested Ms. Sweet to provide a more detailed statistics chart to include a shorter time frame of improvements on enforcement case statuses.

Dr. Bholat asked Ms. Sweet what the percentage is of cases that go out to an expert reviewer and also what is being done to assist those reviewers to respond to these cases, in terms of the new manual.

Ms. Sweet responded that about 80% of cases go to expert reviewers once they have been processed by the Board staff protocol and then sent to the field offices.

Since the Board kept the Expert Reviewer Program, Ms. Kirchmeyer responded, noting that now that a new Chief of Enforcement had been hired, the training program would continue in the near future, on an annual or bi-annual basis, with the assistance of the HQIU.

Dr. Bishop noted his concerns to Ms. Castro about the security of the Cloud that is being developed.

Ms. Castro stated that California had the Criminal Justice Information System Bureau that runs a system called the California Law Enforcement Tracking System (CLETS), which DOJ felt is very secure and encrypted. The security concerns is one of the reasons this project is taking longer than they had hoped since they are having more challenges since the BreEZe system had gone into place. They are taking these concerns seriously and would not release the Cloud until everything can work safely together.

**Agenda Item 22**      **Discussion and Possible Action on the Midwifery Challenge Program Offered by Maternidad La Luz**

Mr. Worden stated that previously, this school had approved a midwifery challenge program, but the law had since changed. With that change, staff requested that schools that already had challenge programs prove that they meet the new requirements. Mr. Worden noted this school



had met those requirement by submitting the necessary documents, which had been reviewed by he and Ms. Webb, who both agree that this school meets the necessary requirements of the new law, based on BPC Section 2513.

Mr. Worden asked the Board to approve this school, as it met the challenge requirements, based on BPC Section 2513.

*Dr. Lewis made a motion to approve this school; s/Ms. Yaroslavsky. Motion carried unanimously.*

**Agenda Item 23**      **Update from the Attorney General's Office**

Ms. Castro noted two new Deputy Attorney Generals had recently been hired. The first being Michael Yun from the Tulare District Attorney's office, and Leanna Shields from the San Diego District Attorney's office. She stated they are both very dedicated to this type of important work and would be a compliment to her current staff.

Ms. Castro then stated the DOJ had filed their responsive brief in the Lewis vs. Medical Board supreme court case in California. The case involved the CURES system and whether or not the Board should continue to use it. She noted this is just a legal challenge based on a privacy issue to determine if the Board would still be able to use the CURES system to assist in protecting the public during investigations. Ms. Castro stated she would hopefully have an update soon with a hearing schedule on that case.

**Agenda Item 24**      **Update on the Physician Assistant Board**

Dr. Bishop stated the Physician Assistant Board (PAB) went live with their BreEZe online renewal system in May and the website was updated to reflect the new service and staff had not experienced any issues with the system. PAB staff stated they were receiving fewer paper renewals and were able to quickly resolve last minute renewal issues by directing licensees to renew online with the BreEZe system.

Dr. Bishop then noted the PAB's website had been updated to provide licensees with information on the CURES 2.0 rollout and registration requirements.

Dr. Bishop announced that a regulatory hearing on the proposed guidelines for imposing the SB 1441 uniform standards regarding substance using licensees had been held on February 9, 2015. The PAB had voted to approve additional amendments in a 15-day public comment period. No public comments were received. Thus, the rulemaking file was finalized and submitted to the DCA for their review. Upon their approval, the file would then be forwarded to the OAL.

Dr. Bishop stated SB 2102 was effective January 1, 2015, and required the PAB to collect at time of the initial licensure renewal, specific demographic data for the Office of Statewide Health Planning and Development (OSHPD). PAB staff worked with the DCA and other boards to develop an electronic online survey. The initial license letter inserted with the wall certificate and pocket identification card would be updated with the link to the survey and the insert would be included with the renewal notice as well. He stated the PAB's website had also been updated

with information and links to the survey. The rollout of the survey took place in July, 2015. The PAB encouraged their licensees to complete the survey, as the data would provide helpful information to assist the State in determining health care shortages and the need for additional PA training programs. The data received would also be useful to the PAB with regard to public and policy goals of consumer protection.

Dr. Bishop noted that at the May 2015 PAB meeting, members discussed SB 337, which is currently pending before the legislature. Members voted to take an oppose unless amended position on the bill. The Members had concerns with the provisions of the bill regarding one of the two additional mechanisms. Specifically the method of concern would permit the supervising physician and PA to conduct medical record review meetings at least ten times annually. The PAB believed that ten times annually was too open ended and believed the time frame should be more precisely defined. In addition, the PAB noted there was no documentation provisions for these meetings. Finally, the PAB believed there should be a baseline of the number of cases reviewed at these meetings.

Dr. Bishop stated that at the July 2015 teleconference Board Meeting, the California Academy of Physician Assistants, sponsors of SB 337, provided amendments to the bill, which addressed the Board's concerns. The PAB then took a support if amended position on the bill.

Dr. Bishop then thanked the Medical Board for their continued support, stating the Executive Director, Ms. Kirchmeyer, and staff always make themselves available to the PAB whenever assistance is needed. He then stated the next PAB meeting is scheduled for August 3, 2015.

#### **Agenda Item 25      Update on the Health Professions Education Foundation**

Ms. Yaroslavsky stated a special application cycle had been opened from new money received from the California Endowment. It started May 18, 2015, and closed June 26, 2015. There were 53 applications received that are pending review at the end of July 2015. She thanked the California Endowment for their support and engagement in this program.

She stated the HPEF had also been doing outreach in trying to get the message of what they do out to the community. With that, she announced the engagement of their newest Executive Director, Linda Onsted Atkins, who had done an amazing job in her role as Acting Executive Director. Ms. Atkins had also taken on the role as the Assistant Executive Director for OSHPD.

#### **Agenda Item 26      Agenda Items for the October 2015 Meeting in the San Diego Area**

Mr. Serrano Sewell asked Members if there were any agenda items they would like added to the October Board Meeting agenda. He requested they contact Ms. Kirchmeyer if there is anything they would like added between now and then.

Mr. Serrano Sewell noted that if an administrative petition requesting the Board require physician notification to patients when they are on probation is received, it would be calendared for the October meeting.

**Agenda Item 27      Election of Officers**

Mr. Serrano Sewell stated that the Election of Board officers is done annually at the July Board Meeting. The Officer positions that would be voted on are Secretary, Vice President and President for the Board.

Mr. Serrano Sewell asked the Members for nominees for Secretary of the Board.

*Dr. Lewis nominated Ms. Pines to continue as secretary of the Board; s/Ms. Yaroslavsky. No other nominations were made. Ms. Pines accepted the role to continue as Secretary. Vote passed unanimously.*

Mr. Serrano Sewell asked the Members for nominees for Vice President of the Board.

*Dr. Levine nominated Dr. GnanaDev to continue as Vice President of the Board; s/Dr. Yip. No other nominations were made. Dr. GnanaDev accepted the role to continue as Vice President. Vote passed unanimously.*

Dr. GnanaDev asked the Members for nominees for President of the Board.

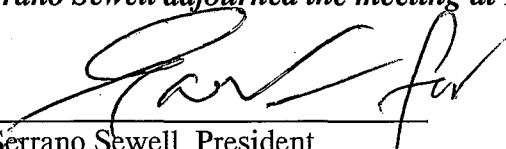
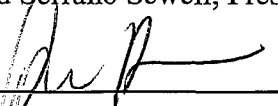
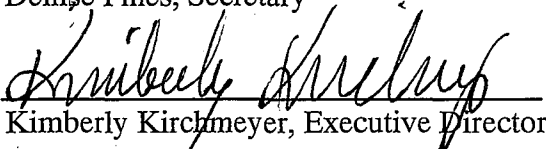
*Ms. Yaroslavsky nominated Mr. Serrano Sewell to continue as President of the Board; s/Dr. Bishop. No other nominations were made. Mr. Serrano Sewell accepted the role to continue as President of the Board. Vote passed unanimously.*

Dr. Levine recommended the Board to consider in the future having these roles be voted on every two years instead of annually.

Mr. Serrano Sewell thanked the Members for his re-election and stated he is honored and looking forward to the upcoming year.

**Agenda Item 28      Adjournment**

*Mr. Serrano Sewell adjourned the meeting at 12:33 p.m.*

	
David Serrano Sewell, President	Date
	10-30-2015
Denise Pines, Secretary	Date
	11-3-15
Kimberly Kirchmeyer, Executive Director	Date

The full meeting can be viewed at [http://www.mbc.ca.gov/About\\_Us/Meetings/2015/](http://www.mbc.ca.gov/About_Us/Meetings/2015/)