



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

May 13 – 14, 2021

MEETING MINUTES

Thursday, May 13, 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., Secretary
Howard R. Krauss, M.D., Vice President
Ronald H. Lewis, M.D.,
Laurie Rose Lubiano, J.D.
Asif Mahmood, M.D.
David Ryu
Richard E. Thorp, M.D.
Eserick "TJ" Watkins
Felix C. Yip, M.D.

Staff Present:

Antonio Adea, Office Technician
Aaron Bone, Chief of Legislation and Public Affairs
Valerie Caldwell, Associate Governmental Program Analyst
Charlotte Clark, Information Technology Supervisor I
Sean Eichelkraut, Information Technology Manager I
Frank Eslami, Information Technology Specialist II
Jenna Jones, Chief of Enforcement
Jacoby Jorgensen, Staff Services Manager, I
Nicole Kraemer, Information Technology Associate
Sheronnia Little, Information Technology Supervisor I
Natalie Lowe, Information Technology Specialist I
Danette, McReynolds, Staff Services Manager I
Marina O'Connor, Chief of Licensing
William Prasifka, Executive Director
Regina Rao, Associate Governmental Program Analyst
Letitia Robinson, Research Data Specialist II

Elizabeth Rojas, Staff Services Analyst
Emmalee Ross, Information Officer I
Alexandria Schembra, Associate Governmental Program Analyst
Reji Varghese, Deputy Director
Carlos Villatoro, Public Information Officer II
Kerrie Webb, Staff Counsel

Members of the Audience:

Judith Alvarado, Attorney General's Office
Eric Andrist, The Patient Safety League
Rosie Arthursdotter
Carmen Balbwe, Consumer Watchdog
Robert Bell, Attorney General's Office
W Brannan
Marcey Brightwell, Brightwell Strategies
Gloria Castro, Attorney General's Office
Yvonne Choong, California Medical Association
Dennis Cuevas-Romero, Physicians for a Healthy California
Matthew Davis, Attorney General's Office
Phil Deters, Attorney General's Office
Ann Dohn, Stanford University
John Dolan
Tracy Dominguez
John Ennis, Consumer Watchdog
Virginia Farr
Julianne Fellmeth, University of San Diego
Robert Garcia
Roxanne Gould, Gould Government Relations
Bridget Gramme, University of San Diego
Lindsay Gullahorn, Capitol Advocacy
Nicole Hendrickson, LaFollette Johnson DeHaas Fesler & Ames
Christina Hildebrand, A Voice for Choice
Monique Himes
Marian Hollingsworth, The Patient Safety League
Emily Hughes, California Medical Association
Gail Jara, California Public Protection & Physician Health
Mary Kate Jones, Department of Consumer Affairs
Anne Jurach, Office of Statewide Health Planning and Development
Jen Kamel
Jessica Kegu, CBS News
Wendy Knecht
Susan Lauren
Brixton Layne, California State Senate
Rachelle LeBlanc, Attorney General's Office
Tim Madden, Madden Quinonez Advocacy
Rebecca Marcus, RMarcus Government Strategies
Michele Monserratt-Ramos, Consumer Watchdog
Kathleen Nicholls, Health Quality Investigations Unit
Erin Norwood, Norwood Associates LLC

Kristen Ogden
Autumn Ogden Smith, American Cancer Society
Helena Pappas
Sandra Perez
Ryan Perez, Department of Consumer Affairs
Priscilla Quiroz, Shaw Yoder Antwih Schmelzer & Lange
Catrina Reyes, California Academy of Family Physicians
Hanna Rhee
Christine Rhee, Attorney General's Office
Gezel Saheli
Alecia Sanchez, California Medical Association
Dan Savage, California State Assembly
Francisco Silva, California Medical Association
Tay Solis
Kim Stone, Stone Advocacy
Meagan Subers, Capitol Connection
Ryan Tacher, Department of Consumer Affairs
Peggie Tarwater, Attorney General's Office
Michel Veverka, Health Quality Investigations Unit
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 May 13, 2021, at 2:04 P.M. A quorum was present and due notice was provided to all interested parties.

Agenda Item 2 Public Comments on Items not on the Agenda

Ms. Rhee thanked the Board for the opportunity to speak at the public stakeholder's meeting but noted that it was inappropriate of Ms. Lawson to stop Board members from speaking to finish the meeting on time.

Ms. Arthursdotter commented on the accuracy of information on the Board's website, saying laws and statutes have been changed or deleted when they should not have been.

Ms. Brannon commented that she is hopeful to see new Board members and hopes they go through Brown Act training. Ms. Brannon also commented that she encourages all votes to be done by roll call, saying there was a panel meeting adjourned without a roll call vote. Ms. Brannon commented on the backlog of enforcement cases and the high turnover of staff handling these cases.

Ms. Perez spoke of her daughter's death and her negative experience with the Board's complaint process and the handling of her complaint. Ms. Perez commented on the lack of oversight and enforcement of supervision for postgraduate training license (PTL) holders.

Ms. Lauren cited a scene from the 2015 documentary *The Hunting Ground*. Ms. Lauren spoke about her negative experience with Dr. Saul Berger and her case with the Board. Ms. Lauren asked the Board to work with her to overhaul bad policies and procedures.

Ms. Ogden commented on behalf of families for intractable pain relief, saying they are committed to working with the Board to find solutions that patients need that would allow medical practitioners to treat pain patients without fear of reprisal. Ms. Ogden asked the Board to explore pilot programs to provide a means for physicians and patients to try new or unproven methods to treat intractable pain.

Ms. Hollingsworth asked the Board to address at a future meeting the new effective and efficient approach to enforcement that Mr. Prasifka spoke of at the sunset hearing. Ms. Hollingsworth also requested a future agenda item to review the early termination of probation that was discussed during the Wednesday panel hearing. Ms. Hollingsworth also criticized Board members who commended a physician at the panel hearing for being brave enough to come before the panel with an admitted alcohol addiction.

Mr. Andrist gave a brief history of his complaints with the Board to the new Board members and thanked Ms. Lawson for her role at the interested parties meeting. Mr. Andrist commented on the last Board meeting and Ms. Webb informing him that his public comment was regarding an ongoing case, saying that the Board hides this kind of information from the public. Mr. Andrist suggested listing complaints on the Board's website.

Agenda Item 3 Approval of Minutes from the February 4 – 5, 2021, Quarterly Board Meeting

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

Dr. Krauss requested corrections for comments made under agenda item twenty-six, saying both he and Ms. Lubiano requested the referenced future agenda item.

Dr. Hawkins requested a correction to a statement Mr. Prasifka made under agenda item six, changing the word "bespoke" to "better". Dr. Hawkins also requested a correction under agenda item twenty-two, changing the word "will" to "may".

Ms. Campoverdi requested to add the word "recruited" to her requested future agenda item.

Ms. Lawson asked for a motion to approve the minutes from the February 4 – 5, 2021, Board meeting.

Dr. Lewis moved to approve the meeting minutes/S: Dr. Mahmood

Ms. Lawson asked for comments from the public.

Ms. Rhee commented that she believes public comments are not being entered into the record and they should be.

Ms. Arthursdotter commented that the minutes are lacking and that the Board should use the closed-caption text as a basis for the minutes. Ms. Arthursdotter also requested a presentation on intractable pain, saying that it was supposed to be presented during the November Board meeting. Lastly, Ms. Arthursdotter commented that the Patient's Right to Know link on the Board's website is not functioning.

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

Motion carried 12-0-1 (Mr. Brooks abstained)

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

Ms. Lawson introduced the newest members of the Board, Mr. Brooks and Mr. Ryu. Ms. Lawson gave a brief background of the members and performed the swearing-in ceremony.

Ms. Lawson commented on the recent public stakeholder meeting, the Sunset Review hearings, and the Federation of State Medical Boards (FSMB) meeting, saying that these topics will be discussed later in the meeting.

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

Mr. Andrist commented on past allegations against Mr. Ryu and questioned if the public can trust whether he can make the right decisions when disciplining doctors.

Ms. Rhee replied to Mr. Andrist's comments, saying he is culturally insensitive. Ms. Rhee commented that being accused is part of the job and that she is not embarrassed of her past.

Agenda Item 5 Board Member Communications with Interested Parties

Dr. Krauss stated that he received an email on April 27th from a representative of California Academy of Family Physicians regarding their concern for the PTL and commented that they subsequently had a call to discuss the concerns of moonlighting and leave within the 36-month licensure period.

Dr. GnanaDev commented that he is politically involved with anything related to health care, but he does not talk about the Board.

Ms. Lawson stated that she met with Senator Caballero and other parties that have a particular interest in the Mexico Pilot Program. Ms. Lawson commented that she received correspondence and communicated with patient advocates regarding the public stakeholder meeting. Ms. Lawson also stated that she met with representatives of California Academy of Family Physicians, the California Medical Association (CMA), the California Primary Care Association, Service Employees International Union (SEIU) California, and the American College of Emergency Physicians California chapter about the PTL.

Dr. Hawkins stated that he spoke with Bridget Gramme from the Center for Public Interest Law about the Board's Public Outreach, Education, and Wellness Committee and how the Board can work with stakeholders to improve communication responsiveness.

Ms. Lawson asked for comments from the public.

Ms. Arthursdotter commented that communication with interested parties does not happen, saying that communications to the Board do not go to whom it is directed or that the answer is not responsive. Ms. Arthursdotter requested to speak to Ms. Lawson.

Agenda Item 6 Executive Management Reports

Mr. Prasifka began by sharing that Board staff had a busy several months with the Sunset Review process, senate confirmation of four Board members, discussion on the PTL and Mexico Pilot Program, along with business as usual. Mr. Prasifka thanked Board staff for all their efforts.

Mr. Prasifka gave a staffing update, noting that the Board has eight new employees in Administrative Services, Licensing, and Enforcement. In the budget update, Mr. Prasifka commented that the Board has shown marginal improvement, saying that the improvement is due to operational efficiencies and increased projections in revenue. Mr. Prasifka noted that this improvement does not obviate the need for a fee increase.

Mr. Prasifka reported that there are fraudulent scams targeting the Board's licensees, saying the scam artists are purporting to be Board staff. Mr. Prasifka stated that the Board has notified its licensees and is working with relevant authorities and the Department of Consumer Affairs (DCA).

Mr. Prasifka commented on remote working, saying the Board has complied with all state rules and has encouraged remote working where possible, but the Board is looking forward to having staff back in the office when the governor gives direction to do so.

Mr. Prasifka gave an Information Systems Branch (ISB) update, commenting on the Board's redesign of the physician survey to make it more user friendly, working to allow licensees to print their own pocket license card, continued updates to the Direct Online Certification Submission (DOCS) portal, launch of the Interagency Development Effort for the Authentication of Licensees (IDEAL) portal, website refresh for Americans with Disabilities Act (ADA) compliance, redesign of the online complaint form, and WebEx training for Board experts.

Mr. Prasifka gave an enforcement update, saying that the Board has been searching for additional expert reviewers. Mr. Prasifka explained what is meant by making progress in complaint processing by being efficient and effective, saying each complaint is handled appropriately, with more serious complaints having more resources and attention.

Mr. Prasifka reported that the average number of days to initiate complaints is down to six. Mr. Prasifka also reported that Board staff are making a concerted effort to monitor and audit

communication with complainants, saying the Board must do better in meeting and exceeding targets that many Board members have raised concerns about. Mr. Prasifka also commented that Board staff are working to develop a complaint tracking system.

Mr. Prasifka referred to the enforcement charts, saying the Board is on track to receive close to 11,000 complaints by the end of next quarter. Mr. Prasifka commented that the past year has been disruptive to the medical community, causing different types of complaints, and that the Board should see a return to pre-COVID complaints in the next year. Referring to the Pending Enforcement Caseload Summary, Mr. Prasifka noted a reduction in total complaints, attributing the reduction to managing complaints effectively and efficiently. Mr. Prasifka explained that Board staff have been working on getting the aging profile down and hopes that will translate into reduced activity levels from both the Attorney General's Office (AGO) and Health Quality Investigations Unit (HQIU).

Mr. Prasifka gave an update on the Licensing Unit, saying the backlog of applications that developed due to the introduction of the PTL last year has been dealt with and the initial review process is back to where it was before the surge. Mr. Prasifka reported that the Board is maintaining pace in applications received and licenses issued. Mr. Prasifka commented that, knowing there will be another increase in applications, Board staff will continue to monitor the situation.

Mr. Prasifka noted that the FSMB and the National Board of Medical Examiners (NBME) announced the discontinuation of work to relaunch a modified Step 2 Clinical Skills examination.

Lastly, Mr. Prasifka reported that there are several waivers that have extended the deadline for the PTL.

Referencing pages BRD 6A-17 and BRD 6A-18, Dr. GnanaDev asked if the amounts listed are what the Board can recoup from probation monitoring if approved through legislation.

Mr. Varghese replied that what is listed are cost recovery amounts already collected, which is not the same as what Dr. GnanaDev was referring to.

Dr. GnanaDev asked if the Board knows the amount that can be collected if cost recovery is implemented.

Mr. Varghese replied that the amounts are in the process of being estimated.

Dr. GnanaDev asked for the amounts to be presented at the next Board meeting.

Mr. Prasifka replied that staff can have the amounts available and commented that the numbers are projections, and that the best predictor of the future is what has happened in the past. Mr. Prasifka continued, saying Board staff are looking at what was collected in the past. Mr. Prasifka stated that the real benefit in cost recovery is future litigation activities, which amounts to savings in litigation costs.

Dr. GnanaDev commented that the Board needs to look at areas to save on expenses, especially since the Board is asking the legislature to approve one of the highest licensing fees in the country.

Dr. Hawkins commended Board staff for their preparation for the sunset hearings and noted that he had meetings with the governor's staff, DCA staff, and AGO staff to help him have a better understanding of how they can help the Board do better.

Commenting on enforcement, Mr. Watkins asked how many public letters of reprimand have been issued since the beginning of the year through the end of April and what the average has been.

Mr. Prasifka commented that Board staff can provide that information.

Mr. Watkins replied that this is an enforcement statistic that he has, which is 64 public reprimands and the average for this period in the last ten years is 31. Mr. Watkins shared his concern that public letters of reprimand will become a catch-all tool. Mr. Watkins commented that the outcomes of cases are the only thing that the public cares about.

Mr. Prasifka replied that he is happy to present the information in whichever form Mr. Watkins would like, including adding the number of reprimands to the enforcement reports. Mr. Prasifka commented that issuing public letters of reprimand does not mean they are being used in circumstances where stronger disciplinary actions should be taken. Mr. Prasifka continued, saying every disciplinary tool has its appropriate place.

Mr. Brooks commented that how the data is used is what makes sense and asked if there appears to be any trends. Mr. Brooks commented that if there are trends, then the Board could address those issues before it happens to prevent the high number of letters of reprimand or stipulations.

Mr. Watkins commented that the number of reprimands increased in the last period and asked if the spike is due to policies in place.

Mr. Brooks commented that numbers are just numbers unless you dig to find out what they mean, which would be the first step to take in preventing incidents from happening, and in turn help save money.

Mr. Watkins commented that his concern is that the Board may be under financial pressure and staff may be under pressure with a high caseload, and he does not want to come across a situation where letters of public reprimand are being used as a catch-all.

Mr. Prasifka commented that Mr. Brooks raised an important point in that the disciplinary rates tell an incomplete story, saying that licensing mechanisms, entry into medical schools, and looking at changes to continuing medical education (CME) may need to be looked at to prevent problems from developing, as it is an upstream regulation system. Mr. Prasifka continued, saying that successful regulatory systems would expect to have fewer disciplinary actions because standards were maintained and developed. Mr. Prasifka added that the best medical boards and worst medical boards could have similar disciplinary rates since the worst

boards are not effective at imposing discipline and the best boards have developed a culture of open disclosure and continuous improvement.

Dr. GnanaDev asked how the Board is closing complaints, how the complainants are being kept informed, and asked for an update at the next Board meeting.

Mr. Prasifka replied that there are several changes that Board staff are looking to implement, including an online tracking system and auditing communications with complainants.

Mr. Ryu referred to page BRD 6B-10 and asked about the increasing trend for unlicensed activity.

Mr. Prasifka replied that the time frame for investigations has increased in many areas. Mr. Prasifka commented that one thing the Board just completed and put into place is a memorandum of understanding between the Board and HQIU which provides for constructive and active engagement, especially with the aging cases since there is a three-year statute of limitations.

Ms. Lawson commented that this is an area of great interest to the Board and there is data in the averages that is skewing the number. Ms. Lawson gave an example where the AGO will not pursue an enforcement case while a criminal investigation is underway, which will lengthen the averages, but that information is not in the data. Ms. Lawson commented that Board staff is working on a table that includes that kind of information.

Mr. Watkins commented that outliers can be pulled out of the data set and explained in a note to maintain the integrity of the data.

Dr. Thorp commented that this topic has been repeatedly brought up by the legislature, members of the public, and patient advocates and that the number of days to complete investigations in the complaint investigation office (CIO) has progressively increased in 2021. Dr. Thorp added that it is a continued concern to Board members in making sure that public letters of reprimand are being used appropriately.

Mr. Prasifka commented that he has asked staff to look into this and was told there are a number of factors that account for the increase in time, including an employee who was reassigned to contact tracing, subpoena enforcement actions, and the CIO taking on more difficult cases than in the past. Mr. Prasifka commented that the goal is to get the timeline down while still maintaining the integrity of the public enforcement function.

Dr. Yip commented that it is a good idea to report the number of public letters of reprimand along with the background of those cases to help understand why the number has increased.

Ms. Campoverdi commented on having regular reporting on the criteria used to close cases, including staff interactions and how and why those cases are closed.

Ms. Lubiano commented that the status of complaints is at the top of mind for complainants, Board members, and the legislature and asked what the timeline is for the online complaint tracking system to be in place.

Mr. Prasifka replied that this matter is of high priority. Mr. Prasifka continued, saying the Board is attempting to roll out something as quickly as possible to identify milestones that can be built into the existing system. Mr. Prasifka commented that a legal review will need to take place to ensure that the information disseminated is consistent with the confidentiality provisions of the Medical Practice Act.

Dr. Mahmood stated that it is a common occurrence for the Board to say it will try to improve and do better and asked if there is a way to set standards to meet certain goals by a specified timeframe. Dr. Mahmood also commented on complicated cases that take up more time and suggested those cases be separated from the standard cases and add an explanation as to why they are taking longer.

Mr. Prasifka agreed with the need to give adequate reporting data and referred to BRD 6B-13, saying that the metrics show the total number of cases as well as the aging cases.

Mr. Watkins suggested auditing the current system instead of redesigning the system to establish where the break down is. Mr. Watkins commented that saying "effective and efficient" does not give much information.

Mr. Prasifka replied that Board staff are not lost in the numbers and that staff can do a better job at explaining the ways that the cases are being worked on to achieve stronger disciplinary outcomes.

Ms. Lawson asked for any other questions and comments from the Board members. Hearing none, Ms. Lawson asked for comments from the public.

Ms. Perez disagreed with Ms. Lawson's statement about cases not being able to move forward during a criminal investigation. Ms. Perez shared that she submitted a complaint with potential felony ramifications and the Board dismissed it in less than 30 days. Ms. Perez also commented that information put online must be meaningful information to the public. Lastly, Ms. Perez commented that the Board needs to have measurable steps instead of repeatedly saying action will be taken when no action is taken.

Ms. Ogden commented on the expert reviewer program and her concerns to restore access to special care for intractable pain patients. Ms. Ogden continued, saying there are fewer doctors practicing who understand how to treat these patients, and there are just as few expert reviewers that understand this topic. Ms. Ogden suggested finding a way to be more selective in choosing expert reviewers for intractable pain.

Ms. Hollingsworth asked about the average and median length of time for processing a complaint, saying this is an ongoing issue. Ms. Hollingsworth commented that other states have limits for the number of days the board can investigate a case. Ms. Hollingsworth also commented that there has been an increased use in the public letters of reprimand for egregious cases. Citing specific cases, Ms. Hollingsworth commented that by giving a reprimand, there is no summary on the doctor's profile to warn patients of a potentially dangerous doctor.

Ms. Monserratt-Ramos commented that reaching out to families is critical and letters need to be sent to families with updates on their complaint. Ms. Monserratt-Ramos continued, saying there are families that hear about accusations on their complaint from members of the public rather than from the Board.

Mr. Andrist commented that both Mr. Prasifka and Ms. Jones misled the sunset committee during the sunset review hearings. Mr. Andrist also commented that the requested reports should already be provided. Mr. Andrist stated that he has been chronicling cases over the years and that the Board should pull his two complaints that were closed without investigation to use as a case study to find out why complaints are closed, saying the trend begins with the people handling the complaints.

Ms. Vismara commented that the PTL and its affiliated requirements has created detrimental impacts to training and residency programs, citing the inability to enroll and bill MediCal for moonlighting. Ms. Vismara encouraged additional data to be produced for stakeholders to better understand the origin of the PTL.

Ms. Farr commented on the online complaint tracking system and asked what would be included. Ms. Farr also commented that it would be helpful to have a patient safety expert in the Board to help prevent errors.

Ms. Arthursdotter commented on the Patient's Right to Know Act and a cease practice order that is not showing up on the Board's website. Ms. Arthursdotter also commented that the online material for the expert reviewer program does not reference laws regarding intractable pain.

Agenda Item 7 Update from the Attorney General's Office

Ms. Castro began by updating the Board that the former Attorney General Javier Becerra has joined the Biden administration and Attorney General Rob Banta was sworn in on April 23, 2021. Ms. Castro also notified the Board that Supervising Deputy Attorney General E. A. Terry Jones III is retiring.

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

Ms. Arthursdotter spoke about Business and Professions Code (BPC) 2220.05 and how it relates to prescribing to intractable pain patients. Ms. Arthursdotter commented on the severe disciplinary actions taken in certain prescribing cases and asked that staff in the AGO look at these complaints.

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

Dr. Thorp commented on the Board's budgetary allocation for the AGO and stated the Board will be over budget by approximately four million dollars if it continues on the current course. Dr. Thorp commented that the Board is seeing no decrease in timeframes for adjudication of cases.

Ms. Lawson agreed with Dr. Thorp but stated many of the items in the budget are outside the control of the AGO. Ms. Lawson commented that some of these issues will be discussed in the next agenda item.

Ms. Castro agreed with Ms. Lawson and commented that Chris Ryan, the budget director at the AGO, is available to address the Board on specific budget questions. Ms. Castro stated that the number of hours devoted to the Board has remained constant even though the volume of work has increased.

Agenda Item 8 Update on the Sunset Review Hearing

Mr. Prasifka began by stating that the Board's first sunset hearing was held on March 19, 2021, and the focus was on enforcement. Mr. Prasifka added that the Board submitted responses and answers to several enforcement questions that the senate and assembly joint committee raised.

Mr. Prasifka noted that there was a second sunset hearing on May 5, 2021, and the focus was on licensing and administrative matters, including the Board's fund condition. Mr. Prasifka commented that one issue of particular significance that was raised was the PTL and the related issues that stakeholders are experiencing, including leave time, moonlighting, and X waivers.

Mr. Prasifka commented that there is no indication of any further sunset hearings, and that Senate Bill 806 is the Board's sunset bill.

Ms. Lawson asked to hear from Dr. Krauss, as he participated in the sunset hearings.

Dr. Krauss shared that, in his view, Board staff and the executives did an incredible amount of work in a short period of time, and he is proud of the work produced. Dr. Krauss asked if it would be helpful for the Board to make a motion and establish a position on the PTL that would state that the Board is not looking to restrict moonlighting nor extend the three-year residency training by three months.

Mr. Prasifka replied that the Board is at a consultative stage of the process. Mr. Prasifka noted that the reason for these technical problems with the PTL is because of interpretations that have been made by third parties, whom the Board has no control over. Mr. Prasifka added that the Board should press ahead with as much engagement as possible to try to resolve these issues at the lowest level of intervention. Mr. Prasifka commented that the Board shares the same view and is looking to resolve the problems.

Mr. Watkins commented that the Board cannot be at a consultative stage since the law went into effect in 2020 and that he feels the Board is late to the game. Mr. Watkins asked if there is another solution to resolve these unintended consequences.

Ms. Lawson commented that the PTL scheme was part of the last sunset review process, it went into effect in 2020, and the unintended consequences came as a result of the

interpretations by other third-party agencies. Ms. Lawson commented that stakeholders are asking the same questions that Mr. Watkins is asking. Ms. Lawson asked Ms. Webb to speak to the issue.

Ms. Webb explained that the Board felt that one year of postgraduate training for U.S. and Canadian graduates, and two years for international graduates, was not sufficient for consumer protection. The Board voted to increase the postgraduate training requirements to 36 months. The Board determined that by increasing the postgraduate training requirements for licensure, it could change its process for reviewing and approving medical schools. Ms. Webb continued, saying the Board went to a process where it approved medical schools listed on the World Directory of Medical Schools, among other pathways, instead of doing a detailed review of international medical schools. The Board also stopped reviewing clinical rotations.

Ms. Webb commented that the Board is currently working through the interpretations about moonlighting and that an interim meeting to address this topic may be necessary.

Dr. Krauss commented that California is not the only state that has moved for more than one year of postgraduate training, and there are some states that require two years, however the issue of moonlighting and the duration of residency training does not inhibit their practice. Dr. Krauss explained that this is the reason the Board hopes that these issues may be fixed without legislation.

Mr. Watkins commented that the data the Board presented is not forthcoming, saying that there were different sets of numbers presented for stipulated settlements public reprimands. Mr. Watkins spoke of transparency, saying the Board should present the data as-is and let other people make the interpretations. Mr. Watkins commented that his opinions that were given at the first sunset hearing were misinterpreted. Mr. Watkins also commented that he created a graph showing the number of stipulated settlements along with the criteria from the disciplinary guidelines. Mr. Watkins stated that his data is not the same as what the Board presented to the legislature. Mr. Watkins explained the data that he included in his document and stated that he will distribute it to the Board members.

Ms. Webb gave caution about Board members sending documents to each other, which may violate the Open Meeting Act, and asked Mr. Watkins to send the information to Board staff for distribution.

Mr. Watkins commented that the data he compiled is from the Board's website, and it shows that statistically, it shows a system that is protecting doctors.

Dr. Mahmood stated that, as a practicing physician, he does not have any sympathy for other doctors, and that his goal is purely protection of the public. Dr. Mahmood commented that there are times when Board members impose discipline that is more than what is recommended, and likewise, there are times when the discipline imposed is less than what is recommended. Dr. Mahmood spoke of early termination of probation, saying the number of physicians who commit the same offense or come back to the Board for additional discipline should be looked at. Dr. Mahmood commented that the Board also has a goal of physician rehabilitation and asked to see data on habitual offenders at the next Board meeting.

Mr. Watkins commented that the deputy attorney general memos produce the numbers the Board has for stipulated settlements and that, although panel members may discuss different options, the vote is usually reflective of the memo.

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

Ms. Perez commented on the PTL and BPC 2052 and said she has letters signed by Board staff stating that the issuance of a PTL will allow residents to train without violating the law. Ms. Perez commented that this means the Board and state legislature knew that residents were violating the law and thus instituted the PTL.

Ms. Lawson asked for clarification on unrestricted licenses prior to January 1, 2020.

Ms. Webb replied that prior to January 1, 2020, individuals in approved postgraduate training programs were authorized by law to practice while they were in those programs. Ms. Webb stated that those individuals did not require a license or a postgraduate training authorization letter if they were graduates of U.S. or Canadian schools. Ms. Webb continued, saying because they were going to be practicing for a longer period of time without a license, along with wanting them to moonlight and sign birth and death certificates, the PTL was instituted to require them to get licensed with 180 days after enrollment in a postgraduate training program

Dr. GnanaDev stated that one of the issues the Board faced was that some of these people were not given a second-year training; they did an internship, and they could get their full license. Dr. GnanaDev commented that that was concerning, so the same thing was done for international graduates if they completed two years of training. Dr. GnanaDev commented that the PTL was instituted because the Board thought it was not safe to issue a full license with one year of training after medical school.

Mr. Andrist commented that it is not a goal of the Board to rehabilitate doctors, and that the Board can strive to rehabilitate doctors only if it is in the best interest of patient safety. Mr. Andrist commented that Mr. Watkins is substantiating advocates' cries that have been thwarted by the Board. Mr. Andrist also commented that Ms. Jones lied to Senator Roth when he asked her if the Board interviewed complainants. Mr. Andrist read from an email stating that the Board does not conduct interviews during a specific stage of the review process.

Mr. Cuevas-Romero commented that the PTL limits the amount of patient access provided to needy communities. Mr. Cuevas-Romero spoke of additional outstanding issues from the PTL, including the inability of residents to sign disability and employment forms. Mr. Cuevas-Romero asked the Board to urge the legislature to resolve these issues through the sunset review process.

Ms. Reyes commented on the PTL issue of the licensing timeframe, saying it disproportionately impacts residents who take medical or family leave, particularly female residents who choose to start a family. Ms. Reyes commented that some residents choose a different career path or choose to be licensed in a different state due to California's strict time requirement for licensure. Ms. Reyes asked the Board to work with the legislature to resolve this issue.

Ms. Hollingsworth thanked Mr. Watkins for asking questions based on statistics, saying this is what advocates have been trying to do for years. Ms. Hollingsworth gave examples of physicians whose discipline was minimal compared to the harm they did. Ms. Hollingsworth commented that she was lied to by an investigator regarding her own complaint. Ms. Hollingsworth commented that the Board has more concerns for doctors than the public.

Mr. Madden commented on the PTL issue of X waivers and spoke of the need for emergency physicians to administer Buprenorphine to addiction patients as directed by the Substance Abuse and Mental Health Services Administration.

Ms. Monserratt-Ramos commented on changing the Board composition to add two public members and seeking cost recovery. Ms. Monserratt-Ramos also commented on complainants not receiving letters.

Ms. Rhee agreed with Dr. Mahmood's comment about rehabilitating doctors and thanked the Board for its efforts.

Ms. Pappas commented that she does not think Board members understand the enforcement process and expressed appreciation for the probing questions that Mr. Watkins has asked. Ms. Pappas commented that individual cases need to be audited to find out where the process is breaking down. Speaking of her own complaint, Ms. Pappas stated that her case was reopened and that she has not received any communications from the Board.

Ms Lawson asked if the Board members had additional questions or comments.

Dr. Lewis commented that the administrative law judges (ALJ) during panel A meetings refer to the fact that protection of the public is paramount and that the Board should try to rehabilitate physicians when possible.

Agenda Item 9 Update on Public Stakeholder Meeting

Mr. Prasifka stated that the public stakeholder meeting was held on April 21, 2021, and the Board plans on holding these meetings on a quarterly basis. Mr. Prasifka noted that Ms. Gramme from the Center for Public Interest Law gave a presentation. Mr. Prasifka commented that an important result from these meetings is that an action is created. Mr. Prasifka also commented that the Board is working to develop a video to explain the complaint process, looking to enhance direct communications with complainants, and is working to develop an online complaint tracking system. Mr. Prasifka spoke of other state medical boards that have victim coordinators or liaisons between the board and complainant and commented that the board is looking into that type of model. Mr. Prasifka stated that the Board is re-establishing the Public Outreach, Education, and Wellness Committee with the goal of engaging further with stakeholders. Lastly, Mr. Prasifka noted that transparency and communications were the major themes raised by four of the Board members at their recent confirmation hearings and Board staff looks forward to working to make those areas more effective.

Ms. Lawson stated that she appreciated the opportunity to have a conversation with patient advocates and other stakeholders at the meeting and she looks forward to future public stakeholder meetings.

Dr. Yip requested for public stakeholder meetings to be held after business hours.

Ms. Lawson commented that executive leadership discussed rotating the times that the meetings are held so that more people could attend.

Dr. Hawkins commented that there is a lot of work to do with the Public Outreach, Education, and Wellness Committee, and the sooner the committee could meet, the better.

Ms. Lubiano commented that she is excited about the progress the committee has made in planning to convene and is looking forward to prioritizing the work and ideas that have come forward.

Ms. Campoverdi commented that the committee has a lot of tools at its disposal and there is much to do to improve communications. Ms. Campoverdi commented that the committee members are excited to do this in a way that is culturally competent and inclusive.

Mr. Watkins suggested prioritizing the items that are most difficult, items that are in the medium-term, and then all other items that have immediate feedback. Mr. Watkins commented that he is encouraged by the enthusiasm of the committee members.

Ms. Campoverdi commented that there are two different kinds of communication and outreach: responsive and strategic. Ms. Campoverdi continued, saying the Board has to work on both areas in tandem.

Ms. Lawson asked for comments from the public.

Mr. Andrist stated he would like his comment to be considered an official complaint and continued to state that Dr. Lewis is incompetent to be serving on the Board. Mr. Andrist commented on the lack of Board members that attended the public stakeholder meeting and thanked Ms. Lawson for her role at the meeting. Lastly, Mr. Andrist complained about the amount of time the public was given to speak at the meeting.

Ms. Ogden expressed her appreciation for the public stakeholder meeting. Ms. Ogden suggested that the Board retain the option of attending meetings virtually to accommodate those who suffer from intractable pain. Ms. Ogden commented that she appreciated Dr. Krauss' and Dr. Thorp's comments.

Ms. Monserratt-Ramos commented that she is please the Board is willing to implement the recommendations she has been asking to consider for years and spoke about creating a video to file a complaint and the online complaint tracking system.

Ms. Pappas commented that the video showing consumers how to file a complaint is a great idea. Ms. Pappas also commented that she does not understand how the public letters of reprimand are serving the public since no information can be given to the public.

Ms. Rhee commented that she thinks the Board is making progress and that the relationship between physicians and patients need to be rebuilt.

Agenda Item 10 Discussion and Possible Action on Legislation/Regulations

Mr. Bone introduced AB 356, Chen, which would authorize, but not require, the California Department of Public Health (CDPH) to issue a physician or doctor of podiatric medicine a one-time temporary permit authorizing them to operate or supervise the operation of fluoroscopic x-ray equipment if they meet certain requirements. Mr. Bone commented that the author and sponsor expect delays with the CDPH permit process and have requested the option to pursue a temporary permit while awaiting approval of the regular permit.

Dr. Krauss moved to take no position.

Ms. Lawson commented that in 2019 the Board had a neutral position on a similar bill.

Mr. Bone replied that the topic was similar, but the direction of the bill was different, and noted that the California Radiological Society was opposed to that bill. Mr. Bone also commented that there may be an advocate on behalf of the sponsors who could provide some understanding of this bill during public comment.

Dr. Lewis seconded the motion of no position.

Ms. Lawson asked for public comment unless there are Board members who would like to comment.

Dr. GnanaDev asked what the difference is between this bill and the current law for a fluoroscopic license.

Mr. Bone replied that a physician must obtain a permit from the CDPH to perform this type of procedure, and because there are delays, of which the details are not clear, the sponsors are seeking a one-time temporary permit, which is not renewable, and the physicians would have to meet other requirements, including holding a valid license to practice medicine in California, submitting an application to the CDPH for their fluoroscopy certificate, and they must disclose the facilities where they plan to practice fluoroscopy. Mr. Bone commented that this topic goes beyond what the Board does and that the Board does not license this particular type of activity.

Dr. Yip asked about the required exam.

Mr. Bone replied that they would have to apply and have an application on file with the CDPH, but he is not clear on all the eligibility requirements that go along with the application.

Dr. GnanaDev commented that no other state has this requirement and that it already takes so long to do in California. Dr. GnanaDev wondered why the author of the bill is only including doctors of podiatry rather than all physicians.

Mr. Bone replied that this bill applies to not only doctors of podiatry but also physicians and surgeons.

Ms. Lawson asked to hear comments from the public.

Ms. Stone commented that this bill applies to all physicians who have used fluoroscopy in another state and that California is one of only two states that require physicians to have additional certification to use fluoroscopy. Ms. Stone explained that when doctors come to practice in California who have practiced in other states, there can be a delay in receiving the required certification, and this bill would allow a one-time temporary permit to use fluoroscopy. Ms. Stone commented that she is happy to answer any questions.

Dr. Yip asked if there is any movement to do away with the exam.

Ms. Stone replied there is not language in this bill for that, only language to provide the one-time temporary permit while going through the process of taking the exam and obtaining CME's.

Dr. Hawkins asked how long the temporary permit lasts.

Ms. Stone replied that it lasts as long as the physician is going through the process of taking the exam for certification, up to 12 months.

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

Dr. Krauss commented that although he thinks this is a good thing, he does not think the Board should take a position on it.

Dr. GnanaDev commented that there is nothing in this bill that has any issues with patient protection and that he supports this bill. Dr. GnanaDev commented that this bill streamlines the process for physicians who already practice fluoroscopy in other states.

Dr. Krauss commented that the Board serves the public interest by improving their access to these services and stated that he is happy to either withdraw or modify his original motion to support this bill. For clarity, Dr. Krauss withdrew his motion.

Dr. Lewis agreed and seconded Dr. Krauss' withdraw.

Mr. Watkins made a motion to support AB 356, Chen/S: Dr. Lewis

Dr. Thorp commented that he thinks Dr. Krauss' initial instinct was appropriate. Dr. Thorp stated that he supports this bill, but it does not make sense for the Board to support this legislation. Dr. Thorp recommended the Board take no position.

Dr. GnanaDev explained that it takes anywhere from three to six months for a physician to obtain certification to use fluoroscopy, during which time they cannot perform procedures where fluoroscopy is needed.

Dr. Thorp commented that he agrees with Dr. GnanaDev and thinks it is a great bill that should be passed, but the Board should consider the reasons for supporting or opposing legislation. Dr. Thorp continued, saying the Board supports bills because they advance the mission statement or vision of the Board, but he does not think it is necessary for the Board to support this bill.

Dr. Mahmood commented that he thinks the Board should support this bill because there are certain places that have only a few providers who can do procedures that require fluoroscopy. Dr. Mahmood explained that if this bill were approved, it would be a good service to consumers in California because they would not have to wait for a provider to be available.

Mr. Watkins added that this increases access to care, which is part of what the Board's mission is in terms of public protection.

Ms. Lubiano agreed that it does promote access to care.

Dr. Krauss asked if the Board weakens itself by supporting something that does not need the Board's support.

Mr. Bone replied that he does not think it weakens the weight of the Board and that a bill like this one is related to the Board's mission.

Dr. Thorp commented that the last time something like this came through, the California Radiological Society opposed it. Dr. Thorp added that he does not think there is a reason for the Board to weigh in on this. Dr. Thorp noted that the bill will get support and should pass, but again, he is not sure the Board needs to support it.

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

Motion carried 12-0-1 (Support; Dr. Thorp abstained)

Mr. Bone introduced AB 359, Cooper, which authorizes applicants who took more than four tries to pass step three of the United States Medical Licensing Examination (USMLE) to qualify for licensure in California if they hold an unrestricted license in another state. Mr. Bone noted that the bill adds specified subjects to the list of courses that a licensee may take to meet their CME requirements.

Mr. Bone commented that there are multiple pathways to obtain a license in California, and for many first-time licensees, they are generally required to pass the USMLE step three after no more than four tries. Mr. Bone continued, saying that for those who require more than four tries, they would be able to apply their test results if they meet certain requirements, including holding an unrestricted physician and surgeon license in another state, the Board determines no disciplinary action has been taken against the applicant by any medical licensing authority, and the applicant has not been the subject of adverse judgments or settlements resulting from the practice of medicine.

Mr. Bone explained the second part of the bill, which expands the type of courses that a physician may take to meet their CME requirements. Mr. Bone commented that current law limits allowable CME to courses related to direct patient care or improving the quality of care provided to patients. Mr. Bone continued, saying the expanded CME courses would include practice management content to improve services to patients, management content related to billing, and educational methodologies used when teaching in a medical school.

Dr. Krauss commented that because this bill deals with licensure, he thinks the Board should have a position. Dr. Krauss also commented that he sees some good in the bill but also has some questions about it. Dr. Krauss continued, saying it is nice to improve access by allowing a pathway for more physicians to practice here, but there is also something questionable about the qualifications of someone who cannot pass the USMLE after four tries. Dr. Krauss commented that he is uncomfortable about the ability for someone to meet CME requirements without having to do any CME that involves patient care.

Mr. Bone commented that the USMLE is implementing a new attempt limit policy that begins July 1, 2021, and will limit the attempts to no more than four.

Dr. Thorp agreed with Dr. Krauss and suggested supporting the bill with the amendment that a certain amount of CME be related to direct patient care.

Dr. GnanaDev stated that he will not participate in the discussion or in the vote for this bill because he has had outside discussions about it.

Mr. Watkins commented that he would oppose this bill for reasons that Dr. Krauss mentioned, saying the integrity of the licensing process would be reduced by allowing it.

Dr. Krauss asked Mr. Bone why this bill came into being.

Mr. Bone replied that it is unclear, and he does not have the answer. Mr. Bone questioned how many people might qualify to be newly eligible for licensure under this bill and speculated that it is a small number. Mr. Bone noted that there is a high passage rate for step three of the USMLE. Regarding the CME portion of the bill, Mr. Bone commented that the COVID-19 pandemic exacerbated certain needs. Mr. Bone commented that the Board may want to consider if the broader CME requirements may indirectly benefit patients through improvement of the physician's practice.

Dr. Lewis asked if Mr. Bone had any conversations with author's office about this bill.

Mr. Bone replied that he had interactions with the sponsors of the bill.

Ms. Webb commented that there is already a pathway that would allow someone who did not pass the USMLE within four attempts to be licensed in California, and what this bill does is allow someone who did not pass and who has not met the other requirements of the alternative pathway to get licensed in California.

Mr. Bone commented on the CME portion of the bill, saying there are other states that allow the broader CME activities and stated the policy question is the more expansive view of CME as it relates to patient care.

Dr. Mahmood commented on the two different portions of the bill, saying it is strange to combine these into one bill. Dr. Mahmood commented on the importance of CME being directly related to patient care. Dr. Mahmood spoke of opposing the bill unless amendments were made.

Dr. Mahmood made a motion to oppose AB 359, Wiener/S: Mr. Watkins

Mr. Bone explained the CME portion of the bill and commented that, with the changes discussed by Board members, an opposed position may be more appropriate.

Dr. Thorp asked if the Board could hear public comment, as there may be an advocate that could answer some of the questions that were raised.

Ms. Lawson wanted to clarify what was written in the analysis, saying physicians can maintain their license to practice exclusively through coursework unrelated to direct patient care. Ms. Lawson commented that Dr. Mahmood and Dr. Hawkins want a CME requirement that includes direct patient care.

Mr. Bone agreed with Ms. Lawson's interpretation and commented that a previously mentioned idea of a limitation on the CME's may be a way the Board can go.

Dr. Krauss commented that another concern he had was that the immediate licensure in California upon licensure in another state could be used to get around the three years of postgraduate education requirement.

Ms. Webb commented that the bill does not waive that requirement.

Ms. Lawson asked for comments from the public. There were none.

Dr. Krauss commented that this bill has an urgency clause, and he is not sure of the necessity of the bill nor its urgency. Dr. Krauss also commented that he is not sure of the unmet need that this bill would satisfy.

Mr. Bone commented that the author of the bill speaks to the pandemic and the shortage of licensed physicians as the reasons for qualifying additional physicians for licensure.

Ms. Lawson commented that this bill seems to modify CME requirements with COVID-19 being the reason, with the connectivity between the two not making much sense.

Mr. Watkins and Dr. Mahmood both commented that this bill does not make sense and should be opposed.

Dr. Krauss asked Mr. Bone if an opposed position removes the Board from opportunities to discuss how the bill moves forward.

Mr. Bone replied that it depends, and the Board seems unclear on what problem the bill is trying to solve, but an opposed position would make sense if the Board does not have a different position that would include a pathway forward.

Dr. Krauss asked Mr. Bone if the author could still approach the Board to discuss the bill.

Mr. Bone replied in the affirmative, saying they would be free to bring the bill back to the Board at the next meeting with possible revisions.

Mr. Brooks asked about the upcoming deadline to move bills through the committee and how it relates to the Board's position if revisions were made.

Mr. Bone replied that our next Board meeting would be just before the summer recess ends, leaving a few weeks left in the session. Mr. Bone agreed with Mr. Brooks, saying there is not much time left in the session.

Dr. Thorp agreed with Mr. Brooks, saying the best position would be opposed unless amended in order to allow the Board flexibility to make changes.

Mr. Brooks commented that negotiations are possible, even with an opposed position. Mr. Brooks continued, saying the biggest challenge with this bill is that he is not sure what problem is trying to be solved.

Ms. Campoverdi asked how the Board would amend the bill if the position taken was opposed unless amended since the Board is not sure of the purpose of the bill. Ms. Campoverdi also commented that it is telling that there was no public member to speak on behalf of the bill.

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

Motion carried 11-0-1 (Oppose; Dr. GnanaDev abstained, Mr. Ryu absent)

Mr. Bone introduced AB 562, Low, which requires DCA to establish a mental health resiliency program for licensees of certain healing arts boards that provide care to patients with COVID-19. Mr. Bone explained that the Board, Osteopathic Medical Board, Board of Registered Nursing, Physician Assistant Board, and Respiratory Care Board would be included in the program.

Mr. Bone commented that he has had productive dialogue with the author's office who indicated they are pursuing funding through the state budget or other possible sources to cover the costs of the program. Mr. Bone noted the suggestion that the bill be amended so that the applications are taken directly by the contracted vendors, which could boost participation and ease any concerns a licensee may feel with requesting mental health services through their regulatory board.

Mr. Bone stated that the staff recommendation is a support if amended position to request that applications be received by program vendors and funds be secured from outside the Board to pay for program costs.

Dr. Krauss made a motion to support, if amended AB 562, Low/S: Dr. Lewis

Dr. GnanaDev asked Mr. Bone to further explain the bill, saying he thought these programs were already available.

Mr. Bone replied that this bill is intended to be a response to the toll and difficulty that the pandemic has had on health care professionals. Mr. Bone commented that it would either be funded through the Board's fees or a budget appropriation, and that the author of the bill is aware of the Board's financial position.

Dr. GnanaDev asked if the funding would come from the tobacco tax proposition that funds new residency programs.

Mr. Bone replied the bill is silent on the funding mechanism but that the program would be through DCA, which the boards fund it through pro rata payments.

Dr. GnanaDev spoke of the programs that the tobacco tax proposition has funded and that he is concerned about the Board's financial position in funding this program.

Mr. Bone commented that the author of the bill is looking into other sources of funding and explained that the support if amended position includes finding other sources of funding.

Ms. Lawson asked for comments from the public. There were none.

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

Motion carried 12-0 (Support, if amended; Mr. Ryu absent)

Mr. Bone introduced AB 1102, Low, which would clarify that a telephone medical advice company must comply with directions and requests for information from DCA as well as any licensing board that has jurisdiction over the type of advice being provided.

Mr. Bone explained that when the Telephone Medical Advice Services Bureau was abolished, enforcement responsibility was transferred to the various boards that regulate the licensees involved with the entity providing telephone medical advice services, but the requirement to comply with DCA was never updated to include complying with the boards. Mr. Bone commented that staff recommend a support position

Mr. Brooks asked how this would be enforced across state lines.

Mr. Bone replied that if the Board receives a complaint about an out-of-state licensee, the complaints are referred to the appropriate licensing board from that state.

Mr. Brooks commented that this approach is reactive rather than proactive, but if the Board feels comfortable enough to regulate it, then it is a great idea.

Mr. Bone explained that the bureau that regulated telephone medical service providers no longer exists, and regulation was turned over to the individual boards. Mr. Bone continued, saying there is no coordinated regulation over the business entities, just the licensees.

Dr. Krauss made a motion to support AB 1102, Low/S: Dr. Lewis

Dr. Krauss commented that this bill is not really changing the law, just requiring that if a patient is in California, the service provider must be licensed in California. Dr. Krauss also commented that telehealth has become a large for-profit corporate entity, and if the Board does not assert its right to oversee the practice of medicine, it will be viewed as a weakness by the telehealth corporate structure.

Ms. Lawson commented that this bill is closing a loophole that the telehealth service providers do not need to comply with the Board's requests.

Ms. Lawson asked for comments from the public.

Ms. Rhee commented on the progress the Board has been making and spoke of her recent experience with the Hawaii Medical Board.

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

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

Mr. Bone introduced AB 1278, Nazarian, which requires physicians who receive payments or transfers of value from a drug or device company on or after January 1, 2014, to disclose that amount in writing to their patients or the patient's representative prior to the use or prescription of that drug or device.

Mr. Bone continued, saying the bill also requires physicians and surgeons to post a notice in an area likely to be seen by all patients who come to their office that informs them of the federal Centers for Medicare and Medicaid Services Open Payments database. Mr. Bone commented that staff recommend a support position.

Dr. Krauss shared his concerns with this bill and commented on receptions he has attended that were sponsored by drug manufacturers. Dr. Krauss commented that he should not have to have his patients sign a release for such things and that he is in favor of introducing a required dollar amount for reporting.

Dr. GnanaDev agreed with Dr. Krauss on requiring a dollar amount and shared similar instances of attending receptions. Dr. GnanaDev suggested letting the author of the bill choose an amount for reporting.

Dr. Lewis commented that he would support this bill if it were amended to include a dollar amount required for reporting.

Mr. Bone commented that it would be helpful if there were a specific dollar amount that the Board agreed upon.

Dr. Lewis asked if the dollar amount would be for each payment or the total for the year.

Dr. Krauss replied that it is for the pharmaceutical company in question. Dr. Krauss suggested a \$500 amount.

Dr. Mahmood suggested making the required reportable amount the annual dollar amount received.

Ms. Campoverdi agreed on having a dollar amount, albeit a low amount. Ms. Campoverdi also commented that this bill is at the very center of patient protection.

Dr. Mahmood commented that this bill is for the small minority of doctors who go to these receptions frequently, and without putting a justified restriction on it, it will be abused.

Dr. Lewis commented that the Form 700 is where the dollar amounts are reported.

Mr. Bone commented that reportable amounts of over \$50 are reported on the Form 700.

Ms. Lawson asked if any Board members object to the \$500 amount previously suggested.

Dr. Krauss recalled a scandal that occurred at University of California, Los Angeles, where several of their surgeons received large sums of money from implant companies to use their implants. Dr. Krauss commented that the intent of this bill is to prevent corruption and perversion of medical practice where a physician is motivated to prescribe based on financial gain. Dr. Krauss continued, saying receiving up to \$500 from a pharmaceutical company is not likely to be a factor in what drug a physician chooses to prescribe.

Ms. Campoverdi asked if Board members are proposing \$500 per company or total.

Ms. Lawson replied that it would be per event.

Mr. Bone commented that the bill speaks to specific pharmaceutical companies related to a device or drug a physician is planning to prescribe to a patient.

Dr. Krauss agreed with Mr. Bone's clarification and commented that he should not have to get an informed consent from every patient for consulting work he did for a drug that he would never prescribe.

Dr. Lewis and Dr. Krauss spoke on the previous suggestion of supporting the bill if amended to be \$500 per company.

Ms. Campoverdi commented that she would like to hear public comments.

Dr. Yip commented that he has no problem with the bill, and he thinks it is fair for the public.

Ms. Campoverdi commented that the bill states the physicians must disclose and that the patient has a right to know if there was a relationship.

Ms. Lubiano commented that, instead of using the word 'company', Board members may want to consider using the word 'source'.

Ms. Lawson asked for comments from the public.

Ms. Gramme commented that the point of the bill is to empower patients with information that is already publicly available. Ms. Gramme commented that people can filter the database by meals and so forth, which is one of the reasons they decided not to put a dollar amount in the bill. Ms. Gramme suggested physicians print out the information from the database for patients to review, so as not to be overly burdensome. Ms. Gramme agreed with Ms. Campoverdi, saying the Board should take a support position on this bill for patient transparency and protection.

Ms. Hollingsworth commented that this process is part of the informed consent process. Ms. Hollingsworth explained that this bill came out of a case where a patient was not told that a device that was going to be used was experimental, not FDA approved, and that the physician had a financial interest in it. Ms. Hollingsworth agreed with Ms. Campoverdi's statements.

Ms. Rhee commented that no one cares about this kind of stuff, and it is a waste of time and resources. Ms. Rhee also commented that the Board has serious cases and issues, and this is not one of them.

Ms. Farr commented that this bill relates to a patient that was injured by a surgeon who received a large amount of money from the company of the device used, which was not FDA approved. Ms. Farr recommended the Board know the background of bills before they are debated.

Ms. Hughes commented that patients should have access to this information, but also commented on the time it would take for a physician to create this document for each patient during their visit.

Ms. Lauren commented that she supports this bill, as it was created for transparency. Ms. Lauren stated that if physicians build relationships with their patients, the patients will understand and trust their physicians.

Mr. Andrist commented that less than one third of California's doctors are members of the CMA. Mr. Andrist spoke of injured patients whose physicians had a financial interest in the drugs or devices used. Mr. Andrist commented that if physicians find it such a burden to create a document to keep patients safe, then they should not take money from pharmaceutical and medical device companies.

Mr. Savage commented that he is the chief of staff for the author of the bill and clarified a section of the bill that explains the written disclosure. Mr. Savage commented that the goal of the bill is to allow patients to know the federal Open Payments database is available to them. Mr. Savage commented that, in speaking with other physicians, they did not want a required minimum threshold since it would create more of a burden.

Ms. Lawson asked for clarification on if the physician would have to create a form for each patient based on what is being prescribed at that time or if the physician could print all information from the database at one time for each patient's use.

Mr. Bone stated that, in reading the bill language, the physician who receives payment shall disclose the source orally and in writing to each patient prior to the intended use or prescription of a device or drug. Mr. Bone commented that if this were to occur before the patient's appointment, a comprehensive document would be needed, depending on all the different payments that the provider has received.

Dr. Krauss commented that the devil is in the details, saying the last public commenter expressed that it is simply a matter of informing the individual of the data available on the website. Dr. Krauss commented that it would become burdensome if the physician had to look up each medication being prescribed to see if they received money or went to a dinner for that manufacturer.

Ms. Lawson invited Ms. Gramme back for further explanation.

Ms. Gramme explained that the bill suggests something that is not administratively burdensome but still provides information to the patients. Ms. Gramme commented that it is still in the details as far as how the language of the bill will end up.

Dr. Thorp commented that, according to the Center for Public Interest Law, disclosure of financial conflicts of interest by doctors is a moral obligation not enforced by law. Dr. Thorp continued, saying this bill would remedy this problem by mandating physician disclosure. Dr. Thorp commented that that is important, but as a primary care physician, having to recall and outline to each patient which drug companies brought lunch to his office would be onerous.

Ms. Lawson stated that she believes patients should have the choice to decide if something may have influenced their physician, but the idea of a physician having to leave an appointment to search a database and come back with a disclosure form is concerning. Ms. Lawson commented that it makes more sense that a list is provided from the database, or showing the patient how to access the database, at the onset of the appointment makes more sense.

Dr. Hawkins commented that he would query himself in the database and have his own printout to review when prescribing medications.

Dr. Hawkins made a motion to support AB 1278, Nazarian/S: Ms. Campoverdi

Ms. Campoverdi commented that she does not agree with the characterization that the intent was for doctors to figure out how to fill out a form during an appointment. Ms. Campoverdi spoke of her experiences with health care and what she wants to bring to the Board as a public member, saying this bill is about transparency and trust.

Dr. GnanaDev commented that he agrees with what the author's chief of staff explained, but not with how Mr. Bone explained the bill, saying there is a discrepancy between the two. Dr.

GnanaDev commented that he would like to see the bill cleaned up to state that a notice showing the Open Payments website is what is required.

Dr. Krauss commented that he supports the disclosure that was offered by the chief of staff, and he would like to support the bill if amended to allow a front-office disclosure that would not interfere with the patient-physician relationship.

Mr. Brooks commented that he understands the intent of the bill and supports it and asked if the physician would have to disclose every drug a particular pharmaceutical company makes.

Mr. Bone replied that the disclosure requirement is triggered when the physician receives a payment from the pharmaceutical company.

Mr. Brooks asked if payment includes products and meals and if the physicians are required to disclose every drug manufacturer.

Mr. Bone replied that the disclosure requirement occurs if the physician is going to issue a prescription or intends to use a device manufactured or distributed by the company.

Ms. Webb commented that there are two ways to move forward, saying one is specific to each patient based on what the physician is going to prescribe, and the other is that a form is prepared ahead of time disclosing all the compensation received from the pharmaceutical and device companies.

Mr. Watkins commented that the Board is discussing patient protection via disclosure while also talking about doctor's administrative functions. Mr. Watkins commented that the doctors will figure it out, and that the Board is here for patient protection.

Dr. Hawkins agreed with Mr. Watkins and commented that a vote should be called. Dr. Hawkins reminded Board members that his motion was to support this bill.

Dr. Thorp commented that this bill is very prescriptive.

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

Motion carried 9-2-1 (Support; Dr. Krauss and Dr. Thorp nay; Dr. GnanaDev abstained; Mr. Ryu absent)

Mr. Bone introduced SB 48, Limón, which would require all general internists and family physicians to complete at least four hours of CME during each two-year renewal cycle. Mr. Bone explained that current Board regulations require physicians to complete at least 50 hours of CME every two years, and general internists and family physicians are required to complete 20% of their CME in the fields of geriatric medicine.

Mr. Bone commented that at a prior Board meeting, a position was not taken, and a letter was sent outlining the concerns the Board had. Mr. Bone also commented that the bill has not been amended to address the Board's concerns. Mr. Bone stated that Board staff recommend an

oppose unless amended position to request the bill be amended to encourage, but not require, the CME.

Dr. Krauss commented that he would support this bill if it were amended, saying his concern is with the CME in general, citing his experience with mandated CME on pain relief. Dr. Krauss stated that those CME courses were by paid consultants of Purdue Pharma, and that Alzheimer's drugs are a multibillion-dollar business. Dr. Krauss commented that he would like to see an amendment indicating that the CME organizer and presenters should not be in receipt of funding directly from corporations deriving revenue from the sale of products or services to dementia or Alzheimer's patients or their families or caretakers.

Dr. GnanaDev asked why this bill is being brought to the Board again if it was not amended.

Dr. Krauss replied that his position is to support the bill with the original amendments requested, in addition to the current amendments discussed to avoid conflict of interest in the purveyors of the CME.

Mr. Bone stated that the Board did not request amendments at the prior meeting, but instead took no position and directed Board staff to write a letter of concern.

Dr. GnanaDev commented that mandated CME has harmed patients and gave the example of the opioid crisis and the pain management mandated CME.

Dr. Krauss stated he misspoke when he said he supported this bill if amended, saying he opposes unless amended to add the origin of the CME to the requested amendment.

Dr. Krauss made a motion to oppose, unless amended SB 48, Limón/S: Dr. Hawkins

Mr. Bone clarified the amendment, saying it would not make the CME mandatory, rather it would allow the physicians who are already subject to the ten-hour CME requirement to add the option of special care needs of patients with dementia to the other topic options, which are geriatric medicine and the care of older patients.

Dr. GnanaDev commented that the concerning issue is the money flowing from the companies that make these drugs for the companies that present the CME, and for public protection, the CME programs should not be funded by the companies that make the drugs for the treatment of dementia.

Mr. Bone commented that if that prohibition is included, it may put Board staff in a challenging position when they review CME providers and whether the CME is acceptable.

Ms. Webb agreed with Mr. Bone's concern but noted that it is an important point for patient safety.

Dr. Krauss suggested asking for an attestation from the CME provider and presenters that they have no financial interest.

Dr. GnanaDev replied that would only work if the CME provider were from California.

Ms. Lawson asked for comments from the public.

Ms. Rhee commented that SB 48 is acceptable.

Ms. Reyes commented that the California Academy of Family Physicians opposes this bill unless amended, saying CME curriculum should be developed by demonstrated clinical need and research.

Ms. Farr commented that CME providers should disclose where their funding comes from.

Ms. Lauren agreed with Dr. Krauss' comments.

Dr. Krauss repeated his motion, which is oppose unless amended to include the items discussed with the CME being an option, and the amendment that the CME purveyor and presenters should not receive funding from corporations deriving revenue from the sale of products or services to dementia or Alzheimer's patients or their families or caretakers.

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

Motion carried 11-0-1 (Oppose, unless amended; Mr. Brooks abstained; Mr. Ryu absent)

Mr. Bone introduced SB 310, Rubio, which would require the Board to administer a program that allows for the donation and redistribution of cancer drugs between patients of a participating physician who is licensed with the Board. Mr. Bone explained that the author and sponsors note the challenges that patients may face to obtain cancer medications.

Mr. Bone commented on the consumer concerns, including medication integrity and liability risks. Mr. Bone also commented that it is unclear why the Board is the appropriate entity to carry out this program and stated that staff recommend an oppose position.

Dr. GnanaDev asked if federal law and the State Board of Pharmacy allow this.

Mr. Bone replied that the State Board of Pharmacy does not allow it, and he is not sure of federal law. Mr. Bone commented that there is an advocate on behalf of the sponsor who will speak during public comments. Mr. Bone noted that there are other states that allow this, however, the programs are not run by the state medical boards.

Dr. Krauss commented that this program is of value, but it should not be through the Board. Dr. Krauss moved to oppose this bill.

Ms. Campoverdi asked to hear from the advocate, saying this program is well needed but is confused why it would be through the Board.

Ms. Lawson asked for comments from the public.

Ms. Smith spoke as a co-sponsor of the bill, saying she understands the cost concerns and stated that 38 states have a drug recycling program. Ms. Smith stated that they thought the

Board would be the appropriate entity since it oversees oncologists. Ms. Smith stated she would be happy to answer questions.

Ms. Rhee commented that this sounds like a great idea but wondered if there would be disclosure to the patient that they received recycled medication.

Ms. Campoverdi commented that her understanding of the bill is that all medication would be unopened and unused and understands the cost concerns from the Board. Ms. Campoverdi commented that she would like to hear more about the program from Ms. Smith.

Mr. Brooks commented that he is curious about how the program details would work.

Mr. Bone commented that the answers would have to be resolved through rulemaking to set up all the different structures and answers to questions that have been raised. Mr. Bone explained that a physician would have to inspect the medication to determine that it is unaltered and safe for distribution.

Dr. Krauss stated that this is a worthy endeavor, but it is not a physician's practice, it is a pharmaceutical and Department of Public Health practice. Dr. Krauss commented that, just because the Board of Pharmacy would have nothing to do with this, it is inappropriate for the program to be under the Board since physicians are not the correct professionals to verify the purity and quality of medications.

Dr. Mahmood commented that another important factor is how the patients would be selected for the unused medications. Dr. Mahmood also commented on the possibility of double-billing for the medications.

Mr. Bone commented that the bill has a requirement that the physician must already have a relationship with the patient, but there is no mention of billing.

Dr. Mahmood commented that many of these cancer drugs must be used within a specified period and questioned whether there would be patients who need that specific drug within the timeframe. Dr. Mahmood stated that this bill is more in the scope of the Board of Pharmacy.

Ms. Campoverdi commented that if Board members agree that the Medical Board is not the right entity for this, then the Board could support if amended to not be within the jurisdiction of the Medical Board. Ms. Campoverdi added that this is a positive, and potentially lifesaving, bill that should be supported.

Mr. Brooks commented that he thinks this is an incredible program, and these drugs should not go to waste, but this is a distribution issue, not a Board issue.

Dr. Krauss commented that he will withdraw his position if Ms. Campoverdi wants to take a new position.

Ms. Campoverdi commented that she would like to support this bill if amended so that the Board is not the entity to administer the program and asked Aaron to clarify what language could be used.

Mr. Bone stated that a support unless amended position would mean the Board supports every aspect of the bill except for who administers the program. Mr. Bone explained that if the author and sponsor did not amend the bill, and left it as is, the Board would have no position on the bill moving forward.

Dr. Krauss asked if the Board is better off accomplishing its request if the position taken is oppose unless amended.

Mr. Bone replied that that position would preserve more opportunity for the Board.

Ms. Campoverdi commented that she will not make a motion to oppose unless amended to include a different entity to supervise the program.

Dr. Krauss made a motion to oppose, unless amended SB 310, Rubio/S: Dr. Lewis

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

Motion carried 10-1 (Oppose, unless amended; Ms. Campoverdi nay; Dr. GnanaDev and Mr. Ryu absent)

Mr. Bone introduced SB 528, Jones, which requires the California Department of Social Services (CDSS) to create an electronic health care portal that providers would be able to access for health information of foster children. Mr. Bone continued, saying the portal must also include completed and approved forms developed by the judicial council relating to the administration of psychotropic medication for specified dependent children and wards of the juvenile court.

Mr. Bone commented that this bill may ease the Board's access to medical records necessary to investigate possible violation of the Medical Practice Act regarding children in foster care, and staff recommend a support position.

Dr. Lewis made a motion to support SB 528, Jones/S: Ms. Campoverdi

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

Mr. Layne, from the author's office, commented that he wanted to make himself available for questions and requested the Board's support of SB 528.

Ms. Rhee commented that this bill sounds like a good idea but would like to hear more about what is included.

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

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

Ms. Lawson adjourned the meeting at 8:43 P.M.

Friday, May 14, 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., Secretary
Howard R. Krauss, M.D., Vice President
Ronald H. Lewis, M.D.,
Laurie Rose Lubiano, J.D.
Asif Mahmood, M.D.
David Ryu
Richard E. Thorp, M.D.
Eserick "TJ" Watkins
Felix C. Yip, M.D.

Staff Present:

Antonio Adea, Office Technician
Aaron Bone, Chief of Legislation and Public Affairs
Valerie Caldwell, Associate Governmental Program Analyst
Charlotte Clark, Information Technology Supervisor I
Arquelle Colson, Associate Governmental Program Analyst
Sean Eichelkraut, Information Technology Manager I
Frank Eslami, Information Technology Specialist II
Jenna Jones, Chief of Enforcement
Jacoby Jorgensen, Staff Services Manager, I
Nicole Kraemer, Information Technology Associate
Sheronnia Little, Information Technology Supervisor I
Natalie Lowe, Information Technology Specialist I
Danette, McReynolds, Staff Services Manager I
Marina O'Connor, Chief of Licensing
William Prasifka, Executive Director
Regina Rao, Associate Governmental Program Analyst
Letitia Robinson, Research Data Specialist II
Elizabeth Rojas, Staff Services Analyst
Emmalee Ross, Information Officer I
Alexandria Schembra, Associate Governmental Program Analyst
Kathryn Taylor, Staff Services Manager I
Reji Varghese, Deputy Director
Carlos Villatoro, Public Information Officer II
Kerrie Webb, Staff Counsel

Members of the Audience:

Eric Andrist, The Patient Safety League
Michelle Angus, Department of Consumer Affairs
JD Anthony
Juan Armenta, English Lloyd & Armenta
W Brannan
Marcey Brightwell, Brightwell Strategies
Tracy Candelaria
Gloria Castro, Attorney General's Office
Teresa Chien, California Academy of Physician Assistants
Yvonne Choong, California Medical Association
Kim Christensen
Elizabeth Coronel, Department of Consumer Affairs
Dennis Cuevas-Romero, Physicians for a Healthy California
Matthew Davis, Attorney General's Office
Phil Deters, Attorney General's Office
John Dolan
Kimberly Elkin
John Ennis, Consumer Watchdog
Virginia Farr
Maggie Fasbender, Wipfli LLP
Julianne Fellmeth, University of San Diego
Anne Fuqua
Bridget Gramme, University of San Diego
Karen Halbo, Department of Consumer Affairs
Nicole Hendrickson, LaFollette Johnson DeHaas Fesler & Ames
Tessa Heunis, Attorney General's Office
Monique Himes
Marian Hollingsworth, The Patient Safety League
Diane Holzer
Adam Horn, Norwood Associates LLC
Ed Howard
Gail Jara, California Public Protection & Physician Health
Rozana Khan, Department of Consumer Affairs
Wendy Knecht
Veronica Kramer
Joseph Kramer
Khadijah Lang, M.D.
Susan Lauren
Evon Lenerd-Tapps, Department of Consumer Affairs
April Manatt, California State Senate
Loretta Melby, California Board of Registered Nursing
Bart Mendoza
Michele Monserratt-Ramos, Consumer Watchdog
Kathleen Nicholls, Health Quality Investigations Unit
Erin Norwood, Norwood Associates LLC
Kristen Ogden
Helena Pappas

Sandra Perez
Ryan Perez, Department of Consumer Affairs
Catrina Reyes, California Academy of Family Physicians
Christine Rhee, Attorney General's Office
Hanna Rhee
Jeff Rizzo
Gezel Saheli
Alecia Sanchez, California Medical Association
LeAnna Shields, Attorney General's Office
Collin Ross, San Ysidro Health Center

Agenda Item 11 Call to Order/Roll Call/Establishment of a Quorum

Ms. Lawson called the meeting of the Medical Board of California (Board) to order on May 14, 2021, at 9:00 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

Mr. Andrist commented that Board staff sugar coat reports to the legislature, Board members, and to the public to make it look like they are doing a better job than they are, citing a report put out by Public Citizen. Mr. Andrist spoke of a case involving patient death and the Board giving the physician a public reprimand, Mr. Andrist played an audio clip of the physician.

Ms. Ogden commented on the Department of Justice restricting physicians from prescribing opioids. Ms. Ogden spoke of several prominent pain management physicians who were investigated but never charged. Ms. Ogden commented that she looks forward to being involved in an interactive advisory committee.

Ms. Farr agreed with Ms. Ogden's comments. Ms. Farr wondered if the Board members read about the legislation before the Board meetings, saying it seems like many Board members do not know much about the bills. Ms. Farr commented on AB 1278 and AB 562.

Ms. Knecht thanked the Board for supporting AB 1278, saying she was the impetus for the bill. Ms. Knecht commented that AB 1278 is about patient protection and transparency. Ms. Knecht spoke of the importance of disclosure and the influence that pharmaceutical and device manufacturers have over physicians.

Ms. Lauren spoke of the harmful outcomes from removing subcutaneous fat tissue. Ms. Lauren commented on her surgical assault and the articles that she has sent to the Board regarding bad outcomes from adipose removal. Ms. Lauren stated that it is time to look at plastic surgery in an updated, informed way.

Ms. Fuqua gave a brief description of her condition and commented on pain management, asking the Board to ensure physicians can treat patients with intractable pain without fear of losing their license.

Dr. Lang commented that the Board has taken some steps for bias training and asked if a difference or an impact has been made. Dr. Lang spoke of patients who are not happy with the care they are receiving from their physicians, saying the patients are unable to find new physicians due to demographics.

Agenda Item 10 Discussion and Possible Action on Legislation/Regulations

Mr. Bone introduced SB 57, Wiener, which authorizes certain local governments to temporarily establish overdose prevention programs within their respective jurisdiction. Mr. Bone continued, saying these programs would provide a hygienic location where individuals may consume controlled substances under the supervision of staff who would intervene if the individual overdoses. Mr. Bone stated that individuals would be offered sterile consumption equipment, general medical advice, including referrals for medical care, substance use disorder treatment, housing options, and other social services.

Mr. Bone commented that the bill's language provides for criminal, civil, administrative, and professional disciplinary protection for the employees, volunteers, or others involved in the operation of these facilities, except for conduct performed in a grossly negligent manner or in bad faith. Mr. Bone noted that following the Board's last meeting, the bill was amended to specify that this liability protection does not limit the Board from taking administrative or disciplinary action against its licensees for any action, conduct, or omission at these facilities that violate the Medical Practice Act. Mr. Bone commented that Board staff recommend a neutral position.

Dr. Lewis commented that he would support this bill.

Mr. Bone explained that the reason why this bill was brought up, and staff recommend a neutral position, is not because of the broader public health objective. Mr. Bone continued, saying that the bill was brought forth during the last meeting because there was inappropriate liability protection, but has since been addressed, so staff now does not recommend a support position for the bill entirely, but rather a neutral position since the Board's concerns were addressed.

Dr. Lewis made a motion for a neutral position on SB 57, Wiener/S: Mr. Watkins

Mr. Watkins asked why a neutral position was recommended, saying the liability concerns have been addressed and the Board agrees on the principle of the bill.

Mr. Bone replied that if it were not for the concerning liability protection language in the prior version of the bill, Board staff would not have brought it to the Board. Mr. Bone continued, saying the overall goal is a public health goal, beyond the Board's jurisdiction, and not pertaining to the Board's licensing and disciplinary programs.

Dr. Krauss commented that he is in favor of the neutral position, but he wanted to clarify that the Board is not precluded from taking positions on bills even if they are not in direct relation to the primary mission of the Board, saying the Board is responsible for consumer protection.

Mr. Watkins thanked Dr. Krauss, saying that is an important point.

Ms. Lawson asked for comments from the public.

Ms. Farr commented on safety measures being put in place and proper staffing and equipment so as not to put the healthcare workers at risk.

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

Motion carried 13-0 (Support)

Mr. Bone reviewed the status of pending regulations.

Ms. Webb informed the Board that the proposed regulations for the Physician and Surgeon Health and Wellness program have been submitted to DCA for review.

Ms. Lawson asked for comments from Board members. Hearing none, Ms. Lawson asked for comments from the public. There were none.

Agenda Item 13 Presentation on Disciplinary Guidelines

Ms. Webb began by saying this has been a hot topic and that almost all the Board members have had training, or similar training, on how the Board uses disciplinary guidelines. Ms. Webb commented that she thinks this is the most important role for Board members.

Ms. Webb commented that the administrative section of the Medical Practice Act states that public protection shall be paramount and that should be on top of everyone's mind when imposing discipline, voting on proposed legislation, and determining Board policy. Ms. Webb also commented that BPC 2229 calls to rehabilitate the licensee so long as it is not inconsistent with public protection. Ms. Webb explained that discipline short of revocation is appropriate if someone can be rehabilitated and the public still be protected.

Ms. Webb stated that the Board does not have the authority to impose punishment and explained what happens if the Board oversteps, saying the licensee can file a petition for reconsideration with the Board or a writ in superior court, and the matter may be remanded back to the Board if the court determines the Board did not prove its case.

Ms. Webb explained that the purpose of the disciplinary guidelines is to assist the Board in evaluating cases and to help foster uniformity, consistency, and fairness while acting as a deterrent. Ms. Webb also explained that the guidelines must be flexible and account for the myriad of variables of each case.

Ms. Webb shared the structure of the guidelines, saying they contain model orders, organized by code section violation, show guidelines for levels of discipline, contain standard and optional conditions of probation, and are adopted and modified through regulation.

Ms. Webb commented that the guidelines are applicable to both proposed decisions and proposed stipulations. Ms. Webb explained how proposed decisions and stipulations are different, saying a proposed decision is written by an ALJ after a full administrative evidentiary hearing, and a stipulation is an agreement reached between the respondent and the Board executive staff prior to a hearing.

Ms. Webb explained that a proposed decision must state the reasons for deviation from the guidelines, while a stipulation does not, since the proposed decision is a public document, while settlement negotiations are confidential because they are designed to promote a resolution without the need for a hearing, and the parties would not want to prejudice their case.

Ms. Webb outlined the process for reviewing cases for proposed decisions, noting that the accusation is written and filed before there is an exchange of discovery and before the deputy attorney general (DAG) receives the licensee's expert report, which means the charges have not yet been proven. Next would be to read the proposed decision and determine what allegations have been sustained by clear and convincing evidence. Ms. Webb noted that many other states require a lower burden of proof, preponderance of the evidence to prove their case. Ms. Webb commented that in California, if only the preponderance of evidence is reached, then the ALJ is obligated to dismiss the charge, and potentially the entire case. Ms. Webb also commented that the Board does not have jurisdiction to impose discipline on one simple negligent act.

Ms. Webb continued with the process, which is to review the disciplinary guidelines to determine the suggested discipline, determine whether the discipline ordered follows the guidelines for each violation, determine whether the proposed decision provides sufficient consumer protection and rehabilitation, and after review and consideration, the Board votes to adopt the proposed decision or hold the proposed decision for discussion.

Ms. Webb explained that the process for reviewing stipulations is similar, with one difference being the DAG memo, which describes the post-filing developments, such as what happened during the discovery exchange, the strength and credibility of the prosecution and defense witnesses, and the qualifications of the experts.

Ms. Webb spoke on what would warrant deviation from the guidelines, including the licensee taking corrective action before the matter comes to the Board's attention, witness unavailability or credibility, expert credibility, the age of the violation, the value of having discipline imposed sooner, and the level of certainty that discipline will be obtained at hearing.

Ms. Webb answered how deviating from the disciplinary guidelines can be consistent with the Board's mission to protect the public, saying that when, under the facts of the case, the stipulation provides sufficient patient protection, and imposes appropriate rehabilitation measures, in a timely manner. Ms. Webb commented that there are times when a stipulation includes conditions that the licensee agrees to that may not have been proposed by an ALJ.

Ms. Webb explained the role of stipulations, saying they provide certainty, the Board is assured that discipline imposed is appropriate and avoids the risk of going to hearing and

receiving a less desirable outcome while the licensee waives their right to seek reconsideration or appeal, and it saves resources.

Ms. Webb gave a case example of a doctor who lied on his application and did not qualify for a full and unrestricted license due to concerns around honesty and alcohol use. Board staff offered a proposed stipulation for five years' probation, with terms requiring him to abstain from use of drugs and alcohol, submit to biological fluid testing, and take an ethics course among other terms and conditions. The applicant agreed to the terms and signed the proposed stipulation for Board review. Ms. Webb explained that the Board wanted to deny his application for licensure and rejected the proposed stipulation. The applicant requested a hearing, and the ALJ proposed a free and clear license. Ms. Webb explained that the Board is required to give the ALJ's findings great weight. While the Board did non-adopt the proposed decision, they were bound by the ALJ's factual findings, and only imposed three years' probation with no requirement that the applicant abstain from use and submit to biological fluid testing, which offered less consumer protection than the originally-proposed stipulation.

Dr. Krauss commented that there are gray zones that must be considered in each case, they are not black and white, and it is frustrating that the Board has not been adequate in communicating this to the public. Dr. Krauss stated that he fears this presentation will quickly be forgotten by the public, and suggested staff consider an update of the 2016 edition of the Board's disciplinary guidelines to include the information presented today.

Dr. Hawkins asked about the public process of adoption and modification of the guidelines through regulation.

Ms. Webb explained that proposed changes to the guidelines are tracked so that people can see what is being proposed, and it comes to the Board for consideration, which then goes through the full rulemaking process, which is subject to public comment and a hearing.

Mr. Brooks asked if DCA has ever conducted an outreach program with the public to go through closed cases so that members of the public get a sense of the challenges and nuances that Board members go through.

Ms. Webb replied that she is not aware of that occurring, but it sounds like a good idea.

Ms. Lawson commented that this suggestion may be something the Board can do at a future public stakeholder meeting.

Ms. Lubiano asked Ms. Webb to explain the difference between a simple departure and an extreme departure.

Ms. Webb replied that an extreme departure would be gross negligence, and that one act of gross negligence can be grounds for disciplinary action. Ms. Webb continued, saying repeated negligent acts fall below that level. Ms. Webb explained that experts decide whether something falls within an extreme departure or a simple departure, with the ALJ being the deciding factor when there are disagreements between the Board's expert and the respondent's expert if the matter goes to hearing.

Ms. Lubiano asked if there could be one simple departure if the patient experienced harm for the rest of their life where the negligent act does not rise to the level where the Board is able to take action.

Ms. Webb affirmed, adding that it is difficult to accept a public reprimand or a probationary term that is less than the disciplinary guidelines when there is death or serious bodily injury, but the Board cannot start with the fact that there was a death or patient harm and then decide what the discipline will be. Ms. Webb added that the Board does not require there to be harm to impose discipline.

Dr. Yip suggested this presentation be put on the Board's website. Dr. Yip also suggested having a meeting to update the disciplinary guidelines and include the ALJ's and DAG's so they can hear the public's concerns.

Dr. Lewis commented that this presentation was long overdue, saying it needs to be refreshed with Board members no matter their tenure.

Dr. GnanaDev commented that the proposed stipulations are prepared by the DAGs, who are experienced attorneys, and most of the time panel members approve them. Dr. GnanaDev continued, saying if members think there is another way, they hold them for discussion, where most of the time panel members end up agreeing. Dr. GnanaDev commented that it is a good process. Dr. GnanaDev spoke on medicine being part science and part art.

Dr. Mahmood commented on cases that require urgent attention, when delaying the process may be harmful to the public and causing a negative impact on the Board and asked if the AGO can get input from the Board before they make the stipulation.

Ms. Webb replied that that is not part of the process, but these urgent cases may warrant an interim suspension order, which go to an ALJ.

Mr. Watkins commented that deciding these cases are not that difficult and that applying the disciplinary guidelines is effectively entering the respondent into a rehabilitation program, saying a big part of rehabilitation is oversight. Mr. Watkins also commented that other boards that apply the full disciplinary guidelines do not have similar issues as the Board. Mr. Watkins asked Ms. Webb if she thought the Board applied the guidelines and established uniformity, consistency, and fairness for the last year. Mr. Watkins stated he did not think the Board did. Mr. Watkins spoke of public reprimands, the tone of DAG memos, his concerns about the Board, and building trust.

Ms. Webb commented that, during closed session, DAG's are obligated to let members know what is likely to be heard at hearing with the ALJ. Ms. Webb also commented that the legislature prohibits the Board from receiving complainants' statements pursuant to BPC 2330 while the case is still pending.

Ms. Lawson asked to hear comments from the public.

Ms. Rhee agreed with Mr. Watkins' comments. Ms. Rhee also commented that there is corruption with the ALJ's and spoke of her own hearing and receiving altered copies of transcripts.

Mr. Andrist commented that Ms. Webb is biased and protects the Board, not the public. Mr. Andrist also commented that the law states certain cases including death or sexual assault should have higher consideration, saying that cases are being manipulated before they are even written. Mr. Andrist stated that the guidelines are not working when victims and families must suffer the consequences of the Board's actions and inactions. Mr. Andrist commented that the Board gives far too many lenient disciplines only to have the doctors reoffend.

Ms. Farr spoke of specific cases and stated that probation is not good enough for those doctors. Ms. Farr commented on her own case and medical history and stated she does not feel safe with doctors.

Ms. Lauren thanked Mr. Watkins for giving a voice to the public. Ms. Lauren commented on her case, saying it was minimized, and asked the Board to take cases more seriously.

Ms. Hollingsworth commented that the disciplinary guidelines are rarely followed, saying the Board is settling instead of doing a good job. Ms. Hollingsworth gave example of cases where the guidelines were not followed. Ms. Hollingsworth commented that public safety are only words on paper and not a serious consideration when a doctor's career is threatened.

Ms. Monserratt-Ramos commented on her husband's death due to a substance-abusing physician, saying her case was dismissed without an investigation. Ms. Monserratt-Ramos recommended the Board move to reveal the reasons for deviating from the guidelines in stipulated decisions, as is done in proposed decisions. Ms. Monserratt-Ramos also recommended not allowing physicians on a stipulated decision to be able to file for early termination of probation, saying that is true consumer protection.

Ms. Lawson asked for additional comments from Board members.

Dr. Mahmood commented that the Board's goal is not to take sides, but rather public protection, and that the decisions and reviews should be just, fair, and unbiased. Dr. Mahmood suggested auditing past cases to see what deviations occurred. Dr. Mahmood spoke of being on panel B and frequently holding cases for discussion to get more information.

Mr. Watkins commented that putting the steps up for review and establishing better practices by an independent party would help restore trust in the Board.

Ms. Lubiano commented that she feels the Board is objective and does their best when looking at cases, but the data speaks for itself in following the guidelines.

Mr. Brooks thanked the public commenters, saying that process is what drives the Board. Mr. Brooks spoke on the data from deviating from the guidelines, saying that the outcomes should be just as important to look at. Mr. Brooks suggested reviewing recidivism rates.

Dr. GnanaDev also suggested reviewing recidivism rates.

Ms. Campoverdi commented that it is important for Board members to hold each other accountable behind closed doors.

Agenda Item 14 Update from the Health Quality Investigation Unit

Ms. Nicholls began the update by saying there are seven investigator vacancies, which is a nine percent vacancy rate, and 18 candidates are in the background process. Ms. Nicholls explained that there are so many in background because they anticipate more retirements through the end of the year, and several supervisor vacancies could potentially be filled internally, creating new investigator vacancies.

Ms. Nicholls stated that HQUI continues to provide specialized training for their investigative staff in addition to the training they receive in the police academy, including specialized training on impairment investigations and a mini academy for newly hired investigators. Ms. Nicholls also commented on statewide supervisor training that was held in April.

Ms. Nicholls spoke of HQUI working with Board executive staff and the AGO to devise a strategy to enforce BPC section 2225.5 for requesting certified medical records. Ms. Nicholls stated that she looks forward to working with Board staff on examining processes, such as obtaining medical records, the types of cases handled by sworn and non-sworn staff, and finding further efficiencies to reduce timelines.

Ms. Nicholls stated that there was a net reduction of 39 cases in April, and a net reduction of 43 cases for cases over two years old, saying HQUI is still working on 179 cases over two years old. Ms. Nicholls also stated that 92 new investigations were received, and 158 completed, in April.

Ms. Nicholls spoke of transparency with HQUI's workload, with updates and reports being shared with Board staff. Lastly, Ms. Nicholls commented on the disciplinary guidelines presentation, urging the Board to pay attention to cases to determine if the case involves an intentional act, where revocation would be recommended, or if it involves a mistake or lack of medical skill.

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

Ms. Rhee commented on unaccounted funds at the HQUI, her civil rights lawsuits, and not seeing any person of color in a leadership position within HQUI.

Ms. Lauren commented that the data used is false and spoke of her experience with, and case against, Dr. Saul Berger.

Ms. Farr spoke of her experience and case, saying there is a difference between medical harm and an error. Ms. Farr commented that she believes her surgeon made an error, but the people after that harmed her by denying care and falsifying records. Ms. Farr stated that patients should be able to co-author their medical records for accuracy.

Agenda Item 15 Update from the Department of Consumer Affairs

Mr. Perez congratulated and welcomed Mr. Brooks and Mr. Ryu to the Board. Mr. Perez commented that DCA boards and bureaus are looking ahead to changes that can be made permanent for efficiency and employee well-being, such as telework and eliminating paper processes.

Mr. Perez commented that DCA has received many questions about when and how boards will meet in-person and that the ability to meet remotely is tied to the governor's executive orders and declared state of emergency, saying when these are lifted, the Board will be required to follow all aspects of the Open Meeting Act, but it is unknown when this will happen.

Mr. Perez stated that 2021 is a mandatory sexual harassment prevention training year and reminded staff and Board members to complete the training. Mr. Perez also reminded the Board that newly appointed and reappointed Board members are required to attend Board Member Orientation Training within one year of appointment or reappointment.

Mr. Perez commented that DCA will be conducting a budget and expenditure training for Board staff on May 19, 2021. Lastly, Mr. Perez commented on new initiatives launched by DCA in 2021 to enhance DCA services to its boards and bureaus, including an executive officer cabinet and the enlightened licensing project.

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

Ms. Rhee commented that Board members may be marginalizing Ms. Campoverdi when she attempts to speak. Ms. Rhee also commented on Ms. Kirchmeyer leaving the Board due to a federal civil rights lawsuit against her.

Ms. Lawson asked for any additional comments from Board members.

Dr. Thorp asked about a completion date for the Physician and Surgeon Health and Wellness Program.

Mr. Perez commented that he does not have this information but will get the information to Mr. Prasifka for distribution to the Board. Mr. Perez congratulated Mr. Brooks, Ms. Lubiano, Ms. Campoverdi, and Dr. Hawkins for progressing through the senate confirmation process.

Agenda Item 16 Update on the Federation of State Medical Boards

Ms. Lawson began the update by stating that she attended FSMB's House of Delegates meeting as the Board's voting delegate. Ms. Lawson commented that Ms. Pines, the Board's former president, is now a member of the Osteopathic Medical Board of California and has been elected to FSMB's Board of Directors. Ms. Lawson invited Dr. Krauss, who also attended the meeting, to give an update.

Dr. Krauss recommended that all Board members be a member of the FSMB as an opportunity to learn and benefit from other states' approach to problems, and to share concepts and experiences to help the Board progress. Dr. Krauss shared that this year's meeting had highlights and discussions in relation to the pandemic, emergency preparedness, health care equity, telehealth, physician impairment, and health and wellness programs. Dr. Krauss noted that the virtual meeting is still available online.

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

Ms. Rhee commented that the FSMB is part of the problem of structural racism and healthcare disparities.

Agenda Item 17 Update on the Mexico Pilot Program

Mr. Prasifka began the update by giving a brief background of the program, saying it became effective under AB 1045 in 2002 and was enacted on January 1, 2003. Mr. Prasifka continued, saying the interagency evaluation agreement was completed on January 26, 2021, which involved U.C. Davis conducting evaluations. Mr. Prasifka reminded the Board that at the February Board meeting, he indicated that the Board was prepared to issue 20 licenses out of the 25 applicants that had no deficiencies. Mr. Prasifka noted that there were applicants who had requested the Board delay issuing their licenses until they were further along in the visa application process to ensure they could practice for the full three years. Mr. Prasifka continued, saying the Board has not received any requests to issue the licenses, but is ready to do so.

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

Ms. Rhee commented that it is wonderful to see the Board moving forward with the Mexico Pilot Program but is concerned that these physicians are not aware of the health care disparity amongst African American patients.

Agenda Item 18 Update on the 2020 Activities of the 2018 – 2021 Strategic Plan

Mr. Varghese reviewed the Board's 2020 accomplishments for licensing, enforcement, legislation, regulations, outreach, and administration from the 2018 – 2021 strategic plan.

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

Ms. Rhee commented that, if the Board hires or contracts with medical consultants, it would be relevant for them to show on their resume that they have worked in areas of racial diversity and religious tolerance.

Ms. Lawson asked for any additional comments from Board members.

Mr. Watkins asked when the process will begin for the new strategic plan.

Ms. Lawson replied that the information will be included in the next agenda item.

Agenda Item 19 Update on the 2022 – 2025 Strategic Plan

Mr. Varghese invited Ms. Coronel to guide the Board through the strategic planning process. Ms. Coronel reviewed the five main parts of the strategic planning roadmap, saying the first part, preliminary meeting and set up, has been completed.

Ms. Lawson asked for comments from the Board members.

Mr. Watkins asked if the Board went through the same process in 2018.

Ms. Coronel replied that DCA and the Board are following the same roadmap.

Dr. Hawkins asked if there is a start date.

Mr. Coronel responded that she has tentative dates for starting in August, and the planning session in November, but would like the Board's executive staff to confirm the dates.

Mr. Varghese commented that the Board's goal is to finalize the plan by the November Board meeting.

Ms. Lawson asked for comments from the public.

Ms. Rhee questioned if the Board should use the same process used in 2018, saying she is unsure how successful that was. Ms. Rhee also commented about having more public stakeholder meetings for the strategic planning process.

Ms. Lawson asked for any additional comments from Board members.

Mr. Watkins asked about a matrix or line-item breakdown to see what the outcomes were from the last strategic plan.

Ms. Coronel clarified Mr. Watkins question, saying he would like an update on the previous strategic plan to see if those objectives were accomplished, and referred to the Board's executive staff. Ms. Coronel commented that DCA assists the Board in developing the strategic plan, and the Board would track the completed objectives.

Ms. Lawson commented that the Board has tracked its progress on the 2018 – 2021 strategic plan and that it is a matter of formatting the information. Ms. Lawson suggested having that information reported at the next Board meeting.

Mr. Varghese commented that at a previous Board meeting, an update was given on measurable goals from the strategic plan. Mr. Varghese also commented that it was identified

that a statute change would be necessary to reach some of the goals, which was incorporated into the sunset process.

Agenda Item 20 Update on the Budgetary Position

Mr. Varghese reviewed each line item from the budget report, including past fiscal years and projections to year end. Mr. Varghese concluded that the Board is doing what it can for cost-cutting, but a 1.33% surplus is not sustainable.

Ms. Lawson asked for comments from the Board members.

Mr. Brooks asked about rent and the square footage utilized.

Mr. Varghese replied that there are multiple locations across the state and the square footage is not readily available.

Mr. Brooks commented on purchasing a building versus renting space.

Mr. Varghese replied that would be something the Board would have to work with DCA with, but the Board is currently looking at various options.

Dr. GnanaDev commented that the two biggest expenses are external consultants and the AGO and asked to explain why the biggest drop is with HQIU.

Mr. Varghese replied that the expenses vary each month, depending on the caseload.

Dr. GnanaDev asked for additional clarification.

Mr. Varghese replied that the HQIU cost was estimated by the Department of Investigations. Mr. Varghese commented that Board staff could drill down on these items to analyze and bring back to Board members.

Dr. GnanaDev stated he was not satisfied with the numbers nor the response.

Mr. Varghese commented that most of the external consultation costs are credit card fees. Mr. Varghese explained that the labels of the categories are confusing.

Mr. Ryu asked about the discrepancy in the budgets for HQIU and the AGO.

Mr. Varghese clarified the current year expenditures and current year revised budget.

Mr. Ryu asked Mr. Varghese to explain the credit card fees.

Mr. Varghese explained that the credit card fees are what the Board pays for accepting credit card payments from licensees.

Ms. Lawson asked for comments from the public.

Ms. Rhee commented that the AGO is making money off of the Board and that HQIU has money that is unaccounted for. Ms. Rhee also commented that there is no study to show that the Board is getting its money's worth from the AGO. Ms. Rhee stated that the Board is paying a lot of money for experts and consultants when we should pay them less.

Ms. Brannan commented on the reduction for training, saying that training is essential for employees and investigators to do their jobs. Ms. Brannan also commented on investigators in the field not having proper technology and tools to conduct business to the best of their ability.

Agenda Item 21 Update on the Health Professions Education Foundation

Dr. Hawkins reviewed the May 12, 2021, Health Professions Education Foundation (HPEF) meeting and the special meeting held with the Office of Statewide Health Planning and Development (OSHPD) on May 6, 2021. Dr. Hawkins explained what the (HPEF) is and what they do.

Dr. Hawkins commented that OSHPD has been elevated to the Department of Health Care Access and Information and noted that OSHPD has proposed legislation that will affect HPEF. Dr. Hawkins referred to the fact sheet on OSHPD's website for highlights. Dr. Hawkins noted that, due to the 501(c)(3) status, accounting, and audit requirements of HPEF, which are costly and burdensome, the existing funding streams will continue to support the scholarships and loan repayment program, and if legislation is approved, would result in the dissolution of HPEF by the end of the year.

Dr. GnanaDev commented that he does not think the dissolution is a bad idea since it is difficult to have a 501(c)(3) in a government agency. Dr. GnanaDev spoke of the possibility of HPEF becoming a committee and still having the Board involved.

Dr. Hawkins agreed with Dr. GnanaDev.

Ms. Lawson shared Dr. GnanaDev's sentiment. Ms. Lawson asked for comments from the public.

Ms. Rhee commented that physicians who are in a teaching role should encourage residents and medical students to include work in underserved areas on their resume.

Ms. Lawson asked for any additional comments from Board members.

Dr. GnanaDev shared how the scholarships are given out, saying there is a priority for socio-economic disadvantaged people.

Agenda Item 22 Update on the Physician Assistant Board

Dr. Hawkins commented that the Physician Assistant Board (PAB) met on May 10, 2021, and explained what the PAB is and what they do. Dr. Hawkins commented that there will be a member from the PAB to comment during agenda item 26 of this meeting.

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

Ms. Rhee commented that it would be relevant and important for physician assistants to be able to gain their independence from the Board, as there are a larger number of underrepresented minorities working as physician assistants.

Dr. Hawkins commented that the PAB is independent of the Board.

Agenda Item 23 Update on Revising Guidelines for Prescribing Controlled Substances for Pain

Mr. Prasifka commented that the task force met with Board staff on May 3, 2021. Mr. Prasifka noted that a subject matter expert needs to be secured to oversee the project, and that the task force will develop a timeline. Mr. Prasifka stated that one of the first things to do is identify the parts of the guidelines that need to be updated, and that once the initial stage is completed, the Board will have a comprehensive consultation process, which will include patient and public interest advocates, government agency stakeholders, academic centers, and the FSMB. Mr. Prasifka commented that the task force has set a target to deliver the project within one year.

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

Mr. Watkins asked if weaknesses have been identified in the current guidelines.

Mr. Prasifka replied that that is what the task force and Board staff are currently doing and will be working with the subject matter experts to develop suggestions. Mr. Prasifka noted that regular updates will be given at Board meetings.

Ms. Lawson asked for comments from the public.

Ms. Ogden commented that stakeholder involvement will be critical to develop a successful set of guidelines. Ms. Ogden also commented that Families for Intractable Pain Relief wants to participate. Ms. Ogden spoke of Dr. Forrest Tennant and intractable pain patients.

Ms. Farr spoke of her experience with being labeled as a chronic pain patient when she actually had treatable pain.

Ms. Hendrickson commented on revising the guidelines for controlled substances rather than for pain.

Ms. Lawson asked for additional comments from Board members.

Dr. Thorp thanked Board members and Board staff for the opportunity to work on the task force. Dr. Thorp spoke of intractable pain and the suggestion of reviewing controlled substance prescribing policies overall.

Agenda Item 24 Update from the Board of Registered Nursing on AB 890

Ms. Melby stated that the Board of Registered Nursing has established its nurse practitioner advisory committee, which includes four nurse practitioners, two medical doctors, and one public member. Ms. Melby noted that the committee has met twice, once to vote on a charter and establish a chair and vice chair, and the second meeting was to begin work relating to BPC 2837. Ms. Melby commented that the Board will be notified of their stakeholder meetings.

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

Ms. Rhee commented that she is concerned that the Board of Registered Nursing is not doing enough to advocate for underrepresented minority patients

Agenda Item 25 Discussion and Possible Action on Modifications to Previously Approved Text for Rulemaking on Postgraduate Training Requirements, 16 CCR Sections 1320 and 1321

Ms. Webb began by saying the proposed regulations were brought to the Board to reconcile previously approved language with the language that was formally noticed by the Office of Administrative Law (OAL). Ms. Webb explained that language that had been stricken, which required an applicant to be formally admitted, should not have been stricken because there are people who are not formally admitted who try to seek credit for postgraduate training. Board staff recognized this issue before the language was noticed by OAL, so is bringing back to the Board for approval.

Ms. Webb commented that we are nearing the end of the rulemaking process, and this is with the OAL, who is prepared to approve it pending the Board's approval. Ms. Webb commented that there were also non-substantive changes requested by the OAL for consistency with statute.

Ms. Webb asked for a motion to approve the noticed language and authorize staff to make any additional non-substantive changes required to complete the rulemaking process without having to return to the Board.

Dr. Krauss moved to approve the language and authorize staff to make non-substantive changes plan/S: Dr. Lewis

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

Ms. Rhee commented that training institutions should document hours that students have worked in racially and religiously diversified patient populations.

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

Motion carried 13-0

Agenda Item 26 Discussion and Possible Action on Proposed Regulatory Language Implementing SB 697 Relating to Physician Assistants, 16 CCR Sections 1399.502, 1399.540, 1399.541, and 1399.545

Ms. Webb began by saying that proposed regulations by the PAB that deal with the scope of practice and physician supervision must go through the Board for review and approval. Ms. Webb continued, saying the PAB has proposed amending regulations to be consistent with SB 697. Ms. Webb commented that Mr. Armenta, president of the PAB, is online to comment about the proposed regulations.

Mr. Armenta commented that the PAB had a meeting with California Assistant Physicians Association (CAPA) and have a pathway to cooperating with them and producing regulatory packages. Mr. Armenta also commented that the PAB and CAPA are in agreement that if any further changes of the regulatory language is to be done, it belongs before the PAB before being presented to the Board.

Ms. Lawson asked for comments from Board members.

Dr. Lewis moved to approve the language and authorize staff to work with the PAB to proceed with the proposed rulemaking/S: Mr. Watkins

Dr. Thorp asked if the limitation of four physician assistants (PA) for any given physician to supervise was still part of the regulatory language. Dr. Thorp also asked for clarification on the language that states PA's do not have to be in the same facility as the supervising physician.

Ms. Webb replied that the number of PA's that can be supervised is not addressed in these regulations. Ms. Webb also replied that the supervising physician does not have to be in the same facility as the PA, except when a procedure is being done under general anesthesia, saying a supervising physician needs to be immediately available. Ms. Webb explained that immediately available is defined as physically accessible and able to return without any delay upon the request of the PA.

Mr. Armenta agreed with Ms. Webb's analysis.

Dr. Thorp asked if there was any movement among the PA, family medicine, or internal medicine communities to come up with a template for supervision practice agreements, or if that is something the Board should consider doing.

Mr. Armenta replied that he is not aware of a template nor of any positions taken.

Ms. Lawson asked for comments from the public.

Ms. Rhee commented that she hopes PA's will be able to work independently and not have to be supervised by a physician.

Mr. Howard commented that on behalf of PA's, CAPA thanks the PAB and its staff, and they look forward to working together to conform regulation and practice with SB 697.

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

Motion carried 13-0

Agenda Item 27 Discussion and Possible Action on Proposed Regulatory Language to Amend the Licensed Midwife Annual Report

Ms. Webb began by saying the Midwifery Advisory Council (MAC) has approved proposed language to add a requirement for licensed midwives (LM) to include in their annual report their client's race and ethnicity as identified by the client. Ms. Webb commented that there currently is no such data collected on LM clients, and that the MAC determined this is an important piece of information.

Dr. Thorp moved to authorize staff to prepare the necessary rulemaking documents for submission and to make non-substantive changes to the language without returning to the Board/S: Dr. Lewis

Dr. GnanaDev asked if there would be a non-disclosure option for clients.

Ms. Webb replied that the clients would have to the option to not respond.

Ms. Lawson asked for comments from the public.

Ms. Rhee commented on the difference between race and ethnicity and stated that she hopes they will be listed separately on the report.

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

Motion carried 13-0

Agenda Item 28 Update, Discussion, and Possible Action on Proposed Agenda from the Midwifery Advisory Council

Ms. Holzer reviewed the agenda items for the upcoming MAC meeting and requested approval, including establishing goals for the MAC, update on midwifery-related legislation and sunset review, report from the MAC chair, update on the midwifery program, update on proposed regulatory language for the Licensed Midwife Annual Report, discussion on training for MAC members, approval of March 11, 2021 MAC meeting minutes, selection of one new MAC public member, and report from the task force and discussion regarding Medi-Cal related issues.

Ms. Lawson asked for comments from the Board members.

Mr. Watkins moved to approve the proposed agenda/S: Ms. Campoverdi

Ms. Lawson asked for comments from the public.

Ms. Rhee commented that it was difficult to hear Ms. Holzer's update.

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

Motion carried 13-0

Agenda Item 29 Discussion and Possible Action on Recommended Appointment Claudia Breglia to the Midwifery Advisory Council

Ms. Holzer recommended the Board approve appointee Claudia Breglia to the MAC.

Dr. Lewis moved to approve the recommended appointee/S: Dr. Mahmood

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

Ms. Rhee commented on the audio quality.

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

Motion carried 13-0

Agenda Item 30 Discussion and Possible Action on 2022 Proposed Board Meeting Dates

Mr. Prasifka shared the material presenting two sets of dates for the 2022 Board meetings.

Ms. Lawson asked for comments from the Board members.

Dr. Thorp moved to approve the first set of dates/S: Dr. Mahmood

Ms. Lawson asked if there were any objections to these dates. There were none.

Ms. Lawson asked for comments from the public.

Ms. Rhee commented on meetings being held at nonprofit organizations to save money.

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

Motion carried 13-0

Agenda Item 31 Election of Officers

Ms. Lawson asked for nominations for Vice President.

Dr. Krauss nominated Dr. Hawkins/S: Ms. Campoverdi

Ms. Lawson asked for public comments.

Ms. Rhee commented that she had the pleasure of meeting Dr. Krauss, he is a wonderful physician, and it was a pleasure working with him as an advocate.

Dr. Hawkins accepted the nomination.

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

Nomination supported 13-0

Ms. Lawson asked for nominations for Secretary.

Dr. Krauss nominated Ms. Lubiano/S: Ms. Lawson

Ms. Lawson asked for public comments.

Ms. Rhee commented that she is excited to see Ms. Lubiano being nominated.

Ms. Lubiano accepted the nomination.

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

Nomination supported 13-0

Dr. Krauss paraphrased a quote, saying he regrets that he has but two terms to give for the Board, as his term concludes on June 1, 2021. Dr. Krauss continued, saying his parting gift is for each Board member, Board executive, Board staff, Board partner and consultant to know that they have his respect, admiration, and love. Dr. Krauss commented that, even with differing opinions, each person has demonstrated a commitment to public protection. Dr. Krauss thanked the Board for sharing and carrying forward its mission.

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

Dr. GnanaDev commented that he will miss Dr. Krauss on the Board, but now he will not hesitate to call him.

Dr. Thorp expressed his respect and commented that he appreciates Dr. Krauss' humor and wisdom.

Dr. Hawkins commented that he and Dr. Krauss have become close friends and he appreciates his humor and sarcasm.

Mr. Watkins shared his gratitude, saying Dr. Krauss has been an inspiration.

Dr. Yip commented that Dr. Krauss has been an inspiration to him.

Ms. Lubiano thanked Dr. Krauss.

Agenda Item 32 Future Agenda Items

Dr. GnanaDev commented that the PTL has some issues that can be cleaned up and he will send his ideas to Board staff.

Ms. Campoverdi requested an update on the timeline for the web complaint tracking system.

Dr. Yip asked if panel meetings could be held monthly instead of quarterly.

Dr. Hawkins commented that Dr. Lang requested the Board revisit the demographic study.

Dr. Mahmood requested meeting locations that are more affordable.

Ms. Lubiano requested a discussion on cultural competency and making it a requirement.

Mr. Brooks requested a report on recidivism rates for the past ten years.

Mr. Watkins requested a presentation from an expert on alcohol use disorders.

Dr. GnanaDev commented that there are enough students in Sacramento and U.C. Davis to gather the information that Mr. Brooks requested.

Ms. Lawson asked for comments from the public.

Ms. Rhee commented that the AGO should be audited to find out why they are so expensive. Ms. Rhee also commented that the Board should conduct a study to see if the Board's enforcement processes are decreasing the recidivism rate. Ms. Rhee stated that there is corruption in the Office of Administrative Hearings (OAH), and that the OAH and AGO should be brought in to answer questions.

Ms. Lauren requested a presentation on adipose tissue removal. Ms. Lauren commented on women having breast reduction surgery and being upsold for liposuction. Ms. Lauren also commented on her experience with Dr. Saul Berger.

Ms. Monserratt-Ramos requested Mr. Brooks' recidivism rate study go back 25 years instead of 20 years, and to also include the number of complaints that did not reach an accusation level or were dismissed. Ms. Monserratt-Ramos also requested a follow up on the probation violation issues from Bakersfield, which were brought up at the February Board meeting.

Ms. Lawson commented that, before the meeting is adjourned, she would like to acknowledge that this meeting will be the last for Dr. Lewis. Ms. Lawson expressed that she has enjoyed working with Dr. Lewis.

Dr. GnanaDev commented that he will miss Dr. Lewis.

Dr. Krauss wished the best for Dr. Lewis and thanked him for being a friend.

Dr. Hawkins commented that Dr. Lewis was helpful to him in the learning process for the panel meetings.

Ms. Lubiano thanked Dr. Lewis for his service and for reaching out to her when she was first appointed to the Board.

Mr. Watkins thanked Dr. Lewis for leading panel discussions and wished him the best.

Dr. Yip commented that Dr. Lewis has been a committed Board member and that he will be missed.

Dr. Thorp congratulated Dr. Lewis on a term well served and thanked him for his friendship.

Dr. Lewis thanked all the members of the Board.

Agenda Item 33 Adjournment

Ms. Lawson adjourned the meeting at 2:29 P.M.

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

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

<u>Signature on File</u>	<u>08/19/2021</u>
William Prasifka, Executive Director	Date