



# 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 Online

June 1, 2021

## MEETING MINUTES

Tuesday, June 1, 2021

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

### Members Present:

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

### Members Absent:

Asif Mahmood, M.D.

### Staff Present:

Aaron Bone, Chief of Legislation and Public Affairs  
Valerie Caldwell, Associate Governmental Program Analyst  
Sean Eichelkraut, Information Technology Manager I  
Jenna Jones, Chief of Enforcement  
Marina O'Connor, Chief of Licensing  
William Prasifka, Executive Director  
Reji Varghese, Deputy Director  
Carlos Villatoro, Public Information Officer II  
Kerrie Webb, Staff Counsel

### Members of the Audience:

Alka Airy  
Eric Andrist, The Patient Safety League  
Dennis Cuevas-Romero, Physicians for a Healthy California

Rosanna Davis  
Nataly Diaz, California Primary Care Association  
Xavier De Leon  
Tracy Dominguez  
Virginia Farr  
Bridget Gramme, University of San Diego  
Mario Guzman  
Monique Himes  
Marian Hollingsworth, The Patient Safety League  
Denise Johnson  
Edwin Kendrick  
Wendy Knecht  
Susan Lauren  
Michele Monserratt-Ramos, Consumer Watchdog  
Kristen Ogden  
Ludmila Parada  
Sandra Perez  
Catrina Reyes, California Academy of Family Physicians  
Gezel Saheli  
Kimberly Turbin  
Marissa Vismara, California Primary Care Association

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

Ms. Lawson called the meeting of the Medical Board of California (Board) to order on June 1, 2021, at 3:32 P.M. A quorum was present and due notice was provided to all interested parties.

**Agenda Item 2      Discussion and Possible Action on Findings of Necessity to Hold a Special Meeting**

Ms. Lawson explained that Government Code section 11125.4(a)(2) allows the Board to hold a special meeting with 48 hours' notice to consider proposed legislation when compliance with the 10-day notice provisions of section 11125 would impose a substantial hardship on the Board. Ms. Lawson stated that the Board seeks to discuss SB 806 and take a position on it before the Senate votes on the bill. Ms. Lawson asked for a motion to approve the findings to hold a special meeting.

***Dr. Lewis moved to approve the findings to hold a special meeting/S: Dr. Krauss***

Ms. Lawson asked for questions or comments from Board members. Hearing none, Ms. Lawson asked for comments from the public, reminding everyone that this agenda item is on the findings of necessity to hold a special meeting and not on SB 806.

Mr. Guzman stated that his comments pertain to the next agenda item.

Ms. Parada stated that her comments are for the next agenda item.

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

***Motion carried 12-0***

**Agenda Item 3 Discussion and Possible Action on SB 806 (Roth)**

Ms. Lawson explained the format of discussing this item, saying Mr. Bone will present the staff report, Board members can ask any clarifying questions, members of the public can comment, and then discussion will be held for each theme or issue.

Mr. Bone explained that SB 806 would increase most of the licensing fees by the amounts requested by the Board, except for fees that pertain to initial licensure and renewal fees for physicians, which would increase by 80 dollars. Mr. Bone commented that amendments to SB 806 were put into print on the evening of Friday, May 28<sup>th</sup>.

Mr. Bone reviewed the next portion of the bill, saying it would allow the Board to recover investigation and prosecution costs for a disciplinary proceeding against a physician licensee.

Mr. Bone continued, saying the bill would also rename the postgraduate training license (PTL) as the postgraduate license, and it would allow individuals to be granted a physician's license if they receive credit from their program director for completing a 36-month program rather than a 36-calendar month program, which would address concerns from PTL holders who took a leave of absence during their program. Mr. Bone commented that the bill states that upon review of supporting documentation, the Board may grant a physician's license to an applicant who demonstrates substantial compliance with the 36-month training requirements, and that the bill clarifies that a postgraduate licensee may sign any forms that a physician is authorized to sign.

In addition, Mr. Bone stated that the bill includes the legislature's intent that an enforcement monitor evaluates the Board's enforcement efforts with a concentration on the handling and processing of complaints and timely application discipline imposed upon licensees.

Lastly, Mr. Bone explained that the bill extends the Board's sunset date by two years instead of four years.

Dr. Hawkins asked if the length of time for Board members to serve changes from four years to two years.

Mr. Bone explained that the sunset clause will remain in effect until January 1, 2024, not the length of a Board member's term.

Dr. Krauss asked if a resident receives a postgraduate license at the initiation of the residency or after 12 months are completed.

Mr. Bone replied that it does not change the timing of when the license is received.

Ms. Webb stated that residents are required to get a PTL within 180 days, and the program director must authorize moonlighting in writing.

Dr. Hawkins asked if a person still must spend 24 months in a single program.

Mr. Bone replied yes.

Mr. Varghese reviewed the analysis of fund condition report, saying the analysis is based on the fees proposed in the current version of SB 806 and assumes the fee increase will go into effect January 1, 2022. Mr. Varghese explained that only half of the fee increase is included in the fiscal year 2021-2022 since January 1, 2022, would be in the third quarter. Mr. Varghese continued, saying that in fiscal year 2022-2023 full fee revenue is accounted for, showing an increase of revenue to about seven million dollars. Mr. Varghese pointed out the loan from the Vehicle Inspection and Repair Fund, saying that 12 million dollars is projected to come to the Board in 2021-2022. Mr. Varghese stated that the Board's total resources minus its expenditures will result in a deficit fund balance. Mr. Varghese concluded that the proposed 80-dollar license fee increase is not enough to address the Board's structural fund imbalance.

Dr. GnanaDev asked if any expenses would be reduced, saying you cannot fix one side without fixing the other.

Mr. Bone commented that he is aware of discussions and ideas from prior Board meetings to reduce expenditures, but there is nothing in the bill that provides for cost reductions.

Mr. Varghese commented that the Health Quality Investigation Unit (HQIU) and Attorney General's Offices (AGO) costs are outside of the Board's direct control. Mr. Varghese also commented that once the pandemic waivers and executive orders expire, the Board's expenses will increase.

Mr. Bone pointed out that, in the bill, it states that the legislature shall review the amount of fees for the Board's initial licensure and renewal fees for physicians next year to determine if another fee increase is necessary to avoid insolvency.

Mr. Watkins asked if there is an analysis that would show what the \$1,150 increase would have done through the next five years.

Mr. Varghese replied that, if all things remained the same and the \$1,150 fee increase were to take effect January 1, 2022, he would estimate that the Board would not need a loan and we could start to build the fund balance back up.

Dr. Hawkins asked if cost recovery is included in the analysis of fund condition.

Mr. Varghese replied that it is in the expenditures as a negative number in Estimated Overcollection of Reimbursements. Mr. Varghese commented that this item is not considered revenue.

Dr. Lewis asked what amounts are generated from outside sources, such as special projects that the Board is required to do, versus internal projects requested by Board members, and what percentage of monies is devoted to each.

Mr. Varghese replied that he is not prepared to answer that, but he can research and get back to him.

Dr. GnanaDev commented that the Board voted to pass the fee increase during the last sunset review, knowing that expenses would have to be controlled. Dr. GnanaDev also commented that \$1,150 would be the highest medical board licensing fee in the country. Dr. GnanaDev suggested cost-cutting be brought up to the legislature rather than just the fee increase.

Mr. Watkins agreed with Dr. GnanaDev in terms of costs, saying the problem arises when the legislature is reluctant to move on fee increases. Mr. Watkins commented that the cost issues the Board has are related to enforcement and the input of the legislature is needed. Mr. Watkins stated that, while both the cost issues and the fee increase needs the Board's focus, only one can be addressed since only one is on the table. Mr. Watkins commented that the current fee is not going to cut it.

Dr. Thorp commented that he was preparing for this meeting based on the prior version of SB 806 and is frustrated there was no notification of the revision.

Ms. Lawson replied that an email was sent to Board members as soon as staff put together an updated analysis, saying the revisions were put into print at 9:00 P.M. Friday evening.

Ms. Lubiano asked if there was any rationale provided for the reduced fee increase of \$80.

Mr. Bone replied that the Board may hear about that from public commenters, but nothing has been officially presented.

Ms. Lawson asked to hear comments from the public.

Mr. Guzman expressed his opposition to the amendments made to SB 806, including removing the public member majority and the reduced fee amount. Mr. Guzman commented that the purpose of this bill is to bring accountability to the Board and to reestablish trust. Mr. Guzman speculated that the reasons for the Board's atrocious track record for investigating complaints is due to the lack of funding.

Ms. Parada commented that Mr. Guzman, her husband, is a victim of medical malpractice from negligent doctors. Ms. Parada stated that the Board found that the doctor's care was below the standard of care but did not receive any disciplinary action. Ms. Parada expressed her disappointment in the legislature to amend SB 806 by reducing the fee increase and eliminating the public member majority. Ms. Parada urged Board members to withhold support of SB 806 until the original fee increase and the public member majority are reinstated.

Ms. Lauren echoed the last two commenters as a surgical assault survivor. Ms. Lauren commented that the revised version of SB 806 does nothing to establish public trust or change anything. Ms. Lauren stated that innocent victims pay with their quality of life and finances and

that a public member majority is a necessary starting point, as long as the members do not have conflicts of interest or bias in their approach to the medical field. Ms. Lauren spoke of her surgery and complaint against Dr. Berger.

Ms. Knecht commented that she was severely harmed by a doctor's conflict of interest and has seen firsthand that the Board is not efficient or effective in the enforcement process. Ms. Knecht implored the Board to support SB 806 to enact changes to protect the public, including an enforcement monitor, cost recovery, as well as work to have a public member majority and restore the original fee increase.

Ms. Farr asked who made the revisions to SB 806, saying that they are at the root of the issues at the Board. Ms. Farr commented on Board members' reactions to public commenters. Ms. Farr asked for the Board to stand up for victims of medical harm.

Ms. Perez spoke of her previous testimony regarding her daughter's death because of medical negligence and her complaint being closed by the Board. Ms. Perez commented that there is zero enforcement and accountability, and that SB 806 will enhance the ability of students who have little experience to treat patients. Ms. Perez urged the Board to withhold support of the bill until there is a public member majority and a fee increase that allows the Board to do its job effectively.

Ms. Himes expressed her disappointment in the removal of the public member majority and asked the Board to withhold support of SB 806 unless the public member majority and original fee increase are restored. Ms. Himes stated that the public has lost trust in the Board and these issues are the only way the public can begin to rebuild trust.

Ms. Hollingsworth expressed her disappointment in the Board, saying that SB 806 enables the Board to protect doctors and not patients. Ms. Hollingsworth urged the Board to make changes to SB 806, including increasing the members to 17 and having a public member majority. Ms. Hollingsworth commented that the Board needs more than an enforcement monitor and asked who it would be. Ms. Hollingsworth spoke on the need to have cost recovery and stated that a fee increase to \$1,150 is not excessive.

Ms. Lawson replied to Ms. Hollingsworth, saying SB 806 and the revisions are not the Board's bill and the Board is reacting just as the public is to the revisions made.

Ms. Dominguez asked the Board to withhold support of SB 806 unless a public member majority is added, and the original fee increase is restored. Ms. Dominguez spoke of her loss of a family member due to the Board's broken enforcement system.

Ms. Reyes stated that the proposed amendments to the PTL will not address such issues as the inability of residents to bill while moonlighting and obtain an X waiver to prescribe substance use disorder medication. Ms. Reyes commented that she looks forward to working with the legislature and the Board on a solution that will address the unintended consequences caused by the PTL.

Mr. Cuevas-Romero stated that the California Medical Association (CMA) remains opposed unless amended due to concerns related to cost recovery and the ongoing unresolved issues

on the PTL. Mr. Cuevas-Romero encouraged the Board to take a holistic view on uncontrolled costs that are further exacerbating the Board's financial condition. Mr. Cuevas-Romero commented that the CMA supports bringing investigators back to the Board and is interested in the enforcement monitor as it relates to fees. Lastly, Ms. Cuevas-Romero stated that the \$80 fee increase was based off the eight million dollar proposed operational loan.

Mr. De Leon asked the Board to withhold support of SB 806 unless the two new public members and the fee increase are restored. Mr. De Leon commented that the public needs accountability and consumer protection from the Board.

Ms. Airy expressed her disappointment in SB 806 for not doing enough to strengthen patient safety and medical oversight. Ms. Airy spoke of her sister's death due to a medical error and commented that it happened again at the same hospital with some of the same physicians. Ms. Airy asked the Board to withhold support of SB 806 unless a public member majority is returned to the bill.

Ms. Monserratt-Ramos commented that she was disappointed to hear that SB 806 was amended to eliminate the public member majority, saying the only way to address consumer protection and bring accountability to the enforcement process is by giving public members the majority vote. Ms. Monserratt-Ramos asked the Board to withhold support unless two new public members and the original fee increase are restored.

Mr. Andrist stated that the public should also be able to comment on each issue separately. Mr. Andrist commented that the legislature has fallen under the CMA spell, even though less than one-third of California doctors are members. Mr. Andrist spoke of CMA's argument that doctors have a greater understanding of the profession and can provide needed insight into the profession, saying that no one is talking about making an all-public member Board. Mr. Andrist commented that supporting this bill is supporting bad doctors and asked the public Board members to expose every time they feel their vote was overridden by a physician member. Mr. Andrist asked the Board to withhold support unless a public member majority is included, and enough money for the Board to operate properly to protect patients.

Ms. Davis advocated for SB 806 to be amended to include language for a licensed midwife (LM) board, saying the LMs are already subject to cost recovery in disciplinary cases. Ms. Davis commented that a 50% fee increase should go to regulation of midwives on their regulatory structure where LMs are represented not under the competing profession of physicians. Ms. Davis stated that, without a regulatory body comprised of LMs, members of the profession are blocked from reviewing and assessing disciplinary cases that could shed light on emerging trends. Ms. Davis commented on CMA's argument that the majority of regulatory boards are governed by professional member majorities, saying it's long past time for consumers of LMs to be afforded the same regulatory protections as those who seek care from other health care professionals.

Ms. Gramme stated that she is disappointed by the amendments that deleted the provisions that would have given the Board the tools it needs to protect the public, particularly the public member majority and the fee increase. Ms. Gramme urged the Board to keep fighting for the fee increase so that it has sufficient resources to detect and discipline dangerous doctors. Mr. Gramme commented that now is not the time to cut expenses, which would further limit the

Board's ability to restrict or revoke the licenses of incompetent physicians. Ms. Gramme asked the Board to support an independent enforcement monitor. Ms. Gramme stated that this is a moment for the Board to demonstrate its commitment to public protection.

Mr. Kendrick commented on the strength and opportunity of a monitoring program, saying that it must include both patients and physicians who feel disenfranchised. Mr. Kendrick commented on a letter sent to Board members and asked them to read it.

Ms. Turbin asked the Board to withhold support of SB 806 unless two new public members are appointed, and the original fee increase is restored.

Ms. Diaz commented on PTL limitations and stated that the proposed amendments to SB 806 will not be sufficient to address issues like the PTL holders not being able to enroll in MediCal to bill for moonlighting services. Ms. Diaz asked the Board to continue to work with stakeholders to address PTL issues.

Ms. Johnson commented that she was devastated at the news that SB 806 had been amended, saying the people have not been heard. Ms. Johnson stated that everyone deserves high quality medical care, and it is impossible without a strong accountability system. Ms. Johnson spoke of her son's medical experiences and death. Ms. Johnson asked the Board to withhold support of SB 806 unless two new public members are appointed.

Ms. Lawson proposed the Board discuss each issue that was brought up, saying she has listed Board member composition, fee increase and fund condition, enforcement monitor, cost recovery, PTL, LM, two-year sunset term, other issues included in the sunset report, and any other issues not mentioned or listed.

Dr. Hawkins commented that during his confirmation hearing, he stated that he thought two additional members was something that could work as long as the members knew about the Board and had life experience and could be a team player. (Dr. Hawkins lost connection during his comments.)

Dr. GnanaDev commented that SB 806 is not the Board's bill, but rather from the Assembly Business and Professions Committee. Dr. GnanaDev that other health care boards have a licensee majority, so that was not an issue for him.

Ms. Lawson asked for clarification on Dr. GnanaDev's perspective.

Dr. GnanaDev commented that he is fine with the current amendment on membership.

Dr. Krauss commented that, while serving on panel B, he has never witnessed a circumstance where any decision was doctors versus public members, but instead he has witnessed discussions that elevated both sides. Dr. Krauss stated that he is sympathetic to the optics that are created by a licensee majority Board, and that having one more public member and one less doctor may not produce a different outcome but would earn less suspicion from the public. Dr. Krauss commented that the optics of having one more public member may be of benefit. Dr. Krauss commented that he has no objection to a public member majority, so long as they go through the same level of background check and review as any other member.



Mr. Watkins stated that his experience is the opposite as Dr. Krauss' and that he has been in the situation of doctors and public members voting differently. Mr. Watkins stated that Dr. Krauss is correct in saying that having more members will not make a difference in panel decisions since those are held in closed session. Mr. Watkins commented that physician members defer to an expert during enforcement cases, so they do not bring greater insight. Mr. Watkins stated that his support for a public member majority is not just for optics but for the integrity of the Board.

Dr. Lewis disagreed with Mr. Watkins, saying during his time on panel A he has never seen two separate sides. Dr. Lewis commented that he thinks the Board member composition should stay as it is, saying the optics may look better but there will not be different outcomes.

Ms. Campoverdi commented that the public's message is loud and clear as far as the importance of having a public member majority. Ms. Campoverdi stated that it comes down to the integrity of the individual and that all she sees are positive changes that a public member majority will bring about.

Dr. Thorp commented that there has been a collaborative relationship between the public and physician members, and he has not felt like there is an adversarial relationship. Dr. Thorp stated that the decisions that come to the panels are generally recommendations by a deputy attorney general (DAG) or an administrative law judge (ALJ) and spoke of legal experts walking the panel through the case if there were disagreements. Dr. Thorp commented that he does not think it is a threat to add public members, but he is concerned of the perception that the Board will be public members against physician members. Dr. Thorp stated that he would not be in favor of adding public members because of his concern of the adversarial relationship between the members.

Ms. Lubiano commented that she is supportive of having a public member majority. Ms. Lubiano stated that the optics would help build trust with the public, and it would also decrease the risk of lawsuits for the Board. Ms. Lubiano recalled two incidents of public members versus physician members. Ms. Lubiano stated that another thing to consider is who would appoint the additional members, saying that the proposed new members would not undergo Senate confirmation and do not appear to be vetted like a governor's appointee.

Dr. Krauss supported a public member majority and commented that he would like to see it done by reallocating the governor's appointments rather than giving more authority to the assembly and the senate with an inadequate vetting process. Dr. Krauss suggested the Board ask that the governor's physician appointments drop to six and add a public member. Dr. Krauss also mentioned the added cost of increasing the Board members from 15 to 17.

Mr. Ryu commented that trust is the most important step, and if there is perception that adding two public members will build trust, he thinks the Board should do it. Mr. Ryu stated that this is not the Board's bill, and whatever the Board comes up with is just a recommendation. Mr. Ryu agreed with Dr. Krauss' recommendation of reallocating the governor's appointments.

Ms. Lawson commented that this was the number one issue from the public, and that it concerns her that the authors thought it was important enough to include it in the original

version but was later amended out. Ms. Lawson stated that she has never experienced physician members versus public members while serving on panel B. Ms. Lawson agreed with Ms. Campoverdi's statement that there is no argument against a public majority. Ms. Lawson stated that she supports a public member majority and agreed with many of the comments.

Ms. Campoverdi commented that not only was the idea of a public member majority a large portion of the public comments, but trust in the Board was a central issue during sunset review. Ms. Campoverdi stated that this topic is high on the priorities list.

Ms. Lawson moved on to the issue of the fee increase and fund condition.

Dr. Krauss commented that the fee increase is essential, and the Board cannot begin to do anything if it does not have the money to support the mission. Dr. Krauss also commented that supporting this bill should be contingent upon having adequate fee increases to maintain insolvency.

Dr. Thorp agreed with Dr. Krauss.

Dr. GnanaDev commented that the Board previously voted to approve the fee increase, but without anything in place to control costs, the Board will be in the same position in a couple of years.

Mr. Watkins commented that a conversation about fee increases should also include a conversation about cost recovery, saying it is a strategic tool. Mr. Watkins commented that enforcement is the bulk of the Board's costs and issues, and cost recovery along with a fee increase can address these items.

Mr. Brooks commented that the Board needs an adequate and purposeful fee increase, but it should be indexed every year for inflation.

Ms. Lawson commented that the Board did previously approve a fee increase, but the purpose of today's conversation is to react to SB 806, which proposes only a modest licensing fee increase.

Dr. Hawkins commented that the fee increase needs to be as originally requested from the Board, which initially received support from the legislature, and this issue is a deal breaker. Speaking on the first issue before losing connection, Dr. Hawkins stated that you cannot predict how someone will behave in a meeting, whether physician or public member, and the confirmation process is an important process in becoming a member of the Board. Dr. Hawkins supported additional members but would want to know how they would be selected.

Mr. Watkins commented that it has been 15 years since the Board last received a fee increase, and that the average years a board has a fee increase is five to seven years. Mr. Watkins stated that the last fee increase was \$180 but the Board also gave up cost recovery, and \$1,150 is not so high since it has been 15 years.

Ms. Lawson moved on to the issue of an enforcement monitor, saying the current bill states that it is the intent of the legislature to have an enforcement monitor evaluate the Board's enforcement efforts, but it is lacking in specificity.

Mr. Bone commented that the bill language is very thin, and this seems to be a placeholder, however the bill language states the monitor would evaluate the Board with a specific concentration on the handling and processing of complaints and timely application of sanctions or discipline imposed on licensees.

Dr. Krauss stated that he liked the concept but does not like the thought of the cost being put on the Board. Dr. Krauss commented that he would be in favor if the costs of the enforcement monitor are not borne by the Board.

Dr. Thorp agreed with Dr. Krauss and added that language needs to be added to delineate how it would be paid for. Dr. Thorp commented that the Board previously had an enforcement monitor, but he has never seen a report on that monitor's function and the outcome.

Mr. Bone commented that the prior monitor was funded by the Board and was selected by the director of Department of Consumer Affairs (DCA). Mr. Bone added that it was a limited term position, and the monitor was required to issue an initial report in October 2003, with an update every six months, and a final report in March 2005.

Dr. Lewis asked if SB 806 was a gut-and-amend from Hill's bill to Roth.

Mr. Bone replied no.

Dr. Lewis asked if stakeholders could comment on the revisions that were recently made.

Mr. Bone explained that the senate is due to approve the bill and then it will have a hearing in the assembly, saying it is at the halfway point. Mr. Bone added that he expects amendments to be made in the next three months.

Ms. Lawson commented that we will have a full Board meeting after this process and there will be discussion and comments at that time before it is ultimately approved.

Mr. Bone added that the bill may be decided by the August Board meeting, otherwise it will be another opportunity for stakeholder comments.

Mr. Watkins stated that the cost issue is a mute issue for him, saying if the Board can forego money on cost recovery that serves the benefit of the doctors, then the Board can spend the money on an enforcement monitor to reestablish public trust and credibility.

Dr. GnanaDev commented that no other board has an enforcement monitor except for the California Bar Association. Dr. GnanaDev stated he does not support it and he does not think it will add any value.

Mr. Watkins commented that the Board of Registered Nursing just did the same thing, and they are paying for it, saying it is standard practice for the board to pay the expense.

Dr. Yip commented that he thinks an enforcement monitor is a good idea and there is always room for improvement.

Mr. Brooks asked what problems the enforcement monitor solves.

Mr. Bone referred to the prior analysis, saying the goals were to improve quality, reduce timeframes, reduce the complaint backlog, and assess the value of the sources information that the Board relies on.

Ms. Lawson commented that the prior monitor presented recommendations that were adopted and added that the enforcement monitor is a good concept that she supports.

Dr. Thorp pointed out that the diversion program was eliminated at that time, which was a serious loss for practicing professionals, and a program still has not been implemented in its place.

Dr. Hawkins commented that he is in favor of an enforcement monitor, but details are lacking, and the language sounds like what the Board is supposed to be doing already. Dr. Hawkins added that the monitor has the potential to improve public confidence.

Ms. Campoverdi supported an enforcement monitor, saying it is a good opportunity for improvement.

Dr. GnanaDev commented that he wants to know what the monitor would do and what it would cost.

Dr. Lewis agreed with Dr. Thorp and asked if the diversion program is part of this discussion.

Ms. Webb spoke on the diversion program, saying it did not operate well, saying diversion associated with the Medical Board is ripe for charges that the public is not being well protected if the Board is aware of physicians who have a substance abusing issue and still practicing.

Ms. Webb explained that the Board is currently in the process of developing a physician health and wellness program that follows the Uniform Standards for Substance Abusing Physicians.

Dr. Lewis asked if this program is in SB 806.

Ms. Webb replied that it has nothing to do with SB 806 and that there is a rulemaking in process and is being reviewed by DCA.

Ms. Lawson reviewed the Board's consensus of supporting the concept of an enforcement monitor and asked Mr. Bone what direction he needs from Board members since there are no details.

Mr. Bone replied that the Board can scope items that it thinks the monitor should focus on.

Mr. Watkins suggested using and amending the language used in the analysis, referencing the disciplinary guidelines.

Ms. Lawson commented that the goals listed in the analysis are the goals the Board would have for an enforcement monitor and suggested that be a framework to start from to provide feedback to the legislature.

Dr. GnanaDev commented that this is a consultation process with a recommendation given to the Board, and he agrees with having an independent person appointed by DCA as the monitor.

Dr. Thorp also agreed with having an independent person appointed by DCA as the monitor.

Mr. Watkins commented that the more independent the monitor is, with no ties to DCA or the Board, the more credibility it will receive.

Ms. Lawson moved on to the issue of cost recovery, saying the current version of SB 806 restores cost recovery, which was the position of the Board. Ms. Lawson asked if anyone disagrees with the position. No one responded.

Moving to the issue of PTL, Ms. Lawson asked Mr. Bone to review the current version.

Mr. Bone explained that SB 806 renames the PTL to the postgraduate license so that it can address the issues related to the training license, such as billing with MediCal, moonlighting, and X waivers. Mr. Bone also explained that it clarifies that an individual does not need 36 calendar months of postgraduate training and instead states an individual can qualify for a license for receiving credit for completing 36 months of postgraduate training. Mr. Bone explained that it also clarifies that postgraduate license holders can sign any forms that a physician can sign. Lastly, Mr. Bone explained that it authorizes the Board in its discretion to grant a physician's license to an individual who demonstrates substantial compliance with a 36-month postgraduate training requirement.

Dr. GnanaDev commented that the bill fixes some of the issues, but it does not fix a lot of other issues and gave the example of residents completing their program who still have to wait three to six months to get hospital privileges and are not able to work. Dr. GnanaDev suggested making the requirement 30 months instead of 36 months.

Dr. Thorp commented that SB 806 does not do enough for the people who are affected and agreed with Dr. GnanaDev.

Ms. Lawson asked if Board staff has made any progress with contacting other state medical boards and agencies regarding how they handle the PTL issues.

Mr. Bone replied that there have been calls between Board staff, advocates, legislative staff, and the Department of Health Care Services (DHCS) regarding the moonlighting issue.

Mr. Varghese added that training licenses are different in how they are regulated in each state. Mr. Varghese noted that one difference between the states is the 36-month requirement and the leave policy, saying other states allow for a longer leave policy and trust the program directors to inform the board when a graduate is ready to be licensed.

Ms. Lawson stated that SB 806 address the 36-month issue by allowing the license holder to meet the 36-month requirement if their program director grants them credit for completing the 36-month program, but it does not address other issues the Board has heard. Ms. Lawson asked if the Board would like to request further amendments to address those issues.

Dr. GnanaDev recommended making individuals eligible after 30 months of residency due to the lag times to obtain a license and get hospital privileges.

Dr. Hawkins asked if reducing the time from 36 months to 30 months is a significant amount of time to not receive training.

Dr. GnanaDev replied that they would have lead-time to get their license and hospital privileges and would be able to start on July 1<sup>st</sup>. Dr. GnanaDev explained that it would not save time on training but would save time for the individuals to get into the workforce.

Dr. Thorp elaborated on Dr. GnanaDev's explanation, saying individuals will still need the 36-month postgraduate training to be credentialed. However, for licensure, if someone has had 30 months of training and in their third year of residency, they should be eligible for licensure in January, six months before they complete their training, to be able to enter the workforce in July.

Mr. Watkins commented that this suggestion does not solve the underlying issues that were brought up during the stakeholders meeting. Mr. Watkins asked, with the license name change, if DHCS changed the status of the license.

Dr. Thorp responded that having a full license resolves the issues that were previously brought up. Dr. Thorp commented that it makes sense to allow people to have a full license at 30 months while fully anticipating that they complete their 36-month training program. Dr. Thorp stated that the leave issue will still need to be addressed.

Dr. Krauss commented that he lacked confidence that the Board will come up with the ideal language to fix all the postgraduate licensing issues, and that it may be better to have Mr. Bone understand that the Board would like to remove the barriers that were unintentionally caused by the PTL.

Mr. Bone referenced a letter from a coalition of physicians that raised the concerns of the PTL, saying their solution is to go back to the timeframe before the PTL was implemented. Mr. Bone explained that it is uncommon for first year residents to moonlight, and the second-year residents would not be helped by the 30-month suggestion. Mr. Bone stated that the leave policy is addressed in the language of the bill, as well as being able to sign forms.

Ms. Lawson commented that the Board may not be able to solve all of the issues and encouraged Board members to think about whether they support the bill with its current amendments or would require additional changes in the bill.

Dr. GnanaDev commented that unless the necessary changes are made, it will be difficult for him to support, saying that many legislators pointed out the issues that need to be fixed.

Dr. Krauss commented that he does not feel the Board has to solve the PTL issues to get a support if amended position.

Mr. Brooks agreed with Dr. Krauss, saying the Board still has time. Mr. Brooks commented that his position is to not support the bill unless it is amended.

Ms. Lawson moved on to the LM issue, saying the current version of the bill does not include any of the items identified in the sunset review report.

Mr. Bone agreed, saying there is no language in the current bill that pertains to LMs, and the sunset report stated that the Board agreed with an appropriate scope of practice and related statutory protections to be regulated through a separate entity under DCA.

Ms. Lawson asked if there were any Board members who disagrees with the Board's position in the sunset review report. There were no Board members who disagreed.

Ms. Lawson moved on to the issue of a two-year extension of the Board, rather than the typical four years. Ms. Lawson shared her concern that two years does not allow the Board sufficient time to do the work that the legislature and public want, particularly the process of implementing an enforcement monitor.

Dr. Krauss agreed with Ms. Lawson.

Mr. Brooks also agreed with Ms. Lawson.

Dr. GnanaDev agreed with Ms. Lawson as well, saying it would be time for the sunset process by the time the Board received a report from the enforcement monitor.

Dr. Lewis asked what the reason was for a two-year sunset.

Mr. Bone replied that he has not been able to receive an answer but agreed that two years is not enough time to measure any improvements or outcomes.

Ms. Lawson asked if there were any Board members with a dissenting viewpoint. There were none.

Dr. GnanaDev commented that there will be additional amendments made to SB 806.

Ms. Lawson asked if there were any other issues that were not mentioned that Board members would like to discuss, there were none. Ms. Lawson reviewed the Board's position, saying amendments would be required before the Board is satisfied. Ms. Lawson asked Mr. Bone to clarify the positions of oppose unless amended and support unless amended, and also asked if an opposed position meant opposing the Board's continuance.

Mr. Bone explained that if the Board adopted an oppose unless amended position, and the legislature declined to include the amendments, then the Board would be opposing its continuance.

Dr. GnanaDev commented on his experience from the last sunset, saying the Board's position should be support unless amended, and state what the amendments are.

Mr. Bone commented that the Board would have the opportunity for revisions or a position change at the August Board meeting.

Ms. Lawson reviewed the suggested amendments, being include a public member majority, restore the original initial licensure and renewal fees request, include the 2002 goals and parameters for the enforcement monitor, and continued work to resolve the other issues regarding the PTL.

Mr. Bone commented that the PTL issues may be resolved with the timing of when the license is issued.

Ms. Lawson suggested no further amendments at this time to the PTL and to let it work its way through the process more before taking another position.

Dr. GnanaDev commented that he will not support that.

Dr. Thorp commented that a placeholder be left on this issue so there is room for further negotiation, saying it is important to advocate for young doctors trying to find their way into the workforce.

Mr. Bone suggested the Board express appreciation and support for the current PTL language and stated that the Board continues to want to resolve the remaining outstanding issues.

Dr. Krauss agreed with Mr. Bone.

Ms. Lawson also agreed with Mr. Bone. Ms. Lawson continued with the last amendment, allowing four more years instead of two years. Ms. Lawson stated that the Board's position on LMs has not changed from the original report, and that the positions of any other issues in the Board's sunset report are not changing.

Mr. Bone commented that Board staff will continue to advocate for everything that is in the sunset report.

Dr. Krauss commented that he does not trust the legislature to understand a more vigorous vetting process for Board member appointments and asked if that needs to be defined or kept open for discussion.

Mr. Bone replied that what it may look like is not clear to him and the processes are subject to the appointing authorities.

Dr. Krauss asked if the legislature has the authority to request a rebalance of the governor's appointments.



Mr. Bone replied that the composition of the Board is in statute and that it would take an act of the legislature to change that.

Dr. Krauss suggested to include that the governor's appointments become six physician members and seven public members.

Ms. Lawson commented that that would be acceptable, except that she has no insight as to whether the vetting process is more rigorous through the governor's office than the speaker of assembly or senate rules committee. Ms. Lawson commented that she supports a public member majority but is not focused on what way that is accomplished.

Mr. Brooks commented that he is confused on what problem the Board is trying to solve, and the legislature appointees are not new.

Dr. Krauss commented that he is not sure that the Board should increase its members from 15 to 17, and the simple solution would be to rebalance the governor's appointments.

Ms. Lawson asked if the Board opposed the creation of a public member majority of 17, or if the Board prefers 15.

Dr. Krauss asked why the Board needs to be bigger.

Dr. Thorp commented that it is not just cost, but larger boards are not necessarily more effective, and agreed with Dr. Krauss' suggestion.

Dr. Krauss commented that an advantage of rebalancing the governor's appointments is that they all go through the senate confirmation process.

Mr. Bone commented that if the Board agrees on a public member majority, but cannot agree on the details, that may be sufficient, and the legislature and governor's office can work out the details.

Mr. Brooks commented that there may be unintended consequences of switching the balance, speaking of aligning terms and timeframes for outgoing members and vacancies.

Dr. Krauss agreed with Mr. Bone's suggestion.

Dr. GnanaDev disagreed with the position, saying no other healthcare board has a public member majority.

Dr. Thorp also disagreed with the position, saying Dr. Krauss' idea is good but he is not in favor of increasing the Board to 17 members.

Dr. Lewis agreed with Dr. Thorp.

Mr. Watkins reviewed the governor, assembly, and senate appointments, and commented that he does not think the cost of 17 members would be that much more, and that in return, we will gain public trust. Mr. Watkins spoke of the Business and Professions Code, saying there are

conflict of interest requirements, along with other criteria, for the public members that are not required for physician members. Mr. Watkins commented that the conversation should not be about 15 or 17 members if the Board agrees on the principle of a public member majority.

Ms. Lawson commented that a majority of the Board members supported a public member majority without any conditions and asked if the Board thinks a separate vote should be taken for this issue.

Dr. Krauss stated that Mr. Bone's suggestion is good.

Dr. Lewis asked if the issue can be restated.

Ms. Lawson stated that the question is if the Board supports a public member majority or not.

Mr. Bone stated the Board can leave the details to the legislature and the governor to work through.

Dr. Lewis asked if this issue could be carved out for further discussion.

Ms. Lawson replied that this issue will not be carved out for further discussion, as it is part of the list of suggested amendments. Ms. Lawson asked for a motion to support, if amended, SB 806.

Mr. Bone restated the motion, saying the Board supports if amended to request a public member majority, revert to the fees included in the May 20<sup>th</sup> version of the bill, model the enforcement monitor after SB 1950 of 2002, and to have a four-year sunset extension.

Ms. Lawson stated there was no change in the Board's LM position, so that remains, and there is also no language in the bill to comment on LM.

***Dr. Krauss moved to support, if amended, SB 806/S: Dr. Yip***

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

***Motion carried 11-0-1 (Dr. GnanaDev abstained)***

#### **Agenda Item 4      Adjournment**

Ms. Lawson adjourned the meeting at 7:02 P.M.

Signature on File	08/19/2021
Kristina D. Lawson, J.D., President	Date

Signature on File	08/19/2021
Laurie Rose Lubiano, J.D., Secretary	Date

Signature on File

William Prasifka, Executive Director

08/19/2021

Date